

NURSES ACT 1991 No. 9

NEW SOUTH WALES



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NURSES ACT 1991 No. 9

NEW SOUTH WALES



Act No. 9, 1991

An Act to regulate the practice of nursing and to repeal the Nurses Registration Act 1953. [Assented to 26 April 1991]

The Legislature of New South Wales enacts:**PART 1—PRELIMINARY****Short title**

1. This Act may be cited as the Nurses Act 1991.

Commencement

2. (1) This Act commences on a day or days to be appointed by proclamation, except as provided by this section.
(2) Part 1, section 81 and Schedule 3 commence on the date of assent to this Act.

Definitions

3. (1) In this Act:
 - “**accreditation**”, in relation to a nurse, means registration in List “A” of the Register, registration in List “B” of the Register, authorisation to practise midwifery, enrolment in List “A” of the Roll or enrolment in List “B” of the Roll;
 - “**accredited nurse**” means a registered nurse or an enrolled nurse;
 - “**Board**” means the Nurses Registration Board;
 - “**Chairperson**” means the Chairperson of the Tribunal;
 - “**Committee**” means a Professional Standards Committee referred to in section 50;
 - “**conduct**” means any act or omission;
 - “**Corporation**” means the Health Administration Corporation constituted under the Health Administration Act 1982;
 - “**Deputy Chairperson**” means a Deputy Chairperson of the Tribunal;
 - “**Director-General**” means the Director-General of the Department of Health;
 - “**enrolled nurse**” means a person who is enrolled under this Act in the Roll;
 - “**member**” means a member of the Board;
 - “**President**” means the President of the Board;
 - “**professional misconduct**” is defined in section 4;
 - “**recognised**” means recognised by the Board;
 - “**Register**” means the Register of Nurses kept by the Board under section 16;

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“registered nurse” means a person who is registered under this Act in the Register;

“Registrar” means the Registrar of the Board;

“Roll” means the Roll of Nurses kept by the Board under section 26;

“Tribunal” means the Nurses Tribunal constituted under section 59;

“unsatisfactory professional conduct” is defined in section 4.

(2) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

“Professional misconduct” and “unsatisfactory professional conduct”

4. (1) For the purposes of this Act, **“professional misconduct”**, in relation to an accredited nurse, means unsatisfactory professional conduct of a sufficiently serious nature to justify the removal of the nurse’s name from the Register or the Roll.

(2) For the purposes of this Act, **“unsatisfactory professional conduct”**, in relation to an accredited nurse, includes any of the following:

- (a) any conduct that demonstrates a lack of adequate:
 - (i) knowledge;
 - (ii) experience;
 - (iii) skill;
 - (iv) judgment; or
 - (v) care,by the nurse in the practice of nursing;
- (b) the nurse’s contravening (whether by act or omission) a provision of this Act or the regulations;
- (c) the nurse’s failure to comply with an order or determination made or a direction given under section 48, 55 or 64 or with a condition of registration;
- (d) a nurse’s holding himself or herself out as having qualifications in nursing other than:
 - (i) those in respect of which the nurse’s registration or enrolment was granted; or
 - (ii) those recorded in the Register or the Roll in respect of the nurse; and

- (e) any other improper or unethical conduct relating to the practice of nursing.

PART 2—REQUIREMENT FOR REGISTRATION OR ENROLMENT

Unregistered and unenrolled persons not entitled to hold themselves out as nurses

- 5.** (1) A person must not:
- (a) claim to be or hold himself or herself out as being; or
 - (b) take or use any name, initials, word, title, addition, symbol or description which, having regard to the circumstances in which it is taken or used:
 - (i) indicates; or
 - (ii) is capable of being understood to indicate; or
 - (iii) is likely to lead persons to infer,

that the person is,

a registered nurse, enrolled nurse or enrolled nurse (mothercraft) or entitled to practise as such unless the person is registered as a nurse or, as the case requires, is enrolled as an enrolled nurse or enrolled nurse (mothercraft).

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

- (2) A person (other than an accredited nurse or a person authorised by the Board) must not wear a badge which is of a design prescribed by the regulations and which is issued to accredited nurses by the Board, or a similar badge.

Maximum penalty: 5 penalty units.

Unregistered persons not entitled to hold themselves out as midwives

- 6.** A person must not:
- (a) claim to be or hold himself or herself out as being; or
 - (b) take or use any name, initials, word, title, addition, symbol or description which, having regard to the circumstances in which it is taken or used:
 - (i) indicates; or
 - (ii) is capable of being understood to indicate; or
 - (iii) is likely to lead persons to infer,
- that the person is,

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a midwife or entitled to practise midwifery, unless the person is a registered nurse who is authorised by the Board to practise midwifery.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

Unauthorised practice of midwifery

7. (1) A person must not practise midwifery unless the person is a registered nurse who is authorised by the Board to practise midwifery.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

- (2) Subsection (1) does not apply to or in respect of:
- (a) any medical practitioner; or
 - (b) any person rendering assistance to a woman who is giving or has just given birth to a child where the assistance is rendered in an emergency; or
 - (c) any medical or nursing student, or any accredited nurse, acting under the supervision of a registered nurse who is authorised by the Board to practise midwifery.

PART 3—THE NURSES REGISTRATION BOARD**Constitution of the Board**

8. There is constituted by this Act a body corporate under the corporate name of the Nurses Registration Board.

Membership of the Board

9. (1) The Board is to consist of 10 members appointed by the Governor.

- (2) Of the members:
- (a) 3 are to be registered nurses elected in accordance with the regulations by registered nurses who are eligible to vote at elections held for the purposes of this paragraph;
 - (b) 1 is to be an enrolled nurse or enrolled nurse (mothercraft) elected in accordance with the regulations by the enrolled nurses and enrolled nurses (mothercraft) who are eligible to vote at elections held for the purposes of this paragraph;
 - (c) 1 is to be a registered nurse nominated by the New South Wales Nurses' Association;

- (d) 1 is to be a registered nurse nominated by the NSW College of Nursing;
 - (e) 1 is to be a registered nurse nominated by the Minister who is an officer of the Department of Health, an Area Health Service, the Ambulance Service of New South Wales or the Corporation;
 - (f) 1 is to be a registered nurse jointly nominated by the Minister for School Education and Youth Affairs and the Minister for Further Education, Training and Employment who is an educator of nurses;
 - (g) 1 is to be a barrister or solicitor nominated by the Minister;
 - (h) 1 is to be a person nominated by the Minister as a representative of consumers.
- (3) If the New South Wales Nurses' Association or the NSW College of Nursing does not nominate a registered nurse within such time or in such manner as may be specified by the Minister by notice in writing to the Association or College, the Governor may instead appoint to be a member a person nominated by the Minister.

Functions of the Board

10. (1) The Board has the following functions:
- (a) to promote and maintain professional standards of nursing practice in New South Wales;
 - (b) to promote the education of nurses and educational programs relating to nursing;
 - (c) to advise the Minister on matters relating to the registration and enrolment of nurses, standards of nursing practice and any other matter arising under or related to this Act or the regulations;
 - (d) to publish and distribute information concerning this Act and the regulations to nurses and other interested persons;
 - (e) to hold examinations for the purposes of this Act and to determine the character, subjects and conduct of those examinations;
 - (f) to appoint examiners and supervisors in respect of examinations referred to in paragraph (e);
 - (g) to appoint places and times at which examinations referred to in paragraph (e) are to be held;
 - (h) for the purpose of facilitating under this Act the registration of nurses, the authorisation of registered nurses to practise midwifery and the enrolment of enrolled nurses and enrolled nurses (mothercraft), to grant recognition to:
 - (i) hospitals, nursing homes and educational and other institutions offering courses for the training of nurses,

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- midwives and enrolled nurses and enrolled nurses (mothercraft); and
- (ii) the curricula for such courses; and
 - (iii) diplomas, certificates and other qualifications awarded to persons who successfully complete those courses;
- (i) to impose requirements or conditions for or relating to registration as a nurse, authorisation to practise midwifery or enrolment as an enrolled nurse or enrolled nurse (mothercraft);
 - (j) to grant to persons in prescribed circumstances or cases exemptions from a requirement or condition for or relating to registration as a nurse, authorisation to practise midwifery or enrolment as an enrolled nurse or enrolled nurse (mothercraft);
 - (k) to cause the relevant particulars of qualified nurses to be entered in the Register, and the relevant particulars of qualified nurses to be entered in the Roll, in such manner as the Board may direct;
 - (l) to cause particulars of the midwifery qualifications of registered nurses who are authorised by the Board to practise midwifery to be entered in the Register;
 - (m) to determine in accordance with this Act applications for registration as a nurse, for authorisation to practise midwifery and for enrolment as an enrolled nurse or enrolled nurse (mothercraft);
 - (n) to issue certificates of registration to registered nurses, certificates of authorisation to practise midwifery to registered nurses who are authorised by the Board to practise midwifery and certificates of enrolment to enrolled nurses and enrolled nurses (mothercraft);
 - (o) to issue authorities to practise as a nurse as provided by section 33; and
 - (p) generally, to do any other act or to exercise any other functions necessary for carrying the provisions of this Act into effect.
- (2)** The Board is empowered:
- (a) to terminate or vary, as it considers appropriate, any appointment made under subsection (1); and
 - (b) to withdraw, or vary the conditions of, any recognition or exemption granted under that subsection; and
 - (c) in accordance with this Act, to cancel or suspend any registration as a nurse, authorisation to practise midwifery or enrolment as an enrolled nurse or enrolled nurse (mothercraft) or, where appropriate, to restore any such registration, authorisation or enrolment; and

- (d) in accordance with this Act, to cancel certificates of the kinds referred to in subsection (1) (n).

Ministerial control

11. The Board is subject to the control and direction of the Minister in the exercise of its functions.

Committees

12. (1) The Board may establish committees to assist it in connection with the exercise of any of its functions.

(2) The committees may include professional practice committees and professional liaison committees.

(3) It does not matter if any or all of the members of a committee are not members of the Board.

(4) It does not matter if all the members of a committee are not accredited nurses but the majority of the members of a committee must be accredited nurses.

(5) The President and Deputy President of the Board are ex officio members of each committee.

(6) A member of a committee, while sitting on the committee, is entitled to be paid by the Board such amount as the Minister from time to time determines in respect of the member.

(7) The procedure for the calling of meetings of any such committee and for the conduct of business at those meetings is to be as determined by the Board or (subject to any determination of the Board) by the committee.

Registrar and other staff

13. A Registrar of the Board and such other staff as may be necessary to enable the Board to exercise its functions are to be employed under the Health Administration Act 1982 by the Corporation.

Delegation of functions

14. (1) The Board may delegate any of its functions (other than this power of delegation and the function under section 76 (5)) to:

- (a) the President; or
- (b) the Deputy President; or
- (c) a Committee comprised of 2 or more members of the Board; or

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(d) the Registrar or any other member of staff of the Board.

(2) The Board must not delegate any of its functions under Part 5 to the Registrar or any other member of staff of the Board.

Other provisions relating to the Board

15. Schedule 1 has effect with respect to the members and procedure of the Board.

PART 4—REGISTRATION AND ENROLMENT**Division 1—The Register of Nurses****Register of Nurses**

16. (1) The Board is required to keep a register, to be called the Register of Nurses.

(2) The Register is to be divided as follows:

- (a) List “A” in which are to be entered the relevant particulars of those persons who are registered as nurses by virtue of section 18 or who are provisionally registered by virtue of section 23;
- (b) List “B” in which are to be entered the relevant particulars of those persons who are registered as nurses by virtue of section 19.

(3) In relation to a registered nurse, the relevant particulars for the purposes of subsection (2) are:

- (a) the full name of the nurse;
- (b) the date of the nurse’s registration as a nurse;
- (c) particulars of the qualification or qualifications by virtue of which the nurse is registered;
- (d) particulars of any authorisation authorising the nurse to practise midwifery and particulars of the qualification by virtue of which the authorisation was granted;
- (e) particulars of any certificate, diploma, membership, degree, licence, letters, testimonial or other title, status, document or description which the nurse is authorised by the Board to use in his or her capacity as a nurse;
- (f) particulars of such further or additional qualifications held by the nurse which the Board decides are appropriate to be entered in the Register, and
- (g) such other particulars as are directed by or under this Act or the regulations to be entered in the Register in relation to the nurse.

(4) The Board is to keep a separate record of the address of each person registered as a nurse.

(5) Such a record is not to be made available to members of the public for inspection.

(6) If, but for this subsection, a person would be entitled to have the particulars referred to in subsection (3) in both List “A” and List “B” of the Register, those particulars are to be entered in List “A” of the Register only.

(7) The Register must at all reasonable times be open to inspection at the office of the Board by any person on payment of the prescribed fee.

Issue of certificate of registration

17. The Registrar must:

- (a) on entering in the Register the particulars pertaining to the registration of a person as a nurse, issue to the person a certificate of registration in the prescribed form; and
- (b) on entering in the Register in relation to that person the particulars referred to in section 16 (3) (d), issue to the person a certificate in the prescribed form that the person is authorised to practise midwifery.

Division 2—Registration

Qualifications for registration—List “A” of the Register

18. Any person who has attained the prescribed age (if any) and satisfies the Board that he or she is of good character is, on making an application in writing to the Board for the purpose and on paying to the Board the prescribed fee, entitled to be registered as a nurse in List “A” of the Register and to be issued with a certificate of that registration if:

- (a) the person satisfies the Board that he or she has completed a course of training as a nurse at a recognised institution in New South Wales and is the holder of a recognised diploma, certificate or other award to the effect that the person has successfully completed that course; or
- (b) the person satisfies the Board that he or she would, but for the commencement of Schedule 2 (3) to the Nurses Registration (Amendment) Act 1985, have been entitled to be registered under the Nurses Registration Act 1953 as a general nurse, a mental retardation nurse or a psychiatric nurse; or

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- (c) the person satisfies the Board that he or she:
- (i) has undergone a course of training as a nurse in any place, other than New South Wales, in which a law providing for the registration of nurses is in force; and
 - (ii) is the holder of a diploma, certificate or other qualification to the effect that the person has successfully completed the course of training; and
 - (iii) is registered as a nurse under that law,
- and the Board is of the opinion that the standards of that training and of the examinations leading to that diploma, certificate or other qualification are not lower than the standards provided for by or under this Act for the registration of nurses in List "A" of the Register; or
- (d) the person satisfies the Board that he or she:
- (i) has undergone a course of training as a nurse; and
 - (ii) is the holder of a diploma, certificate or other qualification approved by the Board from an institution, person or body in any place, other than New South Wales, to the effect that the person has successfully completed the course of training,
- the person has passed such examinations, and has successfully completed such additional training, as the Board may in the particular case require, and the Board is satisfied that the qualifications of the person are adequate for the purposes of registration as a nurse in List "A" of the Register.

Qualifications for registration—List "B" of the Register

19. Any person who has attained the prescribed age (if any) and satisfies the Board that he or she is of good character is, on making an application in writing to the Board for the purpose and on paying to the Board the prescribed fee, entitled to be registered as a nurse in List "B" of the Register and to be issued with a certificate of that registration if:

- (a) the person satisfies the Board that he or she holds a diploma, certificate or other qualification as prescribed stating that the person has, for the period prescribed, attended the practice of one or more recognised hospitals or other institutions at which medical care or treatment is provided and has successfully completed a course of training in connection with that attendance; or
- (b) the person satisfies the Board that he or she would, but for the commencement of Schedule 2 (3) to the Nurses Registration (Amendment) Act 1985, have been entitled to be registered as a geriatric nurse, an infants' nurse or a midwifery nurse and the

Board is of the opinion that the person would not, if Schedule 2 (3) to that Act had not commenced, have been entitled to be registered under the Nurses Registration Act 1953 as a general nurse, a mental retardation nurse or a psychiatric nurse; or

- (c) the person satisfies the Board that he or she:
- (i) has undergone a course of training in any place, other than New South Wales, in which a law providing for the registration of nurses is in force; and
 - (ii) is the holder of a diploma, certificate or other qualification to the effect that the person has successfully completed the course of training; and
 - (iii) is registered as a nurse under that law,

and the Board is of the opinion that the standards of that training and of any examinations leading to that diploma, certificate or qualification are not lower than the standards provided for by or under this Act for the registration of nurses in List "B" of the Register; or

- (d) the person satisfies the Board that he or she:
- (i) has undergone a course of training as a nurse; and
 - (ii) is the holder of a diploma, certificate or other qualification approved by the Board from an institution, person or body in any place, other than New South Wales, to the effect that the person has successfully completed the course of training,
- the person has passed such examinations, and has successfully completed such additional training, as the Board may in the particular case require, and the Board is satisfied that the qualifications of the person are adequate for the purposes of registration as a nurse in List "B" of the Register.

Authorisation to practise midwifery

20. Any person who is registered or entitled to be registered as a nurse is, on making an application in writing to the Board for the purpose and on paying to the Board the prescribed fee, entitled to be authorised to practise midwifery in New South Wales if:

- (a) the person satisfies the Board that he or she holds a recognised diploma, certificate or other qualification to the effect that the person has successfully completed a course of training in midwifery; or

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- (b) the person satisfies the Board that he or she:
- (i) has undergone a course of training in any place, other than New South Wales, in which a law providing for the authorisation of persons to practise midwifery is in force; and
 - (ii) is the holder of a diploma, certificate or other qualification to the effect that the person has successfully completed the course of training; and
 - (iii) is authorised to practise midwifery under that law,
- and the Board is of the opinion that the standards of that training and of any examinations leading to that diploma, certificate or qualification are not lower than the standards provided for by or under this Act for the authorisation of persons to practise midwifery; or
- (c) the person satisfies the Board that he or she:
- (i) has undergone a course of training as a midwife; and
 - (ii) is the holder of a diploma, certificate or other qualification approved by the Board from an institution, person or body in any place, other than New South Wales, to the effect that the person has successfully completed the course of training,
- the person has passed such examinations, and has successfully completed such additional training, as the Board may in the particular case require, and the Board is satisfied that the qualifications of the person are adequate for the purposes of authorising the person to practise midwifery in New South Wales.

Consideration and determination of application

21. (1) As soon as practicable after receiving an application made under section 18, 19 or 20, the Board must consider the application and, if satisfied as to the entitlement of an applicant, must register the applicant or, as the case may be, authorise the applicant to practise midwifery and direct the Registrar to enter the relevant particulars of the applicant in the appropriate part of the Register, but if the Board is not so satisfied, it must refuse the application.

(2) The Board must not refuse an application made under section 18, 19 or 20 unless it has afforded the applicant an opportunity to be heard in relation to the matter.

(3) Where the Board holds a hearing for the purposes of subsection (2), it:

- (a) may conduct the hearing in such manner as it considers appropriate; and

- (b) is not bound to observe rules of law governing the admission of evidence but may inform itself of any matter in such manner as it considers appropriate; and
- (c) may call and receive evidence as to any matter relevant to the hearing; and
- (d) may, from time to time as it considers appropriate, adjourn the hearing.

(4) Where the Board refuses an application made under section 18, 19 or 20, it must forthwith notify the applicant in writing of the refusal and of the reasons for the refusal.

Authorisation and registration of certain qualifications

22. (1) Any person who is registered or entitled to be registered as a nurse may, on making an application for the purpose, request the Board:

- (a) for authorisation to use particulars of any certificate, diploma, membership, degree, licence, letters, testimonial or other title, status, document or description in relation to himself or herself as a nurse; or
- (b) to direct the Registrar to enter in the Register further or additional qualifications relating to that person,

and, on receipt of any such application, the Board may, if it thinks fit, grant the authorisation or give the direction to which the request relates.

(2) An application for a direction to be given under subsection (1) (b) must be accompanied by the prescribed fee.

Provisional registration

23. (1) The President may grant to a person a certificate of provisional registration as a nurse if the person:

- (a) is entitled to a diploma, certificate or other award referred to in section 18 (a) or (d) (ii); and
- (b) will have the diploma, certificate or other award conferred or granted in due course according to the practice of the body, association or institution conferring or granting the diploma, certificate or other award; and
- (c) is of good character; and
- (d) applies to be registered as a nurse and pays the fee prescribed by the regulations.

(2) A certificate of provisional registration has effect until it is cancelled or expires.

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(3) The President is to set an expiry date, not later than 6 months after the certificate takes effect, for each certificate of provisional registration granted by the President.

(4) The Board may, at any time before the date of expiry, for such cause as to it seems proper, cancel a certificate of provisional registration without prejudice to any application for registration of the person who was the holder of the certificate.

(5) If a person to whom a certificate of provisional registration has been granted becomes registered under this Act during the currency of the certificate, the person's registration dates from the granting of the certificate, unless otherwise decided by the Board.

Temporary registration

24. (1) The Board may, on the application in writing of any person who wishes to obtain a certificate of temporary registration and on being paid the prescribed fee, issue to the person a certificate of temporary registration in the prescribed form on being satisfied that:

- (a) the person has adequate qualifications to practise nursing in New South Wales and proposes while in New South Wales to undertake teaching or research work in nursing; or
- (b) for a reason accepted by the Board the person should be permitted to practise nursing in New South Wales temporarily.

(2) A certificate of temporary registration:

- (a) may be issued unconditionally or subject to such conditions, including a condition as to the capacity in which the person to whom it is issued may practise as a nurse, as the Board considers appropriate; and
- (b) if the Board thinks fit, may authorise that person to practise midwifery.

(3) A person to whom a certificate of temporary registration has been issued is, while the certificate is in force and the person complies with any conditions endorsed on the certificate, taken to be registered as a nurse for the purposes of sections 5 and 37 but, if applicable, only in the capacity specified in the certificate and, if the Board has granted to the person an authorisation under subsection (2) (b), is taken for the purposes of sections 6 and 7 to be a registered nurse who is authorised under section 21 to practise midwifery.

(4) A certificate of temporary registration issued under this section, unless sooner cancelled under subsection (5), remains in force for such period not exceeding 12 months as the Board may determine, but the

Board may from time to time renew such a certificate for a further period not exceeding 12 months.

(5) The Board may, by notice given by post to the holder of the certificate at the last address of the holder shown in the record kept under section 16 (4), cancel a certificate of temporary registration in force under this section for failure to comply with any condition subject to which the certificate is issued or for any other reason that it considers appropriate and, on any such notice being given to the holder of such a certificate, the certificate ceases to be in force.

(6) For the purposes of this section, a reference to a certificate of temporary registration includes a reference to such a certificate that is renewed under 'subsection (4).

When registration not required

25. A person who:

- (a) is registered as a nurse in any place in Australia, other than New South Wales, under a law providing for the registration of nurses; and
- (b) is employed in that place as a nurse at a recognised hospital or other institution at which medical care or treatment is provided; and
- (c) is required, in connection with that employment, to exercise any prescribed function relating to medical care or treatment within New South Wales for a period not exceeding 24 hours,

is, during that period, to be considered to be a registered nurse for the purposes of sections 5 and 37.

Division 3—The Roll of Nurses

Roll of Nurses

26. (1) The Board is required to keep a roll, to be called the Roll of Nurses.

(2) The Roll is to be divided as follows:

- (a) List "A" in which are to be entered the relevant particulars of enrolled nurses;
- (b) List "B" in which are to be entered the relevant particulars of enrolled nurses (mothercraft).

(3) The Registrar is required to enter in the appropriate list of the Roll in the prescribed manner on payment of the prescribed fee:

- (a) the full name of every nurse entitled to enrolment in the list; and
- (b) the date of the nurse's enrolment; and

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- (c) particulars of the qualification or qualifications in respect of which the nurse is enrolled.
- (4) The Board is to keep a separate record of the address of each person enrolled as a nurse.
- (5) Such a record is not to be made available to members of the public for inspection.
- (6) The Roll must at all reasonable times be open to inspection at the office of the Board by any person on payment of the prescribed fee.

Division 4—Enrolment**Qualifications for enrolment—List “A” of the Roll**

27. Any person who has attained the prescribed age (if any) and satisfies the Board that he or she is of good character is, on making an application in writing to the Board for the purpose and on paying to the Board the prescribed fee, entitled to be enrolled as a nurse in List “A” of the Roll and to be issued with a certificate of that enrolment, if

- (a) the person satisfies the Board that he or she:
 - (i) holds a prescribed certificate stating that he or she has, for the prescribed period, received training in one or more hospitals or institutions in New South Wales approved by the Board for the purposes of this section; and
 - (ii) has received the prescribed tuition and passed the prescribed examinations; or
- (b) the person satisfies the Board that he or she would, immediately before the commencement of Schedule 2 (6) to the Nurses Registration (Amendment) Act 1987, have been entitled to be enrolled as a nurses aide under the Nurses Registration Act 1953; or
- (c) the person satisfies the Board that he or she:
 - (i) has undergone an equivalent course of training in any place, other than New South Wales; and
 - (ii) is the holder of a diploma, certificate or other qualification to the effect that the person has successfully completed the course of training; and
 - (iii) is enrolled as a nurse or equivalent and with equivalent qualifications under the law in force in that place,and the Board is of the opinion that the standard of that training and of each examination leading to that diploma, certificate or

qualification is not lower than the standard provided for by or under this Act for the enrolment of nurses in List “A” of the Roll or

- (d) the person satisfies the Board that he or she:
- (i) has undergone an equivalent course of training to obtain enrolment or equivalent qualifications; and
 - (ii) is the holder of a diploma, certificate or other qualification approved by the Board from an institution, person, or body in any place, other than New South Wales, to the effect that the person has successfully completed the course of training; and
 - (iii) has passed such examinations, and has successfully completed such additional training, as the Board may in the particular case require,

and the Board is satisfied that the qualifications of the person are adequate for the purposes of enrolment as a nurse in List “A” of the Roll.

Qualifications for enrolment—List “B” of the Roll

28. Any person who has attained the prescribed age (if any) and satisfies the Board that he or she is of good character is, on making an application in writing to the Board for the purpose and on paying to the Board the prescribed fee, entitled to be enrolled as a nurse in List “B” of the Roll and to be issued with a certificate of that enrolment, if:

- (a) the person satisfies the Board that he or she holds a prescribed certificate stating that he or she has, for the prescribed period, attended the practice of such one or more hospitals or homes for children or such similar institutions as are approved by the Board and has passed such examinations as the Board prescribes; or
- (b) the person satisfies the Board that he or she would, immediately before the commencement of Schedule 2 (6) to the Nurses Registration (Amendment) Act 1987, have been entitled to be registered as a mothercraft nurse under the Nurses Registration Act 1953; or
- (c) the person satisfies the Board that he or she:
 - (i) has undergone a course in mothercraft nursing or equivalent training in any place, other than New South Wales; and
 - (ii) is the holder of a diploma, certificate or other qualification to the effect that the person has successfully completed the course of training; and
 - (iii) is registered or enrolled as a nurse with mothercraft or equivalent qualifications under the law in force at that place,

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and the Board is of the opinion that the standard of that training and of each examination leading to that diploma, certificate or qualification is not lower than the standard provided for by or under this Act for the enrolment of nurses in List "B" of the Roll; or

- (d) the person satisfies the Board that he or she:
- (i) has undergone a course of training to obtain mothercraft or equivalent qualifications; and
 - (ii) is the holder of a diploma, certificate or other qualification approved by the Board from an institution, person or body in any place, other than New South Wales, to the effect that the person has successfully completed the course of training; and
 - (iii) has passed such examinations, and has successfully completed such additional training, as the Board may in the particular case require,

and the Board is satisfied that the qualifications of the person are adequate for the purposes of enrolment as a nurse in List "B" of the Roll.

Issue of certificate of enrolment

29. The Registrar must, on entering in the Roll the particulars pertaining to the enrolment of a person as a nurse, issue to the person a certificate of enrolment in the prescribed form.

Division 5—Supplementary**Effect of discontinuation etc. of registered courses**

30. If, after a person commences a recognised course of training, the course is discontinued or ceases to be recognised, the Board may specify the requirements to be satisfied by the person in order to qualify for registration, authorisation to practise midwifery or enrolment under this Part.

Adequacy of language

31. A person is not entitled to be registered, authorised to practise midwifery or enrolled under this Part unless the person proves to the satisfaction of the Board that the person has a knowledge of the English language adequate for the conduct of the practice of nursing as a nurse or, as the case requires, for the practice of midwifery.

Appeals

32. (1) An applicant who is dissatisfied with a determination of the Board concerning his or her application under section 18, 19, 20, 27 or 28 may appeal against the determination to the District Court.

(2) Such an application which is not determined by the Board within 60 days after the application is made is taken, for the purposes of this section, to have been refused on the expiration of the 60-day period.

(3) An appeal against a determination of the Board must be made within 30 days after the date of the determination.

(4) An appeal is to be made in accordance with the rules of the District court.

(5) An appeal is to be dealt with by way of a new hearing and new evidence may be given in addition to or in substitution for any evidence given before the Board.

(6) In hearing an appeal, the District Court is not bound by the rules or practice as to evidence and may inform itself of any matter in such manner as it thinks fit.

(7) The District Court, in determining the appeal, is to have regard to this Act, the regulations, the circumstances of the case and the public interest.

(8) The District Court, in determining the appeal, may:

- (a) confirm the determination of the Board appealed against; or
- (b) substitute for that determination any other determination that the Board might have made.

(9) A decision of the District Court on an appeal is final and is taken to be that of the Board.

Annual practising fee

33. (1) A reference in this section to a prescribed period applicable to an accredited nurse is:

- (a) in relation to an accredited nurse (not being a registered nurse referred to in paragraph (b)), a reference to:
 - (i) the period of 12 months commencing on the first day of the month next following the first anniversary of the day of the nurse's registration or enrolment; and
 - (ii) each subsequent period of 12 months; and
- (b) in relation to a registered nurse who, immediately before the repeal of the Nurses Registration Act 1953, was a registered nurse

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referred to in section 17 (1) (a) of that Act—the period of 12 months commencing on 1 January in each year.

(2) An accredited nurse must, on or before the commencement of any prescribed period applicable to the nurse, pay to the Registrar the prescribed practising fee for an authority to practise as a nurse during that prescribed period.

(3) If:

(a) the Board has, not earlier than 2 months before the commencement of a prescribed period applicable to an accredited nurse, forwarded to the nurse by post addressed to the nurse at the nurse's address appearing on the record kept by the Board under section 16 (4) or 26 (4) a notice, informing the nurse that, if the prescribed practising fee for an authority to practise as a nurse during that prescribed period is not paid, the Board may cancel the nurse's registration or enrolment; and

(b) that nurse has not paid that fee to the Board before that commencement,

the Board may cancel the nurse's registration or enrolment.

(4) If the registration or enrolment of any person is cancelled under subsection (3), the Board must, on application in writing by that person and on payment to the Board of such fees as are prescribed, restore that person's registration.

(5) When determining an application under subsection (4), the Board may waive such part of the fees referred to in that subsection as the Board in any particular case considers appropriate.

Cancellation of registration etc. on account of death or disability etc.

34. (1) The Board is required to cancel the registration or enrolment of an accredited nurse if:

(a) the nurse dies: or

(b) the nurse ceases to possess or does not possess the qualifications in respect of which the nurse was registered or enrolled; or

(c) the nurse becomes a mentally incapacitated person.

(2) The Board is required to cancel the authorisation of a registered nurse who is authorised to practise midwifery if:

(a) the nurse dies: or

(b) the nurse ceases to possess or does not possess the qualification or qualifications by virtue of which the nurse became so authorised; or

(c) the nurse becomes a mentally incapacitated person.

Notice of incapacity

35. If an accredited nurse becomes a mentally incapacitated person, the person prescribed by the regulations is required to cause notice of that fact to be forwarded to the Board in accordance with the regulations.

Effect of cancellation etc. of registration

36. (1) Whenever the registration of a person as a nurse is cancelled under this Act, any authorisation held by that person to practise midwifery is also cancelled.

(2) Where the registration of a person as a nurse is suspended for a specified period under Part 5, any authorisation held by that person to practise midwifery is suspended for the same period.

Badges

37. An accredited nurse is entitled to wear a badge which is of a design prescribed by the regulations and which is issued by the Board.

Division 6—Offences**Misrepresentation concerning registration**

38. A nurse who is registered in a list of the Register must not:

- (a) claim to be; or
- (b) represent himself or herself to be,

registered in a different list of the Register.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

Misrepresentation concerning enrolment

39. A nurse who is enrolled in a list of the Roll must not:

- (a) claim to be; or
- (b) represent himself or herself to be,

enrolled in a different list of the Roll.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

Unauthorised use of qualifications

40. A person must not:

- (a) use; or

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(b) claim to be entitled to use, any certificate, diploma, membership, degree, licence, letters, testimonial or other title, status, document or description in or in relation to the person's registration, enrolment or qualification as a nurse except with the authority of the Board.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

False or misleading entries and statements etc.

41. A person:

- (a) who makes or causes to be made in the Register or the Roll an entry which that person knows to be false or misleading or alters an entry in the Register or the Roll with intent to render the entry false or misleading; or
- (b) who, for the purposes of obtaining registration as a nurse, authorisation to practise midwifery or enrolment as an enrolled nurse or enrolled nurse (mothercraft), either for that person or for anyone else, makes a statement, whether orally or in writing, which that person knows to be false or misleading,

is guilty of an offence.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

Return of certificate on cancellation of accreditation

42. Whenever the accreditation of a nurse is cancelled under this Act, the person whose accreditation is cancelled must immediately return his or her certificate of registration, authorisation or enrolment to the Registrar.

Maximum penalty: 5 penalty units.

PART 5—COMPLAINTS AND DISCIPLINARY PROCEEDINGS**Division 1—Complaints****Codes of professional conduct**

43. The Board may establish codes of professional conduct setting out the rules of conduct which should be observed by accredited nurses in carrying out the practice of nursing.

Complaints

44. (1) A complaint may be made that an accredited nurse:

- (a) has been convicted either in or outside New South Wales of an offence which, from the circumstances in which it was committed, renders the nurse unfit in the public interest to practise nursing; or
- (b) is an habitual drunkard or is addicted to any deleterious drug; or
- (c) has been guilty of unsatisfactory professional conduct; or
- (d) has been guilty of professional misconduct; or
- (e) does not have sufficient physical or mental capacity to practise nursing; or
- (f) is not of good character.

(2) A complaint may be made by any person:

- (a) to the Board; or
- (b) to the Director-General,

or may be made by the Board or the Director-General.

(3) A complaint made to the Board (other than a complaint made by the Director-General) or to the Director-General must:

- (a) be in writing; and
- (b) contain particulars of the allegations on which it is founded; and
- (c) be verified by statutory declaration; and
- (d) if made to the Board, be lodged with the Registrar, and
- (e) if made to the Director-General, be lodged at an office of the Department of Health.

(4) The Director-General and the Board are each to inform the other when a complaint is made to or by either of them.

(5) The Board or the Director-General may require the complainant to provide further particulars of a complaint.

(6) A complaint about an accredited nurse may be dealt with even though the nurse has ceased to be accredited and, for that purpose, references in this Part and Schedule 2 to an accredited nurse include references to a person who has ceased to be accredited.

(7) A complaint that an accredited nurse has been guilty of unsatisfactory professional conduct or professional misconduct may be dealt with even though the unsatisfactory professional conduct or professional misconduct occurred during a period in which the nurse's name had been removed from the Register or the Roll under section 64(1)(g).

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Referral or dismissal of complaints by the Board

45. (1) The Board must, as soon as practicable after a complaint is lodged with the Registrar or the Board has decided to make a complaint:

- (a) refer the complaint to a Committee or the Tribunal (which is to be constituted in accordance with this Act to deal with the complaint), as the Board thinks fit, despite any previous action taken by the Board or the Director-General; or
- (b) direct the accredited nurse concerned to attend for counselling; or
- (c) determine that no further action should be taken, except where the Board has decided to make the complaint.

(2) The Board must refer a complaint to the Tribunal if the complaint is that the nurse has been guilty of professional misconduct or if the Board is of the opinion that the subject-matter of the complaint (not being, in the Board's opinion, a frivolous or vexatious complaint), if substantiated, may provide grounds for the suspension or cancellation of the nurse's accreditation.

(3) The Board may refer a complaint to a Committee even though, if substantiated, it may provide grounds for the suspension or cancellation of the nurse's accreditation, if

- (a) the complaint is made under section 44 (1) (e), or the Board has decided to make the complaint under section 44 (1) (e); and
- (b) the Board is of the opinion that no other complaint under any other provision of section 44 relating to the accredited nurse concerned should be referred to the Tribunal.

(4) Two or more members of the Board may be appointed by the Board for the purpose, of carrying out the functions of the Board under this section, and in this Act and the regulations a reference to the referral of a complaint by the Board is taken to include a reference to a referral of a complaint by those members.

(5) The Board may, before taking any action under this section, require the nurse concerned, by notice in writing given personally or by post to the nurse, to undergo at the Board's expense a medical examination:

- (a) by a registered medical practitioner, and
- (b) at any reasonable time and place,

specified in the notice.

(6) A failure by a nurse, without reasonable cause, to comply with:

- (a) a direction under this section to attend for counselling; or
- (b) a notice given under this section to undergo a medical examination,

is, for the purposes of this Part or any inquiry or appeal under this Part,

evidence that the nurse does not have sufficient physical and mental capacity to practise nursing.

(7) The Board:

- (a) is not to refer a complaint about a nurse who has died; and
- (b) may decide not to refer a complaint:
 - (i) if the complainant fails to provide further particulars requested under section 44; or
 - (ii) if the accredited nurse concerned ceases to be accredited.

Referral or dismissal of complaints by the Director-General

46. (1) The Director-General must, as soon as practicable after a complaint is lodged with the Director-General or the Director-General has decided to make a complaint:

- (a) refer the complaint to the Board, or, after consultation with the Board, to a Committee or the Tribunal (which is to be constituted in accordance with this Act to deal with the complaint), as the Director-General thinks fit, despite any previous action taken by the Director-General or the Board; or
- (b) determine that no further action should be taken, except where the Director-General has decided to make the complaint.

(2) The Director-General must refer a complaint to the Tribunal if the complaint is that the accredited nurse has been guilty of professional misconduct or if the Director-General is of the opinion that the subject-matter of the complaint (not being, in the Director-General's opinion, a frivolous or vexatious complaint), if substantiated, may provide grounds for the suspension or cancellation of the nurse's accreditation.

(3) The Director-General may refer a complaint to the Board even though, if substantiated, it may provide grounds for the suspension or cancellation of the nurse's accreditation if:

- (a) the complaint is made under section 44 (1) (e), or the Director-General has decided to make the complaint under section 44 (1) (e); and
- (b) the Director-General is of the opinion that no other complaint under any other provision of section 44 relating to the nurse concerned should be referred to the Tribunal.

(4) The Director-General is to inform the Board if he or she refers a complaint to a Committee or the Tribunal.

(5) The Director-General:

- (a) is not to refer a complaint about a nurse who has died; and

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- (b) may decide not to refer a complaint:
- (i) if the complainant fails to provide further particulars requested under section 44; or
 - (ii) if the nurse concerned ceases to be accredited.

Investigation of complaints

47. (1) The Board must, at or before the time it refers a complaint to a Committee or the Tribunal, also refer the complaint to the Director-General for investigation.

(2) The Director-General must investigate the complaint or cause it to be investigated.

(3) The Director-General must investigate a complaint (or cause it to be investigated) if the Director-General refers the complaint to the Board, a Committee or the Tribunal.

Suspension etc. by the Board

48. (1) The Board may at any time:

- (a) by its order suspend an accredited nurse from practising for such period (not exceeding 30 days) as is specified in the order; or
- (b) impose on a nurse's accreditation such conditions, relating to the nurse's practice, as it considers appropriate,

if it is satisfied that such action is necessary for the purpose of protecting the life, or the physical or mental health, of any person.

(2) The Board may take action under this section whether or not a complaint has been made to the Board about the accredited nurse.

(3) The Board must, at or before the time it takes action under this section, refer:

- (a) any complaint about the nurse; and
- (b) particulars of the action taken and the Board's reasons for taking the action,

to the Tribunal, or, if the matter is one which could be referred to a Committee under section 45 (3), it may refer it to a Committee, and the matter is taken to be a complaint referred to the Tribunal or the Committee by the Board.

(4) The Tribunal or a Committee is to be constituted in accordance with this Act to deal with a matter referred to it under this section.

(5) The Board is to inform the Director-General when it takes any action under this section.

(6) A period of suspension imposed by the Board under this section may be extended, from time to time, by the Board by its order for a further period or further periods, each of not more than 30 days, if:

- (a) the extension has been approved in writing by the Chairperson or a Deputy Chairperson; and
- (b) the complaint about the nurse has not been disposed of.

(7) A person suspended from practising by an order under this section is, except in the application to the person of a provision of Part 4 or this Part, taken not to be an accredited nurse while the order is in force.

(8) On the expiry of such a period of suspension, the person's rights and privileges as an accredited nurse are revived, subject to any order made by the Tribunal.

(9) Conditions imposed under subsection (1) (b) following the making of a complaint about a nurse have effect until such time as the complaint is disposed of.

Appeals against suspension etc. by the Board

49. (1) A person:

- (a) who has been suspended by the Board from practising; or
- (b) on whose accreditation conditions have been imposed under section 48,

may appeal to the Tribunal against the suspension or conditions or any extension under that section of the period of suspension.

(2) An appeal under this section is to be lodged with the Registrar who is to refer it to the Tribunal (which is to be constituted in accordance with this Act to deal with the appeal).

(3) An appeal under this section against an order made or conditions imposed under section 48 is to be lodged not later than 21 days after notice of the order or notice of the imposition of the conditions is given to the affected person.

- (4) On an appeal under this section, the Tribunal may by its order:
 - (a) terminate, vary or confirm the period of suspension; or
 - (b) revoke, vary or confirm the conditions,

as it thinks proper, but only so that the order does not have effect beyond the day on which any related complaint about the person is disposed of.

(5) An appeal under this section does not affect any suspension or conditions with respect to which it has been made until an order is made under subsection (4).

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Division 2—Hearing of complaints by Professional Standards Committees**Professional Standards Committees**

50. (1) There are to be Professional Standards Committees.

(2) The Committees are to have and may exercise the jurisdiction and functions conferred or imposed on them by or under this Act.

(3) When the Board decides to refer a complaint or is informed by the Director-General of his or her decision to refer a complaint to a Committee, the Board is to appoint 3 persons to sit as the Committee for the purpose of conducting an inquiry into the complaint.

Constitution of Committees

51. (1) For the purpose of conducting an inquiry arising from a complaint against an accredited nurse, a Committee consists of

(a) 2 accredited nurses having such qualifications as may be prescribed; and

(b) 1 lay person (that is, a person who is not an accredited nurse) appointed from among a panel of lay persons for the time being nominated by the Minister.

(2) The Board is to appoint one of the members of a Committee as chairperson of the Committee.

(3) A person may be appointed to sit on a Committee whether or not the person is a member of the Board, but not if the person has previously dealt with the particular matter before the Committee in his or her capacity as such a member.

(4) One or more Committees may conduct more than one inquiry at the same time.

(5) A member of a Committee, while sitting on the Committee, is entitled to be paid by the Board in accordance with the regulations.

Proceedings before a Committee

52. (1) A Committee appointed under section 50 is to hold an inquiry into any complaint referred to it.

(2) On appointment under section 51, the chairperson of a Committee is to fix a time and place for the holding of an inquiry by the Committee into the complaint and is to give not less than 7 days' notice of the inquiry to:

(a) the accredited nurse concerned; and

- (b) the complainant, if any; and
- (c) the Director-General and the Board.

(3) In conducting an inquiry, a Committee is, unless it otherwise directs, to sit in the absence of the public and may conduct the proceedings as it thinks fit.

(4) A Committee may be assisted by a legally qualified officer appointed by the Registrar for that purpose on the request of the Committee.

(5) Schedule 2 has effect with respect to any inquiry conducted by a Committee.

Representation before a Committee

53. (1) At an inquiry conducted by a Committee:

- (a) the accredited nurse concerned; and
- (b) the complainant, if any,

are entitled to attend and to be accompanied by a barrister or solicitor or another adviser, but are not entitled to be represented at the inquiry by the barrister or solicitor or other adviser, except as provided by subsection (3).

(2) A Committee may grant leave for any other person (not being a barrister or solicitor or another adviser representing any person) to appear at an inquiry if the Committee is satisfied that it is appropriate for that person to appear.

(3) A Committee may grant leave for a barrister or solicitor to represent a nurse at an inquiry into a complaint concerning the physical or mental capacity of the nurse if the Committee is satisfied that it is appropriate to do so.

Referral of certain matters to the Tribunal

54. (1) A Committee must forthwith terminate an inquiry if, before or during the inquiry, the Committee:

- (a) forms the opinion that the complaint (not being a complaint referred under section 45 (3)), may provide grounds for the suspension or cancellation of the nurse's accreditation; or
- (b) becomes aware that the Board or the Director-General has referred the complaint or another complaint about the accredited nurse concerned to the Tribunal.

(2) The Committee must refer the complaint to the Tribunal unless it has already been referred to the Tribunal.

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(3) The Tribunal to which the complaint is referred may be the Tribunal as already constituted to deal with another complaint or the Tribunal as constituted in accordance with this Act to deal with the referred complaint.

(4) A Committee is to inform the Board and the Director-General when it takes any action under this section.

Determinations of a Committee

55. (1) A Committee may make one or more of the following determinations if it finds the subject-matter of a complaint made against a person to have been proved:

- (a) caution or reprimand the person;
- (b) order that the person seek medical or psychiatric treatment or counselling;
- (c) direct that such conditions, relating to the person's practice, as it considers appropriate be imposed on the person's registration;
- (d) order that the person complete such educational courses as are specified by the Committee;
- (e) order that the person report on his or her practice at the times, in the manner and to the persons specified by the Committee;
- (f) order that the person seek and take advice, in relation to the management of his or her practice, from such persons as are specified by the Committee.

(2) A power conferred by subsection (1) (b)–(f) may not be exercised unless the person concerned is accredited.

(3) An order may be made by a Committee that a person who is not accredited may be accredited subject only to compliance with an order made under subsection (1) (b), (d), (e) or (f) or conditions that might, if the person were accredited, be imposed under subsection (1) (c).

(4) The Board may refer to the Tribunal any failure by a person to comply with the following orders or conditions imposed by a Committee:

- (a) an order under subsection (1) (b), (d), (e) or (f);
- (b) conditions imposed under subsection (1) (c); or
- (c) an order under subsection (3).

(5) The Tribunal may, if it finds the failure to have been proved:

- (a) exercise any power that the Tribunal may exercise under section 64 (1) or (5) (if the person is an accredited nurse); or
- (b) make any order that the Tribunal may make under section 64 (2) or (5) (if the person is not an accredited nurse).

(6) An order made by a Committee or the Tribunal under this section takes effect on the day on which the order is made or on such later day as is specified in the order.

(7) A Committee is to inform the Registrar of the exercise of any power under this section by the Committee.

(8) A power of a Committee is taken to have been exercised by the Committee if any person other than the Committee exercises the power under this section.

Decisions of a Committee

56. (1) A decision supported by at least 2 members of a Committee on any question arising during an inquiry is the decision of the Committee.

(2) A Committee must, within 30 days of making the decision resulting from any such inquiry, make available to the complainant, the nurse concerned and such other persons as it thinks fit, a written statement of the decision.

(3) A written statement of a decision must:

- (a) set out any findings on material questions of fact; and
- (b) refer to any evidence or other material on which the findings were based; and
- (c) give the reasons for the decision.

(4) A Committee is not required to include confidential information in any such statement (despite any other provision of this section), and if a statement would be false or misleading if it did not include the confidential information, the Committee is not required to provide the statement.

(5) If, because of subsection (4), confidential information is not included or such a statement is not provided, a Committee must, within 30 days of the decision, give notice in writing to the person indicating that:

- (a) the confidential information is not included; or
- (b) the statement will not be provided,

as appropriate, and giving the reasons why the confidential information is not included or the statement will not be provided.

(6) In this section:

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“confidential information” means information that:

- (a) has not previously been published or made available to the public when a written statement of a decision to which it is or may be relevant is being prepared; and
- (b) relates to the personal or business affairs of a person, other than a person to whom a Committee is required (or would, but for subsection (4), be required) to provide a written statement of a decision; and
- (c) is information:
 - (i) that was supplied in confidence; or
 - (ii) the publication of which would reveal a trade secret; or
 - (iii) that was provided in compliance with a duty imposed by an enactment; or
 - (iv) the provision of which by a Committee would be in breach of any enactment.

(7) Nothing in this section affects the power of a court to make an order for the discovery of documents or to require the giving of evidence or the production of documents to a court.

Appeals against decisions of a Committee etc.

57. (1) A nurse about whom a complaint is referred to a Committee, or the complainant, may appeal to the Tribunal against:

- (a) a finding of the Committee; or
- (b) the exercise by the Committee of any power under section 55, within the prescribed time.

(2) The appeal is to be lodged with the Registrar who is to refer it to the Tribunal (which is to be constituted in accordance with this Act to deal with the appeal).

(3) The appeal is to be dealt with by way of a new hearing and new evidence may be given in addition to or in substitution for any evidence received at the inquiry.

(4) On the appeal, the Tribunal may:

- (a) dismiss the appeal; or
- (b) make any finding or exercise any power that the Tribunal could have made or exercised if the complaint had been originally referred to the Tribunal.

(5) The appeal does not affect any finding or exercise of power with respect to which it has been made until an order is made under subsection (4) (b).

Appeals with respect to points of law

58. (1) A nurse about whom a complaint is referred to a Committee, or the complainant, may appeal to the Chairperson, or a Deputy Chairperson nominated by the Chairperson, with respect to a point of law.

(2) The appeal may be made in accordance with the regulations during the inquiry conducted by the Committee or within the prescribed time.

(3) The inquiry by the Committee is not to continue until the appeal has been disposed of (if the inquiry has not been completed).

(4) The Committee, on recommencing the inquiry, is not to make any decision that is inconsistent with the Chairperson's or Deputy Chairperson's determination with respect to the point of law.

Division 3—Hearing of matters by the Nurses Tribunal**The Nurses Tribunal**

59. (1) There is to be a Nurses Tribunal.

(2) The Tribunal has and may exercise the jurisdiction and functions conferred or imposed on it by or under this or any other Act.

(3) The Board must inform the Chairperson and appoint 3 other persons to sit on the Tribunal when:

- (a) the Board decides to refer a complaint to the Tribunal; or
- (b) the Board is informed by a Committee or the Director-General of a decision by the Committee or Director-General to refer a complaint or another matter to the Tribunal; or
- (c) an appeal or application under section 68 to the Tribunal is lodged with the Registrar.

(4) On being informed of a complaint, matter, appeal or application under this section, the Chairperson is to nominate:

- (a) himself or herself; or
- (b) a Deputy Chairperson,

to sit on the Tribunal for the purpose of conducting an inquiry into the complaint, matter or application or hearing the appeal.

(5) For the purpose of conducting an inquiry or hearing an appeal, the Tribunal is to consist of:

- (a) the Chairperson or a Deputy Chairperson; and
- (b) 2 accredited nurses having such qualifications as may be prescribed, appointed by the Board; and

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(c) one lay person (that is, a person who is not an accredited nurse) appointed by the Board from among a panel of lay persons for the time being nominated by the Minister.

(6) A person may be appointed to sit on the Tribunal whether or not the person is a member of the Board, but not if the person has previously dealt with the particular matter before the Tribunal in his or her capacity as such a member.

(7) The Tribunal, as constituted by different persons or the same persons, may conduct or hear more than one inquiry or appeal at the same time.

(8) A member of the Tribunal (other than the Chairperson or a Deputy Chairperson), while sitting on the Tribunal, is entitled to be paid in accordance with the regulations.

(9) The Tribunal is to have a seal of which all courts and persons acting judicially are to take judicial notice.

Chairperson and Deputy Chairpersons of the Tribunal

60. (1) The Governor may appoint:

- (a) a prescribed legal practitioner as Chairperson of the Tribunal; and
- (b) one or more prescribed legal practitioners as Deputy Chairpersons of the Tribunal.

(2) The Chairperson and each Deputy Chairperson hold office for such period not exceeding 7 years as may be specified in the instrument of appointment as Chairperson or Deputy Chairperson, but are eligible (if otherwise qualified) for re-appointment.

(3) A Deputy Chairperson may be appointed by the Governor for the purpose only of conducting or hearing a particular inquiry or appeal described in the instrument of appointment of the Deputy Chairperson (without limiting the generality of this section).

(4) A Deputy Chairperson, while sitting on the Tribunal, has and may exercise all the functions conferred or imposed on the Chairperson by this Act (other than those conferred by section 59 (4)).

(5) The Chairperson or a Deputy Chairperson sitting on the Tribunal is entitled to be paid in accordance with the regulations.

(6) The Governor may appoint a Deputy Chairperson to act in the office of Chairperson during the illness or absence of the Chairperson.

(7) Part 2 of the Public Sector Management Act 1988 does not apply to or in respect of the appointment of the Chairperson or a Deputy Chairperson.

(8) In this section, “**prescribed legal practitioner**” means any of the following:

- (a) a Judge of the District Court;
- (b) a barrister of not less than 5 years’ standing;
- (c) a solicitor of not less than 7 years’ standing;
- (d) a barrister or a solicitor of less than 5 years’ or 7 years’ standing respectively, where at all times during a continuous period of not less than 7 years the person was on the roll of solicitors when the person was not on the roll of barristers or on the roll of barristers when the person was not on the roll of solicitors.

Proceedings before the Tribunal

61. (1) The members of the Tribunal nominated and appointed under section 59 are to conduct an inquiry into any complaint, matter or application and are to hear any appeal referred to it.

(2) On nomination under section 59, the Chairperson or a Deputy Chairperson is to fix a time and place for the conducting of the inquiry or the hearing of the appeal by the Tribunal and is to give not less than 7 days’ notice of the inquiry or appeal to the following persons:

- (a) the accredited nurse concerned;
- (b) the complainant, if any;
- (c) the Director-General and the Board;
- (d) the Chairperson of the relevant Committee, if appropriate.

(3) In conducting an inquiry or hearing an appeal, the Tribunal is, unless it otherwise directs, to be open to the public and may conduct the proceedings as it thinks fit.

(4) Schedule 2 has effect with respect to any inquiry Conducted or appeal heard by the Tribunal.

Representation before the Tribunal

62. (1) At an inquiry conducted or appeal heard by the Tribunal:

- (a) the accredited nurse concerned; and
- (b) the complainant, if any,

are entitled to attend and to be represented by a barrister or solicitor or another adviser.

(2) The Tribunal may grant leave for any other person to appear (whether in person or by a barrister or solicitor or another adviser) at an inquiry or appeal if the Tribunal is satisfied that it is appropriate for that person to appear.

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Chairperson or Deputy Chairperson not to review own decisions

63. The Chairperson or Deputy Chairperson must not sit on the Tribunal for the purpose of conducting any inquiry or hearing any appeal relating to a particular matter before the Tribunal if a decision has been made by the Chairperson or Deputy Chairperson in relation to the matter.

Determinations of the Tribunal

64. (1) The Tribunal may determine to do any one or more of the following if it finds the subject-matter of a complaint made against a person to have been proved:

- (a) caution or reprimand the person;
- (b) order that the person seek medical or psychiatric treatment or counselling;
- (c) direct that such conditions, relating to the person's practice, as it considers appropriate be imposed on the person's accreditation;
- (d) order that the person complete such educational courses as are specified by the Tribunal;
- (e) order that the person report on his or her practice at the times, in the manner and to the persons specified by the Tribunal;
- (f) order that the person seek and take advice, in relation to the management of his or her practice, from such persons as are specified by the Tribunal;
- (g) by its order:
 - (i) suspend the person from practising for such period as it specifies; or
 - (ii) direct that the person's name be removed from the Register or the Roll.

(2) A power conferred by subsection (1) (b)–(g) may not be exercised unless the person is accredited but an order may be made by the Tribunal that a person who is not accredited may be accredited only subject to compliance with an order under subsection (1) (b), (d), (e) or (f) or conditions that might, if the person were accredited, be imposed under subsection (1) (c).

(3) If the Board has reason to believe that a person in respect of whom the Tribunal has:

- (a) made an order under subsection (1) (b), (d), (e) or (f); or
- (b) imposed conditions under subsection (1) (c); or
- (c) made any order under subsection (2),

has failed to comply with the order or conditions, the Board may refer the matter to the Tribunal.

(4) The Tribunal may, if it finds the failure to have been proved:

(a) exercise any power that it may exercise under subsection (1) or (5) (if the person is an accredited nurse); or

(b) make an order that the Tribunal may make under subsection (2) or (5) (if the person is not an accredited nurse).

(5) If the Tribunal makes an order under subsection (1) (g) (ii) or the Tribunal finds the subject-matter of a complaint against a person who has ceased to be accredited to be proved:

(a) the Tribunal may by its order fix a time after which the person whose name is renewed from the Register or the Roll, or a person who has ceased to be accredited, may apply to be accredited; and

(b) if a time has been so fixed, the person is not entitled to be accredited before that time, despite Part 4.

(6) The Tribunal may award costs.

(7) An order made by the Tribunal under this section takes effect on the day on which the order is made or on such later day as is specified in the order.

(8) The Tribunal is to inform the Board of the exercise of any power under this section by the Tribunal.

(9) A power of the Tribunal exercised by the Supreme Court under this section is taken to have been exercised by the Tribunal, except for the purposes of any appeal.

Suspension orders

65. (1) A person subject to a suspension order is taken not to be an accredited nurse, except in the application to the person of a provision of Part 4 or this Part.

(2) On the expiry of such a period of suspension the person's rights and privileges as an accredited nurse are revived.

(3) In this section, "suspension order" means an order suspending a person from practising under section 55, 64 or 67 which is in force.

Decisions of the Tribunal

66. (1) The decision of the Chairperson, or a Deputy Chairperson, on any question of law or procedure arising during an inquiry or appeal at which the Chairperson or Deputy Chairperson presides is the decision of the Tribunal for the purposes of the inquiry or appeal.

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(2) A decision supported by at least 3 members of the Tribunal with respect to a question (other than with respect to a point of law or procedure) arising during an inquiry or appeal before the Tribunal is the decision of the Tribunal or, if 2 members support the decision and 2 members oppose the decision, the decision of the Chairperson or Deputy Chairperson presiding is the decision of the Tribunal.

(3) The Tribunal must, within 30 days of making the decision resulting from any such inquiry or appeal, make available to the complainant, the accredited nurse concerned and such other persons as it thinks fit a written statement of the decision.

(4) A written statement of a decision must:

- (a) set out any findings on material questions of fact: and
- (b) refer to any evidence or other material on which the findings were based; and
- (c) give the reasons for the decision.

(5) The Tribunal is not required to include confidential information in any such statement (despite any other provision of this section) and if a statement would be false or misleading if it did not include the confidential information, the Tribunal is not required to provide the statement.

(6) If, because of subsection (5), confidential information is not included or such a statement is not provided, the Tribunal must, within 30 days of the decision, give notice in writing to the person indicating that:

- (a) the confidential information is not included; or
- (b) the statement will not be provided,

and giving the reasons why the confidential information is not included or the statement will not be provided.

(7) In this section:

“confidential information” means information that:

- (a) has not previously been published or made available to the public when a written statement of a decision to which it is or may be relevant is being prepared; and
- (b) relates to the personal or business affairs of a person, other than a person to whom the Tribunal is required (or would, but for subsection (5), be required) to provide a written statement of a decision; and

(c) is information:

- (i) that was supplied in confidence; or
- (ii) the publication of which would reveal a trade secret; or
- (iii) that was provided in compliance with a duty imposed by an enactment; or
- (iv) the provision of which by the Tribunal would be in breach of any enactment.

(8) Nothing in this section affects the power of a court to make an order for the discovery of documents or to require the giving of evidence or the production of documents to a court.

Appeals against decisions of the Tribunal

67. (1) A person about whom a complaint is referred to the Tribunal under section 45, 46 or 54, or the complainant, may appeal to the Supreme Court against:

- (a) a decision of the Tribunal with respect to a point of law; or
- (b) the exercise of any power under section 64 by the Tribunal, within the prescribed time.

(2) The Supreme Court may stay any order made by the Tribunal, on such terms as the Court sees fit, until such time as the Court determines an appeal made under this section.

(3) In determining an appeal under this section, the Supreme Court may:

- (a) dismiss the appeal; or
 - (b) make such order as it thinks proper having regard to the merits of the case and the public welfare and, in doing so, may exercise any one or more of the powers of the Tribunal under section 64.
- (4) In any case where the Supreme Court dismisses an appeal against an order directing that the name of an accredited nurse be removed from the Register or the Roll or a person has ceased to be accredited:
- (a) the Court may by its order fix a time after which the person whose name is removed from the Register or the Roll, or the person who has ceased to be accredited, may apply to be accredited; and
 - (b) if a time has been so fixed, the person is not entitled to be accredited before that time despite Part 4.

(5) An appeal under this section with respect to a point of law may be made during an inquiry conducted by the Tribunal or within the prescribed time.

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(6) The inquiry before the Tribunal is not to continue until the appeal with respect to the point of law has been disposed of (if the inquiry has not been completed).

(7) The Tribunal, on recommencing the inquiry, is not to make any decision that is inconsistent with the Supreme Court's determination with respect to the point of law.

Review of suspension or cancellation of accreditation by the Tribunal

68. (1) A person:

- (a) who is suspended from practising under section 55 (5) or 64; or
- (b) whose name has been removed from the Register or the Roll under section 55 (5), 64 or 67,

may apply to the Tribunal for a review of the suspension or removal.

(2) An application under this section is to be lodged with the Registrar who is to refer it to the Tribunal (which is to be constituted in accordance with this Act to deal with the application).

(3) An application under this section:

- (a) may not be made by a person while the person is subject to an order fixing a time after which the person may apply to be accredited; and
- (b) may not be made if an appeal to the Supreme Court in respect of the same matter under section 67 has not been disposed of.

(4) On an application being made under this section, the Tribunal may, after such inquiry as it thinks fit:

- (a) dismiss the application; or
- (b) by its order, terminate any suspension; or
- (c) order:

- (i) that a person whose name has been removed from the Register or the Roll be accredited under the provision of this Act under which the person was accredited immediately before the person ceased to be accredited or under any equivalent provision of this Act; and

- (ii) that such conditions, if any, as the Tribunal may impose on the person's accreditation and as are specified in the order be imposed on the person's accreditation.

(5) The Tribunal may award costs.

(6) A person accredited pursuant to an order referred to in subsection (4) (c) (i) is taken to be accredited pursuant to a determination made by the Board under Part 4.

(7) A condition imposed pursuant to an order referred to in subsection (4) (c) (ii) is taken to be a condition that has been imposed by the Board under section 18, 19, 20, 27 or 28, as the case requires.

Inquiries etc. where other proceedings

69. A complaint may be referred to a Committee or the Tribunal, and dealt with by the Committee or Tribunal, even though the accredited nurse about whom the complaint is made is the subject of proposed or current criminal or civil proceedings relating to the subject-matter of the complaint.

Giving of information to other Australian registration bodies

70. The Board is authorised to inform any body which, under the law of another State or a Territory, is responsible for the accreditation of nurses of a determination of the Tribunal under section 64.

PART 6—MISCELLANEOUS

Written statement of decisions

71. (1) If the Board, the President or a member authorised by the Board makes a decision in relation to a person under any provision of this Act, other than Part 5, the person may request in writing that the Board, President or member provide the person with a written statement of the decision.

(2) Any such request is to be made no later than 60 days after the decision to which it relates.

(3) The Board, the President or the member is to provide a written statement of the decision within 30 days of receiving such a request.

(4) A written statement of a decision must:

(a) set out any findings on material questions of fact; and

(b) refer to any evidence or other material on which the findings are based; and

(c) give the reasons for the decision.

(5) Despite any other provision of this section, the Board, the President or the member is not required to include confidential information in any such statement, and if a statement would be false or misleading if it did

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not include the confidential information, the Board, the President or the member is not required to provide the statement.

(6) If, because of subsection (5), confidential information is not included in a written statement of a decision or such a statement is not provided to a person, the Board, the President or the member must within 30 days of receipt of a request under subsection (1), give notice in writing to the person, indicating that:

- (a) the confidential information is not included; or
- (b) the statement will not be provided,

and giving the reasons why the confidential information is not included or the statement will not be provided.

(7) In this section:

“confidential information” means information that:

- (a) has not previously been published or made available to the public when a written statement of a decision to which it is or may be relevant is being prepared; and
- (b) relates to the personal or business affairs of a person, other than a person to whom the Board, the President or the member is required (or would, but for subsection (5), be required) to provide a written statement of a decision; and
- (c) is information:
 - (i) that was supplied in confidence; or
 - (ii) the publication of which would reveal a trade secret; or
 - (iii) that was provided in compliance with a duty imposed by an enactment; or
 - (iv) the provision of which by the Board, the President or the member would be in breach of any enactment.

(8) Nothing in this section affects the power of a court to make an order for the discovery of documents or to require the giving of evidence or the production of documents to a court.

Alternative means of giving notices

72. (1) If the Board is satisfied that a notice is not able to be given to a person in accordance with a provision of this Part, the Board may direct that the notice be given by other means determined by the Board, being means which, in the opinion of the Board, are most likely, in all the circumstances, to bring the notice to the personal attention of the person concerned.

(2) A notice given in accordance with such a direction is taken to be given in accordance with the provision of this Part that requires the notice to be given.

Document under hand of Registrar to be prima facie evidence

73. A certificate purporting to be signed by the Registrar and to certify that:

- (a) on a specified day or days or during the whole of a specified period, a particular person:
 - (i) was duly registered as a nurse;
 - (ii) was, entered in the Register as being a person authorised to practise midwifery; or
 - (iii) was enrolled as an enrolled nurse or enrolled nurse (mothercraft); or
- (b) on a specified day or days or during the whole of a specified period, a particular person:
 - (i) was not registered as a nurse;
 - (ii) was not authorised to practise midwifery;
 - (iii) was not enrolled as an enrolled nurse or enrolled nurse (mothercraft); or
- (c) on a specified day:
 - (i) the registration of a particular person as a nurse;
 - (ii) the authorisation of a particular person to practise midwifery; or
 - (iii) the enrolment of a particular person as an enrolled nurse or enrolled nurse (mothercraft),
- was cancelled; or
- (d) as from a specified day:
 - (i) the registration of a particular person as a nurse was suspended for a specified period;
 - (ii) the authorisation of a particular person to practise midwifery was suspended for a specified period; or
 - (iii) the enrolment of a particular person as an enrolled nurse or enrolled nurse (mothercraft) was suspended for a specified period,

is, in all courts and before all persons and bodies authorised by law to receive evidence, without proof of the signature of the person by whom the certificate purports to have been signed, prima facie evidence of the facts stated.

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Proceedings for offences

74. (1) Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

(2) All informations for offences against this Act and the regulations are to be laid by the Registrar or by some other person appointed by the Board for that purpose, or a police officer.

(3) All penalties when recovered are to be paid to the Registrar, who is to pay them into the Nurses Registration Board Education and Research Account.

Fees etc.

75. The Registrar is required to transmit to the Corporation for payment into an account established under section 13A of the Health Administration Act 1982 all money received by the Board (whether for fees or otherwise), not being fines or penalties or money which is required to be dealt with in some other manner.

Nurses Registration Board Education and Research Account

76. (1) The Board is to establish a Nurses Registration Board Education and Research Account.

(2) The Board is to pay into the Account, from practising fees payable under this Act by registered nurses, enrolled nurses and enrolled nurses (mothercraft), such amounts as are determined by the Minister from time to time.

(3) The Minister may not determine an amount under this section without first consulting with the Board.

(4) Money in the Account may be expended by the Board for or towards any one or more of the following:

- (a) education (including postgraduate education) and research in nursing;
- (b) any public purpose connected with the profession of nursing;
- (c) meeting administrative expenditure incurred with respect to the Account and the purposes for which it is used,

or any related purpose.

(5) Any expenditure of money under this section must not be made unless it is authorised by a resolution supported by at least 6 members of the Board at a meeting specially convened for the purpose of considering the resolution.

Liability of members etc.

77. No matter or thing done by:

- (a) the Board or a member of the Board; or
- (b) the Registrar or any other officer of the Board; or
- (c) a Professional Standards Committee or a member of such a Committee,

subjects the member, the Registrar or the officer personally to any action, liability, claim or demand, if the matter or thing was done in good faith for the purposes of executing this or any other Act, or the exercise, or intended exercise, of any of his or her functions.

Regulations

78. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) In particular, the regulations may make provision for or with respect to the following:

- (a) the proceedings of the Board;
- (b) the issue and surrender of badges, authorities to practise referred to in section 33 and certificates of registration and enrolment and the fees payable for such badges and certificates;
- (c) the circumstances in which and the conditions on which and the persons to whom provisional certificates of registration may be issued and the effect of those certificates;
- (d) the period that a person is required to serve or attend at a hospital, a nursing home or an educational or other institution as a prerequisite to being granted registration as a nurse, authorisation to practise midwifery or enrolment as an enrolled nurse or enrolled nurse (mothercraft);
- (e) the conditions under or subject to which a hospital, a nursing home or an educational or other institution may be recognised by the Board under section 10 (1) (h);
- (f) the qualifications that a person is required to have as a prerequisite to being permitted to undertake a course of training or education leading to registration as a nurse, authorisation to practise midwifery or enrolment as an enrolled nurse or enrolled nurse (mothercraft);

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- (g) the character, subjects and conduct of examinations for registration of nurses, authorisation to practise midwifery or enrolment of enrolled nurses and enrolled nurses (mothercraft);
 - (h) the fees payable for examinations, registration, enrolment, restoration to the Register or the Roll and inspection of the Register or the Roll;
 - (i) the practising fees payable by registered nurses and enrolled nurses and enrolled nurses (mothercraft);
 - (j) the regulation and supervision of the practice of midwifery and the notification of diseases either in the mother or the new-born child by nurses practising midwifery;
 - (k) the circumstances in which, the manner in which and the extent to which a registered nurse, a registered nurse who is authorised by the Board to practise midwifery, an enrolled nurse or an enrolled nurse (mothercraft) is authorised to advertise;
 - (l) the promotion and maintenance of professional standards of nursing practice.
- (3) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.

Repeal of Nurses Registration Act 1953 No. 10

79. The Nurses Registration Act 1953 is repealed.

Repeal of certain regulations

- 80.** (1) The Nurses Registration Regulations are repealed.
(2) The Nurses Registration (Transitional) Regulation 1985 is repealed.

Savings and transitional provisions

81. Schedule 3 has effect.

**SCHEDULE 1—PROVISIONS RELATING TO THE MEMBERS
AND PROCEDURE OF THE BOARD**

(Sec. 15)

PART 1—THE MEMBERS

President and Deputy President of the Board

1. (1) Of the members of the Board, one who is a registered nurse is (in and by the relevant instrument of appointment as such a member, or by another instrument executed by the Governor) to be appointed as President of the Board and one (who need not be an accredited nurse) is to be so appointed as Deputy Resident of the Board,

(2) The Governor may remove a member from the office of Resident or Deputy President.

(3) A person who is the President or Deputy Resident vacates office as President or Deputy President if the person:

- (a) is removed from that office by the Governor; or
- (b) resigns that office by instrument in writing addressed to the Minister; or
- (c) ceases to be a member.

Acting members and acting President

2. (1) The Governor may, from time to time, appoint a person to act in the office of a member during the illness or absence of the member, and the person, while so acting, has all the functions of the member and is taken to be a member.

(2) The Deputy President of the Board may act in the office of President during the illness or absence of the Resident, and while so acting has all the functions of the President and is taken to be the President.

(3) The Governor may, from time to time, appoint a member who is an accredited nurse to act in the office of President during the illness or absence of both the President and Deputy President, and the member, while so acting, has all the functions of the President and is taken to be the President.

(4) The Governor may remove any person from any office to which the person was appointed under this clause.

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**SCHEDULE 1—PROVISIONS RELATING TO THE MEMBERS
AND PROCEDURE OF THE BOARD—*continued***

(5) A person while acting in the office of a member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

(6) For the purposes of this clause, a vacancy in the office of a member, the President or the Deputy President is taken to be an absence from office of the member, President or Deputy President.

Terms of office

3. Subject to this Schedule, a member holds office for such period (not exceeding 3 years) as may be specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

Remuneration

4. A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

Vacancy in office of member

5. (1) The office of a member becomes vacant if the member:
- (a) dies; or
 - (b) completes a term of office and is not re-appointed; or
 - (c) resigns the office by instrument in writing addressed to the Minister, or
 - (d) is removed from office by the Governor under this clause or under Part 8 of the Public Sector Management Act 1988; or
 - (e) is absent from 4 consecutive meetings of the Board of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for being absent from those meetings; or
 - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
 - (g) becomes a mentally incapacitated person; or

SCHEDULE 1—PROVISIONS RELATING TO THE MEMBERS
AND PROCEDURE OF THE BOARD—*continued*

(h) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) The Governor may remove a member from office at any time.

(3) Without affecting the generality of subclause (2), the Governor may remove from office a member who contravenes the provisions of clause 7.

Filling of vacancy in office of member

6. If the office of any member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

Disclosure of pecuniary interests

7. (1) If:

- (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Board; and
- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.

(2) A disclosure by a member at a meeting of the Board that the member:

- (a) is a member, or is in the employment, of a specified company or other body; or
- (b) is a partner, or is in the employment, of a specified person; or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under this clause.

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SCHEDULE 1—PROVISIONS RELATING TO THE MEMBERS
AND PROCEDURE OF THE BOARD—*continued*

(3) Particulars of any disclosure made under this clause are to be recorded by the Board in a book kept for the purpose and that book is to be open at all reasonable hours to inspection by any person on payment of the fee determined by the Board.

(4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Board otherwise determines:

(a) be present during any deliberation of the Board with respect to the matter; or

(b) take part in any decision of the Board with respect to the matter.

(5) For the purposes of the making of a determination by the Board under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:

(a) be present during any deliberation of the Board for the purpose of making the determination; or

(b) take part in the making by the Board of the determination.

(6) A contravention of this clause does not invalidate any decision of the Board.

(7) This clause does not apply to or in respect of an interest of a member in a matter which arises merely because the member is an accredited nurse.

(8) A reference in this clause to a meeting of the Board includes a reference to a meeting of a committee of the Board.

Effect of certain other Acts

8. (1) Part 2 of the Public Sector Management Act 1988 does not apply to or in respect of the appointment of a member.

(2) If by or under any other Act provision is made:

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or

(b) prohibiting the person from engaging in employment outside the duties of that office,

that provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

**SCHEDULE 1—PROVISIONS RELATING TO THE MEMBERS
AND PROCEDURE OF THE BOARD—*continued***

(3) The office of a member is not, for the purposes of any Act, an office or place of profit under the Crown.

PART 2—THE PROCEDURE OF THE BOARD**First meeting of Board**

9. The Minister may call the first meeting of the Board in such manner as the Minister thinks fit.

General procedure

10. The procedure for the calling of meetings of the Board and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Board.

Quorum

11. The quorum for a meeting of the Board is 6 members.

Presiding member

12. (1) The President or, in the absence of the President, the Deputy President of the Board or, in the absence of both of them, another member of the Board elected to chair the meeting by the members present, is to preside at a meeting of the Board.

(2) The person presiding at any meeting of the Board has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

Voting

13. A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.

Minutes

14. The Board must cause full and accurate minutes to be kept of the proceedings of each meeting of the Board.

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SCHEDULE 1—PROVISIONS RELATING TO THE MEMBERS
AND PROCEDURE OF THE BOARD—*continued*

Proof of certain matters not required

15. In any legal proceedings, proof is not required (until evidence is given to the contrary) of:

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

SCHEDULE 2—PROCEEDINGS BEFORE A COMMITTEE
AND THE TRIBUNAL

(Secs. 52, 61)

Proceedings generally

1. In proceedings before it, a Committee or the Tribunal is not bound to observe the rules of law governing the admission of evidence, but may inform itself of any matter in such manner as it thinks fit.

Power to summon witnesses and take evidence

2. (1) A member of a Committee or the Tribunal may summon a person to appear in proceedings before the Committee or the Tribunal, to give evidence and to produce such documents (if any) as are referred to in the summons.

(2) The person presiding at the proceedings may require a person appearing in the proceedings to produce a document.

(3) A Committee or the Tribunal may, in proceedings before it, take evidence on oath or affirmation and, for that purpose a member of the Committee or the Tribunal:

- (a) may require a person appearing in the proceedings to give evidence either to take an oath or to make an affirmation in a form approved by the person presiding; and
- (b) may administer an oath to or take an affirmation from a person so appearing.

(4) A person served with a summons to appear in any such proceedings and to give evidence shall not, without reasonable excuse:

- (a) fail to attend as required by the summons; or

SCHEDULE 2—PROCEEDINGS BEFORE A COMMITTEE AND
THE TRIBUNAL—*continued*

- (b) fail to attend from day to day unless excused, or released from further attendance, by a member of a Committee or the Tribunal.
- (5) A person appearing in proceedings to give evidence shall not, without reasonable excuse:
 - (a) when required to be sworn or affirm—fail to comply with the requirement; or
 - (b) fail to answer a question that the person is required to answer by the person presiding; or
 - (c) fail to produce a document that the person is required to produce by this clause.

Maximum penalty (subclauses (4) and (5)): 20 penalty units.

Power to obtain documents

3. (1) A member of a Committee or the Tribunal may, by notice in writing served on a person, require the person:

- (a) to attend, at a time and place specified in the notice, before a person specified in the notice, being a member of the Committee or the Tribunal or a person authorised by the Committee or the Tribunal in that behalf; and
 - (b) to produce, at that time and place, to the person so specified a document specified in the notice.
- (2) A person who fails, without reasonable excuse, to comply with a notice served on the person under this clause is guilty of an offence.

Maximum penalty: 20 penalty units.

Evidence of other proceedings

4. A Committee or the Tribunal may receive and admit on production, as evidence in any proceedings:

- (a) the judgment and findings of any court (whether civil or criminal and whether or not of New South Wales) or tribunal; or
- (b) the verdict or findings of a jury of any such court; or
- (c) a certificate of the conviction of any person; or
- (d) a transcript of the depositions or of shorthand notes, 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,

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SCHEDULE 2—PROCEEDINGS BEFORE A COMMITTEE AND
THE TRIBUNAL—*continued*

where the Committee or the Tribunal is of the opinion that the judgment, findings, verdict, certificate or evidence is relevant to the proceedings.

Additional complaints

5. (1) A Committee or the Tribunal may in proceedings before it deal with one or more complaints about an accredited nurse.

(2) If, during any such proceedings, it appears to a Committee or the Tribunal that, having regard to any matters that have arisen, another complaint could have been made against the nurse concerned:

- (a) whether instead of or in addition to the complaint which was made; and
- (b) whether or not by the same complainant,

the Committee or the Tribunal may take that other complaint to have been referred to it and may deal with it in the same proceedings.

(3) If another complaint is taken to have been referred to a Committee or the Tribunal under subclause (2), the complaint may be dealt with after such an adjournment (if any) as is, in the opinion of the Committee or the Tribunal, just and equitable in the circumstances.

Release of information

6. (1) The person presiding in proceedings before a Committee or the Tribunal may, on the request of a complainant, the accredited nurse concerned or any other person, if the person presiding thinks it appropriate in the particular circumstances of the case:

- (a) direct that the name of any witness is not to be disclosed in the proceedings; or
- (b) direct that all or any of the following matters:
 - (i) the name and address of any witness;
 - (ii) the name and address of a complainant;
 - (iii) the name and address of a nurse;
 - (iv) any specified evidence;
 - (v) the subject-matter of a complaint,

are not to be published, except in a publication intended primarily for the use of members of the legal or nursing profession.

SCHEDULE 2—PROCEEDINGS BEFORE A COMMITTEE AND
THE TRIBUNAL—*continued*

(2) A direction may be amended or revoked at any time by the person presiding.

(3) A direction may be given before or during proceedings, but is not to be given before the proceedings unless notice is given to:

- (a) the person who requested the direction; and
- (b) the complainant or the nurse concerned, ~~as~~ appropriate; and
- (c) such other persons ~~as~~ the person presiding thinks fit,

of the time and place appointed by the person presiding for consideration of the request.

(4) A person who contravenes a direction given under this clause is guilty of an offence.

Maximum penalty: 20 penalty units.

Authentication of documents by a Committee or the Tribunal

7. Every document requiring authentication by a Committee or the Tribunal may be sufficiently authenticated:

- (a) in the case of a Committee, if signed by the chairperson of that Committee or by a member of that Committee authorised to do ~~so~~ by that chairperson; or
- (b) in the case of the Tribunal, without the seal of the Tribunal, if signed by the Chairperson of the Tribunal or by a member of the Tribunal authorised to do ~~so~~ by the Chairperson.

Nominal complainant

8. In any proceedings before a Committee or the Tribunal, the Director-General or an officer of the Department of Health appointed by the Director-General:

- (a) may, with the consent of a complainant, act ~~as~~ the nominal complainant; and
- (b) when ~~so~~ acting, is, for the purposes of this Act and the regulations, taken to ~~be~~ the person who made the complaint.

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SCHEDULE 2—PROCEEDINGS BEFORE A COMMITTEE AND
THE TRIBUNAL—*continued*

Intervention by Director-General

9. Without limiting the operation of clause 8, the Director-General may intervene in any proceedings before a Committee or the Tribunal, and has a right to be heard:

- (a) personally or by an officer of the Department of Health; and
- (b) also, in the case of any proceedings before the Tribunal, by a barrister or solicitor who is not an officer of the Department of Health.

Expedition of inquiries and appeals

10. (1) It is the duty of a Committee and the Tribunal to hear inquiries and appeals under this Act and to determine those inquiries and appeals as soon as is reasonably practicable.

(2) Without affecting the generality of subclause (1), a Committee or the Tribunal may postpone or adjourn proceedings before it as it thinks fit.

Certain complaints may not be heard

11. (1) A Committee or the Tribunal may decide not to conduct an inquiry, or at any time to terminate an inquiry or appeal, if:

- (a) a complaint fails to comply with a requirement made of the complainant by the Committee or the Tribunal; or
- (b) the person about whom the complaint is made ceases to be an accredited nurse.

(2) A Committee or the Tribunal is not to conduct or continue any inquiry or any appeal if the accredited nurse concerned dies.

SCHEDULE 3—SAVINGS AND TRANSITIONAL PROVISIONS

(Sec. 81)

PART 1—PRELIMINARY

Definitions

1. In this Schedule:

“**new Board**” means the Nurses Registration Board constituted by section 8;

 SCHEDULE 3—SAVINGS AND TRANSITIONAL PROVISIONS—
continued

“old Board” means the Nurses Registration Board constituted under the 1953 Act;

“the 1953 Act” means the Nurses Registration Act 1953.

Regulations

2. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to this Act or a later day.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of the publication.

**PART 2—PROVISIONS CONSEQUENT ON ENACTMENT
OF THIS ACT**

Members of old Board

3. (1) A person who, immediately before the repeal of the 1953 Act, held office as a member of the old Board:

- (a) ceases to hold office as such on that repeal; and
- (b) is eligible (if otherwise qualified) to be appointed as a member of the new Board.

(2) A person who ceases to hold office as a member of the old Board because of the operation of this Act is not entitled to be paid any remuneration or compensation because of ceasing to hold that office.

Continuity of Board

4. Anything done by or in relation to the old Board is taken to have been done by or in relation to the new Board.

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SCHEDULE 3—SAVINGS AND TRANSITIONAL PROVISIONS—
*continued***Appointments etc. before commencement**

5. For the purpose only of enabling the new Board to be constituted in accordance with this Act on or after (but not before) the commencement of section 8, appointments may be made under this Act, and anything else may be done, before that commencement, as if the whole of this Act commenced on the date of assent, but so that no appointment as a member of the new Board as so constituted takes effect before that commencement.

The secretary and other officers

6. A person holding office as the Registrar or other officer under the 1953 Act immediately before the repeal of that Act is, on the commencement of section 13 of this Act, taken to have been appointed as the Registrar or other officer, as the case requires, as referred to in section 13 of this Act and to have been appointed subject to the same terms and conditions as applied to the appointment immediately before that repeal.

The Register

7. The Register referred to in section 16 of the 1953 Act is, on the commencement of section 16 of this Act, taken to be the Register referred to in section 16 of this Act.

The Roll

8. The Roll of Nurses referred to in section 22 of the 1953 Act is, on the commencement of section 26 of this Act, taken to be the Roll of Nurses referred to in section 26 of this Act.

Registration as nurse

9. (1) A person who, immediately before the repeal of the 1953 Act, was registered as a nurse under that Act in List “A” of the Register under that Act is, on the commencement of section 18 of this Act, taken to be registered as a nurse under this Act in List “A” of the Register under this Act.

(2) A person who, immediately before the repeal of the 1953 Act, was registered as a nurse under that Act in List “B” of the Register under that Act is, on the commencement of section 19 of this Act, taken to be

SCHEDULE 3—SAVINGS AND TRANSITIONAL PROVISIONS—
continued

registered as a nurse under this Act in List “B” of the Register under this Act.

(3) A certificate of temporary registration under section 16A of the 1953 Act, in force immediately before the repeal of the 1953 Act, is taken, on the commencement of section 24 of this Act, to have been issued under section 24 of this Act.

Authorisation as midwife

10. An authorisation to practise midwifery under section 15 of the 1953 Act, in force immediately before the repeal of the 1953 Act, is taken, on the commencement of section 20 of this Act, to have been granted under section 20 of this Act.

Enrolment as nurse

11. (1) A person who, immediately before the repeal of the 1953 Act, was enrolled as an enrolled nurse in List “A” of the Roll under that Act is, on the commencement of section 27 of this Act, taken to be enrolled as an enrolled nurse under this Act in List “A,” of the Roll under this Act.

(2) A person who, immediately before the repeal of the 1953 Act, was enrolled as an enrolled nurse (mothercraft) in List “B” of the Roll under that Act is, on the commencement of section 28 of this Act, taken to be enrolled as an enrolled nurse (mothercraft) under this Act in List “B” of the Roll under this Act.

Fees

12. A fee paid or which remains unpaid under a provision of the 1953 Act immediately before its repeal is taken, on commencement of the relevant provisions of this Act, to have been paid or to remain unpaid under the provision of this Act which corresponds to that provision and is taken to have been so paid or to so remain unpaid for or in relation to the same period as that which applied to the fee under the 1953 Act.

Applications for registration

13. An application for registration under the 1953 Act which had not been determined by the old Board before the repeal of that Act is taken to be an application for registration under this Act.

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SCHEDULE 3—SAVINGS AND TRANSITIONAL PROVISIONS—
*continued***Applications for authorisation as midwife**

14. An application for authorisation to practise midwifery under the 1953 Act which had not been determined by the old Board before the repeal of that Act is taken to be an application for authorisation to practise midwifery under this Act.

Applications for enrolment

15. An application for enrolment under the 1953 Act which had not been determined by the old Board before the repeal of that Act is taken to be an application for enrolment under this Act.

Appeals to the District Court

16. (1) An appeal to the District court under section 19A of the 1953 Act pending immediately before the repeal of that Act is to be continued and disposed of as if, except as provided by subclause (2), this Act had not been enacted.

(2) The decision of the District Court on any such appeal is to be final, is to be binding on the new Board and the appellant and for the purposes of this Act is taken to be the final decision of the new Board.

Complaints

17. An inquiry under section 19 of the 1953 Act which had not been completed before the repeal of that Act is, on the commencement of Part 5 of this Act, taken to be a complaint made to the Board under section 44 of this Act and is to be dealt with accordingly.

Construction of certain references

18. A reference in any other Act, in any instrument made under any Act or in any other instrument of any kind:

- (a) to the old Board is, on the commencement of section 8 of this Act, to be read as a reference to the new Board; and
- (b) to the Registrar under the 1953 Act is, on the commencement of section 13 of this Act, to be read as a reference to the Registrar under this Act; and

SCHEDULE 3—SAVINGS AND TRANSITIONAL PROVISIONS—
continued

- (c) to the Register referred to in section 16 of the 1953 Act is, on the commencement of section 16 of this Act, to be read as a reference to the Register referred to in section 16 of this Act; and
- (d) to the Roll of Nurses referred to in section 22 of the 1953 Act is, on the commencement of section 26 of this Act, to be read as a reference to the Roll of Nurses referred to in section 26 of this Act; and
- (e) to the registration of a person as a nurse under the 1953 Act is, on the commencement of sections 18 and 19 of this Act, to be read as a reference to the registration of the person as a nurse under this Act; and
- (f) to the authorisation of a person to practice midwifery under the 1953 Act is, on the commencement of section 20 of this Act, to be read as a reference to the authorisation of the person to practise midwifery under this Act; and
- (g) to the enrolment of a person as an enrolled nurse under the 1953 Act is, on the commencement of section 27 of this Act, to be read as a reference to the enrolment of the person as an enrolled nurse under section 27 of this Act; and
- (h) to the enrolment of a person as an enrolled nurse (mothercraft) under the 1953 Act is, on the commencement of section 28 of this Act, to be read as a reference to the enrolment of the person as an enrolled nurse (mothercraft) under section 28 of this Act.

*[Minister's second reading speech made in-
Legislative Assembly on 20 March 1991
Legislative Council on 11 April 1991]*