

Queensland



# NURSING ACT 1992

**Reprinted as in force on 2 October 1996  
(includes amendments up to Act No. 58 of 1995)**

**Reprint No. 1A**

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# Information about this reprint

This Act is reprinted as at 2 October 1996. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprint for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprint.**

Queensland



**NURSING ACT 1992**

**TABLE OF PROVISIONS**

Section		Page
<b>PART 1—PRELIMINARY</b>		
1	Short title .....	9
2	Commencement .....	9
3	Objective of Act .....	9
4	Definitions .....	9
5	Crown bound .....	11
<b>PART 2—ADMINISTRATION</b>		
<i>Division 1—The Council and its functions and powers</i>		
6	Establishment of Council etc. ....	12
7	Council’s functions .....	12
8	Council’s powers .....	13
9	Council’s power to be a member of other bodies etc. ....	14
10	By-laws .....	15
<i>Division 2—Constitution of Council</i>		
11	Council’s constitution .....	16
<i>Division 3—Chairperson of Council</i>		
12	Chairperson .....	17
<i>Division 4—Meetings of Council</i>		
13	Times and places of meetings .....	17
14	Presiding at meetings .....	18
15	Quorum and voting at meetings .....	18
16	Conduct of meetings .....	18
17	Disclosure of interests .....	18

***Division 5—Financial matters***

18	Funds of Council .....	19
19	Executive officer to present statement of prospective expenditure .....	20

***Division 6—Provisions relating to members other than the executive officer***

20	Division applies to members other than executive officer .....	20
21	Appointment .....	20
22	Duration of appointment .....	20
23	Terms of appointment .....	20
24	Member ceasing as member .....	21
25	Acting member .....	21

***Division 7—Provisions relating to the executive officer***

26	Duties of executive officer .....	21
27	Appointment of executive officer .....	21
28	Duration of appointment .....	22
29	Terms of appointment .....	22
30	Preservation of rights .....	22
31	Superannuation for executive officer who was previously an officer of the public service .....	23
32	Leave of absence .....	23
33	Resignation .....	24
34	Executive officer not to engage in other paid employment .....	24
35	Disclosure of interest by executive officer .....	24
36	Removal .....	24
37	Acting executive officer .....	24

***Division 8—The staff of the Council***

38	Council's staff .....	25
39	Terms of employment .....	25
40	Arrangements relating to staff .....	25
41	Superannuation schemes .....	26
42	Superannuation for officers and employees who were previously officers of the public service .....	26

***Division 9—Miscellaneous***

43	Delegation by Council . . . . .	27
44	Delegation by executive officer . . . . .	27
45	Council's seal . . . . .	27
46	Judicial notice of certain signatures . . . . .	28
47	Committees of Council . . . . .	28

**PART 3—REGISTRATION AND ENROLMENT*****Division 1—Administration***

48	The Register . . . . .	28
49	The Roll . . . . .	29
50	Notification of change of particulars . . . . .	29
51	Particulars of cancellations etc. to be recorded . . . . .	29
52	Corrections to Register or Roll etc. . . . .	30
53	Inspection of Register or Roll etc. . . . .	30

***Division 2—Qualifications***

54	Qualifications for registration or enrolment . . . . .	30
----	--	----

***Division 3—Registration and enrolment***

55	Application for registration or enrolment . . . . .	32
56	Attendance of applicant before Council . . . . .	32
57	Council may require English examination . . . . .	32
58	Registration or enrolment . . . . .	32
59	Refusal of application . . . . .	33
60	Both registration and enrolment not permitted . . . . .	33
61	Action to be taken on registration or enrolment . . . . .	34
62	Copies of certificates to be issued on application . . . . .	34
63	Provisional registration or enrolment . . . . .	34
64	Temporary registration . . . . .	36
65	Limited registration or enrolment . . . . .	37
66	Concerns about condition of applicants and nurses . . . . .	39
67	Immediate suspension of registration or enrolment by Council . . . . .	40
68	Immediate suspension of registration or enrolment by executive officer . . . . .	40
69	Review of suspension for health reasons . . . . .	41

---

70	Cancellation or suspension of registration and enrolment in certain cases . . . . .	41
71	Requirements following cancellation or suspension of registration or enrolment . . . . .	42
72	Restoration of registration or enrolment in certain cases . . . . .	42
73	Reissue of certificate of registration or enrolment etc. . . . .	42
	<b><i>Division 4—Annual licence certificates</i></b>	
74	Fees for annual licence certificates . . . . .	43
75	Renewal of annual licence certificate . . . . .	44
76	Endorsement of annual licence certificates . . . . .	44
	<b><i>Division 5—Authorisation to practise nursing</i></b>	
77	Authorisation to practise . . . . .	45
	<b>PART 4—ACCREDITATION OF NURSING COURSES</b>	
78	Accreditation of nursing courses . . . . .	46
79	Schools of nursing to keep records . . . . .	47
80	Schools of nursing to permit inspection . . . . .	47
81	Schools of nursing to issue certificates etc. . . . .	48
82	Examinations by Council . . . . .	48
83	Power to monitor assessment standards . . . . .	48
	<b>PART 5—PROFESSIONAL CONDUCT</b>	
	<b><i>Division 1—Professional Conduct Committee</i></b>	
84	Professional Conduct Committee . . . . .	49
85	Committee’s functions . . . . .	49
86	Committee’s powers . . . . .	49
87	Committee’s constitution . . . . .	50
88	Committee’s chairperson . . . . .	50
89	Appointment . . . . .	50
90	Duration of appointment . . . . .	50
91	Terms of appointment . . . . .	50
92	Member ceasing as a member . . . . .	51
93	Disclosure of interests . . . . .	51
94	Acting chairperson . . . . .	52
95	Arrangement of business . . . . .	52

---

96	Constitution of Committee for particular proceeding . . . . .	52
97	Member of Committee ceasing to be available . . . . .	53
98	Sitting places . . . . .	53
<b><i>Division 2—Code of conduct</i></b>		
99	Code of conduct . . . . .	53
100	Action may be taken in certain cases . . . . .	54
101	Action taken because of industrial disputes etc. . . . .	54
<b><i>Division 3—Contraventions of code of conduct</i></b>		
102	Complaints concerning conduct . . . . .	54
103	Investigation by Council . . . . .	55
104	Referral of complaint to Professional Conduct Committee . . . . .	56
<b><i>Division 4—Professional Conduct Committee proceedings</i></b>		
105	Proceedings before Committee . . . . .	56
106	Powers of Committee . . . . .	57
107	Summons to witness . . . . .	58
108	Duty of witness at inquiry . . . . .	58
109	Self-incrimination a reasonable excuse . . . . .	59
110	Inspection of documents . . . . .	59
111	Obstruction of Committee etc. . . . .	59
112	Removal from Committee hearing . . . . .	59
113	Evidence and findings etc. in other proceedings may be received or adopted . . . . .	60
114	Health assessment . . . . .	60
115	Determinations of questions before Committee . . . . .	61
116	Action by Committee . . . . .	61
117	Effect of Committee's orders . . . . .	63
118	Notification of Committee's orders and reasons . . . . .	63
<b><i>Division 5—Health assessments</i></b>		
119	Health Assessment Advisory Panel . . . . .	64
120	Members of Health Assessment Advisory Panel . . . . .	64
121	Operation of Health Assessment Advisory Panel . . . . .	64

---

**PART 6—PROVISIONS CONCERNING CERTAIN NURSING  
MATTERS**

122	Application of Act in certain cases . . . . .	65
123	Employment as a nurse . . . . .	65
124	Badges . . . . .	66

**PART 7—INVESTIGATION AND ENFORCEMENT**

*Division 1—Inspectors*

125	Appointment of inspectors . . . . .	66
126	Identity card for inspectors . . . . .	66
127	Inspector to produce identity card . . . . .	67

*Division 2—Investigation of offences*

128	Entry and search—monitoring compliance . . . . .	67
129	Entry and search—evidence of offences . . . . .	67
130	General powers of inspector in relation to places . . . . .	69
131	Offence related warrants . . . . .	70
132	Warrants may be issued by various forms of communication . . . . .	71
133	Inspector may require name and address . . . . .	73
134	Notice of seizure and compensation . . . . .	74
135	Other offences in relation to inspectors . . . . .	75

*Division 3—Investigation of complaints relating to code of conduct*

136	Powers of inspectors . . . . .	76
-----	--------------------------------	----

**PART 8—GENERAL**

*Division 1—Appeals*

137	Appeals . . . . .	76
-----	-------------------	----

*Division 2—Administration*

138	Holders of office to act honestly and with propriety . . . . .	78
139	Confidentiality of documents and information . . . . .	79
140	Supply of information to Council . . . . .	80
141	Prohibited practices . . . . .	81
142	Unauthorised nursing . . . . .	81
143	Penalty for falsifying Register or Roll etc. . . . .	82
144	Penalties and costs to Council . . . . .	83
145	Proceedings generally . . . . .	83

---

146	Evidence . . . . .	83
147	Indemnity . . . . .	84
148	Regulations . . . . .	84

**PART 9—TRANSITIONAL PROVISIONS**

149	References to certain boards etc. . . . .	84
150	Nursing Act 1976 and Nursing Studies Act 1976 references . . . . .	85

**ENDNOTES**

1	Index to Endnotes . . . . .	86
2	Date to which amendments incorporated . . . . .	86
3	Key . . . . .	86
4	Table of earlier reprints . . . . .	87
5	Tables in earlier reprints . . . . .	87
6	List of legislation . . . . .	87
7	List of annotations . . . . .	88



# NURSING ACT 1992

[as amended by all amendments that commenced on or before 2 October 1996]

**An Act to provide for the registration and enrolment of nurses, the practice of nursing and the education of nurses, and related purposes**

## PART 1—PRELIMINARY

### Short title

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

### Commencement

2. This Act (other than section 163 so far as it relates to amendments of the *Acts Interpretation Act 1954*) commences on a day to be fixed by proclamation.

### Objective of Act

3. The objective of this Act is to make provision for ensuring safe and competent nursing practice.

### Definitions

4. In this Act—

“**accredited nursing course**” means a nursing course that is accredited under this Act;

“**chairperson**” means—

- (a) in relation to the Council—the chairperson of the Council; and

- (b) in relation to the Committee—the chairperson of the Committee;
- “code of conduct”** means a code of conduct prescribed under this Act;
- “Committee”** means the Professional Conduct Committee;
- “condition”** includes physical or mental condition;
- “Council”** means the Queensland Nursing Council;
- “enrolled”** means enrolled under this Act as an enrolled nurse;
- “enrolled nurse”** means a person who is enrolled under this Act as an enrolled nurse;
- “executive officer”** means the executive officer of the Council;
- “fee”** includes tax;
- “health service”** means a health service within the meaning of the *Health Services Act 1991*;
- “inspector”** means an inspector appointed under this Act;
- “legal practitioner”** means a barrister, solicitor, barrister and solicitor or legal practitioner of the High Court or the Supreme Court of the State, another State or a Territory;
- “midwife”** means a person who is authorised by the Council to practise midwifery;
- “nurse”** means a registered or enrolled nurse;
- “nurse education”** includes—
- (a) midwifery education, psychiatric nursing education and education in any other area of nursing; and
  - (b) postgraduate nurse education;
- “nursing course”** means a course of study, by any method or system of education, that is designed to educate persons in nursing or midwifery;
- “nursing practice”** includes midwifery practice, psychiatric nursing practice and practice in any other area of nursing;
- “nursing qualifications”** includes midwifery qualifications, psychiatric nursing qualifications and qualifications in any other area of nursing;
- “Panel”** means the Health Assessment Advisory Panel;

**“place”** includes vacant land or premises;

**“premises”** includes—

- (a) a building or structure, or a part of a building or structure, of any kind; and
- (b) the land on which a building or structure is situated;

**“Register”** means the Register of Registered Nurses;

**“registered”** means—

- (a) in relation to a person—registered under this Act as a registered nurse; and
- (b) in relation to particulars—recorded in the Register;

**“registered nurse”** means a person who is registered under this Act as a registered nurse;

**“Roll”** means the Roll of Enrolled Nurses;

**“school of nursing”** includes a hospital, college, school of nursing, teaching institution or other institution that provides nursing courses.

## **Crown bound**

**5.(1)** This Act binds the Crown.

**(2)** Nothing in this Act renders the Crown liable to be prosecuted for an offence.

**(3)** However, subsection (2) does not prevent an officer, employee or agent of the Crown from being prosecuted for an offence.

## **PART 2—ADMINISTRATION**

### *Division 1—The Council and its functions and powers*

#### **Establishment of Council etc.**

**6.(1)** A council called the Queensland Nursing Council is established.

**(2)** The Council—

- (a) is a body corporate with perpetual succession; and
- (b) has a common seal; and
- (c) may sue and be sued in its corporate name.

#### **Council's functions**

**7.** The functions of the Council are to—

- (a) advise on, and report to the Minister on—
  - (i) developments in nurse education and nursing practice; and
  - (ii) the needs of the State in relation to nurse education and nursing practice; and
- (b) determine the scope of nursing practice, including the activities that constitute, or are included in, nursing practice; and
- (c) determine standards for accreditation of nursing courses; and
- (d) accredit nursing courses; and
- (e) determine minimum requirements for entry to accredited nursing courses conducted by health services; and
- (f) determine a code of conduct for nurses, midwives and other persons authorised to practise nursing; and
- (g) undertake investigations into matters and complaints as prescribed by this Act; and
- (h) determine examinations, qualifications, experience and other requirements to be fulfilled by persons applying for and maintaining registration, enrolment or authority to practise under

this Act, and monitor standards of student assessment in schools of nursing; and

- (i) establish and maintain a register and a roll of nurses; and
- (j) establish and maintain other records in relation to nurse education and nursing practice; and
- (k) conduct research into matters relevant to the Council's functions; and
- (l) give to the Minister a report of its work and activities and those of its committees during each financial year; and
- (m) carry out such other functions as are conferred on it by this or another Act.

### **Council's powers**

**8.(1)** The Council has power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions.

**(2)** Without limiting subsection (1), the Council has such powers as are conferred on it by this Act.

**(3)** Without limiting subsection (1), the Council has, for or in connection with the performance of its functions, all the powers of an individual and may, for example—

- (a) enter into contracts; and
- (b) acquire, hold, dispose of and deal with property; and
- (c) appoint committees to assist it to perform its functions; and
- (d) exploit commercially any resources of the Council, including any study, research or knowledge, or the practical application of any study, research or knowledge, developed by or within the Council or belonging to the Council (whether alone or jointly with another person or body); and
- (e) cooperate with any university, college, other educational institution, hospital or other person or body in another State, a Territory or a foreign country in making provision for the education and examination of persons practising, or intending to practise, as nurses and midwives; and

- (f) participate in—
  - (i) any nationally coordinated program relating to nurse education or nursing practice; and
  - (ii) any program with the Commonwealth, another State, a Territory or a foreign country in relation to nurse education or nursing practice; and
- (g) participate in the formation of, and become a member of, any national authority established in Australia to promote consistent policies and practices among Australian authorities responsible for the regulation of nursing and midwifery; and
- (h) develop or assist in the development of curricula for nurse education; and
- (i) enter into, and carry out, agreements or arrangements with any university, college, other educational institution, hospital or other person or body for furthering the Council's functions.

### **Council's power to be a member of other bodies etc.**

#### **9.(1) The Council—**

- (a) may become and be a member of any body (whether incorporated or unincorporated) that—
  - (i) has among its objects nurse education, training or research or any matter relating directly to the Council's functions; or
  - (ii) in the Council's opinion, is engaged in the advancement of nurse education, training or research or any function of the Council; and
- (b) may enter into agreements or arrangements with the body.

(2) Subsection (1)(a) does not require a body to admit the Council to membership of the body.

(3) The Council, or its nominee, may be a member of the governing committee of a body of which it is a member.

(4) This section does not limit the Council's powers under section 8.

**By-laws**

**10.(1)** The Council may make by-laws for the purposes of this Act.

**(2)** A by-law may be made with respect to any of the following matters—

- (a) the Council's common seal, the authentication of the Council's documents and the attesting of documents by or on behalf of the Council;
- (b) the conduct of the Council's affairs;
- (c) the conduct of meetings of, and of any proceedings before, the Council, the Committee and any committee of the Council;
- (d) duties of the executive officer or the Council's employees;
- (e) the Register, the Roll and other records, and the way in which they are to be kept;
- (f) the issue, suspension and cancellation of registration or enrolment and annual licence certificates;
- (g) the making of applications to the Council;
- (h) the accreditation of nursing courses;
- (i) the nature of accredited nursing courses and the conditions under which, the name in which, and the periods for which accredited nursing courses, may be conducted;
- (j) standards for nurse education;
- (k) examinations, qualifications, experience and other requirements for registration, enrolment or endorsement of certificates;
- (l) regulating advertising by nurses and midwives, including the ways in which they may advertise or must not advertise;
- (m) regulating canvassing or soliciting work or business by, for or on behalf of nurses and midwives;
- (n) the matters in respect of which fees are payable for the purposes of this Act, the amounts of fees, the persons who are liable to pay fees, when fees are payable, the waiver of fees, and the recovery of unpaid amounts of fees;
- (o) the allowances payable under this act and the purposes for which

- they are payable;
- (p) regulating the use of any titles, letters or words in relation to nursing qualifications or practice;
  - (q) prescribing offences for contravention of a by-law, and fixing a maximum penalty of a fine of not more than 4 penalty units for an offence;
  - (r) penalties and costs that may be imposed by the Council or the Committee;
  - (s) prescribing the badges to be issued to nurses, and regulating the issue and use of badges;
  - (t) regulating nursing practice, and determining the activities that constitute, or are included in, nursing practice;
  - (u) administrative processes associated with investigations conducted under this Act;
  - (v) student records and accredited nursing course records to be maintained by schools of nursing;
  - (w) keeping of practice records;
  - (x) conditions of employment, and management practices, applicable to the Council's employees;
  - (y) reporting of contraventions of a code of conduct approved under section 99.
- (3) A by-law must be approved by the Governor in Council.

### *Division 2—Constitution of Council*

#### **Council's constitution**

- 11.** The Council consists of the following 13 members—
- (a) 5 nurses;
  - (b) 5 nurses (1 of whom is an enrolled nurse) chosen from a panel of names submitted by an association or associations accepted by the Minister as representative of nurses;

- (c) 1 person, representing persons who use the services provided by the nursing profession;
- (d) 1 legal practitioner;
- (e) the executive officer of the Council.

### *Division 3—Chairperson of Council*

#### **Chairperson**

**12.(1)** The Governor in Council is to appoint a member mentioned in section 11(a) or (b) who is not an officer of the public service to be chairperson of the Council.

**(2)** The member who is chairperson ceases to be chairperson if the member—

- (a) ceases to be a member of the Council; or
- (b) becomes an officer of the public service; or
- (c) becomes the executive officer; or
- (d) resigns as chairperson by signed notice given to the Governor.

**(3)** The chairperson may resign as chairperson and remain a member of the Council.

### *Division 4—Meetings of Council*

#### **Times and places of meetings**

**13.(1)** Subject to subsection (2), meetings of the Council are to be held at such times and places as the Council determines.

**(2)** The chairperson—

- (a) may at any time convene a meeting; and
- (b) must convene a meeting when requested by 7 or more members.

**Presiding at meetings**

**14.(1)** The chairperson is to preside at all meetings at which the chairperson is present.

**(2)** If the chairperson is not present at a meeting, the members present are to choose one of them to preside.

**Quorum and voting at meetings**

**15.** At a meeting of the Council—

- (a) 7 members constitute a quorum; and
- (b) a question is to be decided by a majority of the votes of the members present and voting; and
- (c) the member presiding has a deliberative vote and, if the votes are equal, also has a casting vote.

**Conduct of meetings**

**16.** Subject to this Division and the by-laws, the Council may regulate its proceedings as it considers appropriate.

**Disclosure of interests**

**17.(1)** If—

- (a) a member has a personal interest, or a direct or indirect pecuniary interest, in a matter being considered, or about to be considered, by the Council; and
- (b) the interest could conflict with the proper performance of the member's duties in relation to the matter;

the member must, as soon as practicable after the relevant facts come to the member's knowledge, disclose the nature of the interest to a meeting of the Council.

**(2)** The disclosure must be recorded in the minutes of the meeting, and unless the Council otherwise determines, the member must not—

- (a) be present during any deliberation of the Council in relation to the

matter; or

(b) take part in any decision of the Council in relation to the matter.

(3) For the purpose of the making of a determination by the Council under subsection (2) in relation to the member, the member or another member who has a personal interest, or a direct or indirect pecuniary interest, in the matter to which the disclosure relates must not—

(a) be present during any deliberation of the Council for the purpose of making the determination; or

(b) take part in the making by the Council of the determination.

### *Division 5—Financial matters*

#### **Funds of Council**

**18.(1)** All amounts received by or on behalf of the Council (including any fees, costs and penalties) are to be paid into the funds of the Council and applied for the purposes of this Act.

(2) Expenses of and incidental to the administration of this Act are to be paid by the Council from its funds.

(3) The Council may apply any part of its funds that are not required for making payments under subsection (2) towards—

(a) nurse education or research; or

(b) any public purpose connected with the nursing profession.

(4) The Council may establish a fund called the Nurse Education and Research Fund.

(5) The Nurse Education and Research Fund is to be maintained separate from the other funds of the Council.

(6) There is to be paid into the Nurse Education and Research Fund—

(a) all amounts appropriated by the Parliament from the Consolidated Fund and paid to the Council; and

(b) any other amounts received by the Council;

for the purpose of the advancement of nurse education or research.

(7) Amounts in the Nurse Education and Research Fund are to be applied only towards nurse education or research.

(8) For the purpose of this section, expenses incurred for nurse education or research include expenses of and incidental to the administration of the provisions of this Act that relate to the functions of the Council mentioned in section 7(a), (c) to (e), (h) and (k).

### **Executive officer to present statement of prospective expenditure**

19. Before the start of each financial year, the executive officer must present to the Council a statement of the expenditure expected to be incurred in respect of the respective functions of the Council during the financial year.

### ***Division 6—Provisions relating to members other than the executive officer***

#### **Division applies to members other than executive officer**

20. This Division applies to members of the Council other than the executive officer.

#### **Appointment**

21. The members are appointed by the Governor in Council.

#### **Duration of appointment**

22. The appointment of a member is for the term (not longer than 3 years) specified in the member's instrument of appointment.

#### **Terms of appointment**

23.(1) A member holds office on a part-time basis.

(2) A member is to be paid the remuneration and allowances determined by the Governor in Council.

(3) A member holds office on terms not provided by this Act as are determined by the Governor in Council.

### **Member ceasing as member**

24. A person who is a member of the Council ceases to be a member if the person—

- (a) resigns by signed notice given to the Governor; or
- (b) ceases to be qualified to be appointed as a member; or
- (c) is removed from office by the Governor in Council.

### **Acting member**

25. The Governor in Council may appoint a person who is qualified for appointment as a member to act as the member—

- (a) during a vacancy in the office; or
- (b) during any period, or all periods, when the member is absent from Australia or is, for another reason, unable to attend meetings of the Council or otherwise perform any of the functions of the office.

### *Division 7—Provisions relating to the executive officer*

#### **Duties of executive officer**

26.(1) The executive officer is, under the Council, to manage the Council's affairs.

(2) Anything done in the name of, or on behalf of, the Council by the executive officer is taken to have been done by the Council.

#### **Appointment of executive officer**

27. The executive officer is to be appointed by the Governor in Council.

**Duration of appointment**

**28.** The appointment of the executive officer is for the term (not longer than 5 years) specified in the executive officer's instrument of appointment.

**Terms of appointment**

**29.(1)** The executive officer holds office on a full-time basis.

**(2)** The executive officer is to be paid the remuneration and allowances determined by the Governor in Council.

**(3)** The executive officer holds office on terms not provided by this Act as are determined by the Governor in Council.

**Preservation of rights**

**30.(1)** Subsection (2) applies if an officer of the public service is appointed as the executive officer, and subsection (3) applies if an officer of the public service, or an officer of a unit of the public sector, is appointed as the executive officer.

**(2)** The person retains and is entitled to all rights that have accrued to the person because of employment as an officer of the public service, or that would accrue in the future to the person because of that employment, as if service as executive officer were a continuation of service as an officer of the public service.

**(3)** At the end of the person's term of office or on resignation—

- (a)** the person is entitled to be appointed to an office in the public service or the unit of the public sector, as the case requires, at a salary level not less than the current salary level of an office equivalent to the office the person held before being appointed as executive officer; and
- (b)** the person's service as executive officer is to be regarded as service of a similar kind in the public service or unit of the public sector for the purpose of determining the person's rights as an officer of the public service or the unit of the public sector.

**Superannuation for executive officer who was previously an officer of the public service**

**31.(1)** If, at the time a person is appointed as executive officer—

- (a) the person is—
  - (i) an officer of the public service; and
  - (ii) a contributor to the State Service Superannuation Fund or a member of the State Public Sector Superannuation Scheme; and
- (b) the Council does not maintain or participate in a superannuation scheme for the benefit of the executive officer;

the executive officer is to continue to be a contributor to the State Service Superannuation Fund or a member of the State Public Sector Superannuation Scheme and, for that purpose, is taken to be an officer within the meaning of the *State Service Superannuation Act 1972* or eligible for membership of the scheme under the *Superannuation (State Public Sector) Act 1990*.

**(2)** If—

- (a) the Council subsequently maintains or participates in a superannuation scheme for the benefit of the executive officer (other than the State Service Superannuation Fund or the State Public Sector Superannuation Scheme); and
- (b) the executive officer continued to be a contributor to the fund, or a member of the scheme, under subsection (1);

the executive officer may, under arrangements prescribed by regulation, elect to stop being a contributor or member and become a member of the scheme maintained or participated in by the Council.

**Leave of absence**

**32.** The Council may grant leave of absence to the executive officer on the terms determined by the Council.

**Resignation**

**33.** The executive officer may resign by signed notice given to the Governor.

**Executive officer not to engage in other paid employment**

**34.** The executive officer must not engage in paid employment outside the duties of the office without the approval of the Council.

**Disclosure of interest by executive officer**

**35.(1)** The executive officer must give written notice to the chairperson of all direct or indirect pecuniary interests that the executive officer has or acquires in any business or in any corporation carrying on any business.

**(2)** The obligations of the executive officer under subsection (1) are in addition to any other obligations that the executive officer has under this Act or any other law.

**Removal**

**36.** The Governor in Council may remove the executive officer from office if the executive officer—

- (a) is convicted of an indictable offence; or
- (b) is guilty of misconduct or neglect of duty; or
- (c) contravenes a provision of this Act without reasonable excuse; or
- (d) is unable because of physical or mental incapacity to satisfactorily perform the functions of the office.

**Acting executive officer**

**37.** The Governor in Council may appoint a person to act as executive officer—

- (a) during a vacancy in the office; or
- (b) during any period, or all periods, when the executive officer is

absent from duty or Australia or is, for another reason, unable to perform the functions of the office.

### *Division 8—The staff of the Council*

#### **Council's staff**

**38.** The Council may engage such employees as it considers necessary to perform its functions.

#### **Terms of employment**

**39.(1)** The terms of employment of the Council's employees are as determined by the Council.

**(2)** Subsection (1) has effect subject to—

- (a) this Act or another Act (other than the *Public Service Management and Employment Act 1988*); and
- (b) any relevant award or industrial agreement.

**(3)** Except as expressly provided in this Act, the *Public Service Management and Employment Act 1988* does not apply to the Council or its employees.

**(4)** In this section—

**“terms of employment”** include terms relating to duration of employment and termination of employment.

#### **Arrangements relating to staff**

**40.(1)** The Council may arrange with the chief executive of a department, or with an authority of the State, for the services of officers or employees of the department or authority to be made available to it.

**(2)** The Council may arrange with the appropriate authority of the Commonwealth, another State or a Territory, or with an authority of the Commonwealth, another State or a Territory, for the services of officers or employees of the public service of the Commonwealth, State or Territory, or of the authority, to be made available to it.

(3) The Council may arrange for the service of an employee of the Council to be made available to—

- (a) the Commonwealth, another State or a Territory; or
- (b) an authority of the Commonwealth, another State or a Territory.

### **Superannuation schemes**

41. The council may—

- (a) establish or amend superannuation schemes; or
- (b) join in establishing or amending superannuation schemes; or
- (c) take part in superannuation schemes.

### **Superannuation for officers and employees who were previously officers of the public service**

42.(1) In this section—

**“person to whom this section applies”** means a person employed by the Council in a permanent or full-time capacity who, immediately before becoming so employed, was—

- (a) an officer of the public service; and
- (b) a contributor to the State Service Superannuation Fund or a member of the State Public Sector Superannuation Scheme.

(2) If, at the time a person to whom this section applies becomes employed by the Council, the Council does not take part in a superannuation scheme, the person is to continue to be a contributor to the State Service Superannuation Fund or a member of the State Public Sector Superannuation Scheme and, for that purpose, is taken to be an officer within the meaning of the *State Service Superannuation Act 1972* or eligible for membership of the scheme under the *Superannuation (State Public Sector) Act 1990*.

(3) If—

- (a) the Council subsequently establishes, joins in establishing or takes part in establishing a superannuation scheme (other than the State Service Superannuation Fund or the State Public Sector

Superannuation Scheme); and

- (b) a person continued to be a contributor to the fund, or a member of the scheme, under subsection (2);

the person may, under arrangements prescribed by regulation, stop being a contributor or member and become a member of the scheme established or taken part in by the Council.

### *Division 9—Miscellaneous*

#### **Delegation by Council**

**43.(1)** Subject to subsection (2), the Council may delegate its powers to a member of the Council, a committee of the Council or an employee of the Council.

**(2)** The Council may not delegate its powers under any of the following provisions—

- (a) section 10 (By-laws);
- (b) section 63 (Provisional registration or enrolment);
- (c) section 65 (Limited registration or enrolment);
- (d) section 67 (Immediate suspension of registration or enrolment by Council);
- (e) section 69 (Review of suspension for health reasons);
- (f) section 104 (Referral of complaint to Professional Conduct Committee).

#### **Delegation by executive officer**

**44.** The executive officer may delegate the executive officer's powers to an employee of the Council.

#### **Council's seal**

**45.(1)** The Council's seal is to be kept in such custody as the Council directs and may be used only as authorised by the Council.

(2) Judicial notice must be taken of the imprint of the Council's seal appearing on a document and the document must be presumed to have been properly sealed until the contrary is proved.

### **Judicial notice of certain signatures**

46. Judicial notice must be taken of—

- (a) the official signature of a person who is or has been chairperson or executive officer; and
- (b) the fact that the person holds or has held the office concerned.

### **Committees of Council**

47.(1) Section 17 (Disclosure of interests) applies to members of committees of the Council in the same way as it applies to members of the Council.

(2) A member of a committee of the Council is to be paid such remuneration and allowances as are determined by the Governor in Council.

(3) A member of a committee of the Council holds office on such terms and conditions not provided in this Act as are determined by the Council.

## **PART 3—REGISTRATION AND ENROLMENT**

### *Division 1—Administration*

#### **The Register**

48.(1) The Council must keep a register called the Register of Registered Nurses.

(2) The Register must be kept in such form as the Council determines.

(3) The Register must contain—

- (a) the name of each person registered under this Act as a registered

nurse; and

- (b) such other particulars as are required by this Act to be included in the Register; and
- (c) such other particulars as the Council determines.

### **The Roll**

**49.(1)** The Council must keep a roll called the Roll of Enrolled Nurses.

**(2)** The Roll must be kept in such form as the Council determines.

**(3)** The Roll must contain—

- (a) the name of each person enrolled under this Act as an enrolled nurse; and
- (b) such other particulars as are required by this Act to be included in the Roll; and
- (c) such other particulars as the Council determines.

### **Notification of change of particulars**

**50.(1)** Within 2 months after a change of a particular—

- (a) entered in the Register or Roll; or
- (b) given to the Council to gain entry or remain on the Register or Roll;

the nurse concerned must give written notice of the change to the Council.

Maximum penalty—5 penalty units.

**(2)** The Council must make such alterations to the particulars in the Register or Roll, or take such other action, as is necessary for the Register or Roll to be an accurate record in relation to the persons who are entitled to be registered or enrolled nurses.

### **Particulars of cancellations etc. to be recorded**

**51.** The Council must make such alterations to the particulars in the Register or Roll as are necessary to record, and give effect to—

- (a) cancellations and suspensions of registrations or enrolments; and
- (b) restorations of registration or enrolment; and
- (c) conditions of practice to which registrations or enrolments are subject.

### **Corrections to Register or Roll etc.**

#### **52.** The Council—

- (a) may correct any incorrect entry in the Register or the Roll; and
- (b) may make any consequential alterations to any relevant certificate issued under this Act.

### **Inspection of Register or Roll etc.**

#### **53.** A person may, on payment of the prescribed fee—

- (a) inspect an entry in the Register or Roll; or
- (b) obtain a copy of, or extract from, an entry in the Register or Roll, certified correct by the executive officer;

during ordinary business hours on days on which the Council's office is open.

## ***Division 2—Qualifications***

### **Qualifications for registration or enrolment**

**54.(1)** A person is qualified to be a registered nurse, or an enrolled nurse, if the person complies with the requirements of this section in relation to registration or enrolment.

**(2)** The person must satisfy the Council that the person meets either of the following educational requirements—

- (a) that the person has successfully completed an appropriate accredited nursing course in Queensland (including the passing of any further examinations, and undertaking any additional supervised practice, required by the Council) within such period

before the making of the application for registration or enrolment as the Council determines;

- (b) that the person—
  - (i) has successfully completed an appropriate nursing course conducted outside Queensland for the purposes of registration or enrolment as a nurse that, in the Council's opinion, is based on, and would enable achievement of, competencies similar to those in, and acquired by, accredited nursing courses conducted in Queensland; and
  - (ii) has gained registration or enrolment as a nurse in a place outside Queensland.

(3) The person must also satisfy the Council that the person meets both of the following general requirements for registration or enrolment—

- (a) that the person's state of health is such that the person is capable of carrying out the person's duties as a registered or enrolled nurse without endangering any patient the person may attend;
- (b) that the person has a sufficient command of the English language, both oral and written, to ensure that the safety and wellbeing of patients is maintained.

(4) If the Council is not satisfied that a person has successfully completed an appropriate nursing course mentioned in subsection (2)(a) or (b), the Council may permit the person to comply with subsection (2) by undertaking any or all of the following to the Council's satisfaction—

- (a) a written examination approved by the Council relating to the practice in Queensland of registered or enrolled nurses;
- (b) an assessment approved by the Council on the clinical practice of registered or enrolled nurses;
- (c) a period of nursing practice (whether or not supervised by a registered nurse) determined by the Council;
- (d) a re-entry course approved by the Council.

***Division 3—Registration and enrolment*****Application for registration or enrolment**

**55.** An application to be registered under this Act as a registered nurse, or enrolled under this Act as an enrolled nurse, must be—

- (a) made to the Council in the form approved by the Council; and
- (b) supported by evidence of qualification for registration or enrolment and of such other matters as the Council requires; and
- (c) accompanied by—
  - (i) the prescribed application fee; and
  - (ii) the prescribed register or roll fee.

**Attendance of applicant before Council**

**56.(1)** The Council may, by written notice, require an applicant for registration or enrolment—

- (a) to give to the Council, orally or in writing, further information relating to the application as is specified in the notice; or
- (b) to attend before the Council for the purpose of giving information relating to the application.

**(2)** If the applicant fails to give the information or attend as required, the Council may refuse the application.

**Council may require English examination**

**57.** For the purpose of determining whether an applicant is qualified for registration or enrolment, the Council may require an applicant to undertake and pass an examination determined by the Council in the use of English.

**Registration or enrolment**

**58.(1)** The Council must register a person as a registered nurse if—

- (a) the person is an individual; and

- (b) the person applies to be registered as a registered nurse; and
  - (c) the application complies with section 55; and
  - (d) the person is qualified to be a registered nurse; and
  - (e) the person otherwise complies with this Act in relation to the application.
- (2) The Council must enrol a person as an enrolled nurse if—
- (a) the person is an individual; and
  - (b) the person applies to be enrolled as an enrolled nurse; and
  - (c) the application complies with section 55; and
  - (d) the person is qualified to be an enrolled nurse; and
  - (e) the person otherwise complies with this Act in relation to the application.

### **Refusal of application**

**59.** If an application for registration or enrolment is refused, the Council must immediately—

- (a) advise the applicant, in writing, of the refusal; and
- (b) give the applicant written reasons for the refusal; and
- (c) refund the register or roll fee that accompanied the application.

### **Both registration and enrolment not permitted**

**60.(1)** A person may not be registered as a registered nurse and also enrolled as an enrolled nurse.

(2) An applicant for registration as a registered nurse, or enrolment as an enrolled nurse, must advise the Council whether the person is currently registered or enrolled.

(3) If an enrolled nurse is registered under this Act as a registered nurse, the person's enrolment is cancelled.

(4) If a registered nurse is enrolled under this Act as an enrolled nurse, the person's registration is cancelled.

**Action to be taken on registration or enrolment**

- 61.(1)** On the registration or enrolment of a person, the Council must—
- (a) make appropriate entries in the Register or Roll; and
  - (b) issue to the person a certificate of registration or enrolment in a form approved by the Council; and
  - (c) issue to the person an appropriate badge of the prescribed design.
- (2)** If the registration or enrolment is provisional, temporary or limited—
- (a) an entry must be made in the Register or Roll showing that fact and any conditions to which the registration or enrolment is subject; and
  - (b) the registration or enrolment certificate, and any annual licence certificate, issued to the person is to be endorsed showing that fact and any conditions to which the registration or enrolment is subject.

**Copies of certificates to be issued on application**

**62.** On application accompanied by the prescribed fee, the executive officer may issue to a nurse a duplicate or certified copy of the nurse's certificate of registration or enrolment.

**Provisional registration or enrolment**

- 63.(1)** If—
- (a) a person applies to be registered or enrolled; and
  - (b) the application complies with section 55; and
  - (c) the executive officer is satisfied that the person is qualified to be registered or enrolled;

the executive officer may provisionally register or enrol the person.

**(2)** At the first meeting of the Council after the provisional registration or enrolment, the executive officer must advise the Council of the circumstances and details of the provisional registration or enrolment.

**(3)** If—

- (a) a person applies to be registered or enrolled; and
- (b) the application complies with section 55; and
- (c) the executive officer is not satisfied that the person is qualified to be registered or enrolled;

the Council may provisionally register or enrol the person.

**(4)** Provisional registration or enrolment under subsection (3) may be subject to such conditions (including conditions of practice) as the Council determines.

**(5)** Provisional registration or enrolment is for such period (not longer than 6 months) as the executive officer or Council determines.

**(6)** A person who is provisionally registered is taken to be registered under this Act as a registered nurse.

**(7)** A person who is provisionally enrolled is taken to be enrolled under this Act as an enrolled nurse.

**(8)** The Council may cancel the provisional registration or enrolment of a person.

**(9)** If the Council cancels the provisional registration or enrolment of a person, the Council must immediately—

- (a) advise the person of the cancellation; and
- (b) give the person written reasons for the cancellation; and
- (c) refund an appropriate part of the register or roll fee that accompanied the relevant application.

**(10)** Cancellation of a person's provisional registration or enrolment operates as a refusal by the Council of the person's application for registration or enrolment.

**(11)** If a person who is provisionally registered or enrolled becomes registered as a registered nurse or enrolled as an enrolled nurse, the person's registration or enrolment dates from the person's provisional registration or enrolment unless the Council otherwise decides.

**Temporary registration****64.(1)** If—

- (a) a person applies to the Council, in the form approved by the Council, for temporary registration as a registered nurse; and
- (b) the application is accompanied by—
  - (i) the prescribed application fee; and
  - (ii) the prescribed register fee; and
- (c) the Council is satisfied that—
  - (i) the person is the holder of a degree, diploma or certificate of nursing (recognised by the Council and obtained after due examination) conferred by an institution recognised in the place where it is situated, and by the Council, as authorised to confer the degree, diploma or certificate; and
  - (ii) the person has come to Queensland—
    - (A) at the request of a hospital, college, school of nursing or other teaching institution in Queensland, of the State or a State authority, or of an association recognised by the Council as representative of nurses, for the purpose of teaching, lecturing, giving clinical demonstrations or engaging in research work; or
    - (B) undertaking postgraduate study in nursing;

the Council may grant the person temporary registration as a registered nurse.

(2) Temporary registration may be subject to such conditions (including conditions of practice) as the Council determines.

(3) Temporary registration may be granted or renewed for such period (not longer than 1 year) as the Council determines.

(4) A person who is temporarily registered is taken to be registered under this Act as a registered nurse.

(5) The Council may cancel the temporary registration of a person.

(6) If the Council cancels the temporary registration of a person, the Council must immediately—

- (a) advise the person of the cancellation; and
- (b) give the person written reasons for the cancellation; and
- (c) if the temporary registration has not been renewed—refund an appropriate part of the register fee that accompanied the relevant application.

(7) A person registered under this section must notify the executive officer as soon as possible after the person ceases to engage in the activities mentioned in subsection (1)(c)(ii) for which the registration was granted.

Maximum penalty—5 penalty units.

(8) The executive officer must cancel the person's temporary registration on receipt of the notice.

### **Limited registration or enrolment**

**65.(1)** If—

- (a) the Health Assessment Advisory Panel recommends under section 66 the imposition of limited registration or enrolment on a person; or
- (b) the Professional Conduct Committee orders the imposition of limited registration or enrolment on a person; or
- (c) a person requests the Council to impose limited registration or enrolment on the person; or
- (d) the Council is satisfied, on reasonable grounds, that limited registration or enrolment should be imposed on a person;

then—

- (e) if the person is an applicant for registration or enrolment—the Council may grant limited registration or enrolment to the person; or
- (f) if the person is a registered or enrolled nurse—the Council may, and, if paragraph (b) applies, must, cancel the nurse's current registration or enrolment and grant limited registration or enrolment to the person.

**(2)** The Council must—

(a) in a case to which subsection (1)(a), (c) or (d) applies—

(i) determine the extent to which the person's registration or enrolment is to be limited; and

(ii) impose such conditions, limitations and restrictions on the practice of nursing by the person as will ensure, in the Council's opinion, that the person is capable of carrying out in a professional way such functions as the limited registration or limited enrolment allows the person to carry out; and

(b) in a case to which subsection (1)(b) applies—take such action as is necessary to give effect to the Committee's order.

**(3)** The conditions, limitations and restrictions that the Council may impose include conditions, limitations and restrictions relating to 1 or more of the following—

(a) the times and places at which the person may provide nursing care;

(b) the fields of nursing in which the person may provide nursing care;

(c) the supervision of the person by an appropriately qualified registered nurse, or an otherwise appropriately qualified person, when providing nursing care.

**(4)** Limited registration or enrolment may be granted or renewed for such period (not longer than 2 years) as the Council determines.

**(5)** The Council may cancel limited registration or enrolment.

**(6)** Subsection (5) does not apply to a registration or enrolment limited by an order made by the Professional Conduct Committee.

**(7)** If the Council cancels the limited registration or enrolment of a person, the Council must immediately—

(a) advise the person of the cancellation; and

(b) give the person written reasons for the cancellation.

**(8)** At intervals of not more than 2 years, the Council, or the Committee

acting under section 116, as the case may be, must review each limited registration or enrolment and determine whether it should continue.

(9) A person with limited registration or enrolment is, subject to the conditions, limitations and restrictions of the registration or enrolment, taken to be registered under this Act as a registered nurse or enrolled under this Act as an enrolled nurse.

### **Concerns about condition of applicants and nurses**

**66.(1)** This section applies to a person who is—

- (a) an applicant for registration or enrolment; or
- (b) a registered or enrolled nurse (whether or not the registration or enrolment is suspended or limited).

(2) If the Council is concerned that the condition of a person to whom this section applies may interfere with the person's ability to carry out the functions of a registered or enrolled nurse, the Council may, and, if the person requests, must immediately, refer the person to the Health Assessment Advisory Panel for assessment.

(3) The Council must bear the cost of the assessment unless the Council determines that the whole or a part of the cost is to be borne by the person.

(4) The Panel must, by written report—

- (a) advise the Council on the condition of the person; and
- (b) indicate—
  - (i) whether the person's condition may interfere with the person's ability to carry out the functions of a registered or enrolled nurse; and
  - (ii) the extent of the possible interference.

(5) The Panel may recommend the imposition of restrictions (including limited registration or enrolment) under which the person should—

- (a) be registered or enrolled; or
- (b) continue to be registered or enrolled; or
- (c) be permitted to practise as a registered or enrolled nurse.

(6) The Council must give a copy of the report to the person or, if the Council considers it appropriate, the person's medical practitioner.

### **Immediate suspension of registration or enrolment by Council**

**67.(1)** If the Council is satisfied that the ability of a nurse to continue to practise nursing is seriously impaired to such an extent that a patient's health or safety could be at risk, whether because of the state of the nurse's condition or the nurse's conduct, the Council may by written notice given to the nurse suspend the nurse's registration or enrolment.

(2) The notice must set out the reasons for the suspension.

(3) The suspension takes effect when the nurse is given the notice.

(4) If the Council suspends the registration or enrolment of a nurse because of the nurse's conduct, the Council must immediately refer the matter to the Professional Conduct Committee for determination.

(5) The suspension operates until the Professional Conduct Committee makes a finding under section 116, unless it is earlier lifted by the Council.

### **Immediate suspension of registration or enrolment by executive officer**

**68.(1)** If, in the executive officer's opinion, the circumstances of a particular case involve potential serious risk to a patient's health or safety such that a nurse's registration or enrolment should be suspended immediately, the executive officer may suspend the registration or enrolment of the nurse without first giving written notice to the nurse.

(2) The nurse must be advised orally of the suspension by the executive officer unless it is not reasonably practicable to do so within a reasonable time.

(3) The nurse must be given written notice of the suspension (setting out the reasons for the suspension) as quickly as possible.

(4) The suspension operates until the end of the first meeting of the Council after the suspension, unless it is earlier lifted by the executive officer or the Council.

(5) At the first meeting of the Council after the suspension, the executive officer must make a full report to the Council on the suspension and the

reasons for the suspension.

(6) This section does not prevent the Council from further suspending the registration or enrolment of the nurse either at the meeting or subsequently.

### **Review of suspension for health reasons**

**69.(1)** If—

- (a) the Council suspends the registration or enrolment of a nurse because of the state of the nurse's condition; and
- (b) the nurse's condition has not already been assessed by the Health Assessment Advisory Panel for the purpose of the suspension;

the Council may, and, if the nurse requests, must immediately, refer the question of the nurse's condition to the Panel under section 66.

(2) On receipt of the Panel's report under section 66, the Council must review the suspension of the nurse and may—

- (a) confirm the suspension and determine the period of suspension; or
- (b) lift the suspension either immediately or from a future date determined by the Council; or
- (c) take any other action specified in section 65.

### **Cancellation or suspension of registration and enrolment in certain cases**

**70.(1)** The Council may cancel the registration or enrolment of a nurse—

- (a) who has died; or
- (b) who applies to the Council in writing to have his or her registration or enrolment cancelled; or
- (c) whose registration or enrolment under a law of another State or a Territory has been cancelled; or
- (d) who ceases to have, or does not have, the qualifications necessary for registration or enrolment.

(2) The Council may suspend the registration or enrolment of a nurse whose registration or enrolment under a law of another State or a Territory has been suspended.

(3) The suspension under subsection (2) is to be for the same period as the suspension under the law of the other State or a Territory.

### **Requirements following cancellation or suspension of registration or enrolment**

**71.** A nurse whose registration or enrolment is cancelled or suspended must, within 14 days after being notified of the cancellation or suspension, surrender to the executive officer—

- (a) the nurse's certificate of registration or enrolment; and
- (b) the nurse's current annual licence certificate; and
- (c) any badge issued to the nurse by the Council.

Maximum penalty—10 penalty units.

### **Restoration of registration or enrolment in certain cases**

**72.(1)** If the registration or enrolment of a person is cancelled under section 70(1)(b), (c) or (d), the person must not again be registered or enrolled unless the Council gives a direction under subsection (2).

(2) If the Council, after considering all relevant circumstances, is satisfied that the person is qualified to be registered or enrolled, the Council may direct that the person be re-registered or re-enrolled, either without payment of a fee or on payment of any prescribed fees.

### **Reissue of certificate of registration or enrolment etc.**

**73.** If a person is re-registered or re-enrolled under a direction under subsection 72(2), the Council must issue to the person—

- (a) an appropriate certificate of registration or enrolment; and
- (b) an appropriate badge of a prescribed design.

***Division 4—Annual licence certificates*****Fees for annual licence certificates**

**74.(1)** Every nurse and midwife must pay to the Council a prescribed fee for an annual licence certificate.

**(2)** The certificate must be in a form approved by the Council.

**(3)** The fee for an annual licence certificate must be paid to the Council—

- (a)** for an initial certificate—within 7 days of the nurse being registered or enrolled or the midwife being authorised to practise, as the case may be; and
- (b)** for each other certificate—within the prescribed period in each year.

**(4)** If a nurse fails to pay the prescribed fee for an annual licence certificate within the prescribed period, the Council must immediately cancel the nurse's registration or enrolment.

**(5)** If, within 3 months after the cancellation of the nurse's registration or enrolment, the nurse—

- (a)** pays to the Council the prescribed fee for an annual licence certificate and the prescribed restoration fee; and
- (b)** satisfies the Council that the nurse had practised nursing during the 5 years before the cancellation;

the Council must re-register or re-enrol the nurse and issue an annual licence certificate to the nurse.

**(6)** If a midwife who is not a nurse fails to pay the prescribed fee for an annual licence certificate within the prescribed period, the Council must immediately revoke the midwife's authority to practise midwifery.

**(7)** If, within 3 months after the revocation of the midwife's authority, the midwife—

- (a)** pays to the Council the prescribed fee for an annual licence certificate and the prescribed restoration fee; and
- (b)** satisfies the Council that the midwife had practised midwifery during the 5 years before the revocation;

the Council must reissue an authority to practise midwifery, and issue an annual licence certificate, to the midwife.

### **Renewal of annual licence certificate**

**75.(1)** The holder of an annual licence certificate must, during the period prescribed for the purposes of section 74(3)(b), apply to the Council for renewal of the certificate.

**(2)** The application must be—

- (a) in the form approved by the Council; and
- (b) supported by—
  - (i) proof that the applicant has practised in the relevant area of nursing or midwifery within the previous 5 years; and
  - (ii) such other information as the Council may require.

**(3)** If the Council is not satisfied that the applicant has practised in the relevant area of nursing or midwifery within the previous 5 years, the Council may—

- (a) refuse to grant the renewal; or
- (b) grant the renewal subject to such conditions as the Council considers appropriate, including conditions about education, training and experience to be undertaken or gained.

**(4)** If, during the period prescribed for the purposes of section 74(3)(b), application is made by a person for renewal of an annual licence certificate and the prescribed annual licence fee is paid, the annual licence certificate concerned does not expire until the application is determined, unless the person's registration, enrolment or authorisation to practise midwifery is earlier cancelled or suspended.

### **Endorsement of annual licence certificates**

**76.(1)** An annual licence certificate issued to a person must be suitably endorsed to show—

- (a) any conditions, limitations and restrictions imposed on the person by the Council; and

- (b) any authorisation to practise as a midwife or psychiatric nurse; and
- (c) any authorisation to practise in another area of nursing.

(2) An endorsement authorising a person to practise as a midwife, as a psychiatric nurse or in another area of nursing may be granted by the Council if—

- (a) the person is the holder of a qualification recognised by the Council in relation to the area of nursing; and
- (b) the application for endorsement is made within the period determined by the Council after gaining the qualification.

(3) An endorsement mentioned in subsection (2) is subject to any requirements of proof of practice determined by the Council.

### *Division 5—Authorisation to practise nursing*

#### **Authorisation to practise**

77.(1) An individual may be authorised by the Council to practise midwifery if the person has successfully completed a midwifery course accredited by the Council or a comparable course outside Queensland that is based on similar competencies.

(2) An individual may be authorised by the Council to practise psychiatric nursing if the person has successfully completed a psychiatric nursing course accredited by the Council or a comparable course outside Queensland that is based on similar competencies.

(3) An individual may be authorised to practise nursing in another area of nursing if the person is the holder of a qualification recognised by the Council.

(4) A person who is not a nurse may be authorised by the Council to practise nursing subject to any conditions imposed by the Council.

(5) The Council may, by writing given to the person concerned, revoke an authorisation under this section.

(6) The Council and the Panel have functions and powers in relation to persons authorised to practise nursing and midwifery under this section that

are comparable to the functions and powers that they have in relation to registered nurses and, for that purpose, sections 65 to 73 apply, with necessary modifications and any prescribed modifications, to such a person as if the person were a registered nurse and the person's authority to practise were the registration of the person under this Act as a registered nurse.

## **PART 4—ACCREDITATION OF NURSING COURSES**

### **Accreditation of nursing courses**

**78.(1)** The Council may accredit a nursing course that is being or is to be conducted by a school of nursing.

**(2)** Accreditation of a nursing course under subsection (1) may be by the Council accepting the accreditation of a nursing course by a school of nursing.

**(3)** The Council may accredit a nursing course only if it is satisfied that the course is conducted at an appropriate standard.

**(4)** The Council may grant accreditation to a nursing course in a form that it considers appropriate, including—

- (a)** interim, temporary, provisional or full accreditation; and
- (b)** accreditation that is subject to conditions or recommendations for improvement of the course concerned.

**(5)** The Council may review an accredited nursing course.

**(6)** If the Council finds that the accredited nursing course is not being conducted at the appropriate standard, the Council may cancel or vary the accreditation.

**(7)** The Council may refuse to accredit, or cancel the accreditation of, a nursing course if—

- (a)** the Council is not supplied with relevant information about the course on request; or
- (b)** the school of nursing conducting the course contravenes this Act.

(8) A person must not provide, or advertise that the person is willing or able to provide, an accredited nursing course unless the course is accredited under this section.

(9) A person must not—

- (a) enrol, or cause another person to enrol, a person; or
- (b) offer to enrol, or enter into an agreement to enrol, a person; or
- (c) collect, or accept, a fee for enrolling a person; or
- (d) invite a person to enrol;

in a course purporting to lead to registration or enrolment if the course is not an accredited nursing course.

Maximum penalty—10 penalty units.

### **Schools of nursing to keep records**

79. A school of nursing that conducts an accredited nursing course must accurately keep, in the prescribed way—

- (a) prescribed records of all students undertaking the course; and
- (b) other prescribed records relating to the course, the content of the course and the progress of each student; and
- (c) such other records as are prescribed.

Maximum penalty—10 penalty units.

### **Schools of nursing to permit inspection**

80.(1) A school of nursing that conducts an accredited nursing course must permit an inspector—

- (a) to enter the premises where the course is conducted at any reasonable time; and
- (b) to inspect all documents and records relevant to the course and any other documents necessary to establish—
  - (i) the standard at which the course is being conducted; and
  - (ii) the progress of the students; and

(iii) any other matter that the Council considers relevant to the purposes of this Part.

(2) The school of nursing must, on demand by the inspector, produce to the inspector all documents and records that the inspector is entitled to inspect under subsection (1).

(3) The school of nursing must make the teaching staff of the school available to the inspector for the purpose of discussing any matter relevant to the purposes of this Part.

### **Schools of nursing to issue certificates etc.**

**81.** If a person successfully completes an accredited nursing course conducted by a school of nursing, the governing body of the school must confer, grant or issue to the person a degree, diploma or certificate appropriate for the course completed.

### **Examinations by Council**

**82.(1)** To determine eligibility of persons for registration or enrolment, the Council may—

- (a) determine the character, assessment methodology, examinable subject matter and conduct of examinations; and
- (b) appoint examiners in relation to examinations; and
- (c) appoint places where, and times when, examinations are to be held.

(2) If the Council forms the opinion, on reasonable grounds, that the eligibility of a person to become registered or enrolled, or have a certificate endorsed, is in doubt, the Council may require the person to take an examination arranged by the Council to establish the eligibility.

(3) Subsection (2) does not apply to a person who has undertaken examinations arranged by the Council.

### **Power to monitor assessment standards**

**83.** The Council may monitor standards of student assessment in schools

of nursing if the students do not undertake examinations arranged by the Council.

## **PART 5—PROFESSIONAL CONDUCT**

### *Division 1—Professional Conduct Committee*

#### **Professional Conduct Committee**

**84.** A committee called the Professional Conduct Committee is established.

#### **Committee's functions**

**85.** The functions of the Committee are—

- (a) to hear any charge that is referred to it under this Act; and
- (b) in relation to charges, to make findings whether there have been contraventions of the code of conduct; and
- (c) to take appropriate action under section 116; and
- (d) to keep a written record of—
  - (i) its proceedings; and
  - (ii) the documents produced to it in relation to each matter referred to it; and
- (e) to give to the Council a report of its work and activities during each financial year; and
- (f) to carry out such other functions as are conferred on it by this or another Act.

#### **Committee's powers**

**86.(1)** The Committee has power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions.

(2) Without limiting subsection (1), the committee has such powers as are conferred on it by this Act.

### **Committee's constitution**

**87.** The Committee consists of the following 8 members—

- (a) 1 legal practitioner;
- (b) 6 registered nurses nominated by the Council, of whom 3 are to be chosen by the Council from a panel of names submitted by an association or associations accepted by the Council as representatives of nurses;
- (c) 1 person, representing persons who use services provided by the nursing profession.

### **Committee's chairperson**

**88.** The member mentioned in section 87(a) is the chairperson of the Committee.

### **Appointment**

**89.(1)** The members are appointed by the Governor in Council.

(2) A member of the Council may not be appointed as a member of the Committee.

### **Duration of appointment**

**90.** The appointment of a member is for the term (not longer than 3 years) specified in the member's instrument of appointment.

### **Terms of appointment**

**91.(1)** A member holds office on a part-time basis.

(2) A member is to be paid the remuneration and allowances determined by the Governor in Council.

(3) A member holds office on terms not provided by this Act as are determined by the Governor in Council.

### **Member ceasing as a member**

**92.** A person who is a member of the Committee ceases to be a member if the person—

- (a) resigns by signed notice given to the Governor; or
- (b) ceases to be qualified to be appointed as a member; or
- (c) is removed from office by the Governor in Council.

### **Disclosure of interests**

**93.(1)** If a member of the Committee (including the chairperson) is, or is to be, a member of the Committee as constituted for the purposes of a proceeding and the member has or acquires an interest (whether pecuniary or otherwise) that could conflict with the proper performance of the member's functions in relation to the proceeding—

- (a) the member must disclose the interest to the parties to the proceeding; and
- (b) except with the consent of all parties to the proceeding—the member must not take part in the proceeding or exercise any powers in relation to the proceeding.

**(2)** If the chairperson becomes aware that a member who is, or is to be, a member of the Committee as constituted for the purposes of a proceeding has in relation to the proceeding an interest of the kind mentioned in subsection (1)—

- (a) if the chairperson considers that the member should not take part, or continue to take part, in the proceeding—the chairperson must direct the member accordingly; or
- (b) in any other case—the chairperson must cause the interest of the member to be disclosed to the parties to the proceeding if the interest has not already been disclosed to them.

**Acting chairperson**

**94.** The Governor in Council may appoint a legal practitioner to act as chairperson—

- (a) during a vacancy in the office; or
- (b) during any period, or all periods, when the chairperson is absent from duty or Australia or is, for another reason, unable to perform the duties of the office; or
- (c) in relation to a proceeding in relation to which section 93(1)(b) applies to the chairperson.

**Arrangement of business**

**95.(1)** Subject to section 96, the chairperson may give directions in relation to—

- (a) the arrangement of the business of the Committee; and
- (b) the members who are to constitute the Committee for the purposes of particular proceedings.

**(2)** If the chairperson gives a direction about the members who are to constitute the Committee for the purposes of a particular proceeding, the chairperson may—

- (a) at any time after giving the direction and before the start of the hearing of the proceeding; or
- (b) if 1 of the members ceases to be a member, or ceases to be available for the purposes of the proceeding, during the hearing of the proceeding or after the completion of the hearing but before the matter to which the proceeding relates is determined—at any time after the member ceases to be a member or to be available;

revoke the direction and give a further direction under subsection (1) as to the persons who are to constitute the Committee for the purposes of the proceeding.

**Constitution of Committee for particular proceeding**

**96.(1)** The Committee is to be constituted for the purposes of the hearing

and determination of a proceeding by—

- (a) the chairperson; and
- (b) 4 other members, of whom 3 must be registered nurses.

(2) The Committee may be constituted for the exercise of powers in relation to the hearing of a proceeding, or for purposes other than the hearing and determination of a proceeding, by the chairperson.

### **Member of Committee ceasing to be available**

97.(1) If the hearing of a proceeding has been started or completed by the Committee but, before the matter to which the proceeding relates has been determined, 1 of the members constituting the Committee (other than the chairperson) ceases to be a member, or ceases to be available for the purposes of the proceeding—

- (a) if the parties agree and the chairperson does not give a direction under section 95—the hearing and determination, or the determination, of the proceeding may be completed by the Committee constituted by the remaining members; or
- (b) in any other case—the proceeding is to be reheard by the Committee as constituted under section 96.

(2) If a proceeding is reheard by the Committee, the Committee may, for the purposes of the proceeding, have regard to any record of the proceeding before the Committee as previously constituted, including any evidence taken in the proceeding.

### **Sitting places**

98. Sittings of the Committee may be held from time to time as required at any place in the State.

## ***Division 2—Code of conduct***

### **Code of conduct**

99.(1) The Council may formulate a code of conduct about nursing

practice to give practical guidance to nurses, midwives and anyone else authorised to practice nursing.

(2) A code of conduct must be approved by regulation.

### **Action may be taken in certain cases**

**100.** If a person who is—

- (a) a registered nurse; or
- (b) an enrolled nurse; or
- (c) a midwife; or
- (d) otherwise authorised to practise nursing;

contravenes a code of conduct, action may be taken under this Part against the person on the ground of a contravention of the code of conduct.

### **Action taken because of industrial disputes etc.**

**101.** This Part does not apply to action taken, or not taken, by a person because of an industrial dispute that does not involve civil or criminal negligence by the person.

## ***Division 3—Contraventions of code of conduct***

### **Complaints concerning conduct**

**102.(1)** A person aggrieved by the conduct of a nurse, a midwife or another person authorised to practise nursing may complain in writing to the Council of the conduct.

(2) Subject to Part 8 of the *Health Rights Commission Act 1991*, the Council may cause an investigation to be conducted into the conduct of a nurse, midwife or another person authorised to practise nursing on the ground of contravention of the code of conduct.

(3) Action may be taken under this Part against a person in relation to any conduct mentioned in subsection (2) that is alleged to have happened when the person was a nurse or authorised to practise nursing or midwifery

even though the person is no longer a nurse or authorised to practise nursing or midwifery.

### **Investigation by Council**

**103.(1)** An investigation under section 102(2) may be undertaken by an inspector.

(2) The executive officer must notify the person against whom the complaint is made of the Council's decision to conduct an investigation.

(3) A person does not incur civil liability for the disclosure to an inspector of information or documents relating to the person the subject of the complaint.

(4) The inspector must—

- (a) give the person who is the subject of the complaint full particulars of the complaint; and
- (b) provide the person with an opportunity during the course of the investigation to make formal submission to the inspector in relation to the complaint.

(5) The inspector must give—

- (a) to the Council—a written report, in reasonable detail, of findings, and opinions based on the findings, in relation to the complaint; and
- (b) to the person who is the subject of the complaint—a written outline of the report and general particulars of findings adverse to the person.

(6) If the executive officer suspects, on reasonable grounds, that the person against whom the complaint is made may be suffering from—

- (a) an addiction to alcohol or drugs; or
- (b) another condition;

the executive officer may, by written notice, direct the person to undergo an assessment by the Health Assessment Advisory Panel under Division 5.

(7) The Council must bear the cost of the assessment unless the Council determines that the whole or a part of the cost should be borne by the

person.

(8) The Panel must give a written report of its assessment to the Council.

(9) The Council must give a copy of the report to the person the subject of the complaint or, if it considers it appropriate, the person's medical practitioner.

### **Referral of complaint to Professional Conduct Committee**

**104.(1)** If the Council is satisfied in relation to a complaint that—

- (a) the complaint is based on the ground of contravention of the code of conduct; and
- (b) there is substance to the complaint;

the Council may—

- (c) prefer a charge against a person alleging a contravention of the code of conduct; and
- (d) refer the matter to the Committee for hearing and determination.

(2) The charge is to contain or be accompanied by sufficient particulars to inform the Committee and the person of the alleged contravention of the code of conduct.

### ***Division 4—Professional Conduct Committee proceedings***

#### **Proceedings before Committee**

**105.(1)** A charge referred to the Committee for hearing and determination is to be filed with the chairperson.

(2) The chairperson is to take all steps necessary to have the Committee constituted to hear and determine the charge.

(3) At least 30 days before the day fixed for the hearing, the Committee must give written notice to the person charged of the charge, its particulars and the day and time of the hearing.

(4) The hearing of the charge is to be open to the public unless the Committee determines that, in the special circumstances of the particular

case, the whole or a specified part of the hearing should not be open to the public.

**(5)** At the hearing—

- (a) a barrister or solicitor or a person employed by the Council may appear for the purpose of adducing evidence or assisting the Committee; and
- (b) the person charged is entitled to be represented by—
  - (i) a barrister or solicitor; or
  - (ii) a person nominated by the person charged as the person's agent; and
- (c) any person who lodged a complaint is entitled to be represented by—
  - (i) a barrister or solicitor; or
  - (ii) a person nominated by the first person as the person's agent.

**(6)** In conducting the hearing, the Committee—

- (a) must observe natural justice; and
- (b) must proceed quickly with as little formality and technicality as is consistent with a fair and proper hearing of the charge; and
- (c) is not bound by rules or practice about evidence and may inform itself on any matter as the Committee considers appropriate.

**(7)** Subject to subsection (6), the chairperson may give directions about the procedure to be followed in a hearing.

### **Powers of Committee**

**106.(1)** When conducting a hearing, the Committee may—

- (a) proceed in the absence of the person the subject of the charge if it is satisfied that section 105(3) has been complied with; and
- (b) receive evidence on oath or by statutory declaration; and
- (c) adjourn the proceeding; and
- (d) permit amendment of a document; and

- (e) disregard any defect, error, omission or insufficiency in a document.

(2) The chairperson may administer an oath to a person appearing as a witness at the inquiry.

### **Summons to witness**

**107.(1)** The chairperson may, by written notice given to a person, require the person to attend a hearing before the Committee at a time and place specified in the notice for the purpose of giving evidence or producing a document or thing specified in the notice.

(2) A person to whom a notice under subsection (1) is given must not fail, without reasonable excuse—

- (a) to attend as required by the notice; or
- (b) to continue to attend as required by the chairperson until excused from further attendance; or
- (c) to produce a document or thing that is specified in the notice.

Maximum penalty—10 penalty units.

(3) A person who appears as a witness at a hearing by the Committee is entitled to be paid the allowance prescribed by by-law for attendance at the hearing.

### **Duty of witness at inquiry**

**108.** A person appearing as a witness at a hearing by the Committee must not fail—

- (a) to take an oath, or make an affirmation, when required to do so by the chairperson; or
- (b) without reasonable excuse, to answer a question when required to do so by the chairperson.

Maximum penalty—10 penalty units.

**Self-incrimination a reasonable excuse**

**109.** A person is not required—

- (a) to produce to the Committee a document or thing; or
- (b) to answer a question asked by a member of the Committee;

if producing the document or thing, or answering the question, might tend to incriminate the person.

**Inspection of documents**

**110.(1)** When a document or thing is produced to the Committee at a hearing, the Committee may—

- (a) examine the document or thing; and
- (b) make copies of, or take extracts from, the document, or photograph the thing, if it is relevant to the hearing.

**(2)** The Committee may take possession, and retain for as long as is reasonably necessary, a document or thing produced at the hearing.

**(3)** While it retains possession of a document or thing, the Committee must permit a person otherwise entitled to possession of the document or thing—

- (a) to examine the document or thing; or
- (b) to make copies of, or take extracts from, the document, or photograph the thing;

at such reasonable time and place as the Committee determines.

**Obstruction of Committee etc.**

**111.** A person must not obstruct or hinder, attempt to obstruct or hinder, or attempt to improperly influence, the conduct of a Committee hearing.

Maximum penalty—30 penalty units.

**Removal from Committee hearing**

**112.(1)** The chairperson may order a person to leave a hearing closed to

the public.

(2) The chairperson may order a person to leave a hearing if the person obstructs or hinders, attempts to obstruct or hinder, or attempts to improperly influence, the conduct of the hearing.

(3) If a person is ordered to leave a hearing, the person must immediately do so.

Maximum penalty—50 penalty units.

(4) If the person (the “**offender**”) does not immediately leave the hearing, the chairperson may authorise a person (the “**authorised person**”) to remove the offender from the hearing.

(5) In carrying out the authority, the authorised person must use only such force as is reasonable and necessary.

(6) The offender must not resist the authorised person in carrying out the authority.

Maximum penalty—100 penalty units.

### **Evidence and findings etc. in other proceedings may be received or adopted**

**113.** In the course of a hearing, the Committee may—

- (a) receive in evidence a transcript of evidence taken in a proceeding before a court, tribunal or other body constituted under the law of the State, the Commonwealth, another State, a Territory or a foreign country, and draw conclusions of fact from the evidence that it considers proper; and
- (b) adopt, as it considers proper, findings, decisions, judgments, or reasons for judgment, of the court, tribunal or body that may be relevant to the proceedings before the Committee.

### **Health assessment**

**114.(1)** If the Committee believes, on reasonable grounds, that a person against whom a charge has been preferred is suffering from—

- (a) an addiction to alcohol or drugs; or

(b) another condition;

that impairs the person's ability to practise nursing or midwifery, the chairperson of the Committee may, by written notice, direct the person to be assessed by the Health Assessment Advisory Panel.

(2) The Council must bear the cost of the assessment unless the Committee orders otherwise under section 116(4).

(3) The Panel must give a written report of the assessment to the Committee.

(4) The report may be used in evidence at the hearing of the charge by the Committee.

(5) The Committee may require a member of the Health Assessment Advisory Panel to appear before it and answer questions about the report.

### **Determinations of questions before Committee**

**115.(1)** Subject to subsections (2) and (3), a question before the Committee is to be decided according to the opinion of the majority of the members constituting the Committee for the purpose of the hearing of the charge concerned.

(2) If the members of the Committee are equally divided on a question, the question is to be decided according to the opinion of the chairperson.

(3) A question of law arising before the Committee is to be decided by the chairperson.

### **Action by Committee**

**116.(1)** If, on the hearing of a charge against a person, the Committee finds a contravention of a code of conduct proved, it may do any 1 or more of the following—

(a) take no action;

(b) caution the person;

(c) reprimand the person;

(d) order the imposition of conditions, limitations and restrictions (including limited registration or enrolment) under which the

person may continue to practise as a registered nurse, enrolled nurse, midwife or another person authorised to practise nursing for a period (not longer than 2 years) determined by the Committee;

- (e) order that the person's registration or enrolment, or the person's authorisation to practise midwifery or nursing, be suspended for such period (not longer than 2 years) as the Committee considers appropriate;
- (f) order the cancellation of the person's registration or enrolment, or the revocation of the person's authority to practise midwifery or nursing, and set conditions under which the person may re-apply for registration or enrolment or to be authorised;
- (g) order that the person pay to the Council, by way of penalty, an amount (not more than 20 penalty units) fixed by the Committee;
- (h) order the imposition of such other conditions as the Committee considers appropriate.

**(2)** If conditions, limitations or restrictions are imposed for a period, or a suspension is ordered for a period—

- (a) the matter must be again reviewed by the Committee at the end of the period to determine whether further action should be taken; and
- (b) the Committee is taken to have entered all necessary adjournments for the purpose of any further hearing in relation to the review; and
- (c) the review may be undertaken by the Committee constituted by the same or different members; and
- (d) the Committee may, on reviewing the order made under subsection (1)(d) or (e), continue the order for a period (not longer than 2 years) on each review or do any 1 or more of the things mentioned in subsection (1).

**(3)** If, on the hearing of a charge, the Committee does not find the charge proved, it must dismiss the charge.

**(4)** All costs in relation to a hearing before the Committee are payable by the Council unless the Committee orders, on finding the charge proved, that

the costs of the proceeding be paid by the person against whom the charge was made.

(5) A pecuniary penalty, or amount of costs, ordered by the Committee to be paid under this section—

- (a) becomes due and payable immediately or, if the Committee allows time for payment, on expiry of the time allowed; and
- (b) is to be paid to the Council.

### **Effect of Committee's orders**

**117.(1)** If—

- (a) the Committee orders that a penalty or an amount of costs be paid; and
- (b) the order is not complied with;

the Council may recover the amount of the unpaid penalty or costs from the person against whom the order is made as a debt due to the Council.

(2) The Council must take any action necessary to give effect to an order of the Committee under section 116.

### **Notification of Committee's orders and reasons**

**118.(1)** The Committee must give written reasons for findings and orders made by it.

(2) As soon as practicable after the Committee makes its findings and orders and gives the written reasons, the Committee must give to the Council, the person who is the subject of the charge and any person who made a complaint a copy of the orders and reasons.

(3) The Council may publish the orders and reasons of the Committee in any way the Council considers appropriate.

***Division 5—Health assessments*****Health Assessment Advisory Panel**

**119.(1)** A panel called the Health Assessment Advisory Panel is established.

**(2)** The Panel has such functions and powers as are prescribed by this Act.

**Members of Health Assessment Advisory Panel**

**120.(1)** The Panel is to consist of such number of persons as are appointed from time to time by the Council.

**(2)** The members of the Panel must be persons who, in the Council's opinion, are appropriately qualified to assess the condition of persons.

**(3)** A member of the Council is not eligible for appointment to the Panel.

**Operation of Health Assessment Advisory Panel**

**121.(1)** In a matter, the Panel is constituted by 1 or more members of the Panel selected by the executive officer.

**(2)** The Panel may require the person being assessed to submit to such tests and examinations as are, in the Panel's opinion, necessary to determine the person's condition.

**(3)** Nothing in this section prevents the Panel from considering reports and opinions submitted to the Panel by or on behalf of the person being assessed.

**(4)** The Panel must report to the person or body that referred a person to the Panel for assessment—

(a) on the condition of the person examined; or

(b) if the person refuses to undergo the examination or obstructs the examination—of that fact;

within 7 days after the examination, refusal or obstruction.

## **PART 6—PROVISIONS CONCERNING CERTAIN NURSING MATTERS**

### **Application of Act in certain cases**

**122.** If a person, who is registered as a nurse outside Queensland, is in Queensland for the purpose of—

- (a) assisting in the process of retrieval or escort of a patient; or
- (b) the transplantation of human organs or tissues; or
- (c) another similar emergency purpose;

the person is taken to be a registered nurse while so practising.

### **Employment as a nurse**

**123.(1)** Despite any industrial award or agreement or any other agreement, a registered nurse must not be employed, or continue in employment, as a registered nurse unless the person has a current annual licence certificate.

**(2)** Despite any industrial award or agreement or any other agreement, an enrolled nurse must not be employed, or continue in employment, as an enrolled nurse unless the person has a current annual licence certificate.

**(3)** Despite any industrial award or agreement or any other agreement, a midwife must not be employed, or continue in employment, as a midwife unless the person has a current annual licence certificate.

**(4)** A person (the “**employer**”) who employs a person (the “**employee**”) as a nurse or midwife must ensure—

- (a) that the employee holds a current annual licence certificate at the time the employee is employed; and
- (b) that the employee continues to hold a current annual licence certificate for so long as the employee is employed by the employer.

**(5)** If the employer is not, at any time, satisfied that the employee holds a current annual licence certificate, the employer must immediately notify the

executive officer.

Maximum penalty—20 penalty units.

### **Badges**

**124.(1)** A nurse is entitled to wear a badge of the appropriate prescribed design issued to the nurse by the Council.

**(2)** A person who is not currently registered, enrolled or authorised under this Act to practise nursing must not wear a badge issued by the Council.

**(3)** A person must not wear a badge issued by the Council that is not issued to the person.

**(4)** A person must not use or wear an imitation of a badge issued by the Council.

Maximum penalty—20 penalty units.

## **PART 7—INVESTIGATION AND ENFORCEMENT**

### *Division 1—Inspectors*

#### **Appointment of inspectors**

**125.(1)** The Council may appoint an employee of the Council or another person to be an inspector.

**(2)** The Council must not appoint a person to be an inspector unless the Council is satisfied that the person has the necessary training or experience to be an inspector.

#### **Identity card for inspectors**

**126.(1)** The executive officer must issue an identity card to each inspector.

**(2)** The identity card must—

- (a) contain a recent photograph of the inspector; and
- (b) be in a form approved by the executive officer; and
- (c) be signed by the inspector.

(3) A person who ceases to be an inspector must not, without reasonable excuse, fail to return the person's identity card to the executive officer as soon as practicable after ceasing to be an inspector.

Maximum penalty for subsection (3)—2 penalty units.

### **Inspector to produce identity card**

127. An inspector may exercise a power under this Part in relation to a person only if the inspector first produces his or her identity card for inspection by the person.

## *Division 2—Investigation of offences*

### **Entry and search—monitoring compliance**

128.(1) For the purpose of finding out whether this Act is being complied with, an inspector may—

- (a) enter any place at any reasonable hour of the day or night; and
- (b) exercise the powers mentioned in section 130.

(2) An inspector may enter a place or exercise a power under subsection (1) only if—

- (a) the occupier of the place consents to the entry or exercise of the power; or
- (b) a health service is conducted at the place and the place is open for entry.

### **Entry and search—evidence of offences**

129.(1) If an inspector has reasonable grounds for suspecting that there is in a place a particular thing (the “**evidence**”) that may afford evidence of the commission of an offence against this Act, the inspector may—

*Nursing Act 1992*

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- (a) enter the place; and
  - (b) exercise the powers mentioned in section 130.
- (2) If the inspector enters the place and finds the evidence—
- (a) the inspector may seize the evidence; and
  - (b) the inspector may keep the evidence—
    - (i) for 6 months; or
    - (ii) if a prosecution of an offence against this Act, or a charge of a contravention of a code of conduct, in the commission of which the evidence may have been used or otherwise involved is instituted or preferred within that period—until the completion of the proceeding for the offence or charge and any appeal in relation to the proceeding; and
  - (c) if the evidence is a document—while the inspector has possession of the document, the inspector—
    - (i) may take extracts from, and make copies of, the document; and
    - (ii) must allow the document to be inspected at any reasonable time by a person who would be entitled to inspect it if it were not in the inspector's possession.
- (3) The inspector may enter the place or exercise a power under subsection (1) only if—
- (a) the occupier of the place consents to the entry or exercise of the power; or
  - (b) a warrant under section 131 that was issued in relation to the evidence authorises the entry or exercise of the power.
- (4) If, while searching the place under subsection (1) under a warrant under section 131, the inspector finds a thing (the “**secondary evidence**”) that is not the evidence, then, subject to subsection (5), subsection (2) applies to the secondary evidence as if it were the evidence.
- (5) Subsection (4) applies only if the inspector believes, on reasonable grounds, that—
- (a) the secondary evidence will afford evidence of the commission

of—

- (i) the offence mentioned in subsection (1); or
  - (ii) another offence against this Act; and
- (b) it is necessary to seize the secondary evidence to prevent—
- (i) its concealment, loss, death or destruction; or
  - (ii) its use in committing, continuing or repeating either of the offences.

### **General powers of inspector in relation to places**

**130.(1)** An inspector who enters a place under this Part may exercise any of the following powers—

- (a) search any part of the place;
- (b) inspect, examine, photograph or film anything in the place;
- (c) take extracts from, and make copies of, any documents in the place;
- (d) take into the place persons, equipment and materials that the inspector reasonably requires for the purpose of exercising any powers in relation to the place;
- (e) require—
  - (i) the occupier of the place; or
  - (ii) any person in the place;to give to the inspector reasonable assistance in relation to the exercise of the powers mentioned in paragraphs (a) to (d);
- (f) the power mentioned in section 133 (Inspector may require name and address).

**(2)** A person must not, without reasonable excuse, fail to comply with a requirement made under subsection (1)(e).

Maximum penalty—10 penalty units.

**(3)** It is a reasonable excuse for a person to fail—

- (a) to answer a question; or

- (b) to produce a document (other than a document required to be kept by a person under this Act);

if answering the question, or producing the document, might tend to incriminate the person.

(4) This section does not limit any power that an inspector has apart from this section.

### **Offence related warrants**

**131.(1)** An inspector may apply to a Magistrate for a warrant under this section in relation to a particular place.

(2) Subject to subsection (3), the Magistrate may issue the warrant if the Magistrate is satisfied, by information on oath, that there are reasonable grounds for suspecting that there is, or there may be within the next 7 days, in the place a particular thing that may afford evidence of the commission of an offence against this Act.

(3) If the Magistrate requires further information about the grounds on which the issue of the warrant is being sought, the Magistrate may issue the warrant only if the inspector or some other person has given the information to the Magistrate in the form (either orally or by affidavit) that the Magistrate requires.

(4) The warrant must—

- (a) authorise the inspector, with such assistance and by such force as is necessary and reasonable—
  - (i) to enter the place; and
  - (ii) to exercise the powers set out in section 130; and
  - (iii) to seize the evidence; and
- (b) state whether the entry is authorised to be made—
  - (i) at any time of the day or night; or
  - (ii) during specified hours of the day or night; and
- (c) specify the day (not more than 14 days after the issue of the warrant) on which the warrant ceases to have effect; and
- (d) state the purpose for which the warrant is issued.

**Warrants may be issued by various forms of communication**

**132.(1)** If an inspector considers it necessary to do so because of—

- (a) urgent circumstances; or
- (b) other special circumstances, including, for example, the inspector's remote location;

the inspector may, under this section, apply by telephone, facsimile, radio or another form of communication for a warrant under section 131.

(2) Before applying for the warrant, the inspector must prepare an information of the kind mentioned in section 131(2) that sets out the grounds on which the issue of the warrant is sought.

(3) If it is necessary to do so, an inspector may apply for the warrant before the information has been sworn.

(4) If the Magistrate—

- (a) after having considered the terms of the information; and
- (b) after having received any further information that the Magistrate requires about the grounds on which the issue of the warrant is being sought;

is satisfied that there are reasonable grounds for issuing the warrant, the Magistrate may, under section 131, complete and sign the warrant that the Magistrate would issue under the section if the application had been made under the section.

(5) If the Magistrate completes and signs the warrant, the Magistrate must—

- (a) immediately send a copy of the warrant to the inspector by facsimile; or
- (b) if it is not reasonably practicable to do so—
  - (i) tell the inspector what the terms of the warrant are; and
  - (ii) tell the inspector the day and time when the warrant was signed; and
  - (iii) record on the warrant the reasons for granting the warrant.

(6) If the Magistrate takes the action mentioned in subsection (5)(b), the inspector must—

- (a) complete a form of warrant in the same terms as the warrant completed and signed by the Magistrate; and
  - (b) write on the form of warrant—
    - (i) the name of the Magistrate; and
    - (ii) the day and time when the Magistrate signed the warrant.
- (7)** The inspector must also send to the Magistrate—
- (a) the information mentioned in subsection (2), which must have been properly sworn; and
  - (b) if a form of warrant was completed by the inspector under subsection (6)—the completed form of warrant.
- (8)** A document mentioned in subsection (7) must be sent—
- (a) not later than the day after the day of expiry or execution of the warrant (whichever is the earlier); or
  - (b) if it is not practicable to comply with paragraph (a)—as soon as practicable after the day mentioned in the paragraph.
- (9)** When the Magistrate receives the documents mentioned in subsection (7), the Magistrate must—
- (a) attach them to the warrant that the Magistrate completed and signed; and
  - (b) deal with them in the way in which the Magistrate would have dealt with the information if the application for the warrant had been made under section 131.
- (10)** A facsimile copy of a warrant, or a form of warrant properly completed by the inspector under subsection (6), is authority for any entry, search, seizure or other exercise of a power that the warrant signed by the Magistrate authorises.
- (11)** If—
- (a) it is material for a court to be satisfied that an entry, search, seizure or other exercise of power was authorised by this section; and
  - (b) the warrant completed and signed by the Magistrate authorising the exercise of power is not produced in evidence;

the court must assume, unless the contrary is proved, that the exercise of power was not authorised by such a warrant.

### **Inspector may require name and address**

**133.(1)** This section applies if an inspector—

- (a) finds a person committing an offence against this Act or a contravention of a code of conduct; or
- (b) finds a person who the inspector has reasonable grounds for suspecting has committed an offence against this Act or has contravened a code of conduct; or
- (c) believes on reasonable grounds that the name and address of a person is required for the purpose of the enforcement of this Act.

**(2)** The inspector may—

- (a) require the person to state the person's name and address; and
- (b) if the inspector believes on reasonable grounds that the name or address given by the person is false—require evidence of its correctness.

**(3)** If the inspector makes a requirement under subsection (2), the inspector must warn the person that it is an offence against this Act to fail, without reasonable excuse, to comply with the requirement.

**(4)** A person who is required under subsection (2) to state the person's name or address must not—

- (a) without reasonable excuse, fail to comply with the requirement; or
- (b) state a false name or address.

Maximum penalty—20 penalty units.

**(5)** A person who is required under subsection (2) to give evidence of the correctness of a name or address must not—

- (a) without reasonable excuse, fail to give the evidence; or
- (b) give false evidence.

Maximum penalty—20 penalty units.

**(6) If—**

- (a) an inspector makes a requirement under subsection (2) on suspicion of a person having committed an offence or having contravened a code of conduct; and
- (b) the person is not proved to have committed the offence or to have contravened the code of conduct;

the person is not guilty of an offence against this section.

**Notice of seizure and compensation**

**134.(1)** An inspector who, in the exercise of a power under this Part, seizes or damages a thing must, as soon as practicable, give written notice of the particulars of the seizure or damage.

**(2) The notice must be given to—**

- (a) for a seizure—the person from whom the thing was seized; or
- (b) for damage—the person who appears to the inspector to be the owner of the thing.

**(3) A person who incurs any loss or expense—**

- (a) because of the exercise or purported exercise of a power under this Part; or
- (b) in complying with a requirement made of the person under this Part;

may claim compensation from the Council.

**(4) A payment of compensation may be claimed and ordered—**

- (a) in a proceeding for compensation brought in a court of competent jurisdiction for the recovery of compensation; or
- (b) during a proceeding for an offence against this Act brought against the person by whom the claim is made.

**(5)** A court may order the payment of compensation for the loss or expense only if it is satisfied that it is just to do so in the circumstances of the particular case.

**Other offences in relation to inspectors**

**135.(1)** A person must not, without reasonable excuse—

- (a) obstruct, hinder or resist; or
- (b) attempt to obstruct, hinder or resist;

an inspector in the exercise of a power under this Act.

Maximum penalty—20 penalty units.

**(2)** A person must not pretend to be an inspector.

Maximum penalty—20 penalty units.

**(3)** A person must not—

- (a) make a statement to an inspector that the person knows is false or misleading in a material particular; or
- (b) omit from a statement made to an inspector anything without which the statement is, to the person's knowledge, misleading in a material particular.

Maximum penalty—20 penalty units.

**(4)** A complaint against a person for an offence against subsection (3)(a) or (b) is sufficient if it states that the statement made was false or misleading to the person's knowledge.

**(5)** A person must not give an inspector a document containing information that the person knows is false, misleading or incomplete in a material particular.

Maximum penalty—20 penalty units.

**(6)** Subsection (5) does not apply to a person if, when the person gives the document to the inspector, the person—

- (a) indicates to the inspector that the document is false, misleading or incomplete; and
- (b) indicates the respect in which the document is false, misleading or incomplete; and
- (c) gives the correct information to the inspector if the person has, or can reasonably obtain, the correct information.

***Division 3—Investigation of complaints relating to code of conduct*****Powers of inspectors**

**136.(1)** An inspector conducting an investigation under section 103 has, for the purposes of the investigation, all the powers that an inspector has under this Part in relation to an offence against this Act.

**(2)** This Part applies to the inspector as if a reference to an offence against this Act were a reference to a contravention of a code of conduct.

**PART 8—GENERAL*****Division 1—Appeals*****Appeals**

**137.(1)** This section applies to the following decisions and orders—

- (a) a decision of the Council—
  - (i) to refuse a person’s application—
    - (A) to be registered as a registered nurse; or
    - (B) to be enrolled as an enrolled nurse; or
    - (C) to be authorised as a midwife; or
    - (D) to be otherwise authorised to practise nursing; or
  - (ii) to grant to a person limited registration or enrolment; or
  - (iii) on a review by the Council of limited registration or enrolment; or
  - (iv) to refuse to renew a person’s annual licence certificate; or
  - (v) to refuse to accredit a nursing course under this Act; or
  - (vi) to impose conditions on accreditation by the Council of a nursing course under this Act; or

- (vii) to suspend a person's registration or enrolment; or
- (viii) determining the payment of costs under section 66(3);
- (b) any other decision of the Council or the executive officer (other than a decision prescribed for the purposes of this paragraph);
- (c) an order of the Committee.

(2) A person who is aggrieved by a decision or order to which this section applies may appeal against the decision or order to a District Court Judge.

(3) The appeal—

- (a) must be instituted—
  - (i) within 28 days after the person receives notice of the decision or order; and
  - (ii) by filing a notice of appeal in the appropriate registry of the District Court; and
  - (iii) by complying with any rules of court applicable to the appeal; and
- (b) must be conducted in accordance with any rules of court applicable to the appeal or, if the rules make no provision or insufficient provision, in accordance with directions of a District Court Judge; and
- (c) is by way of rehearing on the material before the Council, the executive officer or the Committee or, if the Judge hearing the appeal so orders, on material submitted on the appeal, or on both.

(4) The Council is a party to the appeal.

(5) If the Judge hearing the appeal is of the opinion that the appeal involves a question of special knowledge and skill, the Judge may appoint 1 or more assessors who in the Judge's opinion possess the special qualifications necessary for the particular case to assist the Judge in the determination.

(6) An assessor may advise the Judge on any matter, but all questions of law and fact are to be determined by the Judge.

(7) The Judge may give such weight to the advice as the Judge considers

appropriate.

(8) On the appeal, the Judge may make such orders as the Judge considers just.

(9) If, on appeal, a Judge orders a penalty to be paid by an appellant, the Judge is to order the penalty to be paid to the Council.

(10) If an appeal under this section is upheld, the Judge may order that the costs of the appeal be paid by the Council.

(11) In this section—

“**decision**” includes a failure to make a decision.

### *Division 2—Administration*

#### **Holders of office to act honestly and with propriety**

**138.(1)** In this section—

“**person to whom this section applies**” means a person who is, or has been—

- (a) a member of the Council or a committee of the Council; or
- (b) a member of the Committee; or
- (c) an employee of the Council; or
- (d) a person performing functions or exercising powers under, or for the purposes of, this Act.

(2) A person to whom this section applies must at all times act honestly in exercise of powers and performance of functions under, or for the purposes of, this Act.

(3) A person to whom this section applies must not make improper use of an office or position held under this Act—

- (a) to gain, directly or indirectly, an advantage for any person; or
- (b) to cause detriment to the Council, a committee of the Council or the Committee.

(4) A person to whom this section applies must not make improper use of information acquired under, or for the purposes of, this Act—

- (a) to gain, directly or indirectly, an advantage for any person; or
- (b) to cause detriment to the Council, a committee of the Council or the Committee.

Maximum penalty—100 penalty units or imprisonment for 6 months.

### **Confidentiality of documents and information**

**139.(1)** In this section—

**“court”** includes any tribunal, authority or person having power to require the production of documents or the answering of questions;

**“person to whom this section applies”** means a person who is, or has been—

- (a) a member of the Council or a committee of the Council; or
- (b) a member of the Committee; or
- (c) an employee of the Council; or
- (d) a person performing functions or exercising powers under, or for the purposes of, this Act;

**“produce”** includes permit access to;

**“protected document”** means a document that was made or obtained by a person as a person to whom this section applies, and includes a document seized, a copy of a document made, or an extract of a document taken, under this Act;

**“protected information”** means information that was disclosed to, or obtained by, a person as a person to whom this section applies.

**(2)** A person to whom this section applies must not—

- (a) make a copy of, or take an extract from, a protected document; or
- (b) make a copy of protected information; or
- (c) whether directly or indirectly, disclose or make use of a protected document or protected information;

unless the person does so—

- (d) in the performance of the person’s functions or the exercise of the

person's powers under, or in relation to, this Act; or

- (e) otherwise under or for the purposes of this Act.

Maximum penalty—100 penalty units or imprisonment for 6 months.

**(3)** A person to whom this section applies is not required—

- (a) to disclose protected information to a court; or  
(b) to produce a protected document in court;

unless it is necessary to do so for the purpose of carrying this Act into effect.

### **Supply of information to Council**

**140.(1)** The Council may, by written notice, request a nurse, midwife or another person authorised to practise nursing to supply to the Council information relating to the person's biography, educational qualifications or employment in nursing or midwifery.

**(2)** The Council may, by written notice, request—

- (a) a nursing student to supply to the Council, within a time specified by the Council, relevant information relating to the student's biography; or  
(b) the person in charge of, or a person connected with the management of, a school of nursing involved with nursing courses to supply to the Council, within a time specified by the Council, relevant information relating to the education of nurses.

**(3)** The Council may, by written notice, request the person in charge of, or a person connected with the management of, a health service to supply to the Council, within a time specified by the Council, relevant information relating to nursing practice.

**(4)** A person who receives a request under subsection (1), (2) or (3) must not, without reasonable excuse, fail to comply with the request.

Maximum penalty—5 penalty units.

**(5)** A person is not required to supply information under this section if supplying the information might tend to incriminate the person.

**Prohibited practices**

**141.(1)** A person must not knowingly take action, or knowingly assist another person to take action, that, having regard to the circumstances in which it is taken, indicates, is capable of being understood to indicate, or is calculated to lead persons to believe, that the person or other person is—

- (a) a registered nurse, unless the person or other person is a registered nurse; or
- (b) an enrolled nurse, unless the person or other person is an enrolled nurse; or
- (c) a midwife, unless the person or other person is authorised to practise midwifery; or
- (d) a person authorised to practise nursing, unless the person or other person is authorised to practise nursing; or
- (e) the holder of an annual licence certificate, unless the person or other person holds an annual licence certificate.

Maximum penalty—20 penalty units.

(2) Action mentioned in subsection (1) may include, but is not limited to, taking or using a name, initial, word, title or description.

**Unauthorised nursing**

**142.(1)** A person who is not a nurse, or a person authorised to practise nursing, must not practise as a nurse or perform a nursing service.

Maximum penalty—20 penalty units.

(2) A nurse or another person authorised to practise nursing must not contravene a term, condition, limitation or restriction to which the person's right to practise nursing is subject.

Maximum penalty—20 penalty units

(3) Subsections (1) and (2) do not apply to a person rendering assistance in an emergency.

(4) For the purposes of this section, a person who does not act for, or in expectation of, a fee or reward does not practise as a nurse or perform a nursing service.

(5) A person who does not have current authorisation from the Council to practise as a midwife must not care for a woman in childbirth.

Maximum penalty—20 penalty units.

(6) Subsection (5) does not apply to—

- (a) a medical practitioner; or
- (b) a medical or midwifery student acting under the direct supervision of a medical practitioner or midwife respectively; or
- (c) a person rendering assistance in an emergency; or
- (d) a person acting in prescribed circumstances.

### **Penalty for falsifying Register or Roll etc.**

**143.(1)** A person must not—

- (a) make an entry in the Register or the Roll, or in any document relating to the Register or the Roll, that the person knows is false; or
- (b) procure, or attempt to procure, the person or another person to be registered, enrolled or authorised to practise nursing or midwifery by making or producing a statement, declaration or representation (whether orally or in writing) that the first person knows is false; or
- (c) represent that the person or another person is the person mentioned in—
  - (i) a certificate, document or writing presented to the Council; or
  - (ii) a certificate or authorisation granted under this Act; knowing that the representation is false; or
- (d) advertise that the person or another person has obtained a certificate under this Act, or is registered, enrolled or authorised to practise midwifery or nursing under this Act, knowing that the advertisement is false.

Maximum penalty—100 penalty units or imprisonment for 6 months.

(2) On the conviction of a person under subsection (1) of having procured the person to be registered or enrolled or authorised to practise nursing or midwifery in a way that contravenes this section, the Council may—

- (a) cancel the person's registration or enrolment; or
- (b) revoke the person's authorisation to practise nursing or midwifery.

### **Penalties and costs to Council**

**144.** All penalties and costs recovered in relation to offences against this Act are to be paid to the Council.

### **Proceedings generally**

**145.(1)** An offence against this Act may be prosecuted in a summary way under the *Justices Act 1886*.

(2) All fees and costs payable to the Council under this Act, and all penalties ordered by the Council or the Committee to be paid to the Council under this Act, are debts due to the Council.

### **Evidence**

**146.(1)** In a proceeding by or on behalf of the Council, it is not necessary to prove the appointment of the members or the executive officer.

(2) A document purporting to be certified by the executive officer to be a true copy of, or a true extract from, a register, roll or document in the Council's custody is, for all purposes, evidence of the original of which it purports to be a copy of, or extract from, and is admissible in evidence to the same extent as the original.

(3) A certificate purporting to be signed by the executive officer stating that a person was or was not on a specified day, or during a specified period, registered or enrolled, or authorised to practise nursing or midwifery, is evidence in all proceedings of the matters stated in the certificate.

**Indemnity**

**147.(1)** A person does not incur civil liability for an act or omission done or omitted to be done honestly and without negligence under, or for the purposes of, this Act.

**(2)** A liability that would, but for subsection (1), attach to the person attaches instead to the Council.

**Regulations**

**148.** The Governor in Council may make regulations under this Act.

**PART 9—TRANSITIONAL PROVISIONS****References to certain boards etc.**

**149.** In an Act or document—

- (a) a reference to the Nurses Registration Board or the Board of Nursing Studies may, if the context permits, be taken to be a reference to the Council; or
- (b) a reference to a registered nurse under the *Nursing Act 1976* (other than a person registered only in the midwifery branch of the register) may, if the context permits, be taken to be a reference to a registered nurse under this Act; or
- (c) a reference to an enrolled nurse under the *Nursing Act 1976* may, if the context permits, be taken to be a reference to an enrolled nurse under this Act; or
- (d) a reference to a person registered under the *Nursing Act 1976* as a registered nurse in the midwifery branch of the register only may, if the context permits, be taken to be a reference to a person authorised under this Act to practice midwifery.

**Nursing Act 1976 and Nursing Studies Act 1976 references**

**150.** In an Act or document, a reference to the *Nursing Act 1976* or the *Nursing Studies Act 1976* may, if the context permits, be taken to be a reference to this Act.

**ENDNOTES****1 Index to endnotes**

	Page
2 Date to which amendments incorporated . . . . .	86
3 Key . . . . .	86
4 Table of earlier reprints . . . . .	87
5 Table in earlier reprint . . . . .	87
6 List of legislation . . . . .	87
7 List of annotations . . . . .	88

**2 Date to which amendments incorporated**

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 2 October 1996. Future amendments of the Nursing Act 1992 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

**3 Key****Key to abbreviations in list of legislation and annotations**

AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
om	=	omitted	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered
prev	=	previous			

## 4 Table of earlier reprints

### TABLE OF EARLIER REPRINTS

[If a reprint number includes an arabic letter, the reprint was released in unauthorised, electronic form only]

Reprint No.	Amendments included	Reprint date
1	none	11 November 1993

## 5 Tables in earlier reprints

### TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Corrected minor errors	1

## 6 List of legislation

### **Nursing Act 1992 No. 55**

date of assent 30 November 1992

ss 1–2, 163 so far as it relates to amendments of the Acts Interpretation Act 1954 commenced on date of assent (see s 2)

ss 4, 6(1), 7(a), pt 2 divs 2–4, 6 and s 47(2) commenced 19 July 1993 (1993 SL No. 260)

pt 2 div 7 commenced 18 December 1992 (1992 SL No. 449)

s 75(2)(b)(i) commenced 30 June 1996 (1995 SL No. 254)

remaining provisions commenced 1 November 1993 (1993 SL No. 393)

as amended by—

### **Statutory Authorities Superannuation Legislation Amendment Act 1995 No. 36 pt 1, s 9 sch 2**

date of assent 16 June 1995

commenced on date of assent (see s 2)

### **Statute Law Revision Act 1995 No. 57 ss 1–2, 4 sch 1**

date of assent 28 November 1995

commenced on date of assent

### **Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 1**

date of assent 28 November 1995

commenced on date of assent

**7 List of annotations****By-laws**

s 10 amd 1995 No. 58 s 4 sch 1

**Superannuation schemes**

s 41 sub 1995 No. 36 s 9 sch 2

**Superannuation for officers and employees who were previously officers of the public service**

s 42 amd 1995 No. 36 s 9 sch 2

**Code of conduct**

s 99 sub 1995 No. 57 s 4 sch 1

**Regulations**

s 148 amd 1995 No. 57 s 4 sch 1

**PART 9—TRANSITIONAL PROVISIONS**

pt 9 hdg sub 1995 No. 57 s 4 sch 1

**Division 1—Interpretation**

div hdg om 1995 No. 57 s 4 sch 1

**References to certain boards etc.**

s 149 sub 1995 No. 57 s 4 sch 1

**Division 2—Dissolution provisions**

div hdg om 1995 No. 57 s 4 sch 1

**Nursing Act 1976 and Nursing Studies Act 1976 references**

s 150 sub 1995 No. 57 s 4 sch 1

**Division 3—Provisions concerning officers of dissolved Boards**

div 3 (ss 151–156) om 1995 No. 57 s 4 sch 1

**Division 4—Transfer of assets and liabilities from dissolved Boards**

div 4 (s 157) om 1995 No. 57 s 4 sch 1

**Division 5—Disciplinary matters**

div 5 (ss 158–159) om 1995 No. 57 s 4 sch 1

**Division 6—Transitional provisions concerning registration, enrolment and courses**

div 6 (ss 160–161) om 1995 No. 57 s 4 sch 1

**Division 7—Repeals and amendments**

div hdg om R1 (see RA s 39)

**Repeals**

s 162 om R1 (see RA s 40)

**Amended Acts**

s 163 om R1 (see RA s 40)

**SCHEDULE 1—REPEAL OF ACTS**

om R1 (see RA s 40)

**SCHEDULE 2—AMENDMENT OF ACTS**

om R1 (see RA s 40)

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