

NURSING ACT 1987

No. 65 of 1987

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NURSING ACT 1987

No. 65 of 1987

AN ACT to provide for the education, training, registration, enrolment, and practice of nurses and to repeal the Nurses' Registration Act 1952 and the Tasmanian Auxiliary Nursing Service Act 1949.

[Royal Assent 18 August 1987]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

PART I

PRELIMINARY

1—This Act may be cited as the *Nursing Act 1987*.

Short title.

2—(1) This section and section (1) shall commence on the day on which this Act receives the Royal assent.

Commencement.

(2) Except as provided in subsections (1) and (2), this Act shall commence on such day as may be fixed by proclamation.

3—In this Act, unless the contrary intention appears—

Interpretation.

“approved” means approved by the Board;

“approved course”, means a course approved by the Board in the following:—

- (a) nursing;
- (b) general nursing;
- (c) psychiatric nursing;
- (d) intellectual disability nursing;
- (e) gerontologic nursing;
- (f) mothercraft nursing;
- (g) auxiliary nursing;

“Board” means the Nursing Board of Tasmania constituted under this Act;

“category of nursing” means—

- (a) midwifery nursing;
- (b) psychiatric nursing;
- (c) intellectual disability nursing;
- (d) child health nursing;
- (e) gerontologic nursing;
- (f) general nursing;
- (g) nursing; or
- (h) such other category of nursing as the Board may determine;

“certificate of enrolment” means a certificate of enrolment issued under section 11;

“certificate of registration” means a certificate of registration issued under section 11;

“enrolled” means enrolled under this Act;

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

“practising certificate” means a practising certificate issued under section 11 (5) (c) or 12 (7) (c);

“provisional practising certificate” means a provisional practising certificate issued under section 14 (3);

“register” means the register kept by the Registrar under section 8;

“registered” means registered under this Act;

“Registrar” means the Registrar of Nurses appointed pursuant to section 7;

“roll” means the roll kept by the Registrar under section 8.

PART II
NURSING BOARD

4—(1) There is constituted by this Act a body to be known as the “Nursing Board of Tasmania”. Constitution of Nursing Board.

(2) The Board shall consist of 12 members appointed by the Minister of whom—

(a) 6 shall be registered nurses appointed after consultation with relevant organizations, each one representing one of the following:—

- (i) administration of nursing services in an institution or hospital in which students of nursing gain clinical experience in an approved course of training;
- (ii) nursing education or staff development in a health care agency;
- (iii) administration of nursing services otherwise than in institutions or hospitals referred to in paragraph (i);
- (iv) mental health nursing;
- (v) midwifery nursing;
- (vi) clinical nursing other than mental health or midwifery nursing;

(b) one shall be a registered or enrolled auxiliary nurse who, in the opinion of the Minister, after consultation with relevant organizations, represents the interests of registered and enrolled auxiliary nurses;

(c) one shall be the Principal Nursing Officer;

(d) one shall be a legally-qualified medical practitioner;

(e) one shall be a person who, in the opinion of the Director-General of Education, has knowledge or expertise in education;

(f) one shall be a person nominated by an institution conducting a course of education in nursing at diploma or degree level; and

(g) one shall be the Director-General of Health Services or a person nominated for that purpose by the Director-General.

(3) The Minister shall appoint one of the members of the Board as chairman of the Board.

(4) A member of the Board is not, as such, subject to the *Tasmanian State Service Act 1984*, but an employee within the meaning of that Act may hold office as a member of the Board in conjunction with a position in the State Service.

(5) The Board constituted under section 4 of the repealed Act is abolished.

(6) Schedule 1 has effect with respect to the membership and meetings of the Board.

Functions of Board.

5—The functions of the Board are as follows:—

- (a) to receive, consider, and determine applications for the registration or enrolment of persons as nurses under this Act;
- (b) to register or enrol persons as nurses;
- (c) to issue certificates of registration or enrolment;
- (d) to issue practising certificates;
- (e) such other functions as are necessary for the purposes of this Act.

Powers of Board.

6—(1) For the purposes of this Act, the Board may—

- (a) subject to subsection (2), approve courses provided by institutions for the purpose of registration or enrolment under this Act;
- (b) approve courses in each category of nursing for the purpose of endorsing practising certificates;
- (c) issue instructions for the conduct of approved courses in nursing and in each category of nursing;
- (d) endorse practising certificates with the category or categories of nursing in which qualification is obtained;
- (e) issue directions with respect to criteria for the assessment of any person undergoing an approved course in nursing or in a category of nursing;
- (f) hold examinations for the purpose of determining eligibility for registration and enrolment;
- (g) appoint examiners for the purposes of paragraph (f) and determine their remuneration; and
- (h) determine criteria for the assessment of eligibility for registration and enrolment;
- (i) do all things necessary or convenient to be done for or in connection with, or incidental to, the performance of its functions under this Act.

(2) The Board shall not approve any course unless it is satisfied that the instructions and directions issued by it under subsection (1) are complied with.

7—(1) Subject to and in accordance with the *State Service Act 1984* a person shall be appointed by the Minister to be the Registrar of Nurses for the purposes of this Act. Registrar of Nurses.

(2) A person who, immediately before the commencement of this Act, held the office of Registrar of Nurses is deemed to be appointed under subsection (1).

(3) A person who is an employee within the meaning of the *State Service Act 1984* may be appointed under subsection (1) as the Registrar and may hold that office in conjunction with an office in the State Service.

(4) The Registrar shall, in addition to such other duties as may be imposed under this Act, be the secretary and executive officer of the Board.

8—(1) The Registrar shall keep a record of all proceedings of the Board and of all registrations, enrolments, endorsements, practising certificate approvals, cancellations, revocations, suspensions, determinations, notices, and directions authorized, issued, imposed, or made by the Board under this Act. Register and records.

(2) The Registrar shall keep a register containing the names of all persons who are registered.

(3) The Registrar shall keep a roll containing the names of all persons who are enrolled.

(4) The Registrar may, if the Board considers it appropriate, publish in the *Gazette* a copy of the register and roll corrected up to the last day of the previous month preceding the publication.

(5) The register and roll are to be made available at all reasonable times to any person for inspection at the office of the Board.

Protection for
members of
Board, &c.

9—(1) Where the Board, a member of the Board, or the Registrar does or omits to do, any act or thing in good faith in the administration or execution, or purported administration or execution of this Act, or in the exercise or performance or purported exercise or performance, of any of its, the member's, or the Registrar's powers, functions, or duties under this Act, it, the member, or the Registrar shall not be personally subjected to any action, liability, claim, or demand in respect of that act or omission.

PART III

REGISTRATION AND ENROLMENT OF NURSES

Registration and
enrolment.

10—(1) A person is entitled to be registered or enrolled, as the case may be, where the Board is satisfied that the person meets the following conditions:—

- (a) the person has the prescribed qualifications;
- (b) the person has sufficient command of the English language to communicate readily for the purpose of the practice of nursing with other persons who ordinarily use that language;
- (c) the person is of such a state of health that no danger would be involved to a patient or other person with whom that person is likely to be in contact whilst engaged in the practice of nursing; and
- (d) the person is of good character.

(2) For the purposes of subsection (1) (a), a person has qualifications to be registered or enrolled where that person—

- (a) has completed, and passed examinations in, an approved course; or
- (b) where no such examination is required, has met the criteria for assessment as determined by the Board.

Applications for
registration or
enrolment.

11—(1) A person who claims to be entitled to be registered or enrolled may make an application in accordance with this section.

- (2) An application under subsection (1) shall—
 - (a) be in a form approved by the Board;
 - (b) be lodged with the Registrar; and
 - (c) be accompanied by the prescribed fee.

(3) On receipt of an application made by a person under subsection (1), the Registrar—

(a) may provisionally register or enrol that person pursuant to section 14; and

(b) shall submit the application to the Board.

(4) On receipt of an application for registration or enrolment, the Board may—

(a) refuse the application; or

(b) grant the application.

(5) Where the Board grants an application for registration or enrolment under this section, it shall authorize the Registrar to—

(a) register or enrol that applicant;

(b) issue a certificate of registration or a certificate of enrolment, as the case may be, to that applicant; and

(c) issue a practising certificate to that applicant and endorse that practising certificate with the category or categories of nursing in which the applicant is entitled to practise.

(6) Where the Board refuses an application for registration or enrolment pursuant to subsection (4) (a), it shall—

(a) by notice in writing served on the applicant, inform the applicant of the refusal and of the grounds on which the refusal is based; and

(b) refund to the applicant the fee which accompanied the application.

12—(1) A person who is registered or enrolled as a nurse in any part of the world, other than this State, may apply to the Board to be registered or enrolled, as the case requires.

Registration or enrolment of person registered or enrolled outside State.

(2) An application for registration or enrolment under subsection (1) shall—

(a) be in a form approved by the Board;

(b) be lodged with the Registrar; and

(c) be accompanied by the prescribed fee.

(3) On receipt of an application made by a person under subsection (1), the Registrar—

(a) may provisionally register or enrol that person pursuant to section 14; and

(b) shall submit the application to the Board.

(4) On receipt of an application for registration or enrolment, the Board may—

- (a) refuse the application; or
- (b) grant the application.

(5) The Board shall not grant an application for registration or enrolment to a person referred to in subsection (1), unless it is satisfied—

- (a) by evidence produced that the person is registered or enrolled, as the case may be, in any part of the world outside this State; and
- (b) subject to subsection (6), that the person substantially meets the conditions referred to in section 10 (1).

(6) The Board may grant an application for registration or enrolment to a person, notwithstanding that it is not satisfied that the qualifications of the person are substantially equivalent to the qualifications referred to in section 10, where that person—

- (a) undertakes a further course in nursing as directed by the Board and passes such examinations or assessments as the Board directs; or
- (b) undertakes a period of supervised practice to the satisfaction of the Board.

(7) Where the Board grants an application for registration or enrolment under this section, it shall authorize the Registrar to—

- (a) register or enrol that applicant;
- (b) issue a certificate of registration or a certificate of enrolment, as the case may be, to that applicant; and
- (c) issue a practising certificate to that applicant and endorse that practising certificate with the category or categories of nursing in which the applicant is entitled to practise.

(8) Where the Board refuses an application for registration or enrolment under this section, it shall—

- (a) by notice in writing served on the applicant, inform the applicant of the refusal and of the grounds on which the refusal is based; and
- (b) refund to the applicant the fee which accompanied the application.

13—(1) A person who is registered as a nurse in another State or in a Territory of the Commonwealth shall be deemed to be registered under this Act and, subject to subsection (2), is entitled to practise as a nurse in this State in respect of a patient who is being transported to or from this State. Temporary registrations.

(2) A person referred to in subsection (1) is not entitled to practise as a nurse in this State otherwise than for the duration of the transportation referred to in that subsection.

14—(1) The Registrar may provisionally register or enrol a person who has made an application under section 11 on being satisfied that the person meets the conditions referred to in section 10 (1). Provisional practising certificates.

(2) The Registrar may provisionally register or enrol a person who has made an application under section 12 on being satisfied that the person meets the requirements of subsection (5) of that section.

(3) Where the Registrar provisionally registers or enrolls a person, the Registrar shall issue to that person a provisional practising certificate for a period not exceeding 3 months and endorse that certificate with the category or categories of nursing in which that person is entitled to practise.

(4) Where a provisional practising certificate is issued under subsection (3), the person named in that certificate shall be registered or enrolled and entitled to practise in the category or categories of nursing endorsed on that certificate for the period referred to in subsection (3).

(5) Where the Board is satisfied that, before the expiration of the period referred to in subsection (3), a person does not meet the conditions referred to in section 10 (1) or the requirements of subsection (5) of section 12, the Board may, without prejudice to the application of the person to be registered or enrolled, cancel the provisional registration or enrolment and the provisional practising certificate issued under subsection (3).

15—(1) A practising certificate, while it is in force, entitles the person named in the certificate to practise in the category or categories of nursing endorsed on the certificate. Practising certificates.

(2) A practising certificate shall remain in force for a period of 12 months from the date specified in the certificate as being the date on which the certificate takes effect.

(3) Subject to subsection (4), a nurse shall not practise in a category of nursing other than a category of nursing endorsed on the practising certificate held by that nurse.

(4) Where the Board is satisfied that in a particular case—

(a) there is no nurse qualified to practise in a category of nursing referred to in paragraphs (b), (c), (d), or (e) of the definition of “category of nursing”; and

(b) nursing is required for the welfare of a patient, the Board may authorize a person entitled to practise in the category of nursing or general nursing to practise in that case for such period as the Board may determine.

(5) A nurse who contravenes subsection (3) is guilty of an offence and is liable on summary conviction to a penalty not exceeding 10 penalty units.

Renewals of
practising
certificates.

16—(1) The holder of a practising certificate may, within the period of 60 days before the practising certificate ceases to be in force, apply to the Board for the renewal of that practising certificate.

(2) An application for the renewal of a practising certificate shall—

(a) be in a form approved by the Board;

(b) be lodged with the Registrar; and

(c) be accompanied by the prescribed fee.

(3) On receipt of an application for the renewal of a practising certificate under subsection (2), the Board may—

(a) refuse the application; or

(b) grant the application.

(4) The Board shall not grant an application for the renewal of a practising certificate if the applicant is for any reason not entitled to be the holder of the practising certificate.

(5) Where an application for the renewal of a practising certificate is made before the date on which the practising certificate would, but for this subsection, have ceased to be in force and—

(a) the renewal is granted before that date, the practising certificate shall be in force for a further period of 12 months commencing on that date; or

(b) the renewal is not granted before that date and the application is not withdrawn before that date—

(i) the practising certificate shall be deemed to continue in force on and after that date until the renewal is granted or the application is withdrawn, whichever occurs first; and

(ii) on the grant of the renewal, the practising certificate shall be in force for a period of 12 months commencing on that date and the renewal shall be expressed to have taken effect on and after that date.

(6) Where the Board refuses an application for the renewal of a practising certificate, it shall—

(a) by notice in writing served on the applicant, inform the applicant of the refusal and of the grounds on which the refusal is based; and

(b) refund to the applicant the fee which accompanied the application.

PART IV

SUSPENSION AND CANCELLATION OF PRACTISING CERTIFICATES, REGISTRATIONS, AND ENROLMENTS

17—(1) A person may make a complaint in writing to the Board, or the Board may make a complaint on its own motion, with respect to possible danger to a patient or other person as a result of the state of health or physical or mental capacity of a nurse.

Power of Board to appoint committee for certain purposes.

(2) On receipt of a complaint made under subsection (1), or on a complaint made by the Board under that subsection, the Board may appoint a committee of assessors to determine the state of health or physical or mental capacity of the nurse to whom the complaint relates.

(3) A committee of assessors appointed under subsection (2) shall consist of 3 persons, one of whom shall be a nurse.

(4) For the purpose of making a determination pursuant to subsection (2), a committee of assessors appointed under that subsection may—

- (a) summon any person to appear before it; and
- (b) do all things it deems necessary to enable it to make that determination.

(5) A committee of assessors shall after making the determination in respect of which it was appointed by the Board pursuant to subsection (2), submit a report of its findings to the Board.

(6) On receipt of the report referred to in subsection (5), the Board may take such action as it thinks fit having regard to the welfare and safety of patients.

Suspension of registration, &c., in interests of public.

18—Where, in the opinion of the Board, it is necessary in the interests of the public to do so, the Board may suspend the registration or enrolment of, and any practising certificate held by, that nurse from such date and for such period, not exceeding 60 days, as may be specified in a notice referred to in section 40.

Exclusion or suspension from practices in places outside State.

19—(1) Where, as a result of any proceedings, a nurse has been excluded from the practice of nursing in any place outside the State (otherwise than for a specified period), the Board may—

- (a) cancel any practising certificate held by that nurse; and
- (b) cancel the registration or enrolment of that nurse.

(2) Where, as a result of any proceedings, a nurse has been excluded from the practice of nursing in any place outside the State for a specified period, the Board may—

- (a) suspend any practising certificate held by that nurse; and
- (b) suspend the registration or enrolment of that nurse, for the duration of that period.

Withdrawal, &c., of qualifications, &c.

20—Where a body or authority other than the Board withdraws, cancels, or revokes a qualification or certificate conferred or granted by it by virtue of the holding of which a nurse is registered or enrolled, the Board may—

- (a) cancel any practising certificate held by that nurse; and
- (b) cancel the registration or enrolment of that nurse.

21—Where, in the opinion of the Board, a nurse has procured registration or enrolment under this Act or the repealed Act by means of fraud, the Board may—

Cancellation of practising certificate, &c., on grounds of fraud.

- (a) cancel any practising certificate held by that nurse; and
- (b) cancel the registration or enrolment of that nurse.

PART V

DISCIPLINARY PROCEDURES

22—In this Part, “defendant” means a nurse on whom a notice is served under section 25.

Interpretation: Part V.

23—A nurse is guilty of misconduct in a professional respect if that nurse—

Professional misconduct.

- (a) contravenes or fails to comply with any provision of the regulations;
- (b) uses or advertises in any way a qualification or title relating to a competence to practise in a category of nursing that is not endorsed on any practising certificate held by that nurse;
- (c) is negligent or incompetent in the practice of nursing; or
- (d) acts in an improper manner in the practice of nursing.

24—(1) Any person may make a complaint to the Board that a nurse—

Complaints against nurses.

- (a) is not entitled to be registered or enrolled on the ground that—
 - (i) at the time that nurse applied for registration or enrolment, that nurse made a false or misleading statement; or
 - (ii) that nurse no longer has, or is no longer entitled to have, the diploma, certificate, or other academic qualification by virtue of which that registration or enrolment was made.
- (b) is unfit to practise in any category of nursing; or
- (c) is guilty of misconduct in a professional respect.

- (2) A complaint under subsection (1) shall—
- (a) be in writing; and
 - (b) contain particulars—
 - (i) of the matter complained of;
 - (ii) of the identity of the nurse against whom the complaint is made; and
 - (iii) the name of the person making the complaint.

Inquiries into complaints.

25—(1) Where the Board receives a complaint under section 24, or on its own motion makes a complaint, against a nurse, it shall, subject to subsection (3)—

- (a) hold an inquiry into the complaint;
- (b) fix a time and place for the holding of that inquiry; and
- (c) serve on that nurse a notice referred to in subsection (2).

(2) A notice served under subsection (1) (c) shall—

- (a) notify the defendant that the Board shall hold an inquiry into a complaint made against the defendant in respect of which the defendant is required to show cause why the complaint should not be dealt with under this Part;
- (b) give particulars of the complaint; and
- (c) specify the place and the date, being a date not less than 14 days after the date on which the notice is served, on which the inquiry shall be held.

(3) Where the Board is satisfied that a complaint made under section 24 is frivolous or vexatious, it shall dismiss the complaint.

(4) The Board may suspend the practising certificate of a nurse against whom a complaint has been made under section 24 until a determination is made by the Board under section 27.

Procedure at inquiries.

26—(1) At an inquiry held by the Board pursuant to section 25 the defendant may appear in person or may be represented by a legal practitioner or by any other advocate or agent.

(2) In holding an inquiry pursuant to section 25, the Board—

- (a) shall comply with the rules of natural justice but otherwise may conduct the inquiry in such manner as it thinks fit;
- (b) is not bound to observe the rules of law governing the admission of evidence but may inform itself of any matter in such manner as it thinks fit;
- (c) may allow the complainant or a person instructed by the Board to appear for the purpose of presenting and adducing evidence with respect to the matter of the complaint;
- (d) shall allow the defendant to adduce evidence in rebuttal of evidence referred to in paragraph (c); and
- (e) may receive in evidence any written submission made by the defendant.

(3) Division 2 of Part II of the *Evidence Act 1910* applies to an inquiry as if the Board were a board of inquiry referred to in section 14 of that Act.

(4) The Board may adjourn an inquiry from place to place and from time to time.

(5) A person who appears at an inquiry pursuant to this section is entitled to be paid such sums by way of reimbursement of expenses as the Board may determine.

27—(1) Where, after holding an inquiry pursuant to section 25, the Board finds—

Determination of Board after inquiry.

- (a) the defendant is guilty of misconduct in a professional respect;
- (b) the defendant is no longer entitled to be registered or enrolled on a ground specified in section 24 (1) (a);
- (c) the defendant is unfit to practise in any category of nursing; or
- (d) a disciplinary authority in a place outside the State exercising jurisdiction in accordance with a law of that place relating to the practice of nursing has made a finding that the defendant is guilty of professional misconduct in relation to the practice of the defendant in that place,

the Board may, subject to subsection (3), make any of the determinations specified in subsection (2) as it considers appropriate in the circumstances.

(2) For the purposes of subsection (1), the following determinations are specified:—

- (a) a determination suspending, or continuing the suspension of, any practising certificate held by the defendant for a period not exceeding 12 months;
- (b) a determination suspending, or continuing the suspension of, the registration or enrolment of the defendant for a period not exceeding 12 months;
- (c) a determination cancelling any practising certificate held by the defendant;
- (d) a determination cancelling the registration or enrolment of the defendant;
- (e) a determination imposing a fine not exceeding \$1 000;
- (f) a determination imposing on the defendant a condition, limitation, or restriction, subject to which the defendant may continue to practise in a category of nursing;
- (g) a determination cautioning or reprimanding the defendant.

(3) In the case of a complaint relating to a matter referred to in section 24 (1) (a) (ii), the Board shall make the determinations specified in subsection (2) (c) and (d).

(4) The Board shall notify its determination and the reasons for the determination under this section by notice in writing served on the defendant.

(5) A determination made by the Board under paragraphs (c), (d), and (e) of subsection (2) shall not take effect—

- (a) until the expiration of 14 days after service of the notice referred to in subsection (4); or
- (b) where the person has lodged an appeal under section 35 within the period referred to in paragraph (a), until the appeal is determined or withdrawn.

(6) Where a person fails to comply with a determination made by the Board under paragraphs (e) or (f) of subsection (2), the Board may suspend the practising certificate held by that person for a period not exceeding 12 months.

Evidence of facts
found in other
proceedings.

28—(1) Any finding of fact relating to the conduct of a nurse in any proceedings in a court (whether in this State or elsewhere) to which that nurse is a party is evidence of that fact in any proceedings under this Part.

(2) Where a qualification or certificate held by a nurse is withdrawn, cancelled, or revoked by the body or authority by whom it was conferred or granted, any finding of fact relating to the conduct of that nurse made in the proceedings as a consequence of which that qualification was so withdrawn, cancelled, or revoked that is notified to the Board by that body or authority is sufficient evidence of that fact in any proceedings under this Part.

PART VI

OFFENCES

29—(1) A person shall not—

- (a) take or use any name, title, designation, or initials proclaiming, indicating, or suggesting that the person is a nurse;
- (b) wear or use any badge prescribed for the use of nurses; or
- (c) publish, issue, or exhibit any advertisement stating or indicating to the public that the person is a nurse,

unless that person is a nurse and holds a current practising certificate.

(2) A person shall not practise nursing unless that person—

- (a) is registered or enrolled as a nurse and holds a current practising certificate; or
- (b) is entitled to practise as a nurse in this State pursuant to section 13.

(3) Subject to section 31, a person who is not a legally-qualified medical practitioner, a person who is not authorized by a legally-qualified medical practitioner, or a person who is not a nurse entitled to practise in the category of midwifery nursing, shall not attend a patient for purposes of a confinement unless that person is undertaking an approved course in that category of nursing.

(4) A person who contravenes the provisions of this section is guilty of an offence and is liable on summary conviction to a penalty not exceeding 10 penalty units.

Offences relating
to persons who
are not nurses.

Offences relating
to nurses.

30—(1) A nurse shall not—

- (a) refuse or neglect to obey any lawful order made by the Board under this Act and brought to the knowledge of that nurse;
- (b) wear or use any badge or bar as an indication of registration or enrolment other than a badge or bar approved or issued by the Board; or
- (c) subject to section 31, attend a patient for the purposes of a confinement or practise in the category of midwifery nursing unless that nurse is entitled to practise in that category of nursing.

(2) Subject to section 31, a nurse who is entitled to practise in the category of midwifery nursing shall not—

- (a) attend a patient for the purposes of a confinement;

, or

- (b) carry out the prenatal supervision of a patient,

except with the authority and under the responsibility of the legally-qualified medical practitioner who has the care and responsibility of that patient during the period of pregnancy preceding that confinement.

(3) A nurse entitled to practise in the category of midwifery nursing shall not employ as a substitute any other person who is not so entitled.

(4) A nurse who contravenes the provisions of this section is guilty of an offence and is liable on summary conviction to a penalty not exceeding 10 penalty units.

Exemptions in
emergencies.

31—(1) The provisions of sections 29 (2), 30 (1) (c), and 30 (2) do not apply to a person rendering assistance in a case of emergency.

(2) For the purposes of subsection (1), “a case of emergency” means a case requiring immediate attention and in which there is no legally-qualified medical practitioner, or nurse entitled to practise in the category of midwifery nursing, available, willing, or present to assist in that case.

False and
misleading
statements, &c.

32—(1) A person shall not, in any application, complaint, or submission under this Act, or in any document provided in support of such an application, complaint, or submission make a statement knowing or believing the statement to be false or misleading as to a material particular.

(2) A person who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a penalty not exceeding 10 penalty units.

(3) A person shall not—

- (a) utter or pass off, or attempt to utter or pass off, as true, a false, forged, or counterfeit certificate or other document;
- (b) falsely personate the person referred to in a certificate or document presented to the Board or in a practising certificate; or
- (c) make or cause to be made an entry in the register or roll, knowing or believing the entry to be false.

(4) A person who contravenes subsection (3) is guilty of an offence and is liable on summary conviction to a penalty not exceeding 30 penalty units or imprisonment for a term not exceeding 1 year.

33—(1) A person shall not—

Forgery, &c., of certificates.

- (a) forge, alter, or counterfeit a practising certificate;
- (b) dishonestly obtain a practising certificate;
- (c) utter or use, or attempt to utter or use, a forged practising certificate knowing or believing the practising certificate to be forged; or
- (d) advertise or publish, or permit to be advertised or published, the false fact of being the holder of a practising certificate or of being registered or enrolled.

(2) A person who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a penalty of 50 penalty units or imprisonment for a term not exceeding 2 years.

34—(1) Where a nurse—

Crimes, &c., and drugs, &c.

- (a) has been convicted in this State or elsewhere of—
 - (i) any crime or offence that, if it had been committed in this State, would have been a crime; or
 - (ii) an offence under a law prohibiting or regulating the possession, sale, use, supply, or other dealing in, any poison, drug, or similar substance;

(b) is guilty of such habitual drunkenness or addiction to a deleterious drug as, in the opinion of the Board, could render the nurse unfit to practise in any category of nursing; or

(c) has become liable to be detained under the *Mental Health Act 1963* in a hospital, being a hospital within the meaning of section 3 (1) of that Act,

the Board may take such action as is specified in subsection (2) as it thinks appropriate.

(2) For the purposes of subsection (1), the Board may—

(a) suspend—

(i) any practising certificate held by the nurse;
and

(ii) the registration or enrolment of the nurse,
for a period not exceeding 12 months; or

(b) cancel—

(i) any practising certificate held by the nurse;
and

(ii) the registration or enrolment of the nurse.

(3) Where under subsection (2) the Board suspends or cancels the practising certificate held by a nurse or the registration or enrolment of a nurse, the Board shall, by notice in writing served on the nurse inform the nurse of the suspension or cancellation.

(4) The notice of cancellation referred to in subsection (2), shall not take effect—

(a) until the expiration of 14 days after serving the notice;
or

(b) where the nurse has lodged an appeal under section 35 until the appeal is determined or withdrawn.

PART VII

APPEALS

35—A person aggrieved—

(a) by the refusal of the Board to grant an application for registration or enrolment under section 11 or section 12;

(b) by the refusal of the Board to renew a practising certificate under section 16;

(c) by any action taken by the Board under section 17, 18, 19, 20, 21, or 34; or

(d) by a determination of the Board under section 27, may, within 14 days after the service of a notice of such refusal, action, or determination, appeal to the Supreme Court.

36—(1) An appeal under section 35 shall be made in accordance with the Rules of the Supreme Court and shall be dealt with by way of rehearing. Hearing and determination of appeal under section 35.

(2) The Supreme Court, in deciding an appeal under section 35, may—

(a) in respect of an appeal under section 35 (a) or (b), confirm the refusal or order that the application for registration or enrolment or renewal of a practising certificate be granted; or

(b) in respect of an appeal under section 35 (c) or (d), confirm or quash the action taken or determination made by the Board, or substitute for that action or determination any other action or determination that the Board might have taken or made.

(3) The decision of the Supreme Court in respect of an appeal under section 35 is final and the Board shall give effect to the decision accordingly.

(4) The Board shall make in the register or roll such entries as may be necessary to give effect to a decision of the Supreme Court under subsection (2).

PART VIII

MISCELLANEOUS

37—Where—

(a) a practising certificate held by a nurse; or

(b) the registration or enrolment of a nurse in respect of a category of nursing,

is suspended for a specified period, that certificate or that registration or enrolment ceases to have effect during that period.

Effect of suspension.

Effect of
cancellation.

38—(1) Where the Board cancels the registration or enrolment of a nurse, it shall remove the name of that nurse from the register or roll, as the case may require.

(2) Where the Board cancels a practising certificate held by a nurse, it may fix a time before which that nurse is not eligible to make application to hold a practising certificate.

Restoration of
name to register
or roll.

39—(1) Where the name of a person has been removed from the register or roll, the Board may, on the application of that person, restore that name to the register or roll if it thinks it proper to do so.

(2) Where, pursuant to subsection (1), the name of a person is restored to a register or roll, that person is entitled to be issued with a practising certificate endorsed in the category or categories of nursing in which the person is qualified to practise.

(3) An application for the restoration of a name to the register or roll shall not be made—

(a) before the expiration of 12 months after the date of the removal; or

(b) before the expiration of 12 months after the date on which such an application was previously made.

(4) The Board may require a person making an application under this section to attend personally before the Board for the purpose of providing facts on which the application relies.

Notification of
suspension,
cancellation, &c.

40—Where—

(a) a practising certificate held by a nurse is suspended or cancelled; or

(b) the registration or enrolment of a nurse is suspended or cancelled,

the Board shall, by notice in writing, notify the suspension or cancellation and the grounds for that suspension or cancellation to—

(c) any authority or body outside the State by which that nurse is registered or enrolled or is entitled to be registered or enrolled as a nurse;

(d) the employer of that nurse; and

(e) that nurse.

Surrender of
practising
certificates.

41—(1) Where a practising certificate held by a nurse is suspended or cancelled, that nurse shall, within 7 days after the date of receipt of the notice referred to in section 40, surrender that practising certificate to the Board.

(2) A nurse who fails to comply with subsection (1) is guilty of an offence and is liable on summary conviction to a penalty not exceeding 10 penalty units.

(3) In a prosecution for failure to surrender a practising certificate as required under subsection (1), it is a defence to prove to the satisfaction of the court that the failure to comply with this section was due to the loss or destruction of that practising certificate.

(4) Where a nurse fails to surrender a practising certificate as required by subsection (1), that failure does not prejudice or affect the suspension or cancellation of the practising certificate.

(5) Where—

- (a) a practising certificate has been surrendered by a nurse under this section; and
- (b) the suspension or cancellation of that practising certificate has not been confirmed by a decision made by the Supreme Court pursuant to section 36,

the Board shall return that practising certificate to that nurse within 7 days of that decision.

42—A notice under section 40 notifying a nurse of the cancellation of the registration or enrolment of that nurse, or the cancellation of the practising certificate held by that nurse, shall not take effect—

Cancellation of registration, &c., not to take effect until appeal determined.

- (a) until the expiration of 14 days after the service of the notice; or
- (b) where the nurse has lodged an appeal under section 35, until the appeal is determined or withdrawn.

43—A document purporting to be a certificate signed by the Registrar and stating that a person specified in that certificate—

Evidentiary certificates.

- (a) is or is not, on a specified day or during a specified period—
 - (i) registered or enrolled; or
 - (ii) the holder of a practising certificate; or
- (b) is, on a specified day or during a specified period, a person whose—
 - (i) registration or enrolment; or
 - (ii) practising certificate, is suspended or cancelled,

is admissible in evidence in any legal proceedings (including an inquiry under Part V) and is evidence of the matters specified in the certificate.

Service of documents by Board.

44—Where, under this Act, the Board is required to serve a notice or document on a person, the document or notice may be served—

- (a) by delivering it personally to the person; or
- (b) by sending it by certified post to the last known place of residence or employment of that person.

Power of Board to rectify register and roll.

45—(1) Where—

- (a) the Board becomes aware that a nurse has died; or
- (b) a nurse requests in writing that the registration or enrolment of that nurse be cancelled, the Board shall cancel the registration or enrolment, and remove the name of that nurse from the register or roll, as the case requires.

(2) A request by a nurse under subsection (1) (b) shall be accompanied by the practising certificate or practising certificates held by that nurse.

(3) Where an entry in the register or roll has been incorrectly made, the Board may correct the entry and make any necessary corrections to any certificate held by a nurse to whom the entry relates.

Application of fees.

46—All fees and money received under this Act shall be paid into the Consolidated Fund.

Provision for expenses.

47—There shall be paid to the Board, out of money appropriated by Parliament for the purposes of the Board, such amounts as are payable in accordance with directions from time to time given by the Treasurer.

Regulations.

48—(1) The Governor may, on the recommendation of the Board, make regulations for the purposes of this Act.

(2) Without limiting the generality of subsection (1), the regulations may make provision for or in respect of—

- (a) the fees payable for the issue of badges and bars;
- (b) the design and issue of badges and bars;
- (c) the fees payable in respect of examinations held by the Board;

- (d) the requirements of education standards and health status to be met by persons wishing to begin approved courses in nursing and in each category of nursing;
- (e) the assessment of eligibility for registration and enrolment;
- (f) the conduct of examinations;
- (g) the conditions required for the conduct of approved courses in nursing and each category of nursing;
- (h) the fees payable in respect of registration certificates or enrolment certificates and the issue and renewal of practising certificates; and
- (i) the regulation, supervision, and restriction of the practice of nursing in each category of nursing.

(3) The regulations under this section may provide that it is an offence, punishable on summary conviction, for a person to contravene, or fail to comply with, any of the regulations and may provide in respect of any such offence for the imposition of a penalty not exceeding 50 penalty units and in the case of a continuing offence, a further penalty not exceeding 5 penalty units for each day during which the offence continues.

(4) The regulations under this section may be made subject to such conditions, or be made so as to apply differently according to such factors, as may be specified in the regulations, or according to such limitations or restrictions, whether as to time or circumstances or otherwise, as may be so specified.

49—The provisions set out in Schedule 2 have effect with respect to transitional provisions and savings.

Transitional and savings provisions.

50—The Acts specified in Schedule 3 are repealed.

Repeal.

SCHEDULE 1

Section 4

PROVISIONS WITH RESPECT TO MEMBERSHIP AND MEETINGS OF
NURSING BOARD OF TASMANIA

- Interpretation.** 1—In this Schedule, “member” means a member of the Board.
- Terms of office.** 2—(1) A member, other than a member referred to in paragraphs (c) and (g) of section 4 (2), shall be appointed for such term, not exceeding 3 years, as is specified in the instrument of his appointment.
- (2) A member, other than a member referred to in paragraphs (c) and (g) of section 4 (2), shall, if qualified, be eligible for re-appointment for such term or terms, not exceeding 3 years, as is specified in the instrument of his re-appointment.
- Provisions relating to members.** 3—(1) Where, by or under any Act, provision is made requiring the holder of an office to devote the whole of his time to the duties of his office, that provision shall not operate to disqualify him from holding that office and also the office as a member or from accepting and retaining any remuneration payable to a member under clause 4.
- (2) The office of a member shall not, for the purposes of any Act, be deemed to be an office of profit under the Crown.
- Remuneration of members.** 4—A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine, but such determination shall not apply in respect of an employee within the meaning of the *Tasmanian State Service Act 1984* without the approval of the Commissioner for Public Employment.
- Appointment of substitute to act during absence of chairman.** 5—(1) The Minister may appoint any person (including a member other than the chairman) to act in the office of the chairman or appoint any person to act in the office of a member other than the chairman while the chairman or that member, as the case may be, is absent from his office through illness or any other cause.
- (2) A member other than the chairman shall, for the purposes of subclause (1), be deemed to be absent from his office if he is acting in the office of the chairman pursuant to subclause (1).
- (3) A member shall, for the purposes of subclause (1), be deemed to be absent from his office if there is a vacancy in that office which has not been filled in accordance with clause 7.
- (4) No person shall be concerned to inquire whether or not any occasion has arisen requiring or authorizing a person to act in the office of a member, and all things done or omitted to be done by that person while so acting shall be as valid, and shall have the same consequences, as if they had been done or omitted to be done by that member.
- Vacation of office.** 6—(1) The office of a member becomes vacant—
- (a) when he dies;
- (b) if he becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors, or makes an assignment of his remuneration or estate for their benefit;

- (c) if he is absent from 3 consecutive ordinary meetings of the Board of which he is a member of which reasonable notice has been given to him, either personally or in the ordinary course of post, unless on leave granted by the Minister or, unless before the expiration of 4 weeks after the last of those meetings, he is excused by the Minister for his absence from those meetings;
- (d) if he becomes liable to be detained under the *Mental Health Act 1963* in a hospital, being a hospital within the meaning of section 3 (1) of that Act;
- (e) if he is convicted in this State of an offence which is punishable by imprisonment for 12 months or upwards, or if he is convicted elsewhere than in this State of an offence which, if committed in this State, would be a crime or an offence so punishable, or has been convicted, whether in this State or elsewhere, of a crime or offence for which he has been sentenced to imprisonment;
- (f) if he is convicted of an offence against this Act;
- (g) if he resigns his office by writing under his hand addressed to the Minister and the Minister accepts the resignation; or
- (h) if he is removed from office by the Minister under subclause (2).

(2) The Minister may remove a member from office for misbehaviour or incompetence.

(3) The Minister may remove from office a member if he is satisfied, having regard to the information supplied by the organization which nominated that member, that the member is no longer qualified to represent the organization on the Board and the Minister may appoint a person nominated by the relevant nominating organization to fill the office for the remainder of the term for which the member removed from office was appointed.

7—On the occurrence of a vacancy in the office of a member, the Minister may appoint a person to that vacant office for the balance of his predecessor's term of office. Filling of casual vacancies.

8—(1) No act or proceeding of the Board or of any person acting pursuant to any direction of the Board is invalidated or prejudiced by reason only of the fact that at the time when the act or proceeding was done, taken, or commenced, there was a vacancy in the office of a member. Validity of proceedings, &c.

(2) All Acts and proceedings of the Board or of any person acting pursuant to any direction of the Board are, notwithstanding the subsequent discovery of any defect in the appointment of any member or that any person was disqualified from acting as, or incapable of being, a member, as valid as if that member had been duly appointed and was qualified to act as, or capable of being, a member, and as if the Board had been fully constituted.

9—In any proceedings by or against the Board, unless evidence is given to the contrary, no proof shall be required of— Presumptions.

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

Convening of meetings of the Board.

10—Meetings of the Board may be convened by the chairman of the Board.

Procedure at meetings.

11—(1) Five members of the Board shall form a quorum at any duly convened meeting of the Board.

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

(3) A question arising at a meeting of the Board shall be determined by a majority of votes of the members of the Board present and voting, and in the event of an equality of votes, the matter stands adjourned to the next meeting of the Board at which, if there is an equality of votes, the matter shall be deemed to have been passed in the negative.

Chairman.

12—(1) The chairman of the Board shall preside at all meetings of the Board at which he is present.

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

General procedure.

13—The procedure for the calling of, and for the conduct of business at meetings of the Board shall, subject to any procedure that is specified in this Schedule, be as determined by the Board.

SCHEDULE 2

Section 49

TRANSITIONAL AND SAVINGS PROVISIONS

1—In this Schedule—

Interpretation.

“former Board” means the Nurses’ Registration Board constituted under section 4 of the repealed Act;

“repealed Act” means the *Nurses’ Registration Act 1952*;

“repealed Auxiliary Nursing Act” means the *Tasmanian Auxiliary Nursing Service Act 1949*.

2—(1) The register and roll kept under the repealed Act, shall, on and after the commencement of this Act, be the register and roll respectively for the purposes of this Act. Registration, &c.

(2) The register kept under the repealed Auxiliary Nursing Act shall, on and after the commencement of this Act, be part of the roll kept for the purposes of this Act.

(3) A person who, immediately before the commencement of this Act, was registered or enrolled under the repealed Act or registered under the repealed Auxiliary Nursing Act shall, on and after that commencement, be deemed to be registered or enrolled, as the case may be, under this Act.

(4) A person who, immediately before the commencement of this Act, was entitled to practise as a registered nurse or enrolled nurse under the repealed Act or as an Auxiliary nurse under the repealed Auxiliary Nursing Act shall, on and after that commencement, be deemed to be entitled to practise as a registered nurse or enrolled nurse, as the case may be, under this Act.

3—(1) Where an application for registration or enrolment has been made under the repealed Act or for registration under the repealed Auxiliary Nursing Act but has not been determined by the former Board before the commencement of this Act, the former Board shall determine that application as if this Act had not been enacted. Applications, inquiries, hearings, and appeals.

(2) Where an inquiry under section 14, or a hearing of a charge under section 15B, of the repealed Act has been commenced but has not been completed before the commencement of this Act, the former Board shall continue that inquiry or hearing, as the case may be, and exercise its powers under the repealed Act with respect to that inquiry or hearing as if this Act had not been enacted.

(3) Where an appeal under section 15D of the repealed Act has been instituted but has not been determined before the commencement of this Act, that appeal shall be continued and determined as if this Act had not been enacted.

4—A course of training at an institution approved by the former Board under the repealed Act or under the repealed Auxiliary Nursing Act shall, on and after the commencement of this Act, be deemed to be an approved course. Courses.

General savings
provision.

5—All acts, matters, and things done, or omitted to be done by, or done or suffered in relation to, the former Board immediately before the commencement of this Act, shall, on and after that commencement, have the same force and effect as if they had been done by, or suffered in relation to, the Board.

SCHEDULE 3

Section 50

ACTS REPEALED

Number and year of Act	Short title of Act
No. 37 of 1949	<i>Tasmanian Auxiliary Nursing Service Act 1949</i>
No. 10 of 1952	<i>Nurses' Registration Act 1952</i>
No. 71 of 1977	<i>Nurses' Registration Act 1977</i>
No. 56 of 1978	<i>Nurses' Registration Act 1978</i>
No. 51 of 1983	<i>Nurses' Registration Amendment Act 1983</i>

