

NORTHERN TERRITORY OF AUSTRALIA

NURSING BILL 1998

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NORTHERN TERRITORY OF AUSTRALIA

A BILL for AN ACT

to provide for the registration and enrolment of nurses
and the regulation of the practice of nursing and for
related purposes

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

PART 1 — PRELIMINARY

1. SHORT TITLE

This Act may be cited as the *Nursing Act 1998*.

2. COMMENCEMENT

(1) Section 93 comes into operation on the day on which the Administrator's assent to this Act is declared.

(2) The remaining provisions of this Act come into operation on the date fixed by the Administrator by notice in the *Gazette*.

3. INTERPRETATION

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

"accredited" means accredited by the Board;

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- "applicant" means a person who submits an application to the Board;
- "application" means an application to be registered or enrolled as a nurse;
- "approved" means approved by the Board;
- "assessment" means an assessment of an applicant's entitlement to be registered or enrolled;
- "Australian Nursing Council" means the body, called the Australian Nursing Council Incorporated, incorporated in the Australian Capital Territory for the purpose of establishing and maintaining national standards and processes for the regulation of nursing in Australia,;
- "authorisation" means an authorisation to practise in a restricted practice area and includes an interim authorisation granted under section 32;
- "Board" means the Nursing Board of the Northern Territory established by section 4;
- "business address" means the address of the premises at or from which a person practises;
- "certificate of enrolment" means a certificate of enrolment issued under section 34(1)(b);
- "certificate of registration" means a certificate of registration issued under section 34(1)(a);
- "committee" means a committee established under section 11;
- "committee of assessors" means a committee that conducts an assessment;
- "complaint" means a complaint made under section 51;
- "contravene" includes fail to comply;
- "defendant" means a registered or enrolled nurse who is the subject of an inquiry;
- "due date" means 30 June;
- "education" includes training;
- "enrolled" means enrolled under this Act;
- "enrolled nurse" means a person who is enrolled as a nurse;
- "Executive Officer" means the Executive Officer of the Board appointed under section 12(1);

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- "foreign nursing law" means a law of a jurisdiction outside the Territory relating to the registration, authorisation, licensing or enrolment of nurses;
- "general practice" means those areas of nursing practice other than restricted practice areas;
- "inquiry" means an inquiry conducted under Division 2 of Part 4;
- "inspector" means a person appointed as an inspector under section 65;
- "interim certificate of enrolment" means an interim certificate of enrolment issued under section 20;
- "interim certificate of registration" means an interim certificate of registration issued under section 20;
- "member" means a member of the Board and includes the Chairperson;
- "midwife" means a registered nurse who holds an authorisation to practise midwifery;
- "notice" means notice in writing;
- "nurse" means a person who is registered or enrolled as a nurse;
- "Nursing Code" means the policies and guidelines developed under section 10;
- "nursing practice" includes nursing clinical practice, nursing education practice, nursing management practice and nursing research practice;
- "nursing registration authority" means a body established under the law of a State or another Territory of the Commonwealth having functions similar to those of the Board;
- "practise" means practise nursing;
- "practising certificate" means a practising certificate issued under section 34;
- "register" means the Register of Nurses kept under section 39;
- "registered" means registered under this Act;
- "registered nurse" means a person who is registered as a nurse;

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"report" includes publish;

"restricted practice area" means an area of nursing practice referred to in section 28;

"roll" means the Roll of Nurses kept under section 40;

"Secretary" means the Chief Executive Officer, within the meaning of the *Public Sector Employment and Management Act*, of the Agency principally responsible under the Minister for the administration of this Act;

"specified" means specified by the Board in writing;

"supervision" includes oversight, direction, guidance and support;

"Tribunal" means the Professional Review Tribunal established by section 58.

(2) If the Australian Nursing Council changes its name, the Administrator may, by notice in the *Gazette*, amend this Act by substituting that body's new name.

(3) If the Australian Nursing Council ceases to exist, the Administrator may, by notice in the *Gazette*, amend this Act by substituting the name of a body that the Administrator is satisfied has a function similar to that of the defunct body.

(4) If the expression "Default penalty" appears at the end of a section or subsection, a person who is found guilty of an offence against the section or subsection —

- (a) may be found guilty of a further offence at the time he or she is found guilty of the first offence if the offence continued after the date of the first offence ; and
- (b) the person is punishable in respect of the further offence by a penalty not exceeding the amount of the default penalty specified after that expression for each day during which the offence continued.

PART 2 — NURSING BOARD OF NORTHERN TERRITORY

4. ESTABLISHMENT OF BOARD

(1) The Nursing Board of the Northern Territory is established.

(2) The Board —

- (a) is a body corporate with perpetual succession;

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- (b) has a common seal; and
 - (c) is capable, in its corporate name, of acquiring, holding and disposing of real (including leasehold) and personal property and of suing and being sued.
- (3) All courts, judges and persons acting judicially are to take judicial notice of the common seal of the Board affixed to a document and are to assume that it was duly affixed.

5. MEMBERSHIP OF BOARD

- (1) The Board consists of 10 persons of whom —
 - (a) 8 are to be appointed by the Minister;
 - (b) one is to be a registered nurse who is a resident of the Territory elected in the prescribed manner; and
 - (c) one is to be an enrolled nurse who is a resident of the Territory elected in the prescribed manner.
- (2) Of the persons appointed under subsection (1) (a) —
 - (a) 4 are to be nurses who hold practising certificates and who, in the opinion of the Minister, have demonstrated an ability to assist in the fulfilment of the Board's objectives;
 - (b) one is to be a legal practitioner, have practised as a barrister or solicitor in a State or another Territory of the Commonwealth or have other qualifications or experience that the Minister thinks appropriate;
 - (c) one is to be a person who, in the opinion of the Minister, is skilled or qualified in a discipline for which study of ethics is a requisite;
 - (d) one is to be a person who is not a nurse and who, in the opinion of the Minister, will represent the interests of persons who use the services provided by nurses; and
 - (e) one is to be a person who is not a nurse and who, in the opinion of the Minister, will represent the interest of Aboriginal and Torres Strait Islander persons who use the services provided by nurses.

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(3) Wherever possible, one of the nurses referred to in subsection (2)(a) is to be of Aboriginal or Torres Strait Islander descent.

(4) Schedule 1 has effect with respect to membership of the Board.

(5) Schedule 2 has effect with respect to meetings of the Board.

6. FUNCTIONS OF BOARD

(1) The Board has the following functions:

- (a) to administer the scheme of registration and enrolment under Part 3;
- (b) to monitor the standard and provision of nursing services in the Territory;
- (c) to determine the activities that constitute or are included in the scope of nursing practice;
- (d) to examine complaints and, as necessary, refer them to the Tribunal or any other relevant body for inquiry;
- (e) to prosecute offences against this Act;
- (f) to monitor standards of nursing education;
- (g) to determine standards for the accreditation of courses in nursing;
- (h) to accredit courses in nursing;
- (j) to advise the Minister on developments in nursing education, practice and regulation and on the needs of the Territory in relation to those matters;
- (k) to advise the Minister on other matters relating to this Act.

(2) In addition to subsection (1), the Board has those functions that are imposed on it by this or any other Act or that are prescribed.

7. POWERS OF BOARD

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

(2) In particular, the Board has power —

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- (a) to share information with nursing registration authorities, the Australian Nursing Council and other relevant bodies;
- (b) to publish and distribute information concerning this Act and its administration to nurses and other interested persons;
- (c) to support nursing education and research;
- (d) to conduct examinations and assessments;
- (e) to co-operate with any university, hospital or other institution or body, whether located in the Territory or elsewhere, in making provision for the education and assessment of nurses;
- (f) to participate in programs relating to nursing education or practice;
- (g) to be a member of any body or program concerned with nurses or specific groups of nurses or with general nursing education or practice or a specific area of nursing education or practice;
- (h) to participate in the formation of any body or program of a kind referred to in paragraph (g); and
- (j) to assist any person or body in developing curricula for nursing education.

8. OBJECTIVES OF BOARD

The Board must exercise its powers and perform its functions under this Act -

- (a) to ensure that nursing services provided to the public are of the highest possible standard;
- (b) to ensure that persons practise nursing according to the highest professional standards; and
- (c) to guard against unlawful, unsafe, incompetent and unethical nursing practices.

9. DELEGATION

(1) The Board may delegate to a member, the Executive Officer or a committee any of its powers and functions under this Act or any other Act, other than this power of delegation.

(2) A power or function delegated under this section, when exercised or performed by the delegate, is to be taken to have been exercised or performed by the Board.

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- (3) A delegation under this section –
 - (a) is to be in writing; and
 - (b) does not prevent the exercise of a power or the performance of a function by the Board.

10. NURSING CODE

(1) The Board may, by resolution, adopt policies and guidelines for the purpose of providing practical guidance to nurses in general practice and in restricted practice areas.

(2) A resolution under subsection (1) may only be passed on the affirmative vote of at least 6 members present and voting at the meeting.

(3) The Board must –

- (a) make a copy of the *Nursing Code* available at its office to be inspected by any person on request free of charge; and
- (b) ensure that any person who wishes to do so may obtain a copy of the *Nursing Code* from the Board.

(4) The Board may charge a fee to recover the cost of providing a person with a copy of the *Nursing Code*.

11. COMMITTEES

(1) The Board may establish committees to assist it in exercising any of its powers or performing any of its functions or advising it on any matter relating to this Act.

(2) A committee consists of persons appointed by the Board.

(3) A member of the Board may be a member of a committee.

(4) The Board may give written directions to a committee and the committee must comply with those directions.

(5) A committee must keep accurate minutes of its proceedings.

(6) Except as provided in this Act, a committee may regulate its own proceedings.

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12. EXECUTIVE OFFICER AND OTHER STAFF

(1) The Minister must appoint a suitably qualified and experienced person to be the Executive Officer of the Board.

(2) The Executive Officer is subject to the directions of the Board.

(3) The Executive Officer is to act as secretary to the Board.

(4) The Executive Officer is custodian of -

(a) the records of the Board, the Tribunal and the committees; and

(b) the register and roll.

(5) The Executive Officer may provide approved information in respect of matters dealt with under Part 3 or 4 -

(a) to a registration authority of a State or another Territory of the Commonwealth and to the Australian Nursing Council for the purpose of maintaining the national nurses data base;

(b) to the Commissioner for Health and Community Services Complaints; and

(c) to any other authority that the Board directs.

(6) The Board may employ, on the terms and conditions it thinks fit, the persons the Board thinks necessary for the performance of its functions and the exercise of its powers.

13. USE BY BOARD OF SERVICES OF PERSONS

(1) The Board may arrange with an Agency or a person for a person employed in the Agency or by the person to be made available to the Board.

(3) The cost of an arrangement under subsection (1) is a cost of the Board.

14. PROTECTION FROM LIABILITY

A member or the Executive Officer is not personally liable for an act done, or purported or omitted to be done, by the member or Executive Officer, in good faith, for the purpose of administering or executing this Act.

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15. ANNUAL REPORT

The Board must, not later than 31 October of each year, give to the Minister a report on its operations for the preceding financial year.

16. FEES

(1) The Board may determine the fees to be paid under this Act by notice in the Gazette.

(2) The Board may waive payment of the whole or a part of a fee determined under subsection (1).

PART 3 - REGISTRATION AND ENROLMENT

Division 1 - Application for Registration or Enrolment

17. APPLICATION FOR REGISTRATION OR ENROLMENT

A person may apply to the Board to be registered or enrolled as a nurse if the person has -

- (a) successfully completed an accredited course in nursing in the Territory;
- (b) successfully completed a course in nursing outside the Territory that the Board considers is at least substantially equivalent to an accredited course in nursing; or
- (c) experience and training in nursing practice that the Board considers is at least substantially equivalent to the successful completion of an accredited course in nursing.

18. REQUIREMENTS OF APPLICATION FOR REGISTRATION OR ENROLMENT

- (1) An application is to -
 - (a) be in the approved form;
 - (b) be lodged with the Executive Officer;
 - (c) be accompanied by the application fee and practising certificate fee;
 - (d) specify, if the application is for registration, whether the applicant is enrolled or, if the application is for enrolment, whether the applicant is registered; and
 - (e) be accompanied by any other information or evidence that the Board may require.

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(2) The Board may require an applicant to provide further information or evidence as it considers necessary in order to consider the application.

Division 2 - Determination of Entitlement

19. ENTITLEMENT TO REGISTRATION OR ENROLMENT

An applicant is entitled to be registered or enrolled as a nurse if the Board is satisfied that the applicant -

- (a) is eligible to apply for registration or enrolment;
- (b) has sufficient competence and capacity to practise;
- (c) is of good character; and
- (d) has an adequate command of the English language.

20. INTERIM REGISTRATION OR ENROLMENT

(1) The Executive Officer may grant an applicant interim registration or enrolment if the Executive Officer reasonably considers that the applicant is entitled to be registered or enrolled as a nurse but that it is not practicable to wait until the Board can consider the application.

(2) Interim registration or enrolment is subject to the conditions, if any, determined by the Executive Officer and specified in the interim certificate of registration.

(3) The Executive Officer must issue -

- (a) an interim certificate of registration to a person who is granted interim registration; and
- (b) an interim certificate of enrolment to a person who is granted interim enrolment.

(4) An interim certificate is -

- (a) to be in the approved form; and
- (b) contain the information that the Board determines.

(5) A person to whom interim registration is granted is a registered nurse for the period during which the interim registration is in force subject to the conditions, if any, specified in the interim certificate of registration.

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(6) A person to whom interim enrolment is granted is an enrolled nurse for the period during which the interim enrolment is in force subject to the conditions, if any, specified in the interim certificate of enrolment.

(7) A person's interim registration or enrolment is in force from the date on which it is granted until the date on which the person receives notice that the Board has -

- (a) registered or enrolled the person;
- (b) refused to register or enrol the person; or
- (c) cancelled the interim registration or enrolment.

21. CANCELLATION OF INTERIM REGISTRATION OR ENROLMENT

(1) The Board may cancel a person's interim registration or enrolment for any reason it considers sufficient.

(2) If the Board cancels a person's interim registration or enrolment, it must immediately -

- (a) give the person notice of its decision and the reasons for its decision; and
- (b) advise the person of his or her right to appeal against the decision.

(3) Notice under subsection (2) is to be served personally on, or sent by certified mail to, the person.

(4) On the notice being served or delivered -

- (a) the person's interim registration or enrolment is cancelled; and
- (b) the interim certificate issued to the person ceases to be valid.

(5) A person who is given a notice under subsection (2) must surrender to the Board the person's interim certificate of registration or enrolment within 7 days after receiving the notice or within any longer period that the Board may allow.

Penalty: \$5,000.

Default penalty: \$150.

(6) An offence against subsection (5) is a regulatory offence.

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22. ASSESSMENT OF ENTITLEMENT

(1) A committee may be established to assess whether an applicant is entitled to be registered or enrolled.

(2) A committee of assessors is to consist of not less than 3 persons of whom at least 2 are to be registered nurses.

(3) Schedule 3 has effect with respect to the powers and procedures of a committee of assessors.

(4) When a committee of assessors is established, the Executive Officer must give notice to the applicant and the Secretary of -

(a) the reasons for assessing the applicant; and

(b) the date, time and place set for the assessment.

(5) Notice under subsection (4) is to be given to the applicant at least 14 days before the date, or first date, set for the assessment.

23. RECOMMENDATION OF COMMITTEE OF ASSESSORS

(1) After conducting an assessment of an applicant, a committee of assessors must provide the Board with a written report containing -

(a) a recommendation as to whether the applicant is entitled to be registered or enrolled and, if so, whether the registration or enrolment should be unconditional or subject to conditions; and

(b) if the committee recommends that the applicant is entitled to be registered or enrolled subject to conditions - a further recommendation as to what those conditions should be.

(2) A report under subsection (1) is also to -

(a) contain any findings on questions of fact and the evidence or other material on which those findings are based; and

(b) set out the reasons for any recommendation.

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Division 3. — Grant or Refusal of Registration or Enrolment

24. DETERMINATION OF APPLICATION

(1) If the Board is satisfied that an applicant is entitled to be registered or enrolled it must register or enrol the applicant and it may do so unconditionally or subject to conditions.

(2) The Board must give notice to the applicant of —

- (a) the applicant's registration or enrolment; and
- (b) if the registration or enrolment is conditional — the conditions that the registration or enrolment is subject to and the applicant's rights of appeal and review in respect of those conditions.

(3) If the Board is not satisfied that an applicant is entitled to be registered or enrolled, it must refuse to register or enrol the applicant.

(4) If the Board does not register or enrol an applicant within 3 months after his or her application is lodged or within any other period agreed on by the Board and the applicant, the Board is taken to have refused to register or enrol the applicant.

(5) The Board must —

- (a) give notice to the applicant of the refusal to register or enrol the applicant under subsection (3) or (4), the reasons for the refusal and the applicant's right of appeal; and
- (b) refund the practising certificate fee that accompanied the application.

25. SPECIAL GROUNDS FOR REFUSING TO GRANT REGISTRATION OR ENROLMENT

Without limiting the matters that the Board may have regard to under section 19(b) or (c), the Board may determine that an applicant is not entitled to be registered or enrolled if —

- (a) the applicant's entitlement to practise under a foreign nursing law has been cancelled or suspended for a reason relating to the person's professional conduct or competence or capacity to practise;

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- (b) the applicant has been convicted in the Territory or elsewhere of a crime or an offence of a kind that, in the Board's opinion, makes it not in the public interest to allow the applicant to practise; or
- (c) the Board considers the applicant's use of alcohol or other drugs may impact on his or her nursing practice.

26. PERSON CANNOT BE REGISTERED AND ENROLLED AT SAME TIME

(1) A person cannot be registered and enrolled at the same time.

(2) If an enrolled nurse is granted registration by the Board, the person's enrolment is cancelled.

(3) If a registered nurse is granted enrolment by the Board, the person's registration is cancelled.

(4) If an enrolled nurse is granted interim registration by the Executive Officer, the person's enrolment is suspended for the period of the interim registration.

(5) If a registered nurse is granted interim enrolment by the Executive Officer, the person's registration is suspended for the period of the interim enrolment.

27. REVIEW OF REGISTRATION OR ENROLMENT CONDITIONS

(1) A person may, at intervals of not less than 12 months, apply to the Board for a review of a condition that the person's registration or enrolment is subject.

(2) A person's right under subsection (1) is in addition to that person's right of appeal under section 68(1)(b).

(3) The Board, on its own motion, may at any time review the registration or enrolment of a person and may —

(a) vary the conditions to which the registration or enrolment is subject; or

(b) impose conditions to which the registration or enrolment is subject.

(4) The Board must give notice to the person of any variation of conditions or the imposing of conditions under subsection (3) and of the person's right of appeal and review in respect of those conditions.

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Division 4 — Authorisations to Practise in Restricted Practice Areas

28. RESTRICTED PRACTICE AREAS

- (1) Midwifery is a restricted practice area.
- (2) The Regulations may prescribe other areas of nursing practice to be restricted practice areas.
- (3) A registered nurse may apply to the Board for an authorisation to practise in a restricted practice area if —
 - (a) in the case of midwifery — the nurse has successfully completed an accredited midwifery course or has qualifications, training and experience in midwifery that the Board considers to be at least substantially equivalent to an accredited midwifery course; or
 - (b) in the case of a prescribed area of nursing practice — the nurse has the qualifications, training and experience prescribed in respect of that area of nursing practice or has qualifications, training and experience that the Board considers to be at least substantially equivalent to the prescribed qualifications, training and experience.

29. REQUIREMENTS OF APPLICATION FOR AUTHORISATION

- (1) An application for an authorisation is to be —
 - (a) in the approved form;
 - (b) lodged with the Executive Officer;
 - (c) accompanied by the application fee; and
 - (d) accompanied by any information or evidence that the Board requires.
- (2) The Board may require an applicant for an authorisation to provide further information or evidence as it considers necessary in order to consider the application.

30. ENTITLEMENT TO AUTHORISATION

An applicant for an authorisation is entitled to be granted the authorisation if the Board is satisfied that the applicant —

- (a) is eligible to apply for the authorisation; and
- (b) is competent and has the capacity to practise.

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31. ASSESSMENT AND DETERMINATION OF APPLICATION

Sections 22, 23, 24, 25 and 27 apply to an application for authorisation and the determination of the application as if -

- (a) the references in those sections to an applicant were references to an applicant for an authorisation;
- (b) the references in those sections to registration were references to an authorisation; and
- (c) the references in those sections to an entitlement to registration were a reference to an entitlement to an authorisation.

32. INTERIM AUTHORISATION

(1) The Executive Officer may grant an applicant for authorisation an interim authorisation if the Executive Officer reasonably considers that the applicant is entitled to the authorisation but that it is not practicable to wait until the Board can consider the application.

(2) An interim authorisation is subject to the conditions, if any, determined by the Executive Officer and specified in the interim authorisation.

(3) A registered nurse to whom an interim authorisation is granted is authorised to practise in the restricted practice area specified in the authorisation subject to the conditions specified in the authorisation.

(4) A person's interim authorisation is in force from the date on which it is granted until the date on which the person receives notice that the Board has -

- (a) approved the person's application for authorisation;
- (b) refused to approve the person's application; or
- (c) cancelled the interim authorisation.

33. CANCELLATION OF AUTHORISATION

(1) The Board may, by notice, cancel the authorisation of a nurse for any reason it considers sufficient.

(2) Without limiting subsection (1), the Board may cancel a nurse's authorisation if the nurse -

- (a) was granted the authorisation by means of a false or misleading statement or declaration;

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- (b) no longer holds, or is no longer entitled to hold, a qualification by reason of which he or she was granted the authorisation;
 - (c) does not have the capacity to practise competently in the relevant restricted practice area;
 - (d) contravenes a condition of the authorisation;
 - (e) contravenes the *Nursing Code* as it applies to the relevant restricted practice area;
 - (f) is negligent or incompetent in practising in the relevant restricted practice area; or
 - (g) has had his or her registration or interim registration cancelled.
- (3) The Board must not cancel a nurse's authorisation without first giving the nurse a reasonable opportunity to be heard.
- (4) Notice under subsection (1) is to –
- (a) specify the reasons for cancelling the authorisation; and
 - (b) inform the nurse of his or her right of appeal.
- (5) Notice under subsection (1) is to be served personally on, or sent by certified mail to, the nurse whose authorisation has been cancelled.
- (6) On the notice being served or delivered, the person ceases to be authorised to practise in the restricted practice area.

Division 5 – Certificates

34. REGISTERED OR ENROLLED PERSON TO BE ISSUED WITH CERTIFICATES

The Board must issue –

- (a) a certificate of registration and a practising certificate to a person who is granted registration; and
- (b) a certificate of enrolment and a practising certificate to a person who is granted enrolment.

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35. CERTIFICATES OF REGISTRATION AND ENROLMENT

(1) A certificate of registration or enrolment is to -

- (a) be in the approved form and contain the information that the Board determines; and
- (b) specify the conditions, if any, to which the registration or enrolment is subject.

(2) A certificate of registration is evidence that the person named in the certificate is registered as a nurse subject to the conditions, if any, specified in the certificate.

(3) A certificate of enrolment is evidence that the person named in the certificate is enrolled as a nurse subject to the conditions, if any, specified in the certificate.

36. PRACTISING CERTIFICATES

(1) A practising certificate is to -

- (a) be in the approved form and contain the information that the Board determines;
- (b) specify the conditions, if any, to which the certificate holder's registration or enrolment is subject; and
- (c) in the case of a practising certificate issued to a registered nurse - specify any authorisations held by the certificate holder.

(2) A practising certificate issued to a registered nurse is evidence that until the due date -

- (a) the nurse is authorised to engage in general practice in the Territory subject to the conditions, if any, specified in the certificate; and
- (b) the nurse is authorised to practise in the restricted practice areas, if any, subject to the conditions, if any, specified in the certificate.

(3) A practising certificate issued to an enrolled nurse is evidence that until the due date the nurse is authorised to practise in the Territory under the supervision of a registered nurse subject to the conditions, if any, specified in the certificate.

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37. REPLACEMENT AND AMENDMENT OF CERTIFICATES

(1) If the Board is satisfied that a certificate issued by it has been lost or destroyed, it may issue a replacement certificate, that is marked accordingly, on the replacement certificate fee being paid.

(2) The Board, by notice, may require a registered or enrolled nurse to surrender a certificate issued by the Board to enable it to issue the nurse with a new certificate with amended particulars.

(3) The Executive Officer has the same powers in relation to an interim certificate of registration or interim certificate of enrolment as the Board has under this section in relation to certificates issued by it.

(4) A registered or enrolled nurse who is given a notice by the Board under subsection (2) must surrender his or her certificate to the Board within 14 days after receiving the notice or within any longer period that the Board may allow.

(5) A person who is given a notice by the Executive Officer under subsection (3) must surrender his or her interim certificate to the Executive Officer within 14 days after receiving the notice or within any longer period that the Executive Officer may allow.

Penalty: \$5,000.

(6) An offence against this section is a regulatory offence.

38. OFFENCES IN RELATION TO CERTIFICATES

A person who is issued with —

- (a) a certificate of registration or enrolment;
- (b) an interim certificate of registration or interim certificate of enrolment; or
- (c) a practising certificate,

must not —

- (d) lend or agree to lend that certificate to another person; or
- (e) allow that certificate to be used by another person.

Penalty: \$5,000.

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Division 6 - Register and Roll of Nurses

39. REGISTER

(1) The Board must keep a register called the Register of Nurses.

(2) The Board must record the following information in the register in relation to each person who is granted registration:

- (a) the person's full name, personal address and business address, if any;
- (b) the person's qualifications;
- (c) the date of the person's registration;
- (d) any conditions to which the person's registration is subject to under section 24;
- (e) any authorisations that the person holds.

(3) The Board must also record the following matters in the register:

- (a) the renewal of a person's right of practice;
- (b) the suspension of a person's right of practice;
- (c) any conditions to which a person's registration is subject to under section 60(1)(e);
- (d) the removal from the register of a person's name;
- (e) the restoration to the register of a person's name;
- (f) any change in the name, personal address or business address of a registered person;
- (g) any change in the authorisations held by a registered person.

(4) The register may contain any other information that the Board considers necessary or appropriate.

40. ROLL

(1) The Board must keep a roll called the Roll of Nurses.

(2) The Board must record the following information in the roll in relation to each person who is granted enrolment:

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- (a) the person's full name, personal address and business address, if any;
 - (b) the person's qualifications;
 - (c) the date of the person's enrolment;
 - (d) any conditions to which the person's enrolment is subject to under section 24(2).
- (3) The Board must also record the following matters in the roll:
- (a) the renewal of a person's right of practice;
 - (b) the suspension of a person's right of practice;
 - (c) any conditions that the person's enrolment is subject to under section 60(1)(e);
 - (d) the removal from the roll of a person's name;
 - (e) the restoration to the roll of a person's name;
 - (f) any change in the name, personal address or business address, if any, of an enrolled person.
- (4) The roll may contain any other information that the Board considers necessary or appropriate.
- (5) The roll may be kept in an electronic form.

41. CORRECTION OF REGISTER AND ROLL

(1) A person may apply to the Board to have an inaccurate or erroneous entry in the register or roll corrected and, if the Board is satisfied that the entry is inaccurate or erroneous, it must correct the register or roll accordingly.

(2) No fee is payable for an application under subsection (1).

(3) The Board may require an applicant under subsection (1) to provide information or evidence as it considers necessary in order to consider the application.

42. NOTICE OF CHANGE OF NAME OR ADDRESS

A registered or enrolled nurse or a nurse whose right of practice is suspended must, within 30 days of changing his or her name, personal address or business address give the Board notice of the change and the new name or address.

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43. INSPECTION OF REGISTER OR ROLL

(1) A person may, on paying the inspection fee, inspect the register or roll at the office of the Board.

(2) A person inspecting the register may, on paying the copy or extract fee, obtain a copy of or extract from the register or roll.

44. PUBLICATION OF REGISTER OR ROLL, &c.

(1) The Board may publish in the *Gazette* any one or more of the following:

- (a) a copy of the register or roll or part of the register or roll;
- (b) a notice of the granting of registration or enrolment to a person, including any conditions to which the registration or enrolment is subject;
- (c) a notice of the granting of an authorisation to a person, including any conditions to which the authorisation is subject;
- (d) a notice of the cancellation of an authorisation;
- (e) a notice of the removal from the register or roll of the name of a person;
- (f) a notice of the restoration to the register or roll of the name of a person;
- (g) a notice of the suspension of a person's right of practice or authorisation;
- (h) a notice of any action taken under section 60 in respect of a registered or enrolled person.

(2) The Board may provide a person with a copy of a notice referred to in subsection (1) on he or she paying the copy notice fee.

45. PROTECTION OF PRIVATE INFORMATION

Despite sections 43 and 44 —

- (a) a nurse's private address is not to appear in the register or roll as made available for public inspection or be published in the *Gazette*;
- (b) the register or roll made available for public inspection need not include the information, or all of the information, referred to in section 39(4) or 40(4); and

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- (c) a copy of the register or roll or part of the register or roll published in the Gazette need not include the information, or all of the information, referred to in section 39(4) or 40(4).

46. ANNUAL PRACTISING CERTIFICATE FEES

- (1) In this section –

"enrolled nurse" includes a person whose enrolment is suspended;

"registered nurse" includes a person whose registration is suspended.

- (2) A registered or enrolled nurse who wishes to practise must, on or before the due date in each year –

- (a) pay to the Board the practising certificate fee; and

- (b) give to the Board any information it requires.

- (3) Subject to subsections (4) and (5), the Board must issue a new practising certificate to a registered or enrolled nurse –

- (a) who pays the practising certificate fee by the due date; or

- (b) who pays the practising certificate fee and the restoration fee referred to in section 49 within 30 days after the due date.

- (4) The Board may refuse to issue a new practising certificate to a registered or enrolled nurse if the Board is not satisfied that the nurse complies with the requirements of section 19.

- (5) The Board must not issue a new practising certificate to a registered or enrolled nurse who has not practised for longer than 5 years unless the Board is satisfied that the nurse complies with the requirements of section 19.

- (6) If the Board refuses to issue a new practising certificate under subsection (4) or (5), the Board must refund the practising certificate fee and give the person notice of the person's right of appeal.

47. REMOVAL FROM REGISTER OR ROLL

- (1) The Board may remove from the register or roll the name of a person who –

- (a) contravenes a condition subject to which the person is registered or enrolled;

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- (b) fails to pay, within the time specified for payment, a fine imposed on the person under section 60(1)(d);
 - (c) fails to comply with a requirement made of the person under section 60(1)(f); or
 - (d) fails to honour an undertaking given to the Board or Tribunal.
- (2) The Board must remove from the register or roll the name of a person –
- (a) who dies;
 - (b) who requests the Board to remove his or her name from the register or roll;
 - (c) in respect of whom the Tribunal has made a decision under section 60(1)(a) that has taken effect;
 - (d) who is no longer entitled to be registered or enrolled;
 - (e) whose authority to practise under a foreign nursing law has been cancelled for any reason relating to the person's competence to practise;
 - (f) who has been registered or enrolled by reason of a false or misleading statement or declaration; or
 - (g) who fails to pay the practising certificate fee referred to in section 46 by the due date.
- (3) The Board must not remove a person's name from the register or roll under subsection (1) or (2)(d), (e), or (f) without first giving the person a reasonable opportunity to be heard.
- (4) If the Board removes a person's name from the register or roll (other than under subsection (2)(a), (c) or (g)), it must immediately give the person notice of the removal.
- (5) A notice under subsection (4) is –
- (a) except in a case to which subsection (2)(b) applies – to specify the reasons for the removal; and
 - (b) except in a case to which subsection (2)(b) or (c) applies – to inform the affected person of his or her right of appeal.

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(6) A notice under subsection (4) is to be served personally on, or sent by certified mail to, the person whose name has been removed from the register or roll.

(7) On the notice being served or delivered, the person ceases to be a registered or enrolled nurse.

(8) If the Board removes a person's name from the register or roll it may require that a specified period must elapse or that a specified condition must be fulfilled before the person may apply for registration or enrolment.

48. PERSONS TAKEN OFF REGISTER OR ROLL MUST SURRENDER CERTIFICATE

(1) A person who is given notice that his or her name has been removed from the register or roll must surrender to the Board the certificate of registration or enrolment and any current practising certificate held by the person within 14 days after receiving the notice or within any longer period that the Board may allow.

Penalty: \$5,000.

Default penalty: \$150.

(2) An offence against subsection (1) is a regulatory offence.

49. RESTORING NAME TO REGISTER OR ROLL

(1) Subject to this section, if a person's name has been removed from the register or roll under section 47(2)(b), the Board must restore a person's name to the register or roll if the person -

(a) requests that his or her name be restored to the register or roll; and

(b) pays the restoration fee.

(2) Subject to this section, if a person's name has been removed from the register or roll under section 47(2)(g), the Board must restore the person's name to the register or roll if the person pays the restoration fee within 30 days after the due date.

(3) The Board may refuse to restore a person's name to the register or roll if it is not satisfied that the person complies with the relevant requirements specified in section 19.

(4) If the Board refuses to restore a person's name to the register or roll it must, as soon as practicable, give the person notice of -

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- (a) the refusal and the reasons for the refusal;
and
- (b) the person's right of appeal.

(5) A notice under subsection (4) is to be served personally on, or sent by certified mail to, the affected person.

50. EVIDENTIARY PROVISIONS

(1) A copy of an entry in the register or roll purporting to be signed by the Executive Officer is evidence that the entry was duly made.

(2) A certificate purporting to be signed by the Executive Officer and stating any one or more of the following matters is evidence of the matters stated:

- (a) a person specified in the certificate was or was not a registered or enrolled nurse on a date or during a period specified in the certificate;
- (b) the registration or enrolment of a person specified in the certificate was subject to a condition specified in the certificate on a date or for a period specified in the certificate;
- (c) the registration or enrolment, right to practise or authorisation of a person specified in the certificate was suspended on a date or for a period specified in the certificate;
- (d) the name of a person specified in the certificate was removed from the register or roll on a date or for a period specified in the certificate;
- (e) a person specified in the certificate was or was not the holder of a practising certificate or an authorisation on a date or during a period specified in the certificate;
- (f) the authorisation of a person specified in the certificate was subject to a condition specified in the certificate on a date or for a period specified in the certificate.

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PART 4 - DISCIPLINE

Division 1 - Complaints

51. MAKING COMPLAINTS

(1) A person who is aggrieved by the conduct of a nurse may complain to the Board.

(2) The Board may, on its own motion, make a complaint in respect of the conduct of a nurse.

(3) A complaint may be made and dealt with under this Part even though the person who is the subject of the complaint has ceased to be a registered or enrolled nurse and, for that purpose, a reference in this Act to a nurse includes a reference to a person who has ceased to be registered or enrolled.

(4) A complaint may be made or dealt with even though the right to practise or authorisation of the person who is the subject of the complaint was suspended at the time of the matter complained of.

52. SPECIFIC MATTERS IN RESPECT OF WHICH COMPLAINTS MAY BE MADE

(1) Without limiting the matters in respect of which a complaint may be made, a complaint may be made that a nurse -

(a) has been registered or enrolled, or granted an authorisation, by reason of a false or misleading statement or declaration;

(b) no longer holds, or is no longer entitled to hold, a qualification by reason of which the nurse was registered or enrolled or granted an authorisation;

(c) does not have capacity to practise competently;

(d) is not entitled on other grounds to be registered or enrolled or to hold an authorisation; or

(e) is guilty of professional misconduct.

(2) Without limiting the matters that may constitute professional misconduct, a nurse is guilty of misconduct if the nurse -

(a) contravenes this Act;

(b) contravenes a foreign nursing law;

(c) contravenes the *Nursing Code*;

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- (d) contravenes a condition subject to which the nurse is registered or enrolled;
- (e) when required to have a practising certificate, practises without a practising certificate;
- (f) practises in a restricted practice area without an authorisation to practise in that area;
- (g) contravenes a condition of an authorisation;
- (h) fails to pay, within the time specified for payment, a fine imposed on the nurse under section 60(1)(d);
- (j) fails to comply with a requirement made of that nurse under section 60(1)(f);
- (k) fails to honour an undertaking given to the Board or Tribunal;
- (m) is negligent or incompetent in nursing practice; or
- (n) behaves in a fraudulent or dishonest manner in nursing practice.

53. COMPLAINTS PROCEDURE

- (1) A complaint is to –
 - (a) be made in writing;
 - (b) contain particulars of the matter complained of;
 - (c) identify the nurse against whom the complaint is being made;
 - (d) identify who is the complainant;
 - (e) contain a statement that the complainant consents to a copy of the complaint being given to the nurse; and
 - (f) be lodged with the Executive Officer.
- (2) The Executive Officer must ensure that a person who wishes to make a complaint is given reasonable assistance to enable the person to make the complaint in accordance with this section.
- (3) On receiving a complaint, the Executive Officer must –
 - (a) record the date on which the complaint was received; and

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- (b) place the complaint before the Board without undue delay.

(4) The Executive Officer may notify the Commissioner for Health and Community Services Complaints that a complaint has been received.

(5) The Board may require the complainant to provide further particulars of the complaint.

(6) The rules of procedural fairness are to be observed in determining a complaint under this Part.

54. PRELIMINARY INVESTIGATION OF COMPLAINTS

(1) The Board may direct a committee, inspector or other person to conduct a preliminary investigation of a complaint.

(2) In a case to which subsection (1) applies, the Board must -

- (a) give a copy of the complaint to the nurse who is the subject of the complaint; and

- (b) allow the nurse to make submissions to the committee, inspector or person conducting the preliminary investigation.

(3) The committee, inspector or person conducting the preliminary investigation of a complaint must provide the Board and the nurse who is the subject of the complaint with a written report of the findings of the preliminary investigation and any opinions based on those findings.

55. REFERRAL OF COMPLAINTS

(1) The Board, after it has considered a complaint and, if applicable, the report on the preliminary investigation, must determine whether to refer the complaint to the Tribunal, the Commissioner for Health and Community Service Complaints or any other relevant body.

(2) A complaint need not be referred to the Tribunal if the Board considers that -

- (a) the complaint is without foundation;

- (b) the complaint is frivolous or vexatious;

- (c) the matter complained of is insubstantial; or

- (d) the matter complained of may not be sufficiently serious to warrant an inquiry.

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(3) The Board, on its own motion, may refer to the Tribunal or the Commissioner for Health and Community Services Complaints any matter that could be grounds for a complaint against a registered or enrolled nurse.

(4) Section 51(3) and (4) have effect in respect of an inquiry of the Tribunal conducted of a matter referred under subsection (3) as if it were an inquiry on a complaint.

56. CERTAIN COMPLAINTS TO BE DISMISSED

The Board must dismiss a complaint if it considers that —

- (a) the complaint is without foundation or frivolous or vexatious; or
- (b) the matter complained of is insubstantial.

57. PROCEDURE FOR LESS SERIOUS COMPLAINTS

(1) In this section, "prescribed matter" means —

- (a) a matter giving rise to a complaint against a nurse; or
- (b) a matter that the Board considers could be grounds for a complaint against a nurse.

(2) If the Board considers that a prescribed matter may not be sufficiently serious to warrant an inquiry, it may, by notice, require the nurse concerned to —

- (a) give to it an explanation of the matter in writing; or
- (b) appear before it to give an explanation of the matter.

(3) If the prescribed matter relates to the nurse's competence to practise, the Board may require the nurse to have a medical examination on the same terms as a medical examination required by the Tribunal.

(4) A notice under subsection (2) is to —

- (a) be served personally or sent by certified mail;
- (b) set out particulars of the prescribed matter;
- (c) in respect of a notice under subsection (2)(a) — specify the date when the explanation is to be given;
- (d) in respect of a notice under subsection (2)(b) —

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- (i) state that the nurse is entitled to make submissions when appearing before the Board;
 - (ii) state that the nurse may be assisted by another person when appearing before the Board but is not entitled to be represented;
 - (iii) state that the appearance before the Board is not open to the public; and
 - (iv) specify the date, time and place at which the nurse is required to appear;
 - (e) inform the nurse that he or she may request that the prescribed matter be referred directly to the Tribunal; and
 - (f) inform the nurse of the other circumstances in which the prescribed matter may be referred to the Tribunal.
- (5) The notice may contain any other information that the Board considers necessary or expedient.
- (6) The date specified under subsection (4)(c) or (d)(iv) is to be not less than 14 days after the date on which the notice is served or delivered.
- (7) The Board must not take any further action in respect of a prescribed matter if, after considering the explanation of the nurse, it is not satisfied that the nurse has a case to answer.
- (8) If the Board is satisfied, after considering the explanation, that the prescribed matter has been substantiated but that it is not sufficiently serious to warrant an inquiry, the Board may do either or both of the following:
- (a) caution or reprimand the nurse;
 - (b) accept an undertaking from the nurse to take or refrain from taking specified action.
- (9) The Board must refer a prescribed matter to the Tribunal if -
- (a) the nurse concerned fails to comply with the notice under subsection (2) or, before the date specified in the notice, requests in writing that the matter be referred;
 - (b) in the course of giving an explanation of the prescribed matter the nurse concerned requests, orally or in writing, that the matter be referred;

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- (c) after or in the course of considering the explanation of the prescribed matter, the Board determines that the matter is sufficiently serious to warrant an inquiry; or
 - (d) in a case to which subsection (8) applies, the nurse concerned disputes that the prescribed matter has been substantiated.
- (10) At a meeting of the Board convened for the purposes of this section, the nurse concerned—
- (a) is entitled to make submissions when appearing before the Board; and
 - (b) may be assisted by another person when appearing before the Board but is not entitled to be represented;
- (11) A meeting of the Board convened for the purposes of this section is not open to the public.

Division 2 — Professional Review Tribunal

58. ESTABLISHMENT AND CONSTITUTION OF TRIBUNAL

- (1) The Professional Review Tribunal is established.
- (2) The Minister is to appoint as permanent members of the Tribunal —
- (a) a person who is a legal practitioner; and
 - (b) a person who is not a legal practitioner or nurse and who, in the opinion of the Board, will represent the interests of persons who use the services provided by nurses.
- (3) The permanent member appointed under subsection (2) (a) is the Chairperson of the Tribunal.
- (4) The Tribunal, in respect of each inquiry it conducts, is to consist of 5 members, being —
- (a) the 2 permanent members; and
 - (b) 3 nurses, who are not members of the Board, appointed by the Chairperson of the Tribunal for the purposes of the inquiry.
- (5) A nurse appointed to the Tribunal for the purposes of an inquiry is known as a special member.
- (6) A special member is to be a nurse who is considered by the Chairperson to have skill, knowledge or experience that is relevant to the inquiry in respect of which he or she is appointed.

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(7) The Board is to appoint a person to be the secretary to the Tribunal.

(8) A person who is a member of the Tribunal or who is the secretary to the Tribunal is not personally liable for any act done or purported or omitted to be done by the person in good faith for the purpose of this Act.

(9) Schedule 3 has effect with respect to the powers and procedures of the Tribunal.

(10) Schedule 4 has effect with respect to the membership of the Tribunal.

(11) Schedule 5 has effect with respect to the proceedings of the Tribunal.

59. FUNCTION OF TRIBUNAL

The Tribunal must conduct an inquiry into each complaint that is referred to it by the Board and each matter that is referred to it by the Board under section 55(3).

Division 3 - Actions following Inquiry

60. ACTIONS BY TRIBUNAL

(1) On concluding an inquiry, the Tribunal may take one or more of the following actions as it considers appropriate having regard to the subject of the inquiry and its findings:

- (a) have the defendant's name removed from the register or roll;
- (b) have the defendant's authorisation cancelled;
- (c) have the defendant's right of practice or authorisation suspended for not longer than 12 months;
- (d) impose on the defendant a fine not exceeding \$5,000;
- (e) impose on the defendant a condition subject to which the defendant may continue to engage in general practice or practise in a restricted practice area;
- (f) require the defendant to take or refrain from taking specified action;
- (g) caution or reprimand the defendant;
- (h) dismiss the complaint and clear the defendant.

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(2) In the case of an inquiry relating to a matter referred to in section 52(1)(b), the Tribunal must, unless it dismisses the complaint or clears the defendant, take at least -

(a) the action specified in subsection (1)(a) - if the matter relates to registration or enrolment; or

(b) the action specified in subsection (1)(b) - if the matter relates to an authorisation.

(3) If the Tribunal imposes a fine under subsection (1)(d), it must specify a period within which the fine is to be paid.

(4) For the purposes of subsection (1)(f), but without limiting the generality of that subsection, the Tribunal may require the defendant to do either or both of the following:

(a) be subject to periodic supervision or inspection by a specified person;

(b) undertake a rehabilitation program.

(5) The Tribunal, as an alternative to taking action against a defendant under subsection (1), may accept an undertaking from the defendant to take or refrain from taking specified action, either generally or within a specified period of time.

61. COSTS AND EXPENSES OF INQUIRIES

(1) The Tribunal may, in addition to exercising its powers under section 60, order the defendant to pay the costs and expenses of or arising from the inquiry as the Tribunal thinks fit.

(2) Subsection (1) does not apply if the Tribunal decides to dismiss the complaint against the defendant or, in a case to which section 55(3) applies, clear the defendant.

(3) If the Tribunal decides to dismiss the complaint or, in a case to which section 55(3) applies, clear the defendant, it may, if it considers it fair to do so, order the Board to pay the costs and expenses or any part of the costs and expenses incurred by the defendant in respect of the inquiry.

(4) The Board must comply with an order of the Tribunal under subsection (3).

(5) Any costs or expenses ordered to be paid under subsection (1) are recoverable as a debt due to the Board.

62. NOTICE OF DECISION

(1) When the Tribunal decides what action to take under section 60, it must give the Board and the defendant notice of the decision and the reasons for the decision.

(2) The notice to the defendant is to -

(a) inform the defendant of his or her right of appeal; and

(b) be served personally or by certified mail.

(3) A decision of the Tribunal under section 60(1)(a), (b), (c), (d), (e), (f) or (g) does not take effect until -

(a) the expiration of the period within which the defendant may lodge an appeal against the decision; or

(b) if the defendant lodges an appeal against the decision, the decision is confirmed or varied or the appeal is withdrawn.

(4) The period referred to in subsection (3)(a) is taken to have commenced when notice of the Tribunal's decision is served on the defendant.

(5) If the Tribunal's decision takes effect, the Board may do either or both of the following:

(a) give notice of the decision to nursing registration authorities, the Australian Nursing Council and any other nursing body or relevant person that the Board considers appropriate to notify;

(b) give notice of the decision to the Secretary.

Division 4 - Suspension

63. SUSPENSION OF RIGHT OF PRACTICE OR AUTHORISATION

(1) The Board may suspend the right of practice or authorisation of a nurse, for not longer than 12 months as the Board in the circumstances considers appropriate, if -

(a) the nurse contravenes a condition subject to which the nurse is registered or enrolled or a condition of an authorisation;

(b) the nurse's right of practice under a foreign nursing law has been suspended for a reason relating to the nurse's competence to practise;

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- (c) the nurse fails to pay, within the time specified for payment, a fine imposed under section 60(1)(d);
- (d) the nurse fails to comply with a requirement made of the nurse under section 60(1)(f);
- (e) the nurse fails to honour an undertaking given to the Board or Tribunal;
- (f) the nurse contravenes the *Nursing Code*;
- (g) the Board reasonably considers the suspension necessary for the purposes of inquiring into a complaint made against the nurse or inquiring into a matter that could be the subject of a complaint against the nurse; or
- (h) the Board considers that it is in the public interest to suspend the registration.

(2) The power of the Board under this section is in addition to the power of the Tribunal under section 60(1)(c).

(3) If the Board decides to suspend a nurse's right of practice or authorisation it may give the nurse an opportunity to be heard.

(4) If the Board decides to suspend a nurse's right of practice or authorisation it must make an appropriate note of the suspension and the reasons for the suspension in the register or roll and give the nurse notice of -

- (a) the suspension and the reasons for the suspension; and
- (b) the nurse's right of appeal.

(5) A notice under subsection (4) is to be served personally on, or sent by certified mail to, the nurse.

(6) On the notice being served or delivered, the person ceases to be entitled to practise or ceases to hold the authorisation, as the case may be, until the period of suspension specified in the notice expires or the suspension is revoked under Part 5 or section 64.

(7) A nurse whose right of practice or authorisation is suspended must, if directed in writing to do so by the Board, return the nurse's practising certificate to the Board within 7 days after receiving the direction or within any longer period that the Board may allow.

Penalty: \$5,000.

Default penalty: \$150.

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(8) In a case to which subsection (7) applies, the Board —

- (a) if the suspension is of a right of practice — may retain the certificate for the period of the suspension; and
- (b) if the suspension is of an authorisation — must as soon as practicable issue the nurse concerned with an amended certificate or a fresh certificate with amended particulars.

(9) If the Board suspends a nurse's right of practice or authorisation under this section it may, if it considers that it is in the public interest to do so, do one or both of the following:

- (a) give notice of the suspension to any nursing registration authority, the Australian Nursing Council and any other nursing body or relevant person that the Board considers appropriate to notify;
- (b) give notice of the suspension to the Secretary.

(10) An offence against subsection (7) is a regulatory offence.

64. REVOCATION OF SUSPENSION

If the Board suspends a nurse's right of practice or authorisation under section 63 it may, at any time and for any reason it considers sufficient, revoke the suspension.

Division 5 — Inspectors and Investigations

65. APPOINTMENT OF INSPECTORS

(1) The Board may appoint a person to be an inspector.

(2) The functions of an inspector are —

- (a) to investigate matters to ensure that this Act and the *Nursing Code* are being complied with; and
- (b) to investigate complaints or matters that could be the subject of complaints.

(3) The Board is to issue an inspector with an identity card, in the approved form, containing a recent photograph of the inspector, the inspector's name and signature and the common seal of the Board.

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(4) A person must, within 5 days of ceasing to be an inspector, return to the Board the identity card issued to the person under subsection (3).

Penalty: \$500.

66. POWERS OF INSPECTORS

(1) In this section —

"premises" includes a vehicle or vessel;

"investigation" means an investigation carried out by an inspector under section 65(2).

(2) An inspector may, on producing his or her identity card —

(a) enter any premises at any time with the consent of the occupier of those premises or enter any premises where a health service is provided if that place is open for entry; and

(b) exercise all or any of the powers specified in section 67 with the consent of the occupier of those premises.

(3) If an inspector considers on reasonable grounds that there is, or is likely to be, on premises a document or thing that is, or is likely to be, relevant to an investigation and that it is not possible or reasonable in the circumstances to rely on the power in subsection (2), the inspector may apply in writing to a Justice for a warrant.

(4) The Justice may issue a warrant if satisfied that —

(a) the document or thing referred to in the application is, or is likely to be, relevant to the inspector's investigation;

(b) there are reasonable grounds for believing that the document or thing is, or is likely to be, on the premises referred to in the application; and

(c) it will not be possible or reasonable in the circumstances for the inspector to rely on the power in subsection (2).

(5) A warrant may be made subject to any conditions the Justice considers appropriate.

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(6) A warrant issued under this section authorises the inspector named in the warrant, using any assistance that the inspector considers necessary and subject to the conditions to which it is subject, to enter and search the premises specified in the warrant and exercise any of the powers specified in section 67 that are not expressly excluded by the Justice who issued the warrant.

(7) An inspector when executing the warrant must permit a person who is an occupier or person in charge of the premises to which the warrant relates to inspect the warrant.

(8) A person must not give, agree to give or offer to an inspector a gift, reward or other inducement to do or abstain from doing anything in relation to an investigation.

Penalty: \$5,000.

67. SPECIFIC INVESTIGATIVE POWERS

(1) Subject to and for the purposes of section 66(2)(b) and (6), an inspector may exercise the following powers:

- (a) inspect and search the premises generally;
- (b) require the person apparently in charge of the premises to produce for inspection any document held at the premises;
- (c) inspect and take notes of or extracts from a document referred to in paragraph (b);
- (d) make a copy of a document referred to in paragraph (b);
- (e) ask questions of and require answers from persons on the premises;
- (f) take photographs;
- (g) open and inspect containers or packages that the inspector reasonably suspects are used for the purpose of, or in connection with, the provision of nursing services;
- (h) examine or test any equipment held on the premises;
- (j) require a person registered or enrolled or claiming to be registered or enrolled to produce a certificate of registration or enrolment or a practising certificate;

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- (k) if the inspector reasonably suspects that this Act or the *Nursing Code* has been contravened, seize and, on providing a receipt, remove anything that in the reasonable opinion of the inspector is evidence of the contravention;
 - (m) remove, on providing a receipt, any document found on the premises to the custody and control of the Board for as long as the Board considers necessary or expedient.
- (2) If the Board is satisfied that for legitimate reasons a person needs access to a document that has been removed from premises to the custody and control of the Board under subsection (1)(m), the Board in its discretion may -
- (a) grant the person reasonable access to the document or to a copy of the document;
 - (b) provide the person with a copy or certified copy of the document; or
 - (c) retain a copy of the document and return the original to the premises.

PART 5 - APPEALS

68. RIGHT OF APPEAL

- (1) A person may appeal to the Local Court against any of the following:
- (a) the refusal of the Board to register or enrol the person;
 - (b) a condition to which the person's registration or enrolment is made subject under section 24(2) or 27(3);
 - (c) the removal of the person's name from the register or roll, other than removal under section 47(2)(b) or (c);
 - (d) the refusal of the Board to restore the person's name to the register or roll under section 49;
 - (e) the suspension of the person's right to practise or authorisation under section 63;
 - (f) the refusal of the Board to issue the person with a new practising certificate under section 46(4) or (5);
 - (g) a decision of the Tribunal under section 60;

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- (h) the refusal of the Board to grant the person an authorisation to practise in a restricted practice area;
 - (j) the cancellation of an authorisation;
 - (k) the cancellation of the person's interim registration or enrolment.
- (2) The Board may appeal to the Local Court against -
- (a) a decision of the Tribunal under section 60(1)(h); or
 - (b) any other decision of the Tribunal under section 60(1) if the Board considers that the action to be taken in pursuance of the decision is inadequate in the circumstances.
- (3) An appeal is to be made within 14 days after notice of the Board's or Tribunal's decision is given to the affected person.

69. HEARING OF APPEALS

- (1) An appeal is to be conducted by way of a hearing *de novo*.
- (2) At the hearing of an appeal, the Local Court may -
- (a) confirm the decision of the Board or Tribunal;
 - (b) set aside the decision of the Board or Tribunal; or
 - (c) set aside the decision of the Board or Tribunal and substitute any other decision that the Board or Tribunal has jurisdiction to take as the Court specifies.

PART 6 - OFFENCES

Division 1 - Protection of Profession

70. OFFENCE TO PRACTISE NURSING, &c., IF UNREGISTERED, &c.

- (1) A person who is not a registered or enrolled nurse, and does not hold a practising certificate, must not -
- (a) practise nursing;
 - (b) carry out an act that by or under an Act is required to be carried out by a registered or enrolled nurse; or

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- (c) carry out an act that by or under an Act is required to be carried out by a nurse holding a practising certificate.

Penalty: \$5,000.

(2) A person to whom interim registration or enrolment is granted does not commit an offence against subsection (1) merely because he or she does not hold a practising certificate.

71. FALSE CLAIMS

(1) A person who is not a registered or enrolled nurse must not hold himself or herself out, or allow himself or herself to be held out, as being a registered or enrolled nurse or as being in any way authorised or qualified to practise nursing.

(2) A person who does not hold a practising certificate must not hold himself or herself out, or allow himself or herself to be held out, as being in any way entitled to practise nursing.

(3) A person who does not hold an authorisation to practise in a restricted practice area must not hold himself or herself out, or allow himself or herself to be held out, as being in any way authorised to practise in that restricted practice area.

Penalty: \$5,000.

72. UNAUTHORISED USE OF CERTAIN TITLES

(1) A person must not practise a profession or trade under any one or more of the following titles:

- (a) nurse;
- (b) registered nurse;
- (c) licensed nurse;
- (d) qualified nurse;
- (e) any other title that is prescribed,

unless he or she is a registered nurse.

(2) A person must not practise a profession or trade under any one or more of the following titles:

- (a) nurse;
- (b) enrolled nurse;
- (c) any other title that is prescribed,

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unless he or she is an enrolled nurse.

(3) A person must not practise a profession or trade under any one or more of the following titles:

- (a) nurse;
- (b) authorised nurse;
- (c) midwife;
- (d) any other title that is prescribed,

unless he or she is authorised to practice in the restrictive practice area of midwifery.

Penalty: \$2,500.

73. ADVERTISING OFFENCES

(1) A person must not advertise a nursing practice or nursing services in a manner that —

- (a) is or is intended to be false or misleading;
- (b) offers a discount, gift or other inducement to attract business unless the advertisement sets out full particulars of the offer;
- (c) refers to or cites actual or purported testimonials; or
- (d) unfavourably compares another nursing practice or other nursing services with that nursing practice or those nursing services.

Penalty: \$2,500 or, in the case of a body corporate, \$5,000.

(2) A person who, in good faith, publishes or prints an advertisement that contravenes subsection (1) on behalf of another person is not guilty of an offence under that subsection.

74. FAILURE TO NOTIFY BOARD OF CIVIL CLAIMS

(1) A nurse must, within 14 days after any proceedings claiming damages or other compensation for alleged negligence in nursing practice are commenced against the nurse, give the Board notice of the proceedings, including particulars of the claim.

(2) A nurse must, within 14 days after any proceedings claiming damages or other compensation for alleged negligence by the nurse in nursing practice are withdrawn or settled, or a court or other tribunal makes an order in respect of the proceedings, give the Board notice of the withdrawal, settlement or order.

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Penalty: \$2,500.

75. FAILURE TO NOTIFY BOARD OF CONVICTIONS

A nurse must, within 14 days after being convicted of an offence in the Territory or elsewhere, notify the Board of the conviction.

Penalty: \$2,500.

Division 2 - General Offences

76. OFFENCES OF DISHONESTY

(1) A person must not make or produce, or cause to be made or produced, a false or misleading statement, either orally or in writing, in connection with -

- (a) an application, assessment or inquiry;
- (b) a preliminary investigation into a complaint;
or
- (c) an investigation carried out by an inspector.

(2) A person must not forge or change -

- (a) a certificate of registration or enrolment;
- (b) an interim certificate of registration or enrolment; or
- (c) a practising certificate.

(3) A person must not forge or change a degree, diploma or other evidence of qualifications for registration under this Act.

Penalty: 10,000.

77. OBSTRUCTION

A person must not obstruct, hinder, threaten or intimidate another person exercising a power or performing a function conferred on that other person by this Act.

Penalty: \$5,000.

78. OFFENCES RELATING TO ASSESSMENTS AND INQUIRIES, &c.

(1) A person must not, without reasonable excuse -

- (a) fail to attend an assessment or inquiry as required by summons;
- (b) fail in an assessment or inquiry to comply with the requirement to affirm or be sworn;

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- (c) fail to produce a document when required by a committee of assessors or the Tribunal to do so;
- (d) fail to answer questions required by a committee of assessors or the Tribunal to be answered.

Penalty: \$5,000.

Default penalty: \$200.

(2) A person may be required by a committee of assessors or the Tribunal to answer a question or produce a document notwithstanding that the answer to the question or the contents of the document may tend to incriminate the person.

(3) If in an assessment or inquiry a person objects to answering a question or producing a document on the grounds that to do so may tend to incriminate the person, the answer to the question or the contents of the document are not admissible in evidence in any other proceedings in respect of the person, other than proceedings in respect of an offence under section 76 or in respect of an appeal under Part 5.

79. FAILURE TO COMPLY WITH ORDERS

- (1) A person must not —
 - (a) fail to leave the hearing of an assessment when ordered to do so by the committee conducting the assessment;
 - (b) fail to leave the hearing of an inquiry when ordered to do so by the Tribunal; or
 - (c) fail to leave a meeting of the Board when ordered to do so by the Board.

Penalty: \$5,000.

- (2) A person must not —
 - (a) report or otherwise disclose any proceedings of a committee of assessors or the Tribunal contrary to an order of that committee or the Tribunal; or
 - (b) report or otherwise disclose any information in respect of the proceedings of a committee of assessors or the Tribunal contrary to an order of that committee or the Tribunal.

Penalty: \$2,500 or, in the case of a body corporate, \$5,000.

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- (3) A person must not -
 - (a) report or otherwise disclose any proceedings of a meeting of the Board contrary to an order of the Board; or
 - (b) report or otherwise disclose any information in respect of a meeting of the Board contrary to an order of the Board.

Penalty: \$2,500 or, in the case of a body corporate, \$5,000.

PART 7 - MISCELLANEOUS

Division 1 - Obligations to Provide Information

80. MEDICAL PRACTITIONERS' NOTICES RELATING TO FITNESS TO PRACTISE

If a medical practitioner is treating a nurse in relation to an illness that, in the opinion of the medical practitioner, has resulted in or is likely to result in an incapacity that seriously impairs or may seriously impair the nurse's ability to practise competently, the medical practitioner must give the Board notice of that fact.

Penalty: \$5,000.

81. PROVISION OF INFORMATION BY BODIES CORPORATE

(1) A body corporate that provides nursing services or causes or allows nursing services to be provided in its name or on its behalf must, if the Board by notice requires it to do so, give the Board any or all of the following within the time provided by the notice:

- (a) a copy of its memorandum and articles of association or any other document relating to its constitution or rules;
- (b) any information required by the notice concerning its membership, shareholdings, officers or employees;
- (c) any other information required by the notice concerning the body corporate's structure, management or operations.

Penalty: \$10,000.

Default penalty: \$400.

(2) A registered or enrolled nurse must, if the Board by notice requires the nurse to do so, give the Board, within the time provided by the notice, the information that is specified in the notice regarding any body corporate of which the nurse is a member.

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Penalty: \$5,000.

Default penalty: \$400.

82. EMPLOYER NOTICES OF MISCONDUCT OR INCOMPETENCE

A person who employs a nurse must provide a written report to the Board, and the nurse, of the circumstances if the nurse's employment is terminated or suspended because of alleged or actual misconduct or incompetence to practise.

Penalty: \$5,000.

Division 2 - Administrative and Legal

83. SERVICE OF DOCUMENTS

(1) Subject to subsection (2), a document may be served on the Board, the Tribunal or a committee -

- (a) by leaving it at, or sending it by post to, the Board's address;
- (b) by sending it by way of facsimile transmission to the Board's facsimile number; or
- (c) by sending it by Ccmail or Email to the Board's address.

(2) A document required to be delivered to or served on the Board under Part 3 is to be delivered or served by leaving it at, or sending it by post to, the Board's address.

84. PRESUMPTIONS

In any proceedings, unless evidence is given to the contrary, proof is not required of -

- (a) the constitution of the Board, the Tribunal or a committee;
- (b) any resolution or decision of the Board, the Tribunal or a committee;
- (c) the appointment of any member of the Board, the Tribunal or a committee; or
- (d) the presence of a quorum at any meeting of the Board, the Tribunal or a committee.

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85. EVIDENCE OF FACTS FOUND IN OTHER PROCEEDINGS

A finding of fact relating to the conduct of a nurse made by a court or other tribunal in any proceedings to which that nurse is a party, whether in the Territory or elsewhere, is evidence of the fact in any proceedings under this Act.

86. FEES, PENALTIES AND FINES TO BE PAID TO BOARD

(1) All fees payable and all penalties imposed and recovered under this Act are to be paid to the Board.

(2) A fee payable under this Act may be recovered as a debt due to the Board.

(3) A fine imposed on a person under section 60(1)(d) may be recovered as a debt due to the Board.

87. NO RIGHT OF RECOVERY BY UNREGISTERED OR UNENROLLED PERSON, &c.

(1) A person is not entitled to recover a fee or other remuneration for a nursing service that he or she has provided on his or her own account unless he or she -

(a) was registered or enrolled and, except in the case of interim registration or enrolment, was the holder of a practising certificate at the time the service was provided; and

(b) if the service provided was in a restricted practice area - held an authorisation to practise in the restricted practice area at the time the service was provided.

(2) A body corporate that provides nursing services is not entitled to recover a fee or other remuneration for or in connection with a nursing service provided in its name or on its behalf unless the service was provided by a nurse who -

(a) was registered or enrolled and, except in the case of interim registration or enrolment, was the holder of a practising certificate, at the time the service was provided; and

(b) if the service provided was in a restricted practice area, held an authorisation to practise in the restricted practice area at the time the service was provided.

(3) In an action for the recovery of a fee or other remuneration for a nursing service it is sufficient to state in the particulars of claim or demand the words "for nursing services".

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88. PUNISHMENT OF CONDUCT CONSTITUTING AN OFFENCE

If conduct that constitutes an offence against this Act is also grounds for action under section 57, 60 or 63 —

- (a) the taking of the action is not a bar to conviction and punishment for the offence; and
- (b) conviction and punishment for the offence is not a bar to the taking of the action under this Act.

89. OFFENCES BY BODIES CORPORATE

(1) If a body corporate is found guilty of an offence against this Act, each person concerned in the management of the body corporate is taken also to have committed the offence and may be found guilty of the offence unless the person proves that the act or omission constituting the offence took place without that person's knowledge or consent.

(2) A person referred to in subsection (1) may be found guilty of an offence against this Act whether or not the body corporate is charged with or found guilty of the offence.

90. ACT DOES NOT PROHIBIT CERTAIN PRACTICES

Nothing in this Act prohibits —

- (a) a person from rendering assistance in an emergency;
- (b) a person providing care to another person or using lawful traditional or cultural practices in caring for another person;
- (c) a person who is registered or enrolled under a foreign nursing law from assisting in the lawful retrieval of organs or tissue for transplanting to a person elsewhere, from retrieving or escorting a patient to or from the Territory or from assisting in similar emergencies or special circumstances;
- (d) a midwifery student under the supervision of a medical practitioner or midwife from providing care to a woman in childbirth; or
- (e) a student in an accredited course in nursing from engaging in nursing practice under supervision in accordance with and for the purposes of the course.

91. REGULATIONS

(1) The Administrator may make regulations, not inconsistent with this Act, prescribing all matters —

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting subsection (1), the Regulations may prescribe any matters necessary for or incidental to the conduct of elections referred to in section 5.

(3) The Regulations may —

- (a) apply generally or be limited in their application by reference to specified exemptions or specified factors;
- (b) apply differently according to different factors, limitations or restrictions of a specified kind;
- (c) authorise any matter to be from time to time determined, applied or regulated by the Board or Tribunal;
- (d) apply, adopt or incorporate, with or without modification, any publication as in force from time to time;
- (e) provide that a contravention or failure to comply with the Regulations is an offence (including a regulatory offence) and prescribing a penalty of not more than \$5,000 for the offence and a further penalty of not more than \$200 for each day during which the offence continues; and
- (f) provide for a prescribed amount to be paid instead of a penalty that may otherwise be imposed for an offence against this Act or the Regulations and for serving a notice the a person alleged to have committed the offence and the particulars to be included in the notice.

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Division 3 — Repeal, Savings and Transitional

92. REPEAL

The Nursing Act 1982 (No. 48, 1982) is repealed.

93. INITIAL ELECTION TO BOARD

(1) Within 60 days after the commencement of this section, the Minister must, by notice in the *Gazette*, approve an electoral scheme for conducting and determining the initial election of the members of the Board under section 5(1)(b) and (c).

(2) Within 90 days after the commencement of this section, the initial election for the purposes of section 5(1)(b) and (c) is to be conducted and determined in accordance with the electoral scheme approved under subsection (1).

(3) A person elected under this section holds office for 3 years from the date his or her election is declared or this Act (other than this section) comes into operation, whichever is first to occur.

94. SAVINGS AND TRANSITIONAL PROVISIONS

The savings and transitional provisions set out in Schedule 6 have effect.

SCHEDULE 1

Section 5(4)

PROVISIONS WITH RESPECT TO MEMBERSHIP OF BOARD

95. TERM OF OFFICE

(1) A person appointed as a member under section 5(1)(a) holds office for the period, not exceeding 3 years, as is specified by the Minister.

(2) A person elected a member under section 5(1)(b) or (c) hold office for 3 years.

(3) A member may serve any number of terms but may not serve more than 2 terms in succession.

96. VACATION OF OFFICE

(1) A member vacates office if the member —

(a) resigns;

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- (b) is removed from office under subclause (2) or (3); or
 - (c) ceases to be qualified for office by virtue of subclause (4).
- (2) The Minister may remove a member from office if the member —
- (a) is absent from 3 consecutive meetings of the Board without the permission of the Board;
 - (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's remuneration or estate for their benefit;
 - (c) is found guilty in the Territory or elsewhere of a crime or an offence punishable by imprisonment;
 - (d) fails, without reasonable excuse, to comply with the member's obligation under clause 5 of Schedule 2; or
 - (e) is found guilty of an offence against this Act.
- (3) The Minister may remove a member from office if satisfied that the member is unable to perform the duties of the office competently.
- (4) A member who is required to be a nurse vacates office if he or she ceases to be registered or enrolled.

97. CHAIRPERSON

- (1) The members must elect one of the nurses appointed under section 5(2)(a) to be Chairperson of the Board.
- (2) The Chairperson may in writing to the Minister resign the office.
- (3) The Chairperson may resign the office but remain a member.

98. FILLING OF VACANCIES

- (1) If the office of a member appointed under section 5(1)(a) becomes vacant, the Minister may appoint a person to the office for the remainder of the term of the member who vacated the office.

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(2) If the office of a member referred to in section 5(1)(b) or (c) becomes vacant within 12 months of the last election for the office, the votes from the election are to be recounted and the next person elected in the election who gives notice to the Minister that he or she is willing to fill the vacant office is the new member for the remainder of the term of the member who vacated the office.

(3) If the office of a member referred to in section 5(1)(b) or (c) becomes vacant after the expiry of 12 months from the last election for the office, the Minister may appoint a person to the vacant office for the remainder of the term of the member who vacated the office.

99. VALIDITY OF PROCEEDINGS, &c.

(1) An act or proceeding of the Board or of a person acting under the direction of the Board is not invalid by reason only that at the time when the act or proceeding was done, taken or commenced there was a vacancy in the membership of the Board.

(2) An act or proceeding of the Board or of a person acting under the direction of the Board is valid even if —

- (a) the appointment or election of a member of the Board was defective; or
- (b) a person appointed or elected as a member of the Board was disqualified from acting as, or incapable of being, a member.

SCHEDULE 2

Section 5(5)

PROVISIONS WITH RESPECT TO MEETINGS OF BOARD

100. CONVENING OF MEETINGS

A meeting of the Board may be convened by the Chairperson or by 4 members.

101. PROCEDURE AT MEETINGS

(1) At a meeting of the Board 6 members of whom not less than 3 are to be nurses constitute a quorum.

(2) Any duly convened meeting of the Board at which a quorum is present is competent to transact any business of the Board.

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(3) Questions arising at a meeting of the Board are to be determined by a majority of votes of the members present and voting.

(4) In the event of an equality of votes on a question arising at a meeting of the Board, the question stands adjourned until its next meeting.

102. WHO PRESIDES AT MEETINGS

(1) The Chairperson is to preside at all meetings of the Board at which the Chairperson is present.

(2) If the Chairperson is not present at a meeting of the Board, a member elected by the members present is to preside at the meeting.

103. MINUTES

The Board must keep accurate minutes of its meetings.

104. DISCLOSURE OF INTEREST

(1) If a member has or acquires an interest (whether pecuniary or otherwise) that would conflict with the proper performance of the member's functions in relation to a matter being considered or about to be considered by the Board, the member must disclose the nature of the interest at a meeting of the Board.

(2) A disclosure under subclause (1) is to be recorded in the minutes and, unless the Board, exclusive of the member, determines otherwise, the member must not -

- (a) be present during any deliberations of the Board in relation to the matter; or
- (b) take part in any decision of the Board in relation to the matter.

105. MEETINGS TO BE OPEN TO PUBLIC

(1) In this clause, "meeting" does not include a meeting convened for the purposes of section 55 or 57.

(2) Except as provided in subclause (3), a meeting of the Board is to be open to the public.

(3) The Board may do either or both of the following at a meeting if it considers that there are compelling grounds to do so:

- (a) make an order excluding any person from the meeting;

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- (b) make an order prohibiting the reporting or other disclosure of all or any of the proceedings at the meeting or prohibiting the reporting or other disclosure of particular information in respect of the meeting.
- (4) Without limiting the range of grounds that may be relevant for the purposes of subclause (3), the Board may exercise its power under that subclause if -
 - (a) it is dealing with privileged information or information that has been communicated to the Board in confidence;
 - (b) it is dealing with information concerning the personal affairs, finances or business arrangements of an applicant or of a registered or enrolled nurse; or
 - (c) the disclosure of the proceedings or the information may be unfairly prejudicial to the reputation of a registered or enrolled nurse or any other person.
- (5) A person wishing to attend a meeting of the Board must notify the Board not later than 7 days before the date of the meeting.

106. GENERAL PROCEDURES

- (1) Subject to this Schedule, the procedure for convening the Board and conducting its business is as determined by the Board.
- (2) The Board may permit members to participate in a particular meeting by telephone or by other means of communication.
- (3) A member who is permitted to participate in a meeting under subclause (2) is taken to be present at the meeting.
- (4) The Board may allow a person to attend a meeting for the purpose of advising or informing it on any matter.

107. REPORT TO MINISTER

The Board, if requested by the Minister, must provide the Minister with any information the Minister may require in relation to the proceedings of the Board.

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SCHEDULE 3

Sections 22(3) and 58(9)

POWERS AND PROCEDURES OF COMMITTEES OF ASSESSORS AND
TRIBUNAL

1. DEFINITIONS

In this Schedule —

"committee" means a committee of assessors;

"proceedings" includes assessments and inquiries.

2. POWERS

A committee or the Tribunal may —

- (a) summon any person to appear before it to give evidence and produce any document specified in the summons;
- (b) require any person appearing before it to produce any document;
- (c) require any person appearing before it to give evidence on oath or affirmation;
- (d) require any person appearing before it to answer questions;
- (e) proceed with and determine any proceedings despite the absence of a person who is summoned to appear; and
- (f) adjourn the hearing of any proceedings from time to time and from place to place.

3. REQUIREMENTS OF SUMMONS FOR INQUIRY

(1) A summons to a nurse who is the subject of an inquiry is to —

- (a) set out particulars of the matter that the inquiry relates to;
- (b) state that the nurse is entitled to be represented by a legal practitioner or other person in the inquiry;
- (c) state that the proceedings will be open to the public unless the Tribunal orders otherwise; and

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- (d) specify the date, time and place at which the nurse is required to appear.
- (2) The summons may contain any other information that the Tribunal considers necessary or appropriate.
- (3) The date specified in subclause (1)(d) is to be not less than 14 days after the date on which the summons is served.

4. PROCEDURES

A committee or the Tribunal -

- (a) must conduct its proceedings with as little formality and with as much expedition as a proper consideration of the matter before it permits;
- (b) is not bound by the rules of evidence;
- (c) may inform itself on any matter in any way it considers appropriate; and
- (d) must observe the rules of procedural fairness.

5. MEDICAL EXAMINATIONS

(1) In this clause, "medical examination" includes an examination of the physical, psychological and mental capacities of a person.

(2) A committee or the Tribunal, by notice, may require an applicant or defendant to have a medical examination at the Board's expense.

(3) The Tribunal must not require a defendant to have a medical examination under subclause (2) unless, having regard to the relevant inquiry, it is reasonable to require the examination.

(4) A notice under subclause (2) is to specify -

- (a) the name of the practitioner who is to carry out the medical examination; and
- (b) the date, time and place of the medical examination.

(5) The time and place specified for a medical examination must be reasonable.

(6) The practitioner who carries out the medical examination must provide the committee or the Tribunal, and the person examined, with a written report of the results of the examination.

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6. PROCEEDINGS TO BE OPEN TO PUBLIC

(1) Except as provided in subclause (2), the proceedings of a committee or the Tribunal are to be open to the public.

(2) If a committee or the Tribunal is hearing any proceedings, the committee or Tribunal may, on the application of a party to the proceedings or on its own motion, do either or both of the following if it considers that there are compelling grounds to do so:-

(a) make an order excluding any person from the hearing;

(b) make an order prohibiting the reporting or other disclosure of all or any of the proceedings or prohibiting the reporting or other disclosure of particular information in respect of the proceedings.

(3) Without limiting the range of grounds that may be relevant for the purposes of subclause (2), a committee or the Tribunal may exercise its power under that subclause if -

(a) it is dealing with privileged information or information that has been communicated to it in confidence;

(b) it is dealing with information concerning the personal affairs, finances or business arrangements of an applicant or of a registered or enrolled nurse; or

(c) the disclosure of the proceedings or the information may be unfairly prejudicial to the reputation of a registered or enrolled nurse or any other person.

7. REPRESENTATION, &c.

(1) An applicant is entitled to attend an assessment and to be represented by a legal practitioner or any other person.

(2) The costs of representation are to be met by the applicant.

(3) A defendant is entitled to attend an inquiry and to be represented by a legal practitioner or any other person.

(4) The Board, at its own expense, may appoint a legal practitioner to assist a committee or the Tribunal in conducting any proceedings.

(5) The Secretary may -

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- (a) become a party to any proceedings; and
 - (b) be represented in the proceedings by an employee of the Agency.
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SCHEDULE 4

Section 58(10)

PROVISIONS WITH RESPECT TO MEMBERSHIP OF TRIBUNAL

8. DEFINITIONS

In this Schedule -

"meeting" includes proceedings being conducted by the Tribunal;

"member" means a member of the Tribunal and includes the Chairperson of the Tribunal.

9. TERM OF OFFICE, &c.

(1) A permanent member holds office for the period, not exceeding 2 years, as is specified by the Board.

(2) A permanent member may serve any number of terms but may not serve more than 2 terms in succession.

(3) A special member is appointed for the duration of the inquiry to which the member's appointment relates.

(4) There is no limit to the number of times a person may be appointed as a special member.

10. VACATION OF OFFICE

(1) A member vacates office if he or she -

(a) resigns;

(b) is removed from office under subclause (2) or (3); or

(c) ceases to be qualified for office by virtue of subclause (4), (5) or (6).

(2) The Board may remove a member from office if the member -

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- (a) being a permanent member, is absent from a meeting of the Tribunal convened to deal with a particular inquiry without the permission of the other members of the Tribunal as it is constituted for the purposes of that inquiry;
 - (b) being a special member, is absent from a meeting of the Tribunal convened to deal with the inquiry to which the special member's appointment relates without the permission of the other members of the Tribunal as it is constituted for the purposes of the inquiry;
 - (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's remuneration or estate for their benefit;
 - (d) is found guilty, in the Territory or elsewhere, of a crime or an offence punishable by imprisonment for longer than 12 months;
 - (e) fails, without reasonable excuse, to comply with the member's obligations under clause 6 of Schedule 5; or
 - (f) is found guilty of an offence against this Act.
- (3) The Board may remove a member from office if satisfied that the member is unable to perform the duties of the office competently.
- (4) The permanent member appointed under section 58(2)(a) vacates office if he or she ceases to be a legal practitioner.
- (5) The permanent member appointed under section 58(2)(b) vacates office if he or she becomes a nurse or legal practitioner.
- (6) A special member vacates office if he or she ceases to be registered or enrolled.

11. FILLING OF VACANCIES

- (1) If the office of a permanent member becomes vacant, the Board may appoint a person to the vacant office for the remainder of the former member's term of office.
- (2) The person appointed to a vacant office under subclause (1) is -
- (a) in the case of the office referred to in section 58(2)(a), to be a legal practitioner; and

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- (b) in the case of the office referred to in section 58(2)(b), not to be a nurse or legal practitioner.

12. VALIDITY OF PROCEEDINGS, &c.

An act or proceeding of the Tribunal or of a person acting under the direction of the Tribunal is valid even if -

- (a) the appointment of a member of the Tribunal was defective; or
- (b) a person appointed as a member of the Tribunal was disqualified from acting as, or incapable of being, a member.

SCHEDULE 5

Section 58(11)

PROVISIONS WITH RESPECT TO PROCEEDINGS OF TRIBUNAL

13. CONVENING TRIBUNAL

The Tribunal, as constituted for the purposes of an inquiry, may be convened by -

- (a) the Chairperson; or
- (b) any 2 members.

14. CONSTITUTION OF TRIBUNAL AND EFFECT OF VACANCIES

(1) Subject to this clause and clause 6, the Tribunal is not competent to take any action in respect of an inquiry unless each of the 2 permanent members, and each of the 3 special members appointed for the purposes of the inquiry, is present.

(2) If one of the members, other than the Chairperson, constituting the Tribunal for the purposes of an inquiry vacates office for any reason before the inquiry is completed, the inquiry may be continued and completed by the remaining 4 members regardless of whether, in the case of a vacancy in the office referred to in section 58(2)(b), any other person is appointed to the vacant office.

(3) If more than one of the members constituting the Tribunal for the purposes of an inquiry vacates office for any reason before the inquiry is completed, the inquiry is terminated.

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(4) If an inquiry is terminated by virtue of subclause (3), the Tribunal may be reconstituted for the purposes of conducting a new inquiry on the same matter.

(5) For the purposes of this clause, an inquiry is taken to have been completed once the Tribunal has made a decision under section 60.

15. VOTING

(1) Questions arising for determination by the Tribunal are to be determined by a majority of votes of the members present and voting.

(2) In the event of an equality of votes on a question arising for determination by the Tribunal, the question stands adjourned until it is next convened.

(3) The vote of a special member is equal to the vote of a permanent member.

16. CHAIRPERSON

The Chairperson is to preside over all proceedings of the Tribunal.

17. MINUTES

The Tribunal must keep —

- (a) accurate minutes of its meetings; and
- (b) a verbatim record of each hearing it conducts in the course of an inquiry.

18. DISCLOSURE OF INTEREST

(1) If a member has or acquires an interest (whether pecuniary or otherwise) that would conflict with the proper performance of the member's functions in relation to a matter being considered or about to be considered by the Tribunal, the member must disclose the nature of the interest at a meeting of the Tribunal.

(2) A disclosure under subclause (1) is to be recorded in the minutes and the member must not, unless the Tribunal exclusive of the member determines otherwise —

- (a) be present during any deliberations of the Tribunal in relation to the matter; or
- (b) take part in any decision of the Tribunal in relation to the matter.

19. GENERAL PROCEDURES

Subject to this Schedule and Schedule 3, the procedure for convening the Tribunal and conducting its business is as determined by the Tribunal.

SCHEDULE 6

Section 94

SAVINGS AND TRANSITIONAL

1. DEFINITIONS

In this Schedule -

"former Board" means the Nurses Board of the Northern Territory as constituted under the repealed Act;

"repealed Act" means the *Nursing Act* repealed by section 92.

2. PROCEEDINGS

Any proceedings that, immediately before the commencement of this Act, might have been brought or continued by or against the former Board may be brought or continued by or against the Board.

3. CONTINUATION OF REGISTER AND ROLL

(1) The Register kept under section 36(1)(a) of the repealed Act is taken to be part of the register for the purposes of this Act.

(2) The Roll kept under section 36(1)(a) of the repealed Act is taken to be part of the roll for the purposes of this Act.

4. ACCREDITED COURSES

A course of study prescribed under the repealed Act is, unless the Board determines otherwise, to be taken to be an accredited course in nursing education for the purposes of this Act.

5. APPLICATION FOR REGISTRATION OR ENROLMENT

An application made under the repealed Act to be registered or enrolled and not determined by the former Board before the commencement of this Act is to be determined by the Board as if it were an application for registration or enrolment under this Act.

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6. CONTINUATION OF REGISTRATION AND ENROLMENT

(1) A person who, immediately before the commencement of this Act, was registered under the repealed Act is taken to be registered under and subject to this Act on the same conditions and with the same limitations, if any, as applied to the person's registration under the repealed Act.

(2) A person who, immediately before the commencement of this Act, was enrolled under the repealed Act is taken to be enrolled under and subject to this Act on the same conditions and with the same limitations, if any, as applied to the person's enrolment under the repealed Act.

(3) Subclauses (1) and (2) apply to a registration or enrolment even if, immediately before the commencement of this Act, the registration or enrolment was suspended under the repealed Act but those subclauses are not to be taken as revoking or reducing any period of suspension to which that former registration or enrolment was subject immediately before that day.

7. INTERIM REGISTRATION OR ENROLMENT

(1) A provisional registration or enrolment that was in force under the repealed Act immediately before the commencement of this Act remains in force as an interim registration or enrolment under this Act until the first of the following events occurs:

- (a) the person holding the interim registration or enrolment applies for and is granted registration or enrolment as a nurse under this Act;
- (b) the interim registration or enrolment is cancelled by the Board;
- (c) the expiration of 3 months from the day on which the interim registration or enrolment was granted, as provisional registration or enrolment, under the repealed Act.

(2) For the purposes of subclause (1), the certificate issued under section 16 of the repealed Act in respect of the provisional registration or enrolment is, despite anything to the contrary in this Schedule, taken to continue in force until the first of the events referred to in subclause (1) occurs.

8. PRACTISING CERTIFICATE

(1) A certificate issued under section 20 of the repealed Act to a registered or enrolled nurse that was in force immediately before the commencement of this Act is taken to be a practising certificate issued to the

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person under this Act for the unexpired period of the certificate.

(2) Subclause (1) applies to a certificate even if, immediately before the commencement of this Act, the certificate was suspended under the repealed Act but that subclause is not to be taken as revoking or reducing any period of suspension to which the former certificate was subject immediately before that commencement.

(3) If a certificate referred to in subclause (1) expires before the due date, the Board may issue a new certificate for the period that commences immediately after the expiry and ends on the due date.

(4) The Board may set and charge a fee for issuing a temporary practising certificate under subclause (3).

(5) The Board may waive the whole or any part of the set fee.

(6) If a certificate referred to in subclause (1) is endorsed with the category of midwifery, the holder of the certificate is, on the commencement of this Act —

(a) entitled to practise generally under and subject to this Act; and

(b) taken to hold an authorisation to practise in the restricted practice area of midwifery under and subject to this Act.

(7) If the certificate referred to in subclause (1) is endorsed with categories of nursing other than midwifery, the holder of the certificate is, on the commencement of this Act, entitled to practise generally under and subject to this Act on the same conditions and with the same limitations as applied to the person's entitlement to practise under the repealed Act.

(8) Subclauses (6) and (7) have effect subject to subclause (2).

9. REGISTERED OR ENROLLED PERSON WITHOUT PRACTISING CERTIFICATE MAY APPLY FOR THAT CERTIFICATE UNDER THIS ACT

(1) A person who is taken to be registered or enrolled by virtue of this Schedule and who did not hold a certificate under section 20 of the repealed Act may apply in writing to the Board for a practising certificate under this Act.

(2) The Board must, within 14 days after receiving an application under subclause (1), having regard to the matters that the Board considers necessary or appropriate, issue or refuse to issue the person with a practising certificate.

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(3) The Board must, as soon as practicable, give notice of its decision to the applicant.

(4) A person whose application under subclause (1) is refused may, within 14 days of receiving the notice, appeal to the Local Court against the Board's decision.

(5) At the hearing of an appeal the Local Court may confirm the decision of the Board or order the Board to issue the applicant with a practising certificate.

10. COMPLAINTS

(1) If, immediately before the commencement of this Act, an investigation had begun under section 22 of the repealed Act but had not been concluded, the Board may -

- (a) terminate the investigation and regard the investigation as a complaint to the Board made under this Act; or
- (b) continue and conclude the investigation as if this Act had not commenced.

(2) In making a determination under subclause (1), the Board may have regard to any matter that it considers appropriate but must have particular regard to -

- (a) how far the investigation had progressed;
- (b) fairness to the person who is the subject of the investigation;
- (c) cost and inconvenience to the Board, the person who is the subject of the investigation or other persons; and
- (d) any submissions made to the Board by or on behalf of the person who is the subject of the investigation.

(3) In a case to which subclause (1)(b) applies, the Board, on concluding the investigation, may take any action under this Act that it considers appropriate having regard to the findings of the investigation.

(4) A complaint may be made or dealt with under this Act in respect of an act or omission of a nurse despite that the act or omission actually or allegedly occurred before the commencement of this Act.

11. APPEALS

(1) An appeal instituted under section 24 of the repealed Act and not determined by the commencement of this Act may be continued and determined as if this Act had not commenced.

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(2) If under subclause (1), a magistrate orders in respect of an appeal that an application for registration or enrolment under the repealed Act be granted, the registration or enrolment is, for the purposes of this Schedule, taken to have been in force immediately before the commencement of this Act.

(3) If under subclause (1), a magistrate orders that an application for the renewal of a certificate under the repealed Act be granted, the certificate is, for the purposes of this Schedule, taken to have been a certificate issued under section 19 of the repealed Act in force immediately before the commencement of this Act.

(4) If under subclause (1), a magistrate orders in respect of an appeal that some action or determination be substituted for an action or determination of the former Board, the magistrate may, if he or she considers it fair and appropriate to do so having regard to the repeal of the repealed Act and the enactment of this Act, order that the substituted action or determination be one that the Board or Tribunal could take or make under this Act had the appeal been instituted under this Act.
