

South Australia

## **Nurses Act 1999**

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; and for other purposes.

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## Legislative history

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### The Parliament of South Australia enacts as follows:

## Part 1—Preliminary

### 1—Short title

This Act may be cited as the *Nurses Act 1999*.

### 3—Interpretation

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

**Board** means the *Nurses Board of South Australia* established under this Act;

**enrolled nurse** means a person whose name is on the nurses roll;<sup>1</sup>

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

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

**health professional** means—

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

**medical practitioner** means a legally qualified medical practitioner;

**mental health nurse** means a person who is authorised under this Act to practise mental health nursing;

**mental health nurses register**—see section 22(3)(c);

**mental health nursing** means nursing care provided to a person in the field of mental health;

**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;

**midwives register**—see section 22(3)(b);

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

**nurses roll** or **roll** means the roll under section 22(1)(b);

**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** means registered under this Act;

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

**special practice area**—see subsection (3);

**State** includes a Territory;

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

**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 code of conduct or professional standard endorsed by the Board under this Act; or
  - (iii) 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.

(3) For the purposes of this Act, the following are special practice areas:

- (a) midwifery;
- (b) mental health nursing;

- (c) any other area of nursing recognised by the Board as being a special practice area (see section 16).

**Note—**

- 1 An enrolled nurse is (subject to this Act) authorised to practise in the field of nursing under the supervision of a registered nurse (or under special arrangements approved by the Board).

## **Part 2—Nurses Board of South Australia**

### **Division 1—Establishment of Board**

#### **4—Establishment of Board**

- (1) The *Nurses Board of South Australia* is established.
- (2) The Board—
  - (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 the functions and powers assigned or conferred by or under this Act.
- (3) If a document appears to bear the common seal of the Board, it will be presumed, in the absence of proof to the contrary, that the common seal of the Board was duly affixed to the document.

### **Division 2—The Board's membership**

#### **5—Composition of Board**

- (1) The Board consists of 11 members<sup>1</sup> appointed by the Governor of whom—
  - (a) one must be a person with nursing qualifications nominated by the Minister to be the presiding member of the Board; and
  - (b) five must be nurses registered or enrolled under this Act chosen at an election conducted in accordance with the regulations; and
  - (c) one must be a medical practitioner; and
  - (d) one must be a legal practitioner; and
  - (e) three must be persons, nominated by the Minister, who are not eligible for appointment under paragraphs (b), (c) or (d).
- (2) At least one member of the Board must be a woman and at least one must be a man.
- (3) An election under subsection (1)(b) must be conducted in accordance with principles of proportional representation.
- (4) Every person registered or enrolled under this Act will be entitled to vote at an election under subsection (1)(b).
- (5) The Governor may appoint a member of the Board under subsection (1)(b) to be the deputy presiding member of the Board.

- (6) Subject to subsection (8), if a casual vacancy occurs in the office of a member of the Board appointed under subsection (1)(b), the Governor may fill the vacancy by appointing a registered or enrolled nurse nominated by the Minister.
- (7) The Minister must consult with the bodies representing the interests of nurses referred to in the Schedule before making a nomination under subsection (6).
- (8) If a casual vacancy occurs in the office of a member of the Board appointed under subsection (1)(b) within 12 months of that member's election under that subsection, the Governor must, subject to subsection (9), appoint the person who was the sole candidate not elected or excluded after the election of the fifth person at the election in which the member was elected.
- (9) If a person who would otherwise be appointed under subsection (8) is no longer qualified to be appointed, or is unavailable or unwilling to be appointed, then the Governor must appoint the last excluded person at the election in which the member was elected, or, if that person is no longer qualified to be appointed, or is unavailable or unwilling to be appointed, the second-last excluded person, and so on.
- (10) If there is no person qualified, or available or willing, to be appointed under subsection (9), then the Governor may make an appointment under subsection (6).
- (11) A person appointed to a casual vacancy under subsection (6), (8) or (9) will hold office for the balance of the term of that person's predecessor.

**Note—**

- 1 This number is subject to any appointment under Part 5.

## **6—Terms and conditions of membership**

- (1) A member of the Board will be appointed on conditions determined by the Governor and for a term, not exceeding three years, specified in the instrument of appointment and, at the expiration of a term of appointment, is eligible for reappointment.
- (2) The Governor may remove a member of the Board from office—
  - (a) for breach of, or non-compliance with, a condition of appointment; or
  - (b) for misconduct; or
  - (c) for failure or incapacity to carry out official duties satisfactorily; or
  - (d) if serious irregularities have occurred in the conduct of the Board's affairs or the Board has failed to carry out its functions satisfactorily and the Board's membership should, in the opinion of the Governor, be reconstituted for that reason.
- (3) The office of a member of the Board 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) is removed from office under subsection (2).

- (4) If a member of the Board is a member constituting the Board for the purposes of any proceedings under Part 5 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 Board.

### **7—Vacancies or defects in appointment of members**

An act or proceeding of the Board is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

### **8—Remuneration**

A member of the Board is entitled to remuneration, allowances and expenses determined by the Governor.

### **9—Disclosure of interest**

- (1) A member of the Board who has a direct or indirect pecuniary or personal interest in a matter under consideration by the Board—
  - (a) must, as soon as he or she becomes aware of the interest, disclose the nature and extent of the interest to the Board; and
  - (b) must not take part in any deliberations or decision of the Board on the matter.
- (2) A member of the Board will not be taken to have a direct or indirect interest in a matter for the purposes of this section by reason only of the fact that the member has an interest in the matter that is shared in common with the public, nurses generally or a substantial section of the public or of nurses in this State.
- (3) A disclosure under this section must be recorded in the minutes of the Board.
- (4) If a member of the Board discloses an interest in a proposed contract under this section and takes no part in any deliberations or decision of the Board on the contract—
  - (a) the contract is not liable to be avoided by the Board; and
  - (b) the member is not liable to account for profits derived from the contract.

## **Division 3—The Board's procedures**

### **10—The Board's procedures**

- (1) Subject to this Act, six members constitute a quorum of the Board.
- (2) At least three of the members of the Board appointed under section 5(1)(b) must be present at any meeting of the Board (other than under Part 5).
- (3) If the presiding member of the Board is absent from a meeting of the Board, the following provisions apply:
  - (a) if a deputy presiding member has been appointed and is present at the meeting—he or she will preside;
  - (b) in any other case—a member chosen by the members present at the meeting will preside.
- (4) A decision carried by a majority of the votes cast by members of the Board at a meeting is a decision of the Board.

- (5) Each member present at a meeting of the Board has one vote on any question arising for decision and, if the votes are equal, the member presiding at the meeting may exercise a casting vote.
- (6) A conference by telephone or other electronic means between the members of the Board will, for the purposes of this section, be taken to be a meeting of the Board at which the participating members are present if—
  - (a) notice of the conference is given to all members in the manner determined by the Board 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 Board becomes a valid decision of the Board despite the fact that it is not voted on at a meeting of the Board if—
  - (a) notice of the proposed resolution is given to all members of the Board in accordance with procedures determined by the Board; and
  - (b) a majority of the members express concurrence in the proposed resolution by letter, telegram, telex, facsimile transmission or other written communication setting out the terms of the resolution.
- (8) The Board must have accurate minutes kept of its meetings.
- (9) Subject to this Act, the Board may determine its own procedures.

## **Division 4—Registrar and staff of the Board**

### **11—Registrar of the Board**

- (1) There will be a Registrar of the Board.
- (2) The Registrar will be appointed by the Board on terms and conditions determined by the Board.
- (3) The Registrar must be a person who is registered, or who is eligible for registration, as a nurse.
- (4) The Registrar is the chief executive of the Board and in particular is, subject to the control and direction of the Board, responsible for—
  - (a) managing the staff and resources of the Board; and
  - (b) giving effect to the policies and decisions of the Board.

### **12—Other staff of the Board**

- (1) There will be such other staff of the Board as the Board thinks necessary for the proper performance of its functions.
- (2) A member of the staff of the Board is not, as such, a member of the Public Service, but the Board 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 Board 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 5—Committees**

### **13—Committees**

- (1) The Board may establish committees—
  - (a) to advise the Board on any matter; or
  - (b) to carry out functions on behalf of the Board.
- (2) The Board will determine who will be the presiding member of a committee.
- (3) The procedures to be observed in relation to the conduct of the business of a committee will be—
  - (a) as determined by the Board;
  - (b) insofar as a procedure is not determined under paragraph (a)—as determined by the relevant committee.

## **Division 6—Accounts, audit and annual report**

### **14—Accounts and audit**

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

### **15—Annual report**

- (1) The Board 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 Board during the financial year ending on the preceding 30 June.
- (2) The report must incorporate the audited accounts of the Board 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—Functions and powers of the Board**

### **Division 1—General functions and powers**

#### **16—Functions of the Board**

- (1) The functions of the Board are as follows:
  - (a) to regulate the practice of nursing in the public interest;
  - (b) to determine the scope of nursing practice;
  - (c) to approve courses of education or training that provide qualifications for registration or enrolment as a nurse under this Act;

- (d) to determine the requirements necessary for registration or enrolment under this Act;
  - (e) to investigate the fitness of persons to practise as nurses in this State, and to investigate the professional conduct of nurses who are registered or enrolled under this Act;
  - (f) to endorse codes of conduct for nurses;
  - (g) to endorse professional standards, including definitions and titles;
  - (h) to authorise areas of specialist nursing practice for inclusion on the register or roll under this Act;
  - (i) to determine and recognise special practice areas for the purposes of this Act;
  - (j) to exchange information with other registering authorities for nurses;
  - (k) to provide advice to the Minister as may be appropriate;
  - (l) to carry out other functions assigned to the Board by or under this Act, or by the Minister.
- (2) The Board should 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) If the Board endorses a code of conduct or professional standard under subsection (1), the Board must—
- (a) take reasonable steps to send a copy of the code or standard to each person who is registered or enrolled as a nurse under this Act; and
  - (b) ensure that a copy of the code or standard is kept available for public inspection, without charge and during normal office hours, at the principal office of the Board; and
  - (c) cause a copy of the code or standard to be published in the Gazette,
- (although proof of compliance with paragraphs (a), (b), and (c) 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) Special practice areas will be those fields of nursing (in addition to the fields of midwifery and mental health nursing) that, in the opinion of the Board, require recognition under this Act as fields of nursing that require nurses who practise in those fields without supervision to have special qualifications, experience and authorisation.

## **17—Powers of the Board**

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

## **Division 2—Evidence and procedure**

### **18—Proceedings before the Board etc**

- (1) The Board may conduct inquiries, hearings and other proceedings.
- (2) For the purpose of an inquiry, hearing or other proceeding 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 by the Registrar, require the appearance before the Board of any person or the production to the Board of any relevant record or equipment; or
  - (b) inspect records or equipment produced to it, and retain them for such reasonable period as it thinks fit, and make copies of the records, or of any of their contents; or
  - (c) require a person appearing before the Board to make an oath or affirmation to answer truthfully all questions put to him or her relating to any matter in issue before the Board (which oath or affirmation may be administered by a member of the Board or the Registrar); or
  - (d) require a person appearing before the Board to answer any relevant question.
- (3) On the receipt of an application for the issue of a summons under this section, a member of the Board or the Registrar may, without referring the matter to the Board, issue a summons on behalf of the Board.
- (4) If a person—
  - (a) who has been served with a summons to appear before the Board fails without reasonable excuse to attend in obedience to the summons; or
  - (b) who has been served with a summons to produce records or equipment, fails, without reasonable excuse to comply with the summons; or
  - (c) misbehaves during any proceedings, or interrupts any proceedings; or
  - (d) refuses to answer a relevant question when required to do so under this section; or
  - (e) refuses to be sworn or to affirm when required to do so under this section, that person is guilty of an offence.  
Maximum penalty: \$10 000 or imprisonment for two years.
- (5) If a person summoned as mentioned in this section fails to produce any records or equipment or to appear as required by the summons, or having appeared before the Board refuses to be sworn or to affirm, or to answer a relevant question when required to do so, a certificate of the failure or refusal, signed by the Registrar, may be filed in the Supreme Court.

- (6) If a certificate is filed under subsection (5), a party requiring the production of records or equipment or the appearance of a person may apply (either *ex parte* or on notice) to the Supreme Court for an order directing the production of the records 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 Supreme Court may make such orders as it thinks fit (including orders for costs).
- (7) A person may be required to answer a question under this section notwithstanding that the answer to that question might tend to incriminate that person, or to produce any records or equipment notwithstanding that they might tend to incriminate that person, but if the person objects to answering a question a note of that objection must be made, and the answer is not admissible against the person in any criminal proceedings (except in proceedings for perjury).
- (8) This section does not limit or affect a power of inquiry or investigation that exists apart from this section.

## **19—Principles governing hearings**

- (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 in any proceedings under this Act will be as determined by the Board.
- (3) On the hearing of proceedings, the Board will act according to equity, good conscience and the substantial merits of the case.

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

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

## **21—Costs**

- (1) The Board may award such costs against a party to proceedings before it as the Board considers just and reasonable.
- (2) A party who is dissatisfied with the amount of the costs fixed by the Board may request a Master of the Supreme Court to tax the costs and, after taxing the costs, a 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.

# **Part 4—Registration and enrolment**

## **Division 1—The register and the roll**

### **22—The register and the roll**

- (1) The Board must, for the purposes of this Act, keep—
  - (a) a register; and
  - (b) a roll.

- (2) The register will be a register of persons to whom the Board has granted registration under this Act.
- (3) The register will be made up of the following parts:
  - (a) the general nurses register;
  - (b) the midwives register;
  - (c) the mental health nurses register;
  - (d) other parts (or "registers") for other areas of nursing recognised by the Board as being special practice areas (if any).
- (4) The register must include, in relation to each registered person—
  - (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) details of any specialist qualifications held by the person and determined by the Board to be appropriate for inclusion on the register; and
  - (d) details of any condition or limitation that applies to the person under this Act; and
  - (e) details concerning the outcome of any action taken against the person by the Board under Part 5,

and may include other information as the Board thinks fit.

- (5) The roll will be a roll of nurses to whom the Board has granted enrolment under this Act and must include, in relation to each enrolled person—
  - (a) the person's full name, personal address and business address (if any); and
  - (b) the qualifications for enrolment held by the person; and
  - (c) details of any specialist qualifications held by the person and determined by the Board to be appropriate for inclusion on the roll; and
  - (d) details of any condition or limitation that applies to the person under this Act; and
  - (e) details concerning the outcome of any action taken against the person by the Board under Part 5,

and may include other information as the Board thinks fit.

- (6) The Registrar will be responsible to the Board for the form and maintenance of the register and the roll.
- (7) The Registrar must remove from the register or roll the name of a person who dies or ceases for any reason to be entitled to be registered or enrolled under this Act (including because of a failure to renew the registration or enrolment in accordance with this Act).
- (8) The Registrar may act under subsection (7) without giving notice to the relevant person.
- (9) A registered or enrolled person must, within three months after changing address, inform the Registrar in writing of the change.

Maximum penalty: \$250.

- (10) The Registrar may correct an entry in the register or roll that is not, or has ceased to be, correct.
- (11) The Registrar must, on payment of the prescribed fee—
  - (a) release the full name of a nurse whose name appears on the register or roll;
  - (b) make any information entered under subsection (4)(b), (c) or (d) or (5)(b), (c) or (d) available for inspection.
- (12) 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 will, 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.

## **Division 2—Registration and enrolment**

### **23—Registration**

- (1) Subject to this Act, a person is eligible for registration as a nurse on an appropriate part of the register if the person—
  - (a) has qualifications approved or recognised by the Board for the purposes of registration under this Act; and
  - (b) has met the requirements determined by the Board to be necessary for the purposes of registration under this Act; and
  - (c) is a fit and proper person to be a registered nurse.
- (2) Subject to this Act, registration as a nurse authorises the registered nurse to practise as a nurse without supervision.
- (3) However, unless subsection (4) applies, only a nurse registered in a special practice area may practise in that area without supervision.
- (4) The Board may, on conditions determined by the Board, authorise a registered nurse to practise without supervision in a special practice area in which the person is not registered.
- (5) The Board may, as it thinks fit, by written notice to a nurse who holds an authorisation under subsection (4)—
  - (a) vary conditions that apply under that subsection;
  - (b) revoke an authorisation under that subsection.

### **24—Enrolment**

- (1) Subject to this Act, a person is eligible for enrolment as a nurse on the roll if the person—
  - (a) has qualifications approved or recognised by the Board for the purposes of enrolment under this Act; and
  - (b) has met the requirements determined by the Board to be necessary for the purposes of enrolment under this Act; and

- (c) is a fit and proper person to be an enrolled nurse.
- (2) Subject to this Act, enrolment as a nurse authorises the enrolled nurse to practise in all fields of nursing under the supervision of a registered nurse who is authorised under this Act to practise in the relevant field without supervision.
- (3) The Board may, on conditions determined by the Board, authorise an enrolled nurse to practise in a field or fields of nursing without the supervision of an appropriately qualified registered nurse (or without the supervision of a registered nurse at all).
- (4) However—
  - (a) the Board must not give an authorisation under subsection (3) unless or until the Board has obtained the advice of a panel established by the Board under subsection (5); and
  - (b) the Board must, in determining whether to give an authorisation under subsection (3), consider—
    - (i) issues associated with public access to nursing care; and
    - (ii) the public interest in ensuring that appropriate standards of nursing care are maintained; and
    - (iii) the qualifications, experience and competency of the particular person.
- (5) The Board must establish an expert advisory panel to consider any application under subsection (3).
- (6) The panel must include—
  - (a) at least one person nominated by the Australian Nursing Federation (SA Branch); and
  - (b) at least one person nominated by the Royal College of Nursing, Australia (SA Branch).
- (7) The Board may, as it thinks fit, by written notice to an enrolled nurse who holds an authorisation under subsection (3)—
  - (a) vary conditions that apply under that subsection;
  - (b) revoke an authorisation under that subsection.
- (8) The Board must not give an authorisation under subsection (3) until at least six months have elapsed from the commencement of that subsection.
- (9) The Board must, during the period of six months from the commencement of subsection (3), consult with the Australian Nursing Federation (SA Branch) and the Royal College of Nursing, Australia (SA Branch) on the implementation and operation of that subsection.

## **25—Application for registration or enrolment**

- (1) An application for registration or enrolment must—
  - (a) be made to the Board in the manner and form approved by the Board; and
  - (b) be accompanied by the fee fixed by regulation.

- (2) An applicant for registration or enrolment must provide the Board with any information required by the Board for the purposes of determining the application.
- (3) If it appears likely to the Registrar that the Board will grant an application for registration or enrolment, the Registrar may provisionally register or enrol the applicant.
- (4) Provisional registration or enrolment remains in force until the Board determines the application.
- (5) The registration or enrolment by the Board of a person who was provisionally registered or enrolled has effect from the commencement of the provisional registration or enrolment.

## **26—Reinstatement of person on register or roll**

- (1) A person whose name has been removed from the register or roll—
  - (a) at his or her request; or
  - (b) on account of a failure to renew the registration or enrolment or to pay the practice fee,may apply to the Board at any time for the reinstatement of the person's name on the register or roll (as appropriate).
- (2) A person whose registration or enrolment has been suspended may apply to the Board for the reinstatement of the person's name on the register or roll (as appropriate) 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 the person's name on the register or roll before the expiration of 12 months after the cancellation.
- (4) An application for reinstatement must—
  - (a) be made to the Board in the manner and form approved by the Board; and
  - (b) be accompanied by the fee fixed by regulation.
- (5) The Board may require an applicant under this section—
  - (a) to provide the Board with any information required by the Board for the purposes of determining the application;
  - (b) to submit a medical report or other evidence acceptable to the Board to ensure that the applicant can practise effectively as a nurse;
  - (c) to obtain additional qualifications or experience specified by the Board before the Board determines the application.
- (6) The Board should, subject to the operation of subsection (5), reinstate the name of a person who applies under this section if satisfied that the person—
  - (a) has sufficient competence and capacity to practise in the field of nursing to the standards required by the Board for the purposes of this Act; and
  - (b) is a fit and proper person to be registered or enrolled under this Act.

## **27—Limited registration or enrolment**

- (1) If a person who applies for registration or enrolment, or reinstatement of registration or enrolment, under this Act does not have, in the opinion of the Board—
  - (a) the necessary qualifications or experience required for unrestricted registration or enrolment; or
  - (b) the physical or mental capacity required for unrestricted registration or enrolment,the Board may register or enrol the person in pursuance of this section—
  - (c) in order to enable the person—
    - (i) to do whatever is necessary to become eligible for full registration or enrolment under this Act; or
    - (ii) to teach or to undertake research or study in South Australia; or
  - (d) in order to enable the person to practise in a specific or specialist area of nursing in which the person is appropriately qualified or experienced; or
  - (e) in order to enable the person to practise nursing under supervision; or
  - (f) in order to act in the public interest.
- (2) In granting an application in pursuance of this section the Board may—
  - (a) restrict the places and times at which the applicant may provide nursing care;
  - (b) limit the areas of nursing in which the applicant may practise;
  - (c) limit the period during which the registration or enrolment will have effect; or
  - (d) impose a condition requiring that the applicant be supervised when providing nursing care by a particular person or by a person of a particular class; or
  - (e) impose other conditions as the Board thinks fit.

## **28—Renewal of registration or enrolment**

- (1) Subject to this Act, registration or enrolment under this Act (not being provisional registration or enrolment) remains in force for a period determined by the Board or prescribed by the regulations, and may be renewed by the Board from time to time.
- (2) An application for renewal of a registration or enrolment must—
  - (a) be made to the Board in the manner and form determined by the Board; and
  - (b) be accompanied by the fee fixed by regulation.

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

- (1) A registered or enrolled nurse who has not practised nursing for a period of five years or more must not practise nursing without first obtaining the approval of the Board.  
Maximum penalty: \$10 000.

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

### **30—Revocation or variation of conditions**

The Board may, at any time, vary or revoke a condition attached to a registration or enrolment under this Part.

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

The Registrar must at the request of a registered or enrolled nurse, remove the person's name from the register or roll.

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

On the suspension of the registration or enrolment of a nurse, the person's name must be removed by the Registrar from the register or the roll.

### **33—Concurrent registration and enrolment**

- (1) A nurse cannot, at the same time, be registered on the register and enrolled on the roll.
- (2) A nurse can be registered on two or more parts of the register at the same time.

### **34—Fees**

- (1) Subject to this Act, a person will not be registered or enrolled, nor will 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 must, before the date fixed by the Board for that purpose from time to time, pay to the Board the prescribed practice fee and the Board may, without further notice, remove from the register or the roll 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.

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

- (1) The Board or the Registrar may, at any time, require a nurse to supply prescribed information relating to the nurse's employment.
- (2) Information provided under this section may be included in the register or roll.

- (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 relating to the provision of nursing care**

#### **36—Illegal holding out as being registered**

- (1) A person who is not registered under this Act must not hold himself or herself out as being a registered nurse or permit another person to do so.
- (2) A person must not hold out another as being a registered nurse unless the other person is registered under this Act.

#### **37—Illegal holding out as being enrolled**

- (1) A person who is not enrolled under this Act must not hold himself or herself out as being an enrolled nurse or permit another person to do so.
- (2) A person must not hold out another as being an enrolled nurse unless the other person is enrolled under this Act.

#### **38—Illegal holding out concerning restrictions or conditions**

A registered or enrolled nurse whose registration or enrolment is restricted or subject to a limitation or condition under this Act must not hold himself or herself out as having a registration or enrolment that is unrestricted or not subject to a limitation or condition.

#### **39—Other restrictions**

- (1) Subject to the regulations, a person must not practise nursing for remuneration, fee or other reward unless the person is registered or enrolled under this Act.
- (2) Subject to the regulations, a person must not take or use the title "nurse", or another title calculated to induce a belief on the part of another that the person is a nurse, unless the person is registered or enrolled under this Act.
- (3) Subject to the regulations—
- (a) a person who is not registered or enrolled under this Act must not hold himself or herself out as a nurse or permit another person to do so; and
  - (b) a person must not hold out another as being a nurse unless the other person is registered or enrolled under this Act.
- (4) A person who is registered or enrolled under this Act must not perform a function in the provision of nursing care that the person is not authorised to perform under this Act.
- (5) A person must not require another to perform a function in provision of nursing care that the other person is not authorised to perform under this Act.
- (6) A person who is not registered as a midwife under this Act must not—
- (a) take or use the title "midwife", or another title calculated to induce a belief on the part of another that the person is a midwife; or

- (b) hold himself or herself out as being a midwife or permit another person to do so.
- (7) A person must not hold out another as a midwife unless the other person is registered as a midwife under this Act.
- (8) A person who is not registered as a mental health nurse under this Act must not—
  - (a) take or use the title "mental health nurse" or "psychiatric nurse", or another title calculated to induce the belief on the part of another that the person is a mental health nurse or psychiatric nurse; or
  - (b) hold himself or herself out as being a mental health nurse or psychiatric nurse or permit another to do so.
- (9) A person must not hold out another as a mental health nurse unless the person is registered as a mental health nurse under this Act.
- (10) A person who is not registered in another special practice area under this Act must not—
  - (a) take or use a title calculated to induce the belief on the part of another that the person is a nurse who is entitled to practise in that area; or
  - (b) hold himself or herself out as being entitled to practise as a nurse in that area.

#### **40—Offence against Division**

A person who contravenes or fails to comply with a provision of this Division is guilty of an offence.

Maximum penalty: \$10 000 or imprisonment for two years.

### **Part 5—Proceedings before the Board**

#### **41—Inquiries by the Board as to competence**

- (1) The Registrar or any other person may lay before the Board a complaint alleging that within a period of two years immediately preceding the laying of the complaint, a nurse provided nursing care without having or exercising adequate or sufficient knowledge, experience or skill.
- (2) If a complaint is laid under this section, the Board must, 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.

#### **42—Incapacity of nurses**

- (1) The Registrar may lay before the Board a complaint alleging that a nurse's ability to provide nursing care is unreasonably impaired by—
  - (a) physical incapacity; or
  - (b) mental incapacity,(or both).

- (2) If, after conducting an inquiry under this section, the Board is satisfied that the ability of a nurse to provide nursing care is impaired by physical incapacity or mental incapacity (or both) to the 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:
- (a) suspend the registration or enrolment of the nurse until the nurse has recovered from the incapacity or incapacities, or for a lesser period determined by the Board; or
  - (b) impose conditions restricting the nurse's right to provide nursing care.

#### **43—Obligation to report incapacity**

If a health professional who has a nurse as a patient or client believes that the ability of the nurse to provide nursing care is, or may be, seriously impaired by a physical incapacity or a mental incapacity (or both), the health professional must submit a written report to the Board stating—

- (a) the grounds on which the belief is based; and
- (b) all other prescribed information.

Maximum penalty: \$1 250.

#### **44—Inquiries by the Board as to unprofessional conduct**

- (1) The Registrar may lay before the Board a complaint alleging unprofessional conduct on the part of—
- (a) a nurse; or
  - (b) a person who was at the relevant time a nurse; or
  - (c) a person who has been registered or enrolled as a nurse under this Act but who was, at the relevant time, practising nursing without being registered or enrolled under this Act.
- (2) If, after conducting an inquiry under this section, the Board is satisfied that the respondent is guilty of unprofessional conduct, the Board may, by order, exercise one or more of the following powers:
- (a) reprimand the respondent;
  - (b) order the respondent to pay a fine not exceeding \$5 000;
  - (c) impose conditions restricting the respondent's right to provide nursing care;
  - (d) if the respondent is a nurse—
    - (i) suspend the registration or enrolment of the nurse by removing his or her name from the register or the roll for a period not exceeding one year;
    - (ii) cancel the registration or enrolment of the nurse.
- (3) A fine imposed under subsection (2) is recoverable by the Board as a debt.

#### **45—Obligation to report unprofessional conduct**

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

- (a) the grounds on which the belief is based; and
- (b) all other prescribed information.

Maximum penalty: \$1 250.

#### **46—Provisions as to inquiries**

- (1) The Governor may appoint a person as a special member of the Board under this Part (and a person so appointed may (but need not) act as a member of the Board for the purpose of any proceedings under this Part).
- (2) Three members (including any member appointed under subsection (1)) constitute a quorum of the Board for the purposes of proceedings under this Part.
- (3) At least one of the members of the Board appointed under section 5(1)(b) must be present at any meeting of the Board for the purposes of proceedings under this Part.
- (4) If a member of the Board is personally involved in an investigation into a matter that is the subject of an inquiry by the Board under this Part, he or she may not sit as a member in the conduct of the inquiry by the Board.
- (5) Subject to this Act, the Board must give to all of the parties to proceedings under this Part 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 Board.
- (6) Except in exceptional circumstances, the period of written notice under subsection (5) must be not less than 14 days.
- (7) The requirement to give written notice under subsection (5) does not extend to adjournments.
- (8) If a party to whom notice has been given pursuant to subsection (5) does not attend at the time and place fixed by the notice, the Board may proceed to hear and determine the matter in the absence of that party.
- (9) 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 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.
- (10) The Board should conduct proceedings under this Part as expeditiously as possible.

#### **47—Revocation or variation of conditions**

The Board may, at any time, vary or revoke a condition imposed under this Part.

## 48—Other matters

- (1) No civil liability arises from a statement made honestly and without malice in a report for the purposes of this Part.
- (2) A person who (whether voluntarily or pursuant to a requirement of this Part) provides information concerning a nurse to the Board or the Registrar for the purposes of this Part 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.

## Part 6—Appeals

### 49—Appeal to Supreme Court

- (1) Subject to this section, 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, order or requirement administered or made by the Board in proceedings under Part 5; or
  - (c) a decision by the Board to vary a condition imposed by the Board under this Act.
- (2) An appeal must be instituted within two months 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, order or requirement 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 or the Registrar (as appropriate) for further hearing or consideration or for rehearing;
  - (c) make an order as to costs.
- (4) When ordering the remission of the subject matter of an appeal to the Board for rehearing, the Supreme Court may disqualify a member from hearing the matter.

## **50—Operation of order may be suspended**

- (1) Subject to subsection (2), if an order or requirement has been made or imposed by the Board or the Registrar and an appeal against the order or requirement is instituted, the operation of the order or requirement continues until the determination of the appeal.
- (2) The Supreme Court or the Board may, if it thinks fit, make an interim order suspending the operation of an order or requirement.

## **Part 7—Miscellaneous**

### **51—Protection from personal liability**

- (1) No personal liability is incurred for an act or omission by—
  - (a) a member of the Board; or
  - (b) the Registrar or another member of the Board'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.

### **52—Delegations**

- (1) The Board or the Registrar may delegate a function or power conferred or vested under this Act.
- (2) A delegation—
  - (a) may be made—
    - (i) to a particular person or body; or
    - (ii) to the person for the time being occupying a particular office or position; 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 delegator to act in a matter.

### **53—Board may require examination or report**

- (1) The Board may, on the application of the Registrar, for any purpose associated with the administration or operation of this Act, require a nurse, or a person who is applying for registration or enrolment, or reinstatement of registration or enrolment, as a nurse, to—
  - (a) submit to an examination by a health professional, or by a health professional of a class, specified by the Board;
  - (b) provide a medical report from a health professional, or from a health professional of a class, specified by the Board,(including an examination or report that will require the nurse to undergo some form of medically invasive procedure).

- (2) The Board may suspend the registration or enrolment of a nurse who fails to comply with an order under subsection (1) and that suspension will, unless otherwise determined by the Board, remain in force until the nurse complies with the order.

#### **54—Registrar may conduct an investigation**

- (1) The Registrar, or a person authorised by the Registrar, may, for any purpose associated with an inquiry or investigation into the conduct or competence of—
- (a) a nurse; or
  - (b) a person who was at the relevant time a nurse; or
  - (c) a person who is applying for registration or enrolment, or reinstatement of registration or enrolment, as a nurse,
- request any person—
- (d) to answer questions and to be present or attend a specified place and time for that purpose;
  - (e) to produce records or equipment for inspection.
- (2) If a person objects to, or fails to comply with, a request under subsection (1), the Board may, on the application of the Registrar, require compliance with the request.
- (3) The Registrar or other person acting under this section may retain any records or equipment produced under this section for such reasonable period as he or she thinks fit, and make copies of any records, or of any of their contents.
- (4) A person who fails, without reasonable excuse, to comply with a requirement under subsection (2) is guilty of an offence.  
Maximum penalty: \$5 000 or imprisonment for one year.
- (5) A person is not obliged to answer a question under this section if the answer to the question would tend to incriminate the person.
- (6) However, a person is obliged to produce any records or equipment for inspection notwithstanding that they might tend to incriminate the person.
- (7) This section does not limit or affect a power of inquiry or investigation that exists apart from this section.

#### **55—Retrievals, emergencies etc**

- (1) A person who is registered by a registering authority for nurses in another State and who practises nursing in this State solely for the purposes of—
- (a) assisting in the retrieval or escorting of a patient; or
  - (b) assisting in the transportation of human organs or tissue; or
  - (c) assisting in an emergency,
- will be taken to be a registered nurse while so practising.
- (2) It is a defence to a charge that a person provided nursing care contrary to this Act or in contravention of a condition imposed under this Act for the person to prove that the nursing care was provided in an emergency.

## **56—Additional provisions concerning conditions**

- (1) A nurse who contravenes or fails to comply with a condition imposed under this Act in relation to the provision of nursing care is guilty of an offence.

Maximum penalty: \$10 000.

- (2) A condition may be varied under this Act by the addition, substitution or deletion of one or more conditions.

## **57—Procurement of registration or enrolment by fraud**

A person who by fraud or any other dishonest means procures registration or enrolment, or the renewal of registration or enrolment, for himself or herself, or for another person (including where the registration or enrolment is an application for reinstatement) is guilty of an offence.

Maximum penalty: \$10 000.

## **58—False or misleading information**

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.

## **59—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.

## **60—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.

## **61—Service of documents**

- (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—

(i) at the person's last known address; or

(ii) at the person's address for service; or

(c) be left for the person at the address for service with someone apparently over the age of 16 years; or

- (d) be transmitted by facsimile transmission to a facsimile number 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) The address for service of a nurse is the address for the nurse that appears on the register or the roll.

## **62—Ministerial review of decisions relating to courses**

- (1) If the Board—
  - (a) refuses to approve a course of education or training for the purposes of this Act; or
  - (b) revokes the 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).

## **63—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 Board to fix—
    - (i) fees or charges for the purposes of this Act;
    - (ii) fees or charges for services provided by the Board in the exercise of its functions under this Act,and may provide for the recovery of a fee or charge so prescribed or fixed;
  - (b) regulate, or otherwise make provision with respect to, nurse education for the purposes of this Act, including by making provision with respect to—
    - (i) standards for schools of nursing; and
    - (ii) the approval of nursing courses that may lead to registration or enrolment; and
    - (iii) the approval of processes for authorisation under this Act; and
    - (iv) the approval of processes for assessing nursing competence;
  - (c) regulate, or otherwise make provision with respect to, independent practice by nurses registered under this Act;
  - (d) make provision with respect to registration or enrolment under this Act;
  - (e) prescribe information that must be included on the register or roll, and make any provision with respect to the keeping of the register or roll;
  - (f) regulate or control any aspect of nursing practice;
  - (g) regulate the wearing of badges by nurses;

- (h) prescribe procedures associated with any process or proceedings under this Act;
  - (i) prescribe forms for the purposes of this Act;
  - (j) prescribe or impose time limits for the purposes of this Act;
  - (k) 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 Board or another prescribed authority.

## **64—Review of special authorisations**

- (1) The Board must, by 30 June 2002, complete a review on the operation of section 24(3) of this Act.
- (2) The Board must, in conducting a review under subsection (1), consult—
  - (a) with appropriate organisations and associations that, in the opinion of the Board, represent the interests of nurses in the State; and
  - (b) with the public generally.
- (3) The Board must prepare a report on the outcome of the review and provide a copy of the report to the Minister by the date referred to in subsection (1).
- (4) The Minister must, within six sitting days after receiving a report under subsection (3), have copies of the report laid before both Houses of Parliament.

## **Schedule—Bodies representing the interests of nurses**

### **1—Bodies representing the interests of nurses**

Subject to clause 2, the following bodies are bodies representing the interests of nurses for the purposes of section 5(7) of the Act:

Australian Council of Community Nursing Services (SA)

Australian and New Zealand College of Mental Health Services

Australian College of Midwives, Inc.

Australian Nursing Federation

Royal College of Nursing Australia

## **2—Amendment of Schedule**

The Governor may, by regulation, amend clause 1 by adding or deleting specified bodies.

## Legislative history

### Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes.

### Legislation repealed by principal Act

The *Nurses Act 1999* repealed the following:

*Nurses Act 1984*

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1999	19	<i>Nurses Act 1999</i>	1.4.1999	3.6.1999 ( <i>Gazette 3.6.1999 p2920</i> ) except ss 4, 6—10, 11(2)—(4), 12—60, 62, 64 and Sch cl 2, 3(1)—(4) & (6)— 7.10.1999 ( <i>Gazette 7.10.1999 p1416</i> )
2003	20	<i>Nurses (Nurses Board Vacancies) Amendment Act 2003</i>	17.7.2003	28.8.2003 ( <i>Gazette 28.8.2003 p3374</i> )
2003	44	<i>Statute Law Revision Act 2003</i>	23.10.2003	Sch 1—24.11.2003 ( <i>Gazette 13.11.2003 p4048</i> )
2006	17	<i>Statutes Amendment (New Rules of Civil Procedure) Act 2006</i>	6.7.2006	Pt 55 (s 173)—4.9.2006 ( <i>Gazette 17.8.2006 p2831</i> )

### Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended by 44/2003 s 3(1) (Sch 1)	24.11.2003
Pt 1		
s 2	<i>deleted by 44/2003 s 3(1) (Sch 1)</i>	<i>24.11.2003</i>
Pt 2		
s 5		
s 5(6)—(11)	inserted by 20/2003 s 3	28.8.2003
Pt 4		

<i>Heading preceding s 23</i>	<i>deleted by 44/2003 s 3(1) (Sch 1)</i>	24.11.2003
<i>Heading preceding s 24</i>	<i>deleted by 44/2003 s 3(1) (Sch 1)</i>	24.11.2003
<i>Heading preceding s 25</i>	<i>deleted by 44/2003 s 3(1) (Sch 1)</i>	24.11.2003
Sch	substituted by 20/2003 s 4	28.8.2003

## Historical versions

Reprint No 1—28.8.2003