

REPUBLIC OF SOUTH AFRICA

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# NURSING AMENDMENT BILL

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*(As amended by the Portfolio Committee on Health (National Assembly))*

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(MINISTER OF HEALTH)

[B 4B—97]

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REPUBLIEK VAN SUID-AFRIKA

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# WYSIGINGSWETSONTWERP OP VERPLEGING

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*(Soos gewysig deur die Portefeuljekomitee oor Gesondheid (Nasionale Vergadering))*

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(MINISTER VAN GESONDHEID)

[W 4B—97]

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**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.

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# **BILL**

**To amend the Nursing Act, 1978, in relation to the definitions; in order to make provision for the establishment, constitution and objects of the South African Nursing Council; and the abolition of the South African Interim Nursing Council; and to make provision for matters connected therewith.**

**B**E 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, section 1 of Act 21 of 1992 and section 1 of Act 5 of 1995**

1. Section 1 of the Nursing Act, 1978 (hereinafter referred to as the principal Act), is hereby amended— 5

- (a) by the deletion of the definitions of “Bophuthatswana Nursing Council” and “Ciskeian Nursing Council”;
- (b) by the substitution for the definition of “council” of the following definition: 10  
    “ ‘council’ means the South African Nursing Council established by section 2;”; and
- (c) by the deletion of the definitions of “Transitional Nurses Committee” and “Transkei Nursing Council”.

**Substitution of heading to Chapter I of Act 50 of 1978, as substituted by section 2 of Act 5 of 1995** 15

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

    “Establishment, Objects, Functions and Powers of the South African **[Interim]** Nursing Council”.

**Substitution of section 2 of Act 50 of 1978, as substituted by section 3 of Act 5 of 1995** 20

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

**“Establishment of South African Nursing Council**

**2. (1)** There is hereby established a juristic person to be called the South African Nursing Council.

**(2)** The head office of the council shall be in Pretoria.”.

**Amendment of section 3 of Act 50 of 1978, as amended by section 4 of Act 5 of 1995** 5

**4.** Section 3 of the principal Act is hereby amended by the deletion of paragraph *(f)*.

**Substitution of section 5 of Act 50 of 1978, as substituted by section 3 of Act 21 of 1992 and section 5 of Act 5 of 1995**

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

**“Constitution of council** 10

**5. (1)** The council shall consist of—

- (a)* 12 persons who shall be registered nurses or midwives and who shall be elected by registered nurses and midwives;
- (b)* three persons who shall be enrolled nurses and who shall be elected by enrolled nurses;
- (c)* three persons who shall be nursing auxiliaries and who shall be elected by nursing auxiliaries;
- (d)* 18 persons who shall be appointed by the Minister of whom—
  - (i)* one shall be a registered nurse who is in the employment of the Department of Health;
  - (ii)* six shall be registered nurses, enrolled nurses or nursing auxiliaries who are not in the employment of the Department of Health;
  - (iii)* two shall be nursing students at nursing colleges or universities who are at least in their third academic year of study; and
  - (iv)* nine shall be persons who are not nurses, each representing a province, and who shall be appointed from persons whose names are submitted by those members of the Executive Council of the various provinces who are responsible for health, after nominations have been submitted by members of the public in the various provinces; and
- (e)* one attorney who shall be appointed by the Association of Law Societies.

**(2)** The persons who are elected in terms of subsection *(1)(a)*, *(b)* and *(c)* shall be South African citizens who are resident in the Republic and shall be elected in the prescribed manner by persons who are such citizens and are so resident.

**(3)(a)** A person who is appointed in terms of subsection *(1)(d)(iv)* shall be resident in the province he or she represents.

**(b)** When the members referred to in subsection *(1)(d)(iii)* are appointed, the Minister shall endeavour to afford the students in the various provinces an equal opportunity to serve on the council.

**(4)(a)** The members of council shall hold office for a period of five years reckoned from the date on which the notice referred to in subsection *(8)* is published in respect of them: Provided that a member referred to in subsection *(1)(d)(iii)* shall hold office for a period of one year.

**(b)** Members shall at the expiry of their terms of office be eligible for reappointment or re-election.

**(5)** The association mentioned in subsection *(1)(e)* shall, not later than three months before the expiry of the terms of office of the members of the council, inform the registrar in writing of the name of the person who is appointed by it as a member of the council.

(6)(a) If the registered nurses and midwives mentioned in subsection (1)(a), the enrolled nurses mentioned in subsection (1)(b) or the nursing auxiliaries mentioned in subsection (1)(c), as the case may be, fail to elect a member or members as required by subsection (1)(a), (b) or (c), as the case may be, the Minister may appoint such number of suitable persons as are required to make up the requisite number, as members of the council. 5

(b) If the association mentioned in subsection (1)(e) fails to make an appointment in terms of subsection (1)(e), or to inform, as required by subsection (5), the registrar of the name of the person appointed by it, the Minister shall appoint a person who is an attorney as member of the council. 10

(c) If a failure as contemplated in paragraph (a) or (b) occurs, the registrar shall immediately inform the Minister thereof.

(7) As soon as possible after the election of the members referred to in subsection (1)(a) has taken place, the Minister shall inform the registrar of the names of the persons who have been appointed by him or her in terms of subsection (1)(d). 15

(8) The names of the members of the council, the dates of their election and the dates of the commencement of their terms of office shall as soon as possible after the constitution of the council be made known by the registrar by notice in the Gazette.” 20

**Amendment of section 6 of Act 50 of 1978, as amended by section 46 of Act 97 of 1986, section 4 of Act 21 of 1992 and section 6 of Act 5 of 1995**

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

(a) in subsection (1)— 25

(i) by the insertion after the word “his”, wherever it occurs, except in paragraph (g), of the words “or her” and by the insertion after the word “he”, wherever it occurs, of the words “or she” except in paragraph (g);

(ii) by the substitution for paragraph (g) of the following paragraph: 30

“(g) he or she—

(i) in the case of an elected member, ceases to hold a qualification required for his or her election, or submits his or her resignation in writing to the registrar;

(ii) in the case of a member appointed in terms of section 5(1)(d), ceases to hold a qualification required for his or her appointment, or submits his or her resignation in writing to the Minister; 35

(iii) in the case of a member appointed in terms of section 5(1)(e), ceases to hold a qualification required for his or her appointment, or submits his or her resignation to the association which appointed him or her;” and 40

(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 [**by the Minister of a person nominated by the Council**] or election, as the case may be, by the person or association by whom, and in the manner in which, the former member was required to be appointed or elected, and every member who is so appointed or elected shall hold his or her office for the unexpired portion of the period for which the [**vacating**] member whose office became vacant was appointed or elected.” 45 50

**Amendment of section 10 of Act 50 of 1978, as amended by section 7 of Act 21 of 1992 and section 7 of Act 58 of 1995**

7. Section 10 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 55

“(1) There shall be an executive committee of the council consisting of the president, the vice-president and the treasurer, one member appointed in terms of section 5(1)(f) (d)(i), and one member appointed in terms of section

5(1)[(i)] (d)(iv), and other members of the council designated by the council.”.

**Substitution of section 14 of Act 50 of 1978, as substituted by section 9 of Act 5 of 1995**

8. The following section is hereby substituted for section 14 of the principal Act: 5

**“Minister may rectify defects**

14. If anything required to be done under this Act in connection with the appointment 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.”. 10

**Amendment of section 45 of Act 50 of 1978, as amended by section 21 of Act 21 of 1992 and section 10 of Act 5 of 1995**

9. Section 45 of the principal Act is hereby amended by the insertion before paragraph (b) of subsection (1) of the following paragraph: 15

“(a) (i) the election of members of the council;  
(ii) the requirements for a valid nomination of a candidate for appointment or election as a member of the council;”. 20

**Repeal of section 45A of Act 50 of 1978, as substituted by section 11 of Act 5 of 1995**

10. Section 45A of the principal Act is hereby repealed.

**Abolition of South African Interim Nursing Council, and savings**

11. (1) The South African Interim Nursing Council mentioned in section 2 of the principal Act, as it read prior to the substitution thereof by section 3 of this Act, (hereinafter in this section referred to as the Interim Council), shall with effect from the date on which the first meeting of the South African Nursing Council, mentioned in section 2 of the principal Act, as it read after that amendment (hereinafter in this section referred to as “the council“), cease to exist, and all rights and liabilities acquired or incurred by the Interim Council shall with effect from that date pass to the council. 30

(2) (a) The registrar of deeds concerned shall at the request of the council and upon submission of the relevant title deeds and other documents, make the necessary entries and endorsements in respect of the immovable property in question in the relevant registers in the office of such registrar in order to indicate the transfer effected by subsection (1). 35

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

(3) Any investigation, including a preliminary investigation in order to establish whether any evidence exists which would justify the institution of an investigation into alleged improper or disgraceful conduct by any person registered or enrolled under the principal Act, instituted by the Interim Council and which at the date of the first meeting of the council has not been completed, shall be continued and disposed of by the council. 40

(4) The council may institute disciplinary proceedings against any person registered or enrolled under the principal Act in respect of any act which constituted improper or disgraceful conduct in terms of the principal Act and which was committed before the date of the first meeting of the council. 45

(5) Any person who immediately before the date on which the Interim Council is abolished, is in the employment of the Interim Council, shall with effect from that day be deemed to have been appointed by the council in its employment, on the same conditions of service (including conditions as to remuneration) as those which immediately before that date applied in respect of that person. 50

(6) The person who immediately prior to the date on which the Interim Council is abolished, is the registrar as contemplated in section 12 of the principal Act, shall continue to hold that office until the first meeting of the council and shall upon the conclusion of that meeting vacate that office, unless the council decides at that meeting that that person shall continue to hold that office and such person consents thereto. 5

**Short title and commencement**

**12.** This Act shall be called the Nursing Amendment Act, 1997, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

**MEMORANDUM ON THE OBJECTS OF THE NURSING  
AMENDMENT BILL, 1997**

During 1995 a transitional council, namely the South African Interim Nursing Council (the "interim council"), was established in terms of the Nursing Amendment Act, 1995 (Act No. 5 of 1995). One of the objects of the interim council was to make recommendations to the Minister on the constitution of a new nursing council, within a period not exceeding two years. Those recommendations have now been made.

The main object of the Bill is, in pursuance of those recommendations, to make provision for the establishment and constitution of the contemplated new council which shall be known as the South African Nursing Council (the "Council"). Certain essential consequential amendments are affected. The interim council will continue to exist until the day which proceeds the day on which the first meeting of the Council takes place, and will until that day continue to perform the functions entrusted to the interim council.

In the opinion of the Department and the State Law Advisers this Bill must be dealt with in terms of section 76 of the Constitution, 1996.