

NURSING AMENDMENT ACT

OFFICE OF THE PRESIDENT

No. 547 12 April 1995

NO. 5 OF 1995: NURSING AMENDMENT ACT, 1995.

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

ACT

To amend the Nursing Act, 1978, so as to amend certain definitions and to define certain expressions; to provide for the establishment of the South African Interim Nursing Council; to further regulate the objects and powers of the said council; to provide for the constitution of the said council; to further regulate the filling of vacancies on the said council; to provide for the abolition of the various nursing councils in the Republic; and to provide for the rationalisation of certain laws relating to nursing that remained in force in various areas of the national territory of the Republic by virtue of section 229 of the Constitution; and to provide for matters connected therewith.

(Afrikaans text signed by the President.) (Assented to 6 April 1995.)

IT ENACTED by the Parliament of the Republic of South Africa, as follows:-

Amendment of section 1 of Act 50 of 1978, as amended by section 26 of Act 94 of 1991 and section 1 of Act 21 of 1992

1. Section 1 of the Nursing Act, 1978 (hereinafter referred to as the principal Act), is hereby amended-

(a) by the insertion after the definition of "approved nursing school" of the following definitions:

" 'Bophuthatswana Nursing Council' means the Bophuthatswana Nursing Council established by section 53 of the Health and Related- Professions Act, 1985 (Act No. 33 of 1985) (Bophuthatswana); 'Ciskeian Nursing Council' means the Ciskeian Nursing Council established by section 2 of the Nursing Act, 1984 (Act No. 13 of 1984) (Ciskei);";

(b) by the substitution for the definition of "council" of the following definition:

" 'council' means the South African Interim Nursing Council [referred to in] established by section 2";;

(c) by the insertion after the definition of "council" of the following definition: "'Director-General' means the Director-General: Health or his or her nominee;";

(d) by the substitution for the definition of "Minister" of the following definition: " 'Minister' means the Minister of [National]Health;"

(e) by the insertion after the definition of "scheduled substance" of the following definition:

" 'South African Nursing Council' means the South African Nursing Council referred to in section 2 of this Act prior to the amendment of the said section 2 by the Nursing Amendment Act, 1995;"

(f) by the insertion after the definition of "this Act" of the following definitions:

" 'Transitional Nurses Committee' means the organisation consisting of the nursing associations of South Africa, the former Republics of Transkei, Bophuthatswana, Venda and Ciskei, the former self-governing territories as well as various other organisations which represent nurses; 'Transkei Nursing Council' means the Transkei Nursing Council established by section 2 of the Nursing Act, 1978 (Act No. 6 of 1978) (Transkei)."

Substitution of heading to Chapter 1 of Act 50 of 1978

2. The following heading is hereby substituted for the heading to Chapter 1 of the principal Act:

"[**Continued Existence and**] Objects, Functions and Powers of the South African Interim Nursing Council".

Substitution of section 2 of Act 50 of 1978

3. The following section is hereby substituted for section 2 of the principal Act:

"Establishment of South African Interim Nursing Council

2. (1) There is hereby established a juristic person to be known as the South African Interim Nursing Council and the first meeting of the council shall be convened by the Director-General.

(2) The head office of the council shall be situated at Pretoria.

(3) The council shall, at its first meeting, appoint an acting registrar to perform the functions of the registrar until a registrar is appointed in terms of section 12."

Amendment of section 3 of Act 50 of 1978

4. Section 3 of the principal Act is hereby amended by the addition of the following paragraphs:

"(f) to make recommendations to the Minister on the constitution of a new council within a period not exceeding two years from the date of the commencement of the Nursing Amendment Act, 1995;

(g) to advise the Minister on the amendment or adaptation of this Act so as to support the universal norms and values of the nursing profession and to place greater emphasis on professional practice, democracy, transparency, equity, accessibility and community involvement."

Substitution of section 5 of Act 50 of 1978, as substituted by section 3 of Act 21 of 1992

5. The following section is hereby substituted for section 5 of the principal Act:

"Constitution of council

5.(1) The council shall consist of the following members, appointed by the Minister, namely-

(a) eight registered nurses designated by the South African Nursing Council from its members taking into account provincial representation;

(b) two registered nurses designated by the Transkei Nursing Council from its members;

(c) three registered nurses designated by the Bophuthatswana Nursing Council from its members;

(d) two registered nurses designated by the Ciskeian Nursing Council from its members;

(e) nine registered nurses designated by the Transitional Nurses Committee taking into account provincial representation; two officers of the Department of Health;

(g) one person registered as a pharmacist in terms of the Pharmacy Act, 1974 (Act No. 53 of 1974), and who practises as such;

(h) one person registered as a medical practitioner in terms of the Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act No. 56 of 1974), and who practises as such;

(i) one person appointed on account of his or her knowledge of the law;

(j) five other persons.

(2) The councils mentioned in subsection (1) (a), (b), (c) and (d) and the Transitional Nurses Committee mentioned in subsection (1)(e) shall, within 14 days of the date of the commencement of the Nursing Amendment Act, 1995, inform the Director-General in writing of the names of the persons designated by them in terms of the relevant provisions of subsection (1).

(3) (a) If the councils mentioned in subsection (1)(a), (b), (c) and (d) and the Transitional Nurses Committee mentioned in subsection (1)(e) fail to designate persons in terms of those provisions or fail to inform the Director-General under subsection (2) of the names of the persons so designated, the Minister shall appoint any qualified persons up to the number required, as members of the council.

(b) The Director-General shall, in the case of a failure contemplated in paragraph (a), immediately inform the Minister thereof in writing.

(4) As soon as possible after the appointment of the members of the council the Minister shall inform the Director-General of the names of the persons appointed by him or her.

(5) The names of the members of the council and the date of commencement of their period of office shall be published by the Director-General in the Gazette as soon as possible after the constitution of the council.

(6) Subject to the provisions of section 6, the members of the council shall hold office as from the date contemplated in subsection (5) until the constitution of a new council but not exceeding a period of two years."

Amendment of section 6 of Act 50 of 1978, as amended by section 46 of Act 97 of 1986 and section 4 of Act 21 of 1992

6. Section 6 of the principal Act is hereby amended-

(a) by the substitution for paragraph (g) of subsection (1) of the following paragraph:

"(g) he or she ceases to hold any qualification necessary for his or her appointment or tenders his or her resignation in writing to the Minister and the Minister accepts his or her resignation;";

(b) by the substitution for subsection (2) of the following subsection:

"(2) Every vacancy on the council arising from a circumstance referred to in subsection (1) and every vacancy caused by the death of a member, shall be filled by appointment [**designation or election, as the case may be, by the person or body by whom and in the manner in which the vacating member was required to be appointed, designated or elected**] by the Minister of a person nominated by the Council and every member so appointed [**designated or elected**] shall hold office for the unexpired portion of the period for which the vacating member was appointed [**designated or elected**]."

Amendment of section 10 of Act 50 of 1978, as amended by section 7 of Act 21 of 1992

7. Section 10 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) There shall be an executive committee of the council consisting of the president, the vice-president and the treasurer, and one member appointed in terms of section 5(1) [~~(a)(i)~~] (f), one member appointed in terms of section 5(1) [~~(a)(ii)~~] (i) and other members of the council designated by the council."

Amendment of section 12 of Act 50 of 1978

8. Section 12 of the principal Act is hereby amended by the deletion of subsection (4).

Substitution of section 14 of Act 50 of 1978

9. The following section is hereby substituted for section 14 of the principal Act:

"Minister may rectify defects

14. If anything required to be done under this Act in connection with the appointment [**designation or election**] of any member is omitted or not done within the time or in the manner required by this Act, the Minister may order all such steps to be taken as may be necessary to rectify the omission or error, or may validate anything done in an irregular manner or form, in order to give effect to the objects of this Act."

Amendment of section 45 of Act 50 of 1978, as amended by section 21 of Act 21 of 1992

10. Section 45 of the principal Act is hereby amended by the deletion of subparagraph (ii) of paragraph (a) of subsection (1).

Substitution of section 45A of Act 50 of 1978, as inserted by section 2 of Act 70 of 1982 and substituted by section 1 of Act 56 of 1987

11. The following section is hereby substituted for section 45A of the principal Act:

"Abolition of certain councils, and transitional arrangements

45A.(1) The South African Nursing Council, the Bophuthatswana Nursing Council, the Transkei Nursing Council and the Ciskeian Nursing Council shall cease to exist on the day immediately preceding the date of the first meeting of the council, and all rights, obligations, assets and liabilities acquired or incurred, as the case may be, by the South African Nursing Council, the Bophuthatswana Nursing Council, the Transkei Nursing Council and the Ciskeian Nursing Council, shall immediately vest in the council and the council shall be deemed to have acquired or incurred such rights, obligations, assets and liabilities in terms of this Act.

(2) (a) The registrar of deeds in question shall make, at the request of the council and on submission of the relevant title deeds and other documents, the necessary entries and endorsements in respect of his or her registers and other documents in order to give effect to any transfer contemplated in subsection (1).

(b) No transfer duty, stamp duty or other fees shall be payable in respect of such transfer, entry or endorsement."

Amendment of section 46 of Act 50 of 1978

12. Section 46 of the principal Act is hereby amended by the deletion of subsection (5).

Substitution of long title of Act 50 of 1978

13. The following long title is hereby substituted for the long title of the principal Act:

"ACT

To consolidate and amend the laws relating to the professions of registered or enrolled nurses, nursing [**assistants**] auxiliaries and midwives; and to provide for matters incidental thereto."

Repeal of laws, and savings

14. (1) Subject to the provisions of this section, the laws mentioned in the second column of the Schedule are, from the date on which the South African Nursing Council, the Bophuthatswana Nursing Council, the Transkei Nursing Council and the Ciskeian Nursing Council are abolished in terms of section 45A of the Nursing Act, 1978 (Act No. 50 of 1978) (in this section referred to as the principal Act), repealed as indicated in the third column of the Schedule, to the extent that such laws were in force in the various areas of the national territory of the Republic as set out in the fourth column of the Schedule, immediately prior to the commencement of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993).

(2) Any proclamation, notice, regulation, authorisation or order issued, made, granted or done in terms of a provision of any law repealed in terms of subsection (1) shall, unless inconsistent with any provision of the principal Act, be deemed to have been issued, made, granted or done under the corresponding provision of the principal Act, and shall remain in force until withdrawn or repealed, as the case may be, by the South African Interim Nursing Council established by section 2 of the principal Act (in this section referred to as the interim council).

(3) (a) Any registration or enrolment, or any removal from a register or roll, or any appointment or any other thing done in terms of a provision of any law repealed by subsection (1) shall be deemed to have been done under the principal Act.

(b) Any person enrolled as a nursing assistant or a pupil nursing assistant in terms of a provision of any law repealed by subsection (1) shall be deemed to have been enrolled as a nursing auxiliary or a pupil nursing auxiliary under section 16 or 24 of the principal Act, as the case may be.

(4) Notwithstanding the provisions of subsection (1), any inquiry into alleged improper or disgraceful conduct, including any preliminary investigation undertaken to determine whether prima facie evidence exists which would justify such inquiry, instituted by a council abolished under section 45A of the principal Act and which has not been concluded at the date of the first meeting of the interim council shall be continued and concluded by the interim council in accordance with the provisions of the law under which the inquiry was instituted, as if such law had not been repealed.

(5) Notwithstanding the provisions of subsection (1), the interim council shall have the power to institute and conclude disciplinary proceedings under the relevant provisions of the repealed laws in accordance with the procedures as prescribed by regulations made under section 45 of the principal Act, against any person who, at any time prior to the first meeting of the interim council, is alleged to have committed an act which may have constituted improper or disgraceful conduct in terms of the provisions of the repealed laws or any regulation made thereunder: Provided that the interim council shall not institute proceedings against any person, unless the nature of the contravention which such person is alleged to have committed in terms of the repealed laws or any regulation made thereunder, is substantially the same as that of a contravention contemplated in the corresponding provisions of the principal Act or any regulation made thereunder.

(6) Any act performed or decision taken by the Bophuthatswana Nursing Council, the Transkei Nursing Council and the Ciskeian Nursing Council, shall be deemed to have been performed or to have been taken, as the case may be, in terms of the corresponding provisions of the principal Act.

(7) Any person who was employed by the South African Nursing Council, the Bophuthatswana Nursing Council, the Transkei Nursing Council or the Ciskeian Nursing Council immediately prior to the date referred to in subsection (1), shall be deemed to have been appointed by the interim council in terms of section 12 of the principal Act.

(8) Any person who, immediately prior to the date referred to in subsection (1), was the registrar of the South African Nursing Council, the Bophuthatswana Nursing Council, the Transkei Nursing Council or the Ciskeian Nursing Council, shall, within 14 days after the commencement of this Act, furnish the Director-General: Health with the registers, rolls, minutes, financial statements and any other relevant documents of their respective councils.

Extension of application of Act 50 of 1978

15. The Nursing Act, 1978 (Act No. 50 of 1978), as it was in force immediately prior to the commencement of the Nursing Amendment Act, 1995, in the national territory of the Republic excluding the areas which comprised the former Republics of Transkei, Bophuthatswana, Venda and Ciskei and the areas which comprised the territories declared under section 26 of the Self-governing Territories Constitution Act, 1971 (Act No. 21 of 1971), to be self-governing territories shall, from the date referred to in section 14(1) of the Nursing Amendment Act, 1995, also apply in all the aforesaid areas of the national territory of the Republic.

General provision

16. During the period of existence of the South African Interim Nursing Council the name "South African Nursing Council" shall be deemed to be the name of the said interim council, for purposes of the issue of certificates, diplomas and distinguishing devices, as well as for the use on letterheads or on any other place where the emblem and name of the South African Nursing Council is used.

Short title

17. This Act shall be called the Nursing Amendment Act, 1995.

SCHEDULE

LAWS REPEALED BY SECTION 14

Number and year of law	Short title	Extent of repeal	Area of national territory in respect which law is repealed
Act No. 69 of 1957	Nursing Act, 1957	The whole	The territory of the former public of Venda and the territory of the former self-governing territory of Lebowa
Act No. 31 of 1970	Nursing Amendment Act, 1970	The whole	The territory of the former Republic of Venda and the territory of the former self-governing territory of Lebowa
Act No. 50 of 1972	Nursing Amendment Act, 1972	The whole	The territory of the former Republic of Venda and the territory of the former self-governing territory of Lebowa
Act No. 6 of 1978 (Transkei)	Nursing Act, 1978	The whole, except sections 27 to 36 inclusive	The territory of the former Republic of Transkei
Act No. 50 of 1978	Nursing Act, 1978	The whole	The territories of the former self-governing territories of KwaNdebele and KaNgwane
Act No. 12 of 1979 (Transkei)	Nursing Amendment Act, 1979	The whole	The territory of the former Republic of Transkei
Act No. 16 of 1981 (Transkei)	General Law Amendment Act, 1981	Section 6	The territory of the former Republic of Transkei
Act No. 71 of 1981	Nursing Amendment Act, 1981	The whole	The territory of the former self-governing territory of KaNgwane
Act No. 70 of 1982	Nursing Amendment Act, 1982	The whole	The territory of the former self-governing territory of KaNgwane
Act No. 13 of 1984 (Ciskei)	Nursing Act, 1984	The whole	The territory of the former Republic of Ciskei
Act No. 12 of 1985 (Gazankulu)	Gazankulu Nursing Act, 1985	The whole	The territory of the former self-governing territory of Gazankulu
Act No. 15 of 1985 (KwaZulu)	KwaZulu Nursing Act, 1985	The whole	The territory of the former self-governing territory of KwaZulu
Act No. 22 of 1985 (Transkei)	General Law Amendment Act, 1985	Sections 8 and 9	The territory of the former Republic of Transkei
Act No. 25 of 1985	Health Laws	Sections 11 to	The territory of the former Republic

(Transkei)	Amendment Act, 1985	14 inclusive	of Transkei
Act No. 33 of 1985 (Bophuthatswana)	Health and Related Professions Act, 1985	Chapter 4	The territory of the former Republic of Bophuthatswana
Act No. 3 of 1986 (Ciskei)	Nursing Amendment Act, 1986	The whole	The territory of the former Republic of Ciskei
Act No. 8 of 1986 (Qwaqwa)	Qwaqwa Nursing Act, 1986	The whole	The territory of the former self-governing territory of Owaqwa
Act No.18 of 1986 (Transkei)	Nursing Amendment Act, 1986	The whole	The territory of the former Republic of Transkei
Decree No. 2 of 1989 (Transkei)	Nursing Amendment Decree, 1989	The whole	The territory of the former Republic of Transkei
Act No. 12 of 1989 (KwaZulu)	Nursing Amendment Act, 1989	The whole	The territory of the former self-governing territory of KwaZulu
Act No. 20 of 1989 (KwaNdebele)	Nursing Amendment Act, 1989	The whole	The territory of the former self-governing territory of KwaNdebele
Decree No. 20 1990 (Transkei)	Decree: Nursing Act Rectification of Nursing Council Elections, 1990	The whole	The territory of the former Republic of Transkei
Decree No. 48 of 1990 (Ciskei)	Nursing Amendment Decree, 1990	The whole	The territory of the former Republic of Ciskei
Act No. 12 of 1991(KwaZulu)	KwaZulu Nursing Amendment Act, 1991	The whole	The territory of the former self-governing territory of KwaZulu