

(Reprint No. 1)

SOUTH AUSTRALIA

**NURSES ACT 1984**

*This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at 1 January 1994.*

*It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.*

## SUMMARY OF PROVISIONS

### PART 1 PRELIMINARY

1. Short title
2. Commencement
3. Repeal of Nurses Registration Act 1920
4. Interpretation

### PART 2 ADMINISTRATION

#### DIVISION 1—THE NURSES BOARD

5. The Nurses Board
6. Membership of the Board
7. The Chairman
8. Procedures at meetings of the Board
9. Validity of acts of Board and immunity of members
10. Personal interest of member
11. Remuneration, etc., of members
12. Registrar and employees of the Board

#### DIVISION 2—COMMITTEES

13. Committees

#### DIVISION 3—FUNCTIONS AND POWERS OF THE BOARD

14. Functions and powers of the Board
15. Delegation of functions and powers

#### DIVISION 4—EVIDENCE AND PROCEDURE

16. Powers of the Board in relation to witnesses, etc.
17. Principles governing hearings
18. Representation at proceedings before the Board
19. Costs

#### DIVISION 5—ACCOUNTS AND REPORT

20. Accounts and audit
21. Report

### PART 3 REGISTRATION AND ENROLMENT

#### DIVISION 1—RESTRICTIONS RELATING TO THE PROVISION OF NURSING CARE BY UNREGISTERED AND UNENROLLED PERSONS

22. Illegal holding out
23. Restriction in relation to providing nursing care

**DIVISION 2—REGISTRATION AND ENROLMENT**

24. Registration
25. Limitation on right to practise
26. Enrolment as nurse
27. Enrolment as mothercraft nurse

**DIVISION 3—REINSTATEMENT OF REGISTRATION, ENROLMENT OR RIGHT TO PRACTISE**

28. Reinstatement of person on register
29. Board's approval required where nurse has not practised for five years

**DIVISION 4—LIMITED REGISTRATION AND ENROLMENT**

30. Limited registration and enrolment for the purpose of gaining experience or teaching, etc.

**DIVISION 5—PROVISIONAL REGISTRATION OR ENROLMENT**

31. Provisional registration or enrolment

**DIVISION 6—GENERAL**

32. The registers
33. Fees
34. Removal from register or roll on request
35. Removal of name from register or roll on suspension
36. Information to be provided by nurses

**PART 4  
PROCEEDINGS BEFORE THE BOARD**

37. Inquiries by the Board as to competence
38. Incapacity of nurses
39. Obligation to report incapacity
40. Power to require nurse to submit to examination
41. Enquiries by Board as to unprofessional conduct
42. Variation, etc., of conditions imposed by Board
43. Provisions as to inquiries
44. Suspension of registration or enrolment pending determination of complaint

**PART 5  
APPEALS TO THE SUPREME COURT**

45. Appeal to Supreme Court
46. Operation of order may be suspended
47. Variation of conditions imposed by the Court

**PART 6  
MISCELLANEOUS**

48. Penalty for breach of condition
49. Defence where nursing care provided in an emergency
50. Service
51. Procurement of registration or enrolment by fraud
52. Punishment of conduct that constitutes an offence
53. Offences
54. Regulations

**SCHEDULE**

# NURSES ACT 1984

being

Nurses Act 1984 No. 100 of 1984 [Assented to 20 December 1984]<sup>1</sup>

as amended by

Statutes Amendment (Abolition of Compulsory Retirement) Act 1993 No. 75 of 1993 [Assented to 21 October 1993]<sup>2</sup>

<sup>1</sup> Came into operation 5 May 1986: *Gaz.* 1 May 1986, p. 1104.

<sup>2</sup> Came into operation 1 January 1994: s. 2.

**NOTE:**

- Asterisks indicate repeal or deletion of text.
- For the legislative history of the Act see Appendix. Entries appearing in the Appendix in bold type indicate the amendments incorporated since the last reprint.

**An Act to provide for the registration and enrolment of nurses; to regulate nursing for the purpose of maintaining high standards of competence and conduct by nurses in South Australia; to repeal the Nurses Registration Act 1920; and for other purposes.**

The Parliament of South Australia enacts as follows:

**PART 1  
PRELIMINARY**

**Short title**

1. This Act may be cited as the *Nurses Act 1984*.

**Commencement**

2. (1) This Act shall come into operation on a day to be fixed by proclamation.

(2) The Governor may, in a proclamation fixing a day for this Act to come into operation, suspend the operation of specified provisions of this Act until a subsequent day fixed in the proclamation, or a day to be fixed by subsequent proclamation.

**Repeal of Nurses Registration Act 1920**

3. (1) The *Nurses Registration Act 1920* is repealed.

(2) Transitional provisions are set out in the schedule.

**Interpretation**

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

"**the Board**" means the Nurses Board established under this Act;

"**books**" includes papers, documents, films, photographs and other records;

"**enrolled nurse**" means a person whose name is enrolled under this Act as a general nurse (supervised) or a mothercraft nurse;

"**equipment**" includes appliances, instruments, dressings, specimens or substances used in nursing or used in or for the purpose of medical treatment;

"**the former board**" means the Nurses Board of South Australia established under the repealed Act;

"**general nurse**" means a person who is qualified in accordance with this Act to practise in all fields of nursing (other than psychiatric nursing, mental deficiency nursing and midwifery) without supervision;

"**general nurse (supervised)**" means a person who is qualified in accordance with this Act to practise in all fields of nursing under supervision;

"**member**" means a member of the Board;

"**mental deficiency nurse**" means a person who is qualified in accordance with this Act to practise mental deficiency nursing;

**Nurses Act 1984**

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"**mental deficiency nurses register**" means the register maintained under this Act of mental deficiency nurses;

"**mental deficiency nursing**" means nursing care provided to patients suffering from imperfect or retarded development of their mental faculties;

"**midwife**" means a person who is qualified in accordance with this Act to practise midwifery;

"**midwifery**" means nursing care provided to a mother or child in relation to the birth of the child;

"**midwives register**" means the register maintained under this Act of midwives;

"**mothercraft nurse**" means a person whose name is enrolled on the mothercraft nurses roll;

"**mothercraft nurses roll**" means the roll maintained under this Act of persons entitled to provide nursing care under supervision to children below the age of thirteen years;

"**nurse**" means a person who is registered or enrolled under this Act;

"**nurses register**" means the register maintained under this Act of general nurses;

"**nurses roll**" means the roll maintained under this Act of general nurses (supervised);

"**psychiatric nurse**" means a person who is qualified in accordance with this Act to practise psychiatric nursing;

"**psychiatric nurses register**" means the register maintained under this Act of psychiatric nurses;

"**psychiatric nursing**" means nursing care provided to patients suffering from an illness or disorder of the mind;

"**registered nurse**" means a person whose name is registered on a register under this Act;

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

"**the repealed Act**" means the *Nurses Registration Act 1920* repealed by this Act;

"**unprofessional conduct**" includes—

- (a) improper or unethical conduct in relation to nursing; and
- (b) incompetence or negligence in relation to nursing; and
- (c) a contravention of or failure to comply with—
  - (i) a provision of this Act; or
  - (ii) a condition imposed under this Act in relation to the registration or enrolment of a nurse or in relation to the provision of nursing care by a nurse.

(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.

**PART 2  
ADMINISTRATION**

**DIVISION 1—THE NURSES BOARD**

**The Nurses Board**

**5.** (1) There shall be a board entitled the "Nurses Board".

(2) The Board—

(a) shall be a body corporate with perpetual succession and a common seal;

(b) shall be capable of suing and being sued.

(3) Where an apparently genuine document purports to bear the common seal of the Board, it shall be presumed in legal proceedings, in the absence of proof to the contrary, that the document has been duly executed by the Board.

**Membership of the Board**

**6.** (1) The Board shall consist of eleven members appointed by the Governor of whom—

(a) one shall be a general nurse who has been nominated by the South Australian Health Commission; and

(b) one shall be a psychiatric nurse chosen at an election conducted in accordance with the regulations by psychiatric nurses; and

(c) one shall be a mental deficiency nurse chosen at an election conducted in accordance with the regulations by mental deficiency nurses; and

(d) four shall be nurses (one of whom shall be an enrolled nurse) nominated by the Royal Australian Nursing Federation (S.A. Branch); and

(e) one shall be a medical practitioner selected by the Minister from a panel of three medical practitioners nominated by the South Australian Branch of the Australian Medical Association Incorporated; and

(f) one shall be a medical practitioner who is a member of the Royal Australian and New Zealand College of Psychiatrists nominated by the Minister; and

(g) one shall be a person nominated by the South Australian Hospitals Association Incorporated; and

(h) one shall be a person nominated by the Minister who is neither a nurse nor a medical practitioner.

(2) Every psychiatric nurse or mental deficiency nurse shall be entitled to vote at an election under subsection (1)(b) or (c).

(3) A member shall be appointed for a term not exceeding three years upon such conditions as the Governor determines and at the expiration of his term of office shall be eligible for reappointment.

(4) The Governor may appoint a person to be a deputy of a member and the deputy may, in the absence of that member, act as a member of the Board.

(5) The requirements of this section in relation to the qualification and nomination or selection of a member extend to a deputy of that member.

(6) The Governor may remove a member from office for—

- (a) a breach of, or non-compliance with, the conditions of his appointment; or
- (b) mental or physical incapacity to carry out satisfactorily the duties of his office; or
- (c) neglect of duty; or
- (d) dishonourable conduct.

(7) The office of a member becomes vacant if—

- (a) he dies; or
- (b) his term of office expires; or

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- (d) he resigns by written notice to the Minister; or
- (e) he ceases to satisfy the qualification referred to in this section by virtue of which he was eligible for nomination; or
- (f) he is removed from office by the Governor pursuant to subsection (6).

(8) Upon the office of a member becoming vacant, a person shall be appointed in accordance with this Act to the vacant office.

(9) A member of the Board who is one of the members constituting the Board for the purposes of proceedings under Part 4 and whose term of office expires before those proceedings have been completed may, for the purpose of continuing and completing those proceedings, continue to act as a member of the Board.

**The Chairman**

7. The Minister shall appoint one of the members of the Board who is a registered nurse to be the Chairman of the Board.

**Procedures at meetings of the Board**

8. (1) Six members shall constitute a quorum at a meeting of the Board.

(2) The Chairman shall preside at a meeting of the Board at which he is present and, in the absence of the Chairman from a meeting, the members present shall decide who is to preside at the meeting.

**Nurses Act 1984**

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(3) A question arising before the Board shall be determined in accordance with the opinion of a majority of the members present or, where they are equally divided in opinion, in accordance with the opinion of the person presiding at the meeting.

(4) The Board shall cause accurate minutes to be kept of the business conducted at its meetings.

(5) Subject to this Act, the procedure for the calling of meetings of the Board and the conduct of business at meetings of the Board shall be determined by the Board.

**Validity of acts of Board and immunity of members**

**9.** (1) No act or proceeding of the Board is invalid by reason only of a vacancy in the office of a member, or a defect in the appointment of a member.

(2) No liability attaches to a member or the Registrar for any act or omission by him, or by the Board, in good faith and in the exercise of his or its powers or functions or in the discharge of his or its duties under this Act.

**Personal interest of member**

**10.** A member who has a personal interest, or a direct or indirect pecuniary interest, in a matter under consideration by the Board is disqualified from participating in the Board's consideration of that matter.

**Remuneration, etc., of members**

**11.** A member is entitled to such remuneration, allowances and expenses as are determined by the Governor.

**Registrar and employees of the Board**

**12.** (1) The Board shall appoint a suitable person, on such conditions as it determines, to be the Registrar of the Board.

(2) The Board may employ such other persons as, in its opinion, are necessary to assist it in carrying out its functions under this Act.

(3) Employees of the Board shall be employed on conditions that are not less favourable to them than those applying to the employment of persons under the *Public Service Act 1967* and under the *South Australian Health Commission Act 1975*.

(4) Those persons who were employees of the former board immediately before the repeal of the repealed Act—

(a) shall be deemed to have been employed by the Board from the commencement of this Act without reduction in salary or status; and

(b) shall not suffer loss of accrued or accruing leave entitlements.

**DIVISION 2—COMMITTEES**

**Committees**

**13.** (1) The Board may establish committees to advise the Board on any matter related to the administration of this Act or to carry out functions on behalf of the Board.

(2) The Board may appoint a person who is not a member of the Board to be a member of a committee.

### **DIVISION 3—FUNCTIONS AND POWERS OF THE BOARD**

#### **Functions and powers of the Board**

**14.** (1) The functions of the Board are as follows:

- (a) to prepare syllabuses and courses to enable persons wishing to apply for registration or enrolment under this Act to acquire the necessary qualifications, experience and skill;
- (b) to make recommendations to the Governor in relation to regulations prescribing the qualifications, experience and other requirements to be fulfilled by persons applying for registration or enrolment under this Act;
- (c) to make recommendations to the Governor in relation to the making of other regulations under this Act;
- (d) to establish and maintain registers and rolls of persons qualified to practise nursing in accordance with this Act;
- (e) to carry out such other functions as are prescribed by this Act.

(2) The Board shall exercise its functions under this Act with a view to—

- (a) ensuring that the community is adequately provided with nursing care of the highest standard; and
- (b) achieving and maintaining the highest professional standards both of competence and conduct in nursing.

(3) For the purposes of this Act, the Board may—

- (a) acquire, hold, deal with and dispose of real and personal property;
- (b) enter into any kind of contract or arrangement;
- (c) acquire or incur any other rights or liabilities;
- (d) exercise such other powers as are vested in it under this Act or are necessary for, or incidental to, the efficient discharge of its functions.

#### **Delegation of functions and powers**

**15.** (1) The Board may delegate any of its functions or powers except those relating to proceedings under Part 4.

**Nurses Act 1984**

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(2) A delegation under this section—

(a) may be made—

(i) to a member, to the Registrar or to an employee of the Board; or

(ii) to a committee established by the Board under this Act; and

(b) may be made subject to such conditions as the Board thinks fit; and

(c) is revocable at will and does not derogate from the power of the Board to act in any matter itself.

(3) A person to whom functions or powers are delegated under this section is disqualified from acting in pursuance of the delegation in relation to any matter in which he has a personal interest or a direct or indirect pecuniary interest.

**DIVISION 4—EVIDENCE AND PROCEDURE**

**Powers of the Board in relation to witnesses, etc.**

**16.** (1) For the purpose of proceedings before the Board (including an application for registration, enrolment or reinstatement), the Board may—

(a) by summons signed on behalf of the Board by a member, or the Registrar, require the appearance before the Board of any person or the production to the Board of any relevant books or equipment; or

(b) inspect any books or equipment produced to it, and retain them for such reasonable period as it thinks fit, and make copies of the books, or of any of their contents; or

(c) require a person appearing before the Board to make an oath or affirmation that he will truly answer all questions put to him relating to any matter in issue before the Board (which oath or affirmation may be administered by a member or the Registrar); or

(d) require a person appearing before the Board to answer any relevant questions put to him by a member, or by a party or a person appearing on behalf of a party to a proceeding before the Board.

(2) Upon 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 Board, issue a summons on behalf of the Board.

(3) If a person—

(a) who has been served with a summons to appear before the Board fails, without reasonable excuse, to appear in obedience to the summons; or

(b) who has been served with a summons to produce relevant books or equipment fails, without reasonable excuse, to comply with the summons; or

(c) misbehaves himself before the Board, wilfully insults the Board or any member of the Board, or interrupts the proceedings of the Board; or

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

he shall be guilty of an offence and liable to a penalty not exceeding five thousand dollars or imprisonment for six months.

(4) If a person summoned as mentioned in subsection (1) fails to produce any books or equipment or to appear before the Board as required by the summons, or having appeared refuses to be sworn or to affirm, or to answer a relevant question when required to do so by the Board, a certificate of the failure or refusal, signed by a member of the Board or by the Registrar, may be filed in the Supreme Court.

(5) Where a certificate has been filed under subsection (4), a party requiring the production of books or equipment or the appearance of a person before the Board may apply (either *ex parte* or on notice) to the Supreme Court for an order directing the production of the books or equipment or that that person attend, or be sworn or affirm, or answer questions (as the case may require) and on that application the Court may make such orders as it thinks fit (including orders for costs).

(6) A person may be required to answer a question by the Board notwithstanding that the answer to that question might tend to incriminate him, or to produce any books or equipment notwithstanding that they might tend to incriminate him, but if that person objects to answering any question a note of that objection shall be taken down in the minutes of the proceedings, and the answer shall not be admissible against him in any criminal proceedings (except in proceedings for perjury).

### **Principles governing hearings**

17. (1) The Board is not bound by the rules of evidence and may inform itself on any matter as it thinks fit.

(2) Subject to this Act, the procedure of the Board upon the hearing of proceedings under this Act shall be as determined by the Board.

(3) On the hearing of proceedings, the Board shall act according to equity, good conscience and the substantial merits of the case.

### **Representation at proceedings before the Board**

18. Subject to this Act, a party to proceedings before the Board (including an applicant for registration, enrolment or reinstatement) shall be entitled to be represented at the hearing of those proceedings.

### **Costs**

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

(2) If a party is dissatisfied with the amount of the costs fixed by the Board, he may request a master of the Supreme Court to tax the costs and, after taxing the costs, the master may confirm or vary the amount of the costs fixed by the Board.

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

**DIVISION 5—ACCOUNTS AND REPORT**

**Accounts and audit**

20. (1) The Board shall cause proper accounts to be kept of its financial affairs.

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

**Report**

21. (1) The Board shall, on or before the thirtieth day of September in each year, deliver to the Minister a report upon the administration of this Act during the period of twelve months that ended on the preceding thirtieth day of June.

(2) The report must incorporate the audited statement of accounts kept by the Board in relation to the relevant period.

(3) The Minister shall cause a copy of the report to be laid before each House of Parliament within fourteen sitting days after it has been delivered to him.

**PART 3  
REGISTRATION AND ENROLMENT**

**DIVISION 1—RESTRICTIONS RELATING TO THE PROVISION OF NURSING  
CARE BY UNREGISTERED AND UNENROLLED PERSONS**

**Illegal holding out**

**22.** (1) No person shall hold himself out or permit another person to hold him out as a general nurse, a psychiatric nurse, a mental deficiency nurse or a midwife unless he is registered on the nurses register, the psychiatric nurses register, the mental deficiency nurses register or the midwives register (as the case may require).

Penalty: Five thousand dollars or imprisonment for six months.

(2) No person shall hold out another person as a general nurse, a psychiatric nurse, a mental deficiency nurse or a midwife unless that other person is registered on the nurses register, the psychiatric nurses register, the mental deficiency nurses register or the midwives register (as the case may require).

Penalty: Five thousand dollars or imprisonment for six months.

(3) No person shall hold himself out or permit another person to hold him out as a general nurse (supervised) or a mothercraft nurse unless he is enrolled on the nurses roll or the mothercraft nurses roll (as the case may require).

Penalty: Five thousand dollars or imprisonment for six months.

(4) No person shall hold out another person as a general nurse (supervised) or a mothercraft nurse unless that other person is enrolled on the nurses roll or the mothercraft nurses roll (as the case may require).

Penalty: Five thousand dollars or imprisonment for six months.

**Restriction in relation to providing nursing care**

**23.** (1) No person may recover a fee or other charge for nursing care provided by him unless he was, at the time at which he provided that care, a qualified person.

(2) Subsection (1) does not apply to—

(a) nursing care provided through the instrumentality of a qualified person or an authorised person by a person carrying on the business of a hospital, health centre, nursing home or community health service; or

(b) nursing care provided in prescribed circumstances or by prescribed persons.

(3) The Minister may, by notice published in the *Gazette*—

(a) authorise a person, or a class of persons, to provide nursing care at a hospital, health centre, nursing home or on behalf of a community health service under the supervision of a registered nurse of a particular class;

**Nurses Act 1984**

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- (b) attach such conditions as he thinks fit to such an authorisation;
- (c) vary or revoke an authorisation granted under this section.

(4) In this section—

"**authorised person**" means a person to whom an authorisation under subsection (3) relates;

"**community health service**" means a body of persons (whether corporate or unincorporate) established on a non-profit basis to provide health services to the community or a section of the community;

"**qualified person**", in relation to nursing care, means a person registered or enrolled under this Act or any other Act as a person qualified, in the circumstances under which the nursing care is provided, to provide that nursing care.

**DIVISION 2—REGISTRATION AND ENROLMENT**

**Registration**

**24.** (1) A natural person who satisfies the Board that he—

- (a) has the prescribed qualifications and experience and fulfils all other prescribed requirements for registration as a general nurse, a psychiatric nurse, a mental deficiency nurse or a midwife; and
- (b) is otherwise a fit and proper person to be so registered,

shall, subject to this Act, be registered as a general nurse, a psychiatric nurse, a mental deficiency nurse or a midwife (as the case may require).

(2) Registration as a general nurse authorises the nurse—

- (a) to practise in all fields of nursing (other than psychiatric nursing, mental deficiency nursing and midwifery) without supervision;
- (b) to practise in the fields of psychiatric nursing, mental deficiency nursing and midwifery under the supervision of a psychiatric nurse, mental deficiency nurse or a midwife (as the case requires).

(3) Registration as a psychiatric nurse authorises the nurse to practise psychiatric nursing.

(4) Registration as a mental deficiency nurse authorises the nurse to practise mental deficiency nursing.

(5) Registration as a midwife authorises the nurse to practise midwifery.

**Limitation on right to practise**

**25.** (1) A registered nurse shall not, without the written authority of the Board—

- (a) in the case of a general nurse—practise psychiatric nursing, mental deficiency nursing or midwifery unless he is supervised by, or is registered as, a psychiatric nurse, a mental deficiency nurse or a midwife (as the case may require);

- (b) in the case of a psychiatric nurse, a mental deficiency nurse or a midwife—practise in any field of nursing in which he is not authorised to practise by this Act.

Penalty: Five thousand dollars.

(2) The Board may, subject to such conditions as it thinks fit—

- (a) authorise a general nurse to practise psychiatric nursing, mental deficiency nursing or midwifery without supervision;
- (b) authorise a psychiatric nurse, a mental deficiency nurse or a midwife to practise in any other field of nursing,

and may vary or revoke an authorisation, or a condition to which it is subject, at any time.

### **Enrolment as nurse**

26. (1) A natural person who satisfies the Board that he—

- (a) has prescribed qualifications and experience and fulfils all other prescribed requirements for enrolment as a general nurse (supervised); and
- (b) is otherwise a fit and proper person to be so enrolled,

shall, subject to this Act, be enrolled as a general nurse (supervised).

(2) Enrolment as a general nurse (supervised) authorises the nurse to practise in all fields of nursing under the supervision of a registered nurse who is authorised by this Act to practise in that field.

(3) A general nurse (supervised) shall not practise nursing unless he is supervised as required by subsection (2).

Penalty: Five thousand dollars.

### **Enrolment as mothercraft nurse**

27. (1) A person who, immediately before the repeal of the *Nurses Registration Act 1920*, was enrolled on The Mothercraft Nurses Roll under that Act shall, from the repeal of that Act, be deemed to be enrolled on the mothercraft nurses roll under this Act.

(2) A person whose name was removed from The Mothercraft Nurses Roll under the repealed Act for any reason and whose name had not, before the repeal of that Act, been reinstated on that roll, may apply under this Act for enrolment on the mothercraft nurses roll.

(3) A mothercraft nurse may provide nursing care under the supervision of a registered nurse to a child below the age of thirteen years.

(4) A mothercraft nurse who practises nursing in contravention of subsection (3) is guilty of an offence.

Penalty: Five thousand dollars.

**DIVISION 3—REINSTATEMENT OF REGISTRATION, ENROLMENT OR  
RIGHT TO PRACTISE**

**Reinstatement of person on register**

**28.** (1) A person whose name has been removed from a register or roll—

- (a) at his request; or
- (b) on his failure to pay the practice fee,

may apply to the Board at any time for the reinstatement of his name on the appropriate register or roll.

(2) A person whose registration or enrolment has been suspended may apply to the Board for the reinstatement of his name on the appropriate register or roll after the period of suspension has expired.

(3) A person whose registration or enrolment has been cancelled for unprofessional conduct may not apply to the Board for reinstatement of his name on the register or roll before the expiration of two years after the cancellation.

(4) The Board shall, subject to subsection (5), reinstate the name of a person who applies under this section if it is satisfied that—

- (a) he has sufficient knowledge and experience, and is able to exercise the necessary degree of skill required, for the provision of the nursing care that he will be entitled to provide after reinstatement; and
- (b) he is a fit and proper person to be registered or enrolled under this Act.

(5) Before granting an application under this section, the Board may require the applicant to obtain qualifications and experience specified by the Board and for that purpose may require the applicant to undertake a specified course of instruction and training in nursing.

**Board's approval required where nurse has not practised for five years**

**29.** (1) A registered or enrolled nurse who has not practised nursing for a period of five years or more shall not practise nursing without first obtaining the approval of the Board.

Penalty: Five thousand dollars.

(2) The Board may—

- (a) before granting its approval under subsection (1), require the nurse to obtain qualifications and experience specified by the Board and for that purpose may require the nurse to undertake a specified course of instruction and training in nursing;
- (b) make its approval subject to one or more of the following conditions:
  - (i) a condition restricting the places or times at which the nurse may provide nursing care;
  - (ii) a condition limiting the field of nursing in which he may practise;

- (iii) a condition that he be supervised when providing nursing care by a particular person or by a person of a particular class;
- (iv) such other conditions as the Board thinks fit.

#### **DIVISION 4—LIMITED REGISTRATION AND ENROLMENT**

##### **Limited registration and enrolment for the purpose of gaining experience or teaching, etc.**

**30.** (1) Where a person who applies for registration or enrolment, or reinstatement of registration or enrolment, under this Act does not have the necessary qualifications or experience or does not fulfil the other requirements prescribed by or under this Act, the Board may register or enrol that person in pursuance of this section—

- (a) in order to enable him—
  - (i) to acquire the experience and skill required for full registration or enrolment under this Act; or
  - (ii) to teach or to undertake research or study in South Australia; or
- (b) if, in its opinion, his registration or enrolment is in the public interest.

(2) Where a person applies for registration or enrolment, or reinstatement of registration or enrolment, under this Act but has not satisfied the Board that he is a fit and proper person to be registered or enrolled unconditionally, but otherwise fulfils the requirements prescribed by or under this Act for registration or enrolment, the Board may register or enrol that person in pursuance of this section.

(3) When granting an application referred to in subsection (1) or (2), the Board may—

- (a) restrict the places and times at which the applicant may provide nursing care; or
- (b) limit the fields of nursing in which he may provide nursing care; or
- (c) limit the period during which the registration or enrolment will have effect; or
- (d) impose a condition requiring that he be supervised when providing nursing care by a particular person or by a person of a particular class; or
- (e) impose such other conditions as the Board thinks fit.

#### **DIVISION 5—PROVISIONAL REGISTRATION OR ENROLMENT**

##### **Provisional registration or enrolment**

**31.** (1) Where a person has applied for registration or enrolment under this Act, the Registrar may, if in his opinion the Board is likely to grant the application, provisionally register or enrol the applicant.

(2) The registration or enrolment of a person registered or enrolled pursuant to subsection (1) shall remain in force until the Board determines the application.

(3) The registration or enrolment by the Board under this Act of a person who was provisionally registered or enrolled under this section shall have effect from the commencement of the provisional registration or enrolment.

#### **DIVISION 6—GENERAL**

##### **The registers**

**32.** (1) The registers and rolls shall be kept at the office of the Registrar and shall, during office hours, be available for inspection by any person on payment of the prescribed fee.

(2) A registered nurse or an enrolled nurse shall, within three months after changing his address, inform the Registrar in writing of the change.

Penalty: One hundred dollars.

(3) A certificate stating that a person was, or was not, registered or enrolled under this Act as at a particular date or during a particular period and purporting to be signed by the Registrar shall, in legal proceedings in the absence of proof to the contrary, be accepted as proof of the registration or enrolment of that person, or of the fact that that person was not registered or enrolled, on the date, or during the period, stated in the certificate.

##### **Fees**

**33.** (1) subject to this Act, a person shall not be registered or enrolled, nor shall a registration or enrolment be reinstated, until the prescribed registration, enrolment or reinstatement fee and the prescribed practice fee have been paid.

(2) Every person registered or enrolled under this Act shall, before the date fixed by the Board for that purpose, pay to the Board the prescribed practice fee and the Board may remove from the register the name of a person who fails to do so.

(3) The Governor may, by regulation, exempt a person or a class of persons from the obligation to pay a fee under this section.

##### **Removal from register or roll on request**

**34.** The Registrar shall, at the request of a registered or enrolled nurse, remove his name from the register or roll.

##### **Removal of name from register or roll on suspension**

**35.** Upon the suspension of the registration or enrolment of a nurse, his name shall be removed by the Registrar from the register or the roll.

##### **Information to be provided by nurses**

**36.** (1) The Board may, at any time, require a nurse to supply it with prescribed information relating to his employment as a nurse.

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

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

Penalty: One thousand dollars.

**PART 4  
PROCEEDINGS BEFORE THE BOARD**

**Inquiries by the Board as to competence**

**37.** (1) A complaint alleging that within a period of twelve months immediately preceding the laying of the complaint a nurse has provided nursing care without having or exercising adequate or sufficient knowledge, experience or skill may be laid before the Board by—

- (a) the Registrar; or
- (b) the Minister; or
- (c) the Royal Australian Nursing Federation (S.A. Branch); or
- (d) a nurse.

(2) Where a complaint has been laid under this section, the Board shall, unless it considers the complaint frivolous or vexatious, inquire into the subject matter of the complaint.

(3) If, after conducting an inquiry under this section, the Board is satisfied that the matters alleged in the complaint have been established, it may, by order, impose conditions restricting the right of the nurse to provide nursing care.

**Incapacity of nurses**

**38.** Where, on the application of—

- (a) the Registrar; or
- (b) the Minister; or
- (c) the Royal Australian Nursing Federation (S.A. Branch); or
- (d) a nurse,

the Board is satisfied that the ability of a nurse to provide nursing care is impaired by mental or physical incapacity to such an extent that it is desirable, in the public interest, that an order be made under this section, the Board may, by order, exercise one or both of the following powers:

- (e) suspend his registration or enrolment until he has recovered from the incapacity or for such lesser period as the Board determines; or
- (f) impose conditions restricting his right to provide nursing care.

**Obligation to report incapacity**

**39.** Where a medical practitioner is treating a nurse in relation to an illness that, in the opinion of the medical practitioner, has resulted in or is likely to result in mental or physical incapacity that seriously impairs, or may seriously impair, his patient's ability to provide nursing care, he shall submit a written report to the Board stating—

**Nurses Act 1984**

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- (a) his reasons for that opinion; and
- (b) the views of any other medical practitioner in relation to the matter that are known to him; and
- (c) all other prescribed information.

Penalty: One thousand dollars.

**Power to require nurse to submit to examination**

**40.** (1) For the purposes of inquiring into the mental or physical capacity of a nurse under this Part, the Board may (without derogation from its other powers under this Act) order the nurse to submit to an examination by a medical practitioner appointed by the Board.

(2) The Board may suspend the registration or enrolment of a nurse who fails to submit to an examination ordered by it under subsection (1) and that suspension shall remain in force until he submits to the examination.

**Enquiries by Board as to unprofessional conduct**

**41.** (1) A complaint alleging unprofessional conduct—

- (a) on the part of a nurse; or
- (b) on the part of a person who was at the relevant time a nurse,

may be laid before the Board by—

- (c) the Registrar; or
- (d) the Minister; or
- (e) the Royal Australian Nursing Federation (S.A. Branch).

(2) Where a complaint has been laid under this section, the Board shall, unless it considers the complaint frivolous or vexatious, inquire into the subject matter of the complaint.

(3) If, after conducting an inquiry under this section, the Board is satisfied that the nurse, or former nurse, is guilty of the unprofessional conduct alleged against him—

- (a) it may, in the case of a nurse, by order, exercise one or more of the following powers:
  - (i) reprimand the nurse;
  - (ii) order the nurse to pay a fine not exceeding five thousand dollars;
  - (iii) impose conditions restricting his right to provide nursing care;
  - (iv) suspend the registration or enrolment of nurse by removing his name from the register or the roll for a period not exceeding one year;
  - (v) cancel the registration or enrolment of the nurse; or

- (b) it may, in the case of a former nurse, order him to pay a fine not exceeding five thousand dollars.

**Variation, etc., of conditions imposed by Board**

42. (1) The Board may, at any time, on application by a nurse, vary or revoke a condition imposed by the Board under this Part or under Part 3 in relation to the provision of nursing care by him.

(2) The Registrar, the Minister and the Royal Australian Nursing Federation (S.A. Branch) shall be entitled to appear and be heard on an application under this section.

**Provisions as to inquiries**

43. (1) The Board shall give to all of the parties to proceedings under this Part not less than fourteen days written notice of the time and place at which it intends to conduct the proceedings, and shall afford to the parties a reasonable opportunity to call and give evidence, to examine or cross-examine witnesses, and to make submissions to the Board.

(2) If a party to whom notice has been given pursuant to subsection (1) does not attend at the time and place fixed by the notice, the Board may proceed to hear and determine the complaint or application in the absence of that party.

(3) In the course of proceedings the Board 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 the Commonwealth 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.

**Suspension of registration of enrolment pending determination of complaint**

44. Where—

- (a) a complaint against a nurse who was registered or enrolled pursuant to legislation that corresponds to this Act in another State or Territory of the Commonwealth or in another country has been laid before the Board; and
- (b) the registration or enrolment of that person in that other State, Territory or country was suspended or cancelled by reason of conduct that is the subject matter of the complaint before the Board,

the Board may suspend the registration or enrolment of the nurse under this Act pending the determination of the complaint by the Board.

**PART 5**  
**APPEALS TO THE SUPREME COURT**

**Appeal to Supreme Court**

**45.** (1) Subject to subsection (2), a right of appeal to the Supreme Court lies against—

- (a) (i) a refusal by the Board to register or enrol, or to reinstate the registration or enrolment of, a person under this Act;
  - (ii) the imposition by the Board of conditions in respect of registration or enrolment;
  - (iii) the refusal by the Board to give its approval to a nurse to practise nursing after an absence of five years or more or the imposition by the Board of conditions in relation to such an approval; or
- (b) a reprimand or order administered or made by the Board in proceedings under Part 4.

(2) An appeal must be instituted within sixty days of the date of the decision appealed against, but the Supreme Court may, if it is satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that the appeal should be instituted within that time.

(3) The Supreme Court may, on the hearing of an appeal, exercise any one or more of the following powers:

- (a) affirm, vary or quash the decision, reprimand or order against which the appeal has been instituted and make any consequential or other order that may be just in the circumstances;
- (b) remit the subject matter of the appeal to the Board for further hearing or consideration or for rehearing;
- (c) make any order as to costs.

(4) When ordering the remission of the subject matter of an appeal to the Board for rehearing, the Court may disqualify a member from hearing the matter and, in that case, the deputy of that member may, if he is not also disqualified, take the place of that member for the purpose of the hearing.

**Operation of order may be suspended**

**46.** (1) Where an order has been made by the Board and an appeal against the order has been instituted, or is intended, the operation of the order may be suspended until the determination of the appeal.

(2) A suspension under subsection (1) may be terminated—

- (a) if the intended appeal is not in fact instituted; or
- (b) if the appeal is withdrawn or lapses.

(3) A suspension may be granted or terminated under this section by the Board or by the Supreme Court.

**Variation of conditions imposed by the Court**

**47.** (1) The Supreme Court may, at any time, on application by a nurse, vary or revoke a condition imposed by the Court in relation to the provision of nursing care by him.

(2) The Board, the Minister and the Royal Australian Nursing Federation (S.A. Branch) shall be entitled to appear and be heard on an application under this section.

**PART 6  
MISCELLANEOUS**

**Penalty for breach of condition**

**48.** A nurse who contravenes or fails to comply with a condition imposed under this Act in relation to the provision of nursing care by him is guilty of an offence.

Penalty: Five thousand dollars.

**Defence where nursing care provided in an emergency**

**49.** It shall be a defence to a charge that a nurse provided nursing care contrary to this Act or in contravention of a condition imposed under this Act for the nurse to prove that the nursing care was provided in an emergency.

**Service**

**50.** A notice or other document that is required by this Act to be given or served on a nurse shall be properly given or served if it is sent by certified mail to the nurse at his address appearing in the register or roll.

**Procurement of registration or enrolment by fraud**

**51.** A person who by fraud or any other dishonest means procures his registration or enrolment or the registration or enrolment of another person under this Act (whether that registration or enrolment is procured on initial application or on application for reinstatement) shall be guilty of an offence.

Penalty: Five thousand dollars.

**Punishment of conduct that constitutes an offence**

**52.** Where 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.

**Offences**

**53.** Offences against this Act shall be disposed of summarily.

**Regulations**

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

(2) Without limiting the generality of the foregoing, those regulations may—

- (a) prescribe qualifications, experience and other requirements for the purpose of the registration or enrolment of any person or class of persons under this Act; and
- (b) prescribe (or empower the Board to fix) fees or charges for the purposes of this Act and may provide for the recovery of a fee or charge so prescribed or fixed; and
- (c) prescribe information that shall be included in a register maintained under this Act; and
- (d) prescribe any form for the purposes of this Act; and

- (e) regulate, restrict or prohibit the publication of advertisements by or on behalf of nurses; and
- (f) prescribe penalties, not exceeding five thousand dollars, for breach of, or non-compliance with, a regulation.

(3) A regulation under subsection (2)(a) may empower the Board to approve the hospitals, health centres, and tertiary or other institutions at which applicants for registration or enrolment must gain the experience required for registration or enrolment under this Act.

(4) This section is in addition to, and does not derogate from, any other provision of this Act providing for the making of regulations.

**Nurses Act 1984**

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**SCHEDULE**

*Transitional Provisions*

(1) All property, rights and liabilities vested in or attached to the former board immediately before the repeal of the repealed Act shall, upon the commencement of this Act, vest in or attach to the Board.

(2) A reference in an instrument (whether or not of a statutory nature) to the former board shall, where the context admits, be construed as a reference to the Board.

(3) A person registered on a register under the repealed Act immediately before the commencement of this Act shall be deemed to have been registered on the corresponding register under this Act.

(4) A person enrolled on the Nurses Roll under the repealed Act immediately before the commencement of this Act shall be deemed to have been enrolled on the nurses roll under this Act.

(5) The name of a person deemed to have been registered or enrolled by virtue of clauses 3 or 4 shall, without payment of a fee, be entered in the appropriate register or roll under this Act.

(6) Where a person whose name was removed from a register or roll under the repealed Act for any reason and whose name had not, before the repeal of the repealed Act, been reinstated on that register or roll, applies for registration or enrolment under this Act, the Board may deal with the application as though it were an application for reinstatement under this Act.

## **APPENDIX**

### **LEGISLATIVE HISTORY**

Section 6(7)(c):

repealed by 75, 1993, s. 18(a)

Section 6(9):

amended by 75, 1993, s. 18(b)