South Australia

Midwives Bill 2005

A BILL FOR

An Act to provide for the registration of midwives and midwifery students; to regulate midwifery for the purpose of maintaining high standards of competence and conduct by midwives and midwifery students in South Australia; and for other purposes.
Contents

Part 1—Preliminary
1  Short title
2  Commencement
3  Interpretation
4  Medical fitness to practice midwifery
5  Objects

Part 2—Midwives Council of South Australia

Division 1—Establishment of Council
6  Establishment of Council

Division 2—The Council's membership
7  Composition of Council
8  Terms and conditions of membership
9  Presiding member
10  Vacancies or defects in appointment of members
11  Remuneration

Division 3—Registrar and staff of Council
12  Registrar of Council
13  Other staff of Council

Division 4—General functions and powers
14  Functions of Council
15  Powers of the Council
16  Committees
17  Delegations

Division 5—The Council's procedures
18  The Council's procedures
19  Conflict of interest
20  Powers of Council in relation to witnesses etc
21  Principles governing hearings
22  Representation at proceedings before Council
23  Costs

Division 6—Accounts, audit and annual report
24  Accounts and audit
25  Annual report

Part 3—Registration

Division 1—The register
26  The register
27  Authority conferred by registration on register
### Division 2—Registration

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>28</td>
<td>Registration of natural persons on the register</td>
</tr>
<tr>
<td>29</td>
<td>Registration of midwifery students</td>
</tr>
<tr>
<td>30</td>
<td>Application for registration</td>
</tr>
<tr>
<td>31</td>
<td>Removal from register</td>
</tr>
<tr>
<td>32</td>
<td>Reinstatement on register</td>
</tr>
<tr>
<td>33</td>
<td>Annual practice fee</td>
</tr>
<tr>
<td>34</td>
<td>Information to be provided by registered persons</td>
</tr>
</tbody>
</table>

### Division 3—Restrictions on the practice of midwifery

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>35</td>
<td>Illegal holding out as registered person</td>
</tr>
<tr>
<td>36</td>
<td>Illegal holding out concerning limitations or conditions</td>
</tr>
<tr>
<td>37</td>
<td>Use of certain titles or descriptions prohibited</td>
</tr>
<tr>
<td>38</td>
<td>Prohibition on provision of midwifery by unqualified persons</td>
</tr>
<tr>
<td>39</td>
<td>Council’s approval required where registered person has not practised for 5 years</td>
</tr>
</tbody>
</table>

### Part 4—Investigations and proceedings

#### Division 1—Preliminary

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>40</td>
<td>Interpretation</td>
</tr>
<tr>
<td>41</td>
<td>Cause for disciplinary action</td>
</tr>
</tbody>
</table>

#### Division 2—Investigations

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>42</td>
<td>Powers of inspectors</td>
</tr>
<tr>
<td>43</td>
<td>Offence to hinder etc inspector</td>
</tr>
</tbody>
</table>

#### Division 3—Proceedings before Council

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>44</td>
<td>Constitution of Council for purpose of proceedings</td>
</tr>
<tr>
<td>45</td>
<td>Obligation to report unprofessional conduct</td>
</tr>
<tr>
<td>46</td>
<td>Obligation to report medical unfitness of registered person</td>
</tr>
<tr>
<td>47</td>
<td>Medical fitness of registered person</td>
</tr>
<tr>
<td>48</td>
<td>Inquiries by Council as to matters constituting grounds for disciplinary action</td>
</tr>
<tr>
<td>49</td>
<td>Contravention of prohibition order</td>
</tr>
<tr>
<td>50</td>
<td>Variation or revocation of conditions imposed by Council</td>
</tr>
<tr>
<td>51</td>
<td>Provisions as to proceedings before Council</td>
</tr>
</tbody>
</table>

### Part 5—Appeals

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>52</td>
<td>Right of appeal to District Court</td>
</tr>
<tr>
<td>53</td>
<td>Operation of order may be suspended</td>
</tr>
<tr>
<td>54</td>
<td>Variation or revocation of conditions imposed by Court</td>
</tr>
</tbody>
</table>

### Part 6—Miscellaneous

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>55</td>
<td>Interpretation</td>
</tr>
<tr>
<td>56</td>
<td>Offence to contravene conditions of registration</td>
</tr>
<tr>
<td>57</td>
<td>Offence to give, offer or accept benefit for referral or recommendation</td>
</tr>
<tr>
<td>58</td>
<td>Procurement of registration by fraud</td>
</tr>
<tr>
<td>59</td>
<td>Statutory declarations</td>
</tr>
<tr>
<td>60</td>
<td>False or misleading statement</td>
</tr>
<tr>
<td>61</td>
<td>Registered person must report her or his medical unfitness to Council</td>
</tr>
<tr>
<td>62</td>
<td>Registered persons to be indemnified against loss</td>
</tr>
<tr>
<td>63</td>
<td>Protection from personal liability</td>
</tr>
</tbody>
</table>
Schedule 1—Related amendments and transitional provisions

Part 1—Amendment of Nurses Act 1999
1 Amendment of section 3—Interpretation
2 Amendment of section 16—Functions of the Council
3 Amendment of section 39—Other restrictions
4 Amendment of Schedule—Bodies representing the interests of nurses

Part 2—Amendment of Controlled Substances Act 1984
5 Amendment of section 4—Interpretation
6 Amendment of section 18—Sale, supply, administration and possession of prescription drugs
7 Amendment of section 31—Prohibition of possession or consumption of drug of dependence and prohibited substance
8 Amendment of section 32—Prohibition of manufacture sale etc of drug of dependence or prohibited substance
9 Amendment of section 60—Minister may require certain information to be given

Part 3—Transitional provisions
10 Registration of certain nurses as midwives

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the Midwives Act 2005.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Interpretation

(1) In this Act, unless the contrary intention appears—

Council means the Midwives Council of South Australia established under this Act;
**District Court** means the Administrative and Disciplinary Division of the District Court;

**inspector** means a person authorised by the Council to exercise the powers of an inspector under this Act;

**legal practitioner** means a person admitted and enrolled as a practitioner of the Supreme Court of South Australia;

**medical practitioner** means a person who is registered on the general register or on both the general register and the specialist register under the *Medical Practice Act 2004*;

**midwife** means a person who is authorised under this Act to practise midwifery;

**midwifery** means care, assistance or support provided to a mother or child in relation to pregnancy or the birth of a child;

**midwifery student** means a person who is registered on the midwifery student register;

**midwifery student register**—see section 26(3)

**midwives register** or **the register** means the register under section 26;

**psychologist** means a person who is registered as a psychologist under the *Psychological Practices Act 1973*;

**record** means—

(a) a documentary record; or
(b) a record made by an electronic, electromagnetic, photographic or optical process; or
(c) any other kind of record;

**registered person** means a midwife or midwifery student registered under section 26;

**Registrar** means the person holding the office of Registrar of the Council under this Act;

**supervision** includes oversight, direction, guidance or support (whether given directly or indirectly);

**unprofessional conduct** includes—

(a) improper or unethical conduct in relation to midwifery; and
(b) incompetence or negligence in relation to midwifery; and
(c) a contravention of or failure to comply with—

(i) a provision of this Act; or
(ii) a code of conduct or professional standard endorsed by the Council under this Act; or
(iii) a condition imposed under this Act in relation to the registration of a registered person or in relation to the provision of midwifery by a registered person.

(2) A reference in this Act to **unprofessional conduct** extends to—

(a) unprofessional conduct committed before the commencement of this Act; and
(b) unprofessional conduct committed within or outside South Australia or the Commonwealth.

(3) A reference in this Act to engaging in conduct includes a reference to failing or refusing to engage in conduct.

4—Medical fitness to practice midwifery

A person or body must, in making a determination under this Act as to a person's medical fitness to practice midwifery, have regard to the question of whether the person is able to provide midwifery services personally to a patient without endangering the patient's health or safety.

5—Objects

(1) The objects of this Act include to assist in the recognition and restoration of the role of midwives in maternity care by establishing a scheme that—

(a) regulates the practice of midwifery to ensure the highest standards of competence and conduct by registered persons in South Australia; and

(b) involves midwives, midwife educators and ordinary people who have recently had the benefit of midwifery care in regulating the practice of midwifery; and

(c) ensures the best possible care and support is provided to women and babies before, during and after birthing; and

(d) encourages a reduction in medical interventions in birthing; and

(e) provides flexible maternity options for women and their partners; and

(f) reinstates birthing as a woman-centred, woman-led experience.

(2) Where possible, a person administering this Act should endeavour to give effect to these objects.

Part 2—Midwives Council of South Australia

Division 1—Establishment of Council

6—Establishment of Council

(1) The Midwives Council of South Australia is established.

(2) The Council—

(a) is a body corporate; and

(b) has perpetual succession and a common seal; and

(c) is capable of suing and being sued in its corporate name; and

(d) has all the powers of a natural person that are capable of being exercised by a body corporate; and

(e) has the functions and powers assigned or conferred by or under this Act.
(3) If a document appears to bear the common seal of the Council, it will be presumed, in the absence of proof to the contrary, that the common seal of the Council was duly affixed to the document.

**Division 2—The Council's membership**

**7—Composition of Council**

1. The Council consists of 6 members appointed by the Governor of whom—
   1. 2 must be midwives registered under this Act chosen at an election conducted in accordance with the regulations; and
   2. 1 must be a member of the Australian College of Midwives, Inc. chosen at an election conducted in a manner determined by the College; and
   3. 1 must be a person currently employed as midwifery educator; and
   4. 1 must be a legal practitioner; and
   5. 1 must be a person, nominated by the Minister, who has, within the 10 years prior to her or his nomination, used the services of a midwife and who is not eligible for appointment under paragraph (a), (b) or (d).

2. Every midwife will be entitled to vote at an election under subsection (1)(a).

3. If an election for the purposes of subsection (1)(a) fails for any reason, the Governor may appoint a midwife and the person appointed will be taken to have been appointed after due election under this section.

4. At least one member of the Council must be a woman and at least one must be a man.

5. The Governor may appoint a person to be a deputy of a member and a person so appointed may act as a member of the Council in the absence of the member.

6. The requirements of qualification and nomination made by this section in relation to the appointment of a member extend to the appointment of a deputy of that member.

7. In this section—
   midwifery educator means a person who is currently engaged or employed as a midwife educator in a tertiary institution in this State.

**8—Terms and conditions of membership**

1. A member of the Council will be appointed on conditions determined by the Governor and for a term, not exceeding 3 years, specified in the instrument of appointment and, at the expiration of a term of appointment, is eligible for reappointment.

2. However, a member of the Council may not hold office for consecutive terms that exceed 9 years in total.

3. The Governor may remove a member of the Council from office—
   1. for breach of, or non-compliance with, a condition of appointment; or
   2. for misconduct; or
   3. for failure or incapacity to carry out official duties satisfactorily.
(4) The office of a member of the Council becomes vacant if the member—
(a) dies; or
(b) completes a term of office and is not reappointed; or
(c) resigns by written notice to the Minister; or
(d) ceases to satisfy the qualification by virtue of which the member was eligible for appointment to the Council; or
(e) is removed from office under subsection (3).

(5) If a member of the Council is a member constituting the Council for the purposes of any proceedings under Part 4 and the member's term of office expires before those proceedings are completed, the member may, for the purpose of continuing and completing those proceedings, continue to act as a member of the Council.

9—Presiding member
The Minister must, after consultation with the Council, appoint a member appointed under section 7(1)(a) to preside at meetings of the Council.

10—Vacancies or defects in appointment of members
An act or proceeding of the Council is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

11—Remuneration
A member of the Council is entitled to remuneration, allowances and expenses determined by the Governor.

Division 3—Registrar and staff of Council

12—Registrar of Council

(1) There will be a Registrar of the Council.

(2) The Registrar will be appointed by the Council on terms and conditions determined by the Council.

(3) The Registrar must be a person who is registered under this Act, or who is eligible for registration under this Act, as a midwife.

13—Other staff of Council

(1) There will be such other staff of the Council as the Council thinks necessary for the proper performance of its functions.

(2) A member of the staff of the Council is not, as such, a member of the Public Service, but the Council may employ a person who is on leave from employment in the Public Service or with an instrumentality or agency of the Crown.

(3) The Council may, with the approval of the Minister administering an administrative unit of the Public Service, make use of the services, facilities or officers of that unit.
Division 4—General functions and powers

14—Functions of Council

(1) The functions of the Council are as follows:

(a) to oversee the practice of midwifery in the interest of women and their families;

(b) to approve, after consultation with authorities considered appropriate by the Council, courses of education or training that provide qualifications for registration under this Act;

(c) to determine, after consultation with authorities considered appropriate by the Council, the requirements necessary for registration under this Act;

(d) to investigate the fitness of persons to practise as midwives in this State, and to investigate the professional conduct of registered persons;

(e) to establish and maintain the registers contemplated by this Act;

(f) to prepare or endorse, subject to the approval of the Minister, codes of conduct or professional standards for registered persons;

(g) to prepare or endorse guidelines on continuing midwifery education for midwives;

(h) to establish administrative processes for handling complaints received against registered persons (which may include processes under which the registered person voluntarily enters into an undertaking);

(i) to provide advice to the Minister as may be appropriate;

(j) to carry out other functions assigned to the Council by or under this Act, or by the Minister.

(2) The Council must exercise its functions under this Act with the object of protecting the health and safety of the public by achieving and maintaining high professional standards both of competence and conduct in the provision of midwifery services in this State.

(3) If—

(a) a code of conduct or professional standard prepared or endorsed by the Council is approved by the Minister; or

(b) guidelines are prepared or endorsed by the Council,

the Council must—

(c) cause a copy of the code, standard or guidelines to be published in the Gazette; and

(d) take reasonable steps to send a copy of the code, standard or guidelines to each registered person to whom it applies; and

(e) ensure that a copy of the code, standard or guidelines is published on the Internet and kept available for public inspection without charge during normal office hours at the principal office of the Council,
(although proof of compliance with paragraphs (c),(d) and(e) is not necessary for the purposes of any proceedings that involve an alleged contravention of or failure to comply with a code of conduct or professional standard).

(4) The administrative processes established by the Council for handling complaints received against registered persons must be designed—

(a) to be fair to both the aggrieved person and the respondent; and
(b) to keep both the aggrieved person and the respondent properly informed about the steps taken by the Council in response to the complaint; and
(c) to provide, where appropriate, opportunities for the clarification of any misapprehension or misunderstanding between the aggrieved person and the respondent; and
(d) to keep both the aggrieved person and the respondent properly informed about the outcome of the processes.

15—Powers of the Council

(1) The Council has the powers necessary or expedient for, or incidental to, the performance of its functions.

(2) The Council may, for example—

(a) engage experts or consultants, appoint agents, or engage contractors;
(b) enter into any form of contract or arrangement;
(c) acquire, hold, deal with and dispose of real and personal property;
(d) acquire or incur other rights or liabilities.

16—Committees

(1) The Council may establish committees—

(a) to advise the Council on any matter; or
(b) to carry out functions on behalf of the Council.

(2) The membership of a committee will be determined by the Council and may, but need not, consist of, or include, members of the Council.

(3) The Council will determine who will be the presiding member of a committee.

(4) The procedures to be observed in relation to the conduct of the business of a committee will be—

(a) as determined by the Council; or
(b) insofar as a procedure is not determined under paragraph (a)—as determined by the committee.

(5) If the Public Sector Management Act 1995 would not, apart from this section, apply to a member of a committee, that Act applies to the member in the same way as to an advisory body member within the meaning of that Act.
17—Delegations

(1) The Council may delegate any of its functions or powers under this Act other than—
   (a) this power of delegation; and
   (b) the power to hear and determine proceedings under Part 4.

(2) A delegation—
   (a) may be made—
      (i) to a member of the Council, the Registrar or an employee of the Council; or
      (ii) to a committee established by the Council; and
   (b) may be made subject to conditions and limitations specified in the instrument of delegation; and
   (c) is revocable at will and does not derogate from the power of the Council to act in a matter.

Division 5—The Council's procedures

18—The Council's procedures

(1) Subject to this Act, 4 members constitute a quorum of the Council.

(2) At least 1 of the members of the Council appointed under section 7(1)(a) must be present at any meeting of the Council (other than for the purposes of hearing and determining proceedings under Part 4).

(3) A meeting of the Council (other than for the purposes of hearing and determining proceedings under Part 4) will be chaired by the presiding member or, in her or his absence, the members present at a meeting of the Council must choose one of their number to preside at the meeting.

(4) A decision carried by a majority of the votes cast by members of the Council at a meeting is a decision of the Council.

(5) Each member present at a meeting of the Council has one vote on any question arising for decision and, except in hearing and determining proceedings under Part 4, the member presiding at the meeting may exercise a casting vote if the votes are equal.

(6) A conference by telephone or other electronic means between the members of the Council will, for the purposes of this section, be taken to be a meeting of the Council at which the participating members are present if—
   (a) notice of the conference is given to all members in the manner determined by the Council for the purpose; and
   (b) each participating member is capable of communicating with every other participating member during the conference.

(7) A proposed resolution of the Council becomes a valid decision of the Council despite the fact that it is not voted on at a meeting of the Council if—
   (a) notice of the proposed resolution is given to all members of the Council in accordance with procedures determined by the Council; and
(b) a majority of the members express concurrence in the proposed resolution by letter, telegram, telex, facsimile transmission, electronic mail or other written communication setting out the terms of the resolution.

(8) However, subsections (6) and (7) do not apply in relation to the hearing and determination of proceedings under Part 4 by the Council as constituted for the purposes of proceedings under that Part.

(9) The Council must have accurate minutes kept of its meetings.

(10) Subject to this Act, the Council may determine its own procedures.

19—Conflict of interest

(1) A member of the Council who has a direct or indirect personal or pecuniary interest in a matter decided or under consideration by the Council—

(a) must, as soon as reasonably practicable, disclose in writing to the agency or the governing body of the agency full and accurate details of the interest; and

(b) must not take part in any discussion by the agency or the governing body of the agency relating to that matter; and

(c) must not vote in relation to that matter; and

(d) must be absent from the meeting room when any such discussion or voting is taking place.

Maximum penalty: $20 000.

(2) If a member makes a disclosure of interest and complies with the other requirements of subsection (1) in respect of a proposed contract—

(a) the contract is not liable to be avoided by the Council; and

(b) the member is not liable to account to the Council for profits derived from the contract.

(3) If a member fails to make a disclosure of interest or fails to comply with any other requirement of subsection (1) in respect of a proposed contract, the contract is liable to be avoided by the Council or by the Minister.

(4) A contract may not be avoided under subsection (3) if a person has acquired an interest in property the subject of the contract in good faith for valuable consideration and without notice of the contravention.

(5) Where a member has or acquires a personal or pecuniary interest, or is or becomes the holder of an office, such that it is reasonably foreseeable that a conflict might arise with her or his duties as a member of the Council, the member must, as soon as reasonably practicable, disclose in writing to the Council full and accurate details of the interest or office.

Maximum penalty: $20 000.

(6) A disclosure under this section must be recorded in the minutes of the agency or the governing body of the agency and reported to the relevant Minister.
(7) If, in the opinion of the Minister, a particular interest or office of a member is of such significance that the holding of the interest or office is not consistent with the proper discharge of the duties of the member, the Minister may require the member either to divest himself or herself of the interest or office or to resign from the Council (and non-compliance with the requirement constitutes misconduct and hence a ground for removal of the member from the Council).

(8) Without limiting the effect of this section, a member will be taken to have an interest in a matter for the purposes of this section if an associate of the member has an interest in the matter.

(9) This section does not apply in relation to a matter in which a member has an interest while the member remains unaware that she or he has an interest in the matter, but in any proceedings against the member the burden will lie on the member to prove that she or he was not, at the material time, aware of her or his interest.

(10) A member will not be taken to have a direct or indirect interest in a matter by reason only of the fact that the member has an interest in the matter that is shared in common with the public, midwives generally or a substantial section of the public or of midwives in this State.

(11) For the purposes of this section, a person is an associate of another person if—
   (a) the other person is a relative of the person or of the person's spouse;
   (b) the other person—
      (i) is a body corporate; and
      (ii) the person or a relative of the person or of the person's spouse has, or two or more such persons together have, a relevant interest or relevant interests in shares in the body corporate the nominal value of which is not less than 10 per cent of the nominal value of the issued share capital of the body corporate;
   (c) the other person is a trustee of a trust of which the person, a relative of the person or of the person's spouse or a body corporate referred to in paragraph (b) is a beneficiary;
   (d) the person is declared by the regulations to be an associate of the other person.

20—Powers of Council in relation to witnesses etc

(1) For the purposes of proceedings before the Council (including an application for registration or reinstatement of registration), the Council may—
   (a) by summons signed on behalf of the Council by a member of the Council or the Registrar, require the attendance before the Council of any person whom the Council thinks fit to call before it; or
   (b) by summons signed on behalf of the Council by a member of the Council or the Registrar, require the production of any relevant documents, records or equipment and, in the case of a document or record that is not in the English language, require the production of a written statement in the English language of the contents of the document or record; or
(c) inspect any documents, records or equipment produced before it, and retain them for such reasonable period as it thinks fit, and make copies of the documents or records or their contents; or

(d) require any person to make an oath or affirmation (which may be administered by any member of the Council) to answer truthfully questions put by any member of the Council or any person appearing before the Council; or

(e) require any person appearing before the Council (whether summoned to appear or not) to answer any questions put by any member of the Council or by any person appearing before the Council.

(2) On the receipt of an application for the issue of a summons under this section, a member or the Registrar may, without referring the matter to the Council, issue a summons on behalf of the Council.

(3) A person who—

(a) fails without reasonable excuse to comply with a summons issued to attend, or to produce documents, records or equipment, before the Council; or

(b) having been served with a summons to produce a written statement of the contents of a document or record in the English language fails, without reasonable excuse, to comply with the summons or produces a statement that she or he knows, or ought to know, is false or misleading in a material particular; or

(c) misbehaves before the Council, wilfully insults the Council or one or more of the members in the exercise of the member's official duties, or interrupts the proceedings of the Council; or

(d) refuses to be sworn or to affirm, or refuses or fails to answer truthfully a relevant question when required to do so by the Council,

is guilty of an offence.

Maximum penalty: $10 000 or imprisonment for 6 months.

(4) A person who appears as a witness before the Council has the same protection as a witness in proceedings before the Supreme Court.

21—Principles governing hearings

(1) In any proceedings before the Council under this Act, the Council—

(a) is not bound by the rules of evidence and may inform itself on any matter as it thinks fit; and

(b) must act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms.

(2) In any proceedings before the Council under this Act, the Council must keep the parties to the proceedings properly informed as to the progress and outcome of the proceedings.
22—Representation at proceedings before Council

A party to proceedings before the Council (including an applicant for registration or reinstatement of registration) is entitled to be represented at the hearing of those proceedings.

23—Costs

(1) The Council may award such costs against a party to proceedings before it as the Council considers just and reasonable.

(2) A party who is dissatisfied with the amount of the costs fixed by the Council may request a Master of the District Court to tax the costs and, after taxing the costs, the Master may confirm or vary the amount of the costs fixed by the Council.

(3) Subject to this section, costs awarded by the Council under this section may be recovered as a debt.

Division 6—Accounts, audit and annual report

24—Accounts and audit

(1) The Council must keep proper accounting records in relation to its financial affairs, and must have annual statements of account prepared in respect of each financial year.

(2) The accounts must be audited at least once in every year by an auditor approved by the Auditor-General and appointed by the Council.

(3) The Auditor-General may at any time audit the accounts of the Council.

25—Annual report

(1) The Council must, on or before 30 September in each year, deliver to the Minister a report on the administration of this Act and the work of the Council during the financial year ending on the preceding 30 June.

(2) The report must—

(a) include the following information in relation to the relevant financial year:

(i) the number and nature of complaints received by the Council against registered persons;

(ii) the number and nature of voluntary undertakings given to the Council by registered persons;

(iii) the outcomes of proceedings before the Council under Part 4;

(iv) information prescribed by the regulations; and

(b) incorporate the audited accounts of the Council for the relevant financial year.

(3) The Minister must, within 12 sitting days after receiving a report under this section, have copies of the report laid before both Houses of Parliament.
Part 3—Registration

Division 1—The register

26—The register

(1) The Registrar must keep a midwives register.

(2) The register will be a register of persons to whom the Council has granted registration under this Act.

(3) The register will be made up of the following parts:
   (a) the midwives register; and
   (b) the midwifery student register; and
   (c) a register of persons who have been removed from the midwives register or midwifery student register under this Act or any other Act or law and who have not been reinstated to that register.

(4) The register kept under subsection (1) must include, in relation to each person on the register—
   (a) the person's full name, personal address and business address (if any); and
   (b) the qualifications for registration held by the person; and
   (c) the particulars of any condition of registration or limitation that affects or restricts the person's right to practice midwifery; and
   (d) details concerning the outcome of any action taken against the person by the Council under Part 4; and
   (e) the information prescribed by the regulations,

and may include other information as the Council thinks fit.

(5) A registered person must, within 1 month after changing her or his name or address, inform the Registrar in writing of the change.

Maximum penalty: $250.

(6) The register referred to in subsection (3)(c)—
   (a) must not include any person who is dead;
   (b) must include, in relation to each person on the register, a statement of—
      (i) the reason for removal of the person; and
      (ii) the date of removal; and
      (iii) in the case of removal consequent on suspension or disqualification—the duration of the suspension or disqualification;
   (c) must have deleted from it all information relating to any person who has been reinstated on the midwives or midwifery student register.

(7) The Registrar is responsible to the Council for the form and maintenance of the registers.
(8) The Registrar must correct an entry in a register that is not, or has ceased to be, correct.

(9) The registers must be kept available for inspection by any person during ordinary office hours at the office of the Registrar and the registers or extracts of the registers may be made available to the public by electronic means.

(10) A person may, on payment of the prescribed fee, obtain a copy of any part of a register kept under this Act.

(11) A certificate stating that a person was, or was not, registered on the midwives or midwifery student register under this Act at a particular date or during a particular period and purporting to be signed by the Registrar will, in the absence of proof to the contrary, be accepted in legal proceedings as proof of the registration, or of the fact that the person was not so registered, on the date or during the period stated in the certificate.

27—Authority conferred by registration on register

Subject to any restrictions, limitations or conditions imposed under this Act—

(a) registration on the midwives register authorises the person to practice midwifery; and

(b) registration on the midwifery student register authorises the person to practice midwifery in prescribed circumstances.

Division 2—Registration

28—Registration of natural persons on the register

(1) Subject to this Act, a natural person is eligible for registration on the register if the person, on application to the Council, satisfies the Council that she or he—

(a) has qualifications approved or recognised by the Council for the purposes of registration on the register; and

(b) has met the requirements determined by the Council to be necessary for the purposes of registration on the register; and

(c) is medically fit to practice midwifery; and

(d) is, unless exempted by the Council, insured or indemnified in a manner and to an extent approved by the Council against civil liabilities that might be incurred by the person in connection with the practice of midwifery as a midwife; and

(e) is a fit and proper person to be registered on the register.

(2) If a person who applies for registration, or reinstatement of registration, on a particular register—

(a) does not, in the opinion of the Council, have the necessary qualifications or experience required for registration on the register; or

(b) is not, in the opinion of the Council, medically fit to practice midwifery; or

(c) is not, in the opinion of the Council, a fit and proper person to be registered on the register.
the Council may register the person on the register in pursuance of this subsection (limited registration)—

(d) in order to enable the person—

(i) to do whatever is necessary to become eligible for full registration under this Act; or

(ii) to teach or to undertake research or study in this State; or

(iii) in the case of an applicant who has obtained qualifications for the practice of midwifery under the law of a place outside of Australia—to practise in a part of the State or at a place that the Minister and the Council consider is in urgent need of the services of a midwife; or

(e) if, in its opinion, it would otherwise be in the public interest to do so.

(3) In registering a person under subsection (2) the Council may impose one or more of the following conditions on the registration:

(a) a condition restricting the places or times at which the person may practice midwifery;

(b) a condition limiting the kind of midwifery that the person may practise;

(c) a condition limiting the period during which the registration will have effect;

(d) a condition requiring that the person be supervised in the practise of midwifery by a particular person or by a person of a particular class;

(e) such other conditions as the Council thinks fit.

29—Registration of midwifery students

(1) A person is not entitled to undertake a course of study that provides qualifications for registration on the midwives register unless the person is registered under this section as a midwifery student.

(2) A person is eligible for registration as a midwifery student on the midwifery student register if the person, on application to the Council, satisfies the Council that she or he—

(a) genuinely requires registration on that register for the purpose of enabling the person to undertake a course of study that provides qualifications for registration on the midwives register; and

(b) is medically fit to practice midwifery as authorised by registration on the midwifery student register; and

(c) is a fit and proper person to be registered on the midwifery student register.

(3) If a person who applies for registration, or reinstatement of registration, on the midwifery student register is not, in the opinion of the Council, medically fit to practice midwifery as authorised by registration on that register, the Council may register the person on that register in pursuance of this subsection (limited student registration) and impose one or more of the following conditions on the registration:

(a) a condition limiting the kind of midwifery that the person may practice;

(b) a condition limiting the period during which the registration will have effect;
(c) a condition requiring that the person be supervised in the practice of
midwifery by a particular person or by a person of a particular class;

(d) such other conditions as the Council thinks fit.

30—Application for registration

(1) An application for registration must—

(a) be made to the Council in the manner and form approved by the Council; and

(b) be accompanied by the registration fee fixed under this Act.

(2) An applicant for registration must, if the Council so requires, provide the Council with specified information to enable the Council to determine the application.

(3) The Council may require an applicant for registration—

(a) to submit a medical report or other evidence acceptable to the Council as to the applicant's medical fitness to practice midwifery; or

(b) to obtain additional qualifications or experience specified by the Council before the Council determines the application.

(4) If it appears likely to the Registrar that the Council will grant an application for registration, the Registrar may provisionally register the applicant.

(5) Provisional registration remains in force until the Council determines the application.

(6) The registration by the Council under this Act of a person who was provisionally registered has effect from the commencement of the provisional registration.

31—Removal from register

(1) The Registrar must, on application by a registered person, remove the person from the register.

(2) The Registrar must remove from the register—

(a) who dies; or

(b) who ceases to hold a qualification required for registration on the register; or

(c) who ceases for any other reason to be entitled to be registered on the register; or

(d) whose registration on the register has been suspended or cancelled under this Act.

(3) The Registrar may act under subsection (2) without giving prior notice to the relevant person.

32—Reinstatement on register

(1) A person whose name has been removed from the register under this Act—

(a) on her or his application; or

(b) on account of failure to pay the annual practice fee required under section 33; or

(c) on account of failure to pay a fine imposed on the person by the Council under this Act,
(d) on account of the person ceasing to hold a qualification required for registration on the register or otherwise ceasing to be entitled to be registered on the register,

may apply to the Council at any time for reinstatement on the register.

(2) A person whose registration on the register has been suspended may apply to the Council for reinstatement on the register (but not, in the case of an order for suspension for a specified period made in disciplinary proceedings, until after the expiry of that period).

(3) A person who has been disqualified from being registered on the register under this Act may, subject to the terms of the order for disqualification, apply to the Council for reinstatement on the register.

(4) An application for reinstatement must—

(a) be made to the Council in the manner and form approved by the Council; and

(b) be accompanied by the reinstatement fee fixed under this Act.

(5) An applicant for reinstatement must, if the Council so requires, provide the Council with specified information to enable the Council to determine the application.

(6) The Council may require an applicant for reinstatement of registration to obtain additional qualifications or experience specified by the Council before the Council determines the application.

(7) Subject to this section, the Council must reinstate on the register an applicant under this section if satisfied that the applicant is eligible for registration on the register.

(8) The Council may refuse to reinstate the applicant on the register until all complaints (if any) laid against the applicant under this Act have been finally disposed of.

33—Annual practice fee

(1) Subject to this Act, a person will not be registered, nor will a registration be reinstated, until the registration or reinstatement fee, and the annual practice fee, fixed under this Act have been paid.

(2) A registered person must, in each calendar year before the date fixed for that purpose by the Council pay to the Council the annual practice fee fixed under this Act.

(3) The Council may, without further notice, remove from the register a registered person who fails to pay the annual practice fee by the due date.

34—Information to be provided by registered persons

(1) The Council or the Registrar may, at any time, require a registered person to supply prescribed information relating to the registered person’s employment.

(2) Information provided under this section may be included in the register.

(3) A person who fails to comply with a requirement under this section is guilty of an offence.

   Maximum penalty: $1 250.
Division 3—Restrictions on the practice of midwifery

35—Illegal holding out as registered person

(1) A person must not hold himself or herself out as a midwife or a midwifery student, or permit another person to do so, unless registered on the appropriate register.

Maximum penalty: $10 000 or imprisonment for 2 years.

(2) A person must not hold out another as a registered person unless the other person is registered on the appropriate register.

Maximum penalty: $10 000 or imprisonment for 2 years.

36—Illegal holding out concerning limitations or conditions

(1) A person whose registration is limited or subject to a condition under this Act must not hold himself or herself out as having a registration that is not limited or not subject to a condition or permit another person to do so.

Maximum penalty: $10 000 or imprisonment for 2 years.

(2) A person must not hold out another whose registration is limited or subject to a condition under this Act as having a registration that is not limited or not subject to a condition.

Maximum penalty: $10 000 or imprisonment for 2 years.

37—Use of certain titles or descriptions prohibited

(1) A person who is not registered on the register must not use a prescribed word, or its derivatives, to describe himself or herself or a service that she or he provides.

Maximum penalty: $10 000.

(2) A person must not, in the course of advertising or promoting a service that she or he provides, use a prescribed word, or its derivatives, to describe a person who is engaged in the provision of the service but is not registered on the appropriate register.

Maximum penalty: $10 000.

(3) In this section—

 prescribed word means—

(a) midwife; or

(b) registered midwifery student; or

(c) midwifery; or

(d) any other word or expression prescribed by the regulations.

38—Prohibition on provision of midwifery by unqualified persons

(1) A person must not practice midwifery for fee or reward unless the person is a registered person under this Act.

Maximum penalty: $10 000 or imprisonment for 2 years.

(2) Subsection (1) does not apply in relation to midwifery services provided by an unqualified person in prescribed circumstances or pursuant to an exemption under subsection (3).
(3) The Governor may, by proclamation, exempt a person from subsection (1) if of the opinion that good reason exists for doing so in the particular circumstances of the case.

(4) An exemption under subsection (3) may be subject to such conditions as the Governor thinks fit.

(5) A person who contravenes, or fails to comply with, a condition of an exemption under this section is guilty of an offence.

Maximum penalty: $10 000.

(6) The Governor may, by proclamation, vary or revoke a proclamation under this section.

39—Council's approval required where registered person has not practised for 5 years

(1) A registered person who has not practised midwifery of a kind authorised by her or his registration for a period of 5 years or more must not provide any such treatment for fee or reward without first obtaining the approval of the Council.

Maximum penalty: $10 000.

(2) The Council—

(a) may, before granting its approval under subsection (1), require the applicant to obtain qualifications or experience specified by the Council and for that purpose may require the applicant to undertake a specified course of instruction or training in midwifery; and

(b) may impose one or more of the following conditions on the applicant's registration:

(i) a condition restricting the places and times at which the applicant may practise midwifery;

(ii) a condition limiting the kind of midwifery that the applicant may practise;

(iii) a condition requiring that the applicant be supervised in the practise of midwifery by a particular person or by a person of a particular class;

(iv) such other conditions as the Council thinks fit.

Part 4—Investigations and proceedings

Division 1—Preliminary

40—Interpretation

In this Part, a reference to a registered person includes a reference to a person who is not but who was, at the relevant time, a registered person under this Act.

41—Cause for disciplinary action

There is proper cause for disciplinary action against a registered person if—

(a) the person's registration was improperly obtained; or
(b) the person is guilty of unprofessional conduct; or
(c) the person is for any reason no longer a fit and proper person to be registered on the register.

Division 2—Investigations

42—Powers of inspectors

(1) If there are reasonable grounds for suspecting—
   (a) that there is proper cause for disciplinary action against a person; or
   (b) that a registered person is medically unfit to practice midwifery; or
   (c) that a person is guilty of an offence against this Act, an inspector may investigate the matter.

(2) For the purposes of an investigation, an inspector may—
   (a) at any reasonable time, enter and inspect premises of a registered person or premises on which the inspector reasonably suspects an offence against this Act has been or is being committed; or
   (b) with the authority of a warrant issued by a magistrate or in circumstances in which the inspector reasonably believes that immediate action is required, use reasonable force to break into or open any part of, or anything in or on any premises referred to in paragraph (a); or
   (c) while on premises entered under paragraph (a) or (b), seize and retain anything found on the premises that the inspector reasonably believes may afford evidence relevant to the matters under investigation; or
   (d) require any person who has possession of documents or records relevant to the matters under investigation to produce those documents or records for inspection, including written records that reproduce in a readily understandable form information kept by computer, microfilm or other process; or
   (e) inspect any documents or records produced to the inspector and retain them for such reasonable period as the inspector thinks fit, and make copies of the documents or records; or
   (f) require any person who is in a position to provide information relevant to the matters under investigation to answer any question put by the inspector in relation to those matters; or
   (g) take photographs, films or video or audio recordings; or
   (h) if the inspector reasonably suspects that an offence against this Act has been or is being committed, require the suspected offender to state her or his full name and address.

(3) An inspector must not exercise the power conferred by subsection (2)(a) in relation to any residential premises except with the permission of the occupier of the premises or on the authority of a warrant issued by a magistrate.
(4) A magistrate must not issue a warrant under this section unless satisfied, by information given on oath, that the warrant is reasonably required in the circumstances.

(5) The person in charge of premises at the relevant time must give an inspector such assistance and provide such facilities as are necessary to enable the powers conferred by this section to be exercised.

Maximum penalty: $5 000.

43—Offence to hinder etc inspector

A person who—

(a) hinders or obstructs an inspector in the exercise of powers conferred by this Act; or

(b) uses abusive, threatening or insulting language to an inspector; or

(c) refuses or fails to comply with a requirement of an inspector under this Act; or

(d) when required by an inspector to answer a question, refuses or fails to answer the question to the best of the person's knowledge, information and belief; or

(e) falsely represents, by words or conduct, that she or he is an inspector,

is guilty of an offence.

Maximum penalty: $10 000.

Division 3—Proceedings before Council

44—Constitution of Council for purpose of proceedings

(1) The Council will, for the purpose of hearing and determining proceedings under this Part, be constituted of 4 members, of whom—

(a) 1 will be the member (or her or his deputy) who is a legal practitioner; and

(b) 2 will be members who are midwives; and

(c) 1 will be a member who is not a midwife.

(2) The member referred to in subsection (1)(a) will preside over the proceedings.

(3) The members of the Council referred to in subsection (1)(b) and (1)(c) will, for the purposes of any particular proceedings, be selected by the presiding member of the Council.

(4) If a member of the Council as constituted under this section (other than the member presiding over the proceedings) dies or is for any other reason unable to continue with the proceedings, the Council constituted of the remaining members may, if the member presiding over the proceedings so determines, continue and complete the proceedings.

(5) Any questions of law or procedure arising before the Council will be determined by the member presiding over the proceedings and any other questions by unanimous or majority decision of the members.
(6) The Council constituted of the member presiding over the proceedings may, sitting alone—

(a) deal with—

(i) preliminary, interlocutory or procedural matters; or

(ii) questions of costs; or

(iii) questions of law; or

(b) enter consent orders,

and may, for that purpose or as a consequence, while sitting alone, make any determination or order (including a final order) that the member considers appropriate.

45—Obligation to report unprofessional conduct

If the employer of a registered person has reason to believe that the registered person has been guilty of unprofessional conduct, the employer must submit a written report to the Council stating—

(a) the grounds on which the belief is based; and

(b) any other information prescribed by the regulations.

Maximum penalty: $1 250.

46—Obligation to report medical unfitness of registered person

(1) If a health professional who has treated, or is treating, a patient who is a registered person is of the opinion that the registered person is, or may be, medically unfit to practice midwifery, the person must submit a written report to the Council setting out her or his reasons for that opinion and any other information required by the regulations.

Maximum penalty: $1 250.

(2) The Council must cause a report made under this section to be investigated.

(3) In this section—

health professional means—

(a) a medical practitioner; or

(b) a psychologist; or

(c) any other person who belongs to a profession, or who has an occupation, declared by the Council, by notice in the Gazette, to be a profession or occupation within the ambit of this definition.

47—Medical fitness of registered person

If—

(a) on the application of—

(i) the Registrar; or

(ii) the Minister; or

(iii) a representative body; or

(b) after an investigation under section 46 has been conducted,
the Council is satisfied, after due inquiry, that a registered person is medically unfit to practice midwifery and that it is desirable in the public interest that an order be made under this section, the Council may, by order—

(c) suspend the person's registration until further order of the Council or for a specified period determined by the Council; or

(d) impose conditions on the person's registration restricting the person's right to practice midwifery; or

(e) impose conditions on the person's registration requiring the person to undergo counselling or treatment or to enter into any other undertaking.

48—Inquiries by Council as to matters constituting grounds for disciplinary action

(1) A complaint setting out matters that are alleged to constitute grounds for disciplinary action against a person may be laid before the Council (in a manner and form approved by the Council) by—

(a) the Registrar; or
(b) the Minister; or
(c) a representative body; or
(d) a person who is aggrieved by conduct of the person or, if the person aggrieved is a child or is suffering from a mental or physical incapacity, by a person acting on her or his behalf.

(2) If a complaint is laid under this section the Council must inquire into the subject matter of the complaint unless the Council considers that the complaint is frivolous or vexatious.

(3) If a complaint has been laid under this section by or on behalf of an aggrieved person and the Council is satisfied that the complaint arose from a misapprehension on the part of the complainant or from a misunderstanding between the parties, it may, before proceeding further with the hearing of the complaint, require the parties to attend before the Registrar in order to clarify the misapprehension or misunderstanding.

(4) If, after conducting an inquiry under this section, the Council is satisfied on the balance of probabilities that there is proper cause for disciplinary action against the respondent, the Council may, by order, do one or more of the following:

(a) censure the respondent;
(b) require the respondent to pay to the Council a fine not exceeding $10 000;
(c) if the respondent is a registered person—

(i) impose conditions on the respondent's registration restricting the respondent's right to practice midwifery;
(ii) suspend the respondent's registration on the register for a period not exceeding 1 year;
(iii) cancel the respondent's registration on the register;
(iv) disqualify the respondent from being registered on the register.
(5) The Council may—

(a) stipulate that a disqualification or prohibition under subsection (4) is to apply—

(i) permanently; or

(ii) for a specified period; or

(iii) until the fulfilment of specified conditions; or

(iv) until further order;

(b) stipulate that an order relating to a person is to have effect at a specified future time and impose conditions as to the conduct of the person.

(6) If—

(a) a person has been found guilty of an offence; and

(b) the circumstances of the offence form, in whole or in part, the subject matter of the complaint,

the person is not liable to a fine under this section in respect of conduct giving rise to the offence.

(7) The Council may—

(a) fix a period within which a fine imposed under this section must be paid;

(b) on application by a person liable to pay a fine imposed under this section, extend the period within which the fine must be paid.

(8) A fine imposed under this section is recoverable by the Council as a debt.

(9) The Council may, without further notice, remove from the register a person who fails to pay a fine imposed under this section.

49—Contravention of prohibition order

A person who contravenes or fails to comply with a condition imposed by the Council as to the conduct of the person, is guilty of an offence.

Maximum penalty: $10 000 or imprisonment for 2 years.

50—Variation or revocation of conditions imposed by Council

(1) The Council may, at any time, on application by a registered person, vary or revoke a condition imposed by the Council in relation to the person's registration under this Act.

(2) The Registrar, the Minister and representative bodies are entitled to appear and be heard on an application under this section.

51—Provisions as to proceedings before Council

(1) Subject to this Act, the Council must give to all of the parties to proceedings before the Council under this Part at least 14 days' written notice of the time and place at which it intends to conduct the proceedings, and must afford to the parties a reasonable opportunity to call and give evidence, to examine or cross-examine witnesses, and to make submissions to the Council.
(2) However—

(a) the Council may, if it thinks special reasons exist for doing so, give a lesser period of written notice under subsection (1); and

(b) the Council may, if of the opinion that it is necessary to do so to protect the health and safety of the public, suspend the registration of the person the subject of the proceedings pending hearing and determination of the proceedings.

(3) The requirement to give written notice under subsection (1) does not extend to adjournments.

(4) If a party to whom notice has been given pursuant to this section does not attend at the time and place fixed by the notice, the Council may proceed to hear and determine the matter in the absence of that party.

(5) A person who is aggrieved by the conduct of a person that is the subject of proceedings before the Council under this Part is, subject to any direction of the Council to the contrary, entitled to be present at the hearing of the proceedings.

(6) In the course of proceedings before the Council under this Part, the Council may—

(a) receive in evidence a transcript of evidence taken in proceedings before a court, tribunal or other body constituted under the law of South Australia or of any other State or Territory of Australia or of another country, and draw any conclusions of fact from the evidence that it considers proper;

(b) adopt, as in its discretion it considers proper, any findings, decision, judgment, or reasons for judgment, of any such court, tribunal or body that may be relevant to the proceedings.

(7) The Council should conduct proceedings under this Part as expeditiously as possible.

Part 5—Appeals

52—Right of appeal to District Court

(1) An appeal lies to the District Court against—

(a) a refusal by the Council to register, or reinstate the registration of, a person under this Act; or

(b) the imposition by the Council of conditions on a person's registration under this Act; or

(c) a decision made by the Council in proceedings under Part 4.

(2) An appeal under subsection (1)(c) against a decision may be instituted by the complainant or the respondent in the proceedings in which the decision was made.

(3) An appeal must be instituted within one month of the date of the decision appealed against.

53—Operation of order may be suspended

(1) Where an order has been made by the Council, and the Council or the District Court is satisfied that an appeal against the order has been instituted, or is intended, it may suspend the operation of the order until the determination of the appeal.
(2) Where the Council has suspended the operation of an order under subsection (1), the Council may terminate the suspension, and where the District Court has done so, the Court may terminate the suspension.

54—Variation or revocation of conditions imposed by Court

(1) The District Court may, at any time, on application by a registered person, vary or revoke a condition imposed by the Court in relation to the person’s registration under this Act.

(2) The Council, the Minister and representative bodies are entitled to appear and be heard on an application under this section.

Part 6—Miscellaneous

55—Interpretation

In this Part—

*health product* means—

(a) a pharmaceutical product; or

(b) any other product declared by the regulations to be a health product for the purposes of this Part;

*health service* means—

(a) hospital services; or

(b) medical or pharmaceutical services; or

(c) physiotherapy, podiatric, chiropractic or osteopathy services; or

(d) any other service declared by the regulations to be a health service for the purposes of this Part;

*prescribed relative*, in relation to a registered person, means a parent, spouse, child, grandchild, brother or sister of the registered person;

*putative spouse*, in relation to a registered person, means a person who is cohabiting with the registered person as the husband or wife *de facto* of the registered person and—

(a) who has so cohabited continuously over the last preceding period of 5 years, or for periods aggregating 5 years over the last preceding period of 6 years; or

(b) who has had sexual relations with the registered person resulting in the birth of a child;

*spouse* includes a putative spouse.

56—Offence to contravene conditions of registration

A person who contravenes, or fails to comply with, a condition imposed under this Act on the person’s registration is guilty of an offence.

Maximum penalty: $10 000 or imprisonment for 2 years.
57—Offence to give, offer or accept benefit for referral or recommendation

(1) A person must not give, or offer to give, a registered person, or a prescribed relative of a registered person, a benefit as an inducement, consideration or reward for the registered person—

(a) referring a patient to, or recommending that a patient use, a health service provided by the person; or

(b) prescribing, or recommending that a patient use, a health product manufactured, sold or supplied by the person.

Maximum penalty: $75 000.

(2) A registered person, or a prescribed relative of a registered person, must not accept from any person a benefit offered or given as an inducement, consideration or reward for the registered person—

(a) referring a patient to, or recommending that a patient use, a health service provided by that person; or

(b) prescribing, or recommending that a patient use, a health product manufactured, sold or supplied by that person.

Maximum penalty: $75 000.

(3) In this section—

benefit means money, property or anything else of value.

58—Procurement of registration by fraud

A person who, by fraud or any other dishonest means, procures registration or reinstatement of registration under this Act (whether for himself or herself or for another person) is guilty of an offence.

Maximum penalty: $10 000 or imprisonment for 2 years.

59—Statutory declarations

If a person is required under this Act to furnish information to the Council, the Council may require that the information be verified by statutory declaration and, in that event, the person will not be taken to have furnished the information as required unless it has been verified in accordance with the requirements of the Council.

60—False or misleading statement

A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information provided under this Act.

Maximum penalty: $10 000.

61—Registered person must report her or his medical unfitness to Council

If a registered person becomes aware that she or he is or may be medically unfit to practice midwifery, the registered person must forthwith give written notice of that fact to the Council.

Maximum penalty: $10 000.
62—Registered persons to be indemnified against loss

(1) A registered person must not, unless exempted by the Council, practice midwifery for fee or reward unless insured or indemnified in a manner and to an extent approved by the Council against civil liabilities that might be incurred by the registered person in connection with the practice of midwifery.

Maximum penalty: $10 000.

(2) The Council may, subject to such conditions as it thinks fit, exempt a person, or a class of persons, from the requirements of this section and may, whenever it thinks fit, revoke an exemption or revoke or vary the conditions under which an exemption operates.

63—Protection from personal liability

(1) No personal liability is incurred for an act or omission by—

(a) a member of the Council; or
(b) the Registrar or another member of the Council's staff,

in good faith in the performance or purported performance of functions or duties under this Act.

(2) A civil liability that would, but for this section, lie against a person lies instead against the Crown.

64—Immunity from liability

(1) No civil liability arises from a statement made honestly and without malice in a report for the purposes of this Act.

(2) A person who (whether voluntarily or pursuant to a requirement of this Act) provides information concerning a registered person to the Council or the Registrar for the purposes of this Act cannot, by virtue of doing so, be held to have breached any code of professional etiquette or ethics, or to have departed from any accepted form of professional conduct.

65—Information relating to claim against registered person to be provided

If a person has claimed damages or other compensation from a registered person or other person for alleged negligence committed by the registered person in the course of practising midwifery, the registered person must—

(a) within 30 days after the claim is made; and
(b) within 30 days after any order is made by a court to pay damages or other compensation in respect of that claim or any agreement has been entered into for payment of a sum of money in settlement of that claim (whether with or without a denial of liability),

provide the Council with prescribed information relating to the claim.

Maximum penalty: $10 000.
66—Self-incrimination

If a person is required to provide information or to produce a document, record or equipment under this Act and the information, document, record or equipment would tend to incriminate the person or make the person liable to a penalty, the person must nevertheless provide the information or produce the document, record or equipment, but the information, document, record or equipment so provided or produced will not be admissible in evidence against the person in proceedings for an offence, other than an offence against this or any other Act relating to the provision of false or misleading information.

67—Continuing offence

A person convicted of an offence against a provision of this Act in respect of a continuing act is, if the act continues after the conviction, guilty of a further offence against the provision and liable, in addition to the penalty otherwise applicable to the further offence, to a penalty for each day during which the act continued after the conviction of not more than one-tenth of the maximum penalty prescribed for the offence.

68—Punishment of conduct that constitutes an offence

If conduct constitutes an offence and is also a ground for disciplinary action under this Act, the taking of disciplinary action under this Act is not a bar to conviction and punishment for the offence, nor is conviction and punishment for the offence a bar to disciplinary action under this Act.

69—Application of fines

A fine imposed for an offence against this Act must be paid to the Council.

70—Council may require medical examination or report

(1) The Council may, for any purpose associated with the administration or operation of this Act, require a registered person, or a person who is applying for registration or reinstatement of registration, to—

(a) submit to an examination by a health professional, or by a health professional of a class, specified by the Council; or

(b) provide a medical report from a health professional, or from a health professional of a class, specified by the Council,

(including an examination or report that will require the person to undergo some form of medically invasive procedure).

(2) If a person fails to comply with a requirement made under subsection (1), the Council may suspend the person's registration until further order of the Council.

(3) In this section—

health professional means—

(a) a medical practitioner; or

(b) a psychologist; or
(c) any other person who belongs to a profession, or who has an occupation, declared by the Council, by notice in the Gazette, to be a profession or occupation within the ambit of this definition.

71—Ministerial review of decisions relating to courses

1. If the Council—
   (a) refuses to approve a course of education or training for the purposes of this Act; or
   (b) revokes an approval of a course of education or training under this Act, the provider of the course may apply to the Minister for a review of that decision.

2. The Minister may determine the application as the Minister thinks fit and, if the Minister finds in favour of the applicant, grant or preserve the approval (as appropriate).

72—Confidentiality

1. A person engaged or formerly engaged in the administration of this Act must not divulge or communicate personal information obtained (whether by that person or otherwise) in the course of official duties except—
   (a) as required or authorised by or under this Act or any other Act or law; or
   (b) with the consent of the person to whom the information relates; or
   (c) in connection with the administration of this Act or the repealed Act; or
   (d) to an authority responsible under the law of a place outside this State for the registration or licensing of persons who practice midwifery, where the information is required for the proper administration of that law; or
   (e) to an agency or instrumentality of this State, the Commonwealth or another State or a Territory of the Commonwealth for the purposes of the proper performance of its functions.

2. Subsection (1) does not prevent disclosure of statistical or other data that could not reasonably be expected to lead to the identification of any person to whom it relates.

3. Information that has been disclosed under subsection (1) for a particular purpose must not be used for any other purpose by—
   (a) the person to whom the information was disclosed; or
   (b) any other person who gains access to the information (whether properly or improperly and whether directly or indirectly) as a result of that disclosure.

Maximum penalty: $10 000.

73—Service

1. A notice or document required or authorised to be given or sent to, or served on, a person for the purposes of this Act may—
   (a) be given to the person personally; or
(b) be posted in an envelope addressed to the person at the person's last known residential, business or (in the case of a corporation) registered address; or

(c) be left for the person at the person's last known residential, business or (in the case of a corporation) registered address with someone apparently over the age of 16 years; or

(d) be transmitted by facsimile transmission or electronic mail to a facsimile number or electronic mail address provided by the person (in which case the notice or document will be taken to have been given or served at the time of transmission).

(2) Without limiting the effect of subsection (1), a notice or other document required or authorised to be given or sent to, or served on, a person for the purposes of this Act may, if the person is a company or registered body within the meaning of the Corporations Act 2001 of the Commonwealth, be served on the person in accordance with that Act.

74—Evidentiary provision

(1) In proceedings for an offence against this Act or in disciplinary proceedings under Part 4, an allegation in the complaint—

(a) that a person named in the complaint is or is not, or was or was not, on a specified date, a registered person;

(b) that a person named in the complaint is or is not, or was or was not on a specified date, registered on a register;

(c) that the registration of a person named in the complaint is, or was on a specified date, subject to specified conditions;

(d) that a person named in the complaint is, or was on a specified date, an inspector,

must be accepted as proved in the absence of proof to the contrary.

(2) In legal proceedings, a document apparently certified by the Registrar to be a copy of a register under this Act, or a copy of a code of conduct or professional standard prepared or endorsed by the Council under this Act, must be accepted as such in the absence of proof to the contrary.

75—Regulations

(1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.

(2) Without limiting the generality of subsection (1), the regulations may—

(a) prescribe, or empower the Council to fix—

(i) fees or charges for the purposes of this Act;

(ii) fees or charges for services provided by the Council in the exercise of its functions under this Act,

and may provide for the recovery of a fee or charge so prescribed;

(b) exempt any person or class of persons from the obligation to pay a fee or charge so prescribed;
(c) regulate, or otherwise make provision with respect to, the education of midwives for the purposes of this Act, including by making provision with respect to the approval of courses that may lead to registration;

(d) regulate, or otherwise make provision with respect to, independent practice by midwives registered under this Act;

(e) make any provision with respect to the keeping of a register;

(f) regulate the wearing of badges by her or his;

(g) prescribe forms for the purposes of this Act;

(h) prescribe penalties, not exceeding $5 000, for breach of, or non-compliance, with a regulation.

(3) The regulations may—

(a) refer to or incorporate, wholly or partially and with or without modification, a code, standard or other document prepared or published by a prescribed body, either as in force at the time the regulations are made or as in force from time to time; and

(b) be of general or limited application; and

(c) make different provision according to the persons, things or circumstances to which they are expressed to apply; and

(d) provide that a specified provision of this Act does not apply, or applies with prescribed variations, to any person, circumstance or situation (or person, circumstance or situation of a prescribed class) specified by the regulations, subject to any condition to which the regulations are expressed to be subject; and

(e) provide that any matter or thing is to be determined, dispensed with, regulated or prohibited according to the discretion of the Minister, the Council or another prescribed authority.

(4) If a code, standard or other document is referred to or incorporated in the regulations—

(a) a copy of the code, standard or other document must be kept available for public inspection, without charge and during ordinary office hours, at an office or offices specified in the regulations; and

(b) evidence of the contents of the code, standard or other document may be given in any legal proceedings by production of a document apparently certified by the Minister to be a true copy of the code, standard or other document.

Schedule 1—Related amendments and transitional provisions

Part 1—Amendment of Nurses Act 1999

1—Amendment of section 3—Interpretation

(1) Section 3(1), definition of midwife—delete the definition
(2) Section 3(1), definition of *midwifery*—delete the definition

(3) Section 3(1), definition of *midwives register*—delete the definition

(4) Section 3(3)(a)—delete paragraph (a)

2—Amendment of section 16—Functions of the Council

   Section 16(3)(b)—delete paragraph (b)

3—Amendment of section 39—Other restrictions

   Section 39(6) and (7)—delete subsections (6) and (7)

4—Amendment of Schedule—Bodies representing the interests of nurses

   Schedule, clause 1—delete "Australian College of Midwives, Inc."

Part 2—Amendment of *Controlled Substances Act 1984*

5—Amendment of section 4—Interpretation

   Section 4(1)—after the definition of "medical practitioner" insert:

   *midwife* means a person registered under the *Midwives Act 2005*;

6—Amendment of section 18—Sale, supply, administration and possession of

   prescription drugs

   Section 18(1)(a)—delete "or nurse" and substitute:

   , nurse or midwife

7—Amendment of section 31—Prohibition of possession or consumption of

   drug of dependence and prohibited substance

   Section 31(3)(a)—delete "or nurse" and substitute:

   , nurse or midwife

8—Amendment of section 32—Prohibition of manufacture sale etc of drug of

   dependence or prohibited substance

   Section 32(2)(a)—delete "or nurse" and substitute:

   , nurse or midwife

9—Amendment of section 60—Minister may require certain information to be

   given

   (1) Section 60(1)—after "nurse" insert:

       , midwife

   (2) Section 60(2)—delete "or nurse" and substitute:

       , nurse or midwife
Part 3—Transitional provisions

10—Registration of certain nurses as midwives

(1) A person who, immediately before the commencement of Part 1 of this Schedule, was registered on the midwives register under section 22 of the *Nurses Act 1999* may apply to the Council to be registered on the midwives register under this Act.

(2) An application for registration under subsection (1)—
   
   (a) must be in the manner and form determined by the Minister; and
   
   (b) is not subject to any application or registration fee.

(3) Despite a provision of this Act, the Council must, if satisfied that a person applying under subclause (1) was registered on the midwives register under section 22 of the *Nurses Act 1999* at the time the application was made, register the person on the midwives register under this Act.

(4) The registration of a person under subclause (3)—
   
   (a) will be taken to be subject to the same conditions (if any) as the person's registration on the midwives register under section 22 of the *Nurses Act 1999*; and
   
   (b) will be taken to take effect on the date that the application for registration is received by the Council.

(5) For the purposes of this clause, a certificate purporting to be issued by the Nurses Board of South Australia and to certify that a person was, at the time referred to in the certificate, registered on the midwives register under the *Nurses Act 1999* is, in the absence of proof to the contrary, proof of the matters so certified.

(6) The Governor may, by regulation, make additional provisions of a saving or transitional nature consequent on the enactment of this Act.

(7) In this clause—

*Nurses Board of South Australia* means the board of that name established under the *Nurses Act 1999*. 