



Nursing Act 1992

Reprinted as in force on 2 November 2009

Reprint No. 4E

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This Act is reprinted as at 2 November 2009. 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. Also see list of legislation for any uncommenced amendments.

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

Also see endnotes for information about—

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

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The spelling of certain words or phrases may be inconsistent in this reprint or with other reprints because of changes made in various editions of the Macquarie Dictionary (for example, in the dictionary, ‘lodgement’ has replaced ‘lodgment’). Variations of spelling will be updated in the next authorised reprint.

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Queensland

Nursing Act 1992

Contents

		Page
Part 1	Preliminary	
1	Short title	11
3	Objective of Act	11
4	Definitions	11
5	Crown bound	15
Part 2	Administration	
Division 1	The council and its functions and powers	
6	Establishment of council etc.	16
7	Council's functions	16
8	Council's powers	17
9	Council's power to be a member of other bodies etc.	18
Division 2	Constitution of council	
11	Council's constitution	19
Division 3	Chairperson of council	
12	Chairperson	20
Division 4	Meetings of council	
13	Times and places of meetings	20
14	Presiding at meetings	20
15	Quorum and voting at meetings	21
16	Conduct of meetings	21
16A	Resolutions without meetings.	21
16B	Minutes	22
17	Disclosure of interests	22
Division 5	Financial matters	
18	Funds of council	23
18A	Council is statutory body	24

19	Executive officer to present statement of prospective expenditure	24
Division 6	Provisions relating to members other than the executive officer	
20	Division applies to members other than executive officer.	24
21	Appointment.	24
22	Duration of appointment.	24
23	Terms of appointment.	24
24	Member ceasing as member	25
25	Acting member	25
Division 7	Provisions relating to the executive officer	
26	Duties of executive officer.	25
27	Appointment of executive officer.	25
28	Duration of appointment.	26
29	Terms of appointment.	26
30	Preservation of rights	26
31	Superannuation for executive officer who was previously an officer of the public service.	27
32	Leave of absence	27
33	Resignation	27
34	Executive officer not to engage in other paid employment.	28
35	Disclosure of interest by executive officer	28
36	Removal	28
37	Acting executive officer.	28
Division 8	The staff of the council	
38	Council's staff.	29
39	Terms of employment.	29
40	Arrangements relating to staff	29
41	Superannuation schemes.	30
42	Superannuation for officers and employees who were previously officers of the public service.	30
Division 9	Miscellaneous	
42A	Minister's power to give directions	31
43	Delegation by council	32
44	Delegation by executive officer.	32
45	Council's seal	32
46	Judicial notice of certain signatures	32
47	Committees of council	32

Part 3	Registration and enrolment	
Division 1	Administration	
48	The register	33
49	The roll	34
50	Notification of change of particulars	34
51	Particulars of cancellations etc. to be recorded	35
52	Corrections to register or roll etc.	35
53	Inspection of register or roll etc.	35
Division 2	Qualifications	
54	Qualifications for registration or enrolment.	36
Division 3	Registration and enrolment	
55	Application for registration or enrolment.	38
56	Attendance of applicant before council.	38
57	Council may require English examination	39
58	Registration or enrolment	39
59	Refusal of application	39
60	Both registration and enrolment not permitted	40
61	Action to be taken on registration or enrolment	40
62	Nurse must notify council if certificate of registration or enrolment lost or destroyed	40
63	Provisional registration or enrolment	41
64	Temporary registration	42
64A	Suitability to be temporarily registered	44
65	Limited registration or enrolment	44
66	Concerns about condition of applicants and nurses.	46
67	Immediate suspension of registration or enrolment by council. . .	47
68	Immediate suspension of registration or enrolment by executive officer	48
69	Review of suspension for health reasons.	49
70	Cancellation or suspension of registration and enrolment in certain cases	49
71	Requirements following cancellation or suspension of registration or enrolment	50
72	Restoration of registration or enrolment in certain cases.	51
73	Reissue of certificate of registration or enrolment etc.	51
Division 4	Annual licence certificates	
74	Fees for annual licence certificates	51
75	Renewal of annual licence certificate.	52

76	Endorsement of annual licence certificates	53
Division 5	Authorisation to practise midwifery or nursing	
77	Authorisation to practise	54
77A	Suitability to practise midwifery or nursing	54
Part 3A	Restrictions and holding out	
77B	Definitions for pt 3A	55
77C	Taking of restricted titles etc.	57
77D	Claims by persons as to registration etc.	59
77E	Claims by persons as to other persons' registration etc.	59
77F	Restrictions on persons with conditional, provisional or limited registration or enrolment	60
77G	Restrictions on persons with conditional authorisation.	60
77H	Restrictions on practising nursing	60
77I	Restrictions on caring for a woman in childbirth.	62
Part 4	Accreditation of nursing courses	
Division 1	Preliminary	
78	Definitions for pt 4.	63
Division 2	Accreditation of nursing course	
79	Application for accreditation	64
80	Late applications	65
81	Criteria for applications.	65
82	Protection from liability	66
83	Inquiries into applications.	66
83A	Decision	67
83B	Failure to decide applications.	67
83C	Period of accreditation	67
83D	Standard condition	67
83E	Conditions	68
83F	Accreditation certificate	68
Division 3	Variation of accredited nursing course	
83G	Application for approval of variation	69
83H	Inquiries into applications.	69
83I	Decision	70
83J	Failure to decide applications.	71
83K	Refund of fees	71
Division 4	Renewal of accreditation	
83L	Applications for renewal	71

83M	Inquiries into applications	72
83N	Accreditation taken to be in force while application is considered	72
83O	Decision	72
83P	Failure to decide application	73
Division 5	Cancellation of accreditation	
83Q	Ground for cancellation	73
83R	Show cause notice	74
83S	Submissions about show cause notices	75
83T	Ending show cause process without further action	75
83U	Cancellation	75
83V	Return of accreditation certificate to council	76
Division 6	Offences relating to accreditation	
83W	Person must not make false claims in relation to nursing course	76
Division 7	General provisions about accreditation	
83X	Surrender of accreditation	77
83Y	Replacement of accreditation certificates	77
Part 5	Professional conduct	
Division 1	Nursing Tribunal	
84	Continuation of Professional Conduct Committee under the name Nursing Tribunal	78
85	Tribunal's functions	78
86	Tribunal's powers	79
87	Tribunal's constitution	79
88	Tribunal's chairperson	79
89	Appointment	79
90	Duration of appointment	79
91	Terms of appointment	79
92	Member ceasing as a member	80
93	Disclosure of interests	80
94	Acting chairperson	81
95	Arrangement of business	81
96	Constitution of tribunal for particular proceeding	82
97	Member of tribunal ceasing to be available	83
98	Sitting places	83
Division 2	When part does not apply	
101	Action taken because of industrial disputes etc.	83

Division 2A	Codes of practice	
101A	Council may develop or adopt code of practice	83
101B	Inspection of approved codes of practice etc.	84
101C	Use of approved code of practice in disciplinary proceedings . . .	85
Division 3	Complaints and investigations	
102	Who may make complaint about nurse, midwife or other person authorised to practise nursing	85
102AA	Grounds for complaint	85
102AB	How complaint is made	86
102AC	Entity making complaint to reveal identity	86
102A	Action by council on receipt of complaint	86
102B	Referral of complaint to commission	87
102C	Investigation to be undertaken by council	88
102D	Action may be taken in relation to former nurses etc.	88
103	Investigation by council	88
103A	Council to keep commission informed about investigation	90
103B	Council may refer complaint to appropriate entity	90
104	Referral of charge to tribunal	91
Division 3A	Grounds for disciplinary action	
104A	Grounds	91
Division 4	Tribunal proceedings	
105	Proceedings before tribunal	93
106	Powers of tribunal	94
107	Summons to witness	94
108	Duty of witness at inquiry	95
109	Self-incrimination a reasonable excuse	95
110	Inspection of documents	95
111	Obstruction of tribunal etc.	96
112	Removal from tribunal hearing	96
113	Evidence and findings etc. in other proceedings may be received or adopted	97
114	Health assessment	97
115	Determinations of questions before tribunal	98
116	Action by tribunal	98
117	Effect of tribunal's orders	99
118	Notification of tribunal's orders and reasons	100

Division 4A	Council to give notice to commission	
118A	Council to give notice to commission at end of dealing with matter	100
Division 5	Health assessments	
119	Health Assessment Advisory Panel	101
120	Members of Health Assessment Advisory Panel	101
121	Operation of Health Assessment Advisory Panel	101
Division 6	Other matters	
121A	Aiding, abetting etc. conduct that is a ground for disciplinary action	102
Part 6	Provisions concerning certain nursing matters	
122	Application of Act in certain cases	102
123	Employment as a nurse	103
124	Badges	103
Part 7	Investigation and enforcement	
Division 1	Inspectors	
125	Appointment of inspectors	104
126	Identity card for inspectors	104
127	Inspector to produce identity card	105
Division 2	Investigation of offences	
128	Entry and search—monitoring compliance	105
129	Entry and search—evidence of offences	105
130	General powers of inspector in relation to places.	107
131	Offence related warrants	108
132	Warrants may be issued by various forms of communication . . .	108
133	Inspector may require name and address	111
134	Notice of seizure and compensation	112
135	Other offences in relation to inspectors	113
Division 3	Investigation under section 103	
136	Powers of inspectors	114
Part 8	General	
Division 1	Appeals	
137	Appeals	114
Division 2	Administration	
138	Holders of office to act honestly and with propriety	116
139	Confidentiality of documents and information	117

139A	Executive officer or council may notify Commissioner for Children and Young People and Child Guardian about particular information	119
140	Supply of information to council	120
140A	Notice of certain convictions to be given to council	121
140B	Notice of certain judgments and settlements to be given to council	121
140C	Notice about certain events to be given to council	122
141	Approval of forms	123
142A	Council may give combined notice	123
143	Penalty for falsifying register or roll etc.	123
144	Penalties and costs to council	124
145	Proceedings generally	124
146	Evidence.	125
147	Indemnity	125
148	Regulation-making power.	125
Part 9	Transitional provisions	
Division 1	Provisions consequential on passing of Nursing Act 1992	
149	References to certain boards etc.	127
150	Nursing Act 1976 and Nursing Studies Act 1976 references	128
Division 2	Provisions for the Health and Other Legislation Amendment Act 1998	
151	Existing time for notification of change of particulars to continue etc.	128
152	Endorsement to practise as psychiatric nurse	129
Division 3	Provisions for the Health Practitioners (Professional Standards) Act 1999	
153	Transitional for Health Practitioners (Professional Standards) Act 1999	129
Division 4	Provision for Health Legislation Amendment Act 2003	
154	Continuation of Professional Conduct Committee under the name Nursing Tribunal	129
Division 5	Provisions for the Health Legislation Amendment Act 2005	
155	Transitional for Health Legislation Amendment Act 2005.	130
Division 6	Provisions for the Health Quality and Complaints Commission Act 2006	
156	Definitions for div 6.	130
157	When investigation must be conducted or continued.	130
158	Reports to commission on investigation by council	131
159	Continuing requirement for council to give notice to commission.	132

Endnotes

1	Index to endnotes	133
2	Date to which amendments incorporated	133
3	Key	134
4	Table of reprints	134
5	Tables in earlier reprints	135
6	List of legislation	135
7	List of annotations	137
8	List of forms notified or published in the gazette	148

Nursing Act 1992

[as amended by all amendments that commenced on or before 2 November 2009]

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

1 Short title

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

3 Objective of Act

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

4 Definitions

In this Act—

accredited nursing course means a nursing course accredited under part 4 and includes an accredited nursing course that has been varied under an approval under section 83I.

annual licence certificate fee see section 74(1).

application fee, for part 4, see section 78.

approved code of practice means a code of practice approved by the Minister under section 101A(3).

approved form means a form approved by the council under section 141.

assessment body, for part 4, see section 78.

business name, of a business, means a name or style under which the business is carried on.

chairperson means—

- (a) in relation to the council—the chairperson of the council; and
- (b) in relation to the tribunal—the chairperson of the tribunal.

childbirth, for part 3A, see section 77B.

commencement, for part 9, division 6, see section 156.

commission means the Health Quality and Complaints Commission under the *Health Quality and Complaints Commission Act 2006*.

condition includes physical or mental condition.

convicted, for an offence, includes a plea of guilty or a finding of guilt by a court even though a conviction is not recorded.

corresponding law means a law applying in another State, the Commonwealth or a foreign country that provides for the same matter as this Act.

council means the Queensland Nursing Council.

criminal history, of a person, means—

- (a) every conviction of the person for an offence, in Queensland or elsewhere, and whether before or after the commencement of this Act; and
- (b) every charge made against the person for an offence, in Queensland or elsewhere, and whether before or after the commencement of this Act.

disciplinary action means—

- (a) for a nurse, midwife or other person authorised to practise nursing—any action the tribunal may take at the end of disciplinary proceedings; or
- (b) for a person who was a nurse, midwife or other person authorised to practise nursing, but is not a nurse, midwife or other person authorised to practise nursing at the time of the tribunal's decision at the end of disciplinary proceedings relating to the person—a

decision the tribunal may make at the end of the proceedings.

disciplinary matter means a matter that may provide a ground for disciplinary action to be taken, under section 104, against a person.

disciplinary proceedings means proceedings conducted by the tribunal under part 5, division 4.

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.

entity acting on behalf of a user means—

- (a) an entity chosen by the user to act on the user's behalf; or
- (b) if it would be difficult or impossible for the user to choose an entity to act on the user's behalf—an entity that has a sufficient interest in the health or welfare of the user.

executive officer means the executive officer of the council.

fee includes tax.

foreign regulatory authority means—

- (a) an interstate regulatory authority; or
- (b) an entity established under the law applying in a foreign country, other than New Zealand, having functions similar to the functions of the council under this Act.

ground for disciplinary action means a ground mentioned in section 104A.

health practitioner registration Act, for part 3A, see section 77B.

health professional, for part 3A, see section 77B.

Health Rights Commissioner, for part 9, division 6, see section 156.

health service means a health service within the meaning of the *Health Services Act 1991*.

information notice, for part 4, see section 78.

inspector means an inspector appointed under this Act.

interstate regulatory authority means an entity established under the law of another State or New Zealand having functions similar to the functions of the council under this Act.

midwife means a person who is authorised by the council to practise midwifery.

notice, for part 4, see section 78.

nurse means a registered or enrolled nurse.

nurse education includes—

- (a) midwifery education, mental health 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, mental health nursing practice and practice in any other area of nursing.

nursing qualifications includes midwifery qualifications, mental health nursing qualifications and qualifications in any other area of nursing.

Nursing Tribunal means the professional conduct committee previously established under this Act and continued in existence, under section 84, under the name Nursing Tribunal.

panel means the Health Assessment Advisory Panel.

payment period see section 74(3).

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.

profession, for part 3A, see section 77B.

professional service, for part 3A, see section 77B.

recognised person, for part 3A, see section 77B.

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.

repealed Act, for part 9, division 6, see section 156.

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.

show cause notice, for part 4, see section 78.

show cause period, for part 4, see section 78.

tribunal means the Nursing Tribunal.

5 Crown bound

- (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

6 Establishment of council etc.

- (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.

7 Council's functions

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) develop or adopt codes of practice 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) consult and cooperate with foreign regulatory authorities and other relevant entities about the following—
 - (i) nurse education;
 - (ii) nursing practice;
 - (iii) the regulation of nursing and midwifery; and
- (n) carry out other functions conferred on it by this or another Act.

8 Council's powers

- (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.

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

- (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.

Division 2 Constitution of council

11 Council's constitution

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 lawyer;
- (e) the executive officer of the council.

Division 3 Chairperson of council

12 Chairperson

- (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

13 Times and places of meetings

- (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.

14 Presiding at meetings

- (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.

15 Quorum and voting at meetings

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.

16 Conduct of meetings

- (1) Subject to this division and a regulation, the council may regulate its proceedings as it considers appropriate.
- (2) Without limiting subsection (1), the council may permit its members to participate in a particular meeting, or all meetings, by telephone, closed-circuit television or another form of communication.
- (3) A member who participates in a meeting under a permission under subsection (2) is taken to be present at the meeting.

16A Resolutions without meetings

- (1) If at least a majority of members sign a document containing a statement that they are in favour of a resolution stated in the document, a resolution in those terms is taken to have been passed at a meeting of the council held on the day on which the document is signed or, if the members do not sign it on the same day, the day on which the last of the members forming the majority signs the document.
- (2) If a resolution is, under subsection (1), taken to have been passed at a meeting of the council, each member must immediately be advised of the matter and given a copy of the terms of the resolution.
- (3) For subsection (1), 2 or more separate documents containing a statement in identical terms, each of which is signed by 1 or more members, are taken to be 1 document.

16B Minutes

The council must keep minutes of its meetings.

17 Disclosure of interests

- (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

18 Funds of council

- (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).

18A Council is statutory body

- (1) Under the *Statutory Bodies Financial Arrangements Act 1982*, the council is a statutory body.
- (2) The *Statutory Bodies Financial Arrangements Act 1982*, part 2B sets out the way in which the council's powers under this Act are affected by the *Statutory Bodies Financial Arrangements Act 1982*.

19 Executive officer to present statement of prospective expenditure

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

This division applies to members of the council other than the executive officer.

21 Appointment

The members are appointed by the Governor in Council.

22 Duration of appointment

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

23 Terms of appointment

- (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.

- (2A) However, a member may waive payment in whole or part.
- (3) A member holds office on terms not provided by this Act as are determined by the Governor in Council.

24 Member ceasing as member

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.

25 Acting member

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

26 Duties of executive officer

- (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.

27 Appointment of executive officer

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

28 Duration of appointment

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

29 Terms of appointment

- (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.

30 Preservation of rights

- (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 public sector unit, 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 public sector unit, 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 public sector unit for the purpose of determining the person's rights as an officer of the public service or the public sector unit.

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

- (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 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 member of the State Public Sector Superannuation Scheme and, for that purpose, is taken to be eligible for membership of the scheme under the *Superannuation (State Public Sector) Act 1990*.

- (2) Subsection (3) applies if—
- (a) the council maintains or participates in a superannuation scheme (the *council scheme*), other than the State Public Sector Superannuation Scheme, for the benefit of the executive officer; and
 - (b) the executive officer continued to be a member of the State Public Sector Superannuation Scheme under subsection (1).
- (3) The executive officer may, under arrangements prescribed under a regulation, stop being a member of the State Public Sector Superannuation Scheme and become a member of the council scheme.

32 Leave of absence

The council may grant leave of absence to the executive officer on the terms determined by the council.

33 Resignation

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

34 Executive officer not to engage in other paid employment

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

35 Disclosure of interest by executive officer

- (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.

36 Removal

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.

37 Acting executive officer

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

38 Council's staff

The council may engage such employees as it considers necessary to perform its functions.

39 Terms of employment

- (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 Act 2008*); and
 - (b) any relevant award or industrial agreement.
- (3) The council's employees are to be employed under this Act, and not under the *Public Service Act 2008*.
- (4) In this section—

terms of employment include terms relating to duration of employment and termination of employment.

40 Arrangements relating to staff

- (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.

41 Superannuation schemes

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.

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

- (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 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 member of the State Public Sector Superannuation Scheme and, for that purpose, is taken to be eligible for membership of the scheme under the *Superannuation (State Public Sector) Act 1990*.

- (3) Subsection (4) applies if—

- (a) the council establishes, joins in establishing or takes part in establishing a superannuation scheme (the *council scheme*); and
- (b) a person continued to be a member of the State Public Sector Superannuation Scheme under subsection (2).

- (4) The person may, under arrangements prescribed under a regulation, stop being a member of the State Public Sector

Superannuation Scheme and become a member of the council scheme.

Division 9 Miscellaneous

42A Minister's power to give directions

- (1) The Minister may give the council a written direction about a matter relevant to the council's functions under this Act if the Minister is satisfied it is necessary to give the direction in the public interest.
- (2) Without limiting subsection (1), a direction may be to give reports and information to the Minister.
- (3) However, a direction can not be about the following—
 - (a) the registering or enrolment of, or refusal to register or enrol, an applicant for registration or enrolment;
 - (b) the suspension or cancellation of a registration or enrolment;
 - (c) the issue or renewal, or refusal to issue or renew, an annual licence certificate;
 - (d) the authorisation of, or refusal to authorise, a person to practise midwifery or nursing;
 - (e) the revocation of an authorisation of a person to practise midwifery or nursing;
 - (f) a decision to accredit, or refuse to accredit, a nursing course;
 - (g) a decision to cancel the accreditation of a nursing course;
 - (h) preferring a charge against a person and referring it to the tribunal.
- (4) The council must comply with the direction.
- (5) The council's annual report for a financial year, under the *Financial Accountability Act 2009*, must include copies of all directions given to it in the financial year.

- (6) However, the council must exclude from the copies all information likely to identify a registered nurse, enrolled nurse, or person authorised to practise midwifery or nursing, to whom the direction relates.

43 Delegation by council

- (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 section 63, 65, 67, 69 or 104.

44 Delegation by executive officer

The executive officer may delegate the executive officer's powers to an employee of the council.

45 Council's seal

- (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.

46 Judicial notice of certain signatures

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.

47 Committees of council

- (1) Section 17 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.
- (2A) However a member of a committee of the council may waive payment in whole or part.
- (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

48 The register

- (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 following particulars in relation to each person who is a registered nurse—
 - (i) the person's name;
 - (ii) the person's date of birth;
 - (iii) the person's residential address;
 - (iv) relevant qualifications held by the person;
 - (v) any authorisations held by the person to practise midwifery, mental health nursing or nursing in another area of nursing;
 - (vi) the person's registration number;
 - (vii) the date the person was registered;

- (viii) any other particulars prescribed under a regulation; 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.

49 The roll

- (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 following particulars in relation to each person who is an enrolled nurse—
 - (i) the person's name;
 - (ii) the person's date of birth;
 - (iii) the person's residential address;
 - (iv) relevant qualifications held by the person;
 - (v) any authorisations held by the person to practise midwifery, mental health nursing or in another area of nursing;
 - (vi) the person's enrolment number;
 - (vii) the date the person was enrolled;
 - (viii) any other particulars prescribed under a regulation; 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.

50 Notification of change of particulars

- (1) Within 21 days 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 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.

51 Particulars of cancellations etc. to be recorded

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.

52 Corrections to register or roll etc.

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.

53 Inspection of register or roll etc.

- (1) 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.

- (2) Subsection (1) does not apply to the following particulars contained in the register or roll—
 - (a) a person's date of birth;
 - (b) a person's residential address;
 - (c) another particular prescribed under a regulation.
- (3) The council may, at the request of the Australian Nursing Council Incorporated, supply that body with information about the particulars in the register or roll.

Division 2 Qualifications

54 Qualifications for registration or enrolment

- (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.
- (2A) The person must also satisfy the council that the person is competent and fit to practise nursing.
- (3) Without limiting subsection (2A), the person must satisfy the council—
 - (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; and
 - (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.
- (3A) In deciding whether the person is competent and fit to practise nursing, the council may have regard to the person's criminal history.
- (3B) The council may ask the commissioner of the police service for a written report about the person's criminal history.
- (3C) If asked by the council, the commissioner of the police service must give the council a written report about the person's criminal history, including the criminal history in the commissioner's possession or to which the commissioner has access.
- (3D) The *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the asking for, or giving of, the report.
- (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

55 Application for registration or enrolment

- (1) 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 annual licence certificate fee.
- (2) The approved form may require the disclosure of the applicant's criminal history.
- (3) If the approved form requires the disclosure of the applicant's criminal history, the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the disclosure.

56 Attendance of applicant before council

- (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.

57 Council may require English examination

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.

58 Registration or enrolment

- (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.
- (3) This section applies subject to section 72.

59 Refusal of application

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 annual licence certificate fee that accompanied the application.

60 Both registration and enrolment not permitted

- (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.

61 Action to be taken on registration or enrolment

- (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.

62 Nurse must notify council if certificate of registration or enrolment lost or destroyed

- (1) A nurse whose certificate of registration or enrolment is lost or destroyed must give the council written notice of the loss or destruction of the certificate, unless the nurse has a reasonable excuse.

Maximum penalty—1 penalty unit.

- (2) 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.

63 Provisional registration or enrolment

- (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 annual licence certificate 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.

64 Temporary registration

- (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 annual licence certificate 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; and
- (iii) the person is a suitable person to be temporarily registered as a registered nurse;

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

- (1A) The approved form may require the disclosure of the person's criminal history.
- (1B) If the approved form requires the disclosure of the person's criminal history, the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the disclosure.
- (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 annual licence certificate 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.

64A Suitability to be temporarily registered

- (1) In deciding whether a person is a suitable person to be temporarily registered as a registered nurse, the council may have regard to the following—
- (a) the person's criminal history;
 - (b) any other issue relevant to the person's ability to undertake the activity the subject of the application.
- (2) The council may ask the commissioner of the police service for a written report about the person's criminal history.
- (3) If asked by the council, the commissioner of the police service must give the council a written report about the person's criminal history, including the criminal history in the commissioner's possession or to which the commissioner has access.
- (4) The *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the asking for, or giving of, the report.

65 Limited registration or enrolment

- (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 tribunal 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 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 tribunal’s order.
- (3) The conditions that the council may impose include conditions 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 tribunal.
- (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 tribunal 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 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.

66 Concerns about condition of applicants and nurses

- (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.
- (2A) The council must as soon as practicable give the commission written notice of a referral, under subsection (2), about a registered or enrolled nurse.
- (2B) If, under subsection (2), the council refers an applicant for registration or enrolment to the panel for assessment—
 - (a) the council may disclose the applicant's criminal history to the panel if the council considers it relevant to the assessment; and

- (b) the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the disclosure.
- (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 conditions (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.
- (7) Also, the council must as soon as practicable give the commission written notice of—
 - (a) any recommendation made under subsection (5) about the person; and
 - (b) what action, if any, it decides to take in response to the recommendation.

67 Immediate suspension of registration or enrolment by council

- (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 or

practice, 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.
- (3A) Also, the council must as soon as practicable give the commission written notice of the suspension, stating the reasons for the suspension.
- (4) If the council suspends the registration or enrolment of a nurse because of the nurse's conduct or practice, the council must immediately have the matter investigated.¹
- (5) On receipt of the investigating inspector's report, the council must immediately—
 - (a) lift the suspension; or
 - (b) prefer a charge against the suspended nurse on the basis that there may be a ground for disciplinary action to be taken against the nurse.
- (6) If a charge is preferred under subsection (5), the suspension applies until the determination of the matter referred to the tribunal for hearing and determination under section 104(1A).

68 Immediate suspension of registration or enrolment by executive officer

- (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.

¹ See section 103 (Investigation by council).

- (3) The executive officer must as soon as practicable give the nurse and commission written notice of the suspension, stating the reasons for the suspension.
- (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.

69 Review of suspension for health reasons

- (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.

70 Cancellation or suspension of registration and enrolment in certain cases

- (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, a Territory or a foreign country 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, a Territory or a foreign country has been suspended.
- (3) The suspension is to be for—
- (a) if the suspension is under the law of another State or a Territory—the same period as the suspension under the other law; or
 - (b) if the suspension is under the law of a foreign country—the same period as, or a shorter period than, the suspension under the other law.

71 Requirements following cancellation or suspension of registration or enrolment

- (1) A nurse whose registration or enrolment is cancelled or suspended under this division 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.

- (2) Subsection (1) does not apply to a cancellation of registration or enrolment under section 70(1)(b).
- (3) However, the council may require a person whose registration or enrolment has been cancelled under section 70(1)(b) to surrender to the executive officer 1 or more of the items mentioned in subsection (1).

72 Restoration of registration or enrolment in certain cases

- (1) If the registration or enrolment of a person is cancelled under the *Nursing Act 1976*, section 31, or section 70(1)(c) or (d), the person must not again be registered or enrolled unless the council gives a direction under subsection (4).
- (2) A person whose registration or enrolment has been cancelled as mentioned in subsection (1) may apply to the council for the restoration of the person's registration or enrolment.
- (3) The application must be—
 - (a) in the approved form; and
 - (b) accompanied by the fee prescribed under a regulation.
- (4) If the council, after considering the application and 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.

73 Reissue of certificate of registration or enrolment etc.

If a person is re-registered or re-enrolled under a direction under section 72(4), 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**74 Fees for annual licence certificates**

- (1) Every nurse and midwife must pay to the council a prescribed fee for an annual licence certificate (the *annual licence certificate fee*).
- (2) The certificate must be in a form approved by the council.
- (3) If a nurse, or midwife who is not a nurse, fails to pay the annual licence certificate fee within the period prescribed under a regulation (the *payment period*), the council must

immediately cancel the nurse's registration or enrolment or revoke the midwife's authority to practise.

- (4) A person whose registration or enrolment is cancelled or authority to practise is revoked under subsection (3) may apply to the council for reregistration, re-enrolment or reauthorisation in the form approved by the council.
- (5) The application must be accompanied by the annual licence certificate fee and the restoration fee prescribed under a regulation.
- (6) The council must reregister, re-enrol or reauthorise the applicant and issue an annual licence certificate to the applicant if it is satisfied—
 - (a) the applicant has practised nursing or midwifery during the 5 years before the application; and
 - (b) the applicant is qualified to be registered, enrolled or authorised.
- (7) However, if the council is not satisfied the applicant has practised nursing or midwifery during the 5 years before the application, the council may reregister, re-enrol or reauthorise the applicant subject to the conditions of practice it considers appropriate.

75 Renewal of annual licence certificate

- (1) The holder of an annual licence certificate must, during the payment period, 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; and
 - (c) accompanied by the annual licence certificate fee.

- (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 payment period, application is made by a person for renewal of an annual licence certificate and the annual licence certificate 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.

76 Endorsement of annual licence certificates

- (1) An annual licence certificate issued to a person must be suitably endorsed to show—
 - (a) any conditions imposed on the person by the council; and
 - (b) any authorisation to practise as a midwife or mental health 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 mental health 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 midwifery or nursing

77 Authorisation to practise

- (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 and the council is satisfied the person is a suitable person to practise midwifery.
- (2) An individual may be authorised by the council to practise mental health nursing if the person has successfully completed a mental health 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 if the council is satisfied the person is a suitable person to practise nursing.
- (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.

77A Suitability to practise midwifery or nursing

- (1) This section applies for the purpose of the council deciding whether—

- (a) a person is a suitable person to practise midwifery under section 77(1); or
 - (b) a person is a suitable person to practise nursing under section 77(4).
- (2) The council may have regard to the following—
- (a) the person’s criminal history;
 - (b) any other issue relevant to the person’s ability to practise midwifery or nursing.
- (3) The council may—
- (a) ask the person for details of the person’s criminal history; or
 - (b) ask the commissioner of the police service for a written report about the person’s criminal history.
- (4) If asked by the council, the commissioner of the police service must give the council a written report about the person’s criminal history, including the criminal history in the commissioner’s possession or to which the commissioner has access.
- (5) The *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the asking for, or giving of, the details or report.

Part 3A Restrictions and holding out

77B Definitions for pt 3A

In this part—

childbirth means the process of labour and delivery beginning with uterine contractions and ending with the expulsion of the placenta and membranes from the woman giving birth.

health practitioner registration Act means any 1 of the following Acts—

- *Chiropractors Registration Act 2001*

- *Dental Practitioners Registration Act 2001*
- *Dental Technicians and Dental Prosthetists Registration Act 2001*
- *Medical Practitioners Registration Act 2001*
- *Medical Radiation Technologists Registration Act 2001*
- *Occupational Therapists Registration Act 2001*
- *Optometrists Registration Act 2001*
- *Osteopaths Registration Act 2001*
- *Pharmacists Registration Act 2001*
- *Physiotherapists Registration Act 2001*
- *Podiatrists Registration Act 2001*
- *Psychologists Registration Act 2001*
- *Speech Pathologists Registration Act 2001.*

health professional means a registrant under a health practitioner registration Act.

profession means—

- (a) the nursing profession as practised by a registered nurse;
or
- (b) the nursing profession as practised by an enrolled nurse;
or
- (c) the midwifery profession as practised by a midwife.

professional service means—

- (a) for the nursing profession as practised by a registered nurse—a service ordinarily provided by a registered nurse; or
- (b) for the nursing profession as practised by an enrolled nurse—a service ordinarily provided by an enrolled nurse; or
- (c) for the midwifery profession—a midwifery service.

recognised person, for a profession, means—

- (a) for the nursing profession as practised by a registered nurse—a registered nurse; or

- (b) for the nursing profession as practised by an enrolled nurse—an enrolled nurse; or
- (c) for the midwifery profession—a midwife.

77C Taking of restricted titles etc.

- (1) A person who is not a recognised person for a profession must not take or use a restricted title for the profession.

Maximum penalty—1000 penalty units.

Examples of an individual taking or using a restricted title—

- 1 AB describes himself or herself as ‘AB, registered nurse’
- 2 AB describes himself or herself as ‘AB, enrolled nurse’
- 3 AB describes himself or herself as ‘AB, midwife’

- (2) Subsection (1) does not apply to a person if—
 - (a) the person takes or uses a restricted title for a profession as part of a business name for a business providing professional services in the profession; and
 - (b) in the carrying on of the business by the person, a recognised person for the profession provides professional services in the profession.
- (3) Also, subsection (1) does not apply to a person if—
 - (a) the person is undertaking an accredited nursing course for a profession; and
 - (b) the person takes or uses a restricted title for the profession, in conjunction with words indicating the person is a student in the profession.
- (4) A person (the *first person*) must not, in relation to another person who the first person knows, or ought reasonably to know, is not a recognised person for a profession, use a restricted title for the profession.

Maximum penalty—1000 penalty units.

- (5) Subsection (4) does not apply to the first person if—
 - (a) the other person is undertaking an accredited nursing course for a profession; and

(b) the first person uses a restricted title for the profession in relation to the other person, in conjunction with words indicating the other person is a student in the profession.

(6) A person who is not a recognised person for a profession must not take or use a nursing related title for the profession.

Maximum penalty—500 penalty units.

(7) Subsection (6) does not apply to a person if—

(a) the person is undertaking an accredited nursing course for a profession; and

(b) the person takes or uses a nursing related title for the profession, in conjunction with words indicating the person is a student in the profession.

(8) A person (the *first person*) must not, in relation to another person who the first person knows, or ought reasonably to know, is not a recognised person for a profession use a nursing related title for the profession.

Maximum penalty—500 penalty units.

(9) Subsection (8) does not apply to the first person if—

(a) the other person is undertaking an accredited nursing course for a profession; and

(b) the first person uses a nursing related title for the profession in relation to the other person, in conjunction with words indicating the other person is a student in the profession.

(10) In this section—

nursing related title, for a profession, means a title (other than a restricted title), name, initial, symbol, word or description that, having regard to the circumstances in which it is taken or used, indicates or could be reasonably understood to indicate—

(a) a person is a recognised person for the profession; or

(b) the person is, under this Act, authorised or qualified to practise the profession.

restricted title means a title that consists of, or includes—

- (a) for the nursing profession as practised by a registered nurse—registered nurse; or
- (b) for the nursing profession as practised by an enrolled nurse—enrolled nurse; or
- (c) for the midwifery profession—midwife.

77D Claims by persons as to registration etc.

- (1) A person who is not a recognised person for a profession must not—
 - (a) claim, or hold himself or herself out, to be a recognised person for the profession; or
 - (b) allow himself or herself to be held out as being a recognised person for the profession; or
 - (c) claim, or hold himself or herself out, to be eligible to be a recognised person for the profession.

Maximum penalty—1000 penalty units.

- (2) A person who is not, under this Act, authorised to practise in an area of nursing must not—
 - (a) claim, or hold himself or herself out, to be authorised to practise in the area of nursing; or
 - (b) allow himself or herself to be held out as being authorised to practise in the area of nursing; or
 - (c) claim, or hold himself or herself out, to be eligible to be authorised to practise in the area of nursing.

Maximum penalty—1000 penalty units.

77E Claims by persons as to other persons' registration etc.

A person must not hold out another person as being—

- (a) a recognised person for a profession if the person knows, or ought reasonably to know, the other person is not a recognised person for the profession; or

- (b) authorised under this Act to practise in an area of nursing if the person knows, or ought reasonably to know, the other person is not authorised to practise in the area of nursing.

Maximum penalty—1000 penalty units.

77F Restrictions on persons with conditional, provisional or limited registration or enrolment

A person whose registration or enrolment is subject to a condition, or is provisional or limited must not—

- (a) claim, or hold himself or herself out to be registered or enrolled other than as—
 - (i) subject to the condition; or
 - (ii) provisionally; or
 - (iii) subject to the limitation; or
- (b) allow himself or herself to be held out as being registered or enrolled other than as—
 - (i) subject to the condition; or
 - (ii) provisionally; or
 - (iii) subject to the limitation.

Maximum penalty—100 penalty units.

77G Restrictions on persons with conditional authorisation

A person whose authorisation, under this Act, to practise nursing or midwifery is subject to a condition must not—

- (a) claim, or hold himself or herself out to be authorised other than as subject to the condition; or
- (b) allow himself or herself to be held out as being authorised other than as subject to the condition.

Maximum penalty—100 penalty units.

77H Restrictions on practising nursing

- (1) A person must not practise nursing unless the person is—

- (a) a registered nurse practising the profession as practised by a registered nurse; or
- (b) an enrolled nurse practising the profession as practised by an enrolled nurse; or
- (c) authorised under this Act to practise in an area of nursing and practising in the area.

Maximum penalty—1000 penalty units.

- (2) Subsection (1) does not apply to caring for a woman in childbirth.²
- (3) Also, subsection (1) does not apply to—
 - (a) a health professional carrying out, in the practice of the person's profession, an activity that would ordinarily be carried out in the practice of the profession; or
 - (b) a person engaged in providing a health service and carrying out an activity that is within the person's professional training and expertise; or
 - (c) a person, including, for example, a nursing assistant, practising under the supervision of a registered nurse; or
 - (d) a person who is—
 - (i) undertaking an accredited nursing course for qualification for registration as a registered nurse or enrolment as an enrolled nurse; and
 - (ii) practising under the supervision of a registered nurse; or
 - (e) a person who is—
 - (i) undertaking study or training for qualification for registration as a health professional; and
 - (ii) practising under the supervision of a health professional for the relevant health profession or a registered nurse; and
 - (iii) carrying out an activity that would ordinarily be carried out in the practice of the relevant health profession; or

² See section 77I (Restrictions on caring for a woman in childbirth).

- (f) a person who is—
 - (i) undertaking a midwifery course accredited by the council; and
 - (ii) practising under the supervision of a midwife; and
 - (iii) carrying out an activity as part of the course that would ordinarily be carried out by a midwife; or
- (g) a person giving help in an emergency; or
- (h) a person carrying out an activity for which no fee or reward is expected or received.

Examples for paragraph (h)—

- 1 a mother nurses a sick child at home
 - 2 a person nurses an elderly parent at home
- (4) Without limiting subsection (1), a person may be practising nursing even if the person carries out 1 or more activities, usually carried out in the practice of nursing, on 1 occasion only or only on a limited number of occasions.

77I Restrictions on caring for a woman in childbirth

- (1) A person must not care for a woman in childbirth unless the person is authorised under this Act to practise midwifery.

Maximum penalty—1000 penalty units.

- (2) Subsection (1) does not apply to—
- (a) any of the following persons carrying out, in the practice of the person's profession, an activity that would ordinarily be carried out in the practice of the profession—
 - (i) a registered nurse;
 - (ii) an enrolled nurse;
 - (iii) a person authorised under this Act to practice nursing in an area of nursing other than midwifery;
 - (iv) a health professional; or
 - (b) a person acting under the supervision of a midwife or a medical practitioner; or

- (c) a person undertaking, under the supervision of a medical practitioner or midwife, a midwifery course accredited by the council; or
- (d) a person who is—
 - (i) undertaking an accredited nursing course for qualification for registration as a registered nurse or enrolment as an enrolled nurse; and
 - (ii) practising under the supervision of a registered nurse; and
 - (iii) carrying out an activity as part of the course that would ordinarily be carried out by a registered nurse or an enrolled nurse; or
- (e) a person who is—
 - (i) undertaking study or training for qualification for registration as a health professional; and
 - (ii) practising under the supervision of a health professional for the relevant health profession; and
 - (iii) carrying out an activity that would ordinarily be carried out in the practice of the relevant health profession; or
- (f) a person giving help in an emergency; or
- (g) a person carrying out activities for which no fee or reward is expected or received.

Part 4 Accreditation of nursing courses

Division 1 Preliminary

78 Definitions for pt 4

In this part—

application fee see section 79(2)(b)(i).

assessment body means a body recognised by the council as competent to assess standards of nursing education.

information notice, for a decision of the council, means a notice stating the following—

- (a) the decision;
- (b) the reason for the decision;
- (c) that the person to whom the notice is given may appeal against the decision within 28 days;
- (d) how the person may appeal against the decision to the District Court;
- (e) if the decision is that the accreditation of a nursing course be renewed or cancelled—a direction to return the certificate of accreditation to the council within 14 days.

notice means written notice.

show cause notice see section 83R(1).

show cause period see section 83R(2)(d).

Division 2 Accreditation of nursing course

79 Application for accreditation

- (1) A person may apply to the council for accreditation of a nursing course.
- (2) The application must—
 - (a) be in the approved form; and
 - (b) be accompanied by—
 - (i) the fee (the **application fee**) prescribed under a regulation; and
 - (ii) any other documents, identified in the approved form, the council reasonably requires.

- (3) Information in the application must, if the approved form requires, be verified by a statutory declaration.

80 Late applications

- (1) This section applies if the application is made after the day prescribed under a regulation.
- (2) In addition to the application fee, the application must be accompanied by the fee (the *late fee*) prescribed under a regulation.
- (3) If the council reasonably considers there is insufficient time to adequately consider the application having regard to the proposed commencement day for the nursing course, the council must—
 - (a) refuse to consider the application; and
 - (b) refund the application fee and late fee.

81 Criteria for applications

- (1) The council may grant the application only if it is satisfied the standard of education offered by the nursing course is sufficient to enable persons undertaking the nursing course to gain the skills and knowledge necessary to competently and safely practise in the area of nursing to which the nursing course relates.
- (2) In deciding the application, the council may have regard to the following—
 - (a) the duration, structure and content of the nursing course, including theoretical and clinical experience components;
 - (b) the nature of the assessment, and supervision, of students by teaching staff to take place under the nursing course;
 - (c) the status of the nursing course under another Act;
 - (d) the resources and facilities that will be available under the nursing course;

- (e) the management, staffing and record-keeping policies and practices of the school of nursing that will conduct the nursing course;
- (f) the advice and recommendation of an assessment body.

82 Protection from liability

- (1) This section applies if an assessment body, honestly and on reasonable grounds, gives advice, or makes a recommendation, to the council under section 81(2)(f).
- (2) A discloser is not liable, civilly, criminally or under an administrative process, for disclosing information contained in the advice or recommendation.
- (3) Without limiting subsection (2)—
 - (a) in a proceeding for defamation, the discloser has a defence of absolute privilege for publishing the disclosed information; and
 - (b) if the discloser would otherwise be required to maintain confidentiality about the disclosed information under an Act or oath, or a rule of law or practice, the discloser—
 - (i) does not contravene the Act, oath, rule of law or practice by disclosing the information; and
 - (ii) is not liable to disciplinary action for disclosing the information.
- (4) In this section—

discloser means any of the following—

 - (a) an assessment body that gives advice, or makes a recommendation, under section 81(2)(f);
 - (b) all the members of that assessment body;
 - (c) each of the members of that assessment body.

83 Inquiries into applications

- (1) This section applies if the council reasonably considers further information or a document is required to decide the application.

- (2) The council may, by notice given to the applicant within the period prescribed under a regulation, require the applicant to give the council the further information or document within the period stated in the notice.
- (3) The period stated in the notice must not be less than the period prescribed under a regulation.
- (4) The applicant is taken to have withdrawn the application if the applicant does not comply with the requirement.

83A Decision

- (1) The council must consider the application and decide to accredit, or refuse to accredit, the nursing course.
- (2) If it decides to accredit the nursing course, the council must as soon as practicable issue an accreditation certificate for the nursing course to the applicant.
- (3) If it decides to refuse to accredit the nursing course, the council must as soon as practicable give the applicant an information notice about the decision.

83B Failure to decide applications

If the council fails to decide the application within the period prescribed under a regulation, the council is taken to have decided to refuse to accredit the nursing course.

83C Period of accreditation

The period of accreditation that is to apply to a nursing course is the period, not more than 5 years, stated in the accreditation certificate for the nursing course.

83D Standard condition

It is a condition of the accreditation of an accredited nursing course that the holder of the certificate of accreditation—

- (a) allows an inspector to enter, at any reasonable time, a place to examine the holder's operation for the nursing course at the place; and

- (b) complies with all reasonable requests by an inspector to inspect a document—
 - (i) relevant to the nursing course; or
 - (ii) necessary to establish the standard at which the course is being conducted;

for the purpose of the council considering whether the nursing course and the way of delivering it comply with the accreditation.

83E Conditions

- (1) The council may decide to accredit a nursing course subject to the conditions that are relevant and reasonable.

Example of a condition the council may decide to impose on the accreditation of a nursing course—

The nursing course is not to commence until it is also accredited under the *Higher Education (General Provisions) Act 2008*.

- (2) If the council decides to accredit a nursing course subject to conditions it must as soon as practicable give the applicant an information notice about the decision.

83F Accreditation certificate

- (1) An accreditation certificate for a nursing course must be in the approved form.
- (2) The approved form must provide for the inclusion of the following—
 - (a) the name of the nursing course;
 - (b) the name of the holder of the certificate;
 - (c) the period of accreditation;
 - (d) the name and address of the school of nursing conducting the nursing course;
 - (e) any conditions imposed on the accreditation, other than the condition under section 83D.

Division 3 Variation of accredited nursing course

83G Application for approval of variation

- (1) The holder of an accreditation certificate for a nursing course may apply to the council for approval of a variation of the accredited nursing course.
- (2) The application must—
 - (a) be in the approved form; and
 - (b) be accompanied by—
 - (i) the fee prescribed under a regulation; and
 - (ii) any other documents, identified in the approved form, the council reasonably requires.
- (3) An application for approval of a variation of an accredited nursing course may not be made during the following periods—
 - (a) the period between the day prescribed under section 83L(2)(c) and the day the period of accreditation ends;
 - (b) the period between the day an application for renewal of the accreditation is made and the day a decision is made under section 83O about the application;
 - (c) the period between the day a show cause notice has been given to the holder of the accreditation certificate and the day the holder has been given a notice under section 83T(3) that no further action is to be taken about the show cause notice.

83H Inquiries into applications

- (1) This section applies if the council reasonably considers further information or a document is required to decide the application.
- (2) The council may, by notice given to the applicant, require the applicant to give the council the further information or document within the reasonable period stated in the notice.

- (3) The applicant is taken to have withdrawn the application if the applicant does not comply with the requirement.

83I Decision

- (1) The council must consider the application and approve, or refuse to approve, the variation of the accredited nursing course.
- (2) In making its decision, the council may have regard to the matters to which the council may have regard in deciding whether to accredit a nursing course.³
- (3) If, under subsection (2), the council receives advice or a recommendation from an assessment body, section 82 applies to the disclosure of information contained in the advice or recommendation as if the advice or recommendation had been given or made under section 81(2)(f).
- (4) Without limiting subsection (2), the council must refuse to approve the variation of the accredited nursing course if the council reasonably considers—
 - (a) the proposed variation would change the character of the nursing course to the extent that it would no longer be the accredited nursing course; or
 - (b) the proposed variation is within the scope of the accredited nursing course.
- (5) If it decides to refuse to approve the variation of the accredited nursing course, the council must as soon as practicable give the applicant an information notice about the decision.
- (6) If it decides to approve the variation of the accredited nursing course, the council must as soon as practicable give the applicant a notice about the decision.
- (7) The approval of the variation of the accredited nursing course takes effect from the day the holder of the accreditation certificate receives the notice.

³ See section 81(2) for a list of the matters.

83J Failure to decide applications

If the council fails to decide the application within the period prescribed under a regulation, the failure is taken to be a decision by the council to refuse to approve the variation of the accredited nursing course.

83K Refund of fees

- (1) This section applies if—
 - (a) the council refuses under section 83I(4) to approve a variation of an accredited nursing course; or
 - (b) the council is taken, under section 83J, to have decided to refuse to approve a variation of an accredited nursing course.
- (2) The council must refund the fee paid under section 83G(2)(b)(i) for the application.

Division 4 Renewal of accreditation**83L Applications for renewal**

- (1) The holder of an accreditation certificate for a nursing course may apply to the council for the renewal of the accreditation.
- (2) The application must—
 - (a) be in the approved form; and
 - (b) be accompanied by—
 - (i) the fee prescribed under a regulation; and
 - (ii) any other documents, identified in the approved form, the council reasonably requires; and
 - (c) be given to the council not later than the day prescribed under a regulation.
- (3) Information in the application must, if the approved form requires, be verified by a statutory declaration.

83M Inquiries into applications

- (1) This section applies if the council reasonably considers further information or a document is required to decide the application.
- (2) The council may, by notice given to the applicant within the period prescribed under a regulation, require the applicant to give the council the further information or document within the period stated in the notice.
- (3) The period stated in the notice must not be less than the period prescribed under a regulation.
- (4) The applicant is taken to have withdrawn the application if the applicant does not comply with the requirement.

83N Accreditation taken to be in force while application is considered

- (1) If an application is made under section 83L, the accreditation is taken to continue in force from the day that it would, apart from this section, have expired until the application is decided under section 83O or taken to have been withdrawn under section 83M(4).
- (2) However, if the application is refused, the accreditation continues in force until the information notice for the decision is given to the applicant.
- (3) Subsection (1) does not apply if the accreditation is earlier cancelled.

83O Decision

- (1) The council must consider the application and renew, or refuse to renew, the accreditation.
- (2) In making its decision, the council may have regard to the matters to which the council may have regard in deciding whether to accredit the nursing course.⁴
- (3) If, under subsection (2), the council receives advice or a recommendation from an assessment body, section 82 applies

⁴ See section 81(2) for a list of the matters.

to the disclosure of information contained in the advice or recommendation as if the advice or recommendation had been given or made under section 81(2)(f).

- (4) If it decides to refuse to renew the accreditation, the council must as soon as practicable give the applicant an information notice about the decision.
- (5) If it decides to renew the accreditation, it must as soon as practicable—
 - (a) endorse the existing accreditation certificate for the nursing course; or
 - (b) cancel the existing certificate and issue another accreditation certificate for the nursing course.

83P Failure to decide application

If the council fails to decide the application within the period prescribed under a regulation, the failure is taken to be a decision by the council to refuse to renew the accreditation of the nursing course.

Division 5 Cancellation of accreditation

83Q Ground for cancellation

- (1) The accreditation for a nursing course may be cancelled, under this division, on the ground that—
 - (a) the holder of the accreditation has contravened a condition of the accreditation; or
 - (b) the nursing course is no longer being conducted in accordance with the accreditation; or
 - (c) it is otherwise no longer appropriate for the nursing course to continue to be accredited.
- (2) For forming a belief that the ground exists under subsection (1)(b), the council may have regard to the matters to which the

council may have regard in deciding whether to accredit a nursing course.⁵

- (3) If, under subsection (2), the council receives advice or a recommendation from an assessment body, section 82 applies to the disclosure of information contained in the advice or recommendation as if the advice or recommendation had been given or made under section 81(2)(f).
- (4) The accreditation of a nursing course may not be cancelled on the ground the nursing course is no longer being conducted in accordance with the accreditation if—
 - (a) the ground is based on a variation in the accredited nursing course for which an application for approval was made under section 83G by the holder of the accreditation; and
 - (b) the council refused under section 83I(4)(b) to grant the application.

83R Show cause notice

- (1) If the council believes a ground exists to cancel the accreditation for a nursing course, the council must before taking action to cancel the accreditation give the holder of the accreditation certificate for the nursing course a notice (a *show cause notice*).
- (2) The show cause notice must state the following—
 - (a) that the council proposes to cancel the accreditation under this division;
 - (b) the ground for the proposed cancellation;
 - (c) an outline of the facts and circumstances forming the basis for the ground;
 - (d) an invitation to the holder to show within a stated period (the *show cause period*) why the council should not cancel the accreditation.
- (3) The show cause period must be a period that is at least the period prescribed under a regulation.

⁵ See section 81(2) for a list of the matters.

83S Submissions about show cause notices

- (1) The holder of the accreditation certificate may make written submissions about the show cause notice to the council in the show cause period.
- (2) The council must consider all written submissions made under subsection (1).

83T Ending show cause process without further action

- (1) This section applies if, after considering the submissions about the show cause notice, the council no longer believes the ground exists to cancel the accreditation.
- (2) The council must not take any further action about the show cause notice.
- (3) The council must give the holder of the accreditation certificate notice that no further action is to be taken about the show cause notice.

83U Cancellation

- (1) This section applies if, after considering the submissions about the show cause notice, the council—
 - (a) still believes the ground exists to cancel the accreditation; and
 - (b) believes cancellation of the accreditation is warranted.
- (2) This section also applies if there are no submissions under section 83S(1).
- (3) The council may decide to cancel the accreditation.
- (4) If the council decides to cancel the accreditation, it must as soon as practicable give an information notice about the decision to the holder of the accreditation certificate.
- (5) The decision takes effect on—
 - (a) the day the information notice is given to the holder; or
 - (b) if a later day of effect is stated in the information notice, the later day.

83V Return of accreditation certificate to council

- (1) This section applies if the council decides to cancel the accreditation for a nursing course and gives an information notice for the decision to the holder of the accreditation certificate.
- (2) The holder must return the accreditation certificate for the nursing course to the council within 14 days after the decision to cancel the accreditation takes effect under section 83U(5), unless the holder has a reasonable excuse.

Maximum penalty—10 penalty units.

Division 6 Offences relating to accreditation**83W Person must not make false claims in relation to nursing course**

- (1) A person must not advertise that the person is willing or able to provide an accredited nursing course unless the course is accredited under this part.

Maximum penalty—10 penalty units.

- (2) A person must not do any of the following in relation to a course purporting to be an accredited nursing course or a recognised nursing course if the course is not an accredited nursing course or recognised nursing course—
 - (a) enrol, or cause another person to enrol, a person in the course;
 - (b) offer to enrol, or enter into an agreement to enrol, a person in the course;
 - (c) collect, or accept, a fee for enrolling a person in the course;
 - (d) invite a person to enrol in the course.

Maximum penalty—10 penalty units.

- (3) In this section—

recognised nursing course means a course that provides a qualification that is recognised under section 77(3) by the council.

Division 7 General provisions about accreditation

83X Surrender of accreditation

- (1) The holder of the accreditation certificate for a nursing course may surrender the accreditation by notice given to the council.
- (2) The surrender takes effect—
 - (a) on the day the notice is given to the council; or
 - (b) if a later day of effect is stated in the notice, on the later day.
- (3) The holder must return the accreditation certificate for the nursing course to the council within 14 days after the day the surrender takes effect, unless the holder has a reasonable excuse.

Maximum penalty—10 penalty units.

83Y Replacement of accreditation certificates

- (1) The holder of the accreditation certificate for a nursing course may apply in writing to the council for the replacement of the certificate if it has been lost, stolen, destroyed or damaged.
- (2) The council must consider the application and either grant, or refuse to grant, the application.
- (3) The council may grant the application only if the council is satisfied the certificate has been lost, stolen or destroyed, or damaged in a way to require its replacement.
- (4) If the council grants the application, the council must, on payment of the fee prescribed under a regulation, issue another certificate to the applicant to replace the lost, stolen, destroyed or damaged certificate.

- (5) If the council refuses to grant the application, the council must as soon as practicable give the applicant an information notice about the decision.

Part 5 Professional conduct

Division 1 Nursing Tribunal

84 Continuation of Professional Conduct Committee under the name Nursing Tribunal

The entity named Professional Conduct Committee is continued in existence under the name Nursing Tribunal.

85 Tribunal's functions

The functions of the tribunal are—

- (a) to hear any charge that is referred to it under this Act; and
- (b) in relation to charges, to make findings about whether a ground for disciplinary action is established; 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.

86 Tribunal's powers

- (1) The tribunal 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 tribunal has such powers as are conferred on it by this Act.

87 Tribunal's constitution

The tribunal consists of the following members—

- (a) 1 lawyer;
- (b) 12 registered nurses nominated by the council, of whom 6 are to be chosen by the council from a panel of names submitted by associations accepted by the council as representatives of nurses;
- (c) 3 persons, representing persons who use services provided by the nursing profession.

88 Tribunal's chairperson

The member mentioned in section 87(a) is the chairperson of the tribunal.

89 Appointment

- (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 tribunal.

90 Duration of appointment

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

91 Terms of appointment

- (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.
- (2A) However, a member may waive payment in whole or part.
- (3) A member holds office on terms not provided by this Act as are determined by the Governor in Council.

92 Member ceasing as a member

A person who is a member of the tribunal 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.

93 Disclosure of interests

- (1) If a member of the tribunal (including the chairperson) is, or is to be, a member of the tribunal 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 tribunal 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.

94 Acting chairperson

The Governor in Council may appoint a lawyer 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.

95 Arrangement of business

- (1) Subject to section 96, the chairperson may give directions in relation to—
 - (a) the arrangement of the business of the tribunal; and
 - (b) the members who are to constitute the tribunal for the purposes of particular proceedings.
- (2) If the chairperson gives a direction about the members who are to constitute the tribunal 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 tribunal for the purposes of the proceeding.

96 Constitution of tribunal for particular proceeding

- (1) The tribunal 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 tribunal 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.
- (3) The tribunal constituted by the chairperson alone, may make decisions and give directions only about the following—
 - (a) whether an inspector appointed by the council has complied with section 103(4) and (5)(b);
 - (b) the way or sufficiency of service of a notice of charge;
 - (c) the sufficiency of particulars of a charge, and whether further and better particulars of the charge should be given;
 - (d) the granting of leave to amend a notice of charge;
 - (e) requiring a person making an affidavit for a hearing to be present at the hearing for cross-examination;
 - (f) admissions of facts or documents;
 - (g) the place, time and length of a hearing;
 - (h) the issue of summonses by the chairperson to witnesses;
 - (i) the giving of evidence at a hearing;
 - (j) the exchange of affidavits of proposed witnesses;
 - (k) the disclosure of reports of expert witnesses before a hearing;
 - (l) whether the whole or a stated part of a hearing should not be open to the public;
 - (m) applying for further directions.

97 Member of tribunal ceasing to be available

- (1) If the hearing of a proceeding has been started or completed by the tribunal but, before the matter to which the proceeding relates has been determined, 1 of the members constituting the tribunal (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 tribunal constituted by the remaining members; or
 - (b) in any other case—the proceeding is to be reheard by the tribunal as constituted under section 96.
- (2) If a proceeding is reheard by the tribunal, the tribunal may, for the purposes of the proceeding, have regard to any record of the proceeding before the tribunal as previously constituted, including any evidence taken in the proceeding.

98 Sitting places

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

Division 2 When part does not apply**101 Action taken because of industrial disputes etc.**

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 2A Codes of practice**101A Council may develop or adopt code of practice**

- (1) The council may develop a code of practice, or adopt another entity's code of practice, to provide guidance for nurses,

midwives and other persons authorised to practise nursing as to appropriate professional conduct or nursing practice.

- (2) In developing or amending a code of practice, or before adopting a code of practice, the council must consult with—
 - (a) the commission; and
 - (b) community groups and other entities in the State that the council considers have an interest in consumer health issues; and
 - (c) professional associations in the State that the council considers are representative of nurses, midwives or other persons authorised to practise nursing; and
 - (d) universities and training institutions, established in Queensland, that are engaged in nurse education; and
 - (e) professional colleges established in Australia that the council considers are relevant to nurses, midwives or other persons authorised to practise nursing; and
 - (f) any other entity the Minister directs the council to consult with.
- (3) A code of practice, or an amendment of a code of practice, has no effect until it is approved by the Minister by gazette notice.
- (4) The council must review its approved codes of practice on a regular basis.

101B Inspection of approved codes of practice etc.

- (1) The executive officer must keep copies of approved codes of practice available for inspection at the council's office by members of the public during ordinary office hours.
- (2) Also, the council must ensure that nurses, midwives and other persons authorised to practise nursing are notified of the approval of a code of practice and any amendment of the code.

101C Use of approved code of practice in disciplinary proceedings

- (1) An approved code of practice is admissible as evidence in disciplinary proceedings brought by the council against a nurse, midwife or other person authorised to practise nursing.
- (2) The code may only be used to provide evidence, in the disciplinary proceedings, of appropriate professional conduct or nursing practice.

Division 3 Complaints and investigations**102 Who may make complaint about nurse, midwife or other person authorised to practise nursing**

A complaint about a nurse, midwife or another person authorised to practise nursing (the *other person*) may be made by any entity, including, for example—

- (a) the user of a service provided by the nurse, midwife or other person; or
- (b) an entity acting on behalf of the user of a service provided by the nurse, midwife or other person; or
- (c) another nurse, midwife or other person; or
- (d) the chief executive; or
- (e) the Minister; or
- (f) a foreign regulatory authority.

102AA Grounds for complaint

- (1) An entity may complain about a relevant person by complaining to the council about any aspect of the relevant person's conduct or practice, or another matter relating to the relevant person, that appears to provide a ground for disciplinary action against the relevant person.
- (2) Also, a complaint may be made about a matter for which a health service complaint could be made under the *Health Quality and Complaints Commission Act 2006*.

(3) In this section—

relevant person means a nurse, midwife or other person authorised to practise nursing.

102AB How complaint is made

A complaint to the council about a nurse, midwife or other person authorised to practise nursing must be in writing and contain particulars of the allegation on which it is based.

102AC Entity making complaint to reveal identity

(1) An entity making a complaint about a relevant person must give the council—

- (a) the entity's name and address; and
- (b) any other information relating to the entity's identity that the council reasonably requires.

(2) However, the council may accept a complaint from a complainant who does not comply with subsection (1) if the council reasonably believes it is in the public interest to do so.

(3) If the council accepts a complaint under subsection (2), the council must provide the relevant person with written notice of its reasons for accepting the complaint.

(4) In this section—

relevant person means a nurse, midwife or other person authorised to practise nursing.

102A Action by council on receipt of complaint

(1) This section applies if the council receives a complaint about a nurse, midwife or another person authorised to practise nursing.

(2) If the complaint is a user complaint, the council must immediately refer the complaint to the commission unless—

- (a) following consultation between the council and the commission, the council and the commission agree it is

- in the public interest for the council to retain the complaint for investigation or other action; or
- (b) the council has suspended the nurse, midwife or other person under section 67; or
 - (c) the executive officer has suspended the nurse, midwife or other person under section 68.
- (3) If the complaint is not a user complaint, the council may decide to investigate the nurse, midwife or other person.
 - (4) If the council is not required to immediately refer the complaint to the commission under subsection (2) or the complaint is not a user complaint, the council must, as soon as practicable after receipt of the complaint, give a copy of it to the commission.
 - (5) If the council agrees with the commission to keep a complaint and take stated action under subsection (2)(a), the council must take the stated action, as soon as practicable after reaching the agreement.
 - (6) In this section—

user complaint means a complaint by—

 - (a) a user of a service provided by a nurse, midwife or other person authorised to practise nursing; or
 - (b) a representative of a user mentioned in paragraph (a).

102B Referral of complaint to commission

- (1) If the council refers a complaint to the commission under section 102A, the complaint is, under the *Health Quality and Complaints Commission Act 2006*, taken to be a health service complaint made to the commission.
- (2) The council is to take no further action on the complaint unless, under the *Health Quality and Complaints Commission Act 2006*, the commission refers the complaint back to the council.
- (3) The council may give the commission information, comments and recommendations in relation to the complaint and the nurse, midwife or other person authorised to practise nursing against whom the complaint has been made.

102C Investigation to be undertaken by council

(1) The council may, on the basis of a complaint or on its own initiative, investigate a relevant person if it reasonably believes an aspect of the relevant person's conduct or practice, or another matter relating to the relevant person, may provide a ground for disciplinary action against the relevant person.

(2) In this section—

relevant person means a nurse, midwife or other person authorised to practise nursing.

102D Action may be taken in relation to former nurses etc.

The council may take action under this part against a person on the basis that there may be a ground for disciplinary action to be taken against the person in relation to something that happened when the person was a nurse, midwife or authorised to practise nursing even if the person is no longer a nurse, midwife or authorised to practise nursing.

103 Investigation by council

(1) This section applies if a person is to be investigated because of—

- (a) a complaint under section 102AA; or
- (b) a complaint referred to the council by the commission; or
- (c) the suspension of the registration or enrolment of a nurse under section 67(1); or
- (d) a decision by the council, on its own initiative, to investigate a nurse, midwife or another person authorised to practise nursing.

(1A) The investigation must be conducted 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 an opportunity during the course of the investigation to make formal submissions to the inspector; and
 - (b) if subsection (1)(a) applies—give the person particulars of the complaint.
- (5) On conclusion of the investigation, the inspector must give—
 - (a) to the council—a written report, in reasonable detail, of—
 - (i) findings about the complaint or other matter the subject of the investigation; and
 - (ii) opinions based on the findings; and
 - (b) to the person—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 may be suffering from an addiction to alcohol or drugs or another condition that impairs the person's ability to practise nursing or midwifery, the officer may, by written notice, direct the person to undergo an assessment by the 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.

103A Council to keep commission informed about investigation

- (1) If the council conducts an investigation of a person it must, during the investigation, give to the commission the reasonable reports requested by the commission about the investigation.
- (2) As soon as practicable after completing the investigation, the council must give the commission a report about the investigation.
- (3) The report must include—
 - (a) the council's findings about the investigation including, if the investigation was the result of a complaint, the council's findings about the complaint; and
 - (b) the action taken or proposed to be taken by the council about the complaint or other matter the subject of the investigation.
- (4) The commission may give the council information, comments or recommendations about a report given to the commission under subsection (1) or (2), within 14 days after receiving the report or the longer period decided by the council.
- (5) If the commission gives information, comments or recommendations to the council under subsection (4), the council must have regard to the information, comments or recommendations in making a decision about action it intends to take about the complaint or other matter the subject of the investigation.
- (6) The commission may give the Minister a report about investigations conducted by the council or a particular investigation.

103B Council may refer complaint to appropriate entity

In addition to any other action taken under this Act, the council may, at any time, refer a complaint to another entity that has a function or power to deal with the complaint.

Example of circumstance in which council may refer complaint to another entity—

If a complaint about a nurse's conduct alleges or indicates possible criminal activity, the council may, in addition to taking action against the nurse for professional misconduct under this Act, refer the matter to the commissioner of the police service for action.

104 Referral of charge to tribunal

- (1) The council may prefer a charge against a person and refer it to the tribunal if the council reasonably believes a disciplinary matter exists in relation to the person.
- (1A) If the council prefers a charge against a suspended nurse under section 67(5), it must immediately refer the matter to the tribunal for hearing and determination.
- (2) The charge is to contain or be accompanied by sufficient particulars to inform the tribunal and the person of the ground for disciplinary action that is the basis of the charge.
- (3) If the council refers a charge to the tribunal, the council must immediately give notice of the referral to the commission.

Division 3A Grounds for disciplinary action

104A Grounds

- (1) Each of the following is a ground for disciplinary action against a relevant person—
 - (a) the relevant person has behaved in a way that constitutes unsatisfactory professional conduct;
 - (b) the relevant person has failed to comply with a condition of practice imposed under this Act;
 - (c) the relevant person has failed to comply with a lawful demand of the council, executive officer or tribunal, or an inspector or another entity authorised to make the demand under this Act;
 - (d) the relevant person does not meet, or no longer meets, the requirements to be a nurse, midwife or other person authorised to practise nursing;

- (e) the relevant person has failed to comply with a provision of this Act;
 - (f) the relevant person has been convicted of an offence against an Act of the State, the Commonwealth or another State related to nursing practice;
 - (g) the relevant person has been convicted of an indictable offence.
- (2) Also, if a relevant person is impaired, the relevant person's impairment is taken to be a ground for disciplinary action against the relevant person.
- (3) In this section—

authorised person means a person authorised to practise nursing under section 77(2), (3) or (4).

impairment, of a relevant person, means the relevant person has a physical or mental impairment, disability, condition or disorder that detrimentally affects, or is likely to detrimentally affect, the relevant person's physical or mental capacity for nursing practice and includes substance abuse or dependence.

relevant person means a nurse, midwife or authorised person.

unsatisfactory professional conduct, for a relevant person, includes the following—

- (a) professional conduct that is of a lesser standard than that which might reasonably be expected of the relevant person by the public or the relevant person's professional peers;
- (b) professional conduct that demonstrates incompetence, or a lack of adequate knowledge, skill, judgment or care, in nursing practice;
- (c) infamous conduct in a professional respect;
- (d) misconduct in a professional respect;
- (e) conduct discreditable to the nursing profession;
- (f) providing a person with health services of a kind that are excessive, unnecessary or not reasonably required for the person's wellbeing;

- (g) influencing, or attempting to influence, the conduct of another nurse, midwife or authorised person in a way that may compromise patient care;
- (h) fraudulent or dishonest behaviour in nursing practice.

Division 4 Tribunal proceedings

105 Proceedings before tribunal

- (1) A charge referred to the tribunal for hearing and determination is to be filed with the chairperson.
- (2) The chairperson is to take all steps necessary to have the tribunal constituted to hear and determine the charge.
- (3) At least 30 days before the day fixed for the hearing, the tribunal 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 tribunal 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 tribunal; 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 tribunal—

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

106 Powers of tribunal

- (1) When conducting a hearing, the tribunal 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.

107 Summons to witness

- (1) The chairperson may, by written notice given to a person, require the person to attend a hearing before the tribunal 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 tribunal is entitled to be paid the allowance prescribed under a regulation for attendance at the hearing.

108 Duty of witness at inquiry

A person appearing as a witness at a hearing by the tribunal 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.

109 Self-incrimination a reasonable excuse

A person is not required—

- (a) to produce to the tribunal a document or thing; or
- (b) to answer a question asked by a member of the tribunal; if producing the document or thing, or answering the question, might tend to incriminate the person.

110 Inspection of documents

- (1) When a document or thing is produced to the tribunal at a hearing, the tribunal 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 tribunal 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 tribunal 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 tribunal determines.

111 **Obstruction of tribunal etc.**

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

Maximum penalty—30 penalty units.

112 **Removal from tribunal hearing**

- (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.

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

In the course of a hearing, the tribunal 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 tribunal.

114 Health assessment

- (1) If the tribunal 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 tribunal 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 tribunal orders otherwise under section 116(4).
- (3) The panel must give a written report of the assessment to the tribunal.
- (4) The report may be used in evidence at the hearing of the charge by the tribunal.
- (5) The tribunal may require a member of the Health Assessment Advisory Panel to appear before it and answer questions about the report.

115 Determinations of questions before tribunal

- (1) Subject to subsections (2) and (3), a question before the tribunal is to be decided according to the opinion of the majority of the members constituting the tribunal for the purpose of the hearing of the charge concerned.
- (2) If the members of the tribunal 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 tribunal is to be decided by the chairperson.

116 Action by tribunal

- (1) If, on the hearing of a charge against a person, the tribunal decides a ground for disciplinary action against the person is established, 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 (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 tribunal;
 - (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 tribunal 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 tribunal;

- (h) order the imposition of such other conditions as the tribunal considers appropriate, including, for example, conditions under which a person may reapply for registration or enrolment as a nurse or authorisation to practise midwifery or nursing.
- (2) If conditions are imposed for a period, or a suspension is ordered for a period—
 - (a) the matter must be again reviewed by the tribunal at the end of the period to determine whether further action should be taken; and
 - (b) the tribunal 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 tribunal constituted by the same or different members; and
 - (d) the tribunal 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 against a person, the tribunal decides a ground for disciplinary action against the person is not established, it must dismiss the charge.
 - (4) The tribunal may make any order about costs it considers appropriate to a maximum amount equivalent to 135 penalty units.
 - (5) A pecuniary penalty, or amount of costs, ordered by the tribunal to be paid under this section—
 - (a) becomes due and payable immediately or, if the tribunal allows time for payment, on expiry of the time allowed; and
 - (b) is to be paid to the council.

117 Effect of tribunal's orders

- (1) If—
 - (a) the tribunal 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 tribunal under section 116.

118 Notification of tribunal's orders and reasons

- (1) The tribunal must give written reasons for findings and orders made by it.
- (2) As soon as practicable after the tribunal makes its findings and orders and gives the written reasons, the tribunal 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.
- (2A) Also, the tribunal must give a copy of the orders and the reasons to the commission.
- (3) The council may publish the orders and reasons of the tribunal in any way the council considers appropriate.

Division 4A Council to give notice to commission

118A Council to give notice to commission at end of dealing with matter

- (1) This section applies if—
 - (a) a complaint about a nurse, a midwife or another person authorised to practise nursing is being dealt with by the council or tribunal under this part; and
 - (b) the commission has, under the *Health Quality and Complaints Commission Act 2006*, section 62(3), 66(3) or 76(3), advised the council that the commission intends to conciliate, or continue to conciliate, the complaint.

- (2) The council must, as soon as practicable after the council or tribunal has finished dealing with the matter, give the commission written notice that no further action is to be taken about the complaint under this Act.

Division 5 Health assessments

119 Health Assessment Advisory Panel

- (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.

120 Members of Health Assessment Advisory Panel

- (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.

121 Operation of Health Assessment Advisory Panel

- (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.

Division 6 Other matters

121A Aiding, abetting etc. conduct that is a ground for disciplinary action

- (1) A person (the *first person*) must not aid, abet, counsel, procure or induce a nurse, midwife or other person authorised to practise nursing to engage in conduct the first person is aware, or ought reasonably be aware, is conduct forming the basis for a ground for disciplinary action.

Maximum penalty—1000 penalty units.

- (2) To remove doubt, it is declared that a nurse, midwife or other person authorised to practise nursing may be induced by threats or promises.

Part 6 Provisions concerning certain nursing matters

122 Application of Act in certain cases

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.

123 Employment as a nurse

- (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.

124 Badges

- (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

125 Appointment of inspectors

- (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.

126 Identity card for inspectors

- (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.

127 Inspector to produce identity card

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**128 Entry and search—monitoring compliance**

- (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.

129 Entry and search—evidence of offences

- (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—
 - (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 proceeding for an offence against this Act involving the evidence is started within 6 months

- after its seizure—until the end of the proceeding and any appeal from the proceeding; or
- (iii) if disciplinary proceedings involving the evidence are started within 6 months after its seizure—until the end of the proceedings and any appeal from the proceedings; 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.

130 General powers of inspector in relation to places

- (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.

131 Offence related warrants

- (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.

132 Warrants may be issued by various forms of communication

- (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.

133 Inspector may require name and address

- (1) This section applies if an inspector—
 - (a) finds a person committing an offence against this Act; or
 - (b) finds a person who the inspector has reasonable grounds for suspecting has committed an offence against this Act or a disciplinary matter exists in relation to the person; 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 a disciplinary matter existing in relation to a person; and
- (b) the person is not proved to have committed the offence or a ground for disciplinary action against the person is not established;

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

134 Notice of seizure and compensation

- (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.

135 Other offences in relation to inspectors

- (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 under section 103

136 Powers of inspectors

- (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) a reference to evidence of an offence against this Act were a reference to evidence about a disciplinary matter; and
 - (b) a reference to a proceeding for an offence against this Act were a reference to disciplinary proceedings.

Part 8 General

Division 1 Appeals

137 Appeals

- (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

Nursing Act 1992

- (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 cancel or suspend a person's registration or enrolment; or
 - (viii) determining the payment of costs under section 66(3); or
 - (ix) to refuse to vary an accredited nursing course; or
 - (x) to refuse to renew the accreditation of an accredited nursing course; or
 - (xi) to cancel the accreditation of an accredited nursing course;
- (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 tribunal.
- (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 tribunal 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) The judge may make any order about the costs of the appeal the judge considers appropriate.
- (11) In this section—
decision includes a failure to make a decision.

Division 2 Administration

138 Holders of office to act honestly and with propriety

- (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 tribunal; 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 the 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 tribunal.
- (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 tribunal.

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

139 Confidentiality of documents and information

- (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 tribunal; 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.

- (2A) A person to whom this section applies may disclose a protected document or protected information to a foreign regulatory authority if the disclosure is necessary for the authority to perform its functions.
- (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.

139A Executive officer or council may notify Commissioner for Children and Young People and Child Guardian about particular information

- (1) Subsection (2) applies if—
 - (a) the council, under section 65, grants limited registration or enrolment in relation to a relevant person, including after cancelling the person's current registration; or
 - (b) the council decides, under section 67, to suspend a relevant person's registration or enrolment (*immediate suspension*); or
 - (c) the executive officer decides, under section 68, to suspend a relevant person's registration or enrolment (also *immediate suspension*); or
 - (d) the council, under section 70(1)(c) or (2), cancels or suspends a relevant person's registration or enrolment; or
 - (e) the council takes action under section 117(2) to give effect to an order of the tribunal under section 116 about a relevant person's registration or enrolment.
- (2) If the council or executive officer reasonably believes the action may be relevant to the children's commissioner's functions or powers under part 6 of the commissioner's Act,⁶ the council or executive officer may give written notice about the action to the children's commissioner.
- (3) A notice under subsection (2) must state the following—
 - (a) the relevant person's name, address and date of birth;
 - (b) what action was taken in relation to the relevant person, including the nature of the action;
 - (c) when the matter that was the reason for the action happened;
 - (d) the nature of the matter mentioned in paragraph (c).

⁶ *Commission for Children and Young People and Child Guardian Act 2000*, part 6 (Screening for regulated employment and regulated businesses)

- (4) Also, the council or executive officer may give information about a complaint or investigation relevant to the matter that caused the council or executive officer to take the action.
- (5) However, if the matter mentioned in subsection (3)(c) relates to a particular child, the notice must not contain information that identifies, or is likely to identify, the child.
- (6) In this section—

children’s commissioner means the Commissioner for Children and Young People and Child Guardian under the commissioner’s Act.

commissioner’s Act means the *Commission for Children and Young People and Child Guardian Act 2000*.

relevant person means—

- (a) a nurse; or
- (b) a person authorised to practise nursing or midwifery under section 77(1), (2), (3) or (4).⁷

140 Supply of information to council

- (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.

⁷ Under section 77 (Authorisation to practise), a person may be authorised to practise midwifery, mental health nursing or nursing. Also see section 77(6) for the application of sections 65 to 73.

- (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.

140A Notice of certain convictions to be given to council

- (1) This section applies if a relevant person—
 - (a) is convicted of an indictable offence; or
 - (b) is convicted of an offence against a corresponding law.
- (2) The relevant person must, within 30 days after the conviction, give the council notice of the conviction.
Maximum penalty—50 penalty units.
- (3) The notice must be in the approved form.
- (4) Information in the notice must, if the approved form requires, be verified by a statutory declaration.
- (5) In this section—
relevant person means a nurse, midwife or other person authorised to practise nursing.

140B Notice of certain judgments and settlements to be given to council

- (1) This section applies if—
 - (a) a relevant person is a party to proceedings in a court, brought by another party against the relevant person, claiming damages or other compensation for alleged

negligence by the relevant person in the practice of nursing; and

(b) there is—

(i) a judgment in relation to the proceedings; or

(ii) a settlement of the proceedings, or part of the proceedings.

(2) The relevant person must give the council notice of the judgment or settlement within 30 days after the date of the judgment or settlement.

Maximum penalty—50 penalty units.

(3) The notice must be in the approved form.

(4) Information in the notice must, if the approved form requires, be verified by a statutory declaration.

(5) To remove doubt, it is declared that subsections (2) and (3) apply despite any agreement entered into by the parties to the settlement.

(6) Subsection (2) does not apply to a settlement of proceedings under an agreement reached in conciliation under the *Health Rights Commission Act 1991*, part 6, *Health Quality and Complaints Commission Act 2006*, chapter 6 or a relevant interstate law.

(7) In this section—

relevant interstate law means a law of another State that provides for the same matter as the *Health Quality and Complaints Commission Act 2006*, chapter 6.

relevant person means a nurse, midwife or other person authorised to practise nursing.

140C Notice about certain events to be given to council

(1) This section applies if—

(a) a relevant person is also registered, enrolled or authorised to practise under a corresponding law; and

(b) after the relevant person becomes a nurse, midwife or other person authorised to practise nursing, the relevant

person's registration, enrolment or authorisation under the corresponding law is affected by disciplinary action or is otherwise cancelled, suspended or made subject to a condition or undertaking (the *relevant action*).

- (2) The relevant person must, within 30 days after the registration, enrolment or authorisation is affected by the relevant action, give the council notice about the relevant action.

Maximum penalty—50 penalty units.

- (3) The notice must be in the approved form.
- (4) Information in the notice must, if the approved form requires, be verified by a statutory declaration.
- (5) In this section—

relevant person means a nurse, midwife or other person authorised to practise nursing.

141 Approval of forms

The council may approve forms for use under this Act.

142A Council may give combined notice

- (1) This section applies if the council is required under this Act to give a person notices under more than 1 provision.
- (2) The council may give the person a combined notice for the provisions.

143 Penalty for falsifying register or roll etc.

- (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.

144 Penalties and costs to council

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

145 Proceedings generally

- (1) An offence against this Act may be prosecuted in a summary way under the *Justices Act 1886*.
- (1A) A proceeding for an offence against this Act must start—
- (a) within 1 year after the commission of the offence; or

- (b) within 1 year after the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.
- (2) All fees and costs payable to the council under this Act, and all penalties ordered by the council or the tribunal to be paid to the council under this Act, are debts due to the council.

146 Evidence

- (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.

147 Indemnity

- (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.

148 Regulation-making power

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation 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 tribunal 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 regulation, 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 tribunal;
- (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) publishing reports about disciplinary proceedings.

Part 9 Transitional provisions

Division 1 Provisions consequential on passing of Nursing Act 1992

149 References to certain boards etc.

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 practise midwifery.

150 Nursing Act 1976 and Nursing Studies Act 1976 references

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.

Division 2 Provisions for the Health and Other Legislation Amendment Act 1998

151 Existing time for notification of change of particulars to continue etc.

- (1) This section applies to a person who, immediately before the commencement of this section, was required to give notice about the change of either of the following within 2 months of the change—
 - (a) a particular entered in the register or roll;
 - (b) a particular given to the council to gain entry or remain in the register or roll.
- (2) Despite section 50, the person still has the same time to give notice to the council about the change that the person had before the commencement.

- (3) However, the person need not give notice of the change in writing.

152 Endorsement to practise as psychiatric nurse

- (1) This section applies to an annual licence certificate issued before the commencement of this section and endorsed to show an authorisation to practise as a psychiatric nurse.
- (2) This certificate is taken to be endorsed to show an authorisation to practise as a mental health nurse.

Division 3 Provisions for the Health Practitioners (Professional Standards) Act 1999

153 Transitional for Health Practitioners (Professional Standards) Act 1999

- (1) A complaint made to the council about a nurse, midwife or another person authorised to practise nursing and not finally dealt with before the commencement day may continue to be dealt with under this Act as if the *Health Practitioners (Professional Standards) Act 1999*, part 14 had not commenced.
- (2) In subsection (1)—

commencement day means the day the *Health Practitioners (Professional Standards) Act 1999*, part 14, commences.

Division 4 Provision for Health Legislation Amendment Act 2003

154 Continuation of Professional Conduct Committee under the name Nursing Tribunal

The continuation in existence of the entity named Professional Conduct Committee under the name Nursing Tribunal, under section 84, does not affect anything done by or in relation to the entity before the commencement of this section.

Division 5 Provisions for the Health Legislation Amendment Act 2005

155 Transitional for Health Legislation Amendment Act 2005

- (1) A nursing course that is an accredited nursing course immediately before the commencement day continues to be an accredited nursing course, for the same period and subject to the same conditions, after the commencement day as if the grant of an application for accreditation of the nursing course had been made under part 4, division 2.
- (2) An application for accreditation of a nursing course made to the council and not finally dealt with before the commencement day is to be dealt with as if the application had been made, on the commencement day, under section 79.
- (3) In this section—

commencement day means the day this section commences.

Division 6 Provisions for the Health Quality and Complaints Commission Act 2006

156 Definitions for div 6

In this division—

commencement means the commencement of the provision in which the term is used.

Health Rights Commissioner means the Health Rights Commissioner under the repealed Act.

repealed Act means the *Health Rights Commission Act 1991*.

157 When investigation must be conducted or continued

- (1) This section applies if—
 - (a) before the commencement—

- (i) the Minister who was administering the repealed Act decided, under section 74(7)(b) of that Act, that a complaint about a nurse, midwife or person authorised to practise nursing should be referred by the Health Rights Commissioner to the council; or
 - (ii) the council and the Health Rights Commissioner agreed under the repealed Act, section 74(2)(a), or under section 102A(2)(a) of this Act, that a complaint about a nurse, midwife or person authorised to practise nursing was to be investigated by the council; and
- (b) the council has not started or finished investigating the complaint.
- (2) The council must investigate, or continue to investigate, the nurse, midwife or person authorised to practise nursing.

158 Reports to commission on investigation by council

- (1) This section applies if the Health Rights Commissioner was given a report under pre-amended section 103A(1) or (2) and had not, before the commencement, given to the council comments under the pre-amended section 103A(4).
- (2) For section 103A(4), the report is taken to have been given to the commission and to have been received by it when it was received by the Health Rights Commissioner.
- (3) Also, if, before the commencement, the Health Rights Commissioner gave comments to the council under the pre-amended section 103A(4), the council must have regard to the comments in making a decision after the commencement about the action it intends to take about the complaint or other matter the subject of the investigation.
- (4) In this section—

comments includes information or recommendations.

pre-amended, in relation to a section, means the section as in force immediately before the commencement.

159 Continuing requirement for council to give notice to commission

- (1) This section applies if—
 - (a) a complaint about a nurse, midwife or person authorised to practise nursing is being dealt with by the council or tribunal under part 5; and
 - (b) before the commencement the Health Rights Commissioner had, under the repealed Act, section 74(6), 77(3) or 85(8), advised the council that the commissioner intended to conciliate, or continue to conciliate, the complaint.
- (2) The council must, as soon as practicable after the council or tribunal has finished dealing with the complaint under this Act, give the commission notice that no further action is to be taken about the complaint under this Act.

Endnotes

1 Index to endnotes

	Page
2 Date to which amendments incorporated	133
3 Key	134
4 Table of reprints	134
5 Tables in earlier reprints	135
6 List of legislation	135
7 List of annotations	137
8 List of forms notified or published in the gazette	148

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 November 2009. 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

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No. [X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
num	= numbered	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 2002
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
prev	= previous		

4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

Reprint No.	Amendments to	Effective	Reprint date
1	none	1 November 1993	11 November 1993
1A	1995 Act No. 58	28 November 1995	2 October 1996
2	1996 Act No. 60	20 December 1996	23 January 1997
2A	1996 Act No. 60	1 June 1997	8 August 1997
2B	1998 Act No. 41	5 April 1999	5 April 1999
2C	1999 Act No. 58	7 February 2000	7 February 2000
3	1999 Act No. 58	7 February 2000	3 March 2000
3A	2000 Act No. 46	25 October 2000	3 November 2000
3B	2000 Act No. 52	17 November 2000	1 December 2000
3C	2001 Act No. 78	15 November 2001	29 November 2001

Reprint No.	Amendments included	Effective	Notes
3D	2003 Act No. 68	22 October 2003	
3E	2003 Act No. 68	4 October 2004	
3F	2004 Act No. 49	17 January 2005	

Reprint No.	Amendments included	Effective	Notes
3G	2005 Act No. 10	29 April 2005	
4	2005 Act No. 10	30 August 2005	
4A	2006 Act No. 25	1 July 2006	
4B	2007 Act No. 54	9 November 2007	
4C	2008 Act No. 25	1 August 2008	
4D	2009 Act No. 9	1 July 2009	
4E	2009 Act No. 25	2 November 2009	

5 Tables in earlier reprints

Name of table	Reprint No.
Corrected minor errors	1, 3, 4

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 amdts of the Acts Interpretation Act 1954) commenced on date of assent (see s 2)

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

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

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

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

amending legislation—

Statutory Authorities Superannuation Legislation Amendment Act 1995 No. 36 ss 1–2, 9 sch 2

date of assent 16 June 1995

commenced on date of assent

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

Public Service Act 1996 No. 37 ss 1–2, 147 sch 2

date of assent 22 October 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 1996 (1996 SL No. 361)

Statutory Bodies Financial Arrangements Amendment Act 1996 No. 54 ss 1–2, 9 sch

date of assent 20 November 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 1 June 1997 (1997 SL No. 128)

Health Legislation Amendment Act 1996 No. 60 ss 1–2, pt 6

date of assent 9 December 1996

ss 35(2), 41–43, 45–47, 54–55 commenced 20 December 1996 (1996 SL No. 401)

remaining provisions commenced on date of assent

Health and Other Legislation Amendment Act 1998 No. 41 ss 1, 2(2), 14(2) sch 2

date of assent 27 November 1998

ss 1–2 commenced on date of assent

remaining provisions commenced 5 April 1999 (1999 SL No. 40)

Health Practitioners (Professional Standards) Act 1999 No. 58 ss 1–2, pt 14 div 8

date of assent 18 November 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 7 February 2000 (1999 SL No. 327)

Statute Law (Miscellaneous Provisions) Act 2000 No. 46 ss 1, 3 sch

date of assent 25 October 2000

commenced on date of assent

Superannuation and Other Legislation Amendment Act 2000 No. 52 ss 1, 48 sch

date of assent 17 November 2000

commenced on date of assent

Health Legislation Amendment Act 2001 No. 78 ss 1, 237 sch 4

date of assent 15 November 2001

commenced on date of assent

Health Legislation Amendment Act 2003 No. 68 ss 1, 2(1)(a), pt 9, s 114 sch

date of assent 22 October 2003

ss 1–2 commenced on date of assent

ss 66–69, 71(2), 74–75 commenced 4 October 2004 (2004 SL No. 174)

remaining provisions commenced on date of assent

Commission for Children and Young People and Child Guardian Amendment Act 2004 No. 49 ss 1–2, 53 sch

date of assent 29 November 2004

ss 1–2 commenced on date of assent

remaining provisions commenced 17 January 2005 (2004 SL No. 282)

Health Legislation Amendment Act 2005 No. 10 pts 1, 4

date of assent 1 April 2005

ss 1–2 commenced on date of assent

ss 28(1), 28(2) (to the extent it ins def “accredited nursing course”, “application fee”, “assessment body”, “information notice”, “notice”, “show cause notice”, “show cause period”), 29–37, 40–42, 44 commenced 30 August 2005 (2005 SL No. 191)

remaining provisions commenced 29 April 2005 (2005 SL No. 72)

Health Quality and Complaints Commission Act 2006 No. 25 ss 1–2(1), 241 schs 3–4

date of assent 29 May 2006

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2006 (see s 2(1))

Mental Health and Other Legislation Amendment Act 2007 No. 54 s 1, pt 9

date of assent 9 November 2007

commenced on date of assent

Higher Education (General Provisions) Act 2008 No. 25 ss 1–2, 164 sch 1

date of assent 9 May 2008

ss 1–2 commenced on date of assent

remaining provisions commenced 1 August 2008 (2008 SL No. 242)

Financial Accountability Act 2009 No. 9 ss 1, 2(2), 136 sch 1

date of assent 28 May 2009

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2009 (2009 SL No. 80)

Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009 No. 24 ss 1–2, ch 7 pt 11

date of assent 26 June 2009

ss 1–2 commenced on date of assent

remaining provisions not yet proclaimed into force (see s 2)**Criminal Code and Other Legislation (Misconduct, Breaches of Discipline and Public Sector Ethics) Amendment Act 2009 No. 25 pt 1, s 83 sch**

date of assent 11 August 2009

ss 1–2 commenced on date of assent

remaining provisions commenced 2 November 2009 (2009 SL No. 241)

7 List of annotations

Commencement

s 2 om 2001 No. 78 s 237 sch 4

Definitions

s 4 def “**accredited nursing course**” sub 2005 No. 10 s 28(1)–(2)
 def “**annual licence certificate fee**” ins 1996 No. 60 s 35(2)
 def “**application fee**” ins 2005 No. 10 s 28(2)
 def “**approved code of practice**” ins 2003 No. 68 s 61(2)
 def “**approved form**” ins 2005 No. 10 s 28(2)
 def “**assessment body**” ins 2005 No. 10 s 28(2)
 def “**business name**” ins 2005 No. 10 s 28(2)
 def “**chairperson**” amd 2003 No. 68 s 114 sch
 def “**childbirth**” ins 2005 No. 10 s 28(2)
 def “**code of conduct**” om 2003 No. 68 s 61(1)
 def “**commencement**” ins 2006 No. 25 s 241(1) sch 3
 def “**commission**” ins 2006 No. 25 s 241(1) sch 3
 def “**commissioner**” ins 1999 No. 58 s 495
 om 2006 No. 25 s 241(1) sch 3

def “**committee**” om 2003 No. 68 s 61(1)
 def “**convicted**” ins 2003 No. 68 s 61(2)
 def “**corresponding law**” ins 2003 No. 68 s 61(2)
 def “**criminal history**” ins 2003 No. 68 s 61(2)
 def “**disciplinary action**” ins 2003 No. 68 s 61(2)
 def “**disciplinary matter**” ins 2003 No. 68 s 61(2)
 def “**disciplinary proceedings**” ins 2003 No. 68 s 61(2)
 def “**entity acting on behalf of a user**” ins 2003 No. 68 s 61(2)
 def “**foreign regulatory authority**” ins 2003 No. 68 s 61(2)
 def “**ground for disciplinary action**” ins 2003 No. 68 s 61(2)
 def “**health practitioner registration Act**” ins 2005 No. 10 s 28(2)
 def “**health professional**” ins 2005 No. 10 s 28(2)
 def “**Health Rights Commissioner**” ins 2006 No. 25 s 241(1) sch 3
 def “**information notice**” ins 2005 No. 10 s 28(2)
 def “**interstate regulatory authority**” ins 2003 No. 68 s 61(2)
 def “**legal practitioner**” om 1996 No. 60 s 35(1)
 def “**notice**” ins 2005 No. 10 s 28(2)
 def “**nurse education**” amd 1998 No. 41 s 14(2) sch 2
 def “**nursing practice**” amd 1998 No. 41 s 14(2) sch 2
 def “**nursing qualifications**” amd 1998 No. 41 s 14(2) sch 2
 def “**Nursing Tribunal**” ins 2003 No. 68 s 61(2)
 def “**payment period**” ins 1996 No. 60 s 35(2)
 def “**profession**” ins 2005 No. 10 s 28(2)
 def “**professional service**” ins 2005 No. 10 s 28(2)
 def “**recognised person**” ins 2005 No. 10 s 28(2)
 def “**repealed Act**” ins 2006 No. 25 s 241(1) sch 3
 def “**show cause notice**” ins 2005 No. 10 s 28(2)
 def “**show cause period**” ins 2005 No. 10 s 28(2)
 def “**tribunal**” ins 2003 No. 68 s 61(2)

Council’s functions

s 7 amd 2003 No. 68 s 62

By-laws

s 10 amd 1995 No. 58 s 4 sch 1; 2003 No. 68 s 63
om 2005 No. 10 s 29(1)

Council’s constitution

s 11 amd 1996 No. 60 s 36

Conduct of meetings

s 16 amd 1996 No. 60 s 37; 2005 No. 10 s 30

Resolutions without meetings

s 16A ins 1996 No. 60 s 38

Minutes

s 16B ins 2005 No. 10 s 31

Council is statutory body

s 18A ins 1996 No. 54 s 9 sch

Terms of appointment

s 23 amd 1996 No. 60 s 39

Preservation of rights

s 30 amd 1996 No. 37 s 147 sch 2

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

s 31 amd 2000 No. 52 s 48 sch

Terms of employment

s 39 amd 1996 No. 37 s 147 sch 2; 2009 No. 25 s 83 sch

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; 2000 No. 52 s 48 sch

Minister's power to give directionss 42A ins 2007 No. 54 s 54
amd 2009 No. 9 s 136 sch 1**Delegation by council**

s 43 amd 2003 No. 68 s 64; 2006 No. 25 s 241(2) sch 4

Committees of council

s 47 amd 1996 No. 60 s 40; 2003 No. 68 s 65

PART 3—REGISTRATION AND ENROLMENT**The register**

s 48 amd 2005 No. 10 s 32

The roll

s 49 amd 2005 No. 10 s 33

Notification of change of particulars

s 50 amd 1998 No. 41 s 14(2) sch 2

Inspection of register or roll etc.

s 53 amd 1996 No. 60 s 41; 2005 No. 10 s 34

Qualifications for registration or enrolment

s 54 amd 1996 No. 60 s 42; 2003 No. 68 s 66

Application for registration or enrolment

s 55 amd 1996 No. 60 s 43; 2003 No. 68 s 67

Registration or enrolment

s 58 amd 1996 No. 60 s 44

Refusal of application

s 59 amd 1996 No. 60 s 45

Nurse must notify council if certificate of registration or enrolment lost or destroyed

prov hdg amd 2005 No. 10 s 35(1)

s 62 amd 2005 No. 10 s 35(2)–(3)

Provisional registration or enrolment

s 63 amd 1996 No. 60 s 46

Temporary registration

s 64 amd 1996 No. 60 s 47; 2003 No. 68 s 68

Suitability to be temporarily registered

s 64A ins 2003 No. 68 s 69

Limited registration or enrolment

s 65 amd 1996 No. 60 s 48; 2003 No. 68 s 70

Concerns about condition of applicants and nurses

s 66 amd 1996 No. 60 s 49; 2003 No. 68 s 71; 2006 No. 25 s 241(1) sch 3

Immediate suspension of registration or enrolment by council

s 67 amd 1996 No. 60 s 50; 2003 No. 68 s 72; 2006 No. 25 s 241(1) sch 3

Immediate suspension of registration or enrolment by executive officer

s 68 amd 2003 No. 68 s 73; 2006 No. 25 s 241(1) sch 3

Cancellation or suspension of registration and enrolment in certain cases

s 70 amd 1996 No. 60 s 51

Requirements following cancellation or suspension of registration or enrolment

s 71 amd 1996 No. 60 s 52

Restoration of registration or enrolment in certain cases

s 72 amd 1996 No. 60 s 53; 2005 No. 10 s 36; 2006 No. 25 s 241(2) sch 4

Reissue of certificate of registration or enrolment etc.

s 73 amd 2006 No. 25 s 241(2) sch 4

Fees for annual licence certificates

s 74 amd 1996 No. 60 s 54; 2005 No. 10 s 37

Renewal of annual licence certificate

s 75 amd 1996 No. 60 s 55

Endorsement of annual licence certificates

s 76 amd 1996 No. 60 s 56; 1998 No. 41 s 14(2) sch 2

Division 5—Authorisation to practise midwifery or nursing

div hdg amd 2005 No. 10 s 38

Authorisation to practise

s 77 amd 1998 No. 41 s 14(2) sch 2; 2003 No. 68 s 74

Suitability to practise midwifery or nursing

s 77A ins 2003 No. 68 s 75

PART 3A—RESTRICTIONS AND HOLDING OUT

pt hdg ins 2005 No. 10 s 39

Definitions for pt 3A

s 77B ins 2005 No. 10 s 39

Taking of restricted titles etc.

s 77C ins 2005 No. 10 s 39

Claims by persons as to registration etc.

s 77D ins 2005 No. 10 s 39

Claims by persons as to other persons' registration etc.

s 77E ins 2005 No. 10 s 39

Restrictions on persons with conditional, provisional or limited registration or enrolment

s 77F ins 2005 No. 10 s 39

Restrictions on persons with conditional authorisation

s 77G ins 2005 No. 10 s 39

Restrictions on practising nursings 77H ins 2005 No. 10 s 39
amd 2006 No. 25 s 241(2) sch 4**Restrictions on caring for a woman in childbirth**s 77I ins 2005 No. 10 s 39
amd 2006 No. 25 s 241(2) sch 4**PART 4—ACCREDITATION OF NURSING COURSE**

pt hdg sub 2005 No. 10 s 40

Division 1—Preliminary

div hdg ins 2005 No. 10 s 40

Definitions for pt 4s 78 amd 1998 No. 41 s 14(2) sch 2
sub 2005 No. 10 s 40**Division 2—Accreditation of nursing course**

div hdg ins 2005 No. 10 s 40

Application for accreditation

s 79 sub 2005 No. 10 s 40

Late applications

s 80 sub 2005 No. 10 s 40

Criteria for applications

s 81 sub 2005 No. 10 s 40

Protection from liability

s 82 sub 2005 No. 10 s 40

Inquiries into applications

s 83 sub 2005 No. 10 s 40

Decision

s 83A ins 2005 No. 10 s 40

Failure to decide applications

s 83B ins 2005 No. 10 s 40

Period of accreditation

s 83C ins 2005 No. 10 s 40

Standard condition

s 83D ins 2005 No. 10 s 40

Conditions

83E ins 2005 No. 10 s 40
amd 2008 No. 25 s 164 sch 1

Accreditation certificate

s 83F ins 2005 No. 10 s 40

Division 3—Variation of accredited nursing course

div 3 (ss 83G–83K) ins 2005 No. 10 s 40

Division 4—Renewal of accreditation

div 4 (ss 83L–83P) ins 2005 No. 10 s 40

Division 5—Cancellation of accreditation

div 5 (ss 83Q–83V) ins 2005 No. 10 s 40

Division 6—Offences relating to accreditation

div 6 (s 83W) ins 2005 No. 10 s 40

Division 7—General provisions about accreditation

div 7 (ss 83X–83Y) ins 2005 No. 10 s 40

PART 5—PROFESSIONAL CONDUCT**Division 1—Nursing Tribunal**

div hdg sub 2003 No. 68 s 76

Continuation of Professional Conduct Committee under the name Nursing Tribunal

s 84 sub 2003 No. 68 s 77

Tribunal's functions

prov hdg amd 2003 No. 68 s 78(1)
s 85 amd 2003 No. 68 s 78(2)–(3)

Tribunal's powers

prov hdg amd 2003 No. 68 s 114 sch
s 86 amd 2003 No. 68 s 114 sch

Tribunal's constitution

prov hdg amd 2003 No. 68 s 114 sch
s 87 sub 1996 No. 60 s 57
amd 2003 No. 68 s 114 sch

Tribunal's chairperson

prov hdg amd 2003 No. 68 s 114 sch
s 88 amd 2003 No. 68 s 114 sch

Appointment

s 89 amd 2003 No. 68 s 114 sch

Terms of appointment

s 91 amd 1996 No. 60 s 58

Member ceasing as a member

s 92 amd 2003 No. 68 s 114 sch

Disclosure of interests

s 93 amd 2003 No. 68 s 114 sch

Acting chairperson

s 94 amd 1996 No. 60 s 59

Arrangement of business

s 95 amd 2003 No. 68 s 114 sch

Constitution of tribunal for particular proceeding

prov hdg amd 2003 No. 68 s 114 sch

s 96 amd 1996 No. 60 s 60; 2003 No. 68 s 114 sch

Member of tribunal ceasing to be available

prov hdg amd 2003 No. 68 s 114 sch

s 97 amd 2003 No. 68 s 114 sch

Sitting places

s 98 amd 2003 No. 68 s 114 sch

Division 2—When part does not apply

div hdg sub 2003 No. 68 s 79

Code of conduct

s 99 sub 1995 No. 57 s 4 sch 1

om 2003 No. 68 s 80

Action may be taken in certain cases

s 100 om 2003 No. 68 s 80

Division 2A—Codes of practice

div hdg ins 2003 No. 68 s 81

Council may develop or adopt code of practice

s 101A ins 2003 No. 68 s 81

amd 2006 No. 25 s 241(1) sch 3

Inspection of approved codes of practice etc.

s 101B ins 2003 No. 68 s 81

Use of approved code of practice in disciplinary proceedings

s 101C ins 2003 No. 68 s 81

Division 3—Complaints and investigations

div hdg sub 2003 No. 68 s 82

Who may make complaint about nurse, midwife or other person authorised to practise nursing

s 102 sub 1999 No. 58 s 496; 2003 No. 68 s 83

Grounds for complaint

s 102AA ins 2003 No. 68 s 83

amd 2006 No. 25 s 241(1) sch 3

How complaint is made

s 102AB ins 2003 No. 68 s 83

Entity making complaint to reveal identity

s 102AC ins 2003 No. 68 s 83

Action by council on receipt of complaint

prov hdg amd 2003 No. 68 s 84(1)

s 102A ins 1999 No. 58 s 496
amd 2003 No. 68 s 84(2)–(5); 2006 No. 25 s 241(1) sch 3

Referral of complaint to commission

prov hdg amd 2006 No. 25 s 241(1) sch 3

s 102B ins 1999 No. 58 s 496
amd 2006 No. 25 s 241(1) sch 3

Investigation to be undertaken by council

s 102C ins 1999 No. 58 s 496
amd 2000 No. 46 s 3 sch; 2003 No. 68 s 85; 2006 No. 25 s 241(1) sch 3

Action may be taken in relation to former nurses etc.

s 102D ins 1999 No. 58 s 496
amd 2003 No. 68 s 86

Investigation by council

s 103 amd 1996 No. 60 s 61; 1999 No. 58 s 497; 2003 No. 68 s 87; 2006 No. 25 s 241(1) sch 3

Council to keep commission informed about investigation

prov hdg amd 2006 No. 25 s 241(1) sch 3

s 103A ins 1999 No. 58 s 498
amd 2003 No. 68 s 88; 2006 No. 25 s 241(1) sch 3

Council may refer complaint to appropriate entity

s 103B ins 1999 No. 58 s 498

Referral of charge to tribunal

prov hdg amd 1996 No. 60 s 62(1); 2003 No. 68 s 89(1)

s 104 amd 1996 No. 60 s 62(2); 1999 No. 58 s 499; 2003 No. 68 s 89(2)–(4); 2006 No. 25 s 241(1) sch 3

Division 3A—Grounds for disciplinary action

div hdg ins 2003 No. 68 s 90

Grounds

s 104A ins 2003 No. 68 s 90

Division 4—Tribunal proceedings

div hdg sub 2003 No. 68 s 91

Proceedings before tribunal

prov hdg amd 2003 No. 68 s 114 sch

s 105 amd 2003 No. 68 s 114 sch

Powers of tribunal**prov hdg** amd 2003 No. 68 s 114 sch**s 106** amd 2003 No. 68 s 114 sch**Summons to witness****s 107** amd 2003 No. 68 s 114 sch; 2005 No. 10 s 41**Duty of witness at inquiry****s 108** amd 2003 No. 68 s 114 sch**Self-incrimination a reasonable excuse****s 109** amd 2003 No. 68 s 114 sch**Inspection of documents****s 110** amd 2003 No. 68 s 114 sch**Obstruction of tribunal etc.****prov hdg** amd 2003 No. 68 s 114 sch**s 111** amd 2003 No. 68 s 114 sch**Removal from tribunal hearing****s 112 prov hdg** amd 2003 No. 68 s 114 sch**Evidence and findings etc. in other proceedings may be received or adopted****s 113** amd 2003 No. 68 s 114 sch**Health assessment****s 114** amd 2003 No. 68 s 114 sch**Determinations of questions before tribunal****prov hdg** amd 2003 No. 68 s 114 sch**s 115** amd 2003 No. 68 s 114 sch**Action by tribunal****prov hdg** amd 2003 No. 68 s 92(1)**s 116** amd 1996 No. 60 s 63; 2003 No. 68 s 92**Effect of tribunal's orders****prov hdg** amd 2003 No. 68 s 114 sch**s 117** amd 2003 No. 68 s 114 sch**Notification of tribunal's orders and reasons****prov hdg** amd 2003 No. 68 s 114 sch**s 118** amd 1999 No. 58 s 500; 2003 No. 68 s 114 sch; 2006 No. 25 s 241(1) sch 3**Division 4A—Council to give notice to commission****div hdg** ins 1999 No. 58 s 501

amd 2006 No. 25 s 241(1) sch 3

Council to give notice to commission at end of dealing with matter**prov hdg** amd 2006 No. 25 s 241(1) sch 3**s 118A** ins 1999 No. 58 s 501

amd 2000 No. 46 s 3 sch; 2003 No. 68 s 93; 2006 No. 25 s 241(1) sch 3

Division 6—Other matters**div hdg** ins 2003 No. 68 s 94

Aiding, abetting etc. conduct that is a ground for disciplinary action

s 121A ins 2003 No. 68 s 94

PART 7—INVESTIGATION AND ENFORCEMENT**Entry and search—evidence of offences**

s 129 amd 2003 No. 68 s 95

Inspector may require name and address

s 133 amd 2003 No. 68 s 96

Division 3—Investigation under section 103

div hdg amd 2003 No. 68 s 97

Powers of inspectors

s 136 amd 2003 No. 68 s 98

Appeals

s 137 amd 1996 No. 60 s 64; 2003 No. 68 s 99; 2005 No. 10 s 42

Holders of office to act honestly and with propriety

s 138 amd 2003 No. 68 s 100

Confidentiality of documents and information

s 139 amd 2003 No. 68 s 101

Executive officer or council may notify Commissioner for Children and Young People and Child Guardian about particular informations 139A ins 2004 No. 49 s 53 sch
amd 2006 No. 25 s 241(2) sch 4**Notice of certain convictions to be given to council**

s 140A ins 2003 No. 68 s 102

Notice of certain judgments and settlements to be given to councils 140B ins 2003 No. 68 s 102
amd 2006 No. 25 s 241(1) sch 3**Notice about certain events to be given to council**

s 140C ins 2003 No. 68 s 102

Approval of forms

s 141 sub 2005 No. 10 s 43

Unauthorised nursing

s 142 om 2005 No. 10 s 43

Council may give combined notice

s 142A ins 1999 No. 58 s 502

Proceedings generally

s 145 amd 1996 No. 60 s 65; 2003 No. 68 s 114 sch

Regulation-making powerprov hdg amd 1996 No. 60 s 66
s 148 amd 1995 No. 57 s 4 sch 1
(2) (prev s 10(2)) amd 2005 No. 10 s 10(2)
reloc 2005 No. 10 s 10(3)

PART 9—TRANSITIONAL PROVISIONS**pt hdg** sub 1995 No. 57 s 4 sch 1**Division 1—Provisions consequential on passing of Nursing Act 1992****div hdg** prev div 1 hdg om 1995 No. 57 s 4 sch 1
pres div 1 hdg ins 1998 No. 41 s 14(2) sch 2**References to certain boards etc.****s 149** sub 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 2—Provisions for the Health and Other Legislation Amendment Act 1998****div hdg** prev div 2 hdg om 1995 No. 57 s 4 sch 1
pres div 2 hdg ins 1998 No. 41 s 14(2) sch 2**Existing time for notification of change of particulars to continue etc.****s 151** prev s 151 om 1995 No. 57 s 4 sch 1
pres s 151 ins 1998 No. 41 s 14(2) sch 2**Endorsement to practise as psychiatric nurse****s 152** prev s 152 om 1995 No. 57 s 4 sch 1
pres s 152 ins 1998 No. 41 s 14(2) sch 2**Division 3—Provisions for the Health Practitioners (Professional Standards) Act 1999****div hdg** prev div 3 hdg om 1995 No. 57 s 4 sch 1
pres div 3 hdg ins 1999 No. 58 s 503**Transitional for Health Practitioners (Professional Standards) Act 1999****s 153** prev s 153 om 1995 No. 57 s 4 sch 1
pres s 153 ins 1999 No. 58 s 503**Division 4—Provision for Health Legislation Amendment Act 2003****div hdg** prev div 4 hdg om 1995 No. 57 s 4 sch 1
pres div 4 hdg ins 2003 No. 68 s 103**Continuation of Professional Conduct Committee under the name Nursing Tribunal****s 154** prev s 154 om 1995 No. 57 s 4 sch 1
pres s 154 ins 2003 No. 68 s 103**Division 5—Provisions for the Health Legislation Amendment Act 2005****div hdg** prev div 5 hdg om 1995 No. 57 s 4 sch 1
pres div 5 hdg ins 2005 No. 10 s 44**Transitional for Health Legislation Amendment Act 2005****s 155** prev s 155 om 1995 No. 57 s 4 sch 1
pres s 155 ins 2005 No. 10 s 44**Division 6—Provisions for the Health Quality and Complaints Commission Act 2006****div hdg** prev div 6 hdg om 1995 No. 57 s 4 sch 1
pres div 6 hdg ins 2006 No. 25 s 241(1) sch 3

Definitions for div 6

s 156 prev s 156 om 1995 No. 57 s 4 sch 1
pres s 156 ins 2006 No. 25 s 241(1) sch 3

When investigation must be conducted or continued

s 157 prev s 157 om 1995 No. 57 s 4 sch 1
pres s 157 ins 2006 No. 25 s 241(1) sch 3

Reports to commission on investigation by council

s 158 prev s 158 om 1995 No. 57 s 4 sch 1
pres s 158 ins 2006 No. 25 s 241(1) sch 3

Continuing requirement for council to give notice to commission

s 159 prev s 159 om 1995 No. 57 s 4 sch 1
pres s 159 ins 2006 No. 25 s 241(1) sch 3

Transfer of existing registrations, enrolments and courses

s 160 om 1995 No. 57 s 4 sch 1

Persons who are both registered nurses and enrolled nurses

s 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)

8 List of forms notified or published in the gazette

(The following information about forms is taken from the gazette and is included for information purposes only. Because failure by a department to notify or publish a form in the gazette does not invalidate the form, you should check with the relevant government department for the latest information about forms (see Statutory Instruments Act, section 58(8)).)

Form QNC1 Application Form: Nursing Act (1992) in Application Package QNC1

pubd gaz 1 October 2004 p 390

Form QNC2 Notification Form: Mutual Recognition Act 1992 and Trans Tasman Mutual Recognition Act 2003 in Application Package QNC2

pubd gaz 1 October 2004 p 390

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