

Western Australia

Nurses and Midwives Act 2006

As at 01 Mar 2009

Version 00-f0-02

Extract from www.slp.wa.gov.au, see that website for further information

Nurses and Midwives Act 2006

CONTENTS

Part 1 — Preliminary		
1.	Short title	2
2.	Commencement	2
3.	Terms used in this Act	2
4.	Application	4
Part 2 — Nurses and Midwives Board and committees		
Division 1 — The Board		
5.	Board established	6
6.	Membership of Board	6
7.	Presiding member and deputy presiding member	7
8.	Constitution and proceedings	7
9.	Remuneration and allowances	7
Division 2 — Functions and powers		
10.	Functions	7
11.	Powers	8
12.	Delegation by Board	8
Division 3 — Relationship of Board with Minister		
13.	Directions by Minister	9
14.	Minister to have access to information	9
Division 4 — Committees		
15.	Committees	10
16.	Provisions relating to committees	11

	Division 5 — Registrar and other staff	
17.	Registrar	11
18.	Other staff	12
	Division 6 — General	
19.	Duty not to make improper use of information	12
20.	Meetings and minutes of meetings	12
21.	Execution of documents by Board	13
	Part 3 — Finance and reports	
22.	Funds of the Board	15
23.	Accounts	15
24.	Audit	16
25.	Annual report and other reports	16
	Part 4 — Registration of nurses and midwives	
	Division 1 — Registration	
26.	Natural persons may be registered	18
27.	Registration as an enrolled nurse, midwife or registered nurse	18
28.	Registration as a nurse practitioner	19
29.	Provisional registration	20
30.	Conditional registration as an enrolled nurse, midwife, nurse practitioner or registered nurse at the discretion of the Board	21
31.	Registration as specialists	23
32.	Professional indemnity insurance	24
33.	Application	25
34.	Effect of registration	25
35.	Duration of registration	26
36.	Renewal of registration	26
37.	Application for registration by a person whose type of registration has been cancelled under section 81(1)(i)	27
	Division 2 — The register	
38.	The register	27
39.	Inspection of register	28
40.	Certificate of registration	29

41.	Voluntary removal from register and cancellation of registration	29
42.	Removal of name and cancellation of registration of person in certain circumstances	29
43.	Effect of removal of name from register	30
	Division 3 — Notifications to Board	
44.	Change of address	30
45.	Loss of qualifications	31
46.	Insolvency	31
47.	Civil or criminal proceedings	31
48.	Information about professional indemnity insurance	32
	Part 5 — Disciplinary and impairment matters	
	Division 1 — Preliminary	
49.	Disciplinary matters	33
50.	Impairment matters	33
	Division 2 — Committees	
51.	Complaints assessment committee	34
52.	Impairment review committee	34
53.	Deputy member of the complaints assessment committee or the impairment review committee	35
	Division 3 — Complaints	
54.	Complaints	36
55.	Complaints assessment committee to determine action required	37
56.	Complaints assessment committee may reject certain complaints	38
	Division 4 — Summary orders of Board	
57.	Interim orders by Board	38
58.	Complaint dealt with summarily to be referred to the State Administrative Tribunal	40
59.	Complaint not dealt with summarily to be referred to relevant committee	40
	Division 5 — Disciplinary matters	
60.	Investigation and recommendation	40
61.	Role of Board	41

62.	Alternative to making allegation to the State Administrative Tribunal	42
	Division 6 — Impairment matters	
63.	Request by nurse or midwife for imposition of condition	43
64.	Revocation of condition	44
65.	Investigation	44
66.	Nurse or midwife to be notified about investigation	44
67.	Examination	44
68.	Report of examination	45
69.	Role of the impairment review committee	46
70.	Recommendation	47
71.	Role of Board	47
	Division 7 — Investigator's role and powers	
72.	Interpretation	48
73.	Investigator	48
74.	Report of investigator	48
75.	Powers of investigator	49
76.	Warrant to enter premises	51
77.	Issue of warrant	52
78.	Execution of warrant	52
	Division 8 — Conciliation	
79.	Conciliation process	53
80.	Action if conciliation fails	54
	Division 9 — Role of the State Administrative Tribunal	
81.	Powers of the State Administrative Tribunal on dealing with a disciplinary matter	54
82.	Powers of the State Administrative Tribunal on dealing with an impairment matter	56
	Division 10 — Miscellaneous	
83.	Suspension	57
84.	Costs and recovery	57
	Part 6 — Offences	
85.	Persons who may practise nursing or midwifery or a specialty	59
86.	Persons who may be employed or engaged to practise nursing or midwifery or a specialty	59

87.	Exceptions to sections 85 and 86	60
88.	Use of titles or pretending to be registered	61
89.	Name in which practice may be carried on	61
90.	Unlawful delegation by registered person	62
91.	Undue influence	62
92.	Failure to comply with disciplinary action	63
93.	False or misleading information	63
94.	Offences in relation to investigation	64
95.	Obstruction of investigator	65
96.	Assistance to execute warrant	65
97.	Surrender of certificate	65
98.	Incriminating information, questions, or documents	66
99.	Legal professional privilege	66

Part 7 — Codes of practice, rules and regulations

100.	Codes of practice	67
101.	Rules	68
102.	Regulations	69
103.	Forms	70

Part 8 — Miscellaneous

104.	Protection	71
105.	Notice of decision to be given	71
106.	Review	72
107.	Publication of proceedings etc.	72
108.	Legal proceedings	73
109.	Liability of certain officers of body corporate: offences	74
110.	Review of Act	75
111.	<i>Nurses Act 1992</i> repealed	75
112.	<i>Nurses Rules 1993</i> repealed	76
113.	Transitional and savings provisions	76
114.	Consequential amendments	76

Schedule 1 — Constitution and proceedings of the Board

Division 1 — General provisions

1.	Term of office	77
2.	Functions of deputy presiding member	77

Contents

3.	Deputy members	77
4.	Vacation of office by member	78
5.	General procedure concerning meetings	78
6.	Voting	79
7.	Holding meetings remotely	79
8.	Resolution without meeting	79
9.	Minutes	79
	Division 2 — Disclosure of interests etc.	
10.	Meaning of “member”	80
11.	Disclosure of interests	80
12.	Exclusion of interested member	80
13.	Board or committee may resolve that clause 12 inapplicable	80
14.	Quorum where clause 12 applies	81
15.	Minister may declare clauses 12 and 14 inapplicable	81
	Schedule 2 — Transitional and savings	
1.	Terms used in this Schedule	82
2.	<i>Interpretation Act 1984</i> not affected	82
3.	The Nurses Registration Board continues	82
4.	Board members	83
5.	The registrar and other staff	83
6.	Persons entered in division 1 of the register	83
7.	Persons entered in division 2 of the register under the repealed Act section 34(b)(i)	84
8.	Persons entered in division 2 of the register under the repealed Act section 34(b)(ii)	85
9.	Persons granted honorary or temporary registration under the repealed Act	85
10.	Persons granted provisional registration under the repealed Act	85
11.	Registered body corporate	86
12.	Register	86
13.	Certificates of registration issued under the repealed Act	86
14.	Restoration of certain names to the register	86
15.	Suspensions	86
16.	Undertakings under the repealed Act	86

17.	Interim orders of the former Board	87
18.	Investigations	87
19.	Complaints being dealt with by the former Board	87
20.	Matters referred to the professional standards committee	87
21.	Matters being dealt with by the presiding member of the former Board	87
22.	Failure to comply with an order made under the repealed Act	88
23.	Codes of practice	88
24.	Annual report for part of a year	88
25.	Powers in relation to transitional provision	88

Schedule 3 — Consequential amendments

1.	<i>Blood Donation (Limitation of Liability) Act 1985</i> amended	90
2.	<i>Civil Liability Act 2002</i> amended	90
3.	<i>Constitution Acts Amendment Act 1899</i> amended	90
4.	<i>Corruption and Crime Commission Act 2003</i> amended	91
5.	<i>Court Security and Custodial Services Act 1999</i> amended	91
6.	<i>The Criminal Code</i> amended	92
7.	<i>Criminal Investigation (Identifying People) Act 2002</i> amended	92
8.	<i>Firearms Act 1973</i> amended	92
9.	<i>Health Act 1911</i> amended	92
10.	<i>Health Professionals (Special Events Exemption) Act 2000</i> amended	93
11.	<i>Health Services (Conciliation and Review) Act 1995</i> amended	93
12.	<i>Juries Act 1957</i> amended	93
13.	<i>Medical Act 1894</i> amended	94
14.	<i>Mental Health Act 1996</i> amended	94
15.	<i>Misuse of Drugs Act 1981</i> amended	94
16.	<i>Pharmacy Act 1964</i> amended	95
17.	<i>Poisons Act 1964</i> amended	95
18.	<i>Prostitution Act 2000</i> amended	96
19.	<i>Radiation Safety Act 1975</i> amended	96

Contents

20.	<i>Road Traffic Act 1974</i> amended	96
21.	<i>State Administrative Tribunal Act 2004</i> amended	97

Notes

	Compilation table	98
	Provisions that have not come into operation	98

Western Australia

Nurses and Midwives Act 2006

An Act to —

- **provide for the regulation of the practice of nursing and midwifery and the registration of persons as nurses and midwives;**
- **repeal the *Nurses Act 1992*;**
- **make consequential amendments to various Acts, and for related purposes.**

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Nurses and Midwives Act 2006*.

2. Commencement

This Act comes into operation on a day fixed by proclamation.

3. Terms used in this Act

In this Act, unless the contrary intention appears —

application means an application for registration;

approved means approved by the Board in writing;

Board means the Nurses and Midwives Board of Western Australia established by section 5;

certificate of registration means a certificate of registration issued under section 40;

committee means a committee established by the Board under this Act;

complainant means a person who lodges a complaint under section 54(1) or (2);

complaint means —

- (a) a complaint lodged under section 54(1) or (2);
- (b) a complaint referred under section 54(3);
- (c) a matter the complaints assessment committee has determined under section 54(4) to deal with as if it were a complaint; and
- (d) a matter the Board has referred to the impairment review committee under section 63(3);

complaints assessment committee means the committee established under section 51;

condition includes restriction;

Corporations Act means the *Corporations Act 2001* of the Commonwealth;

designated area means an area designated by the Commissioner of Health under the *Poisons Act 1964* section 23(2)(e);

Director means the Director of the Office of Health Review under the *Health Services (Conciliation and Review) Act 1995*;

disciplinary matter means a matter referred to in section 49;

document includes any tape, disc or other device or medium on which information is recorded or stored;

enrolled nurse means a person who is registered as an enrolled nurse;

impairment means —

- (a) mental disability;
- (b) injury;
- (c) physical illness;

impairment matter means a matter referred to in section 50;

impairment review committee means any committee established under section 52;

investigator means a person appointed under section 73;

medical practitioner means a medical practitioner registered under the *Medical Practitioners Act 2008*;

member of the Board includes a person acting under Schedule 1 clause 3;

midwife means a person who is registered as a midwife;

midwifery means the practice of assisting a woman in childbirth;

nurse means a person who is registered as an enrolled nurse, nurse practitioner or registered nurse;

nurse practitioner means a person who is registered as a nurse practitioner;

nursing does not include midwifery;

s. 4

officer, in relation to a body corporate, has the meaning given to “officer of a corporation” in the Corporations Act section 9 but does not include an employee of the body corporate unless the employee is concerned in the management of the body corporate;

presiding member means the presiding member of the Board referred to in section 7;

register means the register referred to in section 38;

registered means registered by the Board under this Act;

registered nurse means a person who is registered as a registered nurse;

registrar means the person engaged or employed to be registrar under section 17;

registration includes renewal of registration;

respondent means a person the subject of a complaint;

specialist means a registered nurse who is registered under section 31;

specialty means a branch of nursing prescribed under section 31(1) as a specialty;

type of registration means registration as —

- (a) an enrolled nurse;
- (b) a midwife;
- (c) a nurse practitioner; or
- (d) a registered nurse.

[Section 3 amended by No. 22 of 2008 s. 162; No. 21 of 2008 s. 683(2).]

4. Application

This Act does not apply to, or in respect of, or in any way affect —

- (a) the practice of a person’s profession as a medical practitioner;

- (b) a carer performing the usual duties of a carer in relation to a person who is ill, aged, frail or disabled; or
- (c) a natural person who is registered as a nurse under the law in force in another State, a Territory or New Zealand who practises nursing for the purpose of the removal of tissue under the *Human Tissue and Transplant Act 1982*.

Part 2 — Nurses and Midwives Board and committees

Division 1 — The Board

5. Board established

- (1) A body called the Nurses and Midwives Board of Western Australia is established.
- (2) The Board —
 - (a) is a body corporate;
 - (b) has perpetual succession and a common seal; and
 - (c) may sue and be sued in its corporate name.
- (3) The Board does not represent, and is not an agent of, the Crown.

6. Membership of Board

- (1) The Board consists of 13 members appointed by the Minister, of whom —
 - (a) 5 are to be registered nurses;
 - (b) one is to be a registered nurse who teaches nursing in a higher education institution;
 - (c) one is to be a registered nurse who practises in the area of mental health nursing;
 - (d) 2 are to be midwives;
 - (e) 2 are to be enrolled nurses;
 - (f) one is to be a person who has knowledge of and experience in representing the interests of consumers; and
 - (g) one is to be an Australian lawyer (within the meaning of that term in the *Legal Profession Act 2008* section 3).
- (2) Each member of the Board is to be a natural person.
- (3) Before appointing a person under subsection (1)(a) or (e), the Minister is to consult the Australian Nursing Federation,

Western Australian Branch or the Australian Liquor, Hospitality and Miscellaneous Workers' Union, Western Australian Branch, respectively.

[Section 6 amended by No. 21 of 2008 s. 683(3).]

7. Presiding member and deputy presiding member

The presiding member and the deputy presiding member of the Board are to be elected by the Board from amongst its members.

8. Constitution and proceedings

Schedule 1 has effect with respect to the constitution and proceedings of the Board.

9. Remuneration and allowances

A member of the Board, or of a committee, is to be paid such remuneration and allowances (if any) as the Minister, on the recommendation of the Minister for Public Sector Management, determines from time to time.

Division 2 — Functions and powers

10. Functions

The functions of the Board are as follows —

- (a) to advise the Minister on matters to which this Act applies;
- (b) to administer the scheme of registration under Part 4;
- (c) to facilitate and promote public education and research in relation to the practice of nursing and midwifery;
- (d) to monitor education in nursing and midwifery, and provide advice on that education to the Minister and to any other person or body involved in that education;
- (e) to promote and encourage —

- (i) the continuing education of nurses and midwives in the practice of their professions; and
 - (ii) increased levels of skill, knowledge and competence in the practice of nursing and midwifery;
- and
- (f) to perform other functions that are conferred on the Board under this Act or any other Act.

11. Powers

The Board has all the powers it needs to perform its functions.

12. Delegation by Board

- (1) The Board may delegate any power or duty of the Board under another provision of this Act to —
 - (a) a member of the Board;
 - (b) a committee or a member of a committee; or
 - (c) the registrar.
- (2) The delegation must be in writing executed by the Board.
- (3) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (4) A person exercising or performing a power or duty that has been delegated to the person under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5) Nothing in this section limits the ability of the Board to perform a function through the registrar or any other member of staff or an agent.

Division 3 — Relationship of Board with Minister

13. Directions by Minister

- (1) Subject to subsection (2), the Minister may, after consulting with the Board, give directions in writing to the Board with respect to the performance of its functions either generally or in relation to a particular matter, and the Board is to give effect to any such direction.
- (2) The Minister must not under subsection (1) direct the Board with respect to the performance of its functions in respect of —
 - (a) a particular person;
 - (b) a particular qualification; or
 - (c) a particular application, complaint or proceeding.
- (3) The text of a direction given under subsection (1) must be —
 - (a) laid before each House of Parliament within 14 sitting days of that House after the direction is given; and
 - (b) included in the annual report submitted by the Board under section 25(1).

14. Minister to have access to information

- (1) In this section —
information means information specified, or of a description specified, by the Minister that relates to the functions of the Board.
- (2) The Minister is entitled —
 - (a) to have information in the possession of the Board; and
 - (b) if the information is in or on a document, to have, and make and retain copies of, that document.
- (3) For the purposes of subsection (2) the Minister may —
 - (a) request the Board to furnish information to the Minister;

- (b) request the Board to give the Minister access to information;
 - (c) for the purposes of paragraph (b) make use of the staff of the Board to obtain the information and furnish it to the Minister.
- (4) The Board is to comply with a request under subsection (3) and make its staff and facilities available to the Minister for the purposes of subsection (3)(c).
- (5) The Minister is not entitled to have information under this section in a form that —
 - (a) discloses the identity of a person involved in a particular application, complaint, investigation or other proceeding; or
 - (b) might enable the identity of any such person to be ascertained,unless that person has consented to the disclosure.

Division 4 — Committees

15. Committees

- (1) In addition to the complaints assessment committee and the impairment review committee the Board may from time to time establish any other committee.
- (2) The Board may —
 - (a) determine the functions, membership and constitution;
 - (b) appoint such members and other persons as it thinks fit to be members; and
 - (c) give directions with respect to the functions and procedures,of a committee established under this section.
- (3) A committee is to comply with a direction given to it under subsection (2)(c).

- (4) At the request of the Board, a committee established under this section is to report on the performance of its functions to the Board, in accordance with the Board's request.

16. Provisions relating to committees

- (1) Each member of a committee is to be a natural person.
- (2) The Board may remove a person from membership of a committee and may reconstitute or discharge a committee established by the Board.
- (3) A committee is to ensure that an accurate record is kept and preserved of the proceedings of each meeting of the committee and of each resolution passed by the committee.
- (4) Subject to this Act, a committee may determine its own procedures.
- (5) A person with special knowledge or experience may be invited to act in an advisory capacity to a committee if the committee is of the opinion that the person will assist the committee in the performance of its functions and the Board has approved the invitation.

Division 5 — Registrar and other staff

17. Registrar

- (1) The Board is to engage or employ a person to be the registrar.
- (2) The registrar has the functions that are conferred under this Act or that the Board directs the registrar to perform.
- (3) The registrar may delegate to a person engaged or employed by the Board any power or duty of the registrar under another provision of this Act.
- (4) The delegation must be in writing executed by the registrar.
- (5) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.

- (6) A delegate exercising or performing a power or duty that has been delegated to the person under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.

18. Other staff

The Board may engage or employ persons to provide such professional, technical or other assistance that the Board considers necessary to enable it to perform its functions.

Division 6 — General

19. Duty not to make improper use of information

A member or former member of the Board or a member or former member of a committee must not, whether within or outside the State, make improper use of information acquired by virtue of that position to gain, directly or indirectly, an advantage for himself or herself or for any other person.

Penalty: \$5 000.

20. Meetings and minutes of meetings

- (1) Subject to this section, every meeting of the Board is to be open to members of the public.
- (2) Despite subsection (1) —
- (a) the Board may of its own initiative order that in any particular case a meeting, or part of a meeting, of the Board is to be closed; and
 - (b) where a meeting of the Board concerns a proceeding under Part 5 relating to a disciplinary or impairment matter, a person to whom the proceedings relate may request that the meeting, or part of the meeting, be closed.
- (3) The Board is to consider a request under subsection (2)(b) and may order that the meeting, or part of the meeting, be closed if it

is of the opinion that such an order is in the best interests of the parties involved or the maintenance of professional standards.

- (4) The minutes of a meeting of the Board are to be open for inspection at its principal place of business by members of the public during normal office hours without fee, other than minutes relating to —
 - (a) proceedings under Part 5 relating to a disciplinary or impairment matter;
 - (b) a matter determined to be confidential under subsection (6); or
 - (c) a meeting, or part of a meeting, that the Board ordered be closed under subsection (2)(a) or (3).
- (5) A person may, on payment of the fee prescribed by the regulations, if any, obtain a copy of any minutes of the Board available for inspection under subsection (4).
- (6) The Board may determine that a matter is confidential if it considers that its disclosure is likely to infringe the reasonable privacy of any person.

21. Execution of documents by Board

- (1) The Board is to have a common seal.
- (2) A document is duly executed by the Board, if —
 - (a) the common seal of the Board is affixed to it in accordance with subsections (3) and (4); or
 - (b) it is signed on behalf of the Board by a person or persons authorised by the Board to do so under subsection (5).
- (3) The common seal of the Board is not to be affixed to any document except as authorised by the Board.
- (4) The common seal of the Board is to be affixed to a document in the presence of 2 members of the Board and each of them is to sign the document to attest that the common seal was so affixed.

Nurses and Midwives Act 2006

Part 2 Nurses and Midwives Board and committees

Division 6 General

s. 21

- (5) The Board may, by writing under its seal, authorise —
- (a) a member or members of the Board; or
 - (b) a member or members of staff,
- to sign documents on behalf of the Board, either generally or subject to such conditions as are specified in the authorisation.
- (6) A document executed under this section without the common seal of the Board is not to be regarded as being a document under seal.
- (7) A document purporting to be executed in accordance with this section is to be presumed to be duly executed until the contrary is shown.
- (8) When a document is produced bearing a seal purporting to be the common seal of the Board, it is to be presumed that the seal is the common seal of the Board until the contrary is shown.

Part 3 — Finance and reports

22. Funds of the Board

- (1) The funds of the Board consist of —
 - (a) fees received by the Board;
 - (b) grants (if any) by the State, and all gifts and donations made to the Board, but subject to any trusts declared in relation to the grants, gifts or donations;
 - (c) penalties, costs and expenses received under section 62 or 84; and
 - (d) other money or property lawfully received by the Board in connection with the performance of its functions.

- (2) The funds of the Board may be applied —
 - (a) for the purposes of the administration and enforcement of this Act, including the remuneration of members of the Board and committees and of the registrar and other persons engaged or employed by the Board;
 - (b) for the payment of examinations and reports in accordance with section 67(3);
 - (c) for the payment of costs under section 84(3);
 - (d) for the furtherance of education, including public education, and research in relation to the practice of nursing and midwifery;
 - (e) by way of contribution to any professional body for nurses or midwives for the development by that body of professional standards; and
 - (f) for any other purpose that the Board may recommend and the Minister may approve to enable the Board to perform its functions.

23. Accounts

- (1) The Board is to cause to be kept proper accounts and records of the transactions and affairs of the Board and is to prepare

s. 24

financial statements in accordance with Australian Accounting Standards.

- (2) The financial statements are to be prepared on an accrual basis unless the Board determines otherwise.

24. Audit

The accounts and financial statements of the Board are to be audited at least once a year, at the expense of the Board, by a registered company auditor (as defined in paragraph (a) of the definition of that term in the Corporations Act section 9) appointed by the Board with the prior approval of the Minister.

25. Annual report and other reports

- (1) The Board, not later than 31 December in each year, is to make and submit to the Minister an annual report of its proceedings for the preceding year ending on 30 June together with a copy of its financial statements for that year and the auditor's report on those statements.
- (2) The Board's annual report must include details of —
 - (a) the number, nature, and outcome, of —
 - (i) investigations and inquiries undertaken under this Act during the year to which the report relates; and
 - (ii) matters that have been brought before the State Administrative Tribunal by the Board during the year to which the report relates;
 - (b) the number and nature of matters referred to in paragraph (a) that are outstanding;
 - (c) any trends or special problems that may have emerged;
 - (d) forecasts of the workload of the Board in the year after the year to which the report relates; and
 - (e) any proposals for improving the operation of the Board.

- (3) The Minister is to cause a copy of the Board's annual report and financial statements and of the auditor's report submitted under subsection (1) to be laid before each House of Parliament within 14 sitting days of that House after receipt of the report by the Minister.
- (4) The Board is to ensure that after subsection (3) has been complied with copies of the reports and statements referred to in that subsection are available on request for inspection at its principal place of business.

Part 4 — Registration of nurses and midwives

Division 1 — Registration

26. Natural persons may be registered

Registration under this Act may be granted only to a natural person.

27. Registration as an enrolled nurse, midwife or registered nurse

- (1) The Board is to register an applicant as an enrolled nurse, midwife or registered nurse if satisfied that the applicant has —
 - (a) complied with the requirements of subsection (2); and
 - (b) paid the registration fee, if any, prescribed by the regulations.
- (2) The requirements for registration as an enrolled nurse, midwife or registered nurse are that the applicant —
 - (a) is a fit and proper person to be registered as an enrolled nurse, midwife or registered nurse;
 - (b) has not been convicted of an offence the nature of which renders the person unfit to practise as a nurse or midwife, as the case may be;
 - (c) has adequate knowledge of the English language both written and oral;
 - (d) has sufficient physical capacity, mental capacity and skill to practise nursing or midwifery, as the case may be;
 - (e) subject to subsection (3), has acquired such knowledge and has such practical experience in nursing or midwifery, as the case may be, as in the opinion of the Board is sufficient to enable that person to perform efficiently the duties of an enrolled nurse, midwife or registered nurse, as the case may be; and

- (f) holds a qualification approved by the Board as a qualification for registration as an enrolled nurse, midwife or registered nurse, as the case may be, or a qualification that in the opinion of the Board is equivalent to such a qualification.
- (3) Subsection (2)(e) does not apply to a person who, having been awarded a qualification referred to in subsection (2)(f) within the 5 years preceding the application, is applying to the Board, for the first time, for registration under subsection (1).
- (4) The Board may impose such conditions on registration under subsection (1) as the Board reasonably requires to ensure the competent and safe practice of —
 - (a) nursing by the enrolled nurse or registered nurse; or
 - (b) midwifery by the midwife.
- (5) A condition imposed under subsection (4) may apply indefinitely or for a period of time specified by the Board in the written notice.
- (6) The Board may, on its own motion or on the application of a person the subject of a condition imposed under this section, on reasonable grounds, revoke or vary the condition.

28. Registration as a nurse practitioner

- (1) The Board is to register an applicant as a nurse practitioner if satisfied that the applicant has —
 - (a) complied with the requirements of subsection (2); and
 - (b) paid the registration fee, if any, prescribed by the regulations.
- (2) The requirements for registration as a nurse practitioner are that the applicant —
 - (a) is a registered nurse or the Board is satisfied that the person meets the requirements for registration as a registered nurse; and

- (b) holds a qualification prescribed by the rules as a qualification for registration as a nurse practitioner or a qualification that in the opinion of the Board is equivalent to such a qualification.
- (3) The Board may impose such conditions on registration under subsection (1) as the Board reasonably requires to ensure the competent and safe practice of nursing by the nurse practitioner.
- (4) A condition imposed under subsection (3) may apply indefinitely or for a period of time specified by the Board in the written notice.
- (5) The Board may, on its own motion or on the application of a person the subject of a condition imposed under this section, on reasonable grounds, revoke or vary the condition.

29. Provisional registration

- (1) The Board may provisionally register an applicant as an enrolled nurse, midwife, nurse practitioner or registered nurse if satisfied that —
 - (a) the applicant has applied to be registered under section 27 or 28;
 - (b) the requisite evidence is likely to be produced to enable the Board to be satisfied as to the matters set out in section 27(2) or 28(2) relevant to the type of registration applied for; and
 - (c) the applicant has paid the registration fee, if any, prescribed by the regulations.
- (2) Provisional registration has effect for a period of 3 months beginning on the day on which it is granted unless earlier cancelled.
- (3) The Board may impose such conditions on registration under subsection (1) as the Board reasonably requires to ensure the competent and safe practice of nursing or midwifery, as the case may be.

- (4) If the Board, before the period referred to in subsection (2) expires, has reason to believe that a person granted provisional registration is not entitled to be registered under section 27 or 28 as an enrolled nurse, midwife, nurse practitioner or registered nurse, as the case may be, the Board may, without prejudice to the person's application to be registered, cancel the person's provisional registration.

30. Conditional registration as an enrolled nurse, midwife, nurse practitioner or registered nurse at the discretion of the Board

- (1) The Board may grant a person conditional registration as an enrolled nurse, midwife or registered nurse, as the case may be, if —
- (a) the Board is satisfied that the person meets the requirements of section 27(2)(a), (b), (c) and (d);
 - (b) the Board is satisfied that —
 - (i) the person meets the requirements of section 27(2)(e) and that the requisite evidence is likely to be produced to enable the Board to be satisfied as to the matters set out in section 27(2)(f);
 - (ii) the person, recognised by the Board as being a person of eminence within the field of nursing or midwifery, desires registration for the purpose of enabling the person to teach nursing or midwifery, as the case may be, in a clinical setting; or
 - (iii) the person desires registration to enable the person to undertake particular nursing duties of limited duration or duties of midwifery of limited duration, as the case may be;
- and
- (c) the applicant has paid the registration fee, if any, prescribed by the regulations.

- (2) The Board may grant a person conditional registration as a nurse practitioner if —
- (a) the Board is satisfied that —
 - (i) the person meets the requirements of section 28(2)(a) and that the requisite evidence is likely to be produced to enable the Board to be satisfied as to the matters set out in section 28(2)(b);
 - (ii) the person, recognised by the Board as being a person of eminence within the field of nursing, desires registration for the purpose of enabling the person to teach with respect to the functions of a nurse practitioner; or
 - (iii) the person desires registration to enable the person to undertake particular functions of a nurse practitioner of limited duration;
 - and
 - (b) the applicant has paid the registration fee, if any, prescribed by the regulations.
- (3) Conditional registration —
- (a) has effect until the day specified in the certificate of registration (unless registration is earlier cancelled by the Board) but that day is in no case to be later than 12 months after the issue of the certificate; and
 - (b) is not renewable.
- (4) Conditional registration, and the practice of nursing or midwifery, as the case may be, by a person registered under this section, may be made subject to such conditions as the Board imposes in any particular case.
- (5) The Board may at any time cancel a conditional registration.

- (6) The Board may, on its own motion or on the application of a person the subject of a condition imposed under this section, on reasonable grounds, revoke or vary the condition.

31. Registration as specialists

- (1) The Board is to register an applicant as a specialist in a branch of nursing prescribed by the regulations as a specialty if satisfied that the applicant has —
- (a) complied with the requirements of subsection (2); and
 - (b) paid the registration fee, if any, prescribed by the regulations.
- (2) The requirements for registration as a specialist are that the applicant —
- (a) is a registered nurse; and
 - (b) holds a qualification for registration in the specialty that is prescribed by the regulations as a qualification for the specialty or a qualification that in the opinion of the Board is equivalent to such a qualification.
- (3) The Board may impose such conditions on registration under subsection (1) as the Board reasonably requires to ensure the competent and safe practice of the specialty by the specialist.
- (4) A condition imposed under subsection (3) may apply indefinitely or for a period specified by the Board in the written notice of the decision under section 105.
- (5) The Board may, on its own motion or on the application of a person the subject of a condition imposed under this section, on reasonable grounds, revoke or vary the condition.
- (6) Subject to this Act, registration of a registered nurse as a specialist confers on that person the right to carry on in the State the practice of the specialty for which the person was granted registration as a specialist under the title or titles prescribed by the regulations as the title or titles under which the specialty may be practised.

32. Professional indemnity insurance

- (1) In this section —
- professional indemnity insurance* means professional indemnity insurance that meets the minimum terms and conditions approved by the Board.
- (2) Without limiting the Board's powers under section 27, 28, 29, 30 or 31, the Board may impose both of the following conditions as conditions of registration under section 27, 28, 29, 30 or 31 —
- (a) that —
- (i) the nurse or midwife must hold professional indemnity insurance;
 - (ii) the professional care provided by the nurse or midwife must be covered by professional indemnity insurance; or
 - (iii) the nurse or midwife must be specified or referred to in professional indemnity insurance, whether by name or otherwise, as a person to whom the professional indemnity insurance extends even though the nurse or midwife is not a party to the professional indemnity insurance;
- (b) that the professional indemnity insurance must meet the minimum terms and conditions approved by the Board.
- (3) A condition imposed under this section may apply indefinitely or for a period of time specified by the Board in the written notice of the decision given under section 105.
- (4) The Board may, on its own motion or on the application of a person the subject of a condition imposed under this section, on reasonable grounds, revoke or vary the condition.

33. Application

- (1) An application is to be —
 - (a) in writing;
 - (b) made in an approved manner and form; and
 - (c) accompanied by the application fee, if any, prescribed by the regulations.
- (2) The applicant must provide the Board or the registrar with such further information as the Board or the registrar requires, in any particular case, and if required by the Board or the registrar must verify the information by statutory declaration.
- (3) The Board may, in writing, require an applicant for registration to attend before the Board for the purpose of satisfying the Board as to a matter relevant to the application and, if the person fails to attend, may refuse the application.
- (4) The Board may refuse to register a person who does not comply with this section.

34. Effect of registration

Subject to this Act, registration as —

- (a) an enrolled nurse confers on the person registered the right to carry on in the State the practice of nursing under —
 - (i) the professional direction of a midwife, nurse practitioner or registered nurse; and
 - (ii) the title of “enrolled nurse”;
- (b) a midwife confers on the person registered the right to carry on in the State the practice of midwifery under the title of “midwife”;
- (c) a nurse practitioner confers on the person registered the right to carry on at a designated area the practice of nursing as a nurse practitioner under the title of “nurse practitioner”; and

- (d) a registered nurse confers on the person registered the right to carry on in the State the practice of nursing under the title of “registered nurse”.

35. Duration of registration

Subject to this Act, registration —

- (a) has effect for the period prescribed by the regulations; and
- (b) may be renewed in accordance with the regulations for a further period prescribed by the regulations.

36. Renewal of registration

- (1) A nurse or midwife must pay to the Board a fee prescribed by the regulations for the renewal of registration, and if the fee is not paid on or before the day on which it falls due under the regulations —
 - (a) the person ceases to be registered; and
 - (b) the person’s name must be removed from the register.
- (2) A person whose name is removed from the register under subsection (1) may at any time pay to the Board all fees that are in arrears, and all fees that would be in arrears if the person had continued to be registered, together with any additional amount prescribed by the regulations for the purposes of this subsection, and is then to be entitled, subject to this Act, to have his or her registration as an enrolled nurse, midwife, nurse practitioner or registered nurse renewed and the name restored to the register.
- (3) For the purposes of Part 5, the registration of a person whose name is restored to the register under subsection (2) is taken to have continued during the period that the person’s name was removed from the register under subsection (1).
- (4) The Board is to give written notice of the renewal fee to a nurse or midwife, sent to that person’s address as recorded in the

register, at least 42 days before the fee falls due under the regulations.

- (5) A person may apply to the Board for the remission of fees payable by the person under this section that are in arrears, and the Board may remit those fees in whole or in part.

37. Application for registration by a person whose type of registration has been cancelled under section 81(1)(i)

- (1) In this section —

disqualified person means a person whose registration in relation to a type of registration has been cancelled and name removed from the register in relation to that registration under section 81(1)(i).

- (2) A disqualified person may not apply for registration in relation to the type of registration that was cancelled for a period of 2 years after that registration was cancelled.
- (3) The Board cannot grant an application for registration by a disqualified person in relation to the type of registration that was cancelled unless it has applied for, and obtained, the approval of the State Administrative Tribunal to do so.
- (4) Registration of, and the practice of nursing or midwifery by, a disqualified person may be made subject to such conditions as the Board in any particular case imposes.

Division 2 — The register

38. The register

The Board is required to keep an accurate and up to date register of all nurses and midwives in such manner and form as the Board determines and in respect of each nurse or midwife is to record —

- (a) the name of that person;
- (b) the business, or other, address of that person;

- (c) particulars of all of the nursing or midwifery qualifications recognised by the Board and held by that person;
- (d) the type of registration;
- (e) the provision of this Act under which the person is registered;
- (f) any conditions applying to the registration;
- (g) details of the exercise of any power under Part 5 in respect of that person or any order made in respect of that person in a proceeding before the State Administrative Tribunal under Part 5; and
- (h) such other information, if any, as is prescribed by the regulations.

39. Inspection of register

- (1) The register must be kept in the office of the registrar.
- (2) The register must be available for inspection by members of the public during normal office hours.
- (3) The register may be made available for inspection by members of the public on an internet website maintained by the Board.
- (4) A person may, on application to the registrar in respect of the register or an entry in the register, and payment of the fee prescribed by the regulations, if any, obtain a certified copy of the register or the entry.
- (5) No fee is payable under subsection (4) if the application is made —
 - (a) by an officer of the department of the Public Service principally assisting the Minister in the administration of this Act; and
 - (b) for the purpose of carrying out the functions of an officer of that department.

- (6) Despite subsections (2), (3) and (4), the registrar must not disclose the address of a nurse or midwife to any person without the written consent of the nurse or midwife, other than for the purpose of section 108(4).

40. Certificate of registration

- (1) On the registration of a person the Board is to issue to that person a certificate of registration in a form approved for that type of registration.
- (2) In the absence of evidence to the contrary a certificate of registration is evidence that the person to whom the certificate of registration is issued is registered as specified in the certificate.

41. Voluntary removal from register and cancellation of registration

- (1) A nurse or midwife may, in writing, request the registrar to remove the name of that person from the register in relation to a type of registration and cancel his or her registration in relation to that type of registration.
- (2) Upon receipt of a request under subsection (1), the registrar is to refer the request to the Board and may, if the Board so approves, remove the name of that person from the register in relation to that type of registration and cancel his or her registration in relation to that type of registration.
- (3) This section does not apply to a nurse or midwife who is the subject of proceedings under Part 5.

42. Removal of name and cancellation of registration of person in certain circumstances

- (1) Subject to subsections (3) and (4), the Board is to cancel a type of registration of and direct the registrar to remove from the register the name of a nurse in relation to that type of registration if the Board is satisfied that the nurse —

- (a) has not practised nursing of that type in the preceding period of 5 years; and
 - (b) has not maintained current knowledge and skills in nursing at an approved level.
- (2) Subject to subsections (3) and (4), the Board is to cancel the registration of and direct the registrar to remove from the register the name of a midwife if the Board is satisfied that the midwife —
 - (a) has not practised midwifery in the preceding period of 5 years; and
 - (b) has not maintained current knowledge and skills in midwifery at an approved level.
- (3) If the Board proposes to give a direction under subsection (1) or (2), the Board is to give the nurse or midwife written notice of the proposal and the reasons for the proposal.
- (4) A notice given under subsection (3) must state that within 28 days after the notice is given, the nurse or midwife to whom it is given may make written representations to the Board concerning the proposal, and the Board is not to give the direction without considering any representations received within that period.

43. Effect of removal of name from register

If the name of a nurse or midwife is removed from the register under a provision of this Act in relation to a type of registration, that person ceases to be registered in relation to that type of registration.

Division 3 — Notifications to Board

44. Change of address

- (1) A nurse or midwife must give the registrar written advice of any change to the address that is recorded in the register in relation to the person.

Penalty: \$1 000.

- (2) The advice referred to in subsection (1) must be given no later than 30 days after the change to the address.

45. Loss of qualifications

- (1) A nurse or midwife must give the registrar written advice if a qualification that enabled the person to be registered is withdrawn or cancelled by the body that conferred the qualification.

Penalty: \$1 000.

- (2) The advice referred to in subsection (1) must be given no later than 90 days after the withdrawal or cancellation.

46. Insolvency

- (1) In subsection (2) —

insolvent means a person who is an insolvent under administration as defined in the Corporations Act section 9.

- (2) A nurse or midwife must, within 30 days of becoming an insolvent, give the registrar written advice of the insolvency.

Penalty: \$5 000.

47. Civil or criminal proceedings

- (1) A nurse or midwife must give the registrar written advice of any of the following matters within 14 days after —

- (a) any civil proceedings claiming damages or other compensation arising out of the practice of nursing or midwifery;
- (b) any criminal proceedings for an offence arising out of the practice of nursing or midwifery,

are commenced against that nurse or midwife.

Penalty: \$5 000.

- (2) A nurse or midwife must give the registrar written advice of any of the following matters within 14 days after —
- (a) any proceedings of a kind referred to in subsection (1) commenced against that person are withdrawn or settled;
 - (b) any such proceedings are determined by a court or other tribunal.

Penalty: \$5 000.

48. Information about professional indemnity insurance

- (1) If it is a condition of a person's registration that —
- (a) the person must hold professional indemnity insurance;
 - (b) the professional care provided by the person must be covered by professional indemnity insurance; or
 - (c) the person must be specified or referred to in professional indemnity insurance, whether by name or otherwise, as a person to whom the professional indemnity insurance extends even though the person is not a party to the professional indemnity insurance,

the person must give the registrar written advice —

- (d) if the professional indemnity insurance is cancelled; or
- (e) of any change in the terms or conditions of the professional indemnity insurance.

Penalty: \$1 000.

- (2) The advice referred to in subsection (1) must be given no later than 30 days after the cancellation or change in the terms or conditions.

Part 5 — Disciplinary and impairment matters

Division 1 — Preliminary

49. Disciplinary matters

The following are disciplinary matters —

- (a) that a person has contravened a condition applying to that person's registration or the practise of nursing or midwifery by that person;
- (b) that a person in the course of his or her practise as a nurse or midwife —
 - (i) acted carelessly;
 - (ii) acted incompetently;
 - (iii) acted improperly;
 - (iv) breached this Act;
 - (v) failed to comply with an undertaking given to the Board under this Act;
 - (vi) provided services that were excessive, unnecessary or not reasonably necessary for the recipient's wellbeing;
- (c) that a person has been convicted of an offence the nature of which renders the person unfit to practise as a nurse or midwife, as the case may be.

50. Impairment matters

The following are impairment matters —

- (a) that a person is affected by his or her use of or dependence on alcohol or a drug to such an extent that the ability of the person to practise as a nurse or midwife, as the case may be, is or is likely to be affected;
- (b) that a person suffers from an impairment to such an extent that the ability of the person to practise as a nurse or midwife, as the case may be, is or is likely to be affected.

Division 2 — Committees

51. Complaints assessment committee

- (1) The Board is to establish a committee to be known as the complaints assessment committee.
- (2) The complaints assessment committee is to consist of the following 3 persons appointed in writing by the Board from time to time —
 - (a) a nurse or midwife (who may be a member of the Board);
 - (b) a person who is not a nurse or midwife and is not qualified to be registered as a nurse or midwife;
 - (c) such other person (including a nurse or midwife or member of the Board) as the Board considers appropriate.
- (3) The Board is to appoint a member of the complaints assessment committee to be the committee's chairperson.
- (4) The complaints assessment committee is to submit an annual report to the Board as soon as is practicable after 30 June in each year in respect of the functions performed by the committee during the year that ended on that day.
- (5) A notice or appointment authorised by this Act to be given or made by the complaints assessment committee is taken to have been given or made by the committee if it is signed on behalf of the committee —
 - (a) by the chairperson of the committee; or
 - (b) by some other person authorised by the committee to sign the notice or appointment.

52. Impairment review committee

- (1) The Board may establish a committee to be known as the impairment review committee.

- (2) The impairment review committee is to consist of the following 3 persons appointed in writing by the Board from time to time —
 - (a) a nurse or midwife (who may be a member of the Board);
 - (b) a medical practitioner;
 - (c) such other person (including a nurse or midwife or member of the Board) as the Board considers appropriate.
- (3) The Board is to appoint a member of the impairment review committee to be the committee's chairperson.
- (4) A notice or appointment authorised by this Act to be given or made by the impairment review committee is taken to have been given or made by the committee if it is signed on behalf of the committee —
 - (a) by the chairperson of the committee; or
 - (b) by some other person authorised by the committee to sign the notice or appointment.

53. Deputy member of the complaints assessment committee or the impairment review committee

- (1) The Board may appoint an eligible person to be a deputy of a member of the complaints assessment committee or the impairment review committee and may terminate such an appointment at any time.
- (2) The provisions of section 51(2) or 52(2) that apply to and in relation to the appointment of a member apply, with any necessary modification, to and in relation to the appointment of the deputy of that member.
- (3) The deputy of the member referred to in section 51(3) or 52(3) is the deputy chairperson of the committee.

- (4) A deputy of a member may perform the functions of the member when the member is unable to do so by reason of illness, absence or other cause.
- (5) Despite anything in this Act, a deputy of a member may continue to act as a member, after the occasion for so acting has ceased, for the purpose of completing any function.
- (6) A deputy of a member, while acting as a member, has all the functions of and all the protection given to a member.
- (7) No act or omission of a person acting in place of another under this section is to be questioned on the ground that the occasion for so acting had not arisen or had ceased.

Division 3 — Complaints

54. Complaints

- (1) A person may lodge a complaint in relation to an impairment matter with the complaints assessment committee in relation to a person who is a nurse or midwife.
- (2) A person may lodge a complaint in relation to a disciplinary matter with the complaints assessment committee in relation to —
 - (a) a person who is a nurse or midwife; or
 - (b) a person who was a nurse or midwife when the disciplinary matter allegedly occurred but who is no longer a nurse or midwife.
- (3) If the Director refers a complaint to the Board under the *Health Services (Conciliation and Review) Act 1995* section 31 or 43(3), the Board is to refer the complaint to the complaints assessment committee.
- (4) The complaints assessment committee may determine that an impairment matter or a disciplinary matter is to be dealt with as if it were the subject of a complaint lodged with the committee, despite no complaint having been made to it.

- (5) The complaints assessment committee is not to make a determination under subsection (4) unless it is of the opinion that —
- (a) in respect of a person who is a nurse or midwife when the determination is made, there is cause to investigate whether an impairment matter or a disciplinary matter exists or has occurred; or
 - (b) in respect of a person who was a nurse or midwife when the disciplinary matter allegedly occurred, there is cause to investigate whether a disciplinary matter occurred.

55. Complaints assessment committee to determine action required

- (1) The complaints assessment committee is to decide in respect of a complaint —
- (a) if the committee is of the opinion that the complaint requires action under Division 4, to refer it to the Board for action under that Division;
 - (b) to reject the complaint under section 56;
 - (c) in the case of a complaint relating to a disciplinary matter, to deal with the complaint under subsection (3) or section 60; or
 - (d) in the case of a complaint relating to an impairment matter, to refer the complaint to the impairment review committee.
- (2) To enable the complaints assessment committee to make a decision under subsection (1) the committee may make such inquiries as it considers appropriate.
- (3) If the complaint relates to a disciplinary matter referred to in section 49(b)(v), the complaints assessment committee may recommend to the Board that it make an allegation to the State Administrative Tribunal based on the complaint that gave rise to the undertaking.

56. Complaints assessment committee may reject certain complaints

- (1) The complaints assessment committee may at any time before deciding to —
 - (a) refer a complaint to the impairment review committee under section 55(1)(d); or
 - (b) make a recommendation to the Board under section 55(3) or 60,reject a complaint if it is of the opinion that the complaint is frivolous, vexatious or without substance.
- (2) Within 7 days of making a decision under subsection (1), the complaints assessment committee is to give written notice to the complainant, if any, that the complaint is rejected and in the notice is to give short particulars of the reasons for the decision.

Division 4 — Summary orders of Board

57. Interim orders by Board

- (1) If the Board is of the opinion that an activity of a nurse or midwife involves or will involve a risk of imminent injury or harm to the physical or mental health of any person, the Board may, without further inquiry, do any or all of the following —
 - (a) give to the nurse or midwife who is carrying on that activity an order prohibiting the carrying on of the activity for a period of not more than 30 days;
 - (b) give to the nurse or midwife an order to comply, for a period of not more than 30 days, with such conditions as the Board thinks fit in relation to the practice of nursing or midwifery, as the case may be, by that person;
 - (c) give to the nurse or midwife an order suspending the person's registration in relation to a type of registration specified in the order, either generally or in relation to any specified circumstances or service, for a period of not more than 30 days.

- (2) An order made under subsection (1) must —
- (a) state that the Board is of the opinion that the activity of the nurse or midwife involves or will involve a risk of imminent injury or harm to the physical or mental health of any person;
 - (b) specify the activity that in the Board’s opinion involves or will involve the risk and the matters that give or will give rise to the risk; and
 - (c) advise that, within 14 days of the making of the order, the Board will revoke the order or make an allegation about the matter to the State Administrative Tribunal.
- (3) The Board may, by subsequent order given to the person to whom the order made under subsection (1) was given, revoke or vary the original order at any time before making an allegation about the matter to the State Administrative Tribunal under section 58.
- (4) The Board may deal under this section with a complaint even if —
- (a) the Board, the impairment review committee or the complaints assessment committee is already dealing with the complaint, or a complaint including elements of the first-mentioned complaint, under this Act; or
 - (b) the same complaint, or a complaint including elements of the complaint before the Board, has been made under the *Health Services (Conciliation and Review) Act 1995* or is being treated as a complaint that was made under that Act.

58. Complaint dealt with summarily to be referred to the State Administrative Tribunal

- (1) Within 14 days of making an order under section 57, if that order is not revoked under section 57(3), the Board is to —
 - (a) make an allegation about the matter in respect of which the order was made to the State Administrative Tribunal; and
 - (b) order that any other proceedings under this Part in respect of the matter commenced before the making of the order be discontinued.
- (2) Upon an allegation made under subsection (1) the State Administrative Tribunal may, in addition to any other order it may make, affirm or revoke an order under section 57(1) or vary the order by extending the period for which it applies or in any other respect.

59. Complaint not dealt with summarily to be referred to relevant committee

If the Board does not make an order under section 57 in respect of a complaint referred to it under section 55(1)(a) then the Board is to —

- (a) refer the complaint to the complaints assessment committee, if the complaint relates to a disciplinary matter; or
- (b) refer the complaint to the impairment review committee, if the complaint relates to an impairment matter.

Division 5 — Disciplinary matters

60. Investigation and recommendation

- (1) If the complaints assessment committee has made a decision to deal with a complaint relating to a disciplinary matter under this section or has had a complaint referred back to it under

section 59, the complaints assessment committee is to investigate the complaint.

- (2) On completion of the investigation the complaints assessment committee is to make a recommendation to the Board —
 - (a) to make a summary order under Division 4 (unless the complaint was referred back to the committee under section 59);
 - (b) if the complaint comes within the *Health Services (Conciliation and Review) Act 1995* section 25, not being a complaint referred to the Board under section 31 or 43(3) of that Act, to give a copy of the complaint to the Director;
 - (c) if paragraph (b) does not apply, to attempt to settle the complaint by conciliation;
 - (d) to caution or reprimand the respondent;
 - (e) to accept an undertaking from the respondent to take or refrain from action specified in the recommendation;
 - (f) to make an allegation about the complaint to the State Administrative Tribunal; or
 - (g) to take no further action.
- (3) The complaints assessment committee is not to make a recommendation under subsection (2)(c) unless it is satisfied that the matter can be dealt with satisfactorily by informal procedures.
- (4) The complaints assessment committee may recommend to the Board that it take action under both subsection (2)(d) and (e) in respect of a complaint.

61. Role of Board

- (1) The Board is to consider the recommendation of the complaints assessment committee under section 60(2) and may either —
 - (a) act on the recommendation of the complaints assessment committee; or

- (b) take action of a kind referred to in section 60(2) other than that recommended by the complaints assessment committee.
- (2) The Board is not to take action of a kind referred to in section 60(2)(c) unless it is satisfied that the matter can be dealt with satisfactorily by informal procedures.
- (3) The Board may take action under both section 60(2)(d) and (e) in respect of a complaint.
- (4) Within 7 days of making a decision under subsection (1), the Board is to give written notice to the complainant, if any, and the respondent of the action proposed to be taken by the Board together with short particulars of the reasons for the decision.

62. Alternative to making allegation to the State Administrative Tribunal

- (1) If the Board —
 - (a) is of the opinion that a proceeding before the Tribunal is not warranted by the nature of the allegation;
 - (b) has afforded to the person concerned the opportunity of giving an explanation to the Board either in person or in writing and is not satisfied by any explanation offered; and
 - (c) has afforded to the person concerned the option of the matter proceeding before the Tribunal and that option has not been taken up,

the Board, instead of making an allegation to the State Administrative Tribunal under section 61(1), may —

- (d) if the person is a nurse or midwife, order that the particulars entered in the register in relation to that person be amended;
- (e) caution or reprimand that person;

- (f) if the person is a nurse or midwife, require that person to give an undertaking to the Board, either with or without security, for such period as is specified —
 - (i) in relation to his or her future conduct as a nurse or midwife; or
 - (ii) to comply with such conditions as are specified in relation to his or her practice;or
 - (g) order that person to pay to the Board a penalty not exceeding \$2 500.
- (2) The Board may, in addition to or instead of imposing one or more of the penalties specified in subsection (1), order the person concerned to pay such costs and expenses of or incidental to the proceedings as the Board thinks fit.
- (3) Where any penalty, costs or expenses are ordered to be paid under this section the amount ordered to be paid is recoverable in any court of competent jurisdiction as a debt due to the Board.
- (4) Within 7 days of making a decision under subsection (1)(d) to (g) or (2), the Board is to give written notice to the complainant, if any, and the respondent of the decision together with short particulars of the reasons for the decision.

Division 6 — Impairment matters

63. Request by nurse or midwife for imposition of condition

- (1) A nurse or midwife who believes that his or her ability to practise nursing or midwifery, as the case may be, is affected because of an impairment matter may ask the Board to impose a condition with respect to his or her registration.
- (2) If the Board and the nurse or midwife agree upon the condition to be imposed, the Board is to impose that condition with respect to his or her registration.

- (3) If the Board and the nurse or midwife do not agree upon the condition to be imposed, the Board is to refer the matter to the impairment review committee for investigation under this Division.

64. Revocation of condition

The Board may revoke a condition imposed under section 63 if the nurse or midwife satisfies the impairment review committee that his or her ability to practise nursing or midwifery, as the case may be, is no longer affected because of the impairment matter that gave rise to the imposition of the condition.

65. Investigation

The impairment review committee is to investigate a complaint referred to it.

66. Nurse or midwife to be notified about investigation

- (1) The impairment review committee is to give written notice of the investigation to the nurse or midwife to whom the complaint relates.
- (2) The notice must —
- (a) advise the person of the nature of the impairment matter to be investigated;
 - (b) if the impairment review committee considers that an examination of the person is necessary, ask the person to advise the committee as to whether or not he or she will agree to undergo an examination relating to the impairment matter within a period specified by the committee in the notice; and
 - (c) contain a brief summary of the effect of this Division.

67. Examination

- (1) If the nurse or midwife agrees to undergo an examination within the period specified in the notice under section 66(2)(b), the

person is to be examined by a medical practitioner agreed upon by the impairment review committee and the person.

- (2) If the impairment review committee and the nurse or midwife are unable to agree upon the person to conduct the examination, the Board is to appoint a medical practitioner to perform the examination.
- (3) The Board is to pay for an examination conducted under this section and a report provided under section 68.
- (4) If the nurse or midwife does not agree to undergo an examination within the period specified in the notice under section 66(2)(b) or does not abide by an agreement to undergo such an examination, the impairment review committee is to recommend to the Board that the Board make an allegation about the complaint to the State Administrative Tribunal.

68. Report of examination

- (1) A medical practitioner who conducts an examination under section 67 is to give a report of the examination to the impairment review committee and, not more than 7 days later, the committee is to give a copy of the report to the nurse or midwife.
- (2) Despite subsection (1), if it appears to the impairment review committee that the disclosure to the nurse or midwife of information in the report might be prejudicial to the physical or mental health or wellbeing of that person, the committee may decide not to give that report to the nurse or midwife but to give it instead to a medical practitioner or another nurse or midwife nominated by the nurse or midwife.
- (3) If the nurse or midwife does not nominate a medical practitioner or another nurse or midwife to the impairment review committee within 7 days of being requested to do so by the committee, the committee may give the report to a medical practitioner or nurse or midwife selected by the committee.

- (4) The nurse or midwife may make written representations to the impairment review committee with respect to the report within 7 days after the report is given to him or her or the medical practitioner or nurse or midwife nominated by him or her or selected by the committee.

69. Role of the impairment review committee

- (1) On completion of the investigation of a nurse or midwife and after considering —
- (a) any report given to the committee under section 68(1); and
 - (b) any representations made by the nurse or midwife under section 68(4),

the impairment review committee is to decide whether or not further action should be taken.

- (2) If the impairment review committee decides that further action should be taken, it is to request that the nurse or midwife consent —
- (a) to the imposition of conditions on his or her registration;
 - (b) to the person's registration in relation to a specified type of registration being suspended, for a period, not exceeding 2 years, specified by the impairment review committee; or
 - (c) to undergo counselling specified by the impairment review committee.
- (3) If the impairment review committee decides that no further action should be taken it is to give written advice to that effect to —
- (a) the Board;
 - (b) the complainant, if any; and
 - (c) the nurse or midwife.

70. Recommendation

- (1) If the nurse or midwife does not consent to a request made under section 69(2) within 10 days of the request being made, the impairment review committee is to recommend to the Board that the Board make an allegation about the complaint to the State Administrative Tribunal.
- (2) If the nurse or midwife does consent to a request made under section 69(2) within 10 days of the request being made, the impairment review committee is to recommend to the Board that the Board take any action to which the nurse or midwife consented.
- (3) A recommendation made under subsection (1) or (2) must be made in writing and contain details of the committee's investigation of the nurse or midwife.

71. Role of Board

- (1) The Board is to consider a recommendation of the impairment review committee and may —
 - (a) decide not to take any action;
 - (b) take any action to which the nurse or midwife consented under section 69(2); or
 - (c) make an allegation about the complaint to the State Administrative Tribunal.
- (2) For the purpose of taking action to which the nurse or midwife consented under section 69(2), the Board may —
 - (a) impose the conditions to which the nurse or midwife consented;
 - (b) suspend the person's registration in relation to a specified type of registration for the period specified by the impairment review committee; or
 - (c) obtain an undertaking from the nurse or midwife to undergo the counselling specified by the impairment review committee,as the case may require.

- (3) Within 7 days of making a decision under subsection (1) or (2), the Board is to give written notice to the nurse or midwife and the complainant, if any, of the decision together with short particulars of the reasons for the decision.

Division 7 — Investigator's role and powers

72. Interpretation

In this Division —

appointing body, in relation to an investigator, means the Board or the complaints assessment committee which appointed the investigator.

73. Investigator

- (1) The Board or the complaints assessment committee may appoint a person to investigate a complaint and report to the Board or committee.
- (2) A person must not be appointed under subsection (1) unless he or she has the qualifications prescribed by the regulations.
- (3) Qualifications prescribed for the purposes of subsection (2) may relate to educational qualifications or practical experience, or to both.
- (4) An appointing body is to issue to each investigator it appoints a certificate of appointment in an approved form.
- (5) A certificate purporting to have been issued under this section is evidence in any court of the appointment to which the certificate purports to relate.

74. Report of investigator

- (1) An investigator is to —
- (a) within such period as the appointing body requires prepare a report on the investigation, and make

- recommendations as to the manner in which the complaint should be dealt with; and
- (b) immediately after preparing the report, provide the appointing body with a copy of the report.
- (2) The investigator is to return his or her certificate of appointment at the time the appointing body is provided with a copy of the report.

75. Powers of investigator

- (1) An investigator may for the purposes of an investigation —
- (a) enter and inspect the premises named in a warrant issued under section 77(1), and exercise the powers authorised under section 77(2)(b) and (c);
 - (b) require a person to produce to the investigator any document or other thing concerning the investigation that is in the possession or under the control of the person;
 - (c) inspect any document or other thing produced to the investigator and retain it for such reasonable period as the investigator thinks fit, and make copies of a document or any of its contents;
 - (d) require a person —
 - (i) to give the investigator such information as the investigator requires; and
 - (ii) to answer any question put to that person, in relation to the matter the subject of the investigation; and
 - (e) exercise other powers conferred on an investigator by the regulations.
- (2) A requirement made under subsection (1)(b) —
- (a) must be made by notice in writing given to the person required to produce the document or other thing;

- (b) must specify the time at or within which the document or other thing is to be produced;
 - (c) may, by its terms, require that the document or other thing required be produced at a place and by means specified in the requirement; and
 - (d) where the document required is not in a readable format, is to be treated as a requirement to produce —
 - (i) the document itself; and
 - (ii) the contents of the document in a readable format.
- (3) A requirement made under subsection (1)(d) —
- (a) may be made orally or by notice in writing served on the person required to give information or answer a question, as the case may be;
 - (b) must specify the time at or within which the information is to be given or the question is to be answered, as the case may be; and
 - (c) may, by its terms, require that the information or answer required —
 - (i) be given orally or in writing;
 - (ii) be given at or sent or delivered to a place specified in the requirement;
 - (iii) in the case of written information or answers be sent or delivered by means specified in the requirement; or
 - (iv) be verified by statutory declaration.
- (4) If under subsection (1)(b) an investigator requires a person to produce any document or other thing concerning the investigation that is in the possession or under the control of the person, the investigator is to inform that person that the person is required under this Act to produce the document or thing.

- (5) If under subsection (1)(d) an investigator requires a person to give information or answer a question, the investigator is to inform that person that the person is required under this Act to give the information or answer the question.
- (6) An investigator is to produce his or her certificate of appointment if requested to do so by a person in respect of whom the investigator has exercised, or is about to exercise, a power under this section.

76. Warrant to enter premises

- (1) If the Board has determined in a particular case that an investigator has reasonable grounds for believing that entry to premises is necessary for the purpose of substantiating a complaint that may involve a threat to the physical or mental health of a person the investigator may apply to a magistrate for a warrant to be issued in respect of those premises.
- (2) An application for a warrant must —
 - (a) be in writing;
 - (b) be accompanied by a notice in writing from the Board stating that it has determined in the particular case that the investigator has reasonable grounds for believing that entry to premises is necessary for the purpose of substantiating a complaint that may involve a threat to the physical or mental health of a person;
 - (c) set out the grounds for seeking the warrant; and
 - (d) describe the premises that are to be entered.
- (3) A magistrate to whom an application is made under this section is to refuse it if —
 - (a) the application does not comply with the requirements of this Act; or
 - (b) when required to do so by the magistrate, the investigator does not give to the magistrate more information about the application.

- (4) The information in an application or given to a magistrate under this section must be verified before the magistrate on oath or affirmation or by affidavit, and the magistrate may for that purpose administer an oath or affirmation or take an affidavit.

77. Issue of warrant

- (1) A magistrate to whom an application is made under section 76 may issue a warrant, if satisfied that there are reasonable grounds for believing that entry and inspection of the premises are necessary for the purpose referred to in that section.
- (2) A warrant under subsection (1) authorises the investigator —
- (a) to enter and inspect the premises named in the warrant;
 - (b) to require a person on the premises to answer questions or produce documents or other things concerning the investigation that are in the possession or under the control of the person; and
 - (c) to inspect documents and other things, and take copies of or extracts from documents, produced in compliance with a requirement made under paragraph (b).
- (3) There must be stated in a warrant —
- (a) the purpose for which the warrant is issued;
 - (b) the name of the person to whom the warrant is issued; and
 - (c) a description of the premises that may be entered.
- (4) A magistrate who issues a warrant is to cause a record to be made of particulars of the grounds that the magistrate has relied on to justify the issue of the warrant.

78. Execution of warrant

- (1) If asked by an occupier, or a person in charge, of premises, the person executing a warrant at those premises is to produce it for inspection.

- (2) A warrant ceases to have effect —
- (a) at the end of the period of one month after its issue;
 - (b) if it is withdrawn by the magistrate who issued it; or
 - (c) when it is executed,
- whichever occurs first.

Division 8 — Conciliation

79. Conciliation process

- (1) If an attempt is to be made to settle a complaint by conciliation, the Board is to refer the complaint to the complaints assessment committee.
- (2) The complaints assessment committee is to commence conciliation procedures within 14 days of the complaint being referred to it under subsection (1) and may for that purpose —
- (a) cause conferences of the complainant or person affected by the conduct of the respondent and the respondent, or their representatives, to be arranged and to be presided over by a person appointed in accordance with the regulations;
 - (b) give advice and make recommendations to assist in the reaching of an agreement; and
 - (c) cause the persons concerned, or any of them, either separately or together, to appear before the complaints assessment committee.
- (3) The Board may, with the consent of each of the parties to that agreement, by order give effect to an agreement negotiated under this Division.
- (4) If the Board makes an order under subsection (3) —
- (a) the terms of the agreement reached between the parties referred to in the order are final and binding on those parties; and

- (b) the order may include any action that might have been taken by the State Administrative Tribunal under section 81(1) or 82(1).
- (5) Evidence of anything lawfully said or done, or any record prepared and produced for the purpose of conciliation, by a person in the course of the conciliation process is not to be used in any subsequent consideration of the complaint by the Board nor, unless that person waives the right to object, is it admissible in evidence against that person in any subsequent civil proceedings concerning the subject matter of the complaint.

80. Action if conciliation fails

If —

- (a) the conciliation process fails to result in an agreement between the complainant or other person affected by the conduct of the respondent and the respondent;
- (b) the Board is satisfied that the parties are not cooperating with the conciliation process; or
- (c) the Board is not satisfied with the result of the conciliation process,

the Board is to —

- (d) make a summary order under Division 4;
- (e) investigate the complaint; or
- (f) make an allegation about the complaint to the State Administrative Tribunal.

Division 9 — Role of the State Administrative Tribunal

81. Powers of the State Administrative Tribunal on dealing with a disciplinary matter

- (1) If, in a proceeding commenced by an allegation under this Act against a nurse or midwife, the State Administrative Tribunal is

of the opinion that a disciplinary matter exists in relation to the person, the Tribunal may do one or more of the following —

- (a) decline to make an order or a requirement under this subsection;
- (b) order the registrar to amend the particulars entered in the register in respect of the person;
- (c) caution or reprimand the person;
- (d) require the person —
 - (i) if the patient agrees, to provide further services to a patient at no cost or at an amount determined by the Tribunal;
 - (ii) to pay, wholly or in part, for further services to be provided to a patient by another nurse or midwife; or
 - (iii) to reduce or refund the amount of any fees paid in respect of services provided to a patient, to such an extent as is determined by the Tribunal;
- (e) order that the person comply with such conditions as the Tribunal may impose on the registration of that person;
- (f) require the person to complete educational or clinical courses, or both, as specified in the order or to practise under supervision as specified in the order for a period specified in the order;
- (g) require the person to seek and implement, within a period specified in the order, advice from a person or persons specified in the order in relation to the management and conduct of the person's practice of nursing or midwifery, as the case may be, or the specific part or aspect of the practice specified in the order;
- (h) order the person to pay a penalty not exceeding \$25 000;
- (i) order that the person's registration in relation to a type of registration specified in the order be cancelled and name be removed from the register in relation to that type;

- (j) order that the person's registration in relation to a type of registration specified in the order be suspended, either generally or in relation to any specified circumstances or service, for a period, not exceeding 2 years, specified in the order.
- (2) If, in a proceeding commenced by an allegation under this Act against a person who was a nurse or midwife when the disciplinary matter allegedly occurred but who is no longer a nurse or midwife, the State Administrative Tribunal is of the opinion that a disciplinary matter exists in relation to that person, the only powers that the Tribunal may exercise are the powers in subsection (1)(a), (c), (d)(ii) and (iii) and (h).

82. Powers of the State Administrative Tribunal on dealing with an impairment matter

- (1) If, in a proceeding commenced by an allegation under section 71(1)(c), the State Administrative Tribunal is of the opinion that an impairment matter exists in relation to a nurse or midwife, the Tribunal may do one or more of the following —
 - (a) decline to make an order or a requirement under this subsection;
 - (b) order that the person comply with such conditions as the Tribunal may impose on the registration of that person;
 - (c) require the person to seek and undergo medical treatment or counselling specified by the Tribunal;
 - (d) order that the person's registration in relation to a type of registration specified in the order be suspended, either generally or in relation to any specified circumstances or service, for the period of time, not exceeding 2 years, specified by the State Administrative Tribunal in the order.
- (2) If, during the course of hearing an allegation in respect of an impairment matter, the State Administrative Tribunal determines that the allegation involves a disciplinary matter, the

Tribunal may deal with it under section 81(1) or (2) instead of under this section.

Division 10 — Miscellaneous

83. Suspension

- (1) If, under section 57(1)(c), 71(2)(b), 81(1)(j) or 82(1)(d), a person's registration in relation to a specified type of registration is suspended generally, the person is to be regarded as not being registered in relation to that type of registration during the period of the suspension.
- (2) If, under section 57(1)(c), 81(1)(j) or 82(1)(d), a person's registration in relation to a specified type of registration is suspended in relation to any specified circumstances or service, the person is to be regarded as not being registered in relation to that type of registration during the period of the suspension in relation to the circumstances or the performance of the service specified in the order of suspension.
- (3) The Board may, by notice in writing, revoke a suspension, either generally or to a specified extent, and may direct in the notice that the revocation has effect from a date specified in the notice.
- (4) The Board cannot revoke a suspension that was imposed by the State Administrative Tribunal under section 81(1)(j) or 82(1)(d) unless it has applied for, and obtained, the approval of the Tribunal to do so.

84. Costs and recovery

- (1) The Board may, in addition to or instead of exercising a power under section 61(1) or 71(1), order the respondent to pay such costs and expenses of or arising from the investigation and exercise of that power as the Board thinks fit.

- (2) Any costs or expenses ordered to be paid under this section are recoverable by the Board in a court of competent jurisdiction as a debt due to the Board.
- (3) The Board may, in exceptional circumstances, pay from the funds of the Board to a respondent against whom there has been no adverse finding the costs or part of the costs incurred by that person.
- (4) In subsection (3) —
adverse finding means a finding that a disciplinary or impairment matter exists.

Part 6 — Offences

85. Persons who may practise nursing or midwifery or a specialty

- (1) A person must not practise nursing unless that person is an enrolled nurse, nurse practitioner or registered nurse and, in the case of an enrolled nurse, does so under the professional direction of a midwife, nurse practitioner or registered nurse.
- (2) A person must not practise midwifery unless that person is a midwife.
- (3) A person must not practise a specialty unless that person is a specialist registered to practise that specialty.

Penalty applicable to subsections (1), (2) and (3):

- (a) in the case of an individual —
 - (i) for a first offence, \$5 000; and a daily penalty of \$200;
 - (ii) for a second or subsequent offence, \$10 000; and a daily penalty of \$400;
- (b) in any other case —
 - (i) for a first offence, \$10 000; and a daily penalty of \$400;
 - (ii) for a second or subsequent offence, \$20 000; and a daily penalty of \$800.

86. Persons who may be employed or engaged to practise nursing or midwifery or a specialty

- (1) A person must not employ or engage a person to practise nursing unless the person employed or engaged is an enrolled nurse, nurse practitioner or registered nurse and, in the case of an enrolled nurse, is employed or engaged to do so under the professional direction of a midwife, nurse practitioner or registered nurse.

s. 87

- (2) A person must not employ or engage a person to practise midwifery unless the person employed or engaged is a midwife.
- (3) A person must not employ or engage a person to practise a specialty unless the person employed is a specialist registered to practise that specialty.

Penalty applicable to subsections (1), (2) and (3):

- (a) in the case of an individual —
 - (i) for a first offence, \$5 000; and a daily penalty of \$200;
 - (ii) for a second or subsequent offence, \$10 000; and a daily penalty of \$400;
- (b) in any other case —
 - (i) for a first offence, \$10 000; and a daily penalty of \$400;
 - (ii) for a second or subsequent offence, \$20 000; and a daily penalty of \$800.

87. Exceptions to sections 85 and 86

- (1) In this section —

student means a person who is enrolled as a student and is studying for a qualification referred to in section 27(2)(f) or 28(2)(b).
- (2) For the purposes of sections 85 and 86, a person is not practising nursing or midwifery only because —
 - (a) the person is a student; or
 - (b) the person employs or engages a person who practises nursing or midwifery.
- (3) For the purpose of sections 85 and 86, a person is not practising a specialty only because —
 - (a) the person is studying a specialty under the immediate personal supervision of a specialist registered to practise that specialty; or

- (b) the person engages or employs a person who practises that specialty.

88. Use of titles or pretending to be registered

A person must not —

- (a) use the title “enrolled nurse” unless the person is an enrolled nurse;
- (b) use the title “midwife” unless the person is a midwife;
- (c) use the title “nurse practitioner” unless the person is a nurse practitioner;
- (d) use the title “registered nurse” unless the person is a registered nurse;
- (e) use a title under which a specialty may be practised that is prescribed under section 31(6) unless that person is registered to practise that specialty;
- (f) advertise or otherwise hold out or imply, that the person is registered or entitled, either alone or with others, to practise nursing, unless that person is an enrolled nurse, nurse practitioner or registered nurse; or
- (g) advertise or otherwise hold out or imply, that the person is registered or entitled, either alone or with others, to practise midwifery, unless that person is a midwife.

Penalty:

- (a) for a first offence, \$2 500; and a daily penalty of \$100;
- (b) for a second or subsequent offence, \$5 000; and a daily penalty of \$200.

89. Name in which practice may be carried on

- (1) A nurse must not carry on the practice of nursing under any name other than the name of the person as recorded in the register, unless the person has the written consent of the Board

s. 90

to do so, and complies with any conditions imposed by the Board.

- (2) A midwife must not carry on the practice of midwifery under any name other than the name of the person as recorded in the register, unless the person has the written consent of the Board to do so, and complies with any conditions imposed by the Board.

Penalty applicable to subsections (1) and (2):

- (a) for a first offence, \$2 500;
- (b) for a second or subsequent offence, \$5 000.

90. Unlawful delegation by registered person

A registered person must not, except as authorised by the rules, authorise or permit a person who is not a registered person to carry out any nursing for or on behalf of the registered person.

Penalty:

- (a) for a first offence, \$2 500;
- (b) for a second or subsequent offence, \$5 000.

91. Undue influence

A person must not cause or induce —

- (a) a nurse to do any thing in the course of practising nursing; or
- (b) a midwife to do any thing in the course of practising midwifery,

that the person is aware, or ought reasonably to be aware, is conduct that would constitute a disciplinary matter.

Penalty:

- (a) in the case of an individual, \$5 000;
- (b) in any other case, \$10 000.

92. Failure to comply with disciplinary action

A person must not contravene or fail to comply with an order of the Board given to that person under section 57 or 62.

Penalty:

- (a) in the case of an individual, \$5 000;
- (b) in any other case, \$10 000.

93. False or misleading information

- (1) A person must not do any of the things set out in subsection (2) —

- (a) in relation to an application;
- (b) in relation to the compliance, or purported compliance, with any requirement of this Act to give the Board or the registrar advice or information; or
- (c) in relation to an attempt at conciliation under section 79.

Penalty: \$24 000 or imprisonment for 2 years.

- (2) The things to which subsection (1) applies are —

- (a) making a statement which the person knows is false or misleading in a material particular;
- (b) making a statement which is false or misleading in a material particular, with reckless disregard as to whether or not the statement is false or misleading in a material particular;
- (c) providing, or causing to be provided, information that the person knows is false or misleading in a material particular; or
- (d) providing, or causing to be provided, information that is false or misleading in a material particular, with reckless disregard as to whether the information is false or misleading in a material particular.

94. Offences in relation to investigation

- (1) Where under section 75 a person is required to give any information, answer any question, or produce any document or thing and that person, without reasonable excuse (proof of which lies on the person) —
- (a) fails to give that information or answer that question at or within the time specified in the requirement;
 - (b) gives any information or answer that is false in any particular; or
 - (c) fails to produce that document or thing at or within the time specified in the requirement,

the person commits an offence.

Penalty:

- (a) in the case of an individual, \$5 000;
 - (b) in any other case, \$10 000.
- (2) It is a defence in any proceeding for an offence under subsection (1)(a) or (c) for the accused to show —
- (a) that, in the case of an alleged offence arising out of a requirement made orally under section 75, the investigator did not, when making the requirement, inform the accused that he or she was required under this Act to give the information or answer the question, as the case may be;
 - (b) that, in the case of an alleged offence arising out of a requirement made by notice in writing under section 75, the notice did not state that he or she was required under this Act to give the information, answer the question, or produce the document or thing, as the case may be;
 - (c) that the time specified in the requirement did not afford the accused sufficient notice to enable him or her to comply with the requirement; or

- (d) that, in any case, the investigator did not, before making the requirement, have reasonable grounds to believe that compliance with the requirement would materially assist in the investigation being carried out.

95. Obstruction of investigator

A person must not prevent or attempt to prevent an investigator from entering premises or otherwise obstruct or impede an investigator in the exercise of his or her powers under section 75.

Penalty:

- (a) in the case of an individual, \$5 000;
- (b) in any other case, \$10 000.

96. Assistance to execute warrant

A nurse or midwife, and any person —

- (a) who engages or employs the nurse or midwife to practise nursing or midwifery;
- (b) who is engaged or employed by the nurse or midwife in the nurse or midwife's practice; or
- (c) with whom the nurse or midwife practises nursing or midwifery in partnership,

at the premises named in the warrant is to provide all reasonable assistance to an investigator executing the warrant issued under section 77.

Penalty:

- (a) in the case of an individual, \$2 500;
- (b) in any other case, \$5 000.

97. Surrender of certificate

- (1) Where a person's type of registration is cancelled or suspended, the person is, within 14 days after the day on which the person is notified by the Board of the cancellation or suspension, to

s. 98

surrender to the Board his or her certificate of registration in relation to that type of registration.

Penalty: \$1 000.

- (2) The Board may direct in writing that a person whose type of registration is suspended under section 57 is not obliged to comply with subsection (1) and, in that case, the subsection does not apply to that person.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the accused satisfies the court that the failure to surrender the certificate was due to its loss or destruction.

98. Incriminating information, questions, or documents

An individual is not excused from complying with a requirement under section 75 on the ground that the answer to a question or the production of a document or other thing might incriminate the individual or render the individual liable to a penalty, but neither —

- (a) an answer given by the individual that was given to comply with the requirement; nor
- (b) the fact that a document or other thing produced by the individual to comply with the requirement was produced,

is admissible in evidence in any civil or criminal proceedings against the individual other than proceedings for an offence against section 94(1)(b).

99. Legal professional privilege

Nothing in Part 5 or this Part prevents a person from refusing to answer a question, provide information or produce a document or other thing because the answer or information would relate to, or the document or thing contains, information in respect of which the person claims legal professional privilege.

Part 7 — Codes of practice, rules and regulations

100. Codes of practice

- (1) The Board may, with the approval of the Minister, issue codes of practice for —
 - (a) the practice of nursing and the conduct of an enrolled nurse or registered nurse;
 - (b) the practice of nursing and the conduct of a nurse practitioner, in accordance with subsection (2); or
 - (c) the practice of midwifery and the conduct of a midwife.
- (2) A code of practice referred to in subsection (1)(b) is to contain only information recommended by the Commissioner, as defined in the *Health Act 1911* section 3(1), with respect to the functions of nurse practitioners, including —
 - (a) the possession, use, supply or prescription of poisons, as defined in the *Poisons Act 1964* section 5(1), by a nurse practitioner;
 - (b) the requesting, or undertaking, of diagnostic testing or therapies;
 - (c) the undertaking of treatments by a nurse practitioner; and
 - (d) such other functions as are necessary or convenient with respect to the practice of nursing as a nurse practitioner and the conduct of a nurse practitioner,and anything incidental or conducive to those functions.
- (3) The code of practice may adopt the provisions of other publications, whether with or without modification or addition and whether in force at a particular time or from time to time.
- (4) A breach of a code of practice does not of itself constitute a disciplinary matter for the purposes of section 49 but in any proceedings under Part 5 such a breach may be asserted and may be taken into account in determining any question that arises under that Part.

s. 101

- (5) Except as provided in subsection (4) or the *Radiation Safety Act 1975* Part III, no civil or criminal liability attaches to a person by reason only that the person has committed a breach of a code of practice.
- (6) The *Interpretation Act 1984* sections 41, 42, 43 and 44 apply to the code of practice as if the code of practice were regulations.

101. Rules

- (1) The Board may make rules prescribing all matters required or permitted by this Act to be prescribed by rules or necessary or convenient to be prescribed for carrying out this Act.
- (2) Without limiting subsection (1), rules may be made for all or any of the following purposes —
 - (a) prescribing the courses of study and training, including practical experience, to be undertaken, and the examinations to be passed, by persons desiring to be registered under this Act, and determining the qualifications to be held by persons wanting to study nursing or midwifery;
 - (b) regulating the holding of examinations and the appointment of examiners and for the issue of diplomas or certificates to persons passing the examinations;
 - (c) regulating the practice of nursing by an enrolled nurse, nurse practitioner or registered nurse and the manner of carrying on that practice;
 - (d) regulating the practice of midwifery by a midwife and the manner of carrying on that practice;
 - (e) prescribing what diplomas, degrees or certificates of schools of nursing or midwifery or other evidence of qualification will be recognised and accepted by the Board as a substitute for the examinations of the Board, and whether immediately or after further training;

- (f) regulating the manner in which nurses or midwives may advertise or display or publicise their practice of nursing or midwifery.
- (3) A rule made under subsection (1) has no effect unless and until it is confirmed by the Governor.
- (4) Nothing in subsection (3) affects the operation of the *Interpretation Act 1984* Part VI.
- (5) The rules may provide that contravention of a rule is an offence, and provide, for an offence against the rules, a penalty not exceeding a fine of \$5 000.

102. Regulations

- (1) The Governor may make regulations —
 - (a) prescribing all matters that are required or permitted by the Act to be prescribed by regulation; and
 - (b) with respect to any matter on which the Board may make rules.
- (2) Without limiting subsection (1), regulations may be made for all or any of the following purposes —
 - (a) regulating the meetings and proceedings of, and the conduct of business by, the Board or a committee;
 - (b) making provisions relating to registration, including applications for and the amendment or renewal of registration;
 - (c) maintaining the accuracy of the register;
 - (d) regulating the issue, display and use of certificates of registration;
 - (e) regulating the manner of making to the complaints assessment committee any complaint against or concerning a person who is, or was, registered and who may make such a complaint;
 - (f) regulating the conduct of investigations under Part 5;

s. 103

- (g) regulating the conduct of conciliation conferences under section 79 and the appointment of persons to preside over those conferences;
 - (h) prescribing the fees to be paid for the purposes of this Act and the persons liable for payment;
 - (i) prescribing returns and notices that are to be given to the Board, and the manner in which they are to be given;
 - (j) providing that information supplied to the Board may be required to be verified by statutory declaration.
- (3) Where a regulation is inconsistent with a rule the regulation prevails to the extent of the inconsistency.
- (4) The regulations may provide that contravention of a regulation is an offence, and provide, for an offence against the regulations, a penalty not exceeding a fine of \$5 000.

103. Forms

Forms that are convenient for the purposes of this Act may be —

- (a) prescribed by the regulations or rules; or
- (b) approved.

Part 8 — Miscellaneous

104. Protection

- (1) An action in tort does not lie against a person for anything that the person has done, in good faith, in the performance or purported performance of a function under this Act.
- (2) The Crown is also relieved of any liability that it might otherwise have had for another person having done anything as described in subsection (1).
- (3) The protection given by this section applies even though the thing done as described in subsection (1) may have been capable of being done whether or not this Act had been enacted.
- (4) In this section, a reference to the doing of anything includes a reference to an omission to do anything.
- (5) A person who, in relation to any investigation under Part 5 —
 - (a) performs any function under that Part; or
 - (b) is otherwise concerned in proceedings under that Part,has, in respect of any such function or concern, the same protection and immunity as a member or officer of the Supreme Court, or a witness or party before the Supreme Court, would have in respect of a function or concern of a like nature related to the jurisdiction of the Supreme Court.

105. Notice of decision to be given

- (1) Subsection (2) applies to the following decisions —
 - (a) any decision refusing an application to the Board for registration;
 - (b) any decision to impose, or vary, a condition under section 27, 28, 29, 30, 31, 32 or 37(4), otherwise than by consent;
 - (c) any decision under section 30(5); or

s. 106

- (d) any decision to remove a name from the register under section 42.
- (2) If the Board makes a decision to which this subsection applies, it is to record the grounds on which the decision was based, and its reasons, and is as soon as is practicable, but in any case not later than 30 days after making the decision, to give written notice of the decision, together with those grounds and reasons, to the person to whom the decision relates.

106. Review

A person who is aggrieved by —

- (a) an order under section 57 or 62; or
- (b) a decision referred to in section 105(1),

may apply to the State Administrative Tribunal for a review of the order or decision.

107. Publication of proceedings etc.

- (1) Subsection (2) applies to the following —
 - (a) the Board, any member of the Board, the registrar or any officer or delegate of the Board or registrar;
 - (b) any committee or any member of a committee or person referred to in section 16(5);
 - (c) any board or authority outside the State charged with regulating the registration and supervision of nurses or midwives or any officer or agent of, or person engaged or employed by, the board or authority;
 - (d) any journalist for, the proprietor or any person concerned in the publication or operation of, any newspaper or periodical or of any electronic medium.
- (2) Without limiting the operation of section 104, no action, claim or demand lies against a person to whom this subsection applies in respect of the communication or publication in good faith of any finding, reason or decision of the Board, the complaints assessment committee, the impairment review committee or the State Administrative Tribunal.

- (3) The Board may give notice of a finding, reason or decision of the Board, the complaints assessment committee, the impairment review committee or the State Administrative Tribunal in respect of a person to —
- (a) any person referred to in subsection (1)(c) or (d);
 - (b) any body that has granted the person a qualification that is entered in the register;
 - (c) any relevant professional association or trade union of which the person is a member;
 - (d) any person who has engaged or employed the person to practise nursing or midwifery or any person with whom the person practises nursing or midwifery in partnership; and
 - (e) any other person who, in the opinion of the Board, should be made aware of the finding, reason or decision,
- and may publish notice of the finding, reason or decision in the *Gazette* or in such other manner as the Board thinks fit.

108. Legal proceedings

- (1) Any proceedings for an offence against this Act may be taken in the name of the Board by the registrar or any other person authorised in that behalf by the Board.
- (2) All proceedings for offences against this Act are to be heard by a court of summary jurisdiction constituted by a magistrate.
- (3) In any proceedings no proof is required of —
 - (a) the appointment of a member or deputy of a member of the Board or a member or a deputy member of a committee; or
 - (b) the authorisation of a person under subsection (1),but an averment in a prosecution notice that the person is so appointed or authorised is to be taken to be proved in the absence of evidence to the contrary.

s. 109

- (4) In all courts and before all persons and bodies authorised to receive evidence, in the absence of evidence to the contrary —
- (a) a certificate purporting to be issued on behalf of the Board and stating that a person was or was not registered by the Board, the conditions to which a registration was subject, or that a person's type of registration was suspended, on any day or days or during a period mentioned in the certificate, is evidence of the matters so stated;
 - (b) a copy of or extract from a register or any statement that purports to reproduce matters entered in the register that is certified by the registrar as a true copy, extract or statement, is evidence of the facts appearing in that copy, extract or statement; and
 - (c) judicial notice is to be taken of the fact that a person is the holder of the office of registrar and of the signature of the registrar on a certificate purporting to be issued under paragraph (b).
- (5) A notice or appointment purporting to be signed by the chairperson or a person referred to in section 51(5)(b) or 52(4)(b) is to be presumed to be duly signed until the contrary is shown.

109. Liability of certain officers of body corporate: offences

- (1) If a body corporate is charged with an offence under this Act, every person who was an officer of the body corporate at the time of the alleged offence may also be charged with the offence.
- (2) If a body corporate and an officer are charged as permitted by subsection (1) and the body corporate is convicted of the offence, the officer is to be taken to have also committed the offence, subject to subsection (5).
- (3) If a body corporate commits an offence under this Act, then, although the body corporate is not charged with the offence,

every person who was an officer of the body corporate at the time the offence was committed may be charged with the offence.

- (4) If an officer is charged as permitted by subsection (3) and it is proved that the body corporate committed the offence, the officer is to be taken to have also committed the offence, subject to subsection (5).
- (5) If under this section an officer is charged with an offence it is a defence to prove —
 - (a) that the offence was committed without the officer's consent or connivance; and
 - (b) that the officer took all the measures to prevent the commission of the offence that he or she could reasonably be expected to have taken having regard to the officer's functions and to all the circumstances.

110. Review of Act

- (1) The Minister is to carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiration of 5 years from its commencement, and in the course of that review the Minister is to consider and have regard to —
 - (a) the effectiveness of the operations of the Board;
 - (b) the need for the continuation of the functions of the Board; and
 - (c) any other matters that appear to the Minister to be relevant to the operation and effectiveness of this Act.
- (2) The Minister is to prepare a report based on the review made under subsection (1) and as soon as is practicable after the preparation of the report, cause it to be laid before each House of Parliament.

111. *Nurses Act 1992* repealed

The *Nurses Act 1992* is repealed.

s. 112

112. *Nurses Rules 1993* repealed

The *Nurses Rules 1993* are repealed.

113. **Transitional and savings provisions**

Schedule 2 sets out transitional and savings provisions.

114. **Consequential amendments**

Schedule 3 sets out consequential amendments.

Schedule 1 — Constitution and proceedings of the Board

[s. 8]

Division 1 — General provisions

1. Term of office

- (1) Subject to clause 4, a member of the Board holds office for such term, not exceeding 3 years, as is specified in the member's instrument of appointment.
- (2) Subject to subclause (3), a member of the Board is not to hold office for more than 9 years, consecutively or otherwise.
- (3) If in the opinion of the Minister there are special reasons for doing so, a person may be appointed so that he or she holds office for more than 9 years, consecutively or otherwise.

2. Functions of deputy presiding member

- (1) The deputy presiding member is to perform the functions of the presiding member when the presiding member is unable to do so by reason of illness, absence or other cause, or when the office of presiding member is vacant.
- (2) No act or omission of the deputy presiding member acting as presiding member is to be questioned on the ground that the occasion for his or her so acting had not arisen or had ceased.

3. Deputy members

- (1) The Minister may appoint an eligible person to be a deputy of a member and may terminate such an appointment at any time.
- (2) The provisions of section 6 that apply to and in relation to the appointment of a member apply, with any necessary modification, to and in relation to the appointment of the deputy of that member.
- (3) A deputy of a member may perform the functions of the member when the member is unable to do so by reason of illness, absence or other cause.

- (4) Despite anything in this Act, a deputy of a member may continue to act as a member, after the occasion for so acting has ceased, for the purpose of completing any function.
- (5) A deputy of a member, while acting as a member, has all the functions of and all the protection given to a member.
- (6) No act or omission of a person acting in place of another under this clause is to be questioned on the ground that the occasion for so acting had not arisen or had ceased.

4. Vacation of office by member

- (1) A member of the Board may resign from office by notice in writing given to the Minister.
- (2) A member who resigns under subclause (1) is to give a copy of the notice of resignation to the registrar.
- (3) A member of the Board may be removed from office by the Minister —
 - (a) for mental or physical disability, incompetence, neglect of duty or misconduct that impairs the performance of the member's duties;
 - (b) if the member is an insolvent under administration, as that term is defined in the Corporations Act section 9;
 - (c) if the member is absent without leave of the Board from 3 consecutive meetings of the Board of which the member has had notice; or
 - (d) for any other act or omission that in the opinion of the Minister may cause prejudice or injury to the Board.
- (4) A member of the Board must be removed from office by the Minister if the member ceases to hold a position or qualification by virtue of which the member was appointed or if, in the case of a member who is a nurse or midwife, a type of registration of the member is suspended.

5. General procedure concerning meetings

- (1) The presiding member is to preside at all meetings of the Board at which he or she is present.

- (2) If both the presiding member and deputy presiding member are absent from a meeting the members present are to appoint one of their number to preside.
- (3) A quorum for a meeting of the Board is 7 members.
- (4) The procedure for convening meetings of the Board and the conduct of business at those meetings is, subject to this Act, to be as determined by the Board.

6. Voting

- (1) A decision of the majority of members at a meeting of the Board at which a quorum is present is the decision of the Board.
- (2) If the votes of members present at a meeting and voting are equally divided the member presiding at the meeting is to have a casting vote in addition to a deliberative vote.

7. Holding meetings remotely

The presence of a person at a meeting of the Board need not be by attendance in person but may be by that person and each other person at the meeting being simultaneously in contact by telephone, or other means of instantaneous communication.

8. Resolution without meeting

A resolution in writing signed by each member of the Board or assented to by each member by letter, facsimile transmission, electronic mail or other written means has effect as if it had been passed at a meeting of the Board.

9. Minutes

The Board is to ensure that an accurate record is kept and preserved of the proceedings at each meeting of the Board and of each resolution passed by the Board.

Division 2 — Disclosure of interests etc.

10. Meaning of “member”

In this Division —

member means a member of the Board or a member or a deputy member of a committee, as the case may be.

11. Disclosure of interests

- (1) A member who has a material personal interest in a matter being considered or about to be considered by the Board or a committee must, as soon as possible after the relevant facts have come to the member’s knowledge, disclose the nature of the interest at a meeting of the Board or the committee.

Penalty: \$10 000.

- (2) A disclosure under subclause (1) is to be recorded in the minutes of the meeting.

12. Exclusion of interested member

- (1) A member who has a material personal interest in a matter that is being considered by the Board or a committee —
- (a) must not vote, whether at a meeting or otherwise, on the matter; and
 - (b) must not be present while the matter is being considered at a meeting.
- (2) In subclause (1)(a) or (b) a reference to a matter also refers to a proposed resolution under clause 13 in respect of the matter, whether relating to that member or a different member.

13. Board or committee may resolve that clause 12 inapplicable

Clause 12 does not apply if the Board or a committee has at any time passed a resolution that —

- (a) specifies the member, the interest, and the matter; and
- (b) states that the members voting for the resolution are satisfied that the interest should not disqualify the member from considering or voting on the matter.

14. Quorum where clause 12 applies

- (1) Despite clause 5(3), when the Board is dealing with a matter in relation to which a member of the Board is disqualified under clause 12, 6 members who are entitled to vote on any motion that may be moved in relation to the matter constitute a quorum.
- (2) The Minister may deal with a matter to the extent that the Board cannot deal with it because of subclause (1).

15. Minister may declare clauses 12 and 14 inapplicable

- (1) The Minister may by writing declare that clause 12 or 14 does not apply in relation to a specified matter, either generally or for the purpose of dealing with particular proposed resolutions.
- (2) The Minister is to, within 14 sitting days after a declaration under subclause (1) is made, cause a copy of the declaration to be laid before each House of Parliament.

Schedule 2 — Transitional and savings

[s. 113]

1. Terms used in this Schedule

In this Schedule —

commencement day means the day on which this Act comes into operation;

liability means any liability, duty or obligation whether actual, contingent or prospective, liquidated or unliquidated, or whether owed alone or jointly or jointly and severally with any other person;

professional standards committee means the professional standards committee established under the repealed Act;

register means the register referred to in the repealed Act section 33;

right means any right, power, privilege or immunity whether actual, contingent or prospective;

the former Board means the Nurses Board of Western Australia established under the repealed Act;

the new Board means the Nurses and Midwives Board of Western Australia established under this Act;

the repealed Act means the *Nurses Act 1992*.

2. Interpretation Act 1984 not affected

The provisions of this Schedule do not prejudice or affect the application of the *Interpretation Act 1984* to and in relation to the repeals effected by sections 111 and 112.

3. The Nurses Registration Board continues

- (1) The new Board is a continuation of, and the same legal entity as, the former Board and the rights and liabilities of the entity are not affected.
- (2) If in a written law or other document or instrument there is a reference to the former Board, that reference may, where the context so requires, be read as if it had been amended to be a reference to the new Board.

4. Board members

- (1) A member of the former Board ceases to be a member on the commencement day.
- (2) Six of the members of the new Board as first constituted under this Act are to hold office for such term, not exceeding 18 months, as is specified in the member's instrument of appointment.

5. The registrar and other staff

- (1) The Registrar of the former Board who held office immediately before the commencement day continues in office, under and subject to this Act, as the registrar of the new Board.
- (2) The other officers of the former Board who held office immediately before the commencement day continue in office, under and subject to this Act, as officers of the new Board.
- (3) A person mentioned in subclause (1) or (2) is to be regarded as having been engaged or employed, as is relevant, under this Act.
- (4) Except as otherwise agreed by a person mentioned in subclause (1) or (2), the remuneration, existing or accrued rights, rights under a superannuation scheme or continuity of service of the person are not affected, prejudiced or interrupted by the operation of subclause (1) or (2) or the repeal of the *Nurses Act 1992*.
- (5) The rights under a superannuation scheme of a person who was a Registrar or officer of the former Board are not affected, prejudiced or interrupted by the repeal of the *Nurses Act 1992*.

6. Persons entered in division 1 of the register

- (1) A natural person who immediately before the commencement day was entered in division 1 of the register is, on the commencement day, to be taken to be registered under this Act as a registered nurse for the period that, and subject to the same conditions as, applied to that person's registration under division 1 under the repealed Act.
- (2) A natural person who immediately before the commencement day was entered in division 1 of the register as having a qualification in midwifery is, on the commencement day, to be taken to be registered under this Act as a midwife.

cl. 7

- (3) A natural person who immediately before the commencement day was registered under the repealed Act as a nurse practitioner is, on the commencement day, to be taken to be registered under this Act as a nurse practitioner for the period that, and subject to the same conditions as, applied to that person's registration as a nurse practitioner under the repealed Act.
- (4) If under subclause (1), (2) or (3) a person is to be taken to be registered under this Act, the new Board may within 6 months of the commencement day, by notice in writing to the person, impose the conditions referred to in section 32(2) on the person's registration under this Act.
- (5) If a natural person was entered in division 1 of the register immediately before the commencement day as a specialty mental health nurse, mental retardation nurse or paediatric nurse, on the commencement day, it is to be taken to be a condition of the person's registration under subclause (1) that the nurse may practise only as a mental health nurse, mental retardation nurse or paediatric nurse.

7. Persons entered in division 2 of the register under the repealed Act section 34(b)(i)

- (1) A natural person whose name was entered in division 2 of the register under the repealed Act section 34(b)(i) immediately before the commencement day is, on the commencement day, to be taken to be registered under this Act as an enrolled nurse for the period that, and subject to the same conditions as, applied to that person's registration under the repealed Act.
- (2) Subclause (1) does not apply to a person whose name was entered in division 2 of the register under the repealed Act section 34(b)(i) immediately before the commencement day only as a dental nurse.
- (3) If under subclause (1) a person is to be taken to be registered under this Act, the new Board may within 6 months of the commencement day, by notice in writing to the person, impose the conditions referred to in section 32(2) on the person's registration under this Act.
- (4) If a natural person was entered in division 2 of the register immediately before the commencement day as an enrolled mental health nurse, on the commencement day, it is to be taken to be a

condition of the person's registration under subclause (1) that the nurse may practise only as an enrolled mental health nurse.

8. Persons entered in division 2 of the register under the repealed Act section 34(b)(ii)

- (1) This clause applies to a natural person whose name, immediately before the commencement day, was entered in division 2 of the register under the repealed Act section 34(b)(ii) as a children's nurse (a *children's nurse*) or mothercraft nurse (a *mothercraft nurse*).
- (2) A children's nurse or mothercraft nurse is to be taken to be registered under this Act as an enrolled nurse for the period that, and subject to the same conditions as, applied to that person's registration under the repealed Act.
- (3) If under subclause (2) a person is to be taken to be registered under this Act as an enrolled nurse, the new Board may within 6 months of the commencement day, by notice in writing to the person, impose the conditions referred to in section 32(2) on the person's registration under this Act.
- (4) It is to be taken to be a condition of registration as a children's nurse or mothercraft nurse under subclause (2) that the children's nurse or mothercraft nurse may practise only as a children's nurse or mothercraft nurse.

9. Persons granted honorary or temporary registration under the repealed Act

A person who immediately before the commencement day was registered under the repealed Act section 25 or 27 is, on the commencement day, to be taken to be registered under section 30 for the period that, and subject to the same conditions as, applied to that person's registration under the repealed Act.

10. Persons granted provisional registration under the repealed Act

A person who immediately before the commencement day was registered under the repealed Act section 26 is, on the commencement day, to be taken to be registered under section 29 for the period that, and subject to the same conditions as, applied to that person's registration under the repealed Act.

cl. 11

11. Registered body corporate

A body corporate registered under the repealed Act section 24 immediately before the commencement day ceases to be so registered on the commencement day.

12. Register

The register kept under the repealed Act section 33 immediately before the commencement day is to be taken to be the register required to be kept under section 38.

13. Certificates of registration issued under the repealed Act

A certificate of registration in force under the repealed Act immediately before the commencement day is, subject to this Act, to be taken to be a certificate of registration for the purposes of this Act.

14. Restoration of certain names to the register

If a natural person's name has been struck off the register under the repealed Act section 69(b), section 37 applies to that person as if the person were a disqualified person as defined in section 37(1).

15. Suspensions

If immediately before the commencement day a natural person was suspended under the repealed Act section 69(c), section 83 applies to the suspension as if the person had been suspended under section 81(1)(j).

16. Undertakings under the repealed Act

- (1) If a person has given an undertaking under a provision of the repealed Act that undertaking is not affected by the repeal of that Act.
- (2) If the new Board is satisfied that the person has breached the undertaking before, on or after the commencement day, the Board may deal with the person as if the person had failed to comply with an undertaking given under a provision of this Act.

17. Interim orders of the former Board

If before the commencement day the former Board had delivered an order under the repealed Act section 59B(1)(c), (d) or (e), on the commencement day the order is to be taken to be an order given on that day under section 57(1)(a), (b) or (c), respectively.

18. Investigations

If before the commencement day a person appointed under the repealed Act section 60(1)(c) had not furnished a report under the repealed Act section 62, the person is to continue investigating the matter as if he or she had been appointed under Part 5 Division 7 of this Act and the appointing body were the complaints assessment committee.

19. Complaints being dealt with by the former Board

If before the commencement day the former Board had received a complaint but had not dealt with it under the repealed Act section 60(1)(a), the complaints assessment committee is to deal with the complaint as if the complaint had been lodged under section 54(2).

20. Matters referred to the professional standards committee

If before the commencement day a matter had been referred to the professional standards committee but it had not exercised one or more of the powers conferred on it by the repealed Act section 64, the complaints assessment committee is to deal with the matter as if were a complaint lodged under section 54(2).

21. Matters being dealt with by the presiding member of the former Board

If immediately before the commencement day a report had been furnished under the repealed Act section 62 but had not been dealt with by the presiding member of the former Board under the repealed Act section 63, the new Board is to consider the report and its recommendations and take action in relation to the subject of the report of a kind referred to in section 60(2) or 62.

cl. 22

22. Failure to comply with an order made under the repealed Act

If immediately before the commencement day an order made by the former Board or the professional standards committee under the repealed Act was in effect in relation to a natural person, that order is not affected by the repeal of that Act and failure to comply with it before, on or after the commencement day may be dealt with under section 92 as if the order were an order made under section 57 or 62, as the case requires.

23. Codes of practice

Despite the repeal of the *Nurses Act 1992*, the *Nurses Code of Practice 2000* and the *Nurse Practitioners Code of Practice 2004* issued and in operation under the repealed Act section 9 immediately before the commencement day continue after the commencement day as if they had been issued under section 100.

24. Annual report for part of a year

- (1) The former Board is to make and submit an annual report as required by the repealed Act section 57, but limited to the period from 30 June preceding the commencement day to the commencement day, and that section applies as if that period were a year.
- (2) Despite the repeal of the repealed Act and this Schedule, the former Board remains in existence for the purpose of subclause (1) and is entitled to receive from the new Board and its staff such assistance as it may require for the purpose.

25. Powers in relation to transitional provision

- (1) If there is no sufficient provision in this Schedule for dealing with a transitional matter the Governor may make regulations prescribing all matters that are required, necessary or convenient to be prescribed in relation to that matter.
- (2) Regulations made under subclause (1) may provide that specific provisions of this Act —
 - (a) do not apply; or
 - (b) apply with specific modifications,to or in relation to any matter.

- (3) Regulations made under subclause (1) must be made within 12 months after the commencement day.
- (4) If regulations made under subclause (1) provide that a specified state of affairs is to be taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than the commencement day, the regulations have effect according to their terms.
- (5) In subclause (4) —
specified means specified or described in the regulations.
- (6) If regulations contain a provision referred to in subclause (4), the provision does not operate so as —
 - (a) to affect in a manner prejudicial to any person (other than the State), the right of that person existing before the day of publication of those regulations; or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the day of publication of those regulations.

Schedule 3 — Consequential amendments

[s. 114]

1. *Blood Donation (Limitation of Liability) Act 1985* amended

- (1) The amendments in this clause are to the *Blood Donation (Limitation of Liability) Act 1985**.

[* *Reprint 1 as at 1 August 2003.*
For subsequent amendments see Western Australian Legislation Information Tables for 2004, Table 1, p. 39-40.]

- (2) Section 11(1)(e) is amended by deleting “*Nurses Act 1968* as a general nurse” and inserting instead —

“ *Nurses and Midwives Act 2006* as a registered nurse ”.

2. *Civil Liability Act 2002* amended

- (1) The amendments in this clause are to the *Civil Liability Act 2002**.

[* *Act No. 35 of 2002.*
For subsequent amendments see Western Australian Legislation Information Tables for 2004, Table 1, p. 65.]

- (2) Section 5PA is amended by deleting paragraph (e) of the definition of “health professional” and inserting the following paragraph instead —

“

- (e) a midwife or nurse as defined in the *Nurses and Midwives Act 2006* section 3;

”.

3. *Constitution Acts Amendment Act 1899* amended

- (1) The amendments in this clause are to the *Constitution Acts Amendment Act 1899**.

[* *Reprint 13 as at 18 March 2005.*
For subsequent amendments see Act Nos. 1 and 2 of 2005.]

- (2) Schedule V Part 3 is amended by deleting the item commencing “The Nurses Board” and inserting instead —

“

The Nurses and Midwives Board of Western Australia
established under the *Nurses and Midwives Act 2006*.

”.

4. *Corruption and Crime Commission Act 2003* amended

- (1) The amendments in this clause are to the *Corruption and Crime Commission Act 2003**.

[* *Reprint 1 as at 5 January 2004.*

For subsequent amendments see Western Australian Legislation Information Tables for 2004, Table 1, p. 96.]

- (2) Section 54(1) is amended in the definition of “registered nurse” by deleting “means a person registered under Part 3 of the *Nurses Act 1992*.” and inserting instead —

“

has the meaning given to that term in section 3 of the
Nurses and Midwives Act 2006.

”.

5. *Court Security and Custodial Services Act 1999* amended

- (1) The amendments in this clause are to the *Court Security and Custodial Services Act 1999**.

[* *Reprint 2 as at 9 September 2005.*]

- (2) Section 3 is amended by deleting the definition of “nurse” and inserting instead —

“

nurse has the meaning given to “registered nurse” in
section 3 of the *Nurses and Midwives Act 2006*;

”.

cl. 6

6. *The Criminal Code amended*

- (1) The amendments in this clause are to *The Criminal Code**.
[* Reprint 12 as at 1 June 2005 (see the Schedule to the Criminal Code Act 1913 appearing as Appendix B to the Criminal Code Compilation Act 1913)].
- (2) Section 236(b) is amended by deleting “Nurses Act 1992,” and inserting instead —
“ *Nurses and Midwives Act 2006,* ”.

7. *Criminal Investigation (Identifying People) Act 2002 amended*

- (1) The amendments in this clause are to *Criminal Investigation (Identifying People) Act 2002**.
[* Act No. 6 of 2002.
For subsequent amendments see Western Australian Legislation Information Tables for 2004, Table 1, p. 111-2 and Act No. 84 of 2004.]
- (2) Section 52 is amended in the definition of “nurse” by deleting “Part 3 of the *Nurses Act 1992*,” and inserting instead —
“ Part 4 of the *Nurses and Midwives Act 2006*; ”.

8. *Firearms Act 1973 amended*

- (1) The amendments in this clause are to *Firearms Act 1973**.
[* Reprint 4 as at 1 July 2005.]
- (2) Section 23B(3) is amended in the definition of “registered nurse” by deleting “Part 3 of the *Nurses Act 1992*.” and inserting instead —
“ Part 4 of the *Nurses and Midwives Act 2006.* ”.

9. *Health Act 1911 amended*

- (1) The amendments in this clause are to the *Health Act 1911**.
[* Reprint 13 as at 15 July 2005.]

- (2) Section 3(1) is amended by deleting the definition of “midwife” and inserting instead —

“

midwife has the meaning given to that term in section 3 of the *Nurses and Midwives Act 2006*;

”.

**10. *Health Professionals (Special Events Exemption) Act 2000*
amended**

- (1) The amendments in this clause are to the *Health Professionals (Special Events Exemption) Act 2000**.

[* *Act No. 7 of 2000.*]

- (2) Section 3(1) is amended in the definition of “Health Registration Act” by deleting “*Nurses Act 1992*,” and inserting instead —

“ *Nurses and Midwives Act 2006*; ”.

11. *Health Services (Conciliation and Review) Act 1995* amended

- (1) The amendments in this clause are to the *Health Services (Conciliation and Review) Act 1995**.

[* *Reprint 2 as at 18 March 2005.*]

- (2) Schedule 1 item 4 is deleted and the following item is inserted instead —

“

4. The Nurses and Midwives Board of Western Australia established under the *Nurses and Midwives Act 2006*.

”.

12. *Juries Act 1957* amended

- (1) The amendments in this clause are to the *Juries Act 1957**.

[* *Reprint 4 as at 2 September 2005.*]

cl. 13

- (2) The Second Schedule Part II item 2 is amended by deleting “Nurses registered under the *Nurses Act 1968*” and inserting instead —
- “
- Midwives and nurses registered under the *Nurses and Midwives Act 2006*
- ”.

13. *Medical Act 1894* amended

- (1) The amendments in this clause are to the *Medical Act 1894**.
- [* *Reprint 6 as at 12 August 2005.*]
- (2) Section 19 is amended by deleting “*Nurses Act 1992*” and inserting instead —
- “ *Nurses and Midwives Act 2006* ”.
- (3) Section 21A(2) is amended by deleting “*Nurses Act 1992*” and inserting instead —
- “ *Nurses and Midwives Act 2006* ”.

14. *Mental Health Act 1996* amended

- (1) The amendments in this clause are to the *Mental Health Act 1996**.
- [* *Reprint 1 as at 6 August 2004.*
For subsequent amendments see Western Australian Legislation Information Tables for 2004, Table 1, p. 279.]
- (2) Section 19(1)(b)(i) is amended by deleting “*Nurses Act 1992*,” and inserting instead —
- “ *Nurses and Midwives Act 2006*; ”.

15. *Misuse of Drugs Act 1981* amended

- (1) The amendments in this clause are to the *Misuse of Drugs Act 1981**.
- [* *Reprint 3 as at 1 July 2005.*]

- (2) Section 3(1) is amended in the definition of “nurse practitioner” by deleting “the *Nurses Act 1992*,” and inserting instead —
- “ section 3 of the *Nurses and Midwives Act 2006*; ”.

16. *Pharmacy Act 1964* amended

- (1) The amendments in this clause are to the *Pharmacy Act 1964**.
- [* Reprinted as at as at 29 January 1999.
For subsequent amendments see *Western Australian Legislation Information Tables for 2004, Table 1, p. 338.*]
- (2) Section 5(1) is amended in the definition of “dispensing” by deleting “*Nurses Act 1992*” and inserting instead —
- “ *Nurses and Midwives Act 2006* ”.
- (3) Section 39(3) is amended in the definition of “nurse practitioner” by deleting “the *Nurses Act 1992*.” and inserting instead —
- “ section 3 of the *Nurses and Midwives Act 2006*. ”.

17. *Poisons Act 1964* amended

- (1) The amendments in this clause are to the *Poisons Act 1964**.
- [* Reprint 6 as at 10 September 2004.
For subsequent amendments see *Western Australian Legislation Information Tables for 2004, Table 1, p. 347.*]
- (2) Section 5(1) is amended in the definition of “nurse practitioner” by deleting “the *Nurses Act 1992*,” and inserting instead —
- “ section 3 of the *Nurses and Midwives Act 2006*; ”.
- (3) Section 61(b)(ia) is amended by deleting “Nurses Board of Western Australia constituted under the *Nurses Act 1992*,” and inserting instead —
- “
- Nurses and Midwives Board of Western
Australia established under the *Nurses
and Midwives Act 2006*;
- ”.

cl. 18

18. *Prostitution Act 2000* amended

- (1) The amendments in this clause are to the *Prostitution Act 2000**.
[* *Reprint 1 as at 22 July 2005.*]
- (2) Section 29(7) is amended in the definition of “registered nurse” by deleting “Part 3 of the *Nurses Act 1992.*” and inserting instead —
“ Part 4 of the *Nurses and Midwives Act 2006.* ”.

19. *Radiation Safety Act 1975* amended

- (1) The amendments in this clause are to the *Radiation Safety Act 1975**.
[* *Reprinted as at 25 February 2000.*
For subsequent amendments see Western Australian Legislation Information Tables for 2004, Table 1, p. 375.]
- (2) Section 26(2a) is amended as follows:
- (a) by deleting “*Nurses Act 1992*” and inserting instead —
“ *Nurses and Midwives Act 2006* ”;
 - (b) by deleting “section 9(1)(c)” and inserting instead —
“ section 100(1)(b) ”.

20. *Road Traffic Act 1974* amended

- (1) The amendments in this clause are to the *Road Traffic Act 1974**.
[* *Reprint 8 as at 16 July 2004.*
For subsequent amendments see Western Australian Legislation Information Tables for 2004, Table 1, p. 395-6 and Gazette 27 May 2005 p. 2306-8.]
- (2) Section 63(7) is amended by deleting “*Nurses Act 1992,*” in both places where it occurs and in each case inserting instead —
“ *Nurses and Midwives Act 2006,* ”.

- (3) Section 65 is amended by deleting the definition of “registered nurse” and inserting instead —

“
registered nurse has the meaning given to that term in section 3 of the *Nurses and Midwives Act 2006*;
”.

21. *State Administrative Tribunal Act 2004* amended

- (1) The amendments in this clause are to the *State Administrative Tribunal Act 2004**.

[* *Act No. 54 of 2004*
For subsequent amendments see Western Australian Legislation Information Tables for 2004, Table 1, p. 427.]

- (2) Schedule 1 is amended by deleting “*Nurses Act 1992*” and inserting instead —

“ *Nurses and Midwives Act 2006* ”.

Notes

¹ This is a compilation of the *Nurses and Midwives Act 2006* and includes the amendments made by the other written laws referred to in the following table ^{1a}.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Nurses and Midwives Act 2006</i>	50 of 2006	6 Oct 2006	s. 1 and 2: 6 Oct 2006 (see s. 2); Act other than s. 1 and 2: 19 Sep 2007 (see s. 2 and <i>Gazette</i> 18 Sep 2007 p. 4711)
<i>Legal Profession Act 2008</i> s. 683	21 of 2008	27 May 2008	1 Mar 2009 (see s. 2(b) and <i>Gazette</i> 27 Feb 2009 p. 511)
<i>Medical Practitioners Act 2008</i> s. 162	22 of 2008	27 May 2008	1 Dec 2008 (see s. 2 and <i>Gazette</i> 25 Nov 2008 p. 4989)

^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Prostitution Amendment Act 2008</i> s. 33 ²	13 of 2008	14 Apr 2008	To be proclaimed (see s. 2(b))

² On the date as at which this compilation was prepared, the *Prostitution Amendment Act 2008* s. 33 had not come into operation. It reads as follows:

“

33. *Nurses and Midwives Act 2006* amended

- (1) The amendments in this section are to the *Nurses and Midwives Act 2006*.
- (2) Schedule 3 clause 18(1) is amended by deleting “*Prostitution Act 2000*.” and inserting instead —
“ *Sexual Services Act 2000*. ”.

”.

