

EXPLANATORY STATEMENT

AUSTRALIAN CAPITAL TERRITORY

NURSES ORDINANCE, 1988

No. 61, 1988

The Nurses Ordinance 1988 (the new Ordinance) will repeal and replace the Nurses Registration Ordinance 1933 (the previous Ordinance). The main effect of the new Ordinance is the establishment of a Nurses Board which takes over from the Nurses Registration Board the administration, registration and enrolment of various branches of the nursing profession and the conduct of that profession. The main differences between the new Ordinance and the previous Ordinance include:

- . the establishment of registered nurse (more highly trained) and enrolled person categories in line with most States, (including the removal of the term nursing aid);
- . provision for representation of enrolled nurses on the Nurses Board, (previously only people who were registered nurses had representation);
- . the introduction of annual registration and enrolment;
- . the phased introduction of a requirement that registered nurses must first be entitled to general registration before being entitled to registration as midwifery (after 5 years) or mental health nurses, (after 10 years);
- . the introduction of new provisional registration and enrolment requirements;
- . the introduction of temporary registration for locum tenens arrangements;
- . the introduction of special registration for persons visiting the Australian Capital Territory for research or educational purposes;
- . revised suspension or cancellation of registration and enrolment provisions;



the elimination of the detailed regulations on training, examinations, standards of practice and fees which are unnecessary. Fees are set under the new Ordinance by Ministerial determination rather than by regulation.

The new Ordinance includes amendments recommended by the ACT House of Assembly and accepted by the Minister. Consultation in the formulation of the new Ordinance has also taken place with the Nurses Registration Board, the Royal Australian Nursing Federation and the Hospital Employees Federation. A number of recommendations from these bodies have been incorporated into the new Ordinance.

Details of the new Ordinance are set out in the attachment.

ATTACHMENT

PART I - PRELIMINARY

Section 1 provides for the short title of the new Ordinance which is the Nurses Ordinance 1988.

Section 2 provides that the new Ordinance is to come into operation on such date as is fixed by the Minister of State for the Arts and Territories by notice in the Gazette.

Section 3 defines words and phrases used in the new Ordinance. There are new definitions including a definition of "enrolled nurse". Enrolled nurses under the new Ordinance are persons who are nursing aids under the previous Ordinance. The term "enrolled person" means an enrolled nurse or a mothercraft nurse. These two categories require a similar level of training. Accordingly they are included on the same roll.

PART II - THE NURSES BOARD

Section 4 establishes the new Nurses Board.

Section 5 provides that the Board shall consist of its Chairperson and eight other members. The Chairperson and four members are appointed by the Minister and four members are to be elected in accordance with the Health Professions Boards (Elections) Ordinance 1980. Up to two of the appointed members of the Board may be enrolled nurses. Under the previous Ordinance nursing aids were not represented on the Board.

Section 6 provides that only registered nurses are eligible for appointment as Chairperson or election as Deputy Chairperson.

PART III - EDUCATION AND ASSESSMENT

Section 7 provides that the Board may approve courses of education or training and hold examinations for nurses. Provision is made for publication of statements setting out particulars of approved courses of education, training and examinations determined by the Board. These statements are to be made available to members of the public.

Section 8 makes provision for the Board to arrange examinations with other bodies in the Australian States or another Territory.

Section 9 ensures that fees are paid prior to the conduct of examinations.

PART IV - REGISTRATION

Section 10 outlines the qualifications which entitle a person to be registered as a general nurse under the new Ordinance. These will include registration under the previous Ordinance, (providing the person applies within 5 years) the completion or partial completion of examinations and courses, (including those conducted overseas and other parts of Australia, as well as those conducted by the Board) as approved by the Board.

Section 11 outlines qualifications which entitle a person to be registered under the new Ordinance as a midwifery nurse or a mental health nurse. Combined with section 64 of the new Ordinance, the object of the provision is to phase in a requirement that all those who practise midwifery or mental health nursing must first be registered as a general nurse. The provision does not disadvantage those who are already registered. Those who are registered in those specialities at the commencement of the new Ordinance have 5 years to apply for registration. Once registered they are able to practise as a midwifery or mental health nurse for the rest of their career provided they remain registered. In the case of mental health nurses, section 64 enables new entrants to enter that speciality (without registration as general nurse first) for a period of 10 years providing they complete training considered satisfactory by the Board. The same arrangements apply to interstate and overseas nurses.

Section 12 entitles a person to be registered as an infants' nurse, if he or she is registered under the previous Ordinance, and has made application to be registered within a period of 5 years.

Section 13 prescribes the particulars to be set out in an application for registration, such as the applicant's qualifications and experience and whether the applicant's right to practise as a nurse has ever been cancelled or suspended. The penalty for a false or misleading statement or lodging a false document in connection with an application is \$1,000 or 6 months imprisonment or both, (section 53).

Section 14 requires the Board to approve the registration of an applicant who has paid the appropriate fee, is entitled to apply for registration, is a fit and proper person and has an adequate knowledge of the English language.

Section 15 provides that where an applicant for registration as a general nurse also applies to be registered as a midwifery nurse or mental health nurse, the applicant does not have to pay the determined fee twice.

Section 16 provides that the Board shall keep a Register of Nurses.

Section 17 provides for registration of a person as a particular category of registered nurse where the Board approves the person's application for registration.

Section 18 provides that a person registered under the new Ordinance shall be issued with a certificate to that effect by the Board. It also provides that the Board can require a person who is no longer registered to return the certificate to the Board. The penalty for failure to comply with this requirement is \$100.

Section 19 allows the Chairperson of the Board to grant provisional registration to a person who has applied to the Board to be registered. Such provisional registration is only for three months and cannot be renewed. Provisional registration enables the Board to verify details of a person's entitlement to be registered without disadvantaging them.

Section 20 allows the Chairperson of the Board to grant temporary registration to a person entitled to practise nursing in a State or another Territory who intends to practise nursing in the ACT but who will not be registered in the ACT pursuant to section 17 or enrolled pursuant to section 32 providing that the person has not been temporarily registered for a total period of more than 6 months in the preceding 24 month period.

Section 21 allows the Board to grant special registration to a person entitled to practise nursing in a place outside Australia and who is visiting the ACT for the purpose of research or educating people about nursing. Such special registration can last for a maximum period of 24 months and can be made subject to conditions by the Board.

Section 22 prescribes the details to be entered in the Register with respect to a person registered as a nurse. These include the details of the person's qualifications, date of registration, registration number and name.

Section 23 provides that a person who has been granted provisional, temporary or special registration is deemed to be a registered person for the purposes of Part VI of the new Ordinance dealing with cancellation and suspension of registration, Part VII which regulates the conduct of the practice of nursing, section 54 requiring notification of Board decisions affecting a registered nurse, section 55 relating to appeals to the Administrative Appeals Tribunal, section 56 requiring fees to be paid to the ACT Health Authority and section 58 allowing inspection of the Register.

Section 24 requires a registered nurse on or before 1 January in each year to pay the fee for renewal of registration. If the person fails to comply with the requirement, his or her enrolment can be cancelled. Provision is made for re-enrolment where the person complies with the notification.

Section 25 requires a registered nurse to notify the Chairperson of changes in his or her professional address, place of residence or the nurse's address entered in the Register. There is a penalty of \$100 for failure to comply with this provision.

Section 26 enables the Board to remove from the Register the name of a registered nurse who has died or ceased to be registered. It also gives the Board the power to alter the Register. The provision contains a safeguard to ensure that only necessary qualifications are contained in the Register. The power to alter the registration is necessary to correct clerical errors and changes in the circumstances of individual registered nurses. The registered nurse may request an alteration under the provision. All alterations must be necessary.

PART V - ENROLMENT

Section 27 outlines the qualifications which entitle a person to enrolment as an enrolled nurse or mothercraft nurse. For an enrolled nurse this includes

enrolment as a nursing aid under the previous Ordinance, (providing an application is made within 5 years), the completion or partial completion of training examinations and courses, (including those conducted overseas or in other parts of Australia as well as those conducted by the Board) as approved by the Board. An enrolled nurse is the equivalent of a nursing aid under the previous Ordinance and has less extensive training than a registered nurse. A mothercraft nurse is entitled to enrolment if he or she has completed appropriate training.

Section 28 prescribes the particulars to be included in an application for enrolment as an enrolled nurse, such as the applicant's qualifications and experience and whether the applicant's right to practise as a nurse has ever been suspended or cancelled.

Section 29 requires the Board to approve the enrolment of a qualified applicant who has: paid the appropriate fee, is entitled to apply for enrolment, is a fit and proper person and has an adequate knowledge of the English language.

Section 30 provides that the Board shall keep a Roll of Enrolled Nurses.

Section 31 provides that a person enrolled under the new Ordinance shall be issued with a certificate to that effect by the Board. It also provides for the issue by the Board of duplicate certificates. It provides that the Board can require a person who is no longer enrolled to return the certificate to the Board. The penalty for failure without reasonable excuse to comply with this requirement is \$100.

Section 32 allows the Chairperson of the Board to grant provisional enrolment to a person who has applied to the Board to be an enrolled nurse. Such provisional enrolment is only for three months and cannot be renewed. Provisional registration enables the Board to verify details of a person's entitlement to be registered without disadvantaging them.

Section 33 provides that enrolment of a person comes into effect when the Board approves the person's application for enrolment and enters the particulars of the enrolment on the Roll of Enrolled Nurses.

Section 34 provides that a person who is provisionally enrolled is deemed to be enrolled for the purposes of Part VI of the new Ordinance which provides for cancellation and suspension of enrolment, Part VII which regulates the conduct of the practice of nursing, section 54 requiring notification of Board decisions affecting an enrolled nurse, section 55 relating to appeals to the Administrative Appeals Tribunal, section 56 requiring fees to be paid to the ACT Health Authority and section 58 allowing inspection of the Roll.

Section 35 requires an enrolled person on or before 1 January in each year to pay the fee for renewal of enrolment. If the person fails to comply with the requirement, his or her enrolment can be cancelled. Provision is made for re-enrolment where the person complies with the notification requirements within 12 months of cancellation.

Section 36 requires an enrolled nurse to notify the Board of a change in his or her professional address, place of residence or address entered in the Roll. There is a penalty of \$100 for failure to comply with this provision.

Section 37 enables the Board to remove from the Roll the name of an enrolled person who has died or ceased to be enrolled. It also gives the Board the ability to alter the Roll. The provision contains a safeguard to ensure that only necessary qualifications are contained in the Roll. The power to alter particulars in the Roll is necessary to correct clerical errors and changes in the circumstances of individual enrolled persons. The enrolled person may request an alteration under the provision.

PART VI - CANCELLATION AND SUSPENSION

Section 38 specifies the grounds upon which the registration or enrolment of a person may be cancelled, or suspended. It also enables the Board to reprimand registered or enrolled persons. These grounds include fraudulently obtained registration or enrolment, loss of qualifications or right to practise, conviction for certain kinds of offences, canvassing for the purpose of procuring practice, drunkenness or addiction to drugs and conduct rendering the person unfit to practise.

Section 39 empowers the Board, where it is satisfied that the mental or physical condition of a registered nurse or enrolled person renders him or her unfit to practise, to suspend registration or enrolment, or direct the person not to perform certain specified nursing services, and requires the Board to review the suspension or direction within 12 months and thereafter at intervals not exceeding 12 months. No review is to occur within a period of 3 months from the date of the last order of suspension or restriction of practice or review.

Section 40 requires the Board to hold an inquiry before reprimanding a person, cancelling or suspending registration or enrolment restricting the practice of a person registered or enrolled under the new Ordinance. The Board may suspend temporarily the registration or enrolment of a person to whom an inquiry relates.

Section 41 provides that a person whose registration or enrolment has been suspended shall, during the period of suspension, be deemed not to be registered or enrolled.

Section 42 provides that a person may apply for re-registration, re-enrolment or termination of a suspension, as the case may be, on the ground that circumstances have changed since the cancellation or suspension of registration or enrolment.

PART VII - THE CONDUCT OF THE PRACTICE OF NURSING

Section 43 provides that it is an offence for a person other than a registered nurse or an enrolled person to give or perform any nursing service for fee or reward. The penalty is \$2,000. It also provides that a registered nurse or enrolled person shall not practise under a name other than the name under which the registered nurse or enrolled person is registered or enrolled. The penalty is \$200.

Section 44 provides that a person other than a registered nurse or an enrolled person shall not describe that person as a registered nurse or an enrolled person, or hold that person out, or advertise, as being qualified or authorised to practise nursing. The penalty is \$1,000.

Section 45 provides that a registered nurse or enrolled person shall not practise without supervision in a branch of nursing in relation to which that person is not registered or enrolled. The penalty for breach of this provision is \$2,000. It also provides that a registered nurse or enrolled person shall not describe or advertise or otherwise hold out that he or she is authorised or qualified to practise in a branch of nursing in relation to which he or she is not registered or enrolled. The penalty for breach of this provision is \$1,000.

Section 46 requires that an enrolled nurse should not be employed except under the supervision of a registered nurse. The penalty is \$500 for a natural person and \$2,500 for a body corporate.

Section 47 prohibits any person other than a registered nurse from signing any certificate required by law from a nurse. The penalty is \$500.

Section 48 entitles only a registered nurse or an enrolled nurse to recover fees for nursing services. The registered or enrolled nurse must render an account before taking legal action, except where an application could be made for an order under Part II of the Arrest on Mesne Process Act, 1902 of the State of NSW in its application to the ACT.

Section 49 gives a person liable to pay a fee for a nursing service the right to apply to the Board, within one month after service of the account, for review of the account. The Board shall then, after a review taking into account what is a reasonable amount for fees, certify the amount which the Board considers is a reasonable fee for that service. The provision gives the Board powers necessary to investigate the level of fees and is standard with other health professions registration legislation. It provides protection to consumers.

Section 50 provides that on the death of a registered nurse that nurse's personal representative may carry on the business of the deceased if the practice of nursing in the business is carried on by another registered nurse. This can occur for a 6 month period which can be extended by the Board. An example of the type of business which may be affected by this provision is a nurse locum service.

Section 51 prohibits a registered nurse from knowingly or recklessly employing a person other than a registered nurse as a locum. The penalty is \$500.

Section 52 provides that the provisions relating to the conduct of the practice of nursing are not to be taken as prohibiting emergency nursing services as it is necessary to ensure all available skilled people are available for emergencies. The provision also allows nursing services for quarantine purposes being provided by any person entitled to practise as a nurse under the law of a State or Territory. It also does not prohibit nursing services performed by a person as part of a course of training related to enrolment or registration as a nurse.

PART VIII - MISCELLANEOUS

Section 53 enables the Board to require an applicant for registration or enrolment to provide additional information and penalises those who provide false or misleading information. The penalty is \$1,000 or imprisonment for 6 months or both.

Section 54 requires that where either the Board or the Chairperson has made an adverse decision concerning a person, the Board or the Chairperson must advise the person of the decision and of his or her entitlement to apply to the Administrative Appeals Tribunal for a review of the decision.

Section 55 vests jurisdiction in the Administrative Appeals Tribunal to review decisions which the Board or the Chairperson may make under the Ordinance.

Section 56 requires fees payable under the new Ordinance to be paid to the Australian Capital Territory Health Authority.

Section 57 empowers the Board to appoint members to a committee to undertake research or studies in relation to the education and training of nurses, and to appoint members to the committee. In each case the committee is required to furnish reports to the Board. The provision ensures that committee members are reimbursed for expenses incurred in the performance of committee work.

Section 58 provides that a person may inspect an entry in the Register or the Roll or obtain a certified copy of an entry in the Register or the Roll upon payment of a fee.

Section 59 provides for annual publication in the Gazette of the names and addresses of registered or enrolled persons.

Section 60 gives the Minister for the Arts and Territories the power to determine fees for the purposes of the new Ordinance.

Section 61 empowers the Minister for the Arts and Territories to make regulations under the new Ordinance. It is not intended that any regulations will be passed together with the new Ordinance.

Section 62 provides that the previous Ordinance and amendments to it, are repealed.

PART IX - TRANSITIONAL

Section 63 provides that any person registered or enrolled under the previous Ordinance who applies for registration within six months of the commencement of the Ordinance is not required to pay any fee for such application and is not subject to the provisions relating to the conduct of nursing until the Board has determined the application. Those people will be subject to the provisions of the previous Ordinance and Nurses Regulations relating to conduct.

Section 64 provides that a person is entitled to apply to the Board for registration as a mental health nurse if that person has completed training to the satisfaction of the Board pursuant to subsection 11(2) of the new Ordinance, and makes application within 10 years of the commencement of the new Ordinance. Once 10 years has expired, there will be no new entries of mental health nurses unless they are first registered as a general nurse. Those who have been registered as a mental health nurse before the expiry of 10 years will be able to continue practising for the remainder of their career without being required to become registered as a general nurse, providing they remain registered.

Section 65 provides that the members of the previous Nurses Registration Board will be Board members of the new Nurses Board under the new Ordinance until their terms expire.