

Explanatory Memorandum

Nurses and Midwives Bill 2005

INTRODUCTION

This Bill assists in delivering the State Government's commitment to National Competition Policy principles to review legislation regulating the nursing profession.

As part of the Western Australian State Government's obligations under the Competition Principles Agreement and its commitment to review antiquated health practitioner legislation, the Department of Health completed the *National Competition Policy Review of Western Australian Health Practitioner Legislation*, and the *Report of the Review of Western Australian Health Practitioner Legislation* after an extensive period of stakeholder consultation.

Cabinet approved the drafting of new health practitioner Bills based on the recommendations in these two review reports. The effect of this approval was that replacement legislation be developed for the *Nurses Act 1992* and for health professions regulated under the following Acts: *Dental Act 1939*, *Dental Prosthetists Act 1985*, *Optometrists Act 1940*, *Occupational Therapists Registration Act 1980*, *Osteopaths Act 1997*, *Physiotherapists Act 1950*, *Podiatrists Registration Act 1984* and the *Chiropractors Act 1964*. The result will be that all registration legislation for health professionals in Western Australia will be modelled on consistent, modern and standardised provisions.

As well as satisfying competition policy objectives, this Bill provides an updated version of an Act dating back to 1992, delivering more appropriate legislation for today's health professionals. It also provides an effective framework for the registration of midwives, acknowledging their key role as health professionals and provides for the Nurses Board to be renamed the Nurses and Midwives Board.

The Bill provides for effective registration of nurses and midwives. It controls the use of the titles enrolled nurse, registered nurse, nurse practitioner and midwife and seeks to prevent conduct from non-nurses and non-midwives that may be misleading to consumers and the general public.

The Bill appropriately provides the Nurses and Midwives Board with all the powers it needs to facilitate and promote public education and research in relation to the practice of nursing and midwifery and to promote and encourage the continuing education of nurses and midwives and increased levels of skill, knowledge and competence in the practice of nursing and midwifery.

Long Title

The long title sets out the purpose of the Bill, which is to provide for regulation of the practice of nursing and midwifery and registration of persons as nurses and midwives and to repeal the *Nurses Act 1992*, consequential amendments to various Acts, and for related purposes.

Part 1 – Preliminary

This part contains the title of the Act, the relevant commencement provisions and definitions of the terms used within the Bill.

Clause 1 Short Title

This clause provides the short title of the Act.

Clause 2 Commencement

Provides for the Act to come into operation on a day fixed by proclamation. The date the Act will commence will be dependent upon the making of any necessary rules and regulations.

Clause 3 Terms used in this Act

Contains the definitions required for the purposes of the Act. This clause provides for a definition of “midwifery”. It also provides that “nursing” does not include “midwifery”. This definition is not intended to define the scope of practice for midwives but to describe that practice that only registered midwives can undertake through their qualifications and training – that is to assist in childbirth. Enrolled nurses and registered nurses in some circumstances also undertake aspects of antenatal and postnatal care that are routinely undertaken by midwives and this is recognised by this definition. The definition of midwifery in the Bill does not in anyway impede the provision of antenatal and postnatal care by midwives.

The Board will review the Scope of Nursing Practice – Decision Making Framework in order to support the new legislation and to provide information in accordance with the Board’s functions under clause 10 to define parameters for scopes of practice for nurses and midwives. The Framework can then be considered for incorporation into a Code of Practice(s) under clause 100 of the Bill.

Clause 4 Application

Registered medical practitioners, carers performing their usual duties and nurses registered in other jurisdictions who practice nursing for the purpose of removal of tissue under the *Human Tissue and Transplant Act 1982* are excluded from the provisions of the Bill on the basis that they may perform aspects of nursing and in the case of medical practitioners are regulated in that practice by their own Act.

The application clause avoids duplication in registration and is consistent with similar exemptions in other health registration legislation.

Part 2 – Nurses and Midwives Board and committees

This part provides for the role of the current Nurses Board of Western Australia to be extended as a Nurses and Midwives Board. It sets out the composition of the Board's membership, functions and powers and the Board's relationship with the Minister.

Division 1 – The Board

Clause 5 Board established

The Nurses and Midwives Board is a body corporate. Clause 3 of Schedule 2 provides that the Board established under the Bill is a continuation of, and the same legal entity, as the existing Board created under the repealed Act. The Board is not an agent of the Crown.

Clause 6 Membership of the Board

The Board will consist of 13 natural persons to be appointed by the Minister. The composition of the Board has been broadened to include adequate legal and consumer representation.

Clause 7 Presiding member and deputy presiding member

This clause provides for the election of presiding member and deputy presiding member.

Clause 8 Constitution and proceedings

This clause provides that the constitution and proceedings of the Board are set out in Schedule 1.

Clause 9 Remuneration and allowances

The Minister may determine remuneration for a member of the Board or a committee on the recommendation of the Minister for Public Sector Management ensuring that members are paid in accordance with current Government policy.

Division 2 Functions and Powers

Clause 10 Functions

The Board advises the Minister on matters relating to the Act administers the scheme of registration and plays an active role within the profession in terms of maintaining standards and promoting education. The functions of the Board are set out in general terms.

Clause 11 Powers

The Board has powers necessary to carry out its functions under the Act. They are generic powers, similar to those of other registration boards.

Clause 12 Delegation by Board

This provision gives the Board the flexibility to delegate functions to Board members, committees or committee members or the registrar. This allows for effective administration on the part of the Board.

Division 3 Relationship of Board with Minister

Clause 13 Directions by Minister

The Minister can give written directions to the Board regarding its functions and administration. Any direction must be laid before both Houses of Parliament. The Minister cannot give directions in relation to a particular person, qualification, application, complaint, investigation or proceeding. There are similar provisions in other registration Acts.

Clause 14 Minister to have access to information

The Minister has access to and, where relevant, may make copies of Board information with the exception of information in a form that may disclose the identity of a person involved. The Board must comply with any request. There are similar provisions in other registration Acts.

Division 4 Committees

Clause 15 Committees

The Board will have the power to establish committees in addition to the complaints assessment committee and the impairment review committee. This will assist the effectiveness and efficiency of the Board. The Board can require the committee established under this provision to comply with directions and report on performance.

Clause 16 Provisions relating to committees

The Board may remove committee members and reconstitute or discharge a committee. Committees are to ensure that accurate records of meetings are kept. Persons with special knowledge or experience can be invited to act in an advisory capacity to committees on the Board's approval.

Division 5 Registrar and other staff

Clause 17 Registrar

The Board is to engage or employ a person to be the registrar to perform functions conferred under the Act or as directed by the Board. The Registrar acts as the main employee of the Board.

Clause 18 Other staff

The Board can engage or employ staff to provide such assistance, as the Board considers necessary in performing its functions.

Division 6 General

Clause 19 Duty not to make improper use of information

It is an offence if a member or former member of the Board or a committee makes improper use of any information acquired to gain an advantage for them self or any other person. There are similar provisions and penalties in other registration Acts.

Clause 20 Meetings and minutes of meetings

It is important that the actions of the Board are subject to public scrutiny to avoid the perception amongst members of the public that Boards act in the best interests of the members of the profession rather than in the best interests of the community as a whole. For this reason Board meetings are open to the public except in limited circumstances where confidentiality is appropriate.

Clause 21 Execution of documents by the Board

The Board executes a document if it is signed on behalf of the Board by authorised person(s) and the common seal of the Board is affixed. The protocol for affixing the common seal is specified.

Part 3 – Finance and Reports

Part 3 describes the funds of the Board, how they may be applied, and the requirements relating to accounts and reports.

Clause 22 Funds of the Board

Clause 21 describes what constitutes the funds of the Board and specifies for what purposes they may be applied. The funds may be used for any purpose that enables the Board to perform its functions or to carry out the objectives of the Act. The Board derives its operating revenues from fees paid by registered psychologists.

Clause 23 Accounts

The Board is to keep accounts and records and prepare financial statements in accordance with Australian Accounting Standards.

Clause 24 Audit

Accounts and financial statements are to be audited at least once a year by a registered company auditor approved by the Minister.

Clause 25 Annual report and other reports

The Board is to submit to the Minister an annual report of its proceedings along with a copy of its financial statements and the auditor's report of those statements. The Board is to report on matters that have been referred to the State Administrative Tribunal.

Part 4 – Registration of nurses and midwives

Part 4 provides for the registration of natural persons and the keeping of the register.

Division 1 Registration

Clause 26 Natural persons may be registered

This clause ensures that only natural persons will be registered.

Clause 27 Registration as an enrolled nurse, midwife or registered nurse

Clause 27 ensures that only applicants who are fit to practise and who possess appropriate levels of qualifications and experience can be registered as enrolled nurses, midwives or registered nurses. The Board may impose such conditions on registration under this clause as are reasonably required to ensure the competent and safe practice of nursing and midwifery.

Clause 28 Registration as a nurse practitioner

Clause 28 ensures that only applicants who are registered nurses or meet the requirement for registration as a registered nurse, are fit to practise and who possess appropriate levels of qualifications and experience can be registered as nurse practitioners.

Clause 29 Provisional registration

The Board may provisionally register an applicant for 3 months while awaiting the production of evidence to satisfy the Board that the applicant meets the requirements of clause 26. The Board may impose conditions on the applicant as are reasonably required to ensure the competent and safe practice of nursing or midwifery. Provisional registration can be cancelled.

Clause 30 Conditional registration at the discretion of the Board

This clause gives the Board the flexibility to provide a person who is fit to practice with registration for a period of up to 12 months, if the Board is satisfied of certain requirements. For example, conditional registration facilitates persons who are visiting lecturers and academics eminent in the field of nursing or midwifery that need to practice nursing or midwifery in order to teach it. Conditions may be imposed, revoked or varied. Conditional registration can be cancelled at any time.

Clause 31 Registration of Specialists

This clause reflects the current practice of the Board in providing recognition for registered nurses who hold recognised qualifications in nursing and who are eligible to register those qualifications subject to the Board's approval. Branches of nursing, such as mental health nursing, are to be prescribed in the regulations, together with the requirements for registration. The Board can impose conditions on registration as a specialist.

Clause 32 Professional indemnity insurance

The Board may require that a person has professional indemnity insurance that meets minimum terms and conditions approved by the Board as a condition of registration under clause 27, 28 29 or 30. This is important having regard to the interests of health consumers.

Clause 33 Application

Applications for registration are to be made in writing in a form approved by the Board. Application fees are prescribed by the regulations and must accompany the application. The Board may require further information and attendance before the Board in respect of an application.

Clause 34 Effect of registration

This clause provides that, subject to this Act, registration confers the following:

- The right of an enrolled nurse to practice nursing under the professional direction of a midwife, nurse practitioner or registered nurse under the title “enrolled nurse”;
- The right of a midwife to practice midwifery under the title “midwife”;
- The right of a nurse practitioner to carry on at a designated area the practice of nursing as a nurse practitioner under the title “nurse practitioner”.

Clause 35 Duration of registration

Registration has effect for the period as prescribed in the regulations and may be renewed in accordance with the regulations.

Clause 36 Renewal of registration

Renewal of registration occurs on an annual basis, subject to a renewal fee. If fees are not paid in accordance with this clause, registration ceases and the person’s name is removed from the register. Payment of fees in arrears entitles a person to registration renewal and restoration of their name to the register.

For the purposes of disciplinary proceedings only, a person whose name is restored to the register after payment of fees in arrears will be taken to have been registered during the period their name was removed from the register.

Clause 37 Application for registration by a person whose registration has been cancelled under section 81(1)(i)

If a person’s registration is cancelled and their name removed from the register by an order of the State Administrative Tribunal they are considered to be a disqualified person. A disqualified person may not apply for registration for a period of 2 years from when their registration was cancelled.

The Board must apply to the State Administrative Tribunal before granting an application for registration by a disqualified person.

Division 2 The register

Clause 38 The Register

A register of psychologists is to be maintained by the Board and is to record details specified in this clause, including the particulars of the person's qualifications and any conditions applying to the registration.

Clause 39 Inspection of register

The register is available for inspection by the general public. A fee is payable for a certified copy of a part of the register. The register may be published on an Internet website maintained by the Board.

Clause 40 Certificate of registration

This clause provides for the Board to issue certificate in an approved form that, when issued serves as evidence of registration.

Clause 41 Voluntary removal from register and cancellation of registration

A person's name may be removed from the register upon request in writing. The Board will not approve the removal from the register where a registered person is the subject of an investigation under the Act or a proceeding before the State Administrative Tribunal.

Clause 42 Removal of name and cancellation of registration of person in certain circumstances

This clause gives the Board the power to ensure that all registered nurses and midwives maintain current knowledge and skills at an approved level. The Board cannot cause the removal from the register of the name of a nurse or midwife who has not practised nursing or midwifery for 5 years or more if that person has maintained current knowledge and skills.

Clause 43 Effect of removal of name from register

If the name of a person is removed from the register the person ceases to be registered.

Division 3 Notifications to Board

This section requires a nurse or a midwife to notify the Board of changes in his or her status and imposes a penalty for a failure to do so within the prescribed time limit.

Clause 44 Change of address

Written advice must be provided to the Board no later than 30 days after any change of address that is recorded in the register. This is to ensure timely accuracy of the register.

A penalty of a fine of \$1,000 is provided.

Clause 45 Loss of qualifications

If a registered person loses the qualifications that enabled them to be registered under this Act they must notify the Board in writing no later than 90 days after the loss. This will ensure all registered persons are appropriately qualified at all times and any person who has lost the required qualifications can immediately be removed from the register under clause 40.

A penalty of a fine of \$1,000 is provided.

Clause 46 Insolvency

To comprehensively carry out its functions the Board must be informed of developments in the industry, including the insolvency of registered persons. This section is to keep the Board informed so that the Board can satisfy itself that financial difficulties do not have a negative impact on the standard and level of service provided by a nurse or midwife.

A penalty of a fine of \$5,000 is provided.

Clause 47 Civil or criminal proceedings

The Act lists a number of disciplinary matters (refer clause 49). This clause is designed to ensure the Board is informed and kept informed of matters that may constitute disciplinary matters.

A penalty of a fine of \$5,000 is provided.

Clause 48 Information about professional indemnity insurance

If professional indemnity insurance is a condition of a person's registration, written advice must be provided, within 30 days, if the insurance is cancelled or the terms or conditions are changed.

A penalty of a fine of \$1,000 is provided.

Part 5 – Disciplinary and impairment matters

This Part provides the basis for professional conduct of psychologists and a foundation for disciplinary proceedings.

Division 1 Preliminary

Clause 49 Disciplinary matters

Causes for disciplinary action are specified. These include contravention of conditions on the person's registration, breaches of the Act, acting carelessly, incompetently or improperly or the provision of excessive or unnecessary services.

Clause 50 Impairment matters

This clause defines what constitutes an impairment matter. Impairment, in relation to health practitioner legislation, occurs when a practitioner is affected mentally or physically or by the use of drugs or alcohol to such an extent that their ability to practise is affected.

Division 2 Committees

Clause 51 Complaints assessment committee

The role of the complaints assessment committee is to process complaints at first instance. This structure, while maintaining the Board's representation and accountability, will permit the Board to carry out its disciplinary functions in an objective manner, freed from the time consuming task of initial assessment of complaints.

Clause 52 Impairment review committee

Taking into account the trend in other jurisdictions and the purpose of impairment procedures it is considered appropriate that separate procedures are provided for in health practitioner registration legislation to assess matters of a disciplinary nature and matters of impairment that affect a practitioner's ability to practise.

The impairment review committee investigates complaints referred to it by the complaints assessment committee or the Board. Specific provision is made for the appointment of a medical practitioner to the impairment review committee.

Clause 53 Deputy member of the complaints assessment committee or the impairment review committee

The Board may appoint deputy members of the complaints assessment committee and the impairment review committees.

Division 3 Complaints

Clause 54 Complaints

This clause permits any person to make a complaint to the complaints assessment committee. Additionally, the Director of the Office of Health Review may refer a complaint to the committee. It also provides for the complaints assessment committee to investigate where a disciplinary or impairment matter may have occurred, or exists, in the absence of a complaint.

Clause 55 Complaints assessment committee to determine action required

This clause empowers the complaints assessment committee to make a preliminary assessment of a complaint and to:

- refer it to the Board for an interim order;
- reject the complaint if it is frivolous, vexatious or without substance (refer clause 54);
- investigate the complaint;
- refer the complaint to the impairment review committee;
- if the complaint relates to a failure to comply with an undertaking given to the Board, to recommend to the Board that it make an allegation to the State Administrative Tribunal.

The complaints assessment committee is responsible for “sifting” complaints, ensuring that Board time is not consumed by this task and distancing the Board from the preliminary investigations so that the Board is able make appropriate interim orders (refer clause 57).

Clause 56 Complaints assessment committee may reject certain complaints

This clause sets out the circumstances in which the complaints assessment committee can reject a complaint and notification requirements if a complaint is rejected.

Division 4 – Summary orders of Board

Clause 57 Interim orders by Board

If an activity involves an imminent risk to the physical or mental health of a person the Board may make an interim order for the nurse or midwife to cease the activity or place an interim restriction on the practice. An interim orders may be for a period of up to 30 days. An order must advise that within 14 days of making the order, the Board will revoke the order or make an allegation about the matter to the State Administrative Tribunal.

The Board may deal with a complaint, even though the impairment review committee or the complaints assessment committee or the Office of Health Review is already handling the same or a similar complaint.

Clause 58 Complaint dealt with summarily to be referred to the State Administrative Tribunal

This clause provides that within 14 days of making an order under clause 54, the Board will revoke the order or make an allegation about the matter to the State Administrative Tribunal. The Tribunal may, in addition to any other order it may make, affirm or revoke or extend the period of application for an order under clause 54.

Clause 59 Complaint not dealt with summarily to be referred to relevant committee

If the Board does not deal with a complaint summarily (under clause 57), the complaint is to be referred to the complaints assessment committee or the impairment review committee.

Division 5 – Disciplinary matters

Clause 60 Investigation and recommendation

On completion of an investigation the complaints assessment committee is to make a recommendation to the Board regarding the complaint. The complaints assessment committee may recommend a range of options to the Board in dealing with the complaint. The options are that the Board make a summary order; provide a copy of the complaint to the Director of the Office of Health Review; attempt to settle the matter by conciliation; caution or reprimand or accept an undertaking from the person the subject of the complaint; make an allegation to the State Administrative Tribunal or take no further action.

Clause 61 Role of the Board

The Board is to consider the recommendation of the complaints assessment committee and can act on the recommendation or alternatively choose another option that the complaints assessment committee could have recommended under clause 60. The Board is not to attempt conciliation unless it is satisfied that the matter can be dealt with informally.

Clause 62 Alternative to making an allegation to the State Administrative Tribunal

If the Board decides not to make an allegation to the State Administrative Tribunal, and the nurse or midwife who is the subject of a complaint chooses not to have the matter dealt with by the State Administrative Tribunal, this clause enables the Board to exercise a summary jurisdiction in dealing with less serious disciplinary matters. The Board can:

- amend the register in relation to their particulars;
- require an undertaking in relation to future conduct or to comply with conditions;
- caution or reprimand;
- order a penalty not exceeding \$2500.

An order can be made for the nurse or midwife who is the subject of the complaint to pay costs and expenses incidental to the proceedings, recoverable as a debt due to the Board. Written notice, with short particulars, of any decision in this clause must be provided to both the person making a complaint and the person who is the subject of the complaint.

Division 6 – Impairment matters

Clause 63 Request by nurse or midwife for imposition of condition

A nurse or midwife who believes that his or her ability to practice is affected by an impairment (refer clause 50 for definition of impairment matter) may ask the Board to impose a condition on their registration. If the Board and the nurse or midwife does not agree on the condition to be imposed, the Board is to refer the matter to the impairment review committee.

Clause 64 Revocation of condition

This clause allows the revocation of a condition imposed on registration that has been requested by a nurse or midwife if the Board is satisfied that the person's ability to practice is no longer affected by the impairment.

Clause 65 Investigation

The impairment review committee is to investigate a complaint referred to it.

Clause 66 Nurse or midwife to be notified about investigation

The impairment review committee must give written notice to a nurse or midwife to whom the complaint relates. The notice must advise of the nature of the impairment to be investigated and provide a summary of the effect of the impairment review processes under the Act.

The impairment review committee can request the nurse or midwife to agree to undergo an examination relating to the impairment matter.

Clause 67 Examination

If the nurse or midwife agrees to undergo an examination, the person is to be examined by a medical practitioner agreed on by the impairment review committee and the nurse or midwife. If the committee and the nurse or midwife are not able to agree, then the Board is to appoint a medical practitioner. The Board is to pay for the examination.

If the nurse or midwife does not agree to the examination, or does not undergo the examination within the agreed time, the impairment review committee is to recommend to the Board that an allegation be made to the State Administrative Tribunal.

Clause 68 Report of examination

The examining practitioner must provide a report of the examination to the impairment review committee and the committee is to provide a copy of the report to the practitioner within 7 days of receipt of the report.

If, in the opinion of the committee, the disclosure of the report's contents may adversely affect the mental welfare of the practitioner, the report is to be provided to a medical practitioner or peer psychologist nominated by the practitioner, or selected by the impairment committee in the absence of a nomination.

The psychologist may make written representations to the impairment review committee with respect to the report within 7 days of the report being provided by the committee.

Clause 69 Role of the impairment review committee

The impairment review committee is to decide whether further action should be taken in respect of a matter referred to it. If the committee decides that further action should be taken the committee is to request that the nurse or midwife consent to the further action. The action that the committee may request the nurse or midwife consent to is:

- imposition of conditions on registration;
- suspension from practice for up to 2 years or
- to undergo counselling specified by the committee.

If the committee decides that no further action should be taken, it is to advise the Board, the complainant (if there is one) and the nurse or midwife in writing.

Clause 70 Recommendation

If the nurse or midwife does not consent to a request in clause 69 within 10 days of the request being made, the impairment review committee is to recommend to the Board that an allegation be made to the State Administrative Tribunal within 10 days. If the nurse or midwife consents to the further action requested by the committee, the committee is to recommend that the Board take the action to which the nurse or midwife consented. A recommendation from the committee to the Board must be in writing and set out details of the committee's investigation.

Clause 71 Role of the Board

On consideration of the recommendation of the impairment review committee the Board can decide to:

- not take any action;
- take action to which the nurse or midwife consented following a request under clause 66;
- make an allegation to the State Administrative Tribunal.

The Board must give written notice of its decision and the reasons for the decision to the nurse or midwife and the complainant (if any) within 7 days.

Division 7 – Investigator’s role and powers

Clause 72 Interpretation

This clause defines “appointing body” as the Board or the complaints assessment committee that appoints an investigator.

Clause 73 Investigator

This clause provides that the Board or the complaints assessment committee may appoint a person to investigate a complaint and report to the Board or committee. An investigator is to have qualifications prescribed by the regulations that may relate to educational qualifications and/or practical experience. The appointing body is to issue a certificate of appointment to the investigator appointed, which is evidence in any court of the appointment.

Clause 74 Report of investigator

An investigator must, within a period required by the Board or the complaints assessment committee, prepare a report on the investigation and provide a copy of the report to the Board or the complaints assessment committee. The investigator must return the certificate of appointment to the Board or the complaints assessment committee at the time of providing the report.

Clause 75 Powers of investigator

This clause outlines the powers of an investigator for the purposes of an investigation. It gives the investigator the power to fully investigate complaints. An investigator may enter and inspect premises in accordance with a warrant issued under clause 77, require documents or things to be provided and inspect documents and things and copy documents. Document is defined in clause 3 as including any tape, disc or other device or medium on which information is recorded or stored. The clause provides for the circumstances under which an investigator may require the production of documents or require a person to give information or answer questions.

Clause 76 Warrant to enter premises

If the Board is satisfied an investigator has reasonable grounds for believing entry to a premises is necessary to substantiate a complaint that may involve a threat to the physical or mental health of a person the investigator can apply to a magistrate for a search warrant. The application for a search warrant must include a notice in writing from the Board stating that

the Board has determined that the investigator has reasonable grounds for the application. Information given to the magistrate must be verified on oath or affirmation, or by affidavit.

Clause 77 Issue of warrant

This clause authorises a magistrate to issue a warrant if satisfied that a warrant is necessary for the purpose outlined in clause 73. A warrant authorises the investigator to enter and inspect premises, to require the person on the premises to answer the questions or produce documents or other things concerning the investigation, and to inspect and copy documents and other things produced. The purpose and name of the person to whom the warrant is issued and a description of the premises that may be entered must be stated in the warrant. The magistrate must make a record of the particulars relied on to justify the issue of the warrant.

Clause 78 Execution of warrant

A warrant must be produced by the person executing it, if asked by the occupier or person in charge of the premises. A warrant ceases to have effect one month after its issue, unless withdrawn or executed earlier.

Division 8 – Conciliation

Clause 79 Conciliation process

Assisted communication between the complainant and the respondent can often resolve complaints in an informal and inexpensive way. If the Board considers a disciplinary matter is appropriate to be resolved by conciliation it can refer the complaint to the complaints assessment committee for conciliation.

The complaints assessment committee can arrange conferences between the parties, give advice and make recommendations to assist in reaching an agreement and require the appearance of the parties before the committee. Conciliation conferences are to be presided over by a person appointed in accordance with regulations.

If the parties resolve the complaint by conciliation the Board can, give effect to the negotiated outcome. Orders made by consent can include any action that may be ordered by the State Administrative Tribunal and are binding on the parties.

Evidence of things lawfully said or done during the conciliation process are not to be used in relation to further consideration of the complaint by the Board or in subsequent civil proceedings.

Clause 80 Action if conciliation fails

This clause provides that if agreement is not reached or the conciliation is not progressing satisfactorily the Board can resume control of the conduct of a complaint.

Division 9 – Role of State Administrative Tribunal

Clause 81 Powers of the State Administrative Tribunal on dealing with a disciplinary matter

This clause provides that the State Administrative Tribunal has jurisdiction to deal with disciplinary matters against a registered person on an allegation made by the Board. The SAT will in general hear and determine more serious matters. The SAT has a wider range of penalties and orders available to it. The SAT may decline to make any order or may make do any of the following:

- order amendment of particulars entered in the register;
- caution or reprimand the practitioner;
- require the provision of further patient services at no cost to the patient or a reduction or refund of fees in relation to services provided to a patient (this would only apply in a fee for service arrangement);
- impose conditions on the registration;
- require the practitioner to complete education, training or professional development or to practice under supervision for a specified time;
- require the person to obtain and implement advice in relation to the person's practice of nursing or midwifery;
- impose a fine of up to \$25 000;
- order the cancellation of registration and removal of name of the practitioner from the register;
- order the person suspended from practice for up to 2 years.

If the person was registered when the alleged disciplinary matter occurred, but is no longer registered, the SAT may caution or reprimand the person, require payment for further services to be provided to a patient or reduce or refund fees in respect of a service provided (in a fee for service arrangement), or impose a fine.

Clause 82 Powers of the State Administrative Tribunal on dealing with an impairment matter

This clause provides that the SAT has jurisdiction to deal with impairment matters against a registered person on an allegation made by the Board. The SAT may decline to make an order or impose a condition of registration, require the practitioner to undergo medical treatment or counselling or order that the person be suspended from practice either generally or in relation to some aspect of practice for up to 2 years.

The SAT may determine that an allegation in respect of an impairment matter should be dealt with as a disciplinary matter.

Division 10 – Miscellaneous

Clause 83 Suspension

This clause provides that if a person is suspended from practice, they are regarded as not being registered during the period of suspension. The Board may revoke a suspension order either completely or in part, but cannot revoke a suspension that was imposed by the State Administrative Tribunal, without the approval of the SAT.

Clause 84 Costs and recovery

This clause provides that the Board can order a respondent to pay the Board's expenses in relation to a complaint. Any costs or expenses are a debt due to the Board. The Board may in exceptional circumstances pay to a respondent against whom there has been no adverse finding, the costs or part of the costs incurred by that person.

Part 6 – Offences

Part 6 specifies conduct by non-nurses and midwives that constitute an offence under the Act. It deals with the provision of false or misleading information by applicants for registration and in relation to compliance with provisions in the Act and also with the obstruction of the investigatory process.

Clause 85 Persons who may practise nursing or midwifery or a specialty

This clause restricts the practice of nursing, midwifery and specialties to persons who are registered. Students are exempted under clause 87.

A penalty of a fine of \$5,000 and a daily penalty of \$200 is provided for a first offence. Those penalties are doubled for a second or subsequent offence.

Clause 86 Persons who may be employed or engaged to practise nursing or midwifery or a specialty

This clause prohibits persons from employing or engaging persons to practise nursing, midwifery or a specialty unless that person is a registered (or a student under clause 87).

A penalty of a fine of \$5,000 and a daily penalty of \$200 is provided for a first offence. Those penalties are doubled for a second or subsequent offence.

Clause 87 Exceptions to sections 85 and 86

This clause provides that students and persons who employ or engage nurses and midwives to practice are exempted from the operation of clauses 85 and 86.

Clause 88 Use of titles or pretending to be registered

This clause provides protection of the titles “enrolled nurse”, “midwife“, “nurse practitioner”, “registered nurse” or a title under which a specialty may be practised. A person who is not registered is prohibited from advertising or holding out that the person is registered or entitled to practice using any of these titles.

A penalty of a fine of \$2,500 and a daily penalty of \$100 is provided for a first offence. Those penalties are doubled for a second or subsequent offence.

Clause 89 Name in which practice may be carried on

This clause provides that a nurse or a midwife must not carry on the practice of nursing in any other name other than the name that is recorded in the register, without the written consent of the Board.

Clause 90 Unlawful delegation by registered person

This clause prohibits the delegation of nursing care to unregulated care providers, unless authorised by the rules.

Clause 91 Undue influence

This clause provides for an offence for inducing a practitioner to do anything in the course of practising nursing or midwifery that would constitute a disciplinary matter.

A penalty of a fine of \$5,000 for an individual or \$10,000 for a body corporate is provided.

Clause 92 Failure to comply with disciplinary action

This clause provides for an offence of failing to comply with an order of the Board made in relation to a disciplinary matter.

A penalty of a fine of \$5,000 for an individual or \$10,000 for a body corporate is provided.

Clause 93 False or misleading information

This clause provides that it is an offence to make false or misleading statements or provide false or misleading information in relation to an application, compliance with a requirement to give the Board or register information, or attempt at conciliation under the Act.

A penalty of a fine of \$24,000 or two years imprisonment is provided.

Clause 94 Offences in relation to investigation

This clause provides that it is an offence for a person not to give information, answer questions or produce documents or things if required to do so by an investigator appointed by the Act. It is also an offence to provide false or misleading information. A number of defences are provided covering failure by the investigator to comply with procedural requirements.

A penalty of a fine of \$5,000 for an individual or \$10,000 for a body corporate is provided.

Clause 95 Obstruction of investigator

This clause provides for an offence for obstructing an investigator in the exercise of his or her powers.

A penalty of a fine of \$5,000 or \$10,000 for a body corporate is provided.

Clause 96 Assistance to execute warrant

This clause provides that all reasonable assistance is to be provided to investigators executing a warrant by a nurse or midwife, his or her staff, employers or other persons with whom he or she practices at premises named in warrants.

A penalty of a fine of \$2,5000 or \$10,000 for a body corporate is provided.

Clause 97 Surrender of certificate

Where a person's registration is cancelled or their practice suspended, the person is to surrender their certificate of registration to the Board within 14 days.

Clause 98 Incriminating information, questions, or documents

During the course of an investigation, a person is not excused from answering a question or providing a document or things because it may incriminate the person. However, an answer given, or a document or thing produced is not admissible in evidence in civil or criminal proceedings other than proceedings for providing false or misleading information to an investigator appointed under the Act.

Clause 99 Legal professional privilege

This clause protects the rights of a person to refuse to answer a question, provide information or produce a document or other things in respect of which legal professional privilege is claimed.

Part 7 – Codes of practice, rules and regulations

Part 7 provides for the making of codes of practice and for rules and regulations necessary for giving effect to the Act.

Clause 100 Codes of practice

This clause provides that the Board may, with the approval of the Minister, issue codes of practice. Codes of practice contribute to the protection of the public by promoting standards of practice and conduct. This is clearly relevant to the Board's registration and disciplinary proceedings. The codes of practice may adopt the provisions of other publications.

A breach of a code of practice does not itself constitute grounds for disciplinary action against a nurse or midwife but such a breach may be taken into consideration by the Board in determining questions that arise in respect to disciplinary proceedings. A code of practice is to be published in the *Gazette*, tabled in Parliament and subject to disallowance procedures.

Clause 101 Rules

The Board, with confirmation of the Governor, may make rules as permitted by the Act, and in particular the rules may prescribe training and qualifications for persons to be registered and, evidence of qualifications that will be recognised by the Board and regulate the holding of examinations, the practice of nursing and midwifery, and advertising by nurses and midwives.

Rules are subsidiary legislation and must be published in the *Gazette*, tabled in Parliament and subject to disallowance procedures.

Rules may provide an offence contravention of a rule with a penalty of up to \$5,000.

Clause 102 Regulations

The Governor may make regulations for all matters necessary to give effect to the Act and for any matter on which the Board may make rules (refer clause 101). Such purposes include, but are not limited to:

- regulating the conduct of the business of the Board and committees;
- making provisions relating to registration, including applications;
- maintaining the accuracy of the register;
- regulating the issue, display and use of certificates of registration;
- regulating the manner of making complaints;
- regulating the conduct of investigations;
- regulating conduct of conciliation conferences including the appointment of persons to preside at conciliation conferences;
- prescribing fees;
- prescribing returns and notices provided to the Board;
- providing that information supplied to the Board may be required to be verified by statutory declaration.

Where a regulation is inconsistent with a rule, the regulation prevails to the extent of the inconsistency.

Regulations may provide an offence for contravention of a regulation with a penalty of up to \$5,000

Clause 103 Forms

This clause provides that forms may be either prescribed by regulation or rules, or approved by the Board.

Part 8 – Miscellaneous

Part 8 provides for miscellaneous items such as legal proceedings, liability of officers of a body corporate, review of the Act and repeal of the Act and rules.

Clause 104 Protection

This clause provides protection against an action in tort for a person carrying out a function under the Act in good faith. This protection is also extended to the Crown. Persons involved in investigations of complaints under the Act have the same protection and immunity as if the matter was before the Supreme Court.

Clause 105 Notice of decision to be given

This clause provides that for specified decisions the Board is to make a record of the grounds on which the decision was made and to provide written notice of the decision and the grounds for the decision to the person to whom the decision relates. The decisions to which this requirement relates are decisions to refuse registration, to place conditions on registration or to remove a person's name from the register (refer clauses 26, 27, 28, 29, 30 or 35).

Clause 106 Review

This clause provides that persons may apply to the State Administrative Tribunal for a review of a decision by the Board when registration is refused or an interim or summary order of the Board is made.

Clause 107 Publication of proceedings etc.

This clause protects the Board, members and staff of the Board and committees, registration authorities in other States and journalists who communicate or publish findings, reasons or decisions of the Board, a committee or the SAT in good faith.

The Board may publish or give notice of a finding, reason or decision to other specified bodies that have an interest in the matter.

Clause 108 Legal proceedings

This clause sets out provisions relating to proceedings for offences under the Act. All offence proceedings under the Act are to be heard in a court of summary jurisdiction constituted by a magistrate.

This clause also provides for certain documentation about registration to be evidence of matters included in the documentation and for the presumptions in relation to the signature of notices and appointment signed on behalf of a complaints assessment committee or impairment review committee.

Clause 109 Liability of certain officers of body corporate: offences

This clause deals with the relationship between the body corporate and officers of the body corporate in relation to offences under the Act. Officers of a body corporate have the same responsibilities as a body corporate unless an offence was committed without the officer's consent or if the officer has taken all reasonable steps to prevent the commission of the offence.

Clause 110 Review of Act

This is a standard clause for all new legislation. The Minister is to review the operation of the Act in five years from its commencement to determine the effectiveness and continuation of the Board and any other matters relating to the effectiveness of the Act.

Clause 111 Nurse Act 1992 repealed

This clause provides for the repeal of the *Nurses Act 1992*.

Clause 112 Nurses Rules 1993 repealed

This clause provides for the repeal of the *Nurses Rules 1993*. As the rules will need to be significantly changed in accordance with the new Act, the current rules will be repealed and replaced new rules as required.

Clause 113 Transitional and savings provisions

This clause is self-explanatory.

Clause 114 Consequential amendments

This clause is self-explanatory.

Schedule 1 – Constitution and proceedings of the Board

Schedule 1 presents general provisions in relation to the proceedings of the Board such as terms of office for Board members, deputy members, position vacancy, resignation or removal of members, election of chairperson, calling of meetings and meeting quorums, voting, minutes, and Board committees.

Division 1 – General provisions

Clause 1 Term of Office

Board members are to hold office for three years, not exceeding more than 9 years consecutively, unless approved by the Minister for special reasons.

Clause 2 Functions of deputy presiding member

This clause provides for the circumstance in which the deputy presiding member may perform the functions of the presiding member.

Clause 3 Deputy members

This clause provides that the Minister may appoint a deputy for each member and the circumstances in which the deputy may perform the functions of the member.

Clause 4 Vacation of office by member

A Board member may resign by notice in writing given to the Minister. A member of the Board may be removed from office by the Minister for a number of reasons including mental or physical disability, insolvency and extended absences of leave or loss of qualification or position that was required for the appointment.

Clause 5 General procedure concerning meetings

A quorum for a meeting of the Board is 7 members.

Clause 6 Voting

A decision of the majority of members at which a quorum is present is a decision of the Board. Where votes are equally divided, the presiding member is to have the casting vote.

Clause 7 Holding meetings remotely

A person may attend a Board meeting by telephone or other means of instantaneous communication.

Clause 8 Resolution without meeting

Resolutions in writing signed by each Board member have effect as if they had been passed at a Board meeting.

Clause 9 Minutes

This clause is self-explanatory.

Division 2 – Disclosure of interests etc.

Clause 10 Meaning of “member”

Defines a “member” as a member of the Board or of a committee.

Clause 11 Disclosure of interests

Members must disclose material personal interests in a matter before the Board or an offence is committed.

A penalty of a fine of \$10,000 is provided for failure to disclose a relevant interest.

Clause 12 Exclusion of interested member

A member who has a material personal interest in a matter before the Board must not vote on the matter and must not be present when the matter is being considered.

Clause 13 Board or committee may resolve that clause 12 inapplicable

The Board may declare clause 12 inapplicable if it is satisfied the interest should not disqualify the member from voting.

Clause 14 Quorum where clause 12 applies

If a member is disqualified under clause 12, a quorum will be considered as 6 members. The Minister may deal with a matter if the Board is unable to with only 6 members present, such as for a decision on registration.

Clause 15 Minister may declare clauses 12 and 14 inapplicable

The Minister may declare clauses 12 and 14 inapplicable and, if so, must cause a copy of the declaration to be laid before each House of Parliament.

Schedule 2 – Transitional and savings

Schedule 2 provides transitional provisions for the introduction of the new Act relating to the continuation of the Board, membership of the Board, the Registrar and other staff, registered persons and certificates under the repealed Act, for applications for registration not finalised before commencement of the new Act, suspension of persons under the repealed Act and complaints and investigations dealt with by the former Board.

Clause 1 Terms used in this schedule

Describes the terms used in this schedule.

Clause 2 Interpretation Act 1984 not affected

This schedule does not affect the terms of the *Interpretation Act 1984*.

Clause 3 The Nurses Registration Board continues

The Board continues as a body corporate and all references to the former Board are to be taken to be a reference to the new Board.

Clause 4 Board members

This clause provides for the old Board members to cease office when the new Act commences. Transitional provisions are provided with staggered appointments to ensure all appointments do not fall due at the same time.

Clause 5 The registrar and other staff

The registrar and officers of the old Board will continue as registrar and officers of the new Board.

Clause 6 Persons entered in division 1 of the register

A natural person who was:

- entered in division 1 of the register under the repealed Act, is taken to be registered under this Act as a registered nurse, under the same conditions that previously applied;
- entered in division 1 of the register as having a qualification in midwifery, is to be taken to be registered under this Act as a midwife;
- registered as a nurse practitioner, is taken to be registered under this Act as a nurse practitioner, under the same conditions that previously applied;
- entered in division 1 of the register as a speciality mental health nurse, mental retardation nurse or paediatric nurse, may only practise as a speciality mental health nurse, mental retardation nurse or paediatric nurse under the Act. This is to be a condition of registration.

The Board may require professional indemnity insurance in accordance with clause 32(2) to be a condition of registration within 6 months for a registered nurse, midwife or nurse practitioner.

Clause 7 Persons entered in division 2 of the register under the repealed Act section 34(b)(i)

A natural person who was entered in division 2 of the register, is to be taken to be registered under this Act as an enrolled nurse, under the same conditions that previously applied.

This does not apply to persons who were entered in division 2 of the register as dental nurses. This is because there are no longer any dental nurse programs available in Western Australia and the register for this category of nurses has been closed since 1996. Therefore, dental nurses will no longer be registered under this Act.

A natural person who was entered in division 2 of the register as an enrolled mental health nurse may only practise as an enrolled mental health nurse under the Act. This is to be a condition of registration.

The Board may require professional indemnity insurance in accordance with clause 32(2) to be a condition of registration within 6 months for an enrolled nurse.

Clause 8 Persons entered in division 2 of the register under the repealed Act section 34(b)(ii)

A natural person who was entered in division 2 of the register, as a children's nurse or a mothercraft nurse, is taken to be registered under this Act as an enrolled nurse. It is a condition of registration that the children's nurse or mothercraft nurse may only practise as a children's nurse or a mothercraft nurse. The Board may require professional indemnity insurance in accordance with clause 32(2) to be a condition of registration within 6 months. .

Clause 9 Persons granted honorary or temporary registration under the repealed Act

Any persons granted honorary or conditional registration under the repealed Act will be taken to be conditionally registered under this Act, under the same conditions that previously applied.

Clause 10 Persons granted provisional registration under the repealed Act

A person who was provisionally registered under the repealed Act will be taken to be provisionally registered under this Act, under the same conditions that previously applied.

Clause 11 Registered body corporate

A body corporate registered under the repealed Act ceases to be registered on the commencement day.

Clause 12 Register

The register under the old Act will continue under the new Act, but in the format provided by clause 38.

Clause 13 Certificates of registration issued under the repealed Act

Certificates of registration under the old Act continue as certificates of registration under the new Act.

Clause 14 Restoration of certain names to the register

If a person's name has been removed from the register under the repealed Act, section 37 applies.

Clause 15 Suspensions

If a person has been suspended under the repealed Act, the person is taken to have been suspended by the State Administrative Tribunal under the new Act and any orders of the Tribunal will apply.

Clause 16 Undertakings under the repealed Act

Undertakings given under a provision of the repealed Act will not be affected by the repeal of that Act.

Clause 17 Interim orders of the former Board

Complaints under the repealed Act, if not alleged to the State Administrative Tribunal are to be dealt with as if they had been referred to the complaints assessment committee under the new Act.

Clause 18 Investigations

Investigators are to continue investigations under the new Act.

Clause 19 Complaints being dealt with by the former Board

If an allegation was made to the State Administrative Tribunal under the repealed Act, then the matter continues as if the allegation was made under the new Act.

Clause 20 Matters referred to the professional standards committee.

If a matter had been referred to the professional standards committee under the old Act, but had not been finalised, it is to be dealt with by the complaints assessment committee.

Clause 21 Matters being dealt with by the presiding member of the former Board

The new Board will consider any reports furnished, but not dealt with by the presiding member of the former Board under the repealed Act, as if the complaints assessment committee had made a recommendation to the Board.

Clause 22 Failure to comply with an order made under the repealed Act

Failure to comply orders under the repealed Act, continue under the new Act.

Clause 23 *Codes of practice*

The *Nurses Code of Practice 2000* and the *Nurse Practitioners Code of Practice 2004* will continue to operate.

Clause 24 *Annual report for part of a year*

The former Board is to report on its proceedings, but limited to the period from 31 December preceding the commencement day.

Clause 25 *Powers in relation to transitional provisions*

If there is no specific schedule for dealing with a transitional matter the Governor may make regulations prescribing all required matters.

Schedule 3 – Consequential amendments

Schedule 3 provides for consequential amendments to the *Blood Donation (Limitation of Liability) Act 1985*, the *Civil Liability Act 2002*, the *Constitution Acts Amendment Act 1899*, the *Corruption and Crime Act 2003*, the *Court Security and Custodial Services Act 1999*, *The Criminal Code*, the *Criminal Investigation (Identifying People) Act 2002*, the *Firearms Act 1973*, the *Health Act 1911*, the *Health Professionals (Special Events Exemption) Act 2000*, the *Health Services (Conciliation and Review) Act 1995*, the *Juries Act 1957*, the *Medical Act 1894*, the *Mental Health Act 1996*, the *Misuse of Drugs Act 1981*, the *Pharmacy Act 1964*, the *Poisons Act 1964*, the *Prostitution Act 2000*, the *Radiation Safety Act 1975*, the *Road Traffic Act 1974* and the *State Administrative Tribunal Act 2004*.
