

Nurses Bill

EXPLANATORY MEMORANDUM

Outline

The aim of this legislation is to replace the **Nurses Act 1958** with a modern statutory framework for the registration of nurses in Victoria.

In particular, the Bill will—

- (a) establish a registration board for nurses;
- (b) provide a new registration scheme for nurses;
- (c) establish a more humane process for dealing with nurses whose capacity to practise is in question; and
- (d) create disciplinary procedures which conform with the rules of natural justice.

Clause Notes

PART 1—PRELIMINARY

Clause 1 describes the purposes of the Act.

Clause 2 provides for the commencement of the Act.

Clause 3 defines words and phrases used in the Act.

PART 2—REGISTRATION

Division 1—Procedure for Obtaining Registration

Clause 4 states that the **Mutual Recognition (Victoria) Act 1993** applies to the occupation of nursing.

Clause 5 describes how an application for registration is made and gives the Board the power to require additional information from an applicant.

Clause 6 states the qualifications necessary for registration in the various divisions of the register.

Clause 7 states that the Nurses Board must register an applicant if the applicant is qualified, has paid a fee and is not refused on any ground which registration can be refused by the Board. It also provides that registration must not be granted in divisions 3, 4 or 5 after a certain date.

Clause 8 gives the Board a capacity to grant restricted registration in certain circumstances and requires the Board to provide the applicant with reasons when it does so.

Clause 9 gives the Board power to impose conditions, limitations or restrictions upon the registration of a nurse and to revoke amend or vary those conditions, limitations or restrictions.

Clause 10 entitles an applicant for registration to make submissions to the Board where the Board is proposing to refuse registration or to impose conditions, limitations or restrictions on the applicant's registration.

Clause 11 requires the Board to notify an applicant for registration of the outcome of her or his application and to provide the applicant with certain information in relation to its decision.

Clause 12 states that registration is for a period of 12 months and expires on the 31 December each year.

Clause 13 outlines the process of applying for renewal of registration.

Clause 14 states the grounds upon which the Board may refuse to renew the registration of a nurse.

Clause 15 describes the effect of suspension of registration upon the registration of a nurse.

Division 2—The Register

Clause 16 describes the divisions of the register, the particulars which are to be included on the register, and describes how a person may have access to the information contained in the register.

Clause 17 states that the Board must provide all registered persons with a certificate upon registration and upon renewal of registration and describes the particulars which are to be included on the certificate.

Clause 18 states that a certificate signed by the President or any two members of the Board may be used as evidence of the facts included on it.

PART 3—INQUIRES INTO REGISTERED NURSES

Division 1—Preliminary Investigations into Professional Conduct

Clause 19 states that a person may make a complaint to the Board about a registered nurse.

Clause 20 describes when such complaints are to be inquired into by the Health Services Commissioner and when they may not be dealt with by the Board.

Clause 21 states when complaints may be inquired into by the Board, requires the Board conduct a preliminary investigation and gives the Board the power to delegate its power to conduct any such investigation.

Clause 22 requires an investigator to make recommendations to the Board at the conclusion of the preliminary investigation and requires the Board to determine whether or not it will act on those recommendations.

Clause 23 gives the Board the power to determine to conduct an informal or formal hearing into the professional conduct of a nurse on its own motion without conducting a preliminary investigation.

Clause 24 gives the Board the power to suspend the registration of a nurse pending the conduct of a preliminary investigation or formal or informal hearing where necessary for the health and safety of the public. It also requires that the Board ensure that the hearing into the matter is commenced as soon as possible after the suspension is imposed.

Division 2—Preliminary Investigation into the Mental or Physical Health of Registered Nurses

Clause 25 states that where the Board believes that a nurse's capacity to practise is affected as a result of certain circumstances, the Board must appoint one of its members to determine whether an investigation should be conducted. At the conclusion of any preliminary investigation the appointed member must make recommendations to the Board.

Clause 26 requires the Board to notify a nurse whose health is to be investigated and describes the notice required to be given.

Clause 27 describes the processes for obtaining a medical examination where a nurse agrees to have an examination as part of preliminary investigation.

Clause 28 describes who the examining medical practitioner must report to and in what time frame. It also requires the appointed member both to discuss the report with the nurse who is the subject of the report and to report back to the Board on the contents of the report.

Clause 29 describes the actions the Board may take in response to the reports prepared by the appointed member and the examining medical practitioner.

Clause 30 provides for the referral of a matter to a formal hearing in certain circumstances.

Clause 31 provides that a nurse may request the Board to impose conditions, limitations and restrictions on her or his practise.

Clause 32 provides that the Board may revoke any conditions, limitations, restrictions or a suspension imposed on the practise of a registered nurse if the nurse satisfies the Board that her or his ability to practise is no longer affected.

Clause 33 enables the Board, where it is of the opinion that to permit a nurse to continue to practise would pose a serious risk to the public, to suspend the registration of a nurse pending a formal hearing into the physical or mental health of that nurse.

Clause 34 requires a registered nurse to notify the Board of any change of address.

Clause 35 provides an immunity from liability for a person working with or treating a nurse who, in good faith, reports that nurse to the Board because the person believes the nurse suffers from an incapacity.

Division 3—Formal and Informal Inquiries

Clause 36 requires the Board to do certain things where it determines that an informal hearing is to be held into the professional conduct of a nurse.

Clause 37 provides for the constitution of an informal hearing panel and provides a power for the Governor in Council to appoint alternate members.

Clause 38 states what must be included in a notice of an informal hearing.

Clause 39 provides for the conduct of an informal hearing.

Clause 40 states what findings and determinations may be made by the panel at an informal hearing.

Clause 41 requires that an informal hearing must be abandoned and the matter referred to a formal hearing in certain circumstances.

Clause 42 states that a nurse may request a review by way of formal hearing of the findings and determinations of an informal hearing.

Clause 43 requires the Board to do certain things where it determines that a formal hearing is to be held into the professional conduct of a nurse.

Clause 44 provides for the constitution of a formal hearing panel and provides a power for the Governor in Council to appoint alternates.

Clause 45 states what must be included in a notice of a formal hearing.

Clause 46 provides for the conduct of a formal hearing.

Clause 47 states what findings and determinations may be made after a formal hearing into the professional conduct of a nurse. It also provides that the Board has the power to suspend the registration of a nurse who does not comply with certain determinations made at a formal hearing.

Clause 48 sets out the findings and determinations which may be made after a formal hearing into the physical or mental health of a nurse.

Division 4—General Provisions Relating to Investigations

Clause 49 describes the procedure to be observed at informal and formal hearings.

Clause 50 provides for a formal panel to have the powers given under sections 14, 15, 16 and 21A of the Evidence Act 1958.

Clause 51 provides that a determination of a panel is to have effect as if it were a determination of the Board.

Clause 52 provides a power for the Board to remove any condition, limitation, restriction or suspension imposed pending the completion of an investigation or formal hearing.

Clause 53 states that the Board must give reasons for its determinations, states who may apply to the panel for reasons and gives time limits for the application and the giving of the reasons.

Clause 54 establishes that where the Board has made certain determinations it must notify certain bodies or persons and that no action for defamation lies against the Board or its members for the giving of such notice.

Clause 55 states that the Board must provide notice to the complainant containing certain information about the inquiry.

Clause 56 establishes the terms and conditions upon which members of hearing panels may be appointed.

PART 4—REVIEW BY ADMINISTRATIVE APPEALS TRIBUNAL

Clause 57 establishes the circumstances in which a person aggrieved by a decision of the Board may apply to the AAT for review of that decision.

Clause 58 requires that where a decision of the Board has been reviewed by the AAT and the AAT changes that decision the Board must notify certain bodies or persons.

PART 5—OFFENCES AND RELATED PROVISIONS

Clause 59 creates a number of offences in relation to claims by persons as to registration.

Clause 60 describes the effect of registration in division 1 on the practise of a nurse.

Clause 61 makes it an offence to make false claims as to being qualified to practise midwifery.

Clause 62 makes it an offence for a nurse's agent to provide unregistered persons to work as registered nurses and to provide registered nurses to work in contravention of the terms of their registration.

Clause 63 makes any person who is part of the management of a body corporate which is guilty of an offence under clause 62 and who knowingly commits the offence of providing unregistered persons to work as registered nurses is also guilty of the offence.

PART 6—ADMINISTRATION

Division 1—The Board

Clause 64 establishes the Nurses Board of Victoria as a body corporate.

Clause 65 establishes the powers, functions and consultation requirements imposed upon the Board.

Clause 66 gives the composition of the Board.

Clause 67 states the terms of office for Board members.

Clause 68 provides for the resignation and removal of Board members.

Clause 69 provides for the Governor in Council to appoint registered nurse members of the Board to be President and Deputy President and provides for the resignation and removal of those office bearers.

Clause 70 states that the Governor in Council may, in accordance with certain terms and conditions, appoint an acting member to the Board.

Clause 71 provides for the payment of fees and allowances to Board members.

Clause 72 states the procedure of the Board.

Clause 73 establishes that an act or decision of the Board is not invalid in certain circumstances.

Clause 74 requires a member of the Board to make a declaration of pecuniary interest and states how the Board must deal with such a declaration.

Clause 75 provides an immunity for Board members and the person keeping the register for actions which are not negligent and which are done in good faith in the exercise of a power under this Act.

Clause 76 provides that the Board may employ its own staff under such terms and conditions as it wishes.

Clause 77 establishes that the Board may delegate its functions in relation to renewal of registration to a member of the Board or staff members.

Division 2—Advisory Committees.

Clause 78 states that the Board may establish advisory committees and that it may determine the matters to be considered by those advisory committees.

Clause 79 states who may be a member of an advisory committee and that the chairperson of such a committee must be a member of the Board.

Clause 80 provides for the payment of fees and allowances to advisory committee members.

PART 7—REPORTING AND FINANCIAL PROVISIONS

Clause 81 establishes the Nurses Board Fund and describes what monies must be paid into this fund and what expenses the Board must pay out of this fund.

Clause 82 establishes that the Board may invest money credited to the Fund in an authorised manner.

Clause 83 requires the Board to keep proper accounts and records of its financial position.

Clause 84 requires the Board to produce an annual report to the Minister which describes its operations and gives a financial statement for that year of operation. The Minister is required to table this annual report before both houses of the Victorian Parliament.

Clause 85 requires that the financial statements produced by the Board be audited by the Auditor-General.

PART 8—ENFORCEMENT AND SUPPLEMENTARY POWERS

Clause 86 establishes that certain persons may take proceedings under this Act.

Clause 87 gives the Board the power to make application to a magistrate for the issue of a search warrant where there are reasonable grounds for believing that a breach of the Act or the regulations has occurred.

Clause 88 makes it an offence for a person to obstruct a person executing a search warrant issued under this Part.

Clause 89 gives the Board the power to approve registered funded agencies to conduct courses, approve courses provided by registered funded agencies and accredit courses run in the higher education sector.

Clause 90 requires the Board fix its fees for a period of 12 months, permits the Board to vary fees in certain cases and requires that any fees fixed by the Board are published in the Government Gazette.

PART 9—REGULATIONS

Clause 91 limits the jurisdiction of the Supreme Court to have certain actions brought before it in certain cases.

Clause 92 provides the Board with the power to make regulations about certain matters.

PART 10—SAVINGS AND TRANSITIONALS

Clause 93 defines words and phrases used in this Part.

Clause 94 repeals the **Nurses Act 1958** and the **Nurses (Amendment) Act 1985**.

Clause 95 provides for the continuation in office of a member of the Victorian Nursing Council in certain cases.

Clause 96 makes provision for the Nurses Board to succeed the Victorian Nursing Council which is abolished.

Clause 97 permits any investigation or inquiry commenced under the **Nurses Act 1958** but not completed before the commencement of Part 3 of this Act to be continued and completed as if this Act had not been enacted. It also requires the Board to give effect to any decision made where an investigation or inquiry has been continued and completed as if it had been made under this Act.

Clause 98 deems persons registered under the **Nurses Act 1958** to be registered under this Act.

Clause 99 provides for the temporary savings of certain statutory rules made under the **Nurses Act 1958**.

Clause 100 deals with references in any other Act, or subordinate instrument or any document whatever, to persons registered under the **Nurses Act 1958** and explains how these references are to be interpreted under this Act.

Clause 101 provides for a consequential amendment to the **Children and Young Persons Act 1989**.

