

NURSING BILL 1992

EXPLANATORY NOTES

The purpose of this Bill is to make provision for ensuring safe and competent nursing practice.

PART 1—PRELIMINARY

Clause 1 sets out the short title of the Act.

Clause 2 provides for the Act to commence on a day to be proclaimed, except for amendments to the *Acts Interpretation Act 1954* as outlined in Clause 163.

Clause 3 sets out the objective of the legislation.

Clause 4 sets out the definitions of terms used in the Act.

Clause 5 specifies that the Act binds the Crown.

PART 2—ADMINISTRATION

Division 1—The Council and its functions and powers

Clause 6 establishes the Queensland Nursing Council.

Clause 7 sets out the functions of the Council.

Clause 8 sets out the powers of the Council.

Clause 9 allows the Council to be a member of another body, which has in its objects nurse education, training or research or any matter relating directly to the Council's functions.

Clause 10 enables the Council to make by-laws on relevant matters in order to give effect to the Act. The Clause also specifies that by-laws are to be approved by the Governor in Council.

Division 2—Constitution of Council

Clause 11 specifies the membership of the Council, being 10 nurses one of whom at least is an enrolled nurse, one consumer representative, one legal practitioner and the executive officer of the Council.

Division 3—Chairperson of Council

Clause 12 prescribes the appointment of the chairperson of the Council by Governor in Council. The chairperson is to be a nurse who is not an officer of the public service.

Division 4—Meetings of Council

Clause 13 specifies that the time and place of meetings are to be determined by the Council and may be convened by the chairperson on his or her own initiative, or at the request of a quorum of the Council.

Clause 14 prescribes who is to preside at meetings.

Clause 15 prescribes that seven members constitute a quorum and that a question is to be decided by a majority of votes with the presiding member having a casting vote in the event of tied votes.

Clause 16 allows the Council to regulate its proceedings as it considers appropriate.

Clause 17 requires members to disclose any pecuniary or other interest, whether direct or indirect, in a matter being considered by the Council; prescribes how such interests are to be recorded and that members with a declared interest in a particular matter are not to participate in the deliberative or decision-making processes of the Council when such a matter is being considered.

Division 5—Financial matters

Clause 18 specifies how the funds of the Council are to be received and applied, and sets out the provisions relating to the establishment of a Nurse Education and Research Fund.

Clause 19 requires the executive officer to present an annual statement of prospective expenditure to the Council.

Division 6—Provisions relating to members other than the executive officer

Clause 20 applies Division 6 to members of the Council other than the executive officer.

Clause 21 provides for the appointment of members to the Council by Governor in Council.

Clause 22 sets out the term of office for members of the Council.

Clause 23 provides for the terms and conditions of members, including remuneration and allowances to be determined by the Governor in Council.

Clause 24 prescribes the circumstances in which a member ceases to be a member of the Council.

Clause 25 allows the Governor in Council to appoint a qualified person to act in the place of an absent member of the Council or during a vacancy in the office.

Division 7—Provisions relating to the executive officer

Clause 26 sets out the duties of the executive officer.

Clause 27 provides for the appointment of the executive officer of the Council by Governor in Council.

Clause 28 sets out the term of office for the executive officer.

Clause 29 provides for the terms of appointment of the executive officer, including remuneration and allowances, as determined by the Governor in Council.

Clause 30 allows the preservation of rights and entitlements of an executive officer, who was an officer of the public service before appointment to the Council.

Clause 31 specifies superannuation arrangements applicable to the executive officer.

Clause 32 allows the Council to provide leave of absence to the executive officer.

Clause 33 states the procedure for resignation of the executive officer.

Clause 34 prescribes that the executive officer must not engage in paid employment outside the duties of the office without the approval of the Council.

Clause 35 prescribes the disclosure of pecuniary interests by the executive officer.

Clause 36 provides for the removal or suspension of the executive officer under certain circumstances.

Clause 37 provides for the appointment of an acting executive officer by the Governor in Council during a vacancy in the office or when the executive officer is absent from duty.

Division 8—The staff of the Council

Clause 38 provides for the engagement of employees as the Council considers necessary.

Clause 39 provides for the terms of employment for Council employees to be determined by the Council.

Clause 40 allows the Council to make arrangements for the services of officers or employees to be deployed to the Council or from the Council to an authority or public service department of the Commonwealth, State or Territory.

Clause 41 allows the Council, with the approval of Governor in Council, to establish, maintain or participate in a superannuation scheme for Council employees or the executive officer.

Clause 42 specifies superannuation arrangements applicable to the employees of the Council, who were previously officers of the public service and contributors to State Superannuation schemes or funds.

Division 9—Miscellaneous

Clause 43 allows the Council to delegate its powers, other than those powers listed.

Clause 44 allows the executive officer to delegate his or her powers to a Council employee.

Clause 45 provides for custody of the Council's seal and for judicial notice to be taken of the imprint of the seal.

Clause 46 provides for judicial notice to be taken of the signatures of the chairperson and executive officer.

Clause 47 specifies that members of committees of the Council are bound by Clause 17 (Disclosure of interests) and prescribes that their terms and conditions are determined by the Council and that any remuneration paid is to be determined by the Governor in Council.

PART 3—REGISTRATION AND ENROLMENT

Division 1—Administration

Clause 48 prescribes that a Register of Registered Nurses be kept by the Council and outlines the details to be recorded in such Register.

Clause 49 prescribes that a Roll of Enrolled Nurses be kept by the Council and outlines the details to be recorded in such Roll.

Clause 50 prescribes that the Register or Roll is to be an accurate record of the particulars of persons registered or enrolled, and imposes a penalty on any nurse who fails to notify the Council regarding any changes of particulars entered in the Register or Roll.

Clause 51 prescribes that alterations to particulars in the Register or Roll be recorded in relation to cancellations, suspensions, restorations and conditions of practice.

Clause 52 allows the Council to make corrections to the Register or Roll and make any consequential alterations to certificates issued by the Council.

Clause 53 allows a person to inspect, obtain a copy of, or obtain an extract from the Register or Roll upon payment of the prescribed fee.

Division 2—Qualifications

Clause 54 prescribes the qualifications and general requirements for registration or enrolment as a nurse. The Clause includes a provision ensuring mutual recognition of a person who has successfully completed a nursing course outside Queensland and who is registered or enrolled in another jurisdiction.

Division 3—Registration and enrolment

Clause 55 prescribes the application requirements for registration or enrolment as a nurse.

Clause 56 permits the Council to request an applicant to provide further information or to attend before it, so as to determine eligibility for registration or enrolment.

Clause 57 allows the Council to determine an applicant's proficiency in the English language, so as to determine eligibility for registration or enrolment.

Clause 58 prescribes the conditions under which the Council must register or enrol a person as a nurse.

Clause 59 sets out the procedures to be followed by the Council if an application for registration or enrolment is refused.

Clause 60 ensures that no person can be on both the Register and Roll concurrently.

Clause 61 prescribes the actions the Council must take on registering or enrolling a nurse.

Clause 62 allows the executive officer to supply a duplicate or a certified copy of a registration or enrolment certificate.

Clause 63 enables applicants whose apparent eligibility for registration or enrolment is awaiting confirmation to be provisionally registered or enrolled by the executive officer. The Clause also allows the Council to: provisionally register or enrol an applicant, subject to conditions; and cancel a provisional registration or enrolment.

Clause 64 enables temporary registration to be granted to appropriately qualified nurses from interstate or overseas to teach or to undertake nursing research or post graduate study in nursing.

Clause 65 enables limited registration or enrolment, with attached conditions, to be granted to a person and provides for the Council or the Professional Conduct Committee to review these limited registrations or enrolments at stipulated intervals.

Clause 66 allows the Council, if concerned about the condition of an applicant for registration or enrolment as a nurse, to refer that person to a Health Assessment Advisory Panel for assessment. The Clause also provides for the payment of costs and outlines the Panel's responsibilities to produce a written report on the condition of the person.

Clause 67 prescribes the manner in which the Council may immediately suspend the registration or enrolment of a nurse posing a risk to a patient's health and safety.

Clause 68 prescribes the manner in which the executive officer may immediately suspend the registration or enrolment of a nurse posing a potential serious risk to a patient's health and safety.

Clause 69 prescribes that cases of suspended registration or enrolment due to a person's condition be referred to the Health Assessment Advisory Panel and that the Panel's report be reviewed by the Council and considered when determining future action in relation to a particular case.

Clause 70 allows the Council to cancel the registration or enrolment of a nurse, under certain circumstances.

Clause 71 specifies that a person whose registration or enrolment is cancelled or suspended is, within 14 days, to surrender his or her registration or enrolment certificate, annual licence certificate, and any badge issued by the Council.

Clause 72 prescribes that the Council may give a direction for the restoration of names to the Register or Roll, after considering all relevant circumstances.

Clause 73 requires the Council to re-issue a certificate of registration or enrolment and appropriate badge to a person whose name is restored to the Register or Roll.

Division 4—Annual licence certificates

Clause 74 provides for an annual licence certificate for every nurse and midwife, on payment of a prescribed fee. The Clause also provides for: times in which fees are to be paid; cancellation of registration, enrolment or revocation of a midwife's authority to practise, for non-payment of such fee; and re-registration, re-enrolment and re-issue of an authority to practise midwifery.

Clause 75 prescribes the requirements for renewal of annual licence certificates and the grounds upon which the Council may refuse to grant a renewal.

Clause 76 prescribes the different types of endorsements and qualifications for an annual licence certificate to engage in specialised practices such as midwifery and psychiatric nursing.

Division 5—Authorisation to practise nursing

Clause 77 allows the Council to grant or revoke an authorisation to practise midwifery or a specialised branch of nursing and provides for persons so authorised to be subject to the functions and powers of the Council and the Health Assessment Advisory Panel under Clauses 65 to 73.

PART 4—ACCREDITATION OF NURSING COURSES

Clause 78 provides for the Council to: accredit nursing courses; cancel or vary accreditations; and set standards for nursing courses for accreditation purposes. The Clause also makes it an offence to admit persons to a course purporting to lead to registration or enrolment, if the course is not an accredited nursing course.

Clause 79 requires that a school of nursing conducting an accredited course is to keep records as prescribed.

Clause 80 prescribes that a school of nursing conducting an accredited course is to permit an inspector to enter premises, inspect documents or records and have access to teaching staff so as to determine the standard of the course.

Clause 81 prescribes that a person who successfully completes an accredited nursing course must be granted a degree, diploma or certificate by the governing body of the school of nursing.

Clause 82 makes provision for the Council to conduct examinations in order to determine the eligibility of persons for registration or enrolment.

Clause 83 allows the Council to monitor standards of student assessment in schools of nursing, if students do not undertake examinations arranged by the Council.

PART 5—PROFESSIONAL CONDUCT

Division 1—Professional Conduct Committee

Clause 84 provides for the establishment of a Professional Conduct Committee.

Clause 85 sets out the functions of the Committee.

Clause 86 sets out the powers of the Committee.

Clause 87 prescribes that the Committee will comprise six registered nurses, one consumer representative and one legal practitioner.

Clause 88 prescribes that the legal practitioner on the Committee will be the chairperson.

Clause 89 prescribes the appointment of members to the Committee by Governor in Council and prohibits a member of the Council from being appointed to the Committee.

Clause 90 sets out the term of office for members of the Committee.

Clause 91 provides that office is held on a part-time basis and the terms and conditions of members including remuneration and allowances are to be determined by Governor in Council.

Clause 92 sets out the circumstances in which a person ceases to be a member of the Committee.

Clause 93 provides for the disclosure of pecuniary and other interests by members of the Committee and the procedures to be followed to resolve any possible conflict of interest.

Clause 94 provides for the appointment of an acting chairperson of the Committee by the Governor in Council in certain circumstances.

Clause 95 allows the chairperson, subject to Clause 96, to give directions regarding the business and the constitution of the Committee for the purposes of the hearing of a proceeding.

Clause 96 prescribes that the Committee for the purposes of hearing and determining a proceeding before it, is to be made up of the chairperson and four other members of whom three must be registered nurses.

Clause 97 makes provisions for those circumstances when a member is unavailable or ceases to be a member of the Committee before the finalisation of a particular proceeding.

Clause 98 allows the Committee to convene where and when required.

Division 2—Code of conduct

Clause 99 allows the Council to prescribe a code of conduct relating to nursing practice.

Clause 100 provides that action may be taken against a nurse, a midwife, or a person authorised to practise nursing who is in contravention of the code of conduct.

Clause 101 specifies that Part 5 does not apply to a person who has taken action, or failed to take action, that does not involve civil or criminal negligence, because of an industrial dispute.

Division 3—Contraventions of code of conduct

Clause 102 allows for written complaints regarding the conduct of a nurse, a midwife or other persons authorised to practise nursing to be made to the Council and for the Council to investigate the complaint, subject to Part 8 of the Health Rights Commission Act 1991. The Clause also allows for action to be taken against a person who is no longer a nurse, or authorised to practise nursing or midwifery, provided that the complaint relates to a time when that person was so authorised.

Clause 103 specifies the manner in which an investigation under Clause 102(2) may be undertaken by an inspector, including those procedures to be followed when the executive officer directs that a person undergo an assessment by the Health Assessment Advisory Panel.

Clause 104 allows the Council to refer a matter to the Professional Conduct Committee for hearing and determination if satisfied that sufficient grounds exist and requires that the Council inform the person involved accordingly.

Division 4—Professional Conduct Committee proceedings

Clause 105 prescribes the manner in which the Professional Conduct Committee is to proceed when conducting a hearing, including provisions for legal representation of the person charged.

Clause 106 sets out the powers of the Committee when conducting a hearing.

Clause 107 allows the chairperson to summons a witness to attend a hearing and provides for the person to be paid the prescribed allowance for attendance.

Clause 108 makes it an offence for a witness to refuse to co-operate at a hearing without reasonable excuse.

Clause 109 allows the privilege against self-incrimination to be afforded to a person within the context of a proceeding.

Clause 110 allows the Committee to inspect, retain, copy or take extracts from a document or photograph the thing produced to the Committee at a hearing, if relevant to the hearing. The Clause also provides for access to the document or thing by the person otherwise entitled to possession.

Clause 111 makes it an offence to obstruct or improperly influence the conduct of a Committee hearing.

Clause 112 allows the chairperson to order any person to leave a closed hearing, and to order any person who obstructs or attempts to improperly influence the conduct of a hearing, to leave a hearing.

Clause 113 allows the Committee to receive the evidence from proceedings already completed in other jurisdictions and to adopt any relevant findings, decisions, judgments or reasons for judgments of a court, tribunal or body relevant to the Committee's proceedings.

Clause 114 allows the Committee to refer a person against whom a charge has been made to the Health Assessment Advisory Panel and subsequently for the Panel's report to be used as evidence in a hearing by the Committee.

Clause 115 provides: for the determination of a question before the Committee to be made by majority decision; for the opinion of the chairperson to determine a matter when the Committee is equally divided on a question; and empowers the chairperson to decide questions of law.

Clause 116 prescribes the actions that may be taken by the Committee when a contravention of the code of conduct is proved. The Clause also provides for dismissal of a charge and for payment of costs of a hearing on the order of the Committee.

Clause 117 allows for the recovery of penalties and costs ordered by the Committee and requires the Council to take the necessary action to give effect to an order of the Committee under Clause 116.

Clause 118 requires the Committee to provide full written reasons for its decisions to the Council, the complainant, and the person charged; and allows the Council to publish an order and reasons of the Committee as the Council considers appropriate.

Division 5—Health assessments

Clause 119 establishes the Health Assessment Advisory Panel.

Clause 120 provides that the Council is to appoint appropriately qualified persons to the Panel and that members of the Council are ineligible for such appointment.

Clause 121 prescribes the constitution of the Panel, the requirements on the person being assessed and the operational and reporting procedures to be followed by the Panel.

PART 6—PROVISIONS CONCERNING CERTAIN NURSING MATTERS

Clause 122 sets out specific and short-term circumstances under which a nurse registered outside of Queensland may be taken to be a registered nurse in Queensland.

Clause 123 makes it an offence for a nurse or midwife to continue in employment or be employed without a current annual licence certificate. The Clause also provides that an employer is to ensure that a nurse or midwife holds a current annual licence certificate.

Clause 124 entitles a nurse to wear a badge of prescribed design issued by the Council and sets out the conditions under which the wearing of a badge issued by the Council is an offence.

PART 7—INVESTIGATION AND ENFORCEMENT

Division 1—Inspectors

Clause 125 provides for the appointment of inspectors by the Council, with due regard to training and experience.

Clause 126 provides for the issue to, and return of identity cards by, inspectors.

Clause 127 requires an inspector to produce the identity card when exercising a power under this Part.

Division 2—Investigation of offences

Clause 128 outlines the entry and search powers of inspectors for the purpose of monitoring compliance with this Act.

Clause 129 outlines the entry and search powers of inspectors to collect evidence in relation to matters considered to be offences against this Act.

Clause 130 outlines the general powers an inspector may exercise on entering a place under this Part.

Clause 131 outlines the procedures by which an inspector may obtain an offence related warrant and prescribes the contents of a warrant so issued in relation to a particular place.

Clause 132 outlines the special conditions and procedures for obtaining an offence related warrant by telephone, facsimile, radio, or another form of communication.

Clause 133 empowers an inspector, in certain circumstances, to seek the name and address of a person; to request evidence of the correctness of such information given; and makes it an offence for a person not to supply a name and address, and evidence of correctness of such information without reasonable excuse.

Clause 134 outlines the procedures to be followed by an inspector who seizes or damages a thing in the exercise of a power under this Part. The Clause also provides for claims of compensation by a person incurring loss or expense because of the exercise of a power under this Part.

Clause 135 makes it an offence for a person to: obstruct, hinder or resist an inspector, without reasonable excuse; make false or misleading statements or give false or misleading documents to an inspector.

Division 3—Investigations of complaints relating to code of conduct

Clause 136 provides an inspector investigating a contravention of the code of conduct under clause 103 with all the powers and duties of an inspector under this Part, in relation to an offence.

PART 8—GENERAL***Division 1—Appeals***

Clause 137 provides for appeals against decisions of the Council and orders of the Committee to be heard by a Judge of the District Court and prescribes the procedures to be followed.

Division 2—Administration

Clause 138 requires that a person must at all times act honestly and with propriety in the exercise of powers and the performance of functions under this Act, with particular reference to use of office or position and information.

Clause 139 provides for the protection of confidentiality of documents and information.

Clause 140 permits the Council to obtain information from nurses, midwives, other persons authorised to practise nursing, nursing students, schools of nursing and health services to facilitate the carrying out of its functions.

Clause 141 prohibits a person to take any action that leads other persons to believe that he or she is registered or enrolled, authorised to practise nursing or midwifery, or the holder of an annual licence certificate unless that person is registered, enrolled or authorised to practise nursing or midwifery or holds a licence certificate.

Clause 142 prohibits an unauthorised person from practising as a nurse, performing a nursing service, or caring for a woman in childbirth except in specified circumstances.

Clause 143 makes it an offence to: knowingly falsify the Register or Roll; or make false statements or representations to achieve registration, enrolment or authorisation.

Clause 144 provides that the Council be paid all penalties and costs in relation to offences against this Act.

Clause 145 provides for an offence against the Act to be prosecuted in a summary way, and for the recovery of fees, costs and penalties payable to the Council in a summary way or by action in a court of competent jurisdiction.

Clause 146 provides for documents certified by the executive officer to be accepted as evidence.

Clause 147 indemnifies persons giving effect to this Act who have acted honestly and without negligence.

Clause 148 permits the Governor in Council to make regulations.

PART 9—SAVINGS, TRANSITIONAL AND SPECIAL ARRANGEMENTS

Division 1—Interpretation

Clause 149 sets out the meanings of terms used in this Part of the Act.

Division 2—Dissolution provisions

Clause 150 provides for the dissolution of the Board of Nursing Studies and the Nurses Registration Board on an appointed day.

Division 3—Provisions concerning officers of dissolved boards

Clause 151 provides for existing staff of the Nurses Registration Board and the Board of Nursing Studies to become the initial employees of the Council.

Clause 152 ensures that the employment conditions of employees of the dissolved Boards are maintained until such time as they elect to remain officers of the Council, or elect to return to the public service.

Clause 153 makes provision for: staff of dissolved Boards who are officers of the department or on secondment, to be subject to the control and direction of the Council, as if the person were an officer of the Council; and retention of appeal rights by such staff.

Clause 154 specifies the conditions under which an officer of the public service, who was previously an officer of one of the dissolved Boards, may elect to return to the public service.

Clause 155 makes provision for regulations to cover any deficiency in this Part of the Act, including the transfer of officers, inspectors, or other employees of the dissolved Boards to officers of the Council, or positions in the public service.

Clause 156 provides for officers of the dissolved Boards to become officers of the Council from the nominated day.

Division 4—Transfer of assets and liabilities from dissolved boards

Clause 157 sets out the provisions under which all property, contracts, trusts, liabilities, proceedings and causes of action and similar matters of the dissolved Boards vest in the Council from the appointed day.

Division 5—Disciplinary matters

Clause 158 provides for the continuation of Board inquiries, and the dealing with particular disciplinary matters by the Council ie. when an inquiry could have been started by a dissolved Board, but was not started; and in the situation when a matter arises before a code of conduct is in force.

Clause 159 empowers the Committee to deal with matters arising under *Clause 158*.

Division 6—Transitional provisions concerning registration, enrolment and courses

Clause 160 provides for: the transfer of persons currently registered or enrolled to practise nursing or midwifery; recognition of certificates of registration and enrolment or annual practising certificates issued previously; recognition of all nursing courses currently accredited; and outstanding applications for registration or enrolment to be disposed of by the Council.

Clause 161 sets out the procedures to be followed by the executive officer and the Council in relation to a person who is both a registered and enrolled nurse within the meaning of the *Nursing Act 1976*.

Division 7—Repeals and amendments

Clause 162 provides for the Acts specified in Schedule 1 to be repealed.

Clause 163 provides for the Acts specified in Schedule 2 to be amended.

SCHEDULE 1

Sets out those Acts which are to be repealed.

SCHEDULE 2

Sets out the amendments to be made to other Acts on the commencement of this Act.

