

Nurses Amendment Bill 2003

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Nurses Act 1991* to implement the recommendations of the Competition Principles Agreement Review of that Act and to make other minor, consequential or ancillary amendments to that Act and various other Acts.

The Bill will amend the *Nurses Act 1991* as follows:

- (a) The name of the Act will be changed to the *Nurses and Midwives Act 1991*. (Schedule 1 [2])
- (b) The name of the Nurses Registration Board will be changed to the Nurses and Midwives Board. (Schedule 1 [25])
- (c) The current division of the Register of Nurses into List A and List B will be abolished and replaced by a single merged Register of Nurses. A separate Register of Midwives will be created and practitioners who are entitled to be registered as both nurses and midwives will be required to be registered as both. Transitional provisions will provide for the registration as nurses or midwives, or as both nurses and midwives, of nurses currently registered in List A and List B. (Schedule 1 [32])
- (d) The Board will be authorised to recognise courses of study conducted anywhere in Australia (not just in NSW) as entitling a person to registration or enrolment under the Act. An educational institution that applies for recognition of a course will be entitled to have the Board's decision on the application reviewed by the Administrative Decisions Tribunal. (Schedule 1 [36], [40], [41], [66], [70])
- (e) The processes and requirements relating to registration or enrolment as a nurse or registration as a midwife will be amended to improve procedural fairness and enhance protection of the public, including by:
 - (i) removing the age restriction on registered and enrolled nurses, (Schedule 1 [34], [65], [71])
 - (ii) requiring the Board to give an applicant for registration or enrolment an opportunity to be heard before refusing an application, (Schedule 1 [74])
 - (iii) providing the Board with power to grant both provisional and temporary enrolment. (Schedule 1 [74])
- (f) The Board will be authorised to refuse, or to place conditions on, registration or enrolment applied for under the Act if the Board is of the opinion, after inquiry, that the applicant is not competent to practise or is unfit to practise because of a criminal conviction or criminal finding. (Schedule 1 [76])
- (g) Appeals against decisions of the Board in connection with applications for registration or enrolment will be to the Nurses and Midwives Tribunal rather than to the District Court as at present. (Schedule 1 [80])
- (h) Nurses and midwives will be required to provide the Board with an annual return of certain information (including about criminal convictions and criminal findings) necessary to allow the Board to assess ongoing fitness to practise. (Schedule 1 [94])
- (i) When a nurse or midwife is convicted of an offence or made the subject of a criminal finding for a sex or violence offence, the nurse or midwife will be required to notify the Board and the convicting court will be required to report the conviction or finding to the Board. (Schedule 1 [94])

- (j) A nurse or midwife will be required to notify the Board when charged with a sex or violence offence alleged to have been committed in the course of practice or alleged to have been committed against a minor or to involve child pornography. (Schedule 1 [94])
- (k) The Board will be authorised to treat an application for restoration of enrolment or registration as a fresh application for registration or enrolment (so that the Board can refuse the application or grant it subject to conditions where the applicant is not fit for comprehensive practice). (Schedule 1 [84])
- (l) An additional ground of complaint against a nurse or midwife will be a conviction or criminal finding for an offence where the circumstances render the nurse or midwife unfit in the public interest to practise. (Schedule 1 [97])
- (m) The definition of **unsatisfactory professional conduct** will be broadened to include failure without reasonable excuse to comply with a direction by the Board to provide information in relation to a complaint about the nurse or midwife. (Schedule 1 [9])
- (n) The current disciplinary provisions for nurses and midwives will be amended as follows:
- (i) certain statutory office holders such as judicial officers and the Health Care Complaints Commissioner will be exempted from the requirement to make a complaint by statutory declaration, (Schedule 1 [100])
 - (ii) the maximum period for which the Board can make an emergency suspension order will be increased from 30 days to 8 weeks, (Schedule 1 [111])
 - (iii) members of the Board will be precluded from sitting on the Nurses and Midwives Tribunal, (Schedule 1 [134])
 - (iv) a member of the Board will be precluded from sitting on a Professional Standards Committee if the member has previously dealt with the complaint or another complaint involving the practitioner, (Schedule 1 [119])
 - (v) the Tribunal's power to award costs will be limited to cases in which the Tribunal is satisfied there are special circumstances warranting an award of costs. (Schedule 1 [143], [156])
- (o) The procedure for the establishment by the Board of codes of professional conduct will be changed to require the approval of the Minister before a code is established and to enable the Minister to direct the Board to establish a code on a particular matter. A new process of public consultation will be required before a code is established. (Schedule 1 [95])
- (p) A statement of the objects of the Act will be inserted in the Act. (Schedule 1 [3])
- (q) Procedures for dealing with impaired practitioners will be updated for consistency with parallel provisions of the *Medical Practice Act 1992*. (Schedule 1 [104], [105], [116], [170]–[172])
- (r) The membership of the Board will be changed to increase the representation of consumers and enrolled nurses and to provide for the appointment of an additional nursing academic, with the new members to be nominees of the Minister. (Schedule 1 [26])
- (s) A Nurses Practice Committee and Midwives Practice Committee will be established as committees of the Board. (Schedule 1 [30])
- (t) There will be a new power to make regulations for the infection control standards to be followed by nurses and midwives. (Schedule 1 [203])

(u) The maximum term of office of a member of the Board will be increased from 3 to 4 years, with a maximum of 3 consecutive terms of office.

(Schedule 1 [212])

(v) The procedure for authorising expenditure from the Nurses and Midwives Board Education and Research Account will be changed to require the support of at least 8 (not 6) members of the Board and the requirement for a special meeting to approve expenditure will be removed. (Schedule 1 [194])

(w) Consequential savings and transitional provisions are enacted. (Schedule 1 [225], [226])

(x) Other amendments of a minor, consequential or ancillary nature are made. (other provisions of Schedule 1)

The Bill will also amend other Acts as follows:

(a) The *Public Health Act 1991* will be amended by inserting a new provision to restrict the management of labour and delivery of a baby to registered midwives and medical practitioners, and registered nurses, medical students and midwifery students acting under appropriate supervision. The new provision has an exception for cases of emergency. (Schedule 2.18 [3])

(b) Existing provisions of the *Public Health Act 1991* that restrict the carrying out of spinal manipulation and certain electrophysical treatments to certain health care professionals will be amended to allow student health care professionals acting under appropriate supervision to carry out the procedures. (Schedule 2.18 [1], [2])

(c) The *Physiotherapists Act 2001* will be amended to insert a new regulationmaking power to provide for the infection control standards to be followed by registered physiotherapists in the practice of physiotherapy. (Schedule 2.14)

(d) Consequential amendments are made to various other Acts. (other provisions of Schedule 2)

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 (with minor exceptions) on a day or days to be appointed by proclamation.

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

Clause 4 is a formal provision giving effect to the amendments to other Acts set out in Schedule 2.

Schedule 1 Amendment of Nurses Act 1991

Schedule 1 contains the amendments to the *Nurses Act 1991* referred to in the Overview.

Schedule 2 Amendment of other Acts

Schedule 2 contains the amendments to the *Public Health Act 1991*, the *Physiotherapists Act 2001* and various other Acts as referred to in the Overview.