

Western Australia

Nurses Act 1992

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Western Australia

Nurses Act 1992

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Western Australia

Nurses Act 1992

An Act to provide for the regulation of the practice of nursing, the registration of persons as nurses, to repeal the *Nurses Act 1968*, and for related purposes.

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Nurses Act 1992*¹.

2. Commencement

This Act shall come into operation on such day as is fixed by proclamation¹.

3. Objects of Act

The objects of this Act are —

- (a) to promote suitable standards of knowledge and clinical skills among nurses for the purpose of protecting the health of the people of Western Australia;
- (b) to establish and maintain suitable standards of education among nurses;
- (c) to regulate the practice of nursing and ensure safe standards of nursing care.

4. Interpretation

In this Act, unless the contrary intention appears —

“**Board**” means the Nurses Board of Western Australia established under section 5(1);

“**CEO**” has the meaning given by section 3 of the *Health Legislation Administration Act 1984*;

“**certificate of registration**” means a certificate of registration issued under section 36;

“**committee**” means a committee established by the Board under this Act;

“**designated area**” means an area designated by the CEO under section 23(2)(e) of the *Poisons Act 1964*;

“enrolled nurse” means a person —

- (a) whose name is entered in division 2 of the register;
and
- (b) whose qualifications and experience have been approved by the Board as rendering the person capable of practising nursing only under the professional direction of a nurse registered in division 1 of the register;

“medical practitioner” means a medical practitioner registered under the *Medical Act 1894*;

“member” means a member of the Board;

“nurse” means a person who is registered;

“nurse practitioner” means a nurse who is registered under section 22A as a nurse practitioner;

“practise”, in relation to nursing, includes to teach nursing in a clinical situation;

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

“professional standards committee” means the committee established by the Board under section 17;

“register” means the register referred to in section 33;

“registered” means registered under Part 3;

“Registrar” means the person appointed to be Registrar under section 21;

“registration review committee” means the committee established by the Board under section 16;

“rules” means rules made under section 82;

“speciality”, in respect of nursing, means a particular branch of nursing recognized by the Board as requiring particular qualifications approved by the Board.

[Section 4 amended by No. 9 of 2003 s. 4; No. 55 of 2004 s. 784; No. 28 of 2006 s. 277.]

Part 2 — The Nurses Board of Western Australia and committees

5. Establishment of Board

- (1) A body called the Nurses Board of Western Australia is established.
- (2) The Board —
 - (a) is a body corporate with perpetual succession;
 - (b) is to have 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.
- (4) All courts and persons acting judicially shall take judicial notice of the common seal of the Board affixed to any document and shall presume that it was duly affixed to the document.

6. Membership of Board

- (1) The Board shall consist of 12 members appointed by the Minister, of whom 11 shall be nominated as follows —
 - (a) 2 shall be persons nominated by the Australian Nursing Federation, Industrial Union of Workers, Perth, who have knowledge of and experience in clinical nursing practice and are registered in division 1 of the register;
 - (b) one shall be a person nominated by the Australian College of Midwives (Western Australian Division) who has knowledge of and experience in midwifery and is registered in division 1 of the register;
 - (c) one shall be a person nominated by the Psychiatric Nurses Association who has knowledge of and experience in psychiatric nursing;
 - (d) one shall be a person nominated by the Royal College of Nursing Western Australian Chapter who has knowledge of and experience in nursing administration;

- (e) 2 shall be enrolled nurses nominated by the body known as the Australian Liquor, Hospitality and Miscellaneous Workers' Union;
 - (f) one shall be nominated by the Executive Director of the Office of Technical and Further Education and shall be a person who has knowledge of and experience in teaching nursing to persons who are studying to be registered in division 2 of the register;
 - (g) one shall be nominated by the Chancellor of the Curtin University of Technology referred to in the *Curtin University of Technology Act 1966* and shall be a person who teaches nursing at that university;
 - (h) one shall be nominated by the Council of the Edith Cowan University referred to in the *Edith Cowan University Act 1984* and shall be a person who teaches nursing at that college; and
 - (i) one shall be nominated by the Minister to whom the administration of the *Consumer Affairs Act 1971* is for the time being committed, and shall be a person who has knowledge of and experience in representing the interests of consumers.
- (2) Each member of the Board —
- (a) shall be a natural person; and
 - (b) other than the member referred to subsection (1)(i) ², shall be a nurse of 3 years' standing and practice in the State.
- (3) If, within 30 days of being requested in writing to do so, any person or body referred to in subsection (1) has not made any nomination for appointment required to be made by the person or body under a paragraph of that subsection, the Minister shall make the appointment at his discretion but any person so appointed is deemed to have been nominated under that paragraph.

[Section 6 amended by No. 24 of 2000 s. 28.]

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7. Presiding member

- (1) The Minister shall, after consultation with the Board, appoint from among the members a person to be the presiding member and a person to be the deputy presiding member of the Board.
- (2) During any vacancy in the office of presiding member, or while the presiding member is unable to act by reason of sickness, absence or other cause, the deputy presiding member shall perform the functions of the presiding member.

8. Functions and powers of the Board

- (1) The functions of the Board are —
 - (a) to advise the Minister on matters to which this Act applies;
 - (b) to administer the scheme of registration under Part 3;
 - (c) to carry out and promote public education and research in relation to nursing;
 - (d) to monitor nursing education, and provide advice on nursing education to the Minister and to any other person or body involved in nursing education; and
 - (e) to perform the other functions that are vested in the Board by this Act.
- (2) The Board may do all things that are necessary or convenient to be done for, or in connection with, its functions.

9. Codes of practice

- (1) The Board may, with the approval of the Governor, by publication in the *Gazette* issue codes of practice with respect to —
 - (a) the practice of nursing and the conduct of nurses;
 - (b) the practice of any nursing speciality and the conduct of nurses practising that speciality;
 - (c) nurse practitioners, in accordance with subsection (2a).

- (2) The Board may, with the approval of the Governor, by publication in the *Gazette* —
- (a) amend;
 - (b) revoke; or
 - (c) revoke and replace,
- a code of practice.
- (2a) A code of practice referred to in subsection (1)(c) is to contain only information recommended by the CEO 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*, 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 nurse practitioners,
- and anything incidental or conducive to those functions.
- (3) A code of practice may adopt wholly or partly any standards, rules, code, or other provisions published by some other body and may adopt them —
- (a) with or without any amendment or modification;
 - (b) as in force at the time of adoption or as amended from time to time.
- (4) A breach of a code of practice does not of itself constitute unethical conduct for the purposes of section 61(g) 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.

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- (5) Except as provided in subsection (4) or Part III of the *Radiation Safety Act 1975*, a person is not liable to any civil or criminal proceedings by reason only that the person has committed a breach of code of practice.
- (6) Section 42 of the *Interpretation Act 1984* applies to a code of practice as if it were a regulation, and to anything done under subsection (2) as if it were an amendment of a regulation.

[Section 9 amended by No. 9 of 2003 s. 5; No. 28 of 2006 s. 278.]

10. 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 shall give effect to any such direction.
- (2) The Minister shall not under subsection (1) direct the Board with respect to the performance of its functions under Part 3 or 5 in respect of —
 - (a) a particular person; or
 - (b) a particular application, complaint or proceeding.
- (3) The text of any direction given under subsection (1) shall be included in the annual report submitted by the Board under section 57(1).

11. Constitution and proceedings — Schedule 1

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

12. Remuneration

A member of the Board or of a committee is entitled to such remuneration and allowances as the Minister from time to time

determines on the recommendation of the Minister for Public Sector Management³.

13. Disclosure of interests

- (1) A member of the Board or of a committee (including a person referred to in section 20(5)) who has a direct or indirect interest, other than as a member, in a matter before the Board or committee —
- (a) shall, as soon as the person is aware of the matter, disclose the nature of the interest to the Board or the committee; and
 - (b) shall not without the approval of the Board or the committee take part in any deliberation or decision of the Board or committee with respect to the matter.

Penalty: \$5 000.

- (2) A disclosure made by a person under this section shall be recorded in the minutes of the Board or the committee.

14. Protection of Board, committees and members

A matter or thing done by —

- (a) the Board or a committee;
- (b) a member of the Board or a committee;
- (c) a person acting under the direction of the Board or a committee; or
- (d) a person performing functions under section 60(1)(c),

shall not, if the matter or thing was done in good faith for the purposes of this Act, subject the Board, the committee or that member or person to any action, liability, claim or demand.

15. Meetings and minutes of meetings

- (1) Every meeting of the Board shall be open to all nurses unless the Board in a particular case decides otherwise.

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- (2) Where a meeting of the Board concerns any disciplinary proceedings under Part 5, the nurse who is subject to the proceedings may request that the meeting not be open to all nurses.
- (3) The Board shall consider a request under subsection (2) and may order that the meeting be closed if it is of the opinion that such an order is in the best interests of the parties involved and the maintenance of professional standards.
- (4) The minutes of any meeting of the Board shall be made available, on request, to any nurse, but this subsection does not apply to minutes relating to —
 - (a) disciplinary proceedings under Part 5; or
 - (b) any matter determined to be confidential under subsection (5).
- (5) 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.

16. Registration review committee

- (1) The Board shall establish a committee to be known as the registration review committee.
- (2) Subject to subsection (3), the registration review committee shall consist of —
 - (a) the Registrar; and
 - (b) 3 nurses appointed by the Board of whom —
 - (i) one shall be a member of the Board and shall be the presiding member of the committee; and
 - (ii) 2 shall be nurses who are not members of the Board.
- (3) Where the registration review committee is to perform any function in relation to the registration of a nurse practitioner, a nurse who practises, or of nurses who practise, in a particular

nursing speciality or of an enrolled nurse or of enrolled nurses, and no member of the committee is a nurse practitioner, practises in that nursing speciality or is an enrolled nurse, as the case may be, the Board shall appoint a nurse practitioner, person who practises in that speciality or who is an enrolled nurse, as the case may require, as an additional member of the committee for the purposes of the performance of that function.

- (4) The registration review committee —
 - (a) shall provide advice to the Board on any matter relating to the registration of nurses as requested by the Board, whether generally or in a particular case; and
 - (b) may provide advice to the Board as it considers appropriate on any such matter.
- (5) The registration review committee may carry out research necessary to enable it to perform its functions.

[Section 16 amended by No. 9 of 2003 s. 6.]

17. Professional standards committee

- (1) The Board shall establish a committee to be known as the professional standards committee.
- (2) Subject to subsection (3), the professional standards committee shall consist of 3 persons appointed by the Board of whom —
 - (a) one shall be a member of the Board and shall be the presiding member of the committee; and
 - (b) 2 shall be nurses who are not members of the Board.
- (3) Where the professional standards committee is to perform any function under Part 5 in relation to an enrolled nurse, a nurse practitioner or a nurse who practises in a particular nursing speciality and no member of the committee is an enrolled nurse, nurse practitioner or practises in that nursing speciality, as the case may be, the Board shall appoint a person who is an enrolled nurse, nurse practitioner or who practises in that speciality, as the case may require, as an additional member of

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the committee for the purposes of the performance of that function.

- (4) In addition to its functions under Part 5, the professional standards committee —
 - (a) shall provide advice to the Board on any matter relating to the professional conduct or standards of nurses, as requested by the Board whether generally or in a particular case; and
 - (b) may provide advice to the Board as it considers appropriate on any such matter.
- (5) The professional standards committee may carry out research, or undertake investigation, necessary to enable it to perform its functions.

[Section 17 amended by No. 9 of 2003 s. 7.]

18. Deputies

- (1) The Board shall appoint a deputy for each member of the registration review committee (other than the Registrar) and of the professional standards committee.
- (2) A person shall not be appointed as a deputy unless he or she is eligible to hold the office of the member for whom he or she is to be deputy.
- (3) If a member of any such committee is absent from a meeting the deputy may attend that meeting in place of the member and while so doing the deputy is deemed to be a member.
- (4) The deputy of the member referred to in section 16(2)(b)(i) or section 17(2)(a) is the deputy presiding member of the committee.
- (5) No act or omission of a person acting as a deputy under this section shall be questioned on the ground that the occasion for his or her acting had not arisen or had ceased.

19. Other committees

The Board may from time to time establish any committee and —

- (a) determine the functions, membership, and constitution of the committee; and
- (b) appoint such members and other persons as it thinks fit to be members of the committee.

20. Provisions relating to committees

- (1) The Board may remove a person from the membership of a committee, and may reconstitute or discharge a committee established under section 19.
- (2) The Board may give directions to a committee with respect to the performance of its functions and the committee shall comply with any such direction.
- (3) A committee shall cause accurate minutes of each of its meetings to be recorded and preserved.
- (4) Subject to this Act, a committee may determine its own procedures.
- (5) A person with special knowledge or experience may be invited by a committee to act in an advisory capacity on the committee if the committee is of the opinion that the person will assist the committee in the performance of its functions.
- (6) The registration review committee, the professional standards committee and, unless exempted by the Board, any other committee established by the Board shall each 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.
- (7) The annual reports of the professional standards committee and the registration review committee are to include details of —

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- (a) the number, nature, and outcome, of investigations undertaken by the committee;
- (b) the number and nature of investigations 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 committee in the year after the year to which the report relates; and
- (e) any proposals for improving the operation of the committee.

[Section 20 amended by No. 55 of 2004 s. 785.]

21. Registrar and staff

- (1) The Board shall appoint a Registrar and such other staff as it considers necessary to enable it to perform its functions.
- (2) The Registrar is the secretary of the Board.
- (3) The Registrar may by instrument delegate to a person appointed under subsection (1), either generally or as otherwise provided by the instrument, any of his or her functions under this Act, other than this power of delegation.
- (4) A matter or thing done by the Registrar, or other person appointed under subsection (1) acting under the direction of or a delegation by the Registrar, shall not, if the matter or thing was done in good faith for the purposes of this Act, subject the Registrar or that other person to any action, liability, claim or demand.

Part 3 — Registration of nurses

Division 1 — Applications for registration

22. Registration of natural persons

- (1) A natural person who applies to the Board and satisfies it that he or she complies with the requirements of subsection (2) shall, subject to this Act and on payment of the fee prescribed under section 31, be registered under this section as a nurse; and the Board shall cause the name of that person to be entered in the register.
- (2) The requirements referred to in subsection (1) are that the person —
 - (a) has not been convicted of an offence the nature of which renders the person unfit to practise as a nurse;
 - (b) has a sound knowledge of the English language both written and oral;
 - (c) has —
 - (i) practised as a nurse; or
 - (ii) completed a refresher course in nursing, approved by the Board, within the 5 years preceding his or her application under this section; and
 - (d) holds an approved educational qualification.
- (3) A natural person who applies to the Board and satisfies it that he or she is currently registered as a nurse in another State or in a Territory shall, subject to section 26(2) and the other provisions of this Act and on payment of the fee prescribed under section 31, be registered under this section as a nurse and the Board shall cause his or her name to be entered in the register.

22A. Registration of nurse practitioners

- (1) Any person who applies to the Board and satisfies it that he or she complies with the requirements of subsection (2) shall, subject to this Act and on payment of the fee prescribed under section 31, be registered under this section as a nurse practitioner in division 1 of the register.
- (2) The requirements referred to in subsection (1) are that the person —
 - (a) is registered, or entitled to be registered, as a nurse under section 22 in division 1 of the register; and
 - (b) holds an approved educational qualification.
- (3) When a person is registered as a nurse practitioner, the Board shall cause the name of that person to be entered in the register.

[Section 22A inserted by No. 9 of 2003 s. 8.]

23. Meaning of “approved educational qualification”

- (1) For the purposes of section 22(2)(d) or 22A(2)(b), a person holds an approved educational qualification if the person —
 - (a) has gained a qualification approved by the Board, in relation to that section, granted by an Australian tertiary educational institution recognized by the Board;
 - (b) in a country other than Australia, has completed a qualification in nursing approved by the Board, in relation to that section; or
 - (c) is registered provisionally under section 26 and has completed a course of nursing training or study approved by the Board under subsection (1)(b) of that section in respect of that person.
- (2) Notwithstanding subsection (2) of section 22, a person who applies for registration within 10 years from the commencement of this Act and has complied with the criteria referred to immediately before that commencement in section 20(1)(a)(i)

or (ii) of the *Nurses Act 1968* shall be regarded as having fulfilled the criteria set out in paragraph (d) of that subsection.

[Section 23 amended by No. 9 of 2003 s. 9.]

24. Registration of body corporate

- (1) A body corporate which applies to the Board and satisfies it that the requirements set out in Schedule 2 are complied with in respect of that body corporate shall, on payment of the fee prescribed under section 31, be registered as a body corporate; and the Board shall cause the name of the body corporate to be entered in the register.
- (2) Registration of, and the practice of nursing by, a body corporate may be made subject to such conditions and restrictions as the Board in any particular case specifies.

25. Honorary registration

- (1) The Board may, on application to the Board in the prescribed form and on payment of the prescribed fee, grant honorary registration, and issue to a person a certificate of honorary registration in the prescribed form, notwithstanding that the person is not otherwise entitled to registration.
- (2) Subsection (1) applies only to a person of eminence within the field of nursing, so recognized by the Board, who may visit the State to teach and demonstrate methods and techniques of nursing.
- (3) A certificate of honorary registration has effect, unless earlier cancelled by the Board —
 - (a) for such period not exceeding 12 months as is specified in the certificate; and
 - (b) on payment of the prescribed fee, for a period or periods of renewal not exceeding 12 months,

but so that the certificate does not continue to have effect for a period of more than 5 years in total.

- (4) Honorary registration granted to a person under this section may be made subject to such conditions and restrictions as the Board in any particular case specifies.
- (5) The Board may at any time cancel any honorary registration granted or renewed under this section, or may revoke or vary any condition or restriction to which it was made subject.

26. Provisional registration

- (1) Where a natural person has applied for registration under section 22(1) or 22A(1), the Board shall, on payment of the prescribed fee, grant provisional registration and issue to the person a certificate of provisional registration in the prescribed form, if it is satisfied that —
 - (a) the requisite evidence is likely to be produced to enable the Board to be satisfied as to the matters set out in subsection (2) of section 22 or 22A, as is relevant;
 - (b) the Board would be satisfied as to the matters set out in that subsection if the applicant successfully completed a period of nursing practice or course of study; or
 - (c) the applicant should be granted provisional registration to enable the applicant to undertake a period of nursing practice or course of study.
- (2) Where a natural person has applied for registration under subsection (3) of section 22 and is seeking to be registered in division 2 of the register, the Board if it —
 - (a) is satisfied as to the matters set out in that subsection; but
 - (b) is not satisfied that the educational qualifications of the applicant in the other State or in the Territory are of a standard equivalent to those applicable in this State,

shall on payment of the prescribed fee grant provisional registration and issue to the person a provisional certificate of registration in the prescribed form.

[Section 26 amended by No. 9 of 2003 s. 10.]

27. Temporary registration

Where a natural person has applied for registration under section 22(1) or (3) or 22A(1) to enable the person to undertake in the State particular nursing duties of limited duration, the Board shall, on payment of the prescribed fee and if it is satisfied as to the matters set out in section 22(2) or (3) or 22A(2) as the case may be, grant temporary registration and issue to the person a certificate of temporary registration in the prescribed form.

[Section 27 amended by No. 9 of 2003 s. 11.]

28. Provisions relating to sections 26 and 27

- (1) A certificate of provisional or temporary registration has effect, unless earlier cancelled by the Board, until the day specified in the certificate but that day shall in no case be later than 12 months after the issue of the certificate.
- (2) Provisional or temporary registration may be made subject to such conditions and restrictions as the Board in any particular case specifies.
- (3) The Board may at any time cancel any provisional or temporary registration or may revoke or vary any condition or restriction to which it was made subject.
- (4) If a person to whom a certificate of provisional registration has been issued becomes registered under section 22 or 22A, that registration shall, unless otherwise determined by the Board, have effect from the granting of the certificate of provisional registration.
- (5) The Registrar may perform the functions of the Board under section 26(1) or (2), 27 or subsection (2), or in the absence of the Registrar, the registration review committee may do so.

[Section 28 amended by No. 9 of 2003 s. 12.]

29. Application

- (1) An application for registration under section 22, 22A or 24 shall be made in writing and in a manner and form determined by the Board and shall be accompanied by the application fee prescribed.
- (2) The applicant shall provide the Board with such further information as the Board requires, in any particular case, and shall if required by the Board verify the information by statutory declaration.
- (3) Where it has good cause for doing so, the Board may, in writing, require —
 - (a) any applicant for registration who is a natural person; or
 - (b) a member of a body corporate which is an applicant for registration,

to attend before the Board for the purpose of satisfying the Board as to any relevant matter referred to in section 22, 22A, 24 or Schedule 2 and, if the person fails so to attend, may refuse the application.

- (4) The application fee referred to in subsection (1) is not refundable, but if the application is granted the registration fee under section 31 shall be reduced by the amount of the application fee.

[Section 29 amended by No. 9 of 2003 s. 13.]

30. Effect of registration

Subject to this Act, registration confers on the holder of a certificate of registration the right to carry on in the State the practice of nursing under the title of “nurse”.

30A. Effect of registration as a nurse practitioner

Subject to this Act, registration under section 22A confers on the holder of a certificate of registration the right to carry on at a

designated area the practice of nursing as a nurse practitioner under the title of “nurse practitioner”.

[Section 30A inserted by No. 9 of 2003 s. 14.]

31. Registration fees

A person shall pay to the Board a registration fee of such amount as is prescribed for the purposes of section 22(1) or (3), 22A(1) or 24, and the amount of the fee shall be recoverable in any court of competent jurisdiction as a debt due to the Board.

[Section 31 amended by No. 9 of 2003 s. 15.]

32. Renewal of registration

- (1) Registration may on payment of the prescribed fee be renewed in accordance with the rules.
- (2) A person shall pay to the Board, in accordance with subsection (4), a fee for the renewal of registration of such amount as is prescribed, and if the person fails to do so, the person ceases to be registered and the person’s name shall be removed from the register.
- (3) A person whose name is removed from the register under subsection (2) may at any time pay to the Board all fees that are in arrear, and all fees that would be in arrear if the person had continued to be registered, together with the fee prescribed for the purposes of this subsection, and shall then be entitled, subject to this Act, to have his, her or its name restored to the register.
- (4) The Board shall give written notice of the renewal fee to a person at least 28 days before the fee falls due under the rules and if the Board fails to do so, the person shall not cease to be registered under subsection (2) until 28 days from the time when the person receives notice of the renewal fee from the Board.

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

Division 2 — The register

33. The register

- (1) The Board shall cause to be compiled and maintained a register in a form showing in respect of each application for registration or the renewal of that registration such particulars as may be prescribed.
- (2) Where a person is registered, there shall be entered in the register in the appropriate division —
- (a) the name of that person;
 - (b) the address of that person;
 - (c) in the case of a natural person, particulars of all of the nursing qualifications held by that person;
 - (d) in the case of a body corporate, particulars of all of the nursing qualifications held by those members of the body corporate that are registered;
 - (e) the provision of this Act under which the person is registered;
 - (f) details of the exercise of any power under section 64(2) or 69 in respect of that person; and
 - (g) such other particulars as are prescribed.
- (3) The register may be kept or prepared —
- (a) by making entries in or on a bound or loose-leaf book; or
 - (b) by recording or storing the required particulars by means of a mechanical, electronic or other device, but so that the particulars so recorded or stored will remain in the form in which they were originally recorded or stored

and will be capable of being reproduced in written form
in the English language.

34. Divisions of register

The information to be recorded in the register under section 33 shall be divided into 6 divisions as follows —

- (a) division 1 shall contain the names and other particulars of those persons whose qualifications and experience have been approved in writing by the Board as rendering them capable of practising independently as professional nurses;
- (b) division 2 shall contain the names and other particulars of those persons whose qualifications and experience have been approved in writing by the Board as rendering them capable of practising nursing only —
 - (i) under the professional direction of a nurse registered in division 1; or
 - (ii) in a particular prescribed nursing speciality;
- (c) division 3 shall contain the names and other particulars of bodies corporate; and
- (d) divisions 4, 5 and 6 shall contain the names and other particulars of persons who have been granted honorary registration under section 25, provisional registration under section 26 and temporary registration under section 27 respectively.

[Section 34 amended by No. 9 of 2003 s. 16.]

35. Inspection of register

- (1) The register shall be kept in the office of the Registrar.
- (2) Subject to subsection (2), the Registrar may permit any person, on payment of the prescribed fee (if any) to inspect the register.

- (3) The Registrar shall not disclose the address of a nurse to any person without the written consent of that nurse, other than for the purpose of section 80(4).

36. Certificate of registration

- (1) The Board shall on the registration of a person under section 22, 22A or 24 issue to that person a certificate of registration in the appropriate prescribed form which shall, subject to this Act, have effect for the period prescribed.
- (2) In the absence of evidence to the contrary —
- (a) a certificate of registration is evidence that the person to whom the certificate is issued is registered;
 - (aa) a certificate of registration specifying that a person may practise as a nurse practitioner is evidence that the person to whom the certificate is issued has entered in the register, in respect of his or her registration, qualifications that are approved by the Board in respect of the practice of nursing as a nurse practitioner;
 - (b) a certificate of registration specifying that a person may practise in a particular nursing speciality is evidence that the person to whom the certificate is issued has entered in the register, in respect of his or her registration, qualifications that are approved by the Board in respect of that nursing speciality; and
 - (c) a certificate of registration specifying that a person's name is entered in a particular division of the register under section 34 is evidence that the name of the person is entered in that division of the register.

[Section 36 amended by No. 9 of 2003 s. 17.]

37. Voluntary removal from register

A person who is registered, and whose conduct as a nurse is not the subject of investigation or proceedings under Part 5, may in writing request the Registrar to remove the name of the person

from the register, and the Registrar shall comply with any such request.

[Section 37 amended by No. 55 of 2004 s. 786.]

38. Amendment of particulars

- (1) A person who is registered may at any time apply to the Board for the amendment of the particulars entered in the register relating to that person, and if the Board is satisfied that the amendment may properly be made, the Board shall, on payment of the prescribed fee, amend those particulars accordingly.
- (2) A person who is registered shall, as soon as is practicable after that person changes address, notify the Registrar in writing of the new address.

39. Removal of names of deceased persons and defunct bodies corporate

- (1) The Registrar shall, on being satisfied of the death of a natural person whose name appears in the register, remove the name from the register.
- (2) The Registrar shall, on being satisfied that a body corporate whose name appears in the register no longer exists, remove the name from the register.

40. Amendment to ensure accuracy

Subject to the directions of the Board, the Registrar shall, as the occasion requires, make such amendments, additions and corrections to the register as may be necessary to make the register an accurate record of the prescribed particulars of all registered persons.

41. Removal of name of nurse who has not practised, or trained, for 5 years

- (1) Where a person is registered under section 22 but a period of 5 years has elapsed during which the person has not —

- (a) practised as a nurse; or
- (b) completed a qualification or a refresher course in nursing approved by the Board,

the person shall notify the Board of that fact.

- (1a) Where a person is registered under section 22A but a period of 3 years has elapsed during which the person has not —
- (a) practised as a nurse practitioner; or
 - (b) completed a qualification or a refresher course for nurse practitioners approved by the Board,

the person shall notify the Board of that fact.

- (2) The Board shall remove from the register the name of any person —
- (a) who has given notice to the Board under subsection (1); or
 - (b) in respect of whom it is satisfied that the subsection applies but who has not given such notice.
- (3) The Board shall remove from the register the name of any person registered as a nurse practitioner —
- (a) who has given notice to the Board under subsection (1a); or
 - (b) in respect of whom it is satisfied that the subsection applies but who has not given such notice.

[Section 41 amended by No. 9 of 2003 s. 18.]

42. Restoration of name to register

- (1) A person whose name has been removed from the register under section 37 or 41(2) or (3) may at any time make application in the prescribed form to the Board for the restoration of his or her name to the register.
- (2) If the applicant pays the prescribed fee to the Board and satisfies the Board of the relevant matters set out in section 22, 22A or

24 as the case may be, the name of the applicant shall be restored to the register.

[Section 42 amended by No. 9 of 2003 s. 19.]

43. Effect of striking off, and restoration to register

- (1) Where the name of a person is ordered to be struck off the register under section 69, that person ceases to be registered.
- (2) A person to whom subsection (1) applies may, after a period of not less than 2 years, apply to the Board in the prescribed manner to have the person's name restored to the register.
- (2a) The Board cannot grant an application under subsection (2) unless it has applied for, and obtained, the approval of the State Administrative Tribunal to do so.
- (3) If the Board grants an application under subsection (2), it shall, on payment by the applicant to the Board of the prescribed fee, cause the name of the applicant to be restored to the register.

[Section 43 amended by No. 55 of 2004 s. 787.]

44. Suspension

- (1) Where a person is suspended under section 69 —
 - (a) from the practice of nursing the person is deemed not to be registered during the period of the suspension;
 - (b) from the practice of nursing in relation to any specified circumstances, speciality or service, or as a nurse practitioner, the person is deemed not to be registered during the period of the suspension in relation to the circumstances, speciality or the performance of the service or as a nurse practitioner, as is specified in the order for suspension.
- (2) 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.

- (3) The Board cannot to any extent revoke a suspension that was imposed to give effect to an order of the State Administrative Tribunal under section 69 unless it has applied for, and obtained, the approval of the State Administrative Tribunal to do so.

[Section 44 amended by No. 9 of 2003 s. 20; No. 55 of 2004 s. 788.]

Division 3 — Offences

45. False documents, statements etc.

A person shall not —

- (a) make, or cause to be made, any falsification in any matter relating to the register;
- (b) make or produce, or cause to be made or produced, any false or fraudulent statement or representation, either orally or in writing, or any forged or counterfeit document for the purpose of any application under this Part; or
- (c) personate, or wrongfully represent himself or herself as being, the person referred to in any certificate issued under this Act.

Penalty: \$2 500.

46. Employment or remuneration of unregistered persons

- (1) A person shall not be employed or receive remuneration in connection with the practice of nursing unless the person —
- (a) is registered; or
 - (b) has the written consent of the Board to be so employed or receive remuneration and complies with any conditions and restrictions attached to the Board's consent.
- (2) A person shall not employ or remunerate a person in connection with the practice of nursing —

- (a) if the first-mentioned person knows that the person —
 - (i) is not registered; and
 - (ii) does not have the written consent of the Board to be so employed or remunerated;

or

 - (b) if either person fails to comply with any conditions and restrictions attached to the Board's consent under paragraph (a)(ii).
- (3) A natural person shall not be employed or receive remuneration in connection with the practice of any nursing speciality unless the person —
- (a) holds, and has entered in the register in respect of the person's name, the qualifications approved by the Board in respect of that nursing speciality; or
 - (b) has the written consent of the Board to be so employed or receive remuneration and complies with any conditions and restrictions attached to the Board's consent.
- (4) A body corporate shall not be employed or receive remuneration in connection with the practice of any nursing speciality unless —
- (a) each of the members of the body corporate who is a nurse holds, and has entered in the register in respect of his or her name, the qualifications approved by the Board in respect of that nursing speciality; or
 - (b) the body corporate has the written consent of the Board to be so employed or receive remuneration and complies with any conditions and restrictions attached to the Board's consent.
- (5) The Board may at any time withdraw a consent granted under this section or may revoke or vary any condition or restriction to which it was made subject.

Penalty applicable to this section:

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

47. Use of title “registered nurse”

- (1) Notwithstanding section 30, a person shall not use the title “registered nurse” unless the person’s name is entered in division 1 of the register.

Penalty:

- (a) for a first offence, \$2 500;
 - (b) for a second or subsequent offence, \$5 000.
- (2) Notwithstanding section 30, a person shall not use the title “nurse practitioner” unless the person’s name is entered in the register as a nurse practitioner.
- (3) A person shall not hold himself or herself out to be practising as a nurse practitioner unless —
- (a) the person’s name is entered in the register as a nurse practitioner; and
 - (b) the person is practising as a nurse practitioner in a designated area.

Penalty:

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

[Section 47 amended by No. 9 of 2003 s. 21.]

48. Pretending to be registered etc.

- (1) Subject to this Act, a natural person shall not hold himself or herself out as being, or pretend to be, or make use of any words or letters or any name, title, abbreviation, or description that implies or tends to encourage the belief that he or she is —
- (a) registered or entitled, either alone or with others, to practise nursing, unless that person is registered;

- (aa) registered or entitled, either alone or with others, to practise nursing as a nurse practitioner, unless that person is registered as a nurse practitioner;
 - (b) qualified or entitled, either alone or with others, to practise nursing or teach clinical nursing in a particular nursing speciality, unless that person holds and has entered in the register in respect of his or her name, qualifications that are approved by the Board in respect of the particular nursing speciality; or
 - (c) registered in a particular division of the register, unless the name of the person is entered in that division of the register.
- (2) Subject to this Act, a body corporate shall not hold itself out as being, or pretend to be, or make use of any words or letters or any name, title, abbreviation or description that implies or tends to encourage the belief that it is —
- (a) entitled, either alone or with others, to practise nursing or teach clinical nursing, unless it is registered; or
 - (b) qualified or entitled, either alone or with others, to practise nursing or teach clinical nursing in a particular nursing speciality, unless each of the members of the body corporate who is a nurse has entered in the register in respect of his or her name qualifications that are approved by the Board in respect of the particular nursing speciality.
- (3) This section does not prohibit the use of any title or description necessarily assumed by any public educational institution recognized by the Board for the purpose of education in nursing.
- Penalty applicable to this section:
- (a) for a first offence, \$2 500;
 - (b) for a second or subsequent offence, \$5 000.

[Section 48 amended by No. 9 of 2003 s. 22.]

49. Name in which practice may be carried on

A registered person shall 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 to do so, and complies with any conditions and restrictions imposed by the Board.

Penalty:

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

50. Unlawful delegation

A registered person shall not, except as authorised by the rules, authorise or permit a person —

- (a) who is not registered to carry out any nursing for or on behalf of the first-mentioned person; or
- (b) who does not hold, and have entered in the register in respect of the person's name, qualifications approved by the Board in respect of a nursing speciality, to carry out any nursing in that speciality for or on behalf of the first-mentioned person.

Penalty:

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

51. Unlawful titles etc.

A registered person shall not in relation to nursing use or notify on any name-plate or sign or in any advertisement or notice published by or for that person any title, words, letters, or description, either in full, or in abbreviation or in combination, other than that or those shown in the register in relation to that person.

Penalty:

- (a) for a first offence, \$2 500;

(b) for a second or subsequent offence, \$5 000.

52. Provision for continuing business after death

Where a nurse dies who carried on the practice of nursing immediately before his or her death then, notwithstanding anything in this Act, any executor or administrator of the estate of that nurse may continue the business of that nurse for a period of 12 months from the date of death or for such longer time as the Board permits if the business so continued is conducted in accordance with such conditions and restrictions as the Board may impose.

53. Emergency situations

Notwithstanding anything in this Act, a person does not commit an offence against this Act if the person, whether or not for remuneration, provides such first aid or medical attention as is necessary to save a human life or to relieve human suffering in a medical emergency where it is not possible or practicable for a medical practitioner, or a nurse qualified to provide the first aid or medical attention, to do so.

Part 4 — Finance and reports

54. Funds of Board

- (1) The funds of the Board consist of —
 - (a) fees received by the Board;
 - (b) costs or expenses received under sections 64(2) and 73; and
 - (c) 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 officers and employees;
 - (b) for the furtherance of education, including public education, and research in relation to nursing; and
 - (c) for any other purpose that the Board may recommend and the Minister may approve to enable the Board to perform its functions or to facilitate the carrying out of the objects of this Act.

[Section 54 amended by No. 55 of 2004 s. 789.]

55. Accounts

- (1) The Board shall cause to be kept proper accounts and records of the transactions and affairs of the Board and shall prepare financial statements in accordance with Australian Accounting Standards.
- (2) The financial statements shall be prepared on an accrual basis unless the Board determines otherwise.

56. Audit

The accounts and financial statements of the Board shall 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 2001* of the Commonwealth) appointed by the Board with the prior approval of the Minister.

[Section 56 amended by No. 10 of 2001 s. 139.]

57. Annual report and other reports

- (1) The Board shall not later than 31 December in each year 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.
- (1a) The Board's annual report is to include details of —
 - (a) the number, nature, and outcome, of —
 - (i) investigations and inquiries undertaken by, or at the direction of, the Board or a committee appointed by it; and
 - (ii) matters that have been brought before the State Administrative Tribunal by the Board;
 - (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.
- (2) The Minister shall 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.

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- (3) The Board shall ensure that after subsection (2) 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.

[Section 57 amended by No. 55 of 2004 s. 790.]

58. Minister to have access to information

- (1) For parliamentary purposes or for the proper conduct of the Minister's public business, the Minister is entitled —
- (a) to have information in the possession of the Board; and
 - (b) where the information is in or on a document, to have, and make and retain copies of, that document.
- (2) For the purposes of subsection (1) 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.
- (3) The Board shall comply with a request under subsection (2) and make its staff and facilities available to the Minister for the purposes of paragraph (c) of that subsection.
- (4) In this section —

“document” includes any tape, disc or other device or medium on which information is recorded or stored mechanically, photographically, electronically or otherwise;

“information” means information specified, or of a description specified, by the Minister that relates to the functions of the Board;

“parliamentary purposes” means the purpose of —

- (a) answering a question asked in a House of Parliament;
- or

- (b) complying with a written law, or an order or resolution of a House of Parliament, that requires information to be furnished to a House of Parliament.

Part 5 — Disciplinary proceedings

59. Definitions

In this Part —

“affected person” means a person to whom a complaint, investigation or proceeding relates or in respect of whom the Board has grounds under section 60(1) to appoint an investigator;

“committee” means the professional standards committee.

[Section 59 amended by No. 55 of 2004 s. 791.]

59A. Interim orders of Board

The Board may deal under sections 59B and 59C with a matter notwithstanding that —

- (a) the Board is already dealing with the matter under this Act, either directly or as part of another matter; or
- (b) a complaint about the same matter, or a complaint elements of which include the same matter, 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.

[Section 59A inserted by No. 55 of 2004 s. 792.]

59B. Order to cease activity or interim restriction on practice

- (1) If the Board is of the opinion that an activity of an affected person involves or will involve —
 - (a) a risk of imminent injury or harm to the physical or mental health of any person; or
 - (b) a contravention or likely contravention of a provision of this Act,

the Board may, without further inquiry, do any or all of the following —

- (c) deliver to the affected person who is carrying on that activity an order prohibiting the carrying on of the activity for a period of not more than 30 days;
 - (d) deliver to the affected person an order to comply, for a period of not more than 30 days, with such conditions and restrictions as the Board thinks fit in relation to the practice of nursing by that person; or
 - (e) deliver to the affected person an order suspending the person from the practice of nursing, 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 affected person involves or will involve a risk of imminent injury or harm to the physical or mental health of any person or a contravention or likely contravention of a provision of this Act;
 - (b) specify the activity that in the Board's opinion involves or will involve the risk or contravention and the matters that give or will give rise to the risk or contravention; 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 order given to the person to whom the order made under subsection (1) was given, revoke or vary an order made under subsection (1) at any time before making an allegation about the matter to the State Administrative Tribunal under section 59C.
- (4) The person against whom an order is made under subsection (1) may apply to the State Administrative Tribunal for a review of any order made under this section.

[Section 59B inserted by No. 55 of 2004 s. 792.]

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59C. What happens after making section 59B order

- (1) Within 14 days of making an order under section 59B(1), if that order is not revoked under section 59B(3), the Board must make an allegation to the State Administrative Tribunal about the matter in respect of which the order was made.
- (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 59B(1) or vary the order by extending the period for which it applies or in any other respect.

[Section 59C inserted by No. 55 of 2004 s. 792.]

60. Power of Board to deal with complaint etc.

- (1) Where the Board —
 - (a) receives a complaint that a situation described in section 61 exists or has occurred; or
 - (b) is of the opinion that there is cause to investigate whether or not a situation described in section 61 exists or has occurred,

in respect of a person who is a nurse or who was a nurse at the relevant time the Board may —
 - (c) appoint a person to investigate the matter and report to the presiding member of the Board as to the manner in which the matter should be dealt with; or
 - (e) in the case of a complaint referred to in paragraph (a), decline to take any action under this Part and notify the decision in writing to the complainant and the affected person.
- (2) A person shall not be appointed to investigate a matter under subsection (1)(c) unless he or she has the prescribed qualifications.

- (3) Qualifications prescribed for the purposes of subsection (2) may relate to educational qualifications or practical experience, or to both.
- (4) The Board may give to a person appointed under subsection (1)(c) directions as to the conduct of the investigation, but otherwise the person shall investigate the matter in such manner as he or she thinks fit.

[Section 60 amended by No. 55 of 2004 s. 793.]

61. Disciplinary matters

The situations referred to in section 60 are —

- (a) that —
 - (i) the registration of a person; or
 - (ii) the entry in the register of particular qualifications in relation to a person, has been obtained by fraud or misrepresentation;
- (b) that a person has been convicted of an offence the nature of which renders the person unfit to practise as a nurse;
- (c) that as a result of a finding of any board or authority outside the State charged with regulating the registration and supervision of nurses the name of a person has ceased to appear in the register of nurses or other record kept by that board or authority or that person has been at any time disqualified from carrying on practice as a nurse;
- (d) that a person is addicted to, or habitually misuses, alcohol to a degree that renders the person unfit to practise as a nurse;
- (e) that a person is addicted to, or habitually misuses, any deleterious drug to a degree that renders the person unfit to practise as a nurse;

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- (f) that a person suffers from any mental or physical disorder to a degree that renders the person unfit to practise as a nurse;
- (g) that a person is guilty of unethical conduct as a nurse by reason of —
 - (i) carelessness;
 - (ii) incompetence;
 - (iii) impropriety;
 - (iv) misconduct;
 - (v) a breach of this Act; or
 - (vi) non-compliance with any condition or restriction imposed under this Act.

62. Investigator to report

A person appointed under section 60(1)(c) shall furnish a report of the results of the investigation to the presiding member of the Board and shall include in the report his or her recommendations as to the manner in which the matter should be dealt with.

63. Action following report

- (1) Upon receipt of a report under section 62 the presiding member of the Board may —
 - (a) subject to subsection (2), refer the matter to the committee for the committee to exercise one or more of the powers conferred on it by section 64; or
 - (b) make an allegation about the matter to the State Administrative Tribunal.
- (2) The presiding member shall not refer a matter to the committee under subsection (1)(a) unless the affected person has been given the option of having an allegation about the matter made to the State Administrative Tribunal and has not taken that option.

- (3) An option referred to in subsection (2) shall be given and exercised in such manner as is prescribed.

[Section 63 amended by No. 55 of 2004 s. 794.]

64. Powers where no formal inquiry held

- (1) The committee shall not exercise any power authorised by subsection (2) (other than paragraph (a)) unless it has given to the affected person a copy of the report under section 62 and any other relevant information, and afforded the person an opportunity of making submissions to the committee either in person or in writing.
- (2) The powers that the committee may exercise under this section in respect of a person are power —
- (a) to decline to take any action under this Part;
 - (b) to order the Registrar to amend the particulars entered in the register in relation to the person;
 - (c) to censure the person;
 - (d) to require the person, or in the case of a body corporate any person who is a member of it, to give an undertaking, either with or without security, for such period as the committee thinks necessary —
 - (i) in relation to the future conduct of the person as a nurse;
 - (ii) to comply with such conditions and instructions as the committee may impose in relation to the practice of nursing by that person; and
 - (iii) where a situation referred to in section 61(d), (e) or (f) exists or has occurred, to take part in a treatment or rehabilitation programme specified by the Board;
 - (e) in the case of a body corporate —
 - (i) to impose conditions and restrictions under section 24(2) or to amend or add to the

s. [65-68. Repealed by No. 55 of 2004 s. 796.]

conditions and restrictions specified under that section; and

- (ii) to require that body to give any undertaking referred to in paragraph (d)(i);
 - (f) to order that person to pay to the Board a penalty not exceeding \$2 500; or
 - (g) to make an allegation about the matter to the State Administrative Tribunal.
- (3) Subsection (2)(b), (d) and (e) do not apply in the case of a person who is no longer registered.

[Section 64 amended by No. 55 of 2004 s. 795.]

[65-68. Repealed by No. 55 of 2004 s. 796.]

69. Disciplinary powers of Board where formal inquiry has been held

The State Administrative Tribunal may, in dealing with an allegation made to it under this Part —

- (a) decline to make an order under this section;
- (b) order that the name of the person, or any body corporate of which the person is a member, be struck off the register;
- (c) suspend the person, or any body corporate of which the person is a member, from the practice of nursing, either generally, as a nurse practitioner, or in relation to any specified circumstances, speciality or service, for a period not exceeding 2 years;
- (d) order the person to pay a penalty not exceeding \$5 000;
- (e) deal with the person, or a member of a body corporate, in the manner provided for by section 64(2)(b), (c), (d) or (e), but subject to subsection (3) of that section;
- (f) if it is appropriate, do more than one of those things.

[Section 69 amended by No. 9 of 2003 s. 23; No. 55 of 2004 s. 797.]

70. Other powers in disciplinary proceedings

[(1) repealed]

- (2) Where the Board under section 60(1)(e), the committee under section 64(2)(a) or the State Administrative Tribunal under section 69(a), declines to take any action under this Part in respect of a person the Board, the committee or the Tribunal may make a statement exonerating that person.
- (3) Where the committee is satisfied that a person who has given an undertaking as mentioned in section 64(2)(d) or (e) has failed to comply with the undertaking or any condition imposed, the committee, after giving to the person concerned an opportunity to show cause why the person should not be so dealt with, may in addition to or instead of proceeding against the person in respect of the undertaking, recommend to the Board that it make an allegation to the State Administrative Tribunal about one or both of the following —
 - (a) the original matter for which the person was required to give the undertaking;
 - (b) the conduct or omission giving rise to the failure to comply with the undertaking or any condition, not being an undertaking to take part in a treatment or rehabilitation programme.

[(4) repealed]

[Section 70 amended by No. 55 of 2004 s. 798.]

71. Disqualification of members

- (1) The presiding member of the Board shall not take part in any proceedings of the committee or the Board when it is exercising any power under this Part, other than under section 60, 70(2) or 74.

s. 72

[(2) repealed]

[Section 71 amended by No. 55 of 2004 s. 799.]

72. Evidence of facts found in other proceedings

Any finding of fact relating to the conduct of a nurse made in any proceedings to which the nurse is a party in a court or before a professional nursing body recognized by the Board (whether in this State or elsewhere) is evidence of that fact in any disciplinary proceedings under this Part.

73. Costs

- (1) The committee may, in addition to or instead of exercising any power under section 64 in respect of a person, order the person to pay such costs and expenses of or arising from the investigation as the committee thinks fit.
- (2) Subsection (1) does not apply unless there has been an adverse finding against the person.
- (3) The Board may, in exceptional circumstances, pay from the funds of the Board to an affected person against whom there has been no adverse finding the costs or part of the costs incurred by that person.
- (4) Any costs or expenses ordered to be paid under this section are recoverable in any court of competent jurisdiction as a debt due to the Board.
- (5) In this section “**adverse finding**” means a finding that a situation referred to in section 61 exists or has occurred.

[Section 73 amended by No. 55 of 2004 s. 800.]

74. Reciprocal enforcement

- (1) Subject to subsection (2), where a board or authority outside the State charged with regulating the registration and supervision of nursing has made an order against a person similar in kind to an order which the Board or the State Administrative Tribunal has

power to make under this Part, the Board may, without further inquiry, make a like order to take effect in the State for a period not extending beyond the period of the order made by the first-mentioned board or authority.

- (2) For the purposes of subsection (1), the Board may inquire of a board or authority referred to in that subsection as to the circumstances giving rise to a finding made against a person and may accept the report of that board or authority as to the truth of those circumstances on being satisfied that the person against whom the finding was made had been given an opportunity to make representations in respect of the matter and had failed to satisfy the board or authority thereon.

[Section 74 amended by No. 55 of 2004 s. 801.]

75. Surrender of certificates

- (1) Where —
- (a) the name of a person is struck off the register; or
 - (b) the registration of a person is suspended,

under this Part, the person shall, within 14 days after the day on which the person is notified by the Board of the striking off, cancellation or suspension, surrender the relevant certificate to the Board.

Penalty: \$2 500.

- (2) 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.

[Section 75 amended by No. 84 of 2004 s. 82.]

76. False documents, statements, etc.

A person shall not make or produce, or cause to be made or produced, any false or fraudulent statement or representation, either orally or in writing, for the purpose of any investigation or proceeding under this Part.

s. 76

Penalty: \$2 500.

[Section 76 amended by No. 55 of 2004 s. 802.]

Part 6 — Miscellaneous

77. Board's decisions to be notified

- (1) Where the Board or a committee makes any decision to which this subsection applies, it shall record the grounds on which the decision was based, and its reasons, and shall as soon as is practicable, but in any case not later than 30 days after making the decision, notify its decision to the person affected together with those grounds and reasons.
- (2) Subsection (1) applies to —
 - (a) an order under section 64, 70(3), 73 or 74;
 - (b) the refusal of an application to the Board for registration or restoration to the register;
 - (c) the removal of a name from the register under section 41; or
 - (d) the imposition of any restriction or condition under section 24(2), 25(4), 28(2), 46, 49 or 52, otherwise than by consent.

[Section 77 amended by No. 55 of 2004 s. 803.]

78. Review

A person who is aggrieved by a decision referred to in section 77(2) may apply to the State Administrative Tribunal for a review of the decision.

[Section 78 inserted by No. 55 of 2004 s. 804.]

79. Publication of proceedings etc.

- (1) Without limiting the operation of sections 14 and 21(4), 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 or the professional standards committee under Part 5.
- (2) Subsection (1) applies to —

s. 80

- (a) the Board, any member of the Board, the Registrar or any officer or employee of the Board;
 - (b) any committee or any member of a committee or person referred to in section 20(5);
 - (c) any board or authority outside the State charged with regulating the registration and supervision of nursing or any officer, employee or agent thereof; or
 - (d) the proprietor or any person concerned in the publication or operation of any newspaper or periodical or of any electronic medium.
- (3) The Board may notify any finding, reason or decision of the Board or the professional standards committee under Part 5 to —
- (a) any person referred to in subsection (2)(c) or (d);
 - (b) any body corporate registered under this Act of which the person is a member;
 - (c) any body that has granted the person a qualification that is entered in the register;
 - (d) any trade union of which the person is a member; and
 - (e) any person by whom the person is employed or remunerated as a nurse or any person with whom the person practises nursing in partnership.

80. 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 shall be heard by a court of summary jurisdiction constituted by a magistrate.
- (3) No proof is required of the appointment of any person authorised under subsection (1), but an averment in the prosecution notice that the person is so authorised is deemed to be proved in the absence of evidence to the contrary.

- (4) In all courts and before all persons and bodies authorised to receive evidence —
- (a) a certificate in the prescribed form purporting to be issued on behalf of the Board and stating that any person was or was not registered or that a person was suspended from the practice of nursing, on any day or days or during any period mentioned in the certificate, is evidence of the matters so stated;
 - (b) a copy of or extract from the 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;
 - (c) judicial notice shall be taken of the fact that a person is the holder of the office of Registrar and of the signature of the Registrar on any such certificate.

[Section 80 amended by No. 84 of 2004 s. 80.]

81. Liability of members of body corporate

- (1) Where a body corporate is convicted of an offence against this Act, every person who at the time of the commission of the offence was a member of the body corporate or an officer concerned in the management of it and who authorised or permitted the commission of the offence is guilty of the like offence.
- (2) A person referred to in subsection (1) may, on the request of the prosecutor, be convicted in the proceedings in which the body corporate is convicted if the court is satisfied that the person had reasonable notice that the prosecutor intended to make that request.
- (3) Any civil liability in connection with the practice of nursing incurred by a body corporate that is registered under this Act is enforceable jointly and severally against the body corporate and

s. 82

any person who at the time that the liability was incurred was a member of the body corporate.

[Section 81 amended by No. 84 of 2004 s. 80.]

82. Rules

- (1) The Board may, with the approval of the Governor, make rules prescribing all matters required or permitted by this Act to be prescribed or necessary or convenient to be prescribed for carrying out this Act.
- (2) Without limiting the generality of subsection (1), rules 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) regulating the manner of keeping and the form of the register, and matters relating to certificates of registration;
 - (d) prescribing the fees to be paid for the purposes of this Act and the persons liable for payment;
 - (e) prescribing the forms to be used for the purposes of this Act, and providing that information supplied may be required to be verified by statutory declaration;
 - (f) regulating the manner of making to the Board any complaint against or concerning a nurse or a person who was a nurse, and the conduct of investigations under Part 5;
 - (g) regulating the practice of nursing by registered persons and the conduct of that practice;
 - (h) regulating the manner in which registered persons may advertise or display or publicize their practice of nursing;

- (i) listing, for the information of those persons to whom section 23(2) applies, the criteria referred to immediately before the commencement of this Act in section 20(1)(a)(i) and (ii) of the *Nurses Act 1968*.
- (3) A rule made under this section may provide for a penalty for contravention of the rule or a provision of the rule not exceeding a fine of \$1 000.

[Section 82 amended by No. 55 of 2004 s. 805.]

83. Repeal of *Nurses Act 1968*, transitional and savings

- (1) The *Nurses Act 1968* is repealed.
- (2) Schedule 3 has effect in relation to the repeal effected by subsection (1).

[84. Omitted under the Reprints Act 1984 s. 7(4)(e).]

85. Review of Act

- (1) The Minister shall 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 shall 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 shall prepare a report based on the review made under subsection (1) and as soon as is practicable after the preparation of the report, shall cause it to be laid before each House of Parliament.

Schedule 1

[Section 11]

Constitution and proceedings of Board

1. Term of office of members

- (1) A member shall hold office for such term, not being more than 3 years, as is specified in the member's instrument of appointment, but may from time to time be reappointed.
- (2) A member may not hold office for more than 2 consecutive terms.

2. Vacation of office by member

- (1) A member may resign from office by notice in writing delivered to the Minister.
- (2) A member 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 his or her duties;
 - (b) if the member is an insolvent under administration, as that term is defined in the *Corporations Act 2001* of the Commonwealth;
 - (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;
 - (d) if the member ceases to hold the position or qualification by virtue of which he or she was nominated for appointment; or
 - (e) for any other act or omission that in the opinion of the Minister may cause prejudice or injury to the Board.

3. General procedure concerning meetings

- (1) The procedure for convening meetings of the Board and the conduct of business at those meetings shall, subject to this Act, be as determined by the Board.

- (2) The first meeting of the Board shall be convened by the presiding member.

4. Presiding member

At a meeting of the Board —

- (a) the presiding member, or in his or her absence the deputy presiding member, shall preside; or
- (b) in the absence of both of those members, a member elected by the members present shall preside.

5. Delegation by Board

- (1) The Board may, by resolution, delegate any function specified in the resolution, other than this power of delegation, to a member or any committee.
- (2) The performance of a function by a delegate under this clause is deemed to be the performance of the function 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 presiding member shall have a casting vote in addition to a deliberative vote.

7. Minutes

The Board shall cause accurate minutes of its meetings to be recorded and preserved.

8. Common seal and execution of documents by Board

- (1) A document is duly executed by the Board if —
- (a) the common seal of the Board is affixed in accordance with subclauses (2) and (3); or
- (b) it is signed on behalf of the Board by a member or members authorised by the Board to do so.

Schedule 1 Constitution and proceedings of Board

- (2) The common seal of the Board shall not be affixed to any document except by resolution of the Board.
- (3) The common seal of the Board shall be affixed to a document in the presence of the presiding member and another member and each of them shall sign the document to attest that the common seal was so affixed.
- (4) The common seal of the Board shall —
 - (a) be in a form determined by the Board;
 - (b) be kept in such custody as the Board directs; and
 - (c) not be used except as authorised by the Board.

[Schedule 1 amended by No. 10 of 2001 s. 140.]

Schedule 2

[Sections 24 and 29(3)]

Requirements for registration of body corporate

1. Where the body corporate has —
 - (a) more than 2 members, the majority of the members shall be nurses;
 - (b) only 2 members, one member shall be a nurse and the other need not be a nurse but shall be a person of good character,but in no case may a body corporate be a member.
2. The body corporate shall have a place of business within the State.
3. The principal executive officer of the body corporate shall be a nurse.
4. Control of the affairs of the body corporate shall be vested in a nurse.
5. The power of persons —
 - (a) to exercise, or to control the exercise of, the rights to vote attached to shares in the body corporate; or
 - (b) to dispose of, or to exercise control over the disposal of, such shares,shall be such that the personal supervision and management of the affairs of the body corporate cannot become vested in a person who is not a nurse.
6. Full personal professional responsibility for the conduct of the affairs of the body corporate in relation to the practice of nursing shall remain an obligation of each member who is a nurse and no person other than a nurse may have authority over professional matters.
7. Proper and adequate provision shall be made for disclosure to the Board of the affairs of the body corporate, on request in writing by the Board to any member who is a nurse, or an undertaking to that effect shall be given to and accepted by the Board.
8. The memorandum and articles of association of the body corporate shall be acceptable to the Board and contain a provision that the

Schedule 2 Requirements for registration of body corporate

Board be notified of any intention to amend the memorandum or articles and be furnished with a copy of any proposed resolution or other form of proposal to give effect to that intention.

9. The Board shall be satisfied that there are no other grounds upon which the application for registration ought to be refused.

Schedule 3

[Section 83(2)]

Transitional and savings**1. Interpretation**

In this Schedule —

“**commencement**” means the commencement of this Act;

“**the former Board**” means the Nurses Board established under the repealed Act;

“**the repealed Act**” means the *Nurses Act 1968*.

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 repeal effected by section 83(1).

3. Former Board members

The appointment of every member of the former Board subsisting immediately before the commencement is terminated on the commencement.

4. The Registrar

The person who is Registrar under the repealed Act immediately before the commencement is the Registrar under section 21(1) of this Act until his or her appointment under the repealed Act would have expired.

5. Persons registered under repealed Act

A person who immediately before the commencement was registered under the repealed Act (including a person registered under section 22 of that Act) is, on the commencement, registered as a nurse under this Act for the period that, and on the same terms as, applied to that former registration; and the Registrar shall enter the name and other particulars of that person in the appropriate division of the register.

6. Certificates issued under repealed Act

A certificate of registration issued under the repealed Act is a certificate of registration for the purposes of this Act until, subject to this Act, the time when the certificate would have expired under the repealed Act.

7. Assets and liabilities etc. of former Board

- (1) On the commencement all assets, including funds, and liabilities of the former Board are, by force of this clause, the assets and liabilities of the Board.
- (2) Any proceedings that, immediately before the commencement, might have been brought or continued by or against the former Board may be brought or continued by or against the Board.

8. Schools of nursing

- (1) Notwithstanding the repeal of the *Nurses Act 1968*, the Board has, for 10 years from the commencement, or until there are no longer any schools of nursing controlled by the Board, whichever is the shorter period, the following functions with respect to any school of nursing based at a hospital —
 - (a) to determine the requirements for admission to courses of nursing education at a school of nursing;
 - (b) to determine length, character, content and conduct of education courses at a school of nursing;
 - (c) to determine standards of examination for nurse education, to appoint the places and times for those examinations and to conduct those examinations at schools of nursing;
 - (d) to appoint examiners in respect of examinations conducted by or on behalf of the Board and to determine the rate of remuneration of those examiners;
 - (e) to give to, and to withdraw from, institutions or bodies the approval of the Board to conduct examinations on behalf of the Board;
 - (f) to issue certificates for having passed examinations conducted by, or on behalf of, the Board;

- (g) to require a school of nursing to keep records as prescribed in the rules regarding all students; and
 - (h) to be responsible for the regular inspection of all schools of nursing.
- (2) In this clause “**school of nursing**” means a school of nursing under the repealed Act immediately before the commencement.
- (3) In addition to the purposes for which rules may be made under section 82, the Board may, with the approval of the Governor, also make rules with respect to its functions under subclause (1) and in particular with respect to —
- (a) the courses of education and instruction to be undergone for the purposes of any examination conducted by, or on behalf of, the Board;
 - (b) the character, scope, standard and subjects of examinations conducted by, or on behalf of, the Board; and
 - (c) the supervision of education at schools of nursing.

[Schedule 4 omitted under the Reprints Act 1984 s. 7(4)(e).]

Notes

¹ This is a compilation of the *Nurses Act 1992* and includes the amendments made by the other written laws referred to in the following table ^{1a}. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Nurses Act 1992</i>	27 of 1992	23 Jun 1992	29 Oct 1993 (see s. 2 and <i>Gazette</i> 29 Oct 1993 p. 5881)
Reprint of the <i>Nurses Act 1992</i> as at 18 May 1994			
<i>Statutes (Repeals and Minor Amendments) Act 2000</i> s. 28	24 of 2000	4 Jul 2000	4 Jul 2000 (see s. 2)
<i>Corporations (Consequential Amendments) Act 2001</i> Pt. 41	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and <i>Gazette</i> 29 Jun 2001 p. 3257 and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285)
<i>Nurses Amendment Act 2003</i> Pt. 2 ⁴	9 of 2003	9 Apr 2003	9 Apr 2003 (see s. 2)
Reprint 2: The <i>Nurses Act 1992</i> as at 20 Feb 2004 (includes amendments listed above)			
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004</i> Pt. 2 Div. 88 ^{6,7}	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> s. 80 and 82	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
<i>Machinery of Government (Miscellaneous Amendments) Act 2006</i> Pt. 9 Div. 10 ^{8,9}	28 of 2006	26 Jun 2006	1 Jul 2006 (see s. 2 and <i>Gazette</i> 27 Jun 2006 p. 2347)

^{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	Assent	Commencement
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	and Year		
<i>Courts Legislation Amendment and Repeal Act 2004</i> s. 142 ⁵	59 of 2004	23 Nov 2004	To be proclaimed (see s. 2)

² Formerly referred to subsection (1)(h). Reference to subsection (1)(i) substituted as a clerk's amendment under section 7(5b) of the *Reprints Act 1984*.

³ Under the *Public Sector Management Act 1994* s. 112(2), a reference in a written law to the Public Service Commissioner is, unless the contrary intention appears or it is otherwise provided under the *Acts Amendment (Public Sector Management) Act 1994*, to be construed as if it had been amended to be a reference to the Minister for Public Sector Management (as defined in the *Interpretation Act 1984*). This reference was amended under the *Reprints Act 1984* s. 7(5)(a).

⁴ The *Nurses Amendment Act 2003* Pt. 4 reads as follows:

“

Part 4 — Savings and transitional

55. Savings and transitional

- (1) A person who —
- (a) applies for registration as a nurse practitioner within 6 months of the commencement day; and
 - (b) has carried out functions similar to that of a nurse practitioner at a remote area nursing post at any time within the period of 3 years before the commencement day,

may carry out the functions of a nurse practitioner at the remote area nursing post as if the nursing post was a designated area and the applicant was a nurse practitioner until the application is dealt with.

- (2) The Board may register a person referred to in subsection (1) as a nurse practitioner despite the fact that the person does not hold an approved educational qualification referred to in section 22A(2)(b) of the *Nurses Act 1992* if that person has acquired such knowledge and practical experience as the Board considers sufficient for the person to competently and efficiently carry out the functions of a nurse practitioner.

- (3) In this section —
- “**Board**” has the meaning given by the *Nurses Act 1992*;
- “**commencement day**” means the day on which this Act comes into operation;
- “**designated area**” has the meaning given by the *Nurses Act 1992*;

“**nurse practitioner**” has the meaning given by the *Nurses Act 1992*;

“**remote area nursing post**” has the meaning given by the *Poisons Regulations 1965*.

5 On the date as at which this compilation was prepared, the *Courts Legislation Amendment and Repeal Act 2004* s. 142, which gives effect to Sch. 2, had not come into operation. It reads as follows:

“

142. Other amendments to various Acts

Each Act listed in Schedule 2 is amended as set out in that Schedule immediately below the short title of the Act.

Schedule 2 cl. 34 reads as follows:

“

Schedule 2 — Other Amendments to Acts

34. Nurses Act 1992

s. 78(1)	Delete “a magistrate of the appropriate Local Court.” and insert instead — “ the Magistrates Court. ”.
s. 78(2)	Delete “A Local Court is appropriate for the purposes of this section if it is the nearest Local Court” and insert instead — “ The appeal shall be made to the Magistrates Court at the place nearest ”.
s. 78(3)(a)	Delete “the clerk of the appropriate Local Court” and insert instead — “ the Court ”.
s. 78(4)	Delete “a magistrates of the appropriate Local Court,” and insert instead — “ the Magistrates Court, ”.
s. 78(5)	Delete “magistrate” and insert instead — “ Court, constituted by a magistrate, ”.
s. 78(7)	Delete “ <i>Local Courts Act 1904</i> ” and insert instead — “ <i>Magistrates Court (Civil Proceedings) Act 2004</i> ”.

”.

⁶ The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.

⁷ The *State Administrative Tribunal Regulations 2004* r. 35 reads as follows:

“

35. Nurses Act 1992

(1) In this regulation —

“**commencement day**” means the day on which the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Part 2 Division 88 comes into operation;

“**Nurses Act**” means the *Nurses Act 1992*.

(2) If before the commencement day —

- (a) an affected person has been given the option of proceeding by way of a formal inquiry under the Nurses Act section 63(2); and
- (b) the affected person has taken that option,

but the Board has not determined that a formal inquiry is to be held, on or after the commencement day the Board is to make an allegation about the matter to the State Administrative Tribunal.

(3) If, on or after the commencement day but within a period of 14 days after the date of the notice of the option, the affected person purports to take the option to proceed by way of a formal inquiry, that purported taking of the option is to be taken to be the taking of an option to have an allegation about the matter made to the State Administrative Tribunal.

(4) If —

- (a) before the commencement day a matter was being dealt with by the professional standards committee under the Nurses Act section 65; and
- (b) that matter is transferred to the Tribunal under the Act section 167(5),

despite the Act section 32(2) and (3), the *Evidence Act 1906* and the rules of evidence continue to apply to the matter when it is being dealt with by the Tribunal.

”.

⁸ The *Machinery of Government (Miscellaneous Amendments) Act 2006* Pt. 9 Div. 13 reads as follows:

“

Division 13 — Transitional provisions

289. Commissioner of Health

- (1) A thing done or omitted to be done by, to or in relation to, the Commissioner of Health before commencement under, or for the purposes of, an enactment has the same effect after commencement, to the extent that it has any force or significance after commencement, as if it had been done or omitted by, to or in relation to, the CEO.
- (2) In this section —
 - “**CEO**” has the meaning given by section 3 of the *Health Legislation Administration Act 1984* as in force after commencement;
 - “**commencement**” means the time at which this Division comes into operation;
 - “**Commissioner of Health**” means the Commissioner of Health referred to in section 6(1)(a) of the *Health Legislation Administration Act 1984* as in force before commencement.

”

⁹ The *Machinery of Government (Miscellaneous Amendments) Act 2006* Part 19 provides general transitional provisions concerning references to Departments and chief executive officers that are amended or repealed by that Act.