



Tonga

**NURSES, NURSE PRACTITIONERS AND
MIDWIVES ACT 2021**

Act 10 of 2021



NURSES, NURSE PRACTITIONERS AND MIDWIVES ACT 2021

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NURSES, NURSE PRACTITIONERS AND MIDWIVES ACT 2021

Act 10 of 2021

**AN ACT TO ESTABLISH A NURSES, NURSE PRACTITIONERS AND
MIDWIVES BOARD TO PROVIDE STANDARDS, SUPERVISION AND
REGISTRATION OF NURSES, NURSE PRACTITIONERS AND
MIDWIVES IN TONGA AND TO MAKE PROVISIONS FOR MAKING
COMPLAINTS AND CONDUCT OF DISCIPLINARY PROCEEDING
PROCEEDINGS**

I assent,
TUPOU VI,
28th October 2021.

BE IT ENACTED by the King and Legislative Assembly of Tonga in the
Legislature of the Kingdom as follows:

PART I - PRELIMINARY

1 Short Title and commencement

- (1) This Act may be cited as the Nurses, Nurse Practitioners and Midwives Act 2021.
- (2) This Act shall come into force on a date proclaimed by Cabinet and published in a notice in the Gazette.

2 Object of the Act

- (1) The object of this Act is to establish a regulatory scheme for nurses, nurse practitioners, midwives and students .
- (2) The objectives of the regulatory scheme are to —
 - (a) provide for the protection of the public by ensuring that only nurses, nurse practitioners and midwives who are suitably educated and qualified to practise in a competent and ethical manner are registered;
 - (b) inform the general public of the expected level of knowledge, skills, professional attitudes and behaviours they can expect of nurses, nurse practitioners and midwives;
 - (c) provide for the registration of students of pre-registration nursing programmes;
 - (d) provide for a non-practising register for those nurses and midwives who wish to retain their name on a register but no longer intend to practise nursing or midwifery;
 - (e) accredit high quality education programmes for nurses, nurse practitioners and midwives;
 - (f) enable innovation in the education of, and service delivery by, nurses, nurse practitioners and midwives;
 - (g) facilitate the rigorous and responsive assessment of overseas-educated nurses, nurse practitioners and midwives;
 - (h) facilitate access to services provided by nurses, nurse practitioners and midwives in accordance with the public interest; and
 - (i) enable the continuous development of a flexible, responsive and sustainable nursing and midwifery workforce.

3 Interpretation

In this Act, unless the context otherwise requires —

“advertisement” means an advertisement —

- (a) published in a newspaper, magazine or other publication;
- (b) placed in a circular, hand bill, poster or other notice;
- (c) made orally or by any means of producing light or sound;
- (d) made using a form of electronic communication or utilising an application of information technology, including an advertisement placed on the internet; or
- (e) made in any other manner;

“adjudicative body” means —

- (a) an Immediate Action Committee; or

(b) a Health or Performance Assessment Panel;

“approved accredited program of study” means a program of study accredited under the Tonga National Qualifications and Accreditation Board Act (Cap 13.07);

“Board” means the Nurses, Nurse Practitioners and Midwives Board established under section 4(1);

“conduct” means any act or omission;

“criminal history” means every conviction of a person for an offence, in Tonga or elsewhere, whether before or after the commencement of this Act;

“drug” includes any product defined as a medicinal drug under the Therapeutic Goods Act (Cap. 12.16);

“health assessment” means an assessment of a person to determine whether the person has an impairment and includes a medical, physical, psychiatric or psychological examination or test of the person;

“health, conduct or performance action” means action that the Board or an adjudication body may take in relation to a registered health practitioner or student as part of the processes under Part V of this Act;

“Health Assessment Panel” means a panel established under Part V of this Act;

“Health Practitioners Review Council” means the Health Practitioners Review Council established under the Health Practitioners Review Act (Cap. 12.04);

“health service” includes the following services, whether provided as public or private services—

- (a) services provided by registered health practitioners;
- (b) hospital services;
- (c) mental health services;
- (d) pharmaceutical services;
- (e) ambulance services;
- (f) community health services;
- (g) health education services;
- (h) welfare services necessary to implement any services referred to in paragraphs (a) to (g); or
- (j) pathology services;

“health service provider” means a person who provides a health service;

“Immediate Action Committee” means an committee established independently of the Board under Part V of this Act;

“impairment, in relation to a person” means the person has a physical or mental impairment, disability, condition or disorder including substance abuse or dependence that detrimentally affects or is likely to detrimentally affect—

- (a) for a registered health practitioner or an applicant for registration in a health profession, the person’s capacity to practise the profession; or
- (b) for a student, the student’s capacity to undertake clinical training—
 - (i) as part of the approved program of study in which the student is enrolled; or
 - (ii) arranged by an education provider;

“medicinal drug” is as defined under the Therapeutic Goods Act (Cap 12.16);

“midwife” means a person who is duly registered as a professional midwife under Part II of this Act;

“Minister” means minister responsible for Health;

“narcotic drugs and psychotropic substances” is as defined under the Therapeutic Goods Act (Cap 12.16);

“notification” means a notification about a nurse, nurse practitioner or midwife made under Part V of this Act;

“notifier” means the person or organisation that makes the notification under Part V of this Act;

“nurse” means a person who is duly registered as a nurse under Part II of this Act;

“nurse practitioner” means a person who is duly registered as a nurse practitioner under Part II of this Act;

“Performance Assessment Panel” means a panel established under Part V of this Act;

“performance assessment” means an assessment of the knowledge, skill, attitude, behaviour or judgment possessed, or care exercised by, a registered nurse, nurse practitioner or midwife;

“professional misconduct” includes—

- (a) unprofessional conduct by the nurse, nurse practitioner or midwife that amounts to conduct that is substantially below the standard reasonably expected of a registered nurse, nurse practitioner or midwife of an equivalent level of training or experience;
- (b) more than one instance of unprofessional conduct by a nurse, nurse practitioner or midwife that, when considered together, amounts to conduct that is substantially below the standard reasonably expected of a registered nurse, nurse practitioner or midwife of an equivalent level of training or experience; or

- (c) conduct of the nurse, nurse practitioner or midwife, whether occurring in connection with the practice of the nurse, nurse practitioner or midwife's profession or not, that is inconsistent with the nurse, nurse practitioner or midwife being a fit and proper person to hold registration in the profession;

“programme of study” means a programme of study provided by an education provider;

“Register” means the register maintained by the Board in accordance to Part III of this Act;

“registration standard” means a registration standard developed by the Board under Part IV of this Act;

“Registrar” means the person appointed under section 7 of this Act;

“student” means a student nurse enrolled in a minimum 3-year pre-registration diploma program administered by a School of Nursing;

“unprofessional conduct” means unprofessional conduct that is of a lesser standard than that which might reasonably be expected of the nurse, nurse practitioner or midwife by the public or the nurse, nurse practitioner or midwife's professional peers, and includes—

- (a) a contravention by the nurse, nurse practitioner or midwife of this Act, whether or not the nurse, nurse practitioner or midwife has been prosecuted for, or convicted of, an offence in relation to the contravention;
- (b) a contravention by the nurse, nurse practitioner or midwife of—
 - (i) a condition to which the nurse, nurse practitioner or midwife's registration was subject; or
 - (ii) an undertaking given by the nurse, nurse practitioner or midwife to the Board that registers the nurse, nurse practitioner or midwife;
- (c) the conviction of the nurse, nurse practitioner or midwife for an offence under another Act, the nature of which may affect the nurse, nurse practitioner or midwife's suitability to continue to practise their profession;
- (d) providing a person with health services of a kind that are excessive, unnecessary or otherwise not reasonably required for the person's well-being;
- (e) influencing, or attempting to influence, the conduct of another registered nurse, nurse practitioner or midwife in a way that may compromise patient care;
- (f) accepting a benefit as inducement, consideration or reward for referring another person to a health service provider or

- recommending another person use or consult with a health service provider;
- (g) offering or giving a person a benefit, consideration or reward in return for the person referring another person to the nurse, nurse practitioner or midwife or recommending to another person that the person use a health service provided by the nurse, nurse practitioner or midwife; or
 - (h) referring a person to, or recommending that a person use or consult, another health service provider, health service or health product if the nurse, nurse practitioner or midwife has a pecuniary interest in giving that referral or recommendation, unless the nurse, nurse practitioner or midwife discloses the nature of that interest to the person before or at the time of giving the referral or recommendation; and

“unsatisfactory professional performance” means the knowledge, skill, attitude, behaviour or judgment possessed, or care exercised by, the nurse, nurse practitioner or midwife in the practice of their profession is below the standard reasonably expected of a nurse, nurse practitioner or midwife of an equivalent level of training or experience.

PART II - NURSES, NURSE PRACTITIONERS AND MIDWIVES BOARD

4 Nurses, Nurse Practitioners and Midwives Board

The Nurses, Nurse Practitioners and Midwives Board is hereby established.

5 Functions of the Board

The functions of the Board shall be to —

- (a) set the standards for registration of nurses, nurse practitioners and midwives;
- (b) set the standards for annual renewal of registration for nurses, nurse practitioners and midwives;
- (c) approve accredited programs of study as providing qualifications for registration of nurses, nurse practitioners and midwives;
- (d) maintain registers of pre-registration students, nurses, nurse practitioners and midwives, including non-practising nurses and midwives;
- (e) establish a register for non-practising nurses, nurse practitioners and midwives, who shall be exempted from the annual renewal requirements as long as they remain on that register;

- (f) provide for the registration of suitably educated, qualified and competent nurses, nurse practitioners and midwives;
- (g) where necessary, to impose conditions on persons applying for registration as a nurse, nurse practitioner or midwife;
- (h) oversee the assessment of the knowledge and clinical skills of overseas educated nurses, nurse practitioners and midwives and to determine their suitability for registration in Tonga;
- (i) develop and approve standards and guidelines for the professions of nursing and midwifery, included but not limited to registration standards, accreditation standards, professional standards, codes, policies and guidelines that provide support, guidance and advice to the nursing and midwifery professions in terms of safe and ethical practice;
- (j) oversee the receipt, assessment and investigation of notifications and complaints about pre-registration students, nurses, nurse practitioners and midwives;
- (k) establish panels to conduct hearings about health or performance notifications relating to nurses, nurse practitioners and midwives and hearings about health notifications for pre-registration students;
- (l) refer matters relating to serious health or performance concerns or conduct to the Performance Assessment Panel, Health Assessment Panel, Immediate Action Committee or Investigation Panel to hear any unprofessional conduct or professional misconduct matter relating to pre-registration students, nurses, nurse practitioners and midwives;
- (m) oversee arrangements for monitoring and supervision of conditions that might be imposed on pre-registration students, nurses, nurse practitioners and midwives that might be implemented as a result of any hearings identified in (k) and (l);
- (n) advise the Minister on any matter relating to pre-registration students, nurses, nurse practitioners and midwives;
- (o) promote public and profession awareness of the responsibilities of the Board;
- (p) do anything necessary or convenient for the effective and efficient operation of the scheme; and
- (q) any other function given to the Board by or under this Act.

6 Members of the Board

- (1) The Board shall consist of the following members—
 - (a) Chief Nursing and Midwifery Officer (Chair);
 - (b) Principal of the Queen Salote Institute of Nursing and Allied Health;
 - (c) President or nominee of the Tonga Nurses Association;
 - (d) Senior Public Health Sister;

- (e) Senior Midwife, from Clinical Services;
 - (f) Senior Nurse Practitioner, from Clinical Services;
 - (g) Senior Nurse from the Non-Communicable Diseases nursing practice, from Public Health;
 - (h) Chair or nominee from the Tonga Council of Churches;
 - (i) Layperson nominated by the Minister; and
 - (j) nominated Senior Law Practitioner.
- (2) The Board may co-opt any other person from time to time to provide advice on a matter being considered by the Board.
- (3) The term of appointment of –
- (a) the Chief Nursing and Midwifery Officer or member of the public service shall be for the duration of time that he holds office in the position specified in subsection (1)(a) and (1)(b); and
 - (b) a nominated member under section (5)(1) shall hold office for a period of two years from the date of nomination and shall be eligible for re-nomination.
- (4) The membership of any nominated member may be cancelled by the Minister or the nominating Association, and a person may be nominated by the Minister or the nominating Association in place of such member for the outgoing member's remaining period of office.
- (5) Any nominated member may resign by giving 20 days notice in writing of such resignation to the Board and the Minister or the nominating Association may nominate another person for the outgoing member's remaining period of office.
- (6) The Registrar shall perform the duties of the Secretary of the Board.

7 Registrar

The Board shall appoint, from the staff of the Ministry of Health, a Registrar who shall also perform the duties of the Secretary of the Board, and such officers as are necessary for the implementation of the Act.

8 Delegation by Board

- (1) The Board may from time to time delegate in writing any of its functions, duties or powers to its Registrar.
- (2) A delegation may be subject to any conditions stated in the instrument of delegation.
- (3) The Board may in writing, revoke or cancel a delegation which was issued under subsection (1).

9 Review of decisions of Registrar

A person who is adversely affected by a decision made by the Registrar may, within 10 working days after being notified of the decision, request the Board to review the Registrar's decision and the Board shall either confirm or revoke the Registrar's decision.

10 Board proceedings and reporting

- (1) The seal of the Board shall be kept in the custody of the Registrar and shall be affixed by the Registrar or any other officer duly authorised by the Board to documents authorised to be sealed by the Board.
- (2) The Board shall determine the procedures and rules governing its meetings.
- (3) The Board shall meet as required and shall report to the Health Practitioners Review Council by providing the Board Meeting Minutes.
- (4) The Board shall prepare annually a report of its activities during the preceding 12 months and this report shall be made to the Minister.
- (5) The Minister shall present the report in subsection (4) to Cabinet and the Legislative Assembly on an annual basis.

11 Exclusion of liability

An act in good faith, by the Minister, Registrar, chairman or any Board member shall not subject that person to any liability.

PART III – THE REGISTRATION AND RENEWAL OF REGISTRATION OF NURSES, NURSE PRACTITIONERS AND MIDWIVES

12 Registers

- (1) For the purposes of this Act, the Board shall maintain five divisions of the register as follows –
 - (a) a division of the register for nurses;
 - (b) a division of the register for nurse practitioners;
 - (c) a division of the register for midwives;
 - (d) a division of the register for pre-registration student nurses; and
 - (e) a division of the register for non-practising nurses and midwives.
- (2) The register and its divisions may be kept by electronic means.

13 Application for registration

The Board shall determine the form in which applications for registration under this Act shall be made.

14 Application for renewal of registration

The Board shall determine the frequency of and form in which applications for renewal of registration as a nurse, nurse practitioner or midwife shall be made.

15 Eligibility for registration

- (1) A person is eligible for registration on one or more of the divisions of the register if—
 - (a) the person holds the qualifications recognised by the Board for the purposes of registration on the respective division of the register;
 - (b) the person has successfully completed—
 - (i) any period of supervised practice if required by the Board; or
 - (ii) any examination or assessment if required by the Board to assess the person's ability to practise the profession competently and safely;
 - (c) the person is a suitable person to hold registration as a nurse, nurse practitioner or midwife;
 - (d) the person is not disqualified under this Act or an Act in another jurisdiction from applying for registration, or being registered, as a nurse, nurse practitioner or midwife;
 - (e) the person meets any other requirements for registration stated in the professional standards for the health profession;
 - (f) the person can provide proof of identity; and
 - (g) the person has paid the required fee.
- (2) The Board may vary the relevant qualification referred to in subsection (1)(a) in any case where the Board -
 - (a) proposes to limit the health services that the applicant will be permitted to perform; and
 - (b) is satisfied that the varied qualification is adequate -
 - (i) for the performance of those health services; and
 - (ii) for the protection of the public.

16 Fitness for registration

The Board may decide a person is not a suitable person to hold registration as a nurse, nurse practitioner or midwife if —

- (a) in the Board's opinion, the person has an impairment that would detrimentally affect their capacity to practise the profession to such an extent that it would or may place the safety of the public at risk;
- (b) having regard to the person's criminal history to the extent that is relevant to the person's practice of the profession, the person is not, in the Board's opinion, an appropriate person to practise the profession or it is not in the public interest for the person to practise the profession;
- (c) the person has previously been registered under a relevant law and during the period of that registration proceedings that correspond to proceedings under Part V of this Act, were started against the person but not finalised;
- (d) in the Board's opinion, the person's competency in speaking or otherwise communicating in English or Tongan is not sufficient for the person to practise the profession;
- (e) the person's registration is currently suspended or cancelled in another jurisdiction on a ground for which an adjudication body could suspend or cancel a nurse, nurse practitioner or midwife's registration in Tonga;
- (f) the nature, extent, period and recency of any previous practice of the profession is not sufficient to meet the requirements specified in the standards relevant to registration as a nurse, nurse practitioner or midwife;
- (g) the person fails to meet any other requirement in the professional standards for the profession about the suitability of person's to be registered in the profession or to competently and safely practise the profession; or
- (h) in the Board's opinion, the person is for any other reason—
 - (i) not a fit and proper person for general registration in the profession; or
 - (ii) unable to practise the profession competently and safely.

17 Effect of registration as a nurse, nurse practitioner or midwife

A person duly registered under one or more of the practising registers for nurses, nurse practitioners or midwives with the exception of the pre-registration student or the non-practising registrant shall be entitled to use the title of nurse, nurse practitioner and or midwife and shall be entitled to engage in the practice in which they are so registered pursuant to this Act.

18 Effect of registration as a non-practising nurse, nurse practitioner or midwife

A person duly registered under the non -practising register for nurses, nurse practitioners and midwives shall be entitled to use the title of nurse, nurse practitioner and or midwife but will not be entitled to engage in nursing or midwifery practice.

19 Provisional registration

- (1) Where a person has applied for registration as a nurse, nurse practitioner or midwife the Chair of the Board may, if satisfied that the person has the requisite qualification and experience, and that the person is fit for registration, and on payment of the prescribed fee, grant to that person a certificate of provisional registration in Form 2 prescribed in the Schedule.
- (2) Where a person has obtained a certificate of provisional registration the person shall be deemed to be registered under the Act until —
 - (a) the date stated in the certificate; or
 - (b) such later date as may be fixed by the Board,which date shall, in either case, be not later than 3 months after the granting of the certificate.
- (3) The Board may, at any time before the date so stated or fixed, cancel a certificate of provisional registration.
- (4) Upon the cancellation of a certificate of provisional registration, the holder of the certificate shall no longer be deemed to be registered.
- (5) If a person to whom a certificate of provisional registration has been granted becomes registered before the date stated or fixed pursuant to subsection (2), the registration shall, unless otherwise decided by the Board, date from the granting of the provisional certificate.

20 Temporary registration

The Registrar, subject to the approval of the Chair of the Board, and on assurance that the person is fit for registration, may register nurses, nurse practitioners and midwives who are registered as such in another jurisdiction, for up to 3 months. The Board shall prescribe the fee payable for such temporary registration.

21 Special purpose registration

- (1) The Minister may recommend to the Board that a visiting nurse, nurse practitioner or midwife be granted special purpose registration, on the basis that it is in the public interest to do so.
- (2) The Minister shall include in the recommendation the period for which registration is requested.

- (3) The Board shall in any such case grant special purpose registration but may impose such conditions, including monitoring and oversight that it considers reasonably necessary.

22 Holding out

- (1) No person, except a nurse, nurse practitioner or midwife, shall —
- (a) represent or hold out, expressly or by implication, that he is entitled to engage in the practice of nursing or midwifery;
 - (b) use any sign, emblem, title or advertisement implying that the person is a nurse, nurse practitioner or midwife; or
 - (c) use the title nurse, nurse practitioner or midwife or any similar designation or abbreviation implying that he is registered as a nurse, nurse practitioner midwife.
- (2) Any person who contravenes this section commits an offence and upon conviction shall be liable to a fine not exceeding \$10,000 or not exceeding 5 years imprisonment or both.

23 Content of the Registers

The information to be entered in the register in respect of each person registered under this Act shall contain the following—

- (a) the name of the person;
- (b) the date of birth of the person;
- (c) the person's professional address in the Kingdom or, if the person has no professional address, the person's place of residence;
- (d) particulars of the qualifications entitling the person to be registered;
- (e) the registration number allocated to the person;
- (f) the date of registration;
- (g) any notations relating to specialist qualifications;
- (h) any conditions or other requirements to which the person's registration is subject; and
- (i) such other particulars, if any, as are prescribed.

24 Registration of students

- (1) A person in charge of an education provider providing an approved and accredited programme of study shall inform the Registrar of the particulars of any person who enrolls in that programme of study.
- (2) On receipt of the particulars of a person undertaking an approved program of study, or part of an approved program of study the Registrar shall register the

person as student registrants by entering the person's particulars in the student division of the register kept by the Board.

- (3) The Board shall not require a person to pay a fee for registration as a student.
- (4) As soon as practicable after registering a person as a student registrant, the Registrar shall give written notice of the registration to the education provider that provided the student's particulars to the Board.
- (5) As soon as practicable after receiving notice that a student has been registered the education provider shall give written notice of the registration to the student.

25 Period of student registration

The period of registration for a student —

- (a) starts when the student is registered; and
- (b) expires at the end of the day on which the student completes, or otherwise ceases to be enrolled in, the approved program of study.

26 Notice to be given if student registration suspended or condition imposed

- (1) This section applies if, at any time, any of the following events occurs—
 - (a) a person's registration as a student under this Act is suspended;
 - (b) a condition is imposed on a person's registration as a student under this Act or a condition to which a person's registration is subject is changed or removed; or
 - (c) the Board accepts an undertaking from a person who is a student.
- (2) The Board shall, as soon as practicable after the event occurs, give written notice of the event to the education provider with which the person is undertaking the approved program of study.
- (3) If an education provider is given a notice about a person, the education provider shall, as soon as practicable after receiving the notice, give notice of the event to any entity with whom the person is undertaking training as part of the approved program of study.

27 Report to Board of cessation of status as student

This section applies if—

- (a) a student completes, or otherwise ceases to be enrolled in, an approved program of study for a health profession provided by an education provider;

- (b) a student completes, or otherwise ceases to undertake, clinical training in a health profession arranged by an education provider;
- (c) the education provider shall give written notice of the student ceasing to be enrolled in the program of study, or to undertake the clinical training, to the Board within 60 days of it occurring; or
- (d) on receipt of a notification under section 44, the Registrar shall remove the registrant's name from the register.

28 Renewal of registration fee

- (1) Every nurse, nurse practitioner or midwife shall, on or before the 31st day of October in each year which day is in this section referred to as the "prescribed day" pay to the Registrar a roll fee fixed by the Board for the year commencing on the first day of January next following the prescribed day.
- (2) The nurse, nurse practitioner or midwife shall furnish particulars of his address for entry in the register and such other particulars as may be prescribed.
- (3) If the person does not pay the renewal of registration fee referred to in subsection (1) on or before the prescribed day in any year, the Board shall forthwith notify the person by letter addressed to him at the address appearing in the appropriate register that if the renewal of registration fee be not paid before the end of the first working day of the next calendar year the person's name shall be removed from the register as from the next day.
- (4) If the name of a nurse, nurse practitioner or midwife has been removed from the register under this section, the Board shall, upon application in writing and upon being satisfied that the person is eligible for renewal of registration, restore the person's name to the register upon payment of the outstanding renewal of registration fee and a reinstatement fee fixed by the Board.

29 Renewal of registration requirements

- (1) A registered nurse, nurse practitioner or midwife may apply to the Board for renewal of their registration.
- (2) An application for renewal of a registered nurse's, nurse practitioner's or midwife's registration shall be made not later than the first working day of the next calendar year after their registration was due for renewal.
- (3) The application for renewal of registration shall be —
 - (a) in the form approved by the Board;
 - (b) accompanied by the relevant fee;
 - (c) accompanied by the annual statement required; and
 - (d) be accompanied by any other information reasonably required by the Board.

30 Annual statement required for renewal

- (1) An application for renewal of registration shall include or be accompanied by a statement that includes the following—
 - (a) a declaration by the applicant that—
 - (i) the applicant does not have an impairment;
 - (ii) the applicant has met any recency of practice requirements stated in the standard determined for the nurse, nurse practitioner or midwife;
 - (iii) the applicant has completed the continuing professional development the applicant was required to undertake during the applicant's preceding period of registration; and
 - (iv) the applicant has assessed themselves against the relevant professional standards and either believes they meet the standards or has taken steps to update their knowledge or skills to ensure they meet the standards;
 - (b) details of any change in the applicant's criminal history that occurred during the applicant's preceding period of registration;
 - (c) if the applicant's right to practise at a hospital or another facility at which health services are provided was withdrawn or restricted during the applicant's preceding period of registration because of the applicant's conduct, professional performance or health, details of the withdrawal or restriction of the right to practise;
 - (d) details of any complaint made about the applicant to a registration authority or another entity having functions relating to professional services provided by health practitioners or the regulation of health practitioners; or
 - (e) any other information required by an approved professional standard.
- (2) These annual statement requirements do not apply to an applicant who is applying for the renewal of non-practising registration.
- (3) These annual statements may be subject to random audit to review the evidence on which they are based.
- (4) The Board may make determinations as to the necessary procedures to bring a nurse, nurse practitioner or midwife into line with the requirements under the annual statement before granting renewal of registration.
- (5) Such determinations under subsection (4) shall be made expeditiously to reduce delay in renewal of registration.

31 Removal from the register of nurses, nurse practitioners or midwives

- (1) After due inquiry, as laid down in Part V, the Board may direct that the name and other particulars of a nurse, nurse practitioner or midwife be removed from the register if —
 - (a) the person is convicted of an offence under this Act or under any other legislation relating to drugs;
 - (b) the person has obtained registration by fraud or misrepresentation;
 - (c) the qualification on the basis of which registration was awarded is withdrawn or cancelled by the authority which awarded it;
 - (d) the person is guilty of unsatisfactory professional conduct or professional misconduct which, after due inquiry by the Board, renders the person unfit to be a nurse, nurse practitioner or midwife; or
 - (e) the person's name has been removed from a register of nurses, nurse practitioners or midwives in another jurisdiction having been found guilty of unsatisfactory professional conduct or professional misconduct.
- (2) The Board may suspend the registration of a nurse, nurse practitioner or midwife pending investigations and disciplinary inquiry.

PART IV – STANDARDS, CODES AND GUIDELINES**32 Standards for registration of nurses, nurse practitioners and midwives**

The Board is required to develop standards about the following matters—

- (a) matters about the criminal history of applicants for registration in the profession, and registered nurse, nurse practitioner or midwife and students registered by the Board, including, the matters to be considered in deciding whether a person's criminal history is relevant to the practice of the profession;
- (b) requirements for continuing professional development for registered nurses, nurse practitioners and midwives;
- (c) requirements about the English and Tongan language skills necessary for an applicant for registration to be suitable for registration;
- (d) requirements in relation to the nature, extent, period and recency of any previous practice of the profession by applicants for registration in the profession;
- (e) the physical and mental health of—
 - (i) applicants for registration in the profession; and
 - (ii) registered nurses, nurse practitioners or midwives and students; and

- (f) any other issue relevant to the eligibility of a person for registration in the profession or the suitability of persons to competently and safely practise the profession.

33 Codes and guidelines

The Board may develop and approve codes and guidelines—

- (a) to provide guidance to the nurse, nurse practitioners and midwives it registers; and
- (b) about other matters relevant to the exercise of its functions.

34 Consultation about registration standards, codes and guidelines

The Board shall ensure to consult nurses, nurse practitioners and midwives on the development of the registration standard or a code or guideline under this Act.

35 Use of registration standards, codes or guidelines in health, performance or conduct proceedings

An approved registration standard for a nurse, nurse practitioner or midwife, or a code or guideline approved by the Board, is admissible in proceedings under this Act against a nurses, nurse practitioner or midwife registered by the Board as evidence of what constitutes appropriate professional conduct or practice for the health profession.

PART V – MANAGEMENT OF RISK TO THE SAFETY OF THE PUBLIC – PERFORMANCE, HEALTH AND CONDUCT NOTIFICATIONS AND COMPLAINTS

36 Management of notification and complaints

- (1) There shall be four streams to the management of complaints against nurses, nurse practitioners and midwives.
- (2) The Performance Assessment Panel and the Health Assessment Panel shall manage the notification about health and performance matters and the Immediate Action Committee and Investigation Panel shall manage complaints and conduct matters.

37 Who may make a notification or complaint

Any entity or person that believes that a ground exists on which a notification or complaint may be made exists in relation to a registered nurse, nurse practitioner or midwife or a student, may notify the Registrar.

38 Making of notifications or complaints about nurses, nurse practitioners or midwives

- (1) Any person may make a notification or complaint verbally or in writing to the Registrar on the following grounds-
 - (a) that the nurse, nurse practitioner or midwife's professional conduct is, or may be, of a lesser standard than that which might reasonably be expected of them by the public or their professional peers;
 - (b) that the knowledge, skill or judgment possessed, or care exercised by, the nurse, nurse practitioner or midwife in the practice of their profession is, or may be, below the standard reasonably expected;
 - (c) that the nurse, nurse practitioner or midwife is not, or may not be, a suitable person to hold registration in the health profession.;
 - (d) that the nurse, nurse practitioner or midwife has, or may have, a health impairment;
 - (e) that the nurse, nurse practitioner or midwife has, or may have, contravened this Act;
 - (f) that the nurse, nurse practitioner or midwife has, or may have, contravened a sanction of the nurse, nurse practitioner or midwife's registration or an undertaking given by the nurse, nurse practitioner or midwife to the Board; or
 - (g) that the nurse, nurse practitioner or midwife's registration was, or may have been, improperly obtained because the nurse, nurse practitioner or midwife or someone else gave the Board information or a document that was false or misleading in a material particular.
- (2) A notification or complaint shall include particulars of the basis on which it is made.
- (3) The Registrar shall record the information given verbally, if the complaint is made verbally.

39 Making of notifications or complaints about pre-registration students

A notification or complaint about a pre-registration student may be made to the Board on the grounds that—

- (a) the student has been charged with an offence, or has been convicted or found guilty of an offence, that is punishable by 12 month's imprisonment or more;

- (b) the student has, or may have, an impairment;
- (c) that the student has, or may have, contravened a condition of the student's registration or an undertaking given by the student to the Board; or
- (d) that the student is not, or may not be, a suitable person to hold registration in the health profession.

40 Protection from liability for persons making notification or complaint or otherwise providing information

- (1) If any entity or person who in good faith -
 - (a) makes a notification or complaint under this Act; or
 - (b) gives information in the course of an investigation or for another purpose under this Act to a person exercising functions under this Act,that entity or person is not liable, civilly, criminally or under an administrative process, for giving the information.
- (2) The making of the notification or giving of the information does not constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct.
- (3) No liability for defamation is incurred by the person because of the making of the notification or giving of the information.
- (4) The protection given to the person by this section extends to —
 - (a) a person who, in good faith, provided the person with any information on the basis of which the notification or complaint was made or the information was given; and
 - (b) a person who, in good faith, was otherwise concerned in the making of the notification or giving of the information.

41 Procedure for assessment on receipt of a notification or complaint

- (1) The Registrar shall refer any notification or complaint to the Board.
- (2) The Board may require the notifier or complainant to provide further particulars of the complaint and may make such preliminary inquiries concerning the notification or complaint as it thinks fit.
- (3) The Board shall inform the nurse, nurse practitioner or midwife against whom the notification or complaint is made of the particulars of the notification or complaint and invite that person to make, within 30 days of receipt of a notification or complaint, such representations to the Board with respect to the complaint as he thinks fit.

- (4) The Board shall make an assessment, within 30 days of receipt of a notification or complaint, as to whether the matter relates to the health or performance of a nurse, nurse practitioner or midwife or the health of a pre-registration student.
- (5) The Board shall make an assessment, within 30 days of receipt of a notification or complaint, as to whether the notification or complaint relates to the conduct of a pre-registration student, a nurse, a nurse practitioner or a midwife.

PERFORMANCE ASSESSMENT PANEL

42 Performance Assessment Panel

The Performance Assessment Panel is hereby established by the Board.

43 Members of the Performance Assessment Panel

- (1) The Performance Assessment Panel shall consist of the following members –
 - (a) a Senior Tutor from the Queen Salote School of Nursing and Allied Health;
 - (b) a Nurse educator from the relevant field of practice; and
 - (c) a member of the Board who is a registered nurse.
- (2) The members of the Performance Assessment Panel shall be appointed by the Board for a period of two years from the date of appointment and may be eligible for re-appointment.

44 Functions and Procedures for dealing with a performance notification

- (1) If on the assessment of a complaint or notification under this section, the Board is of the opinion that the matter is primarily a concern about the performance of the nurse, nurse practitioner or midwife, the matter will be referred to a Performance Assessment Panel established by the Board.
- (2) The Performance Assessment Panel can require an independent performance assessment of the nurse, nurse practitioner or midwife and can call for any documentation or persons to provide information relating to the nurse, nurse practitioner or midwife's performance that it sees fit.
- (3) The performance assessment panel may determine the following outcomes that-
 - (a) no further action is required;
 - (b) the nurse, nurse practitioner or midwife shall undertake further specified clinical experience;
 - (c) the nurse, nurse practitioner or midwife shall undertake further specified education;

- (d) the nurse, nurse practitioner or midwife shall have conditions imposed on their practice for a specified time prior to reassessment;
 - (e) the nurse, nurse practitioner or midwife be required to report on their progress as required by the Panel;
 - (f) the matter be referred to a health assessment panel; or
 - (g) the matter be reclassified as a conduct matter and referred back to the Board for investigation as such.
- (4) Any failure to comply with the determinations of the performance assessment panel is considered to be unprofessional conduct.
 - (5) The performance assessment panel shall convene and address the notification or complaint as expeditiously as possible.
 - (6) The Registrar will be responsible for maintaining any monitoring and reporting requirements and for reporting these to the Performance Assessment Panel.

HEALTH ASSESSMENT PANEL

45 Health Assessment Panel

The Health Assessment Panel is hereby established by the Board.

46 Members of the Health Assessment Panel

- (1) The Health Assessment Panel shall consist of the following members –
 - (a) a senior medical officer;
 - (b) an immediate supervisor; and
 - (c) a member of the Board who is a registered Nurse.
- (2) The members of the Performance Assessment Panel shall be appointed by the Board for a period of two years from the date of appointment and may be eligible for re-appointment.

47 Functions and Procedures for dealing with a health notification

- (1) If on the assessment of a complaint or notification under section 44, the Board is of the opinion that the matter is primarily a concern about the health of the pre-registration student, nurse, nurse practitioner or midwife, the matter will be referred to a Health Assessment Panel established by the Board.
- (2) The health assessment panel can require an independent health assessment of the nurse, nurse practitioner or midwife and can call for any documentation or persons to provide information relating to the nurse, nurse practitioner or midwife's health that it sees fit.

- (3) The Health Assessment Panel may determine the following outcomes that -
 - (a) no further action is required;
 - (b) the pre-registration student, nurse, nurse practitioner or midwife shall be referred to specialist services for ongoing treatment;
 - (c) the pre-registration student, nurse, nurse practitioner or midwife shall have conditions imposed on their practice for a specified time prior to reassessment;
 - (d) the pre-registration student, nurse, nurse practitioner or midwife be required to report on their progress as required by the Panel;
 - (e) the matter be referred to a Performance Assessment Panel; or
 - (f) the matter be reclassified as a conduct matter and referred back to the Board for investigation as such.
- (4) Any failure to comply with the determinations of the Performance Assessment Panel is considered to be unprofessional conduct.
- (5) The Performance Assessment Panel shall convene and address the notification or complaint as expeditiously as possible.
- (6) The Registrar will be responsible for maintaining any monitoring and reporting requirements and for reporting these to the Health Assessment Panel.

48 Procedure for dealing with a conduct matter

- (1) Following an assessment that the notification or complaint relates to unprofessional conduct or misconduct of the pre-registration student, nurse, nurse practitioner or midwife, the Board shall immediately determine whether the pre-registration student, nurse, nurse practitioner or midwife poses a risk to public safety if they were to continue to practice during the investigation.
- (2) If the Board has reasonable concerns that the pre-registration student, nurse, nurse practitioner or midwife poses a risk to public safety, they shall refer the matter immediately to an Immediate Action Committee, so that reasonable sanctions may be imposed on the practice of the pre-registration student, nurse, nurse practitioner or midwife, with the effect of maintaining public safety whilst the complaint is being investigated.
- (3) If the Board does not consider that the pre-registration student, nurse, nurse practitioner or midwife poses an immediate risk to public safety, they may proceed to investigation.

IMMEDIATE ACTION COMMITTEE

49 Immediate Action Committee

The Immediate Action Committee is hereby established by the Board.

50 Members of the Immediate Action Committee

- (1) The Immediate Action Committee shall consist of the following members –
 - (a) a nominated Senior Law Practitioner;
 - (b) a nominated member of the Medical, Dental and Allied Health Practitioner’s Board;
 - (c) a nominated retired Senior Nursing Officer; and
 - (d) a nominated lay person of good standing in the community.
- (2) The members of the Immediate Action Committee shall be appointed by the Board for a period of two years from the date of appointment and shall be eligible for re-appointment.

51 Immediate Action Committee

- (1) The Immediate Action Committee shall be a standing committee independent of the Board.
- (2) Immediate action, in relation to a pre-registration student, nurse, nurse practitioner or midwife means—
 - (a) the suspension, or imposition of a condition on, the pre-registration student, nurse, nurse practitioner or midwife registration;
 - (b) accepting an undertaking from the pre-registration student, nurse, nurse practitioner or midwife; or
 - (c) accepting the surrender of the pre-registration student, nurse, nurse practitioner or midwife registration.
- (3) An Immediate Action Committee may take immediate action in relation to a pre-registration student, nurse, nurse practitioner or midwife or student registered by the Board if it reasonably believes that—
 - (a) because of the pre-registration nurse, nurse practitioner or midwife’s conduct, performance or health, the pre-registration nurse, nurse practitioner or midwife poses a serious risk to persons and it is necessary to take immediate action to protect public health or safety or has, or may have, contravened a sanction on their registration or an undertaking given by the pre-registration student, nurse, nurse practitioner or midwife to the Board and it is necessary to take immediate action to protect public health or safety;
 - (b) the nurse, nurse practitioner or midwife’s registration was improperly obtained because the nurse, nurse practitioner or midwife or someone else gave the Board information or a document that was false or misleading in a material particular; or
 - (c) the pre-registration student, nurse, nurse practitioner or midwife’s registration has been cancelled or suspended under the law of another jurisdiction.

- (4) The Board may take immediate action that consists of suspending, or imposing a condition on, the pre-registration student's, nurse's, nurse practitioner's or midwife's registration only if the Board has complied with the show cause process.

52 Show cause process

- (1) If the Immediate Action Committee is proposing to take immediate action that consists of suspending, or imposing a condition on, a pre-registration student's, nurse's, nurse practitioner's or midwife's registration, the Immediate Action Committee shall-
 - (a) give the pre-registration student, nurse, nurse practitioner or midwife notice of the proposed immediate action; and
 - (b) invite the pre-registration student, nurse, nurse practitioner or midwife to make a submission to the Immediate Action Committee, within the time stated in the notice about the proposed immediate action.
- (2) A notice given to a pre-registration student, nurse, nurse practitioner or midwife, and any submissions made by the pre-registration student, nurse, nurse practitioner or midwife in accordance with the notice, may be written or verbal.
- (3) The Board shall have regard to any submissions made by the pre-registration student, nurse, nurse practitioner or midwife in accordance with this section in deciding whether to take immediate action in relation to the pre-registration student, nurse, nurse practitioner or midwife.
- (4) Immediately after deciding to take immediate action in relation to a pre-registration student, nurse, nurse practitioner or midwife, the Immediate Action Committee shall give written notice of the Board's decision to the pre-registration student, nurse, nurse practitioner or midwife and refer the matter back to the Board immediately for investigation.

INVESTIGATION PANEL

53 Investigation Panel

The Investigation Panel is hereby established by the Board for the purpose of investigating the complaint.

54 Members of the Investigation Panel

- (1) The Board may co-opt such persons as may be deemed necessary to assist in the investigation.

- (2) The members of the Investigation Panel shall be appointed by the Board for a period of two years from the date of appointment and shall be eligible for re-appointment.

55 Procedure for investigating a conduct matter

- (1) The Investigation Panel may require the complainant to provide further particulars of the complaint and may make such inquiries concerning the complaint as it thinks fit.
- (2) The Investigation Panel shall inform the pre-registration student, nurse, nurse practitioner or midwife against whom the complaint is made of the particulars of the complaint and invite that person to make, within such time as the Board specifies in the notice, such representations to the Investigation Panel with respect to the complaint as they think fit.
- (3) The Investigation Panel is required to consider any representations made to it within the time specified in the regulations.
- (4) The Investigation Panel may, by written notice, require any person to attend before the Investigation Panel of the Board, at a time and place specified in the notice and to produce any documents specified in the notice. Any person who fails to comply with this requirement commits an offence.
- (5) The Investigation Panel may receive and admit, as evidence at any inquiry—
 - (a) the judgement and findings of any court whether civil or criminal or tribunal made within or outside the Kingdom;
 - (b) the verdict or findings of a jury of any such court;
 - (c) a certificate of the conviction of any person; or
 - (d) a transcript, duly certified by the registrar or clerk of the court or tribunal as correct, of the evidence of witnesses taken in any such court or tribunal,

where the Investigation Panel is of the opinion that the judgment, findings, verdict, certificate or evidence is or are relevant to the proceedings.

- (6) The Investigation Panel may at an inquiry deal with one or more complaints about a pre-registration student, nurse, nurse practitioner or midwife.
- (7) If, during any such inquiry, it appears to the Board that, having regard to any matters that have arisen, another complaint could have been made against the pre-registration student, nurse, nurse practitioner or midwife concerned—
 - (a) whether instead of or in addition to the complaint which was made; and
 - (b) whether or not by the same complainant,

the Board may take that other complaint as having been referred to it and may deal with it at the same investigation.

- (8) If another complaint is taken to have been referred to the Board the complaint may be dealt with after such an adjournment as is, in the opinion of the Board, just and equitable in the circumstances.
- (9) The Investigation Panel has the authority to summon and compel the attendance of any person while conducting complaints and disciplinary proceedings under Part V.

REVIEW OF BOARD'S DECISIONS

56 Review of Board's Decisions

- (1) Any person aggrieved —
 - (a) by an order made by the Board under this Act; or
 - (b) by any refusal or failure to register the person as nurse, nurse practitioner or midwife by the Board,may, not later than one month after being served with, or sent, the order or decisions or not later than 3 months after the application for registration was lodged, apply to the Health Practitioners Review Council for review.
- (2) Any such review shall be in the nature of a new hearing at which new evidence may be given.
- (3) The Health Practitioners Review Council may make such order as it thinks fit.
- (4) The provisions of this section do not apply to enable an applicant for provisional registration or the holder of a certificate of provisional registration that has been cancelled to apply for a review of the refusal or cancellation of the certificate of provisional registration.

PART VI - MISCELLANEOUS

57 Supervised practice

Nothing in this Act prevents a person from engaging in the supervised practice of nursing to the extent required as part of clinical nursing training provided that such nursing practice is in accordance with any other conditions that may be prescribed in the regulations.

58 Making false or fraudulent representation

A person who, in an application for registration under this Act, makes or produces or causes to be made or produced any false or fraudulent representation, certificate or affidavit, either verbally or in writing, and any person who knowingly aids or assists

therein commits an offence and shall be liable on conviction to a fine not exceeding \$1000 or to imprisonment for a term not exceeding 6 months or both.

59 Offence and penalty

Any person who contravenes or fails to comply with any provision of this Act or any regulation made under this Act commits an offence, and on conviction shall, where no other penalty is provided, be liable to a fine not exceeding \$1000 or imprisonment for a term not exceeding 6 months or both; and in the case of a continuing offence, to a fine not exceeding \$100 for every day or part of a day during which the offence has continued.

60 Prosecutions

- (1) Prosecutions for an offence under this Act may be brought —
 - (a) by or on behalf of the Attorney General; or
 - (b) by a member of the police.
- (2) A person referred to in subsection (1)(b), whether or not a law practitioner, may lay, institute or conduct any charge, information, complaint or other proceedings arising under this Act, subject to any directions issued by the Attorney General.

61 Crown to be bound

This Act binds the Crown.

62 Regulations

The Minister may, with the consent of the Cabinet, make regulations prescribing matters necessary or convenient to be made for carrying out or giving effect to this Act and, in particular, for the following purposes —

- (a) prescribing the duties of the Registrar;
- (b) prescribing the fees payable under the Act and the regulations;
- (c) providing codes of conduct for nurses, nurse practitioners and midwives;
- (d) providing the professional competency standards for nurses, nurse practitioners and midwives;
- (e) prescribing the qualifications for registration as a nurse, nurse practitioner and midwife;
- (f) prescribing the format of any examination to be conducted by the Board in connection with the registration of nurses, nurse practitioners or midwives;

- (g) prescribing the registration standards for registration as a nurse, nurse practitioner and midwife under Part IV of the Act;
- (h) forms to be prescribed for the purposes of this Act and of regulations made under this Act; and
- (i) prescribing matters necessary or convenient to be made for carrying out or giving effect to this Act.

63 Savings and Repeal

- (1) The Nurses Act (Cap.12.12) is hereby repealed.
- (2) All persons who, at the commencement of this Act, are registered as a nurse, nurse practitioner or midwife under the Nurses Act (Cap 12.12) shall be deemed to be registered under this Act.
- (3) A reference in any other Act or instrument to a registered nurse, nurse practitioner or midwife registered under the Nurses Act (Cap 12.12), shall be read and construed as a reference to a nurse, nurse practitioner or midwife registered under this Act.

Passed by the Legislative Assembly this **24th** day of **August** 2021.