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 1990, No. 107

An Act to amend the Nurses Act 1977 and certain other enactments

[28 August 1990

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title—This Act may be cited as the Nurses Amendment Act 1990, and shall be read together with and deemed part of the Nurses Act 1977 (hereinafter referred to as the principal Act).

PART I

AMENDMENTS TO PRINCIPAL ACT

2. Membership of Council—(1) Section 4 (1) of the principal Act (as substituted by section 3 (1) of the Nurses Amendment Act 1983) is hereby amended by repealing paragraph (d), and substituting the following paragraph:

“(d) One person to be appointed on the nomination of the Minister of Education:”.

(2) Section 4 (1) (e) of the principal Act (as so substituted) is hereby amended by repealing subparagraph (i), and substituting the following subparagraph:

“(i) One shall be a person who is the most senior nurse employed by an area health board:”.

(3) Section 4 (1) (e) of the principal Act (as so substituted) is hereby further amended by repealing subparagraph (iii), and substituting the following subparagraph:

“(iii) One shall be a person who is a nurse employed by an area health board as a public health nurse:”.

(4) Section 4 (1) (e) of the principal Act (as so substituted) is hereby further amended—

(a) By omitting the expression “Six”, and substituting the expression “Five”:

(b) By repealing subparagraph (iv).

(5) Section 4 (1) of the principal Act (as so substituted) is hereby further amended by adding the following paragraph:

“(h) One registered midwife to be appointed on the nomination of the New Zealand College of Midwives Incorporated.”

3. Experimental programmes—(1) The principal Act is hereby amended by repealing section 39, and substituting the following section:

“39. (1) If a school of nursing or an institution proposes to the Council that a scheme be undertaken at that school or institution on a trial basis, the Council—

“(a) Shall, with the approval of the Minister, by resolution adopt the scheme for such period as may be specified in the resolution; or

“(b) Shall decline the proposal, by notice in writing to the school or institution—

“(i) Giving the reasons for its decision; and

“(ii) Advising the school or institution of any amendments that would make the proposal acceptable to the Council.

“(2) If the Council declines a proposal under subsection (1) (b) of this section, the school or institution concerned may ask the Council to consider an amended proposal; and in that case the Council shall, as soon as practicable, consider that proposal.

“(3) A scheme under this section shall provide for a programme and examinations to be undergone and passed by persons seeking registration in any capacity or enrolment, where either—

“(a) The programme and examinations comprising the scheme differ from, but appear to the Council to be no less efficient than, the programme and examinations prescribed for registration in that capacity or for enrolment, as the case may require; or

“(b) No programme and examinations are prescribed for registration in that capacity or for enrolment, as the case may require, but the Council considers that the programme and examinations comprising the scheme are such as to maintain proper standards of training.

“(4) Every person who, to the satisfaction of the Council, has undergone the programme and passed the examinations specified in the scheme shall, notwithstanding any other provision in this Act or anything in any regulations for the time being in force under this Act, be entitled to registration in the capacity to which the scheme relates, or enrolment, as the case may require.

“(5) Any scheme adopted under this section may contain such incidental and supplementary provisions (including provisions for charging fees in respect of the sitting of examinations specified in the scheme) as appear to the Council to be requisite or expedient for the purposes of the scheme.

“(6) The period for which a scheme is adopted under this section may from time to time, with the approval of the Minister, be extended by resolution of the Council for such period as may be specified in the resolution.

“(7) Any scheme adopted under this section may from time to time, with the approval of the Minister, be extended by resolution of the Council to apply to any other school or schools of nursing, or institution or institutions, specified in the resolution.

“(8) In this section, unless the context otherwise requires, ‘programme’ includes—

“(a) A nursing programme; and

“(b) A nursing course; and

“(c) A course in midwifery.”

(2) Every scheme in force under section 39 of the principal Act immediately before the commencement of this Act shall be deemed to have been adopted under the provisions substituted in the principal Act by subsection (1) of this section, and shall have effect accordingly.

4. Functions of Council as to complaints under Social Security Act 1964—The principal Act is hereby amended by inserting, after section 42, the following section:

“42A. (1) The Council shall inquire into such complaints against persons who are registered midwives or who are conditionally registered, in connection with matters arising under Part II of the Social Security Act 1964, as may be referred to it by the Minister, and it may, if it thinks fit, but subject to the following provisions of this Act as to appeals, make recommendations to the Minister regarding any such complaint, and order the person concerned to pay any costs or expenses of and incidental to the inquiry.

“(2) If any such complaint involves professional misconduct on the part of any such midwife, that complaint may also be the basis of a charge of professional misconduct against that midwife, and the charge may be inquired into and dealt with by the Council in accordance with the provisions of this Act.”

5. Offences relating to obstetric nursing—(1) Section 54 of the principal Act (as substituted by section 17 of the Nurses Amendment Act 1983) is hereby amended—

(a) By inserting in subsection (1), after the words “medical practitioner”, the words “or registered midwife”:

(b) By inserting in subsection (2), after the words “medical practitioner”, the words “or registered midwife”.

(2) Section 54 of the principal Act (as so substituted) is hereby further amended by inserting, after subsection (5), the following subsection:

“(5A) Nothing in subsection (3) of this section shall apply to any person registered as a midwife by virtue of the provisions of section 39 of this Act.”

6. Repeal of section 58—Section 58 of the principal Act (as substituted by section 19 of the Nurses Amendment Act 1983) is hereby repealed.

PART II

AMENDMENTS TO OTHER ACTS

Amendments to Social Security Act 1964

7. Interpretation—(1) Section 88 (1) of the Social Security Act 1964 is hereby amended—

- (a) By omitting from paragraph (b) of the definition of the term “maternity benefits” the words “an approved midwife”, and substituting the words “a registered midwife”;
- (b) By inserting in paragraph (c) of that definition, after the words “medical practitioner”, the words “or a registered midwife”.

(2) Section 88 (1) of the Social Security Act 1964 is hereby further amended by omitting from the definition of the term “pharmaceutical benefits” (as substituted by section 7 (1) of the Social Security Amendment Act (No. 2) 1980) the words “or dentist in the course of his practice”, and substituting the words “, dentist, or registered midwife in the course of his or her practice”.

(3) Section 88 (1) of the Social Security Act 1964 is hereby further amended by inserting, after the definition of the term “practice nurse services” (as inserted by section 20 (1) of the Social Security Amendment Act 1986), the following definition:

“ ‘Registered midwife’ means a person who is registered as a midwife under the Nurses Act 1977.”.

8. Rights to maternity benefits—The Social Security Act 1964 is hereby amended by repealing section 106, and substituting the following section:

“106. (1) Every woman who is entitled to the services of a medical practitioner or a registered midwife, or both, in relation to any maternity benefits, shall have the right to select the medical practitioner or registered midwife, or the medical practitioner and registered midwife, as the case may be, by whom such services shall be given.

“(2) The right of selection conferred by this section shall, in the case of a woman who is confined in a maternity hospital, be subject to the concurrence of the person or body for the time being having authority under section 49 of the Area Health

Boards Act 1983 to control access to that hospital by medical practitioners and registered midwives.

“(3) All fees and other money payable in respect of maternity benefits shall be paid by the Department.”

9. Fixing of fees—(1) Section 111 of the Social Security Act 1964 is hereby amended by repealing subsection (2), and substituting the following subsection:

“(2) The scale of fees may be fixed by agreement between—

“(a) The Minister; and

“(b) Any person or persons having the authority of the Medical Association of New Zealand (hereinafter called the Medical Association) to enter into such an agreement; and

“(c) Any person or persons having the authority of the New Zealand College of Midwives Incorporated (hereinafter called the College) to enter into such an agreement.”

(2) Section 111 (3A) of the Social Security Act 1964 (as substituted by section 22 (1) of the Social Security Amendment Act 1986) is hereby amended by omitting the expression “2”, and substituting the expression “4”.

(3) Section 111 of the Social Security Act 1964 is hereby further amended by repealing subsection (3B) (as so substituted), and substituting the following subsection:

“(3B) The President of the tribunal shall be a barrister or solicitor of the High Court of New Zealand to be appointed by the Minister after consultation with the Medical Association and the College. One of the assessors shall be appointed on the recommendation of the Council of the Medical Association, one shall be appointed on the recommendation of the College, and the other 2 shall be selected by the Minister. A decision by any 3 members of the tribunal shall be deemed to be a decision of the tribunal.”

(4) Section 111 (3F) of the Social Security Act 1964 (as so substituted) is hereby amended by omitting the words “and representatives of the Medical Association”, and substituting the words “, representatives of the Medical Association, and representatives of the College”.

(5) Section 11 of the Social Security Amendment Act 1967 is hereby consequentially repealed.

10. Payment of fees—(1) Section 112 (1) of the Social Security Act 1964 is hereby amended—

- (a) By inserting, before the words “who renders any services”, the words “and every registered midwife”;
- (b) By omitting the words “in full satisfaction of his”, and substituting the words “or registered midwife in full satisfaction of his or her”.

(2) Section 112 (3) of the Social Security Act 1964 is hereby amended by inserting, after the words “medical practitioner” wherever they occur, the words “or registered midwife”.

(3) Section 112 of the Social Security Act 1964 is hereby further amended by adding the following subsection:

“(6) Where a registered midwife renders any service in respect of which fees are fixed under section 110 and also under section 111 of this Act, he or she shall be entitled to be paid fees calculated in accordance with one of those sections only.”

(4) Until a new scale of fees is fixed in accordance with section 111 of the Social Security Act 1964 (as amended by section 9 of this Act), registered midwives who render services in relation to maternity benefits shall be entitled to be paid the appropriate fees for the time being fixed in accordance with the said section 111.

11. Miscellaneous purposes for which money may be expended by Department—Section 118 (d) of the Social Security Act 1964 is hereby amended by inserting, after the words “medical practitioners,”, the words “registered midwives,”.

12. Claims for payments and refunds—Section 119 (1) of the Social Security Act 1964 is hereby amended by inserting, after the words “medical practitioner”, the words “or registered midwife”.

Amendments to Misuse of Drugs Act 1975

13. Interpretation—Section 2 (1) of the Misuse of Drugs Act 1975 is hereby amended by inserting, after the definition of the term “prohibited plant”, the following definition:

“‘Registered midwife’ means a person who is registered as a midwife under the Nurses Act 1977:”.

14. Exemptions from sections 6 and 7—(1) Section 8 (1) of the Misuse of Drugs Act 1975 is hereby amended—

- (a) By inserting, after the words “veterinary surgeon,” in both places where they occur, the words “registered midwife,”;

(b) By inserting, before the words “practice or employment”, the words “or her”.

(2) Section 8 (2) of the Misuse of Drugs Act 1975 is hereby amended by inserting, after paragraph (a), the following paragraph:

“(aa) Any registered midwife may prescribe, supply, or administer the controlled drug pethidine (as described in the Second Schedule to this Act):”.

(3) Section 8 (2) of the Misuse of Drugs Act 1975 is hereby further amended by inserting, after paragraph (b), the following paragraph:

“(ba) Any pharmacist may produce, manufacture, or supply pethidine (as so described) pursuant to a prescription or order issued by a registered midwife:”.

(4) Section 8 (2) of the Misuse of Drugs Act 1975 is hereby further amended by inserting, after paragraph (d), the following paragraph:

“(da) Any person having the care of a patient for whom pethidine (as so described) is supplied by a registered midwife, or prescribed by a registered midwife and lawfully supplied, may administer that drug to that patient in accordance with the advice of the registered midwife who supplied or prescribed it:”.

15. Statements regarding drug dependent persons—

Section 20 (3) of the Misuse of Drugs Act 1975 is hereby amended by inserting, after paragraph (f), the following paragraph:

“(fa) Registered midwives:”.

16. Powers of Minister to prohibit prescribing, etc.—

(1) Section 23 (1) of the Misuse of Drugs Act 1975 is hereby amended by inserting, after paragraph (a), the following paragraph:

“(aa) Prohibit any specified registered midwife from prescribing pethidine (as described in the Second Schedule to this Act):”.

(2) Section 23 (2) of the Misuse of Drugs Act 1975 is hereby amended by inserting, after paragraph (c), the following paragraph:

“(ca) In the case of a registered midwife, except on the recommendation of the Nursing Council of New Zealand; or”.

(3) Section 23 of the Misuse of Drugs Act 1975 is hereby further amended by adding the following subsection:

“(7) Without prejudice to the liability of any registered midwife under any other provision of this Act, every registered midwife who prescribes pethidine (as so described) in contravention of a notice under subsection (1) of this section commits an offence against this Act and is liable to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$1,000, or to both.”

17. Notification of conviction of medical practitioners, etc.—Section 33 of the Misuse of Drugs Act 1975 is hereby amended by inserting, after the word “dentist,” in both places where it occurs, the words “registered midwife,”.

18. Regulations—Section 37 (1) (g) of the Misuse of Drugs Act 1975 is hereby amended by inserting, after the word “dentists,” the words “registered midwives,”.

Amendments to Medicines Act 1981

19. Interpretation—Section 2 of the Medicines Act 1981 is hereby amended by inserting, after the definition of the term “practitioner”, the following definition:

“ ‘Registered midwife’ means a person who is registered as a midwife under the Nurses Act 1977:”.

20. Sale of medicines by retail—Section 18 (2) of the Medicines Act 1981 is hereby amended by inserting, after the word “practitioner”, the words “, registered midwife,”.

21. Administering prescription medicines—Section 19 (1) of the Medicines Act 1981 is hereby amended by inserting, after the words “of the practitioner”, the words “or registered midwife”.

22. Exemptions for practitioners and registered midwives—Section 25 (1) of the Medicines Act 1981 is hereby amended by inserting, after the word “practitioner” wherever it occurs, the words “or registered midwife”.

23. Restrictions on possession of prescription medicines—Section 43 (2) of the Medicines Act 1981 is hereby amended by repealing paragraph (c), and substituting the following paragraph:

“(c) A person to whom the medicine has been lawfully supplied for his or her use, or for use by any other person, as a patient under the care of a practitioner or registered midwife and who does not have in his

or her possession any other supplies of a prescription medicine prescribed or supplied for the same purpose by another practitioner or registered midwife, and is necessary or incidental to such use; or”.

24. Powers of Minister to prohibit prescribing, etc.—

(1) Section 48 (1) (a) of the Medicines Act 1981 is hereby amended by inserting, after the word “practitioner”, the words “or registered midwife”.

(2) Section 48 (2) of the Medicines Act 1981 is hereby amended by inserting, after paragraph (b), the following paragraph:

“(ba) In the case of a registered midwife, except on the recommendation of the Nursing Council of New Zealand; or”.

25. Restrictions on supply to particular persons—

Section 49 (2) of the Medicines Act 1981 is hereby amended by inserting, after the words “any practitioner”, the words “or registered midwife”.

26. Regulations—Section 105 (1) (q) of the Medicines Act 1981 is hereby amended by inserting, after the word “practitioners”, the words “and registered midwives”.

Amendments to Area Health Boards Act 1983

27. Access to maternity hospitals and wards by medical practitioners and registered midwives—(1) Section 49 (1) of the Area Health Boards Act 1983 is hereby amended by inserting, after the words “medical practitioner” wherever they occur, the words “or registered midwife”.

(2) Section 49 (2) of the Area Health Boards Act 1983 is hereby amended by inserting, after the words “medical practitioners”, the words “and registered midwives”.