

NURSES AMENDMENT BILL 2002

EXPLANATORY MEMORANDUM

Part 1 – Preliminary

Clause 1 – Preliminary

This clause provides for the Act to be cited as the *Nurses Amendment Act 2002*.

Clause 2 – Commencement

This clause is self-explanatory.

Part 2 – Nurses Act 1992 amended

Clause 3 – *Nurses Act 1992* amended

This clause is self-explanatory.

Clause 4 – Section 4 amended

This clause amends the interpretation section of the *Nurses Act 1992* to include definitions of “designated area” and “nurse practitioner”.

Designated area has the same meaning as under the proposed amendments to the *Poisons Act 1964*, which allows the Commissioner of Health to designate areas for the purposes of authorising a nurse practitioner to possess, use, supply or prescribe poisons in accordance with regulations made under the *Poisons Act 1964*.

The definition of nurse practitioner is self-explanatory.

Clause 5 – Section 9 amended

This clause amends section 9 to allow the Nurses Board to issue codes of practice in respect of nurse practitioners. The Nurses Board already has the power to issue codes of practice in respect of nurses and specialist nurses.

The Nurses Board can only issue a code of practice in relation to nurse practitioners on the recommendation of the Commissioner of Health.

A code of practice will establish the framework for the exercise of functions of a nurse practitioner, including the possession, use and supply of poisons and the requesting or undertaking of testing, therapies or treatment.

A breach of a code of practice issued by the Nurses Board can be taken into account in any disciplinary proceedings against the nurse practitioner.

Section 42 of the Interpretation Act 1984 applies to a code of practice as if it were a regulation.

Clause 5(3) amends section 9(5) to provide that a person may be liable to criminal proceedings under the *Radiation Safety Act 1975* for a breach of the code of conduct.

Clause 6 – Section 16 amended

This clause provides that if a registration review committee of the Nurses Board is considering the registration of a nurse practitioner there must be a nurse practitioner on the registration review committee.

Clause 7 – Section 17 amended

This clause provides that if a professional standards committee of the Nurses Board is considering the professional conduct or standards of a nurse practitioner there must be a nurse practitioner on the professional standards committee.

Clause 8 – Section 22A inserted

This clause provides that the Nurses Board must register a nurse as a nurse practitioner on payment of a registration fee, if the Nurses Board is satisfied that the nurse is:

- Registered or entitled to be registered in division 1 of the register maintained by the Nurses Board (ie the applicant must be a Registered Nurse capable of practicing independently, rather than an Enrolled Nurse)
- Holds an educational qualification that has been approved by the Nurses Board. Clause 9 provides for the recognition of educational qualifications for nurse practitioners.

Nurse practitioners are to be registered in division 1 of the register.

Clause 9 – Section 23 amended

This clause makes provision for the Nurses Board to recognise a qualification from an Australian tertiary educational institution, or approve of a qualification obtained in a country other than Australia in respect of nurse practitioners.

Clause 10 – Section 26 amended

This clause allows for provisional registration procedures to apply to registration as a nurse practitioner.

Clause 11 – Section 27 amended

This clause allows for temporary registration procedures to apply to registration as a nurse practitioner.

Clause 12 – Section 28 amended

This clause provides that registration has effect from the date of provisional registration if the person is later accepted for registration as a nurse practitioner.

Clause 13 – Section 29 amended

This clause provides for the Nurses Board to determine the form of an application for registration as a nurse practitioner, and for an application fee to be charged.

Clause 14 – Section 30A inserted

This clause provides that on registration, a nurse practitioner can practice as a nurse practitioner and use the title nurse practitioner in connection with that practice, but only while s/he is carrying out duties as a nurse practitioner in a designated area. This means that a person registered as a nurse practitioner cannot use the title

“nurse practitioner” in connection her/his practice at any place other than a designated area.

Clause 15 – Section 31 amended

This clause allows for the payment of registration fees to the Nurses Board in respect of registration as a nurse practitioner.

Clause 16 – Section 34 amended

This is technical amendment to remove a subdivision number that is not required.

Clause 17 – Section 36 amended

This clause provides for the Nurses Board to issue a certificate of registration to a nurse practitioner and that the certificate of registration as a nurse practitioner is evidence of registration.

Clause 18 – Section 41 amended

This clause provides that a nurse practitioner must notify the Nurses Board if s/he has not practiced as a nurse practitioner for a period of three years or completed a qualification or refresher course approved by the Nurses Board within that period. The Nurses Board must remove the name of the person from the register of nurse practitioners on being so notified. The Nurses Board must also remove the name of a person who has not notified it in accordance with this section, but who meets the criteria for removal.

Clause 19 – Section 42 amended

This clause provides for the restoration of the name of a person who has been removed from the register as a nurse practitioner on satisfying the Nurses Board that they meet the requirements for registration.

Clause 20 – Section 44 amended

This clause provides that a nurse practitioner is deemed not to be registered as a nurse practitioner during any period during which her/his registration is suspended.

Clause 21 – Section 47 amended

This clause is an offence provision and provides that a person shall not use the title “nurse practitioner” unless he or she is registered as a nurse practitioner. It also provides that it is an offence for a person to hold him or her self out to be practicing as a nurse practitioner unless he or she is practicing as a nurse practitioner in a designated area. The penalty is \$2,500 for a first offence and \$5,000 or a second or subsequent offence. This is the same level of penalty that applies to the use of the term “registered nurse” without appropriate registration.

Clause 22 – Section 48 amended

This clause is an offence provision and provides that a person shall not hold her/himself out to be a nurse practitioner unless registered. . The penalty is \$2,500 for a first offence and \$5,000 or a second or subsequent offence.

Clause 23 – Section 69 amended

This clause provides that the disciplinary powers of the Nurses Board include the power to suspend a person from practicing as a nurse practitioner.

Part 3 – Consequential amendments

Division 1 – Medical Act 1894 amended

Clause 24 – Medical Act 1984 amended

This clause is self-explanatory.

Clause 25 – Section 19 amended

This clause provides an exception for nurse practitioners in respect of requirements that only a medical practitioner is able to provide certain services or advice. An exception to this requirement already applies to a dietitian or chiropractor giving dietetic or chiropractic advice or services. The exception is expressed to apply only in circumstances where the nurse practitioner is carrying out functions as a nurse practitioner.

Clause 26 – Section 21A amended

This clause provides an exception for nurse practitioners in respect of requirements that only a medical practitioner can use radium or X-ray for certain purposes. An exception to this requirement already applies to a chiropractor or dentist using X-ray as an aid to diagnosis in the course of practice. The exception is expressed to apply only in circumstances where the nurse practitioner is carrying out functions as a nurse practitioner.

Division 2 – Misuse of Drugs Act 1981 amended

Clause 27 – Misuse of Drugs Act 1981 amended

This clause is self-explanatory.

Clause 28 – Section 3 amended

This clause includes a definition of “nurse practitioner” for the purposes of the *Misuse of Drugs Act 1981*.

Clause 29 – Section 6 amended

This clause provides that it is a defence to a charge of possession or use of a prohibited drug that the drug was prescribed for the person by a nurse practitioner in his or her lawful practice as a nurse practitioner.

Clause 30 – Section 8 amended

This clause extends offence provisions relating to obtaining prohibited drugs from a medical practitioner or dentist by fraudulent behaviour to obtaining prohibited drugs from a nurse practitioner by fraudulent behaviour.

Division 3 – Pharmacy Act 1964 amended

Clause 31 – Pharmacy Act 1964 amended

This clause is self-explanatory.

Clause 32 – Section 5 amended

This clause amends the definition of dispensing a medicine or drug to include supplying in accordance with a prescription given by a nurse practitioner registered under the *Nurses Act 1992*.

Clause 33 – Section 39 amended

This clause provides that a nurse practitioner acting in the course of his or her profession may dispense medicines and drugs.

Division 4 – Poisons Act 1964 amended**Clause 34 – Poisons Act 1964 amended**

This clause is self-explanatory.

Clause 35 – Section 5 amended

This clause includes a definition of “nurse practitioner” for the purposes of the *Poisons Act 1964*.

Clause 36 – Section 20 amended

This clause amends the description of:

- Schedule 1 poisons to include the possibility of availability from a nurse practitioner in addition to availability from a medical practitioner, pharmaceutical chemist or veterinary surgeon.
- Schedule 4 poisons to include the possibility of prescription or supply by a nurse practitioner in addition to prescription or supply by a medical practitioner, dentist or veterinary surgeon.

Clause 37 – Section 23 amended

This clause provides that a nurse practitioner, while lawfully practicing as a nurse practitioner is authorised to possess, use, supply or prescribe any poison in accordance with regulations made under the *Poisons Act 1964*. This clause also provides for regulations to be made that allow the Commissioner of Health to designate areas at which such use supply or prescription may be authorised.

Provision is also made to include a nurse practitioner in the class of persons who are not authorised to sell any poison in an open shop without a licence under the *Poisons Act 1964*.

Clause 38 – Section 61 amended

This clause provides that a certificate of registration as a nurse practitioner signed by the Nurses Board is *prima facie* proof of the facts stated in the certificate.

Clause 39 – Section 64 amended

This clause provides that regulations relating to the possession, supply, use or prescription of poisons by a nurse practitioner can only be made on the recommendation of the Commissioner of Health.

Division 5 – Poisons Regulations 1965 amended

Clause 40 – Poisons Regulations 1965 amended

This clause is self-explanatory.

Clause 41 – Regulation 2 amended

This clause amends the definition of “supply”. The definition of supply prior to this amendment provides that administration to a patient of any substance specified in any Schedules of the Act by a medical practitioner, dentist or registered nurse when acting under the direction of a medical practitioner is not deemed to be supplying. The amendment provides that administration to a patient of any substance specified in any Schedules of the Act by a nurse practitioner is also not deemed to be supplying.

Clause 42 – Regulation 11A inserted

This clause provides that the Commissioner of Health may designate, in writing, an area in which a nurse practitioner may be authorised to possess, use, supply or prescribe poisons in accordance with the regulations. The Commissioner of Health may amend or withdraw the designation at any time.

Clause 43 – Regulation 21 amended

This clause amends regulation 21 to provide that all the labelling requirements for poisons dispensed or supplied by a medical practitioner, nurse at a remote area nursing post, or dentist also apply to poisons dispensed or supplied by a nurse practitioner.

Clause 44 – Regulation 36 amended

This clause amends regulation 36 to provide that Schedule 4 poisons may be sold or supplied on a prescription of a nurse practitioner, and includes nurse practitioners in the class of persons who are permitted to dispense Schedule 4 poisons.

Clause 45 – Regulation 37 amended

This clause amends regulation 37 to provide that requirements in relation to the form of a prescription for a Schedule 4 poison apply to prescriptions prepared by a nurse practitioner.

Clause 46 – Regulation 38 amended

This clause amends regulation 38 to provide that requirements in relation to oral directions to dispense Schedule 4 poisons in emergency cases also apply to nurse practitioners.

Clause 47 – Regulation 38AA amended

This clause amends Regulation 38AA to provide that provisions in relation to the administration of Schedule 4 poisons in hospitals includes authorisation for the administration by a nurse practitioner.

Clause 48 – Regulation 40 amended

This clause amends Regulation 40 to allow a nurse practitioner to procure a Schedule 4 poison to the extent that it is required for his or her employment as a nurse practitioner.

Clause 49 – Regulation 64 amended

This clause amends Regulation 64 to allow for the substitution of one brand name for another in dispensing a poison prescribed by a nurse practitioner.

Clause 50 – existing power to amend regulations unaffected

This clause makes it clear that any future amendments to the *Poisons Regulations 1965* including amendments made by this legislation can be amended in the usual way.

Division 6 – Radiation Safety Act 1975 amended**Clause 51 – Radiation Safety Act 1975 amended**

This clause is self-explanatory.

Clause 52 – Section 26 amended

This clause provides that a nurse practitioner, acting in accordance with a code of practice issued by the Nurses Board under the *Nurses Act 1992*, does not need to hold a license for the purpose of requesting the holder of a license under the *Radiation Safety Act 1975* to undertake any diagnosis or therapy. Medical, dental or veterinary practitioners are not required to hold a licence for that purpose.

Division 7 – Road Traffic Act 1974 amended**Clause 53 – Road Traffic Act 1974 amended**

This clause is self-explanatory.

Clause 54 – Section 63 amended

This clause provides that in proceedings relating to the offence of driving under the influence of drugs alone, the defence that the drugs were prescribed by a medical practitioner or dentist also applies in respect of drugs prescribed by a nurse practitioner.

Part 4 – Savings and transitional**Clause 55 – Savings and transitional**

This clause allows for transitional arrangements in respect of applications made within 6 months of the commencement of the amended legislation. A nurse who has carried out functions similar to a nurse practitioner within the previous three years, may carry out the functions of a nurse practitioner in a designated remote area nursing post while an application for registration as a nurse practitioner is being dealt with.

It also provides that a person who applies under the transitional arrangements may be registered as a nurse practitioner without holding formal qualifications if the Nurses Board is satisfied that they have sufficient knowledge and practical experience to carry out the functions of a nurse practitioner.