

House of Assembly

As passed all stages and awaiting assent.

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South Australia

Nursing and Midwifery Practice Bill 2008

A BILL FOR

An Act to protect the health and safety of the public by providing for the registration and enrolment of nurses, midwives and students; to regulate the provision of nursing and midwifery care for the purpose of maintaining high standards of competence and conduct by nurses, midwives, students and services providers; to repeal the *Nurses Act 1999*; and for other purposes.

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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 *Nursing and Midwifery Practice Act 2008*.

2—Commencement

- (1) Subject to subsection (2), this Act will come into operation on a day to be fixed by proclamation.
- (2) Schedule 1 clause 2(5) comes into operation on the day on which this Act is assented to by the Governor.

3—Interpretation

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

appropriate register means—

- (a) the nurses register; or
(b) the midwives register; or
(c) the students register,

as the case may require;

Board means the Nursing and Midwifery Board of South Australia continued in existence under this Act;

corporate or trustee services provider—see subsection (5);

director of a body corporate means a member of a board or committee of management of the body corporate, whether validly appointed or not;

District Court means the Administrative and Disciplinary Division of the District Court;

endorsement of registration—see section 36;

enrolled nurse means a person who is enrolled on the nurses roll;

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

exempt provider means—

- (a) an incorporated hospital, or a private hospital, within the meaning of the *Health Care Act 2008*; or
- (b) any other person declared by the regulations to be an exempt provider for the purposes of this Act;

health professional means—

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

inspector means a person authorised by the Board as an inspector under section 54;

medical practitioner means a person who is registered as a medical practitioner under the law of this State;

midwife means a person who is registered on the midwives register;

midwifery means any treatment, care or advice provided by a person to—

- (a) a woman in relation to her pregnancy; or
- (b) a woman or child in relation to the birth of the child,

(whether such treatment, care or advice is provided antenatally, *intrapartum* or postnatally);

midwives register—see section 25(1)(c);

nominated contact address of a person who is registered or enrolled under this Act means an address nominated by the person for the purpose of service of notices and documents under this Act;

nurse means a person who is registered on the nurses register or enrolled on the nurses roll;

nurses register—see section 25(1)(a);

nurses roll—see section 25(1)(b);

prescription drug has the same meaning as in the *Controlled Substances Act 1984*;

registered nurse means a person who is registered on the nurses register;

Registrar means the person holding or acting in the office of Registrar of the Board;

repealed Act means the *Nurses Act 1999*;

representative body means a body that is declared by the regulations to be a representative body for the purposes of this Act;

services provider means a person (not being a nurse or midwife) who provides nursing or midwifery care through the instrumentality of a nurse or midwife but does not include an exempt provider;

student means a person who is registered on the students register;

students register—see section 25(1)(d);

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

unprofessional conduct includes—

- (a) improper or unethical conduct in relation to nursing or midwifery practice; and
 - (b) incompetence or negligence in relation to the provision of nursing or midwifery care; 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 prepared or endorsed by the Board under this Act; and
 - (d) conduct that constitutes an offence punishable by imprisonment for 1 year or more under some other Act or law.
- (2) A reference in this Act to unprofessional conduct extends to—
- (a) unprofessional conduct committed before the commencement of this Act; and
 - (b) unprofessional conduct committed within or outside South Australia or the Commonwealth.
- (3) A reference in this Act to *engaging in conduct* includes a reference to failing or refusing to engage in conduct.
- (4) Without limiting the generality of the expression, a person who is not a nurse or midwife will be taken to *provide nursing or midwifery care through the instrumentality of a nurse or midwife* if the person, in the course of carrying on a business, provides services to the nurse or midwife for which the person is entitled to receive a share in the profits or income of the nurse or midwife's practice of nursing or midwifery.
- (5) For the purposes of this Act—
- (a) a *corporate services provider* is a services provider that is a body corporate and a person occupies a *position of authority* in such a provider if the person—
 - (i) is a director of the body corporate; or
 - (ii) exercises, or is in a position to exercise, control or substantial influence over the body corporate in the conduct of its affairs; or
 - (iii) manages, or is to manage, the business of the body corporate that consists of the provision of nursing or midwifery care; or
 - (iv) if the body corporate is a proprietary company—is a shareholder in the body corporate; and
 - (b) a *trustee services provider* is a person acting as a services provider in the capacity of trustee of a trust and a person occupies a *position of authority* in such a provider if the person is a trustee or beneficiary of the trust.

- (6) For the purposes of this Act, a person occupies a *position of authority* in a body corporate other than a corporate services provider if the person—
 - (a) is a director of the body corporate; or
 - (b) exercises, or is in a position to exercise, control or substantial influence over the body corporate in the conduct of its affairs; or
 - (c) if the body corporate is a proprietary company—is a shareholder in the body corporate.
- (7) However—
 - (a) a minor who is a shareholder in a proprietary company, or a beneficiary under a trust, is not, for that reason, to be regarded as a person occupying a position of authority; and
 - (b) a charitable organisation that is a beneficiary of a trust is not, for that reason, to be regarded as occupying a position of authority.
- (8) For the purposes of this Act, a person who holds more than 10% of the issued share capital of a public company will be regarded as a person occupying a position of authority in that company.

4—Medical fitness to provide nursing or midwifery care

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

Part 2—Nursing and Midwifery Board of South Australia

Division 1—Continuation of Board

5—Continuation of Board

- (1) The Nurses Board of South Australia continues in existence as the Nursing and Midwifery Board of South Australia.
- (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 all the powers of a natural person that are capable of being exercised by a body corporate; and
 - (e) has the functions and powers assigned or conferred 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—Board's membership

6—Composition of Board

- (1) The Board consists of 11 members (not including a person appointed under Part 4) appointed by the Governor of whom—
 - (a) 7 must be nurses or midwives and of these—
 - (i) 5 must be elected in accordance with the regulations (see section 7); and
 - (ii) 1 must be a person nominated by the Minister; and
 - (iii) 1 must be a person engaged in teaching nursing or midwifery selected from a panel to which each prescribed educational institution has been invited to make a nomination; and
 - (b) 4 must be persons nominated by the Minister and of these—
 - (i) 1 must be a medical practitioner; and
 - (ii) 1 must be a lawyer; and
 - (iii) 2 must be persons who are not eligible for appointment under a preceding provision of this subsection.
- (2) At least 1 member of the Board must be a woman and at least 1 must be a man.
- (3) The Governor may appoint a person to be a deputy of a member and a person so appointed may act as a member of the Board in the absence of the member.
- (4) The requirements of qualification and nomination (if applicable) made by this section in relation to the appointment of a member extend to the appointment of a deputy of that member.
- (5) If prescribed educational institutions fail to nominate a panel of at least 3 persons within a period specified by the Minister, the Governor may appoint a nurse or midwife engaged in teaching nursing or midwifery and the person so appointed will be taken to have been appointed after due nomination under this section.
- (6) In this section—

prescribed educational institution means a university, college (within the meaning of the *Technical and Further Education Act 1975*) or other body providing a course of study in South Australia that provides qualifications for registration or enrolment under this Act.

7—Elections and casual vacancies

- (1) Of the 5 elected nurses or midwives—
 - (a) 3 must be registered nurses chosen at an election; and
 - (b) 1 must be an enrolled nurse chosen at an election; and
 - (c) 1 must be a midwife chosen at an election,unless the regulations specify otherwise.

- (2) An election to choose a person for appointment to the Board must be conducted under the regulations in accordance with principles of proportional representation.
- (3) A person who is, at the time a voters roll is prepared for an election in accordance with the regulations, on the voters roll is entitled to vote at the election.
- (4) If an election to choose a person for appointment to the Board fails for any reason, the Governor may appoint a registered nurse, enrolled nurse or midwife (as the case requires).
- (5) The following rules govern the appointment of a person to fill a casual vacancy that occurs in the office of a member chosen at an election:
 - (a) if the vacancy occurs within 12 months after the member's election and at that election a candidate or candidates were excluded, the Governor must appoint the person who was the last excluded candidate at that election;
 - (b) if that person is no longer qualified for appointment or is unavailable or unwilling to be appointed or if the vacancy occurs later than 12 months after the member's election, the Governor may appoint, on the nomination of the Minister, a registered nurse, enrolled nurse or midwife (as the case requires);
 - (c) before nominating a person for appointment, the Minister must consult the representative bodies;
 - (d) the person appointed holds office for the balance of the term of that person's predecessor.

8—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 3 years, specified in the instrument of appointment and, at the expiration of a term of appointment, is eligible for reappointment.
- (2) However, a member of the Board may not hold office for consecutive terms that exceed 9 years in total.
- (3) 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.
- (4) 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) ceases to satisfy the qualification by virtue of which the member was eligible for appointment to the Board; or
 - (e) is disqualified from managing corporations under Chapter 2D Part 2D.6 of the *Corporations Act 2001* of the Commonwealth; or
 - (f) is removed from office under subsection (3).

- (5) If a member of the Board is a member constituting the Board for the purposes of any proceedings under Part 4 and the member's term of office expires, or the member resigns, 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.

9—Presiding member and deputy

The Minister must, after consultation with the Board, appoint a member who is a nurse or midwife to preside at meetings of the Board (the *presiding member*) and another member who is a nurse or midwife to preside at meetings of the Board in the absence of the presiding member (the *deputy presiding member*).

10—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.

11—Remuneration

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

Division 3—Registrar and staff of Board

12—Registrar of 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.

13—Other staff of 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, an employee 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, under an arrangement established by a Minister administering an administrative unit of the Public Service, make use of the services or staff of that administrative unit.

Division 4—General functions and powers

14—Functions of Board

- (1) The functions of the Board are as follows:
- (a) to oversee the practice of nursing and midwifery in the public interest;
- (b) to approve, after consultation with authorities considered appropriate by the Board, courses of education or training that provide qualifications for registration, endorsement of registration or enrolment under this Act;

- (c) to determine, after consultation with authorities considered appropriate by the Board, the requirements necessary for registration, endorsement of registration or enrolment under this Act;
 - (d) to establish and maintain the registers and the nurses roll contemplated by this Act;
 - (e) to prepare or endorse, subject to the approval of the Minister, codes of conduct or professional standards for nurses, midwives and students and codes of conduct for services providers;
 - (f) to prepare or endorse guidelines on continuing education or training for nurses and midwives;
 - (g) to establish administrative processes for handling complaints received against nurses, midwives, students, services providers or persons who occupy positions of authority in corporate or trustee services providers (which may include processes under which the person or provider voluntarily enters into an undertaking);
 - (h) to provide advice to the Minister as the Board considers appropriate;
 - (i) to carry out other functions assigned to the Board under this Act or by the Minister.
- (2) The Board must perform its functions with the object of protecting the health and safety of the public by achieving and maintaining high professional standards both of competence and conduct by nurses, midwives, students and services providers.
- (3) In preparing or endorsing codes of conduct, professional standards or guidelines, the Board must have regard to definitions of nursing and midwifery prepared respectively by the International Council of Nurses and the International Confederation of Midwives.
- (4) If—
- (a) a code of conduct or professional standard prepared or endorsed by the Board is approved by the Minister; or
 - (b) guidelines are prepared or endorsed by the Board,
- the Board must—
- (c) cause a copy of the code, standard or guidelines to be published in the Gazette, together with a statement of the operative date of the code, standard or guidelines (which may not be a date earlier than the date of publication); and
 - (d) take reasonable steps to send a copy of the code, standard or guidelines to each nurse, midwife, student or services provider to whom it applies; and
 - (e) ensure that a copy of the code, standard or guidelines is published on the Internet and kept available for public inspection without charge during normal office hours at the principal office of the Board,
- (although proof of compliance with paragraphs (c), (d) and (e) is not necessary for the purposes of any proceedings that involve an alleged contravention of or failure to comply with a code of conduct or professional standard).

- (5) The administrative processes established by the Board for handling complaints received against nurses, midwives, students, services providers or persons who occupy positions of authority in corporate or trustee services providers must be designed—
- (a) to be fair to both the aggrieved person and the respondent; and
 - (b) to keep both the aggrieved person and the respondent properly informed about the steps taken by the Board in response to the complaint; and
 - (c) to provide, if appropriate, opportunities for the clarification of any misapprehension or misunderstanding between the aggrieved person and the respondent; and
 - (d) to keep both the aggrieved person and the respondent properly informed about the outcome of the processes; and
 - (e) to take into account the needs of particular classes of persons who may otherwise suffer disadvantage in the conduct of those processes.

15—Committees

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

16—Delegation by Board

- (1) The Board may, by instrument in writing, delegate a power or function under this Act (other than a prescribed power or function)—
- (a) to a member of the Board, the Registrar or an employee of the Board; or
 - (b) to a committee established by the Board.
- (2) A delegation—
- (a) may be absolute or conditional; and
 - (b) does not derogate from the power of the Board to act personally in a matter; and
 - (c) is revocable at will.

Division 5—Board's procedures

17—Board's procedures

- (1) Subject to this Act, 6 members constitute a quorum of the Board.
- (2) At least 4 of the members of the Board who are nurses or midwives appointed under section 6(1)(a) must be present at any meeting of the Board (other than under Part 4).
- (3) A meeting of the Board (other than for the purposes of hearing and determining proceedings under Part 4) will be chaired by the presiding member or, in his or her absence, by the deputy presiding member and, in the absence of both the presiding member and the deputy presiding member, the members present at a meeting of the Board must choose 1 of their number to preside at the meeting.
- (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 1 vote on any question arising for decision and, except in hearing and determining proceedings under Part 4, the member presiding at the meeting may exercise a casting vote if the votes are equal.
- (6) A conference by telephone or other electronic means between the members of the 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, fax, email or other written communication setting out the terms of the resolution.
- (8) However, subsections (6) and (7) do not apply in relation to the hearing and determination of proceedings under Part 4 by the Board as constituted for the purposes of proceedings under that Part.
- (9) The Board must have accurate minutes kept of its meetings.
- (10) Subject to this Act, the Board may determine its own procedures.

18—Conflict of interest etc under Public Sector Management Act

A member of the Board will not be taken to have a direct or indirect interest in a matter for the purposes of the *Public Sector Management Act 1995* by reason only of the fact that the member has an interest in the matter that is shared in common with persons registered or enrolled under this Act generally, or a substantial section of persons registered or enrolled under this Act.

19—Powers of Board in relation to witnesses etc

- (1) For the purposes of proceedings before the Board (including an application for registration or reinstatement of registration), the Board may—
 - (a) by summons signed on behalf of the Board by a member of the Board or the Registrar, require the attendance before the Board of a person whom the Board thinks fit to call before it; or
 - (b) by summons signed on behalf of the Board by a member of the Board or the Registrar, require the production of relevant documents, records or equipment and, in the case of a document or record that is not in the English language—
 - (i) a written translation of the document or record into English; and
 - (ii) a certificate signed by a translator approved by the Board certifying that the translation accurately reproduces in English the contents of the document or record; or
 - (c) inspect documents, records or equipment produced before it, and retain them for such reasonable period as it thinks fit, and make copies of the documents or records or their contents; or
 - (d) require a person to make an oath or affirmation (which may be administered by a member of the Board) to answer truthfully questions put by a member of the Board or a person appearing before the Board; or
 - (e) require a person appearing before the Board (whether summoned to appear or not) to answer questions put by a member of the Board or by a person appearing before the Board.
- (2) 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.
- (3) A person who—
 - (a) fails without reasonable excuse to comply with a summons issued to attend, or to produce documents, records or equipment, before the Board; or
 - (b) having been served with a summons to produce—
 - (i) a written translation of the document or record into English; and
 - (ii) a certificate signed by a translator approved by the Board certifying that the translation accurately reproduces in English the contents of the document or record,fails, without reasonable excuse, to comply with the summons; or
 - (c) misbehaves before the Board, wilfully insults the Board or 1 or more of the members in the exercise of the member's official duties, or wilfully interrupts the proceedings of the Board; or
 - (d) refuses to be sworn or to affirm, or refuses or fails to answer truthfully a relevant question when required to do so by the Board,

is guilty of an offence.

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

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

20—Principles governing proceedings

- (1) In proceedings before the Board under this Act, the Board—
 - (a) is not bound by the rules of evidence and may inform itself on any matter as it thinks fit; and
 - (b) must act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms.
- (2) In proceedings before the Board under this Act, the Board must keep the parties to the proceedings properly informed as to the progress and outcome of the proceedings.

21—Representation at proceedings before Board

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

22—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 awarded by the Board may request a Master of the District Court to tax the costs and, after taxing the costs, the Master may confirm or vary the amount of the costs awarded by the Board.
- (3) Costs awarded by the Board under this section may be recovered as a debt.

Division 6—Accounts, audit and annual report

23—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.

24—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—
 - (a) include the following information in relation to the relevant financial year:
 - (i) the number and nature of complaints received by the Board against persons registered or enrolled under this Act, services providers or persons who occupy positions of authority in corporate or trustee services providers;

- (ii) the number and nature of voluntary undertakings given to the Board by persons registered or enrolled under this Act, services providers or persons who occupy positions of authority in corporate or trustee services providers;
 - (iii) the outcomes of proceedings before the Board under Part 4;
 - (iv) any other information prescribed by the regulations; and
 - (b) 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—Registration, enrolment and practice

Division 1—Registers and nurses roll

25—Registers and nurses roll

- (1) The Registrar must keep the following:
- (a) a nurses register;
 - (b) a nurses roll;
 - (c) a midwives register;
 - (d) a students register comprised of parts for—
 - (i) registered nursing students; and
 - (ii) enrolled nursing students; and
 - (iii) midwifery students;
 - (e) a register of persons who have been removed from any of the registers, or the nurses roll, under this Act or any other Act or law or former Act or law, and who have not been reinstated to that register or nurses roll.
- (2) The registers and the nurses roll must include, in relation to each person on the register or nurses roll—
- (a) the person's full name and nominated contact address; and
 - (b) the qualifications for registration or enrolment held by the person; and
 - (c) details of any endorsement on the person's registration under this Act; and
 - (d) in the case of an enrolled nurse—details of any authorisation under section 27(3); and
 - (e) details of any qualification held by the person and determined by the Board to be appropriate for inclusion on the register or nurses roll; and
 - (f) details of any condition of registration or enrolment that affects or restricts the person's right to provide nursing or midwifery care; and
 - (g) any other information prescribed by the regulations,
- and may include other information as the Board thinks fit.

- (3) A person who is registered or enrolled under this Act must, within 1 month after changing his or her name or nominated contact address, inform the Registrar in writing of the change.
Maximum penalty: \$250.
- (4) The register referred to in subsection (1)(e)—
- (a) must not include any person who is dead; and
 - (b) must include, in relation to each person on the register, a statement of—
 - (i) the register or nurses roll from which the person was removed; and
 - (ii) the reason for removal of the person; and
 - (iii) the date of removal; and
 - (iv) if the removal was consequent on suspension—the duration of the suspension; and
 - (v) if the person has been disqualified from being registered on a register or enrolled on the nurses roll—the duration of the disqualification; and
 - (c) must have deleted from it all information relating to any person who is reinstated on the register or nurses roll from which the person was removed.
- (5) The Registrar is responsible to the Board for the form and maintenance of the registers and the nurses roll.
- (6) The Registrar must correct an entry in a register or the nurses roll that is not, or has ceased to be, correct.
- (7) The registers and the nurses roll must be kept available for inspection by any person during ordinary office hours at the office of the Registrar and the registers and nurses roll, or extracts of the registers and nurses roll, may be made available to the public by electronic means.
- (8) A person may, on payment of the prescribed fee, obtain a copy of any part of a register or the nurses roll.
- (9) Despite subsections (7) and (8), a nominated contact address is not to be disclosed except to a person who satisfies the Registrar that he or she has an adequate reason for wanting the nominated contact address.
- (10) A certificate stating that a person was, or was not, registered on a particular register, or enrolled on the nurses roll, under this Act at a particular date, or during a particular period, and purporting to be signed by the Registrar will, in the absence of proof to the contrary, be accepted in legal proceedings as proof of the registration or enrolment, or of the fact that the person was not so registered or enrolled, on the date, or during the period, stated in the certificate.

Division 2—Registration, endorsement of registration and enrolment

Subdivision 1—Registration and enrolment

26—Registration on nurses register

- (1) Subject to this Act, a natural person is eligible for registration on the nurses register if the person, on application to the Board, satisfies the Board that he or she—
 - (a) has qualifications approved or recognised by the Board for the purposes of registration on the register; and
 - (b) has met the requirements determined by the Board to be necessary for the purposes of registration on the register; and
 - (c) is medically fit to provide nursing care; and
 - (d) is a fit and proper person to be registered on the register.
- (2) If a person who applies for registration, or reinstatement of registration, on the nurses register—
 - (a) does not, in the opinion of the Board, have the necessary qualifications or experience required for registration on the register; or
 - (b) is not, in the opinion of the Board, medically fit to provide nursing care; or
 - (c) is not, in the opinion of the Board, a fit and proper person to be registered on the register,the Board may register the person on the register under this subsection (*limited registration*)—
 - (d) in order to enable the person—
 - (i) to do whatever is necessary to become eligible for full registration on the register under this Act; or
 - (ii) to teach nursing or to undertake research or study related to nursing in this State; or
 - (e) if, in its opinion, it would otherwise be in the public interest to do so.
- (3) In registering a person under subsection (2), the Board may impose 1 or more of the following conditions on the person's registration:
 - (a) a condition restricting the places or times at which the person may provide nursing care;
 - (b) a condition limiting the nursing care that the person may provide;
 - (c) a condition limiting the period during which the registration will have effect;
 - (d) a condition requiring the person to undertake a specified course of education or training, or to obtain specified experience;
 - (e) a condition requiring that the person be supervised in the provision of nursing care by a particular person or by a person of a particular class;
 - (f) such other conditions as the Board thinks fit.

27—Enrolment on nurses roll

- (1) Subject to this Act, a natural person is eligible for enrolment as a nurse on the nurses 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 medically fit to provide nursing care; and
 - (d) is a fit and proper person to be an enrolled nurse.
- (2) It is a condition of enrolment on the nurses roll that an enrolled nurse may only provide nursing care under the supervision of a registered nurse or midwife, or in accordance with an authorisation of the Board.
- (3) The Board may, on conditions determined by the Board, authorise an enrolled nurse to provide nursing care without the supervision of a registered nurse or midwife.
- (4) The Board must, in determining whether to give an authorisation under subsection (3), consider—
 - (a) issues associated with public access to nursing care; and
 - (b) the public interest in ensuring that appropriate standards of nursing care are maintained; and
 - (c) the qualifications, experience and competency of the particular person.
- (5) 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; or
 - (b) revoke an authorisation under that subsection.
- (6) If a person who applies to be enrolled on, or for reinstatement of enrolment on, the nurses roll—
 - (a) does not, in the opinion of the Board, have the necessary qualifications or experience required to be enrolled on the nurses roll; or
 - (b) is not, in the opinion of the Board, medically fit to provide nursing care; or
 - (c) is not, in the opinion of the Board, a fit and proper person to be enrolled on the nurses roll,

the Board may enrol the person on the nurses roll under this subsection (*limited enrolment*)—

- (d) in order to enable the person—
 - (i) to do whatever is necessary to become eligible for full enrolment on the nurses roll under this Act; or
 - (ii) to teach nursing or to undertake research or study related to nursing in this State; or
- (e) if, in its opinion, it would otherwise be in the public interest to do so.

- (7) In granting an authorisation to a person under subsection (3), or enrolling a person under subsection (6), the Board may impose 1 or more of the following conditions on the enrolment:
- (a) a condition restricting the places or times at which the person may provide nursing care;
 - (b) a condition limiting the nursing care that the person may provide;
 - (c) a condition limiting the period during which the enrolment will have effect;
 - (d) a condition requiring the person to undertake a specified course of education or training, or to obtain specified experience;
 - (e) a condition requiring that the person be supervised in the provision of nursing care by a particular person or by a person of a particular class;
 - (f) such other conditions as the Board thinks fit.

28—Registration on midwives register

- (1) Subject to this Act, a natural person is eligible for registration on the midwives register if the person, on application to the Board, satisfies the Board that he or she—
- (a) has qualifications approved or recognised by the Board for the purposes of registration on the register; and
 - (b) has met the requirements determined by the Board to be necessary for the purposes of registration on the register; and
 - (c) is medically fit to provide midwifery care; and
 - (d) is a fit and proper person to be registered on the register.
- (2) If a person who applies for registration, or reinstatement of registration, on the midwives register—
- (a) does not, in the opinion of the Board, have the necessary qualifications or experience required for registration on the register; or
 - (b) is not, in the opinion of the Board, medically fit to provide midwifery care; or
 - (c) is not, in the opinion of the Board, a fit and proper person to be registered on the register,

the Board may register the person on the register under this subsection (*limited registration*)—

- (d) in order to enable the person—
 - (i) to do whatever is necessary to become eligible for full registration under this Act; or
 - (ii) to teach midwifery or to undertake research or study related to midwifery in this State; or
 - (e) if, in its opinion, it would otherwise be in the public interest to do so.
- (3) In registering a person under subsection (2), the Board may impose 1 or more of the following conditions on the registration:
- (a) a condition restricting the places or times at which the person may provide midwifery care;

- (b) a condition limiting the midwifery care that the person may provide;
- (c) a condition limiting the period during which the registration will have effect;
- (d) a condition requiring the person to undertake a specified course of education or training, or to obtain specified experience;
- (e) a condition requiring that the person be supervised in the provision of midwifery care by a particular person or by a person of a particular class;
- (f) such other conditions as the Board thinks fit.

29—Registration on students register

- (1) A person is not entitled to undertake a course of study that provides qualifications for registration on the nurses register or the midwives register, or enrolment on the nurses roll, unless the person is registered on the students register.
- (2) A person is not entitled to provide nursing or midwifery care as part of a course of study that is being undertaken by the person in a place outside the State and provides qualifications for registration, enrolment or some other form of accreditation as a nurse or midwife under the law of that place unless the person is registered on the students register.
- (3) A person is eligible for registration on the students register if the person, on application to the Board, satisfies the Board that he or she—
 - (a) genuinely requires registration on the register—
 - (i) to enable the person to undertake a course of study that provides qualifications for registration or enrolment under this Act; or
 - (ii) to enable the person to provide nursing or midwifery care as part of a course of study that is being undertaken by the person in a place outside the State and provides qualifications for registration, enrolment or some other form of accreditation as a nurse or midwife under the law of that place; and
 - (b) is medically fit to provide nursing or midwifery care (as the case requires); and
 - (c) is a fit and proper person to be registered on the register.
- (4) It is a condition of registration on the students register that the student may only provide nursing or midwifery care—
 - (a) as part of the course of study for which registration on the students register is required; and
 - (b) under the supervision of a nurse or midwife.
- (5) If a person who applies for registration, or reinstatement of registration, on the students register is not, in the opinion of the Board, medically fit to provide nursing or midwifery care (as the case requires), the Board may register the person on the register in pursuance of this subsection (*limited student registration*) and impose 1 or more of the following conditions on the registration:
 - (a) a condition limiting the nursing or midwifery care that the person may provide;

- (b) a condition limiting the period during which the registration will have effect;
- (c) a condition requiring that the person be supervised in the provision of nursing or midwifery care by a particular person or by a person of a particular class;
- (d) such other conditions as the Board thinks fit.

30—Concurrent registration and enrolment

- (1) A person may be concurrently registered on more than 1 register under this Act.
- (2) A person must not be concurrently registered on the nurses register and enrolled on the nurses roll.

31—Application for registration or enrolment and provisional 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 registration or enrolment fee fixed under this Act.
- (2) An applicant for registration or enrolment must, if the Board so requires, provide the Board with specified information to enable the Board to determine the application.
- (3) The Board may require an applicant for registration or enrolment—
 - (a) to submit a medical report or other evidence acceptable to the Board as to the applicant's medical fitness to provide nursing or midwifery care; or
 - (b) to obtain additional qualifications or experience specified by the Board before the Board determines the application.
- (4) 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 (*provisional registration* or *provisional enrolment*).
- (5) Provisional registration or provisional enrolment remains in force until the Board determines the application.
- (6) The registration or enrolment by the Board under this Act of a person who was provisionally registered or provisionally enrolled has effect from the commencement of the provisional registration or provisional enrolment.

32—Removal from register or nurses roll

- (1) The Registrar must, on application by a person registered or enrolled under this Act, remove the person from the appropriate register or the nurses roll.
- (2) The Registrar must remove from the appropriate register or the nurses roll a person—
 - (a) who dies; or
 - (b) who ceases to hold a qualification required for registration on the register, or enrolment on the nurses roll; or
 - (c) who ceases for any other reason to be entitled to be registered on the register or enrolled on the nurses roll; or
 - (d) who completes, or ceases to be enrolled in, the course of study that formed the basis for the person's registration on the students register; or

- (e) whose registration or enrolment has been suspended or cancelled under this Act.
- (3) The Registrar may act under subsection (2) without giving prior notice to the person.

33—Reinstatement on register or nurses roll

- (1) A person who has been removed from a register or the nurses roll under this Act—
 - (a) on his or her application; or
 - (b) on account of a failure to pay the annual practice fee or provide the return required under section 34; or
 - (c) on account of failure to pay a fine imposed on the person by the Board under this Act; or
 - (d) on account of the person—
 - (i) ceasing to hold a qualification required for registration on the register or enrolment on the nurses roll or otherwise ceasing to be entitled to be so registered or enrolled; or
 - (ii) ceasing to be enrolled in the course of study that formed the basis for the person's registration on the students register,

may apply to the Board at any time for reinstatement on the appropriate register or the nurses roll.
- (2) A person whose registration or enrolment under this Act has been suspended may apply to the Board for reinstatement on the appropriate register or the nurses roll (but not, in the case of an order for suspension for a specified period made in disciplinary proceedings, until after the expiration of that period).
- (3) A person who has been disqualified from being registered or enrolled under this Act may, subject to the terms of the order for disqualification, apply to the Board for reinstatement on the appropriate register or the nurses roll.
- (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 reinstatement fee fixed under this Act.
- (5) An applicant for reinstatement must, if the Board so requires, provide the Board with specified information to enable the Board to determine the application.
- (6) The Board may require an applicant for reinstatement—
 - (a) to submit a medical report or other evidence acceptable to the Board as to the applicant's medical fitness to provide nursing or midwifery care; or
 - (b) to obtain additional qualifications or experience specified by the Board before the Board determines the application.
- (7) Subject to this section, the Board must reinstate on the appropriate register or the nurses roll an applicant under this section if satisfied that the applicant is eligible for registration on that register or enrolment on the nurses roll.

- (8) The Board may refuse to reinstate the applicant on the appropriate register or the nurses roll until all complaints (if any) laid against the applicant under this Act, or a law of another State or a Territory of the Commonwealth providing for the registration, enrolment or some other form of accreditation of persons who provide nursing or midwifery care, have been finally disposed of.

34—Fees and returns

- (1) Subject to this Act, a person will not be registered or enrolled under this Act, nor will a registration or enrolment be reinstated, until the registration, enrolment or reinstatement fee, and the annual practice fee, fixed under this Act have been paid.
- (2) A person registered or enrolled under this Act must, in each calendar year before the date fixed for that purpose by the Board—
- (a) pay to the Board the annual practice fee fixed under this Act; and
 - (b) provide the Board with a return, in a form approved by the Board, containing all information specified in the return relating to the provision of nursing or midwifery care, or the undertaking of any course of nursing or midwifery education or training, by the person during the preceding year or to any other matter relevant to the person's registration or enrolment under this Act.
- (3) The Board may, without further notice, remove from the appropriate register or the nurses roll a person who fails to pay the annual practice fee or provide the required return by the due date.

35—Imposition of conditions if nurse or midwife has not practised for 5 years

- (1) If the Board is satisfied that a nurse or midwife has not practised nursing or midwifery for a period of 5 years or more, the Board may, by written notice to the nurse or midwife, impose 1 or more of the following conditions on the person's registration or enrolment under this Act:
- (a) a condition restricting the places or times at which the person may provide nursing or midwifery care;
 - (b) a condition limiting the nursing or midwifery care that the person may provide;
 - (c) a condition requiring the person to undertake a specified course of education or training, or to obtain specified experience;
 - (d) a condition requiring that the person be supervised in the provision of nursing or midwifery care by a particular person or by a person of a particular class;
 - (e) such other conditions as the Board thinks fit.
- (2) Before the Board acts under subsection (1), the Board must—
- (a) give written notice to the person specifying the reasons for the proposal to impose conditions and the terms of the proposed conditions; and
 - (b) allow the person at least 28 days within which to make submissions to the Board.

Subdivision 2—Endorsements of registration

36—Endorsement

- (1) A registered nurse is eligible to have his or her registration endorsed with recognition as a nurse practitioner in a particular area of practice.
- (2) A registered nurse or midwife is eligible to have his or her registration endorsed with—
 - (a) recognition in a particular area of nursing or midwifery prescribed by the regulations; or
 - (b) an authorisation to prescribe prescription drugs,if the nurse or midwife, on application to the Board, satisfies the Board that he or she has qualifications approved or recognised by the Board for the purposes of the endorsement and has met any requirements determined by the Board to be necessary for the purposes of the endorsement.
- (3) If the registration of a nurse or midwife is endorsed with an authorisation to prescribe prescription drugs, the nurse or midwife may prescribe prescription drugs while acting in the ordinary course of his or her profession.

37—Application for endorsement

- (1) An application for endorsement of registration must—
 - (a) be made to the Board in the manner and form approved by the Board; and
 - (b) be accompanied by the fee fixed under this Act.
- (2) An applicant for endorsement must, if the Board so requires, provide the Board with specified information to enable the Board to determine the application.

38—Removal of endorsement

- (1) The Registrar must, on application by a nurse or midwife whose registration is endorsed under this Act, remove the endorsement.
- (2) The Registrar must remove an endorsement from the registration of a nurse or midwife whose registration is endorsed under this Act if—
 - (a) the person ceases to hold a qualification required for the endorsement; or
 - (b) the person ceases for any other reason to be entitled to the endorsement; or
 - (c) the person's endorsement is cancelled under this Act.
- (3) The Registrar may act under subsection (2) without giving prior notice to the person.

Division 3—Special provisions relating to services providers

39—Information to be given to Board by services providers

- (1) A services provider must—
 - (a) in the case of a person who was a services provider immediately before the commencement of this section—within 60 days of that commencement; and
 - (b) in any other case—within 60 days of becoming a services provider,

give written notice to the Board of—

- (c) the provider's full name and business or (in the case of a corporation) registered address; and
 - (d) in the case of a corporate or trustee services provider—the full names and addresses of all persons who occupy a position of authority in the provider.
- (2) A services provider must, within 30 days of any change occurring in the particulars required to be given under subsection (1), inform the Board in writing of the change.
- (3) A services provider who contravenes or fails to comply with this section is guilty of an offence.

Maximum penalty: \$10 000.

- (4) The Board must keep a record of information provided to the Board under this section available for inspection, on payment of the prescribed fee, by any person during ordinary office hours at the office of the Board and may make the record available to the public by electronic means.

40—Records to be kept by services providers

- (1) A services provider must keep—
- (a) a written record of—
 - (i) the full names and nominated contact addresses of nurses and midwives through the instrumentality of whom the provider has provided nursing or midwifery care; and
 - (ii) the period during which, or the dates on which, the provider has provided nursing or midwifery care through each such nurse or midwife; and
 - (iii) the place or places at which the provider has provided nursing or midwifery care through each such nurse or midwife; and
 - (b) a copy of the current certificate of registration or enrolment of each such nurse or midwife for the period or periods during which, or on the dates on which, the provider provided nursing or midwifery care through the nurse or midwife.
- (2) The material kept under subsection (1) must be retained for at least 7 years.
- (3) A services provider must make the material required to be kept under this section available for inspection by any person during ordinary office hours at the provider's business or (in the case of a corporation) registered address and may make the material available to the public by electronic means.
- (4) Despite subsection (3), a nominated contact address is not to be disclosed except to an inspector.
- (5) A fee not exceeding an amount prescribed by regulation may be charged for the inspection of the material by a person other than an inspector.
- (6) A services provider who contravenes or fails to comply with this section is guilty of an offence.

Maximum penalty: \$10 000.

41—Services providers to be indemnified against loss

- (1) A services provider must not, unless exempted by the Board, provide nursing or midwifery care through the instrumentality of a nurse or midwife unless insured or indemnified in a manner and to an extent approved by the Board against civil liabilities that might be incurred by the nurse or midwife or services provider in connection with the provision of such care.
Maximum penalty: \$10 000.
- (2) The Board may, subject to such conditions as it thinks fit, exempt a services provider, or a class of services provider, from the requirements of this section and may, whenever it thinks fit, revoke an exemption or revoke or vary the conditions under which an exemption operates.

Division 4—Offences

42—Illegal holding out as being registered

- (1) A person must not hold himself or herself out as a registered nurse, midwife or student or permit another person to do so, unless the person is registered on the appropriate register.
Maximum penalty: \$50 000 or imprisonment for 6 months.
- (2) A person must not hold out another as a registered nurse, midwife or student unless the other person is registered on the appropriate register.
Maximum penalty: \$50 000 or imprisonment for 6 months.

43—Illegal holding out as being enrolled

- (1) A person must not hold himself or herself out as an enrolled nurse, or permit another person to do so, unless enrolled on the nurses roll.
Maximum penalty: \$50 000 or imprisonment for 6 months.
- (2) A person must not hold out another as an enrolled nurse unless the other person is enrolled on the nurses roll.
Maximum penalty: \$50 000 or imprisonment for 6 months.

44—Illegal holding out concerning limited registration or enrolment, conditions or authorisation

- (1) A person whose registration or enrolment is limited, or is subject to a condition, must not hold himself or herself out as having a registration or enrolment that is not limited or not subject to a condition, or permit another person to do so.
Maximum penalty: \$50 000 or imprisonment for 6 months.
- (2) A person must not hold out another whose registration or enrolment is limited, or subject to a condition, as having a registration or enrolment that is not limited or subject to a condition.
Maximum penalty: \$50 000 or imprisonment for 6 months.

- (3) A person must not hold himself or herself out as being authorised under section 27(3) to provide nursing care without the supervision of a registered nurse or midwife unless he or she is so authorised.

Maximum penalty: \$50 000 or imprisonment for 6 months.

- (4) A person must not hold out another as being authorised under section 27(3) to provide nursing care without the supervision of a registered nurse or midwife unless the other person is so authorised.

Maximum penalty: \$50 000 or imprisonment for 6 months.

45—Illegal holding out as having endorsed registration

- (1) A person must not hold himself or herself out as having registration under this Act that is subject to an endorsement, or permit another person to do so, unless the registration of the person is subject to the endorsement.

Maximum penalty: \$50 000 or imprisonment for 6 months.

- (2) A person must not hold out another as having registration under this Act that is subject to an endorsement, unless the registration of the other person is subject to the endorsement.

Maximum penalty: \$50 000 or imprisonment for 6 months.

46—Use of certain terms or descriptions prohibited

- (1) Subject to the regulations, a person—

- (a) who is not registered on the appropriate register or enrolled on the nurses roll;
or
- (b) whose registration is not subject to the appropriate endorsement,

must not use a prescribed term, or derivatives of the words comprising the term, to describe himself or herself or a service that he or she provides.

Maximum penalty: \$50 000.

- (2) Subject to the regulations, a person must not, in the course of advertising or promoting a service that he or she provides, use a prescribed term, or derivatives of the words comprising the term, to describe a person who is engaged in the provision of the service but—

- (a) who is not registered on the appropriate register or enrolled on the nurses roll;
or
- (b) whose registration is not subject to the appropriate endorsement.

Maximum penalty: \$50 000.

- (3) In this section—

prescribed term means—

- (a) in relation to registration on the nurses register—registered nurse, general nurse or nurse; or
- (b) in relation to enrolment on the nurses roll—enrolled nurse or nurse; or
- (c) in relation to registration on the midwives register—registered midwife or midwife; or

- (d) in relation to registration on the students register—registered student; or
- (e) in relation to registration on the part of the students register for registered nursing students or enrolled nursing students—registered nursing student or student nurse; or
- (f) in relation to registration on the part of the students register for enrolled nursing students—enrolled nursing student; or
- (g) in relation to registration on the part of the students register for midwifery students—registered midwifery student or student midwife; or
- (h) in relation to endorsement as a nurse practitioner in a particular area of practice—nurse practitioner; or
- (i) any other word or expression prescribed by the regulations.

47—Improper directions to registered or enrolled persons

- (1) If a person who provides nursing or midwifery care through the instrumentality of another person registered or enrolled under this Act directs or pressures the other person to engage in unprofessional conduct, the person is guilty of an offence.

Maximum penalty: \$75 000.

- (2) If a person who occupies a position of authority in a corporate or trustee services provider directs or pressures a person registered or enrolled under this Act through whom the provider provides nursing or midwifery care to engage in unprofessional conduct, the person and the provider are each guilty of an offence.

Maximum penalty: \$75 000.

48—Offence to contravene conditions of registration or enrolment

- (1) A person who contravenes, or fails to comply with, a condition imposed under this Act on the person's registration or enrolment is guilty of an offence.

Maximum penalty: \$75 000 or imprisonment for 6 months.

- (2) It is a defence to a charge against subsection (1) for the person to prove that the contravention or failure to comply was necessary or appropriate for the provision of nursing or midwifery care in an emergency.

49—Procurement of registration or enrolment by fraud

A person who, by fraud or any other dishonest means, procures (whether for himself or herself or for another person)—

- (a) registration or enrolment, or reinstatement of registration or enrolment, under this Act; or
- (b) endorsement of a registration under this Act,

is guilty of an offence.

Maximum penalty: \$75 000 or imprisonment for 6 months.

50—Nurse or midwife to produce certificate of registration or enrolment

- (1) A nurse or midwife must, on request by a prescribed person for a purpose related to the provision of nursing or midwifery care by the nurse or midwife, produce his or her certificate of registration or enrolment.

Maximum penalty: \$5 000.

- (2) In this section—

prescribed person means—

- (a) an inspector; or
- (b) a person to whom the nurse or midwife has provided, or is providing, nursing or midwifery care; or
- (c) a services provider who has provided, or who is proposing to provide, nursing or midwifery care through the nurse or midwife; or
- (d) any other person brought within the ambit of this definition by the regulations.

51—Report to Board of cessation of status as student

- (1) The person in charge of an educational institution must, if a student completes, or ceases to be enrolled in, a course of study at that institution providing qualifications for registration or enrolment under this Act, cause written notice of that fact to be given to the Board.

Maximum penalty: \$5 000.

- (2) A person registered on the students register who completes, or ceases to be enrolled in, the course of study that formed the basis for that registration must cause written notice of that fact to be given to the Board.

Maximum penalty: \$1 250.

Part 4—Investigations and proceedings

Division 1—Preliminary

52—Interpretation

In this Part—

- (a) a reference to *occupier of a position of authority* includes a reference to a person who is not but who was, at the relevant time, the occupier of a position of authority;
- (b) a reference to *services provider* includes a reference to a person who is not but who was, at the relevant time, a services provider;
- (c) a reference to *person registered or enrolled under this Act* includes a reference to a person who is not but who was, at the relevant time, registered or enrolled under this Act or the repealed Act.

53—Cause for disciplinary action

- (1) There is proper cause for disciplinary action against a person registered or enrolled under this Act if—
 - (a) the person's registration or enrolment was improperly obtained; or
 - (b) an endorsement of the person's registration was improperly obtained; or
 - (c) the person is guilty of unprofessional conduct; or
 - (d) the person is for any reason no longer a fit and proper person to be registered on the appropriate register or enrolled on the nurses roll.
- (2) There is proper cause for disciplinary action against a services provider if—
 - (a) the provider has contravened or failed to comply with a provision of this Act; or
 - (b) there has been, in connection with the provision of nursing or midwifery care by the provider, a contravention or failure to comply with a code of conduct under this Act applying to the provider; or
 - (c) the provider, or any person employed or engaged by the provider, has, in connection with the provision of nursing or midwifery care by the provider, engaged in conduct that would, if the person were registered or enrolled under this Act, constitute unprofessional conduct; or
 - (d) the provider is for any reason not a fit and proper person to be a services provider; or
 - (e) in the case of a corporate or trustee services provider, an occupier of a position of authority in the provider—
 - (i) has contravened or failed to comply with a provision of this Act; or
 - (ii) has, in connection with the provision of nursing or midwifery care by the provider, engaged in conduct that would, if the person were registered or enrolled under this Act, constitute unprofessional conduct; or
 - (iii) is for any reason not a fit and proper person to occupy a position of authority in a corporate or trustee services provider.
- (3) There is proper cause for disciplinary action against the occupier of a position of authority in a corporate or trustee services provider if—
 - (a) the person has contravened or failed to comply with a provision of this Act; or
 - (b) the person has, in connection with the provision of nursing or midwifery care by the provider, engaged in conduct that would, if the person were registered or enrolled under this Act, constitute unprofessional conduct; or
 - (c) the person is for any reason not a fit and proper person to occupy a position of authority in a corporate or trustee services provider; or
 - (d) —
 - (i) the provider has contravened or failed to comply with a provision of this Act; or

- (ii) there has been, in connection with the provision of nursing or midwifery care by the provider, a contravention or failure to comply with a code of conduct under this Act applying to the provider; or
- (iii) the provider, or any person employed or engaged by the provider, has, in connection with the provision of nursing or midwifery care by the provider, engaged in conduct that would, if the provider or the person were registered or enrolled under this Act, constitute unprofessional conduct,

unless it is proved that the person could not, by the exercise of reasonable care, have prevented the contravention, failure to comply or conduct.

Division 2—Inspectors

54—Authorisation of inspectors

- (1) The Board may authorise persons to be inspectors for the purposes of this Act.
- (2) An authorisation may be made subject to conditions or limitations specified in the instrument of authorisation.
- (3) The Board may, by notice in writing to an inspector, vary or revoke an authorisation, or a condition or limitation of an authorisation, on any grounds it thinks fit.

55—Guidelines

- (1) The Board must, within 6 months after the commencement of this section, prepare and submit to the Minister for approval guidelines to be followed by inspectors when investigating a matter under this Act.
- (2) The Board may, at any time, with the approval of the Minister, amend the guidelines, or substitute new guidelines.
- (3) Before approving the guidelines, or an amendment to or substitution of the guidelines, the Minister must consult with the bodies prescribed by the regulations for the purposes of this subsection.
- (4) A person is entitled to inspect (without charge) the guidelines during ordinary office hours at the principal office of the Board.
- (5) A person is entitled, on payment of the prescribed fee, to a copy of the guidelines.

56—Review of guidelines

- (1) The Minister must, as soon as practicable after the second anniversary of the commencement of this section, conduct a review in relation to the operation and effectiveness of the guidelines prepared and approved under section 55 (or, if the guidelines have been amended or substituted in accordance with that section, the guidelines as so amended or substituted).
- (2) The Minister must prepare a report based on the review and must, within 12 sitting days after the report is prepared, cause copies of the report to be laid before each House of Parliament.

57—Powers of inspectors

- (1) If there are reasonable grounds for suspecting—
 - (a) that there is proper cause for disciplinary action against a person; or
 - (b) that a person registered or enrolled under this Act is medically unfit to provide nursing or midwifery care (as the case requires); or
 - (c) that a person is guilty of an offence against this Act,an inspector may investigate the matter.
- (2) For the purposes of an investigation, an inspector may—
 - (a) at any reasonable time, enter and inspect premises of a person registered or enrolled under this Act or premises on which the inspector reasonably suspects an offence against this Act has been or is being committed; or
 - (b) with the authority of a warrant issued by a magistrate or in circumstances in which the inspector reasonably believes that immediate action is required, use reasonable force to break into or open any part of, or anything in or on any premises referred to in paragraph (a); or
 - (c) while on premises entered under paragraph (a) or (b), seize and retain anything found on the premises that the inspector reasonably believes may afford evidence relevant to the matters under investigation; or
 - (d) require any person who has possession of documents or records relevant to the matters under investigation to produce those documents or records for inspection, including written records that reproduce in a readily understandable form information kept by computer, microfilm or other process; or
 - (e) inspect any documents or records produced to the inspector and retain them for such reasonable period as the inspector thinks fit, and make copies of the documents or records; or
 - (f) require any person who is in a position to provide information relevant to the matters under investigation to answer any question put by the inspector in relation to those matters; or
 - (g) take photographs, films or video or audio recordings; or
 - (h) if the inspector reasonably suspects that an offence against this Act has been or is being committed, require the suspected offender to state his or her full name and address.
- (3) An inspector must not exercise the power conferred by subsection (2)(a) in relation to any residential premises except with the permission of the occupier of the premises or on the authority of a warrant issued by a magistrate.
- (4) A magistrate must not issue a warrant under this section unless satisfied, by information given on oath, that the warrant is reasonably required in the circumstances.

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

Maximum penalty: \$5 000.

- (6) An inspector must, in investigating a matter under this Act, comply with the guidelines made under section 55 as in force from time to time (however a failure to do so will not, of itself, affect the validity of a prosecution for an offence against this Act or disciplinary proceedings under this Act).

58—Offence to hinder etc inspector

A person who—

- (a) hinders or obstructs an inspector in the exercise of powers conferred by this Act; or
- (b) uses abusive, threatening or insulting language to an inspector; or
- (c) refuses or fails to comply with a requirement of an inspector under this Act; or
- (d) when required by an inspector to answer a question, refuses or fails to answer the question to the best of the person's knowledge, information and belief; or
- (e) falsely represents, by words or conduct, that he or she is an inspector,

is guilty of an offence.

Maximum penalty: \$10 000.

Division 3—Proceedings before Board

59—Obligation to report medical unfitness or unprofessional conduct of registered or enrolled persons

- (1) If—
- (a) a health professional who has treated, or is treating, a patient who is a person registered or enrolled under this Act; or
 - (b) a person who provides nursing or midwifery care through the instrumentality of a person registered or enrolled under this Act; or
 - (c) a prescribed employee of a body corporate that has entered into an arrangement with a person registered or enrolled under this Act under which the person provides nursing or midwifery care; or
 - (d) the person in charge of an educational institution at which a student is enrolled in a course of study providing qualifications for registration or enrolment under this Act,

is of the opinion that the person registered or enrolled under this Act is or may be medically unfit to provide nursing or midwifery care, the person must submit a written report to the Board setting out his or her reasons for that opinion and any other information required by the regulations.

Maximum penalty: \$10 000.

- (2) If a services provider or exempt provider is of the opinion that a nurse, midwife or student through whom the provider provides nursing or midwifery care has engaged in unprofessional conduct, the provider must submit a written report to the Board setting out the provider's reasons for that opinion and any other information required by the regulations.
Maximum penalty: \$10 000.
- (3) The Board must cause a report made under this section to be investigated.

60—Medical fitness of registered or enrolled persons

If—

- (a) on the application of the Registrar or the Minister; or
- (b) after an investigation relating to a report under section 59 has been conducted, the Board is satisfied, after due inquiry, that a person registered or enrolled under this Act is medically unfit to provide nursing or midwifery care and that it is desirable in the public interest that an order be made under this section, the Board may, by order—
 - (c) suspend the person's registration or enrolment until further order of the Board or for a specified period determined by the Board; or
 - (d) impose 1 or more of the following conditions on the person's registration or enrolment:
 - (i) a condition restricting the person's right to provide nursing or midwifery care;
 - (ii) a condition requiring the person to undergo counselling or treatment;
 - (iii) a condition requiring the person to enter into any other undertaking.

61—Inquiries by Board as to matters constituting grounds for disciplinary action

- (1) A complaint setting out matters that are alleged to constitute grounds for disciplinary action against a person may be laid before the Board (in a manner and form approved by the Board) by—
 - (a) the Registrar; or
 - (b) the Minister; or
 - (c) a person who is aggrieved by the conduct of the person or, if the person aggrieved is a child or is suffering from a mental or physical incapacity, by a person acting on his or her behalf.
- (2) If a complaint is laid under this section, the Board must, subject to subsection (3), inquire into the subject matter of the complaint.
- (3) If a complaint has been laid under this section by or on behalf of an aggrieved person—
 - (a) the Board need not inquire into the subject matter of the complaint if the Board (constituted of the member presiding over the proceedings sitting alone) determines that the complaint is frivolous or vexatious; and

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Division 3—Proceedings before Board

- (b) the Board (constituted of the member presiding over the proceedings sitting alone) may, if satisfied that the complaint arose from a misapprehension on the part of the complainant or from a misunderstanding between the parties, before proceeding further with the hearing of the complaint, require the parties to attend before the Registrar in order to clarify the misapprehension or misunderstanding.
- (4) If, after conducting an inquiry under this section, the Board is satisfied on the balance of probabilities that there is proper cause for disciplinary action against the respondent, the Board may, by order, do 1 or more of the following:
 - (a) censure the respondent;
 - (b) require the respondent to pay to the Board a fine not exceeding \$5 000;
 - (c) if the respondent is a person who is registered or enrolled under this Act—
 - (i) impose conditions on the respondent's registration or enrolment restricting the respondent's right to provide nursing or midwifery care; or
 - (ii) cancel any endorsement of the respondent's registration; or
 - (iii) suspend the respondent's registration or enrolment for a period not exceeding 1 year; or
 - (iv) cancel the respondent's registration or enrolment; or
 - (v) disqualify the respondent from being registered or enrolled under this Act;
 - (d) prohibit the respondent from carrying on business as a services provider;
 - (e) prohibit the respondent from occupying a position of authority in a corporate or trustee services provider.
- (5) The Board may—
 - (a) stipulate that a disqualification or prohibition under subsection (4) is to apply—
 - (i) permanently; or
 - (ii) for a specified period; or
 - (iii) until the fulfilment of specified conditions; or
 - (iv) until further order;
 - (b) stipulate that an order relating to a person is to have effect at a specified future time and impose conditions as to the conduct of the person or the person's business until that time.
- (6) If—
 - (a) a person has been found guilty of an offence; and
 - (b) the circumstances of the offence form, in whole or in part, the subject matter of the complaint,

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

- (7) The Board may—
 - (a) fix a period within which a fine imposed under this section must be paid;
 - (b) on application by a person liable to pay a fine imposed under this section, extend the period within which the fine must be paid.
- (8) A fine imposed under this section is recoverable by the Board as a debt.
- (9) The Board may, without further notice, remove from the appropriate register or the nurses roll a person who fails to pay a fine imposed under this section.

62—Contravention of prohibition order

- (1) If a person carries on business as a services provider in contravention of an order of the Board, the person is guilty of an offence.
Maximum penalty: \$75 000 or imprisonment for 6 months.
- (2) If a person occupies a position of authority in a corporate or trustee services provider in contravention of an order of the Board, the person and the provider are each guilty of an offence.
Maximum penalty: \$75 000 or imprisonment for 6 months.
- (3) If a person contravenes or fails to comply with a condition imposed by the Board as to the conduct of the person or the person's business, the person is guilty of an offence.
Maximum penalty: \$75 000 or imprisonment for 6 months.

63—Register of prohibition orders

- (1) The Registrar must keep a register of persons who have been prohibited by order of the Board under this Part from carrying on business as a services provider or occupying a position of authority in a corporate or trustee services provider.
- (2) The register—
 - (a) must not include any person who is dead;
 - (b) must include, in relation to each person on the register—
 - (i) the person's full name and business address; and
 - (ii) particulars of the order.
- (3) The Registrar is responsible to the Board for the form and maintenance of the register.
- (4) The Registrar must correct an entry in the register that is not, or has ceased to be, correct.
- (5) The register must be kept available for inspection by any person during ordinary office hours at the office of the Registrar and the register may be made available to the public by electronic means.
- (6) A person may, on payment of the prescribed fee, obtain a copy of any part of the register.

64—Variation or revocation of conditions imposed by Board

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

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

65—Constitution of Board for purpose of proceedings

- (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) The Board will, for the purpose of hearing and determining proceedings under this Part, be constituted of 3 members selected by the presiding member (or, in the absence of the presiding member, the deputy presiding member), of whom—
- (a) in proceedings directly related to the practice of midwifery—at least 1 will be a midwife; and
 - (b) in proceedings of any other kind—at least 1 will be a nurse.
- (3) The presiding member of the Board (or, in the absence of the presiding member, the deputy presiding member) will appoint 1 of the members of the Board, as so constituted for the purposes of any particular proceedings, to preside over those proceedings.
- (4) If a member of the Board as constituted under this section (other than the member presiding over the proceedings) dies or is for any other reason unable to continue with the proceedings, the Board constituted of the remaining members may, if the member presiding over the proceedings so determines, continue and complete the proceedings.
- (5) Any questions of law or procedure arising before the Board will be determined by the member presiding over the proceedings and any other questions by unanimous or majority decision of the members.
- (6) The Board constituted of the member presiding over the proceedings may, sitting alone—
- (a) deal with—
 - (i) preliminary, interlocutory or procedural matters; or
 - (ii) questions of costs; or
 - (iii) questions of law; or
 - (b) enter consent orders,
- and may, for that purpose or as a consequence, while sitting alone, make any determination or order (including a final order) that the member considers appropriate.

66—Provisions as to proceedings before Board

- (1) Subject to this Act, the Board must give to all of the parties to proceedings before the Board under this Part at least 14 days written notice of the time and place at which it intends to conduct the proceedings, and must afford to the parties a reasonable opportunity to call and give evidence, to examine or cross-examine witnesses, and to make submissions to the Board.
- (2) However, the Board may, if it thinks special reasons exist for doing so, give a lesser period of written notice under subsection (1).

- (3) The requirement to give written notice under subsection (1) does not extend to adjournments.
- (4) If a party to whom notice has been given under subsection (1) 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.
- (5) The Board may, if of the opinion that it is desirable to do so in the public interest—
 - (a) suspend the registration or enrolment of the person the subject of the proceedings; or
 - (b) impose conditions on the person's registration or enrolment restricting the person's right to provide nursing or midwifery care,pending hearing and determination of the proceedings.
- (6) A person who is aggrieved by the conduct of a person that is the subject-matter of proceedings before the Board under this Part is, subject to any direction of the Board to the contrary, entitled to be present at the hearing of the proceedings.
- (7) In the course of proceedings before the Board under this Part, 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 a Territory of Australia or of another country, and draw any conclusions of fact from the evidence that it considers proper;
 - (b) adopt, as in its discretion it considers proper, any findings, decision, judgment, or reasons for judgment, of any such court, tribunal or body that may be relevant to the proceedings.
- (8) The Board must conduct proceedings under this Part as expeditiously as possible (and must, if the Board has taken action under subsection (5), hear and determine the proceedings as a matter of urgency).

Part 5—Appeals

67—Right of appeal to District Court

- (1) An appeal lies to the District Court against—
 - (a) a refusal by the Board to register or enrol, or reinstate the registration or enrolment of, a person under this Act; or
 - (b) a refusal by the Board to endorse the registration of a person under this Act; or
 - (c) the imposition by the Board of conditions on a person's registration or enrolment under this Act; or
 - (d) a decision made by the Board in proceedings under Part 4.
- (2) An appeal under subsection (1)(d) against a decision may be instituted—
 - (a) in the case of a decision made in proceedings relating to medical fitness—by the applicant in the proceedings or the person registered or enrolled under this Act to whom the proceedings relate;

- (b) in the case of a decision made in disciplinary proceedings—by the complainant or the respondent in the proceedings in which the decision was made;
 - (c) in the case of a decision under section 64—by the applicant or a person entitled to be heard in the proceedings.
- (3) An appeal must be instituted within 1 month of the date of the decision appealed against.

68—Operation of order may be suspended

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

69—Variation or revocation of conditions imposed by Court

- (1) The District Court may, at any time, on application by a person who is registered or enrolled under this Act, vary or revoke a condition imposed by the Court in relation to the person's registration or enrolment.
- (2) The Board and the Minister are entitled to appear and be heard on an application under this section.

Part 6—Miscellaneous

70—Exemptions

- (1) Subject to this section, the Minister may, by notice in the Gazette—
 - (a) exempt a person or class of persons, subject to such conditions as the Minister thinks fit and specifies in the notice, from specified provisions of this Act; or
 - (b) vary or revoke an exemption, or a condition of an exemption, under this section or impose a further condition.
- (2) The Minister must consult with the Board before making a notice under subsection (1).
- (3) A person who contravenes a condition of an exemption is guilty of an offence.
Maximum penalty: \$10 000.

71—Statutory declarations

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

72—False or misleading statement

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

Maximum penalty: \$20 000.

73—Registered or enrolled person must report medical unfitness to Board

If a person who is registered or enrolled under this Act becomes aware that he or she is or may be medically unfit to provide nursing or midwifery care, the person must immediately give written notice of that fact to the Board.

Maximum penalty: \$10 000.

74—Information relating to claim against registered or enrolled person or services provider to be provided

- (1) If a person has claimed damages or other compensation from any person for alleged negligence committed by a person who is registered or enrolled under this Act in the course of providing nursing or midwifery care, the person against whom the claim is made must—
 - (a) within 30 days after the claim is made; and
 - (b) within 30 days after any order is made by a court to pay damages or other compensation in respect of that claim or any agreement has been entered into for payment of a sum of money in settlement of that claim (whether with or without a denial of liability),

provide the Board with prescribed information relating to the claim.

Maximum penalty: \$10 000.

- (2) If a person has claimed damages or other compensation from a services provider for alleged negligence committed by the services provider in connection with the provision of nursing or midwifery care, the services provider must—
 - (a) within 30 days after the claim is made; and
 - (b) within 30 days after any order is made by a court to pay damages or other compensation in respect of that claim or any agreement has been entered into for payment of a sum of money in settlement of that claim (whether with or without a denial of liability),

provide the Board with prescribed information relating to the claim.

Maximum penalty: \$10 000.

75—Victimisation

- (1) A person commits an act of victimisation against another person (the *victim*) if he or she causes detriment to the victim on the ground, or substantially on the ground, that the victim—
 - (a) has disclosed or intends to disclose information; or
 - (b) has made or intends to make an allegation,that has given rise, or could give rise, to proceedings against the person under this Act.

- (2) An act of victimisation under this Act may be dealt with—
- (a) as a tort; or
 - (b) as if it were an act of victimisation under the *Equal Opportunity Act 1984*, but, if the victim commences proceedings in a court seeking a remedy in tort, he or she cannot subsequently lodge a complaint under the *Equal Opportunity Act 1984* and, conversely, if the victim lodges a complaint under that Act, he or she cannot subsequently commence proceedings in a court seeking a remedy in tort.
- (3) If a complaint alleging an act of victimisation under this Act has been lodged with the Commissioner for Equal Opportunity and the Commissioner is of the opinion that the subject matter of the complaint has already been adequately dealt with by a competent authority, the Commissioner may decline to act on the complaint or to proceed further with action on the complaint.
- (4) In this section—
- detriment* includes—
- (a) injury, damage or loss; or
 - (b) intimidation or harassment; or
 - (c) discrimination, disadvantage or adverse treatment in relation to the victim's employment or business; or
 - (d) threats of reprisal.

76—Self-incrimination

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

77—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.

78—Vicarious liability for offences

If a corporate or trustee services provider or other body corporate is guilty of an offence against this Act, each person occupying a position of authority in the provider or body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless it is proved that the person could not, by the exercise of reasonable care, have prevented the commission of the principal offence.

79—Application of fines

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

80—Board may require medical examination or report

- (1) The Board may, for any purpose associated with the administration or operation of this Act, require a person who is registered or enrolled under this Act, or a person who is applying for registration or enrolment, or reinstatement of registration or enrolment, to—
 - (a) submit to an examination by a health professional, or by a health professional of a class, specified by the Board; or
 - (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 person to undergo some form of medically invasive procedure).
- (2) If a person refuses or fails to comply with a requirement made under subsection (1), the Board may suspend the person's registration or enrolment until further order of the Board.

81—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 an approval of a course of education or training under this Act,the provider of the course may apply to the Minister for a review of that decision.
- (2) The Minister may determine the application as the Minister thinks fit and, if the Minister finds in favour of the applicant, grant or preserve the approval (as appropriate).

82—Confidentiality

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

Maximum penalty: \$10 000.

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

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

Maximum penalty: \$10 000.

83—Service

- (1) A notice or document required or authorised to be given or sent to, or served on, a person for the purposes of this Act may—
- (a) be given to the person personally; or
 - (b) be posted in an envelope addressed to the person at the person's last known nominated contact, residential, business or (in the case of a corporation) registered address; or
 - (c) be left for the person at the person's last known nominated contact, residential, business or (in the case of a corporation) registered address with someone apparently over the age of 16 years; or
 - (d) be transmitted by fax or email to a fax number or email address provided by the person (in which case the notice or document will be taken to have been given or served at the time of transmission).
- (2) Without limiting the effect of subsection (1), a notice or other document required or authorised to be given or sent to, or served on, a person for the purposes of this Act may, if the person is a company or registered body within the meaning of the *Corporations Act 2001* of the Commonwealth, be served on the person in accordance with that Act.

84—Evidentiary provision

- (1) In proceedings for an offence against this Act or in disciplinary proceedings under Part 4, an allegation in the complaint—
- (a) that a person named in the complaint is or is not, or was or was not on a specified date, registered on the nurses register, the midwives register or the students register, or enrolled on the nurses roll; or
 - (b) that the registration under this Act of a person named in the complaint is or is not, or was or was not on a specified date, subject to a specified endorsement; or
 - (c) that the person named in the complaint is or is not, or was or was not on a specified date, authorised under section 27(3) to provide nursing care without the supervision of a registered nurse or midwife; or
 - (d) that the registration or enrolment under this Act of a person named in the complaint is, or was on a specified date, subject to specified conditions; or
 - (e) that on a specified date details of an authorisation under section 27(3) were or were not entered on the nurses roll under this Act in respect of a person named in the complaint; or

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- (f) that on a specified date specified qualifications were or were not entered on a register or the nurses roll under this Act in respect of a person named in the complaint; or
 - (g) that a person named in the complaint is, or was on a specified date, a services provider or exempt provider; or
 - (h) that a person named in the complaint is, or was on a specified date, occupying a position of authority in a corporate or trustee services provider; or
 - (i) that a person named in the complaint is, or was on a specified date, an inspector,

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

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

85—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;
 - (b) exempt any person or class of persons from the obligation to pay a fee or charge so prescribed;
 - (c) regulate, or otherwise make provision with respect to, the education of nurses and midwives for the purposes of this Act, including by making provision with respect to the approval of courses that may lead to registration, endorsement of registration or enrolment;
 - (d) make any provision with respect to the keeping of the registers or the nurses roll under this Act;
 - (e) make any provision with respect to certificates of registration or enrolment under this Act;
 - (f) declare work of a specified class to be work that may or may not be performed in the ordinary course of the profession of a nurse or midwife;
 - (g) 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 or person, 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.
- (4) If a code, standard or other document is referred to or incorporated in the regulations—
- (a) a copy of the code, standard or other document must be kept available for public inspection, without charge and during normal office hours, at an office or offices specified in the regulations; and
 - (b) evidence of the contents of the code, standard or other document may be given in any legal proceedings by production of a document apparently certified by the Minister to be a true copy of the code, standard or other document.

Schedule 1—Repeal and transitional provisions

Part 1—Repeal

1—Repeal of *Nurses Act 1999*

The *Nurses Act 1999* is repealed.

Part 2—Transitional provisions

2—Transitional provisions relating to Board

- (1) The Nursing and Midwifery Board of South Australia is the same body corporate as the Nurses Board of South Australia.
- (2) The following provisions apply in relation to the members of the Board in office immediately before the commencement of clause 1 of this Schedule:
 - (a) the elected members appointed under section 5(1)(b) of the repealed Act continue to hold office for the balance of their respective terms as if they had been elected under this Act (despite section 7(1) and section 8(2));

- (b) all other members vacate their respective offices so that fresh appointments may be made to the Board under section 6.
- (3) Despite section 7(5), the following provisions govern the appointment of a person to fill a casual vacancy that occurs in the office of a member referred to in subclause (2)(a):
 - (a) if the vacancy occurs within 12 months after the election at which the member was elected, and at that election a candidate or candidates were excluded, the Governor must appoint the person who was the last excluded candidate at that election;
 - (b) if that person is no longer qualified for appointment or is unavailable or unwilling to be appointed or if the vacancy occurs later than 12 months after the election at which the member was elected, the Governor may appoint, on the nomination of the Minister, a nurse or midwife;
 - (c) before nominating a person for appointment, the Minister must consult the representative bodies;
 - (d) the person appointed holds office for the balance of the term of that person's predecessor.
- (4) Despite subclause (2)(b), a person may continue to act as a member of the Board for the purpose of continuing and completing proceedings (including an application for registration, enrolment or reinstatement) commenced under the repealed Act.
- (5) If appointments are to be made to the Board pursuant to the *Acts Interpretation Act 1915* prior to the commencement of clause 1 of this Schedule, for the purposes of section 6—
 - (a) a reference in that section to a *nurse* will, for those purposes, be taken to be a reference to a person who is registered on the register (other than that part of the register comprised of the midwives register), or who is an enrolled nurse, under the repealed Act at the relevant time; and
 - (b) a reference in that section to a *midwife* will, for those purposes, be taken to be a reference to a person who is registered on the midwives register under the repealed Act at the relevant time; and
 - (c) despite section 14C(3) of the *Acts Interpretation Act 1915*, such an appointment takes effect on the commencement of section 6 and not before.

3—Transitional provisions relating to registration and enrolment

- (1) The general nurses register forming part of the register under the repealed Act continues in existence as the nurses register under this Act.
- (2) The midwives register forming part of the register under the repealed Act continues in existence as the midwives register under this Act.
- (3) The nurses roll under the repealed Act continues in existence as the nurses roll under this Act.

- (4) A person who is registered under the repealed Act on the register (other than that part of the register comprised of the midwives register) immediately before the commencement of this clause will be taken to be registered under this Act on the nurses register and any restrictions, limitations or conditions that applied to the registration of the person under the repealed Act immediately before that commencement will be taken to continue to apply as conditions of the registration of the person as if they had been imposed by the Board under this Act.
- (5) In addition to subclause (4), the registration of a person who is registered under the repealed Act on the special practice (nurse practitioners) register in a particular area of practice immediately before the commencement of this clause will be taken to be endorsed under this Act with—
- (a) recognition as a nurse practitioner in the same area of practice; and
 - (b) an authorisation to prescribe prescription drugs.
- (6) A person who is registered under the repealed Act on the midwives register immediately before the commencement of this clause will be taken to be registered under this Act on the midwives register and any restrictions, limitations or conditions that applied to the registration of the person under the repealed Act immediately before that commencement will be taken to continue to apply as conditions of the registration of the person as if they had been imposed by the Board under this Act.
- (7) A person who is enrolled under the repealed Act on the nurses roll immediately before the commencement of this clause will be taken to be enrolled under this Act on the nurses roll and any restrictions, limitations or conditions that applied to the enrolment of the person under the repealed Act immediately before that commencement will be taken to continue to apply as conditions of the enrolment of the person as if they had been imposed by the Board under this Act.
- (8) If a person who was removed from the register or nurses roll under the repealed Act for any reason and who had not, before the commencement of this clause, been reinstated on that register or nurses roll, applies for registration or enrolment under this Act, the Board may deal with the application as though it were an application for reinstatement on the appropriate register or the nurses roll under this Act.
- (9) In this clause—
- special practice (nurse practitioners) register* means the part of the register maintained under the repealed Act for the area of nursing recognised by the Board as being the special practice area constituted of the scope of practice of nurse practitioners.

4—Transitional provision relating to students

A person who was, immediately before the commencement of this clause, enrolled in a course of study that provides qualifications for registration or enrolment under the repealed Act is, on due application to the Board, entitled to full registration on the registered nursing students or enrolled nursing students part of the students register.

5—Transitional provisions relating to completion of proceedings

- (1) Disciplinary and other proceedings (including an application for registration, enrolment or reinstatement) commenced but not determined under the repealed Act before the commencement of this clause are to be determined as if they had been commenced under this Act (and for that purpose an application for registration or reinstatement on the special practice (nurse practitioners) register is to be treated as an application for endorsement of registration with recognition as a nurse practitioner in a particular area of practice and an authorisation to prescribe prescription drugs).
- (2) Despite clause 2(2)(b), the Board may, in relation to particular proceedings commenced but not determined under the repealed Act before the commencement of this clause, continue and complete the proceedings as constituted for the purpose of those proceedings under the repealed Act (whether or not the Board as so constituted complies with a requirement of this Act in respect of the constitution of the Board for proceedings of the relevant kind).
- (3) In this clause—

special practice (nurse practitioners) register means the part of the register maintained under the repealed Act for the area of nursing recognised by the Board as being the special practice area constituted of the scope of practice of nurse practitioners.

6—Regulations

The regulations may make other provisions of a savings or transitional nature consequent on the enactment of this Act.