

## Nurses and Midwives Amendment (Performance Assessment) Bill 2004

New South Wales

### Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

This Bill is cognate with the *Health Legislation Amendment (Complaints) Bill 2004*.

Overview of Bill

The object of this Bill is to amend the *Nurses and Midwives Act 1991* (**the Principal Act**) to include provisions enabling the performance assessment of nurses and midwives that mirror those existing in the *Medical Practice Act 1992*.

Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** is a formal provision that gives effect to the amendments to the *Nurses and Midwives Act 1991* set out in Schedule 1.

### Schedule 1 Amendments

**Schedule 1 [2]** inserts proposed Part 4A into the Principal Act which contains proposed sections 42E–42ZB dealing with performance assessment.

**Proposed section 42E** contains a definition of **professional performance**, being the knowledge, skill or care possessed and applied by the nurse or midwife in the practice of nursing or midwifery.

**Proposed section 42F** contains a definition of **unsatisfactory** professional performance, being performance below the standard reasonably expected of a nurse or midwife of an equivalent level of training or experience.

**Proposed section 42G** enables the Nurses and Midwives Board (**the Board**) to have the professional performance of a nurse or midwife assessed under the proposed Part if a matter comes to the Board's attention that indicates that the nurse's or midwife's professional performance is unsatisfactory.

**Proposed section 42H** provides that professional performance raising certain serious questions may not be the subject of performance assessment.

**Proposed section 42I** enables a person (if the person is identified) to notify a matter to the Board if the person thinks that the professional performance of a nurse or midwife is unsatisfactory.

**Proposed section 42J** enables the Health Care Complaints Commission to refer a matter to the Board if the Commission thinks that the professional performance of a nurse or midwife is unsatisfactory.

**Proposed section 42K** provides that the professional performance of a nurse or midwife referred for performance assessment is to be assessed by one or more assessors.

**Proposed section 42L** requires the Board to inform a nurse or midwife if the Board decides to have his or her performance assessed.

**Proposed section 42M** requires an assessor to conduct the assessment and report to the Board on the assessment.

**Proposed section 42N** sets out the options that the Board has following assessment. This includes taking no further action, requiring a Performance Review Panel to conduct a review of the professional performance concerned, making a complaint, referring the matter to an Impairment Panel or giving counselling.

**Proposed section 42O** requires a Performance Review Panel to conduct a review of the professional performance of a nurse or midwife if required to do so by the Board.

**Proposed section 42P** prevents a Performance Review Panel conducting a review of the professional performance of a nurse or midwife if the Health Care Complaints Commission is investigating a complaint against the nurse or midwife.

**Proposed section 42Q** requires a Performance Review Panel to terminate the review of the professional performance of a nurse or midwife and refer the matter to the Board if it forms an opinion that certain serious issues are raised or there is a prima facie case of professional misconduct or unsatisfactory professional conduct.

**Proposed section 42R** provides that a Performance Review Panel may make recommendations to the Board as to certain specified action to take in relation to the nurse or midwife concerned.

**Proposed section 42S** provides that a Performance Review Panel can also direct that the nurse's or midwife's professional performance be re-assessed at a future date.

**Proposed section 42T** requires a Performance Review Panel to provide a written statement of its decision on the performance review to the nurse or midwife concerned and the Board.

**Proposed section 42U** enables a Performance Review Panel to exclude certain confidential information from the statement of its decision.

**Proposed section 42V** requires the Board to monitor whether any orders made by a Performance Review Panel are being complied with.

**Proposed section 42W** gives effect to proposed Schedule 2A which contains provisions relating to performance assessment outlined below.

**Proposed section 42X** provides for the establishment of Performance Review Panels.

**Proposed section 42Y** provides for a decision of a majority of members of a Performance Review Panel to be the decision of the Panel.

**Proposed section 42Z** enables the Board to appoint suitably qualified persons as assessors.

**Proposed section 42ZA** enables a nurse or midwife who has been the subject of a performance review by a Panel to appeal to the Nurses and Midwives Tribunal. Such an appeal is to be dealt with by way of a rehearing.

**Proposed section 42ZB** enables a nurse or midwife who is the subject of a performance review by a Performance Review Panel to appeal to the Chairperson or Deputy Chairperson of the Nurses and Midwives Tribunal on a point of law.

**Schedule 1 [9]** inserts proposed Schedule 2A into the Principal Act which contains further provisions relating to performance assessments.

Part 1 of proposed Schedule 2A gives assessors certain powers, including powers of entry to premises and inspection of premises and equipment and powers to ask questions and require the production of substances and records. The powers of assessors also include requiring a nurse or midwife to take part in an assessment exercise. The proposed Part creates certain offences for obstructing assessors in the performance of their functions, furnishing false information and impersonating assessors. The proposed Part provides that an assessor's report to the Board or a Performance Review Panel is not admissible in civil proceedings without consent. Part 2 of proposed Schedule 2A contains provisions in relation to the conduct of a performance review by a Performance Review Panel. A Panel may summon witnesses and take evidence, obtain documents, seek reports from experts and gain assistance from assessors. The nurse or midwife concerned is entitled to make representations to the Panel and the Panel may allow affected third parties to make submissions.

**Schedule 1 [1] and [3]–[8]** make consequential amendments.

**Schedule 1 [10]** enables regulations to be made of a savings or transitional nature consequent on the enactment of the proposed Act.