

Passed by both Houses



New South Wales

# Nurses Amendment Bill 2003

## Contents

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	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Nurses Act 1991 No 9	2
4 Amendment of other Acts	2
 Schedules	
1 Amendment of Nurses Act 1991	3
2 Amendment of other Acts	70

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*I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.*

*Clerk of the Legislative Assembly.  
Legislative Assembly,  
Sydney, , 2003*



New South Wales

## **Nurses Amendment Bill 2003**

Act No , 2003

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An Act to amend the *Nurses Act 1991* to make further provision for the registration and enrolment of nurses and midwives and to change the name of that Act; and for other purposes.

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*I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.*

*Chairman of Committees of the Legislative Assembly.*

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Nurses Amendment Act 2003*.

**2 Commencement**

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).
- (2) Schedule 2.8 and 2.11 commence:
  - (a) on the commencement of Schedule 1 [196], or
  - (b) on the commencement of Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002*,whichever is the later.

**3 Amendment of Nurses Act 1991 No 9**

The *Nurses Act 1991* is amended as set out in Schedule 1.

**4 Amendment of other Acts**

The Acts set out in Schedule 2 are amended as set out in that Schedule.

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## Schedule 1 Amendment of Nurses Act 1991

(Section 3)

### [1] Long title

Insert “and midwifery” after “nursing”.

### [2] Section 1 Name of Act

Omit “*Nurses Act 1991*”.

Insert instead “*Nurses and Midwives Act 1991*”.

### [3] Section 2A

Insert after section 2:

#### 2A Objects

- (1) The objects of this Act are:
  - (a) to protect the health and safety of the public by providing mechanisms to ensure that nurses and midwives are fit to practise, and
  - (b) to provide mechanisms to enable the public and employers to readily identify nurses and midwives who are registered or enrolled under this Act.
- (2) The Board must exercise its functions under this Act in a manner that is consistent with these objects.

### [4] Section 3 Definitions

Omit the definitions of *accreditation*, *accredited nurse*, *Board*, *enrolled nurse*, *Register*, *registered nurse* and *Tribunal* in section 3 (1).

Insert in alphabetical order:

***Board*** means the Nurses and Midwives Board.

***criminal finding*** means a finding by a court that a person is guilty of an offence without proceeding to conviction.

***enrolled nurse*** means a person who is enrolled under this Act in List “A” of the Roll.

***enrolled nurse (mothercraft)*** means a person who is enrolled under this Act in List “B” of the Roll.

*health registration Act* has the same meaning as in the *Health Care Complaints Act 1993*.

*midwife* means a registered midwife.

*midwife practitioner* means a midwife authorised by the Board under this Act to practise as a midwife practitioner.

*nurse* means a registered nurse or an enrolled nurse.

*Register* means the Register of Nurses or the Register of Midwives.

*Register of Midwives* means the Register of Midwives kept by the Board under this Act.

*Register of Nurses* means the Register of Nurses kept by the Board under this Act.

*registered health practitioner* means a person registered under a health registration Act.

*registered midwife* means a person who is registered in the Register of Midwives.

*registered nurse* means a person who is registered in the Register of Nurses.

*sex/violence criminal finding* means a criminal finding for a sex/violence offence.

*sex/violence offence* means an offence involving sexual activity, acts of indecency, child pornography, physical violence or the threat of physical violence.

*Tribunal* means the Nurses and Midwives Tribunal constituted under section 59.

**[5] Section 3 (1), definition of “Panel”**

Omit “Impaired Nurses Panel”.

Insert instead “Impairment Panel”.

**[6] Section 4 Meaning of “professional misconduct” and “unsatisfactory professional conduct”**

Omit “the Register” from section 4 (1).

Insert instead “a Register”.

**[7] Section 4 (2) (a)**

Insert “or midwife” after “the nurse”.

**[8] Section 4 (2) (c)**

Insert “or enrolment” after “registration”.

**[9] Section 4 (2) (d)**

Omit the paragraph. Insert instead:

- (d) the nurse’s or midwife’s failure without reasonable excuse to comply with a direction by the Board to provide information with respect to a complaint under this Act against the nurse or midwife,

**[10] Section 4**

Omit “an accredited nurse” wherever occurring.

Insert instead “a nurse or midwife”.

**[11] Section 4**

Insert “or midwife’s” after “nurse’s” wherever occurring.

**[12] Section 4**

Insert “or midwifery” after “nursing” wherever occurring.

**[13] Section 4, note**

Omit the note to the section. Insert instead:

**Note.** In the case of nurse practitioners and midwife practitioners, a contravention of any guidelines approved by the Director-General relating to the functions of nurses and midwives as nurse practitioners or midwife practitioners may constitute professional misconduct or unsatisfactory professional conduct (see section 78A).

**[14] Section 4A Meaning of “suffer from an impairment”**

Insert “or midwifery” after “nursing”.

**[15] Section 4B**

Insert after section 4A:

**4B Competence to practise nursing or midwifery**

For the purposes of this Act, a person is competent to practise nursing or midwifery only if the person has sufficient physical capacity, mental capacity, knowledge and skill to practise nursing or midwifery and has sufficient communication skills for the practice of nursing or midwifery, including an adequate command of the English language.

**[16] Section 5 Unregistered and unenrolled persons not to hold themselves out as registered or enrolled**

Insert “registered midwife,” after “registered nurse,” in section 5 (1).

**[17] Section 5 (1)**

Insert “or as a midwife (as appropriate)” after “as a nurse”.

**[18] Section 5 (2)**

Omit “an accredited nurse”. Insert instead “a nurse or midwife”.

**[19] Section 5 (2)**

Omit “accredited nurses”. Insert instead “nurses or midwives”.

**[20] Section 5A Unauthorised persons not to hold themselves out as nurse practitioners or midwife practitioners**

Insert “or a midwife practitioner” after “nurse practitioner” in section 5A (a) and (b) wherever occurring.

**[21] Section 5A**

Omit “unless the person is a registered nurse who is authorised by the Board to practise as a nurse practitioner”.

Insert instead “unless the person is a nurse practitioner or a midwife practitioner (as appropriate)”.

**[22] Section 6 Unregistered persons not entitled to hold themselves out as midwives**

Omit the section.

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**[23] Section 7 Unauthorised practice of midwifery**

Omit the section.

**[24] Part 3, heading**

Omit the heading. Insert instead:

**Part 3 Nurses and Midwives Board**

**[25] Section 8 Constitution of the Board**

Omit “Nurses Registration Board”.

Insert instead “Nurses and Midwives Board”.

**[26] Section 9 Membership of the Board**

Omit section 9 (1) and (2). Insert instead:

- (1) The Board is to consist of 16 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, and
  - (b) 1 is to be a registered midwife elected in accordance with the regulations by registered midwives who are eligible to vote at elections held for the purposes of this paragraph, and
  - (c) 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, and
  - (d) 2 are to be nurses or midwives engaged in the tertiary or pre-enrolment education of nurses or midwives in New South Wales nominated by the Minister, at least one of whom is a registered nurse, and
  - (e) 1 is to be a registered nurse or registered midwife nominated by the New South Wales Nurses’ Association, and



- (f) 1 is to be a registered nurse or registered midwife nominated by the NSW College of Nursing, and
- (g) 1 is to be a registered nurse who is nominated by the Minister and who practises nursing in the area of mental health, and
- (h) 1 is to be an enrolled nurse nominated by the Minister, and
- (i) 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, and
- (j) 1 is to be a legal practitioner nominated by the Minister, and
- (k) 3 are to be persons nominated by the Minister as representatives of the community.

**[27] Section 9 (3)**

Insert “or registered midwife” after “registered nurse”.

**[28] Section 10**

Omit the section. Insert instead:

**10 Functions of Board**

- (1) The Board has the following functions:
  - (a) to promote and maintain professional standards of nursing practice and midwifery practice in New South Wales,
  - (b) to promote the education of nurses and midwives and educational programs relating to nursing and midwifery,
  - (c) to advise the Minister on matters relating to the registration and enrolment of nurses and midwives, standards of nursing practice and midwifery 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 midwives and other interested persons,

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- (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) and to appoint places and times at which those examinations are to be held,
  - (g) for the purpose of facilitating under this Act the registration of nurses and midwives, the authorisation of registered nurses to practise as nurse practitioners, the authorisation of registered midwives to practise as midwife practitioners 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, nurse practitioners, midwives, midwife practitioners 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,
  - (h) to recognise, if the Board considers it appropriate, areas of practice as a nurse practitioner or midwife practitioner,
  - (i) to impose requirements or conditions for or relating to registration as a nurse or midwife, authorisation to practise as a nurse practitioner or midwife practitioner, 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 or midwife, authorisation to practise as a nurse practitioner or midwife practitioner, or enrolment as an enrolled nurse or enrolled nurse (mothercraft),
  - (k) to cause the relevant particulars of qualified nurses or midwives to be entered in the appropriate Register or Roll in such manner as the Board may direct,

- (l) to cause the relevant particulars of the qualifications and experience of registered nurses or midwives who are authorised by the Board to practise as nurse practitioners or midwife practitioners to be entered in the appropriate Register,
  - (m) to determine in accordance with this Act applications for registration as a nurse or midwife, for authorisation to practise as a nurse practitioner or midwife practitioner, and for enrolment as an enrolled nurse or enrolled nurse (mothercraft),
  - (n) to issue certificates of registration to registered nurses and registered midwives, certificates of authorisation to registered nurses or registered midwives who are authorised by the Board to practise as nurse practitioners or midwife practitioners, and certificates of enrolment to enrolled nurses and enrolled nurses (mothercraft),
  - (o) to issue authorities to practise as a nurse or midwife as provided by section 33,
  - (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 or midwife, authorisation to practise as a nurse practitioner or midwife practitioner, 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).

**[29] Section 12 Committees**

Omit section 12 (4). Insert instead:

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

**[30] Section 12A**

Insert after section 12:

**12A Practice Committees**

- (1) The following committees are established as Practice Committees of the Board:
  - (a) the Nurses Practice Committee (*NPC*),
  - (b) the Midwives Practice Committee (*MPC*).
- (2) The Practice Committees have the following functions:
  - (a) the provision of advice to the Board in relation to the accreditation of courses of education and training, and matters of education generally, in connection with the registration or enrolment of nurses (in the case of the NPC) and the registration of midwives (in the case of the MPC),
  - (b) such other functions in connection with the practice of nursing (in the case of the NPC) or midwifery (in the case of the MPC) as the Board may from time to time determine.
- (3) The members of the NPC and the MPC are appointed by the Board.
- (4) The membership of the NPC is as follows:
  - (a) 2 members of the Board selected by the Board,
  - (b) 1 nurse engaged in the tertiary education of nurses in New South Wales selected by the Board,
  - (c) 1 nurse engaged in the pre-enrolment education of nurses in New South Wales selected by the Board,
  - (d) 1 registered nurse engaged in nursing in New South Wales selected by the Board,
  - (e) 1 enrolled nurse engaged in nursing in New South Wales selected by the Board,

- (f) 1 nurse nominated by the Congress of Aboriginal and Torres Strait Islander Nurses,
  - (g) such other members as the Board may from time to time determine.
- (5) The membership of the MPC is as follows:
- (a) 2 members of the Board selected by the Board,
  - (b) 1 registered midwife engaged in the tertiary education of midwives in New South Wales selected by the Board,
  - (c) 1 registered midwife engaged in midwifery in New South Wales selected by the Board,
  - (d) 1 registered midwife nominated by the Congress of Aboriginal and Torres Strait Islander Nurses,
  - (e) such other members as the Board may from time to time determine.
- (6) If the Congress of Aboriginal and Torres Strait Islander Nurses fails to nominate a person for appointment to the NPC or MPC under this section within such time or in such manner as may be specified by the Board by notice in writing to the Congress, the Board may instead select a person for that appointment.
- (7) Of the members of a Practice Committee one is (in and by the member's instrument of appointment as a member or by another instrument executed by the Board) to be appointed as Chairperson of the Practice Committee.
- (8) Schedule 1A has effect with respect to the members and procedure of a Practice Committee.

**[31] Part 4, Division 1, heading**

Omit the heading. Insert instead:

**Division 1 Register of Nurses and Register of Midwives**

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**[32] Section 16**

Omit the section. Insert instead:

**16 The Registers**

- (1) The Board is to keep a Register of Nurses (containing particulars of registered nurses) and a Register of Midwives (containing particulars of registered midwives).
- (2) There is to be entered in the appropriate Register the following particulars of each person who is registered (including provisionally registered or temporarily registered) under this Act as a nurse or midwife:
  - (a) the full name of the person,
  - (b) the date of the person's registration,
  - (c) particulars of the qualification or qualifications by virtue of which the person is registered,
  - (d) particulars of any authorisation authorising the person to practise as a nurse practitioner or midwife practitioner, and particulars of the qualifications and experience by virtue of which the authorisation was granted,
  - (e) particulars of such further or additional qualifications held by the person that the Board decides are appropriate to be entered in the Register,
  - (f) such other particulars as are directed by or under this Act or the regulations to be entered in the Register in relation to the person.
- (3) The Board is to keep a separate record of the address of each person registered as a nurse or midwife. The separate record is not to be made available to members of the public for inspection.
- (4) A Register must be available for inspection by any person:
  - (a) in person at the office of the Board at all reasonable times, and
  - (b) by such other means (such as Internet access) and at such other times as the Board determines.

- (5) The Board may charge a fee for an inspection of a Register, not exceeding such amount as may be prescribed by the regulations.
- (6) The Board may carry out searches of a Register on a person's behalf and may charge such fee as it determines for the search.

**[33] Section 17**

Omit the section. Insert instead:

**17 Certificate of registration and authority to practise**

- (1) The Registrar is to issue a registered nurse or midwife with a certificate of registration and is to issue a nurse practitioner or midwife practitioner with a certificate of authority to practise as a nurse practitioner or midwife practitioner.
- (2) A certificate of registration or authority to practise as a nurse practitioner or midwife practitioner is to be in a form approved by the Board.

**[34] Section 18 Qualifications for registration as a nurse**

Omit "has attained the prescribed age (if any) and".

**[35] Section 18**

Omit "in List "A" of the Register" wherever occurring.

**[36] Section 18 (a)**

Omit the paragraph. Insert instead:

- (a) the person satisfies the Board that he or she has completed a course of training as a nurse at an institution in Australia, being a course of training that is recognised by the Board as entitling the person to registration as a nurse, and is the holder of a degree, diploma, certificate or other qualification to the effect that the person has successfully completed that course,  
or

**[37] Section 18 (c) (i)**

Omit ", other than New South Wales,". Insert instead "outside Australia".

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**[38] Section 18 (c)**

Insert “degree,” before “diploma” wherever occurring.

**[39] Section 18 (d) and (e)**

Omit section 18 (d). Insert instead:

- (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 degree, diploma, certificate or other qualification approved by the Board from an institution, person or body in any place (in or outside Australia) to the effect that the person has successfully completed the course of training, and
  - (iii) 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, or
- (e) the person was previously registered as a nurse under this Act or the *Nurses Registration Act 1953*, being registration properly granted on the basis of qualifications actually possessed by the person at the time of that previous registration.

**[40] Section 18 (2) and (3)**

Insert at the end of section 18:

- (2) Registration granted pursuant to an entitlement arising under subsection (1) (d) may be granted subject to such conditions (if any) as the Board thinks appropriate.
- (3) A training institution may apply to the Board for the recognition by the Board (for the purposes of subsection (1) (a)) of a course of training offered by the institution. The institution may apply to the Administrative Decisions Tribunal for a review of the decision of the Board on the application.



**[41] Section 19**

Omit the section. Insert instead:

**19 Qualifications for registration as a midwife**

(1) Any person who 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 midwife 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 midwife at an institution in Australia, being a course of training that is recognised by the Board as entitling the person to registration as a midwife, and is the holder of a degree, diploma, certificate or other qualification to the effect that the person has successfully completed that course, or

(b) the person satisfies the Board that he or she:

(i) has undergone a course of training in any place outside Australia in which a law providing for the registration (or other entitlement to practise) of midwives is in force, and

(ii) is the holder of a degree, diploma, certificate or other qualification to the effect that the person has successfully completed the course of training, and

(iii) is registered (or otherwise authorised to practise) as a midwife under that law,

and the Board is of the opinion that the standards of that training and of any examinations leading to that degree, diploma, certificate or other qualification are not lower than the standards provided for by or under this Act for the registration of midwives, 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 degree, diploma, certificate or other qualification approved by the Board from an institution, person or body in any place in or

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- outside Australia to the effect that the person has successfully completed the course of training, and
- (iii) 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 midwife, or
- (d) the person was previously registered as a nurse under this Act or the *Nurses Registration Act 1953*, being registration properly granted on the basis of qualifications actually possessed by the person at the time of that previous registration.
- (2) Registration granted pursuant to an entitlement arising under subsection (1) (c) may be granted subject to such conditions (if any) as the Board thinks appropriate.
- (3) A person who is eligible to be registered as a nurse cannot be registered as a midwife unless the person is also registered as a nurse.
- (4) A training institution may apply to the Board for the recognition by the Board (for the purposes of subsection (1) (a)) of a course of training offered by the institution. The institution may apply to the Administrative Decisions Tribunal for a review of the decision of the Board on the application.

**[42] Section 19A Nurse practitioners**

Omit “3 years” from section 19A (3). Insert instead “5 years”.

**[43] Section 20**

Omit the section. Insert instead:

**20 Midwife practitioners**

- (1) Any person who is registered or entitled to be registered as a midwife may apply to the Board for authorisation to practise as a midwife practitioner.

- (2) The Board may authorise a person to practise as a midwife practitioner only if the Board is satisfied that the person has sufficient qualifications and experience to be entitled to be authorised to practise as a midwife practitioner.
- (3) An authorisation to practise as a midwife practitioner has effect for the period specified in the authorisation (not exceeding 5 years), unless sooner cancelled or suspended under this Act.
- (4) An application for authorisation to practise as a midwife practitioner is to be in writing and is to be accompanied by the fee prescribed by the regulations.

**Note.** Section 78A provides that the Director-General may approve guidelines relating to the functions of registered midwives as midwife practitioners. The guidelines may include provision for the possession, use, supply or prescription of certain substances by midwife practitioners.

**[44] Section 21 Consideration and determination of applications**

Omit “to practise midwifery” from section 21 (1).

Insert instead “as a midwife practitioner”.

**[45] Section 21 (1)**

Omit “part of the”.

**[46] Section 21 (5)**

Insert after section 21 (4):

- (5) The Board need not afford the applicant an opportunity to be heard under this section if under section 29A the Board refuses the application because the Board is of the opinion, following an inquiry under Schedule 1B, that the applicant is not competent to practise nursing or midwifery.

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**[47] Section 22**

Omit the section. Insert instead:

**22 Registration of additional qualifications**

- (1) A person who is registered or entitled to be registered as a nurse or midwife may apply to the Board for a direction to the Registrar to enter in the appropriate Register further or additional qualifications relating to the person.
- (2) The Board may, if it thinks fit, give the direction applied for.
- (3) An application for such a direction must be accompanied by the fee prescribed by the regulations.

**[48] Section 23 Provisional registration**

Insert “or a midwife” after “nurse” in section 23 (1) wherever occurring.

**[49] Section 23 (1)**

Insert “degree,” before “diploma” wherever occurring.

**[50] Section 23 (1) (a)**

Omit “section 18 (a) or (d) (ii)”.

Insert instead “section 18 (1) (a) or (d) (ii) or 19 (1) (a) or (c) (ii)”.

**[51] Section 24 Temporary registration**

Insert “or to practise midwifery” after “practise nursing” in section 24 (1) (a).

**[52] Section 24 (1) (a)**

Insert “or in midwifery” after “in nursing”.

**[53] Section 24 (1) (b)**

Insert “or to practise midwifery” after “nursing”.

**[54] Section 24 (2) (a)**

Insert “or as a midwife” after “nurse”.

**[55] Section 24 (2) (b)**

Omit “or to practise midwifery”.

Insert instead “or as a midwife practitioner”.

**[56] Section 24 (3)**

Insert “or as a midwife (as appropriate)” after “registered as a nurse”.

**[57] Section 24 (3)**

Omit “sections 5A, 6 and 7 to be a registered nurse authorised to practise as a nurse practitioner, or to practise midwifery, as the case requires”.

Insert instead “section 5A to be a nurse practitioner or a midwife practitioner (as appropriate)”.

**[58] Section 25 When registration not required**

Insert “or as a midwife” after “nurse” in section 25 (a) and (b) wherever occurring.

**[59] Section 25 (a)**

Omit “registration of nurses”.

Insert instead “registration (or other authorisation to practise) of nurses or midwives”.

**[60] Section 25**

Insert “or a registered midwife (as appropriate)” after “registered nurse”.

**[61] Section 26 Roll of Nurses**

Omit “nurse” from section 26 (3) wherever occurring.

Insert instead “person”.

**[62] Section 26 (3)**

Omit “in the prescribed manner”.

**[63] Section 26 (3) (b)**

Omit “nurse’s”. Insert instead “person’s”.

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**[64] Section 26 (6)–(9)**

Omit section 26 (6). Insert instead:

- (6) The Roll must be available for inspection by any person:
  - (a) in person at the office of the Board at all reasonable times, and
  - (b) by such other means (such as Internet access) and at such other times as the Board determines.
- (7) The Board may charge a fee for an inspection of the Roll, not exceeding such amount as may be prescribed by the regulations.
- (8) The Board may carry out searches of the Roll on a person's behalf and may charge such fee as it determines for the search.
- (9) The provisions of this section extend to provisional and temporary enrolment.

**[65] Section 27 Qualifications for enrolment—List “A” of the Roll**

Omit “has attained the prescribed age (if any) and”.

**[66] Section 27 (a) (i)**

Omit the subparagraph. Insert instead:

- (i) has undergone training as a nurse at one or more hospitals or institutions in Australia, being training that is recognised by the Board as entitling the person to enrolment as a nurse in List “A” of the Roll, and is the holder of a certificate to the effect that the person has undergone that training, and

**[67] Section 27 (c)**

Omit “in any place, other than New South Wales”.

Insert instead “in any place outside Australia”.

**[68] Section 27 (d) (ii)**

Omit “in any place, other than New South Wales,”.

Insert instead “in any place in or outside Australia”.

**[69] Section 27 (e)**

Insert after section 27 (d):

, or

- (e) the person was previously enrolled as a nurse under this Act or the *Nurses Registration Act 1953*, being enrolment properly granted on the basis of qualifications actually possessed by the person at the time of that previous enrolment.

**[70] Section 27 (2) and (3)**

Insert at the end of section 27:

- (2) A hospital or training institution may apply to the Board for the recognition by the Board (for the purposes of subsection (1) (a)) of a course of training offered by the hospital or institution. The hospital or institution may apply to the Administrative Decisions Tribunal for a review of the decision of the Board on the application.
- (3) Enrolment pursuant to an entitlement arising under subsection (1) (d) may be made subject to such conditions (if any) as the Board thinks appropriate.

**[71] Section 28 Qualifications for enrolment—List “B” of the Roll**

Omit “has attained the prescribed age (if any) and”.

**[72] Section 28 (a)**

Omit the paragraph. Insert instead:

- (a) the person satisfies the Board that he or she holds a certificate approved by the Board stating that he or she has, for the period approved by the Board, 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 approves, or

**[73] Section 28 (e)**

Insert after section 28 (d):

, or

- (e) the person was previously enrolled as a nurse under this Act or the *Nurses Registration Act 1953*, being enrolment properly granted on the basis of qualifications actually possessed by the person at the time of that previous enrolment.

**[74] Sections 28A–28C**

Insert after section 28:

**28A Provisional enrolment**

- (1) The President may grant to a person a certificate of provisional enrolment as a nurse if the person:
  - (a) is entitled to a diploma, certificate or other qualification referred to in section 27 (a) or (d), and
  - (b) will have the diploma, certificate or other qualification conferred or granted in due course according to the practice of the body, association or institution conferring or granting the diploma, certificate or other qualification, and
  - (c) is of good character, and
  - (d) applies to be enrolled as a nurse and pays the fee prescribed by the regulations.
- (2) A certificate of provisional enrolment has effect until it is cancelled or expires.
- (3) The President is to set an expiry date, not later than 6 months after the certificate takes effect, for each certificate of provisional enrolment 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 enrolment without prejudice to any application for enrolment of the person who was the holder of the certificate.



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

**28B Temporary enrolment**

- (1) The Board may, on the application in writing of any person who wishes to obtain a certificate of temporary enrolment and on being paid the prescribed fee, issue to the person a certificate of temporary enrolment 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 enrolment 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.
- (3) A person to whom a certificate of temporary enrolment has been issued is, while the certificate is in force and the person complies with any conditions endorsed on the certificate, taken to be enrolled as a nurse for the purposes of sections 5 and 37 but, if applicable, only in the capacity specified in the certificate.
- (4) A certificate of temporary enrolment 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 26 (4), cancel a certificate of temporary enrolment in force under this section for failure to comply

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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 enrolment includes a reference to such a certificate that is renewed under subsection (4).

**28C Consideration and determination of application**

- (1) As soon as practicable after receiving an application made under section 27 or 28, the Board must consider the application and, if satisfied as to the entitlement of an applicant, must enrol the applicant and direct the Registrar to enter the relevant particulars of the applicant in the appropriate part of the Roll, but if the Board is not so satisfied, it must refuse the application.
- (2) The Board must not refuse an application made under section 27 or 28 unless it has afforded the applicant an opportunity to be heard in relation to the matter.
- (3) If 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) If the Board refuses an application made under section 27 or 28, it must forthwith notify the applicant in writing of the refusal and of the reasons for the refusal.
- (5) The Board need not afford the applicant an opportunity to be heard under this section if under section 29A the Board refuses the application because the Board is of the opinion, following an inquiry under Schedule 1B, that the applicant is not competent to practise nursing.

**[75] Section 29 Issue of certificate of enrolment**

Omit “prescribed form”. Insert instead “form approved by the Board”.

**[76] Section 29A**

Omit the section. Insert instead:

**29A Power to refuse or impose conditions on registration or enrolment**

- (1) The Board may refuse to register or enrol a person who would otherwise be entitled to registration or enrolment if:
  - (a) the Board is of the opinion, following an inquiry under Schedule 1B, that the person is not competent to practise nursing or midwifery (as appropriate), or
  - (b) the person has been convicted of or made the subject of a criminal finding for an offence (either in or outside New South Wales) and the Board is of the opinion that the circumstances of the offence render the person unfit in the public interest to practise nursing or midwifery (as appropriate).
- (2) As an alternative to refusing to register or enrol a person, the Board may grant registration or enrolment subject to conditions if the Board considers that refusal of registration or enrolment is not warranted and that the person should be granted registration or enrolment subject to appropriate conditions.
- (3) A nurse or midwife who has had conditions imposed on his or her registration or enrolment under this section (including on a review under this section) may apply to the Board for a review of the conditions.
- (4) The Board may decline to review the conditions if the application is made within 12 months after the conditions were last reviewed under this section. No appeal lies under section 32 in respect of such a decision by the Board to decline to review conditions.
- (5) On a review of conditions the Board may alter or remove conditions or impose new conditions, as it thinks appropriate.
- (6) Schedule 1B has effect.

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**[77] Section 30 Effect of discontinuation or other change in registered courses**

Omit “authorisation to practise midwifery”.

Insert instead “authorisation to practise as a midwife practitioner”.

**[78] Section 31 Adequacy of language**

Omit “authorised to practise midwifery”.

Insert instead “authorised to practise as a midwife practitioner”.

**[79] Section 31**

Insert “as a midwife or as a midwife practitioner” after “the practice of midwifery”.

**[80] Section 32**

Omit the section. Insert instead:

**32 Appeals concerning registration or enrolment**

- (1) A person who is aggrieved by any decision of the Board concerning the person’s application under section 18, 19, 19A, 20, 27 or 28 or application for review under section 29A may appeal to the Tribunal against the decision.
- (2) An appeal must be made within 28 days (or such longer period as the Chairperson may allow in a particular case) after notice of the decision is given to the person. The appeal is to be lodged with the Registrar who is to refer it to the Tribunal.
- (3) If the decision in respect of which an appeal is made was made as a consequence of an inquiry held by the Board, the appeal is to be dealt with by way of rehearing and fresh evidence or evidence in addition to or in substitution for the evidence received at the inquiry may be given.
- (4) An appeal does not affect any determination with respect to which it is made until the appeal is determined.
- (5) When it determines an appeal, the Tribunal may dismiss the appeal or order that the decision of the Board be revoked and replaced by a different decision made by the Tribunal and specified in the order. The Tribunal may also make such ancillary orders as it thinks proper.

- (6) The Tribunal's decision is taken to be a decision of the Board (but this does not confer a right of appeal under this section in respect of the Tribunal's decision).
- (7) No appeal lies under this Act against a decision of the Board under the Mutual Recognition laws in relation to its functions under that Act.

**Note.** The Mutual Recognition laws provide that a person may, subject to the *Administrative Appeals Tribunal Act 1975* of the Commonwealth, apply to the Administrative Appeals Tribunal for a review of a decision of a local registration authority in relation to its functions under the Mutual Recognition laws. Those functions include registration, the imposition or waiver of conditions on registration and the postponement, refusal or reinstatement of registration.

**[81] Section 33 Annual practising fee**

Omit section 33 (1)–(3). Insert instead:

- (1) A nurse or midwife must, on or before the commencement of each practice period for the nurse or midwife, pay to the Board the fee prescribed by the regulations as *the annual practising fee* payable for that practice period.
- (1A) The same annual practising fee must be prescribed in respect of both nurses and midwives. A person who is to be registered as both a nurse and a midwife for a practice period is only required to pay one annual practising fee for the practice period.
- (2) The Board must forward by post to a nurse or midwife (at the address of the nurse or midwife appearing in the Board's record of addresses) not earlier than 2 months before the commencement of each practice period for the nurse or midwife a notice informing the nurse or midwife that:
  - (a) an annual practising fee of a specified amount is payable by the nurse or midwife for the practice period, and
  - (b) if the fee is not paid to the Board before the commencement of the practice period the Board may cancel the nurse's or midwife's registration or enrolment.
- (3) The Board may cancel the registration or enrolment of a nurse or midwife if the annual practising fee payable by the nurse or midwife for a practice period is not paid before the commencement of the practice period.

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**[82] Section 33 (4)**

Omit “the Board must”. Insert instead “the Board may”.

**[83] Section 33 (4)**

Insert “or enrolment” after “person’s registration”.

**[84] Section 33 (6)–(8)**

Insert after section 33 (5):

- (6) If the Board determines not to grant an application for restoration of registration or enrolment, the Board may treat the application as an application by the person for registration or enrolment (and proceed to deal with the application accordingly) or may instead require the person to make the appropriate application for registration or enrolment.
- (7) A person who is eligible to be registered as a nurse cannot remain registered as a midwife unless the person also remains registered as a nurse. Accordingly, the Board must cancel a person’s registration as a midwife if the person’s registration as a nurse is cancelled while the person remains eligible to be registered as a nurse.
- (8) The *practice period* for a nurse or midwife is 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 or midwife’s registration or enrolment, and each subsequent period of 12 months.

**[85] Section 34**

Omit the section. Insert instead:

**34 Cancellation of registration and enrolment**

- (1) The Board is required to cancel the registration or enrolment of a nurse or midwife if:
  - (a) the nurse or midwife dies, or
  - (b) the nurse or midwife ceases to possess or does not possess the qualifications in respect of which the nurse or midwife was registered or enrolled, or
  - (c) the nurse or midwife becomes a mentally incapacitated person.

- (2) The Board is required to cancel the authorisation of a nurse to practise as a nurse practitioner or the authorisation of a midwife to practise as a midwife practitioner if the nurse or midwife ceases to possess or does not possess the qualification or qualifications by virtue of which the nurse or midwife became so authorised.

**[86] Section 35 Notice of incapacity**

Omit “an accredited nurse”. Insert instead “a nurse or midwife”.

**[87] Section 36**

Omit the section. Insert instead:

**36 Effect of cancellation or suspension of registration**

- (1) Whenever the registration of a person as a nurse or midwife is cancelled under this Act, any authorisation held by that person to practise as a nurse practitioner or as a midwife practitioner is also cancelled.
- (2) Where the registration of a person as a nurse or midwife is suspended for a specified period under Part 5, any authorisation held by that person to practise as a nurse practitioner or as a midwife practitioner is suspended for the same period.

**[88] Section 37 Badges**

Omit “An accredited nurse”. Insert instead “A nurse or midwife”.

**[89] Section 38 Misrepresentation concerning registration**

Omit the section.

**[90] Section 40 Unauthorised use of qualifications**

Omit the section.

**[91] Section 41 False or misleading entries and statements**

Omit “the Register” from section 41 (a) wherever occurring.

Insert instead “a Register”.

**[92] Section 41 (b)**

Omit the paragraph. Insert instead:

- (b) who, for the purposes of obtaining registration as a nurse or midwife, authorisation to practise as a nurse practitioner or midwife practitioner, 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,

**[93] Section 42**

Omit the section. Insert instead:

**42 Return of certificate on cancellation of registration, enrolment or authorisation**

A nurse or midwife whose registration, enrolment, authorisation to practise as a nurse practitioner or authorisation to practise as a midwife practitioner is cancelled must immediately return his or her certificate of registration, authorisation or enrolment to the Registrar.

Maximum penalty: 5 penalty units.

**[94] Part 4, Division 7**

Insert after Division 6 of Part 4:

**Division 7 Returns and information**

**42A Annual return to be submitted**

- (1) A nurse or midwife must, on or before the return date for the nurse or midwife in each year, furnish in writing to the Board in a form approved by the Board a return for the return period specifying the following information:
  - (a) details of any conviction of the nurse or midwife for an offence in this State or elsewhere during the return period (together with details of any penalty imposed for the offence),



- (b) details of the making of a sex/violence criminal finding against the nurse or midwife for an offence, in this State or elsewhere, during the return period (together with details of any penalty imposed for the offence),
- (c) details of the making of a criminal finding against the nurse or midwife for an offence committed in the course of the practice or purported practice of nursing or midwifery, in this State or elsewhere, during the return period (together with details of any penalty imposed for the offence),
- (d) details of any criminal proceedings pending against the nurse or midwife at the end of the return period, in this State or elsewhere, for a sex/violence offence alleged to have been committed in the course of the practice or purported practice of nursing or midwifery,
- (e) details of any criminal proceedings pending against the nurse or midwife at the end of the return period, in this State or elsewhere, for a sex/violence offence alleged to have been committed against a minor or to involve child pornography (whether or not alleged to have been committed in the course of the practice or purported practice of nursing or midwifery),
- (f) details of any significant illness (physical or mental) from which the nurse or midwife suffered at any time during the return period and that may reasonably be thought likely to detrimentally affect the nurse's or midwife's physical or mental capacity to practise nursing or midwifery,
- (g) details of any suspension of, cancellation of, or imposition of conditions on, the registration of the nurse or midwife as a nurse or midwife in another jurisdiction (either within Australia or elsewhere) during the return period,
- (h) details of any suspension of, cancellation of, or imposition of conditions on, any registration of the nurse or midwife under a health registration Act during the return period,
- (i) a statement as to whether the nurse or midwife is registered under a health registration Act as at the date of the return,

- (j) a statement as to whether the nurse or midwife has been refused registration as a nurse or midwife in another jurisdiction (either within Australia or elsewhere) during the return period,
  - (k) such other information as may be prescribed by the regulations.
- (2) The Board may require a return under this section to be verified by statutory declaration.
  - (3) The regulations may provide that subsection (1) (a) does not apply in respect of particular offences.
  - (4) In this section:
    - return date* for a nurse or midwife means the date notified to the nurse or midwife by the Board in writing at least 1 month in advance.
    - return period* means the period of 12 months ending 2 months before the return date.

**42B Notification of convictions, criminal findings and charges**

- (1) A nurse or midwife must notify the Board in writing within 7 days after:
  - (a) the nurse or midwife is convicted of an offence or made the subject of a sex/violence criminal finding for an offence, in this State or elsewhere, giving details of the conviction or criminal finding and any penalty imposed for the offence, or
  - (b) criminal proceedings are commenced against the nurse or midwife, in this State or elsewhere, in respect of a sex/violence offence alleged to have been committed in the course of the practice or purported practice of nursing or midwifery, or
  - (c) criminal proceedings are commenced against the nurse or midwife, in this State or elsewhere, in respect of a sex/violence offence alleged to have been committed against a minor or to involve child pornography (whether or not alleged to have been committed in the course of the practice or purported practice of nursing or midwifery).

- (2) The regulations may provide that subsection (1) (a) does not apply in respect of particular offences.

**42C Courts to provide information on convictions**

- (1) As soon as practicable after a nurse or midwife is convicted of an offence or a sex/violence criminal finding is made against a nurse or midwife, the Clerk or other proper officer of the court must (if the court is aware that the person is a nurse or midwife) notify the Board of the conviction or criminal finding together with details of any penalty imposed for the offence.
- (2) The regulations may provide that this section does not apply in respect of particular offences.

**42D Application of Criminal Records Act**

For the purposes of the application of this Division in respect of a criminal finding, the *Criminal Records Act 1991* applies in respect of a criminal finding as if section 8 (2) and (4) of that Act were omitted.

**Note.** Section 8 (2) and (4) of the *Criminal Records Act 1991* make special provision for when criminal findings become "spent" under that Act. The omission of those subsections will mean that in determining when a criminal finding becomes spent for the purposes of this Division, criminal findings will be treated as ordinary convictions and the relevant crime-free period will be as provided by section 9 of that Act.

**[95] Section 43**

Omit the section. Insert instead:

**43 Codes of professional conduct**

- (1) The Board may establish one or more codes of professional conduct setting out guidelines that should be observed by nurses and midwives in their professional practice. The Board may from time to time amend or replace a code of professional conduct.
- (2) The Minister may require the Board to develop guidelines relating to any conduct of nurses or midwives that the Minister considers should be the subject of a code of professional conduct.

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- (3) For that purpose, the Minister may:
- (a) direct the Board to establish a code of professional conduct, or
  - (b) direct the Board to amend or replace a code of professional conduct,
- so that the code includes guidelines relating to that conduct.
- (4) The Board is to comply with any such direction of the Minister.
- (5) The provisions of a code of professional conduct are a relevant consideration in determining for the purposes of this Act what constitutes proper and ethical conduct by a nurse or midwife.
- (6) The procedure for the establishment of a code of professional conduct is as follows:
- (a) the Board is to prepare a proposed code in draft form and is to prepare an impact assessment statement for the proposed code in accordance with such requirements as the Minister may from time to time determine,
  - (b) the draft code and impact assessment statement are to be publicly exhibited for a period of at least 21 days,
  - (c) the Board is to seek public comment on the draft code during the period of public exhibition and public comment may be made during the period of public exhibition and for 21 days (or such longer period as the Board may determine) after the end of that period,
  - (d) the Board is to submit the draft code to the Minister for approval together with a report by the Board giving details of public comment received during the period allowed for public comment and the Board's response to it,
  - (e) the Board is not to establish the draft code as a code of professional conduct unless the Minister approves the draft.
- (7) The procedure for the amendment or replacement of a code of professional conduct is the same as for the establishment of the code unless the Minister otherwise directs in respect of a particular amendment.

**[96] Section 44 Complaints**

Omit “an accredited nurse” from section 44 (1).

Insert instead “a nurse or midwife”.

**[97] Section 44 (1) (a)**

Omit the paragraph. Insert instead:

- (a) has been convicted of or made the subject of a criminal finding for an offence (either in or outside New South Wales) and the circumstances of the offence render the nurse or midwife unfit in the public interest to practise nursing or midwifery, or

**[98] Section 44 (1) (e)**

Insert “or midwifery” after “to practise nursing”.

**[99] Section 44 (3) (c)**

Omit the paragraph.

**[100] Section 44 (3A)**

Insert after section 44 (3):

- (3A) A complaint must be verified by statutory declaration unless the complaint is made by:
  - (a) a judicial officer within the meaning of the *Judicial Officers Act 1986*, or
  - (b) a coroner, or
  - (c) the Minister, or
  - (d) the Director-General, or
  - (e) the Registrar, or
  - (f) the chief executive officer (however described) of a public health organisation (within the meaning of the *Health Services Act 1997*), or
  - (g) the Commission, or
  - (h) a person or body prescribed by the regulations.

**[101] Section 44 (6) and (7)**

Omit the subsections. Insert instead:

- (6) A complaint about a nurse or midwife may be dealt with even though the nurse or midwife has ceased to be registered or enrolled and, for that purpose, references in this Part and Schedule 2 to a nurse or midwife include references to a nurse or midwife who has ceased to be registered or enrolled.
- (7) A complaint that a nurse or midwife 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 or midwife's name had been removed from the Register or the Roll under section 64 (1) (g).

**[102] Section 45 Referral or dismissal of complaints by Board**

Omit "an Impaired Nurses Panel" from section 45 (1) (a).

Insert instead "a Panel".

**[103] Section 45 (1) (b)**

Omit "accredited nurse". Insert instead "nurse or midwife".

**[104] Section 45 (2) and (3)**

Omit the subsections. Insert instead:

- (2) The Board must refer a complaint to the Tribunal if the complaint is that the nurse or midwife 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 or midwife's registration or enrolment.
- (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 or midwife's registration or enrolment, if:
  - (a) the complaint is made, or the Board has decided to make the complaint, under section 44 (1) (b) or (e), and

- (b) the Board is of the opinion that no other complaint under any other provision of section 44 relating to the nurse or midwife concerned should be referred to the Tribunal.

**[105] Section 45 (5)–(7)**

Omit the subsections. Insert instead:

- (5) The Board may, before taking any action under this section, require the nurse or midwife concerned, by notice in writing given personally or by post to the nurse or midwife, to undergo at the Board's expense a health examination:
  - (a) by a registered health practitioner, and
  - (b) at any reasonable time and place, specified in the notice.
- (6) A failure by a nurse or midwife, 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 health examination,is, for the purposes of this Part or any inquiry or appeal under this Part, evidence that the nurse or midwife does not have sufficient physical and mental capacity to practise nursing or midwifery.
- (7) The Board:
  - (a) is not to refer a complaint about a nurse or midwife 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 nurse or midwife concerned ceases to be registered or enrolled.

**[106] Section 46 Role of Health Care Complaints Commission**

Omit "an Impaired Nurses Panel" from section 46 (4).

Insert instead "a Panel".

**[107] Section 48 Suspension etc by Board**

Omit section 48 (1) (a) and (b). Insert instead:

- (a) by its order suspend the registration or enrolment of a nurse or midwife for such period (not exceeding 8 weeks) as is specified in the order, or
- (b) impose such conditions on the registration or enrolment of the nurse or midwife as it considers appropriate,

**[108] Section 48 (2)**

Omit “accredited nurse”. Insert instead “nurse or midwife”.

**[109] Section 48 (3)**

Omit “The Board”. Insert instead “Subject to section 48A, the Board”.

**[110] Section 48 (3) (a)**

Insert “or midwife” after “nurse”.

**[111] Section 48 (6)**

Omit “30 days”. Insert instead “8 weeks”.

**[112] Section 48 (6) (b)**

Insert “or midwife” after “nurse”.

**[113] Section 48 (7)**

Omit the subsection. Insert instead:

- (7) A person whose registration or enrolment as a nurse or midwife is suspended 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 a nurse or midwife.

**[114] Section 48 (8)**

Omit “an accredited nurse”. Insert instead “a nurse or midwife”.

**[115] Section 48 (9)**

Insert “or midwife” after “nurse”.



**[116] Section 48A**

Insert after section 48:

**48A Special provisions—impairment**

- (1) This section applies if the Board takes action against a nurse or midwife under section 48 because the Board is of the opinion that the nurse or midwife suffers from an impairment.
- (2) The Board must, as soon as practicable after taking that action and, in any event, within 7 days after taking that action, notify the Commission that it has taken that action.
- (3) The Board is to consult with the Commission to see if agreement can be reached as to whether the matter should be:
  - (a) dealt with as a complaint against the nurse or midwife, or
  - (b) referred to a Panel.
- (4) The matter is to be dealt with as a complaint against the nurse or midwife only if, following that consultation:
  - (a) the Board and the Commission agree that it should be dealt with as a complaint, or
  - (b) either the Board or the Commission is of the opinion that the matter should be dealt with as a complaint.
- (5) In such a case, the Board is to refer the matter to the Commission and the matter is to be dealt with by the Commission as a complaint made to the Commission against the nurse or midwife concerned.
- (6) The Commission is to investigate the complaint or cause it to be investigated and, as soon as practicable after it has completed its investigation, refer the complaint to the Tribunal or a Committee if the Commission is of the opinion that the matter should be dealt with as a complaint.
- (7) If subsection (4) does not apply, the Board is to refer the matter to a Panel.
- (8) A matter may be referred to a Panel under this section even though the registration or enrolment of the nurse or midwife has been suspended under section 48. Division 4 applies in respect of such a referral as if the registration or enrolment of the nurse or midwife had not been suspended.

**[117] Section 49 Appeals against suspension etc by Board**

Omit section 49 (1) (a) and (b). Insert instead:

- (a) whose registration or enrolment has been suspended by the Board, or
- (b) on whose registration or enrolment conditions have been imposed under section 48,

**[118] Section 51 Constitution of Committees**

Omit section 51 (1). Insert instead:

- (1) For the purpose of conducting an inquiry arising from a complaint against a nurse or midwife, a Committee consists of:
  - (a) 2 nurses or midwives having such qualifications as may be prescribed, and
  - (b) 1 lay person (that is, a person who is not a nurse or midwife) appointed from among a panel of lay persons for the time being nominated by the Minister.

**[119] Section 51 (3)**

Omit the subsection. Insert instead:

- (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, in his or her capacity as a member of the Board, previously dealt with the particular matter before the Committee or with any other complaint concerning the nurse or midwife concerned.

**[120] Section 52 Proceedings before a Committee**

Omit “accredited nurse” from section 52 (2) (a).

Insert instead “nurse or midwife”.

**[121] Section 53 Representation before a Committee**

Omit “accredited nurse” from section 53 (1) (a).

Insert instead “nurse or midwife”.

**[122] Section 53 (3)**

Insert “or midwife” after “nurse” wherever occurring.

**[123] Section 54 Referral of certain matters to the Tribunal**

Omit “nurse’s accreditation” from section 54 (1) (a).

Insert instead “nurse’s or midwife’s registration or enrolment”.

**[124] Section 54 (1) (b)**

Omit “accredited nurse”. Insert instead “nurse or midwife”.

**[125] Section 55 Determinations of a Committee**

Omit “registration” from section 55 (1) (c).

Insert instead “registration or enrolment”.

**[126] Section 55 (2) and (3)**

Omit “accredited” wherever occurring.

Insert instead “registered or enrolled”.

**[127] Section 55 (5)**

Omit “an accredited nurse” wherever occurring.

Insert instead “registered or enrolled”.

**[128] Section 56 Decisions of a Committee**

Insert “or midwife” after “nurse” in section 56 (2).

**[129] Section 57 Appeals against decisions of a Committee etc**

Insert “or midwife” after “nurse” in section 57 (1).

**[130] Section 58 Appeals with respect to points of law**

Insert “or midwife” after “nurse” in section 58 (1).

**[131] Part 5, Division 3, heading**

Omit “Nurses Tribunal”.

Insert instead “Nurses and Midwives Tribunal”.

**[132] Section 59 The Nurses and Midwives Tribunal**

Omit “Nurses Tribunal” from section 59 (1).

Insert instead “Nurses and Midwives Tribunal”.

**[133] Section 59 (5) (b) and (c)**

Omit the paragraphs. Insert instead:

- (b) 2 nurses or midwives, having such qualifications as may be prescribed, appointed by the Board, and
- (c) one lay person (that is, a person who is not a nurse or midwife) appointed by the Board from among a panel of lay persons for the time being nominated by the Minister.

**[134] Section 59 (6)**

Omit the subsection. Insert instead:

- (6) A person is not to be appointed to sit on the Tribunal if the person is a member of the Board.

**[135] Section 61 Proceedings before the Tribunal**

Omit “accredited nurse” from section 61 (2) (a).

Insert instead “nurse or midwife”.

**[136] Section 62 Representation before the Tribunal**

Omit “accredited nurse” from section 62 (1) (a).

Insert instead “nurse or midwife”.

**[137] Section 64 Determinations of the Tribunal**

Omit “accreditation” from section 64 (1) (c).

Insert instead “registration or enrolment”.

**[138] Section 64 (1) (g) (ii)**

Omit “the Register or the Roll”.

Insert instead “the Register of Nurses or the Register of Midwives, or both, or from the Roll”.

**[139] Section 64 (2)**

Omit “accredited” wherever occurring.

Insert instead “registered or enrolled”.

**[140] Section 64 (4)**

Omit “an accredited nurse” wherever occurring.

Insert instead “registered or enrolled”.

**[141] Section 64 (5)**

Omit “accredited” wherever occurring.

Insert instead “registered or enrolled”.

**[142] Section 64 (5)**

Omit “the Register”. Insert instead “a Register”.

**[143] Section 64 (6)**

Omit the subsection. Insert instead:

- (6) The Tribunal may award costs, but only if it is satisfied that there are special circumstances warranting an award of costs.

**[144] Section 65 Suspension orders**

Omit “an accredited nurse” from section 65 (1).

Insert instead “a nurse or midwife”.

**[145] Section 65 (2)**

Omit “an accredited nurse”. Insert instead “a nurse or midwife”.

**[146] Section 66 Decisions of the Tribunal**

Omit “accredited nurse” from section 66 (3).

Insert instead “nurse or midwife”.

**[147] Section 67 Appeals against decisions of the Tribunal**

Omit “an accredited nurse” from section 67 (4).

Insert instead “a nurse or midwife”.

**[148] Section 67 (4)**

Omit “be accredited” wherever occurring.

Insert instead “be registered or enrolled”.

**[149] Section 67 (4)**

Omit “the Register” wherever occurring.

Insert instead “a Register”.

**[150] Section 68 Review of suspension or cancellation of registration or enrolment by the Tribunal**

Omit “who is suspended from practising” from section 68 (1) (a).

Insert instead “whose registration or enrolment has been suspended”.

**[151] Section 68 (1) (b)**

Omit “the Register”. Insert instead “a Register”.

**[152] Section 68 (3)**

Omit “accredited”. Insert instead “registered or enrolled”.

**[153] Section 68 (4)**

Omit “the Register”. Insert instead “a Register”.

**[154] Section 68 (4)**

Omit “accredited” wherever occurring.

Insert instead “registered or enrolled”.

**[155] Section 68 (4)**

Omit “accreditation” wherever occurring.

Insert instead “registration or enrolment”.

**[156] Section 68 (5)**

Omit the subsection. Insert instead:

- (5) The Tribunal may award costs but only if it is satisfied that there are special circumstances warranting an award of costs.

- [157] Section 68 (6)**  
Omit “accredited” wherever occurring.  
Insert instead “registered or enrolled”.
- [158] Section 68 (7)**  
Omit “20,”.
- [159] Section 69 Inquiries etc where other proceedings**  
Omit “accredited nurse”. Insert instead “nurse or midwife”.
- [160] Section 70 Giving of information to other Australian registration bodies**  
Omit “accreditation of nurses”.  
Insert instead “registration, enrolment or authorisation to practise (however described) of nurses or midwives”.
- [161] Part 5, Division 4, heading**  
Insert “**and midwives**” after “**nurses**”.
- [162] Section 70A Referral of impairment matters concerning nurses and midwives**  
Omit “an Impaired Nurses Panel” from section 70A (1).  
Insert instead “a Panel”.
- [163] Section 70A**  
Omit “an accredited nurse” wherever occurring.  
Insert instead “a nurse or midwife”.
- [164] Section 70B Persons may notify Board of impairment matters concerning nurses or midwives**  
Omit “an accredited nurse”. Insert instead “a nurse or midwife”.
- [165] Section 70C Commission may refer impairment matters to Board**  
Omit “an accredited nurse” from section 70C (1).  
Insert instead “a nurse or midwife”.

**[166] Section 70D Panel to inquire into matter referred to it**

Omit “An Impaired Nurses Panel” from section 70D (1).

Insert instead “A Panel”.

**[167] Section 70D (2)**

Omit “an accredited nurse”. Insert instead “a nurse or midwife”.

**[168] Section 70F Board to give notice of proposed inquiry**

Omit “an accredited nurse of any proposed inquiry by a Panel concerning the nurse”.

Insert instead “a nurse or midwife of any proposed inquiry by a Panel concerning the nurse or midwife”.

**[169] Section 70G Nurse or midwife entitled to make representations**

Omit “An accredited nurse”. Insert instead “A nurse or midwife”.

**[170] Section 70GA**

Insert after section 70G:

**70GA Board may require nurse or midwife to undergo examination**

- (1) The Board may by notice given to a nurse or midwife who is the subject of a matter referred or proposed to be referred to a Panel direct the nurse or midwife to undergo an examination by a specified registered health practitioner at a specified time and place.
- (2) A nurse or midwife must not be directed to undergo an examination unless it is reasonable to require the examination, given the nature of the matter that is the subject of the referral or proposed referral. The time and place specified for the examination must be reasonable and the examination is to be at the expense of the Board.
- (3) If a nurse or midwife refuses, without reasonable excuse, to comply with a direction to undergo an examination, that refusal is, for the purposes of this Act and any inquiry or appeal under this Act, evidence that the nurse or midwife does not have sufficient physical and mental capacity to practise nursing or midwifery.



**[171] Section 70H Assessment, report and recommendations by Panel**

Omit section 70H (2) (a) and (b). Insert instead:

- (a) counsel the nurse or midwife concerned or recommend that the nurse or midwife undertake specified counselling,
- (b) recommend that the nurse or midwife consent to conditions being placed on his or her registration or enrolment or to having his or her registration or enrolment suspended for a specified period,

**[172] Sections 70I and 70IA**

Omit section 70I. Insert instead:

**70I Voluntary suspension or conditions on registration or enrolment**

The Board may impose conditions on or suspend the registration or enrolment of a nurse or midwife if:

- (a) a Panel has recommended that the Board do so, and
- (b) the Board is satisfied that the nurse or midwife has voluntarily agreed to the conditions.

**70IA Review of conditions**

- (1) A nurse or midwife who agrees to conditions being imposed on his or her registration or enrolment, or to his or her registration or enrolment being suspended, may, by notice in writing to the Board, request:
  - (a) that those conditions be altered or removed, or
  - (b) that the suspension be terminated or shortened.
- (2) On receipt of such a request, the Board is to require a Panel to review the matter and report in writing to the Board on the results of its review.
- (3) After considering the Panel's report on the matter and any recommendation made in the report, the Board may grant the request or refuse to grant it, as the Board thinks fit.
- (4) The Board is to give the nurse or midwife concerned notice in writing of its decision in respect of the request.

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- (5) The Board may specify in the notice a period in which a further request by the nurse or midwife under this section is not permitted. The Board may reject a request that the conditions be altered or removed, or that the suspension be terminated or shortened, if it is made during that period.

**[173] Section 70J Some matters to be dealt with as complaints**

Omit section 70J (1). Insert instead:

- (1) If a Panel recommends that a nurse or midwife consent to conditions being placed on the nurse's or midwife's registration or enrolment, or to the suspension of the nurse's or midwife's registration or enrolment, and the nurse or midwife fails to comply with the recommendation, the Board is to deal with the matter that was the subject of the referral to the Panel as a complaint against the nurse or midwife.

**[174] Section 70J (2)**

Omit "nurse". Insert instead "nurse or midwife".

**[175] Section 70K Confidentiality of Panel's report to Board**

Insert after section 70K (1):

- (1A) This section does not prevent the disclosure to the Commission of such a report (or any information contained in the report or obtained in connection with the preparation of the report) in connection with the referral to the Commission of a complaint concerning the matter with which the report is concerned.

**[176] Section 70L Board to consider Panel's report when assessing application**

Omit "accreditation" wherever occurring.

Insert instead "registration or enrolment".

**[177] Part 5, Division 5, heading**

Omit the heading. Insert instead:

**Division 5      Impairment Panels**

**[178] Section 70M Impairment Panels**

Omit “Impaired Nurses Panels” from section 70M (1).

Insert instead “Impairment Panels”.

**[179] Section 70N Board to constitute Panel when required**

Omit “an Impaired Nurses Panel” from section 70N (1).

Insert instead “a Panel”.

**[180] Section 70N (2)**

Omit “registered nurse”. Insert instead “nurse or midwife”.

**[181] Section 73 Document under hand of Registrar to be prima facie evidence**

Insert after section 73 (a) (i):

(iaa) was duly registered as a midwife,

**[182] Section 73 (a) (ii)**

Omit the subparagraph. Insert instead:

(ii) was entered in the Register as being a person authorised to practise as a midwife practitioner,

**[183] Section 73 (b) (iaa)**

Insert after section 73 (b) (i):

(iaa) was not registered as a midwife,

**[184] Section 73 (b) (ii)**

Omit the subparagraph. Insert instead:

(ii) was not authorised to practise as a midwife practitioner,

**[185] Section 73 (c) (iaa)**

Insert after section 73 (c) (i):

(iaa) the registration of a particular person as a midwife,

**[186] Section 73 (c) (ii)**

Omit the subparagraph. Insert instead:

- (ii) the authorisation of a particular person to practise as a midwife practitioner,

**[187] Section 73 (d) (iaa)**

Insert after section 73 (d) (i):

- (iaa) the registration of a particular person as a midwife was suspended for a specified period,

**[188] Section 73 (d) (ii)**

Omit the subparagraph. Insert instead:

- (ii) the authorisation of a particular person to practise as a midwife practitioner was suspended for a specified period,

**[189] Section 74 Proceedings for offences**

Omit “Nurses Registration Board” from section 74 (3).

Insert instead “Nurses and Midwives Board”.

**[190] Section 76 Nurses and Midwives Board Education and Research Account**

Omit “Nurses Registration Board” from section 76 (1).

Insert instead “Nurses and Midwives Board”.

**[191] Section 76 (2)**

Insert “registered midwives,” after “registered nurses,”.

**[192] Section 76 (4) (a)**

Insert “and midwifery” after “nursing”.

**[193] Section 76 (4) (b)**

Omit “the profession of nursing”.

Insert instead “the practice of nursing or midwifery”.

**[194] Section 76 (5)**

Omit the subsection. Insert instead:

- (5) Any expenditure of money under this section must not be made unless it is authorised by a resolution of the Board supported by at least 8 members of the Board.

**[195] Section 77 Protection from liability**

Omit “an Impaired Nurses Panel” from section 77 (e).

Insert instead “a Panel”.

**[196] Sections 77A and 77B**

Insert after section 77:

**77A Appointment and powers of inspectors**

- (1) The Board may appoint any person as an inspector for the purposes of this Act. The Board is to provide an inspector with a certificate of authority.
- (2) An inspector may exercise the powers conferred by this section for the purpose of:
  - (a) ascertaining whether the provisions of this Act or the regulations are being complied with or have been contravened, or
  - (b) ascertaining whether section 10AG (Restrictions on certain birthing practices) of the *Public Health Act 1991* has been contravened, or
  - (c) investigating a complaint made or intended to be made under Part 5.
- (3) An inspector may, with the approval of the Board given on the particular occasion, enter and inspect at any reasonable time any premises that the inspector believes on reasonable grounds are being used for the carrying on of the practice of nursing or midwifery.
- (4) While on premises entered under this section or under the authority of a search warrant under section 77B, an inspector may do any one or more of the following:

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- (a) require any person on those premises to produce any records in the possession or under the control of that person relating to the carrying on of the practice of nursing or midwifery or a contravention of a provision of this Act or the regulations or of section 10AG of the *Public Health Act 1991*,
  - (b) inspect, take copies of, or extracts or notes from, any such records and, if the inspector considers it necessary to do so for the purpose of obtaining evidence, seize any such records,
  - (c) examine and inspect any apparatus or equipment used or apparently used in the course of the carrying on of the practice of nursing or midwifery,
  - (d) take such photographs, films and audio, video and other recordings as the inspector considers necessary,
  - (e) require any person on those premises to answer questions or otherwise furnish information in relation to the carrying on of the practice of nursing or midwifery or a contravention of a provision of this Act or the regulations or of section 10AG of the *Public Health Act 1991*,
  - (f) require the owner or occupier of those premises to provide the inspector with such assistance and facilities as is or are reasonably necessary to enable the inspector to exercise the functions of an inspector under this section.
- (5) An inspector is not entitled to enter a part of premises used for residential purposes, except:
- (a) with the consent of the occupier of the part, or
  - (b) under the authority of a search warrant.
- (6) An inspector must, when exercising on any premises any function of the inspector under this section, produce the inspector's certificate of authority to any person apparently in charge of the premises who requests its production.
- (7) A person must not:
- (a) without reasonable excuse, refuse or fail to comply with any requirement made or to answer any question asked by an inspector under the authority of this section, or

- (b) wilfully delay, hinder or obstruct an inspector in the exercise of the inspector's powers under this section, or
- (c) furnish an inspector with information knowing it to be false or misleading in a material particular.

Maximum penalty: 5 penalty units.

- (8) If an inspector seizes any records under this section, they may be retained by the inspector until the completion of any proceedings (including proceedings on appeal) in which they may be evidence but only if the person from whom the records were seized is provided, within a reasonable time after the seizure, with a copy of the records certified by an inspector as a true copy.
- (9) A copy of records provided under subsection (8) is, as evidence, of equal validity to the records of which it is certified to be a copy.

#### **77B Search warrants**

- (1) A person appointed under this Act as an inspector may apply to an authorised justice for the issue of a search warrant for premises if the inspector believes on reasonable grounds:
  - (a) that a provision of this Act or the regulations, or of section 10AG of the *Public Health Act 1991*, is being or has been contravened on the premises, or
  - (b) that there is on the premises evidence of a contravention of a provision of this Act or the regulations.
- (2) A person appointed under this Act as an inspector must not apply for a search warrant unless the person or the Director-General has caused the President of the Board to be notified of the application.
- (3) An authorised justice to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an inspector named in the warrant:
  - (a) to enter and inspect the premises, and
  - (b) to exercise on the premises any function of an inspector under section 77A.
- (4) Part 3 of the *Search Warrants Act 1985* applies to a search warrant issued under this section.

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- (5) In this section, *authorised justice* has the same meaning as in the *Search Warrants Act 1985*.

**[197] Section 78 Regulations**

Insert “or enrolment” after “registration” in section 78 (2) (c).

**[198] Section 78 (2) (d)**

Omit the paragraph. Insert instead:

- (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, registration as a midwife, authorisation to practise as a nurse practitioner, authorisation to practise as a midwife practitioner or enrolment as an enrolled nurse or enrolled nurse (mothercraft),

**[199] Section 78 (2) (f) and (g)**

Omit the paragraphs. Insert instead:

- (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, registration as a midwife, authorisation to practise as a nurse practitioner, authorisation to practise as a midwife practitioner or enrolment as an enrolled nurse or enrolled nurse (mothercraft),
- (g) the character, subjects and conduct of examinations for registration as a nurse or midwife, authorisation to practise as a nurse practitioner or midwife practitioner, or enrolment as an enrolled nurse or enrolled nurse (mothercraft),

**[200] Section 78 (2) (h)**

Omit “the Register” wherever occurring.

Insert instead “a Register”.

**[201] Section 78 (2) (i)**

Insert “, registered midwives” after “registered nurses”.



**[202] Section 78 (2) (i1)**

Insert “and midwife practitioners” after “nurse practitioners”.

**[203] Section 78 (2) (j) and (j1)**

Omit section 78 (2) (j). Insert instead:

- (j) the notification of diseases either in the mother or the new-born child by midwives,
- (j1) infection control standards to be followed by nurses and midwives in the practice of nursing and midwifery,

**[204] Section 78 (2) (k)**

Omit the paragraph. Insert instead:

- (k) the circumstances in which, the manner in which and the extent to which a registered nurse, a registered midwife, a registered nurse who is authorised by the Board to practise as a nurse practitioner, a registered midwife who is authorised by the Board to practise as a midwife practitioner, an enrolled nurse or an enrolled nurse (mothercraft) is authorised to advertise,

**[205] Section 78 (2) (l)**

Insert “and midwifery practice” after “nursing practice”.

**[206] Section 78 (2) (m)**

Omit “an Impaired Nurses Panel”. Insert instead “a Panel”.

**[207] Section 78A Guidelines relating to functions of nurse practitioners and midwife practitioners**

Insert “or midwife practitioners” after “nurse practitioners” wherever occurring.

**[208] Section 78A**

Insert “or midwife practitioner” after “nurse practitioner” wherever occurring.

**[209] Schedule 1 Provisions relating to the members and procedure of the Board**

Omit “registered nurse” from clause 1 (1).

Insert instead “nurse or midwife”.

**[210] Schedule 1, clause 1 (1)**

Omit “an accredited nurse”. Insert instead “a nurse or midwife”.

**[211] Schedule 1, clause 2 (3)**

Omit “an accredited nurse”. Insert instead “a nurse or midwife”.

**[212] Schedule 1, clause 3**

Omit the clause. Insert instead:

**3 Terms of office**

- (1) Subject to this Schedule, a member holds office for such period (not exceeding 4 years) as may be specified in the member’s instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.
- (2) A person may not be appointed to serve more than 3 consecutive terms of office as a member of the Board.

**[213] Schedule 1, clause 7 (7)**

Omit “an accredited nurse”. Insert instead “a nurse or midwife”.

**[214] Schedule 1, clause 11**

Omit “8 members”. Insert instead “9 members”.

**[215] Schedules 1A and 1B**

Insert after Schedule 1:

**Schedule 1A Constitution and procedure of  
Practice Committees**

(Section 12A)

**Part 1 General**

**1 Definitions**

In this Schedule:

*Chairperson* means the Chairperson of a Practice Committee.

*member* means any member of a Practice Committee.

*Practice Committee* means the Nurses Practice Committee or Midwives Practice Committee constituted by section 12A.

**Part 2 Constitution**

**2 Terms of office of members**

- (1) Subject to this Schedule, a member holds office for such period (not exceeding 4 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.
- (2) A person may not be appointed as member for more than 3 terms of office (whether or not any or all of those terms are consecutive).

**3 Remuneration**

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.

**4 Deputies**

- (1) The Board may, from time to time, appoint a person to be the deputy of a member, and the Board may revoke any such appointment.

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- (2) In the absence of a member, the member's deputy may, if available, act in the place of the member.
  - (3) While acting in the place of a member, a person:
    - (a) has all the functions of the member and is taken to be a member, and
    - (b) is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Board may from time to time determine in respect of the person.
  - (4) For the purposes of this clause, a vacancy in the office of a member is taken to be an absence of the member.

#### **5 Vacancy in office of member**

- (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 President of the Board, or
  - (d) is removed from office by the Board under this clause, or
  - (e) is absent from 4 consecutive meetings of the relevant Practice Committee of which reasonable notice has been given to the member personally or by post, except on leave granted by the Board or unless the member is excused by the Board for having been 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
  - (h) is convicted in New South Wales of an offence that is punishable by 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 Board may at any time remove a member from office.

**6 Filling of vacancy in office of member**

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

**7 Disclosure of pecuniary interests**

- (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 Practice Committee concerned, 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 Practice Committee.

- (2) A disclosure by a member at a meeting of a Practice Committee 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 subclause (1).

- (3) Particulars of any disclosure made under this clause must be notified to the Board.
- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Board or the Practice Committee otherwise determines:
- (a) be present during any deliberation of the Practice Committee with respect to the matter, or
  - (b) take part in any decision of the Practice Committee with respect to the matter.

- (5) For the purposes of the making of a determination by a Practice Committee 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 Practice Committee for the purpose of making the determination, or
  - (b) take part in the making by the Practice Committee of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Committee.

#### **8 Effect of certain other Acts**

- (1) Chapter 2 of the *Public Sector Employment and Management Act 2002* does not apply to or in respect of the appointment of a member.
- (2) If by or under any 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,

the 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.

### **Part 3 Procedure**

#### **9 General procedure**

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

#### **10 Quorum**

The quorum for a meeting of a Practice Committee is a majority of its members.

**11 Presiding member**

- (1) The Chairperson of a Practice Committee (or, in the absence of the Chairperson, another member of the Practice Committee elected to preside at the meeting by the members present) is to preside at a meeting of the Practice Committee.
- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

**12 Voting**

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

**13 Transaction of business outside meetings or by telephone**

- (1) A Practice Committee may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Practice Committee for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Practice Committee.
- (2) A Practice Committee may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
  - (a) the approval of a resolution under subclause (1), or
  - (b) a meeting held in accordance with subclause (2),the Chairperson and each member of a Practice Committee have the same voting rights as they have at an ordinary meeting of the Practice Committee.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Practice Committee.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

**14 First meeting**

The Board may call the first meeting of a Practice Committee in such manner as the Board thinks fit.

**Schedule 1B Inquiries by the Board**

(Section 29A)

**1 Board may hold inquiry into eligibility**

- (1) The Board may hold an inquiry, in such cases as it considers appropriate, into the eligibility of an applicant to be registered or enrolled.
- (2) The inquiry may include an inquiry into the applicant's competence to practise nursing or midwifery.

**2 Commission to be notified of inquiry**

- (1) The Board must give the Commission at least 7 days' notice in writing before the Board holds an inquiry under this Schedule.
- (2) The Commission may appear and be heard at an inquiry under this Schedule.

**3 Applicant to be notified of inquiry**

The President is to fix a time and place for the holding of an inquiry and is to cause the applicant concerned to be given at least 14 days' notice in writing of the time and place for the inquiry.

**4 Powers etc of the Board in an inquiry**

For the purposes of an inquiry conducted by the Board under this Schedule, the Board has the same functions that the Tribunal has under this Act. However, proceedings on an inquiry conducted by the Board are not to be open to the public.

**5 Applicant entitled to attend**

- (1) The person in relation to whom an inquiry is being held is entitled to attend and to be accompanied by a legal practitioner or another adviser, but is not entitled to be represented by a legal practitioner or other adviser.



- (2) This clause does not prevent the Board from proceeding with an inquiry in the absence of the applicant so long as the applicant has been given notice of the inquiry in accordance with clause 3.

#### **6 Provisions concerning witnesses etc**

Schedule 2 applies to and in respect of a person or witness appearing or evidence given at an inquiry in the same way as it applies to a person or witness appearing or evidence given before the Tribunal.

#### **7 Constitution of Board for inquiry**

- (1) If the Board decides to hold an inquiry, the Board is to appoint 3 persons to conduct the inquiry.
- (2) The persons appointed to conduct the inquiry need not be members of the Board.
- (3) The persons appointed to conduct an inquiry are taken to be members of the Board and to constitute the Board for the purposes of the inquiry and, accordingly, may exercise the functions of the Board in relation to the inquiry.

#### **8 Director-General may intervene at inquiry**

The Director-General may intervene in any inquiry before the Board and is entitled to be heard personally or by being represented by an officer of the Department of Health.

#### **9 Preliminary examinations of applicants**

- (1) Before or during an inquiry under this Schedule, the Board may require the applicant, by notice in writing given personally or by post to the applicant, to undergo at the Board's expense an examination by a registered health practitioner specified in the notice, at any reasonable time and place so specified.
- (2) A failure by an applicant, without reasonable cause, to comply with such a notice is, for the purposes of this Schedule (including any inquiry or appeal under this Act), evidence that the applicant does not have sufficient physical and mental capacity to practise nursing or midwifery.

**10 Decisions of the Board in an inquiry**

A decision supported by at least 2 of the 3 persons appointed to conduct an inquiry under this Schedule on an inquiry, or on any question arising during an inquiry, is a decision of the Board.

**11 Details of decision to be supplied to applicant**

- (1) The Board must provide a written statement of a decision on an inquiry to the person in relation to whom the inquiry was held and must do so within one month after the decision is made.
- (2) The statement of a decision must:
  - (a) give the reasons for the decision, and
  - (b) include information about any appeal rights the person has under section 32.
- (3) The Board may also provide the statement of a decision to such other persons as the Board thinks fit.

**12 Statement need not contain confidential information**

- (1) The Board is not required to include confidential information in the statement of a decision. If a statement would be false or misleading if it did not include the confidential information, the Board is not required to provide the statement.
- (2) When confidential information is not included in the statement of a decision provided to a person or the statement is not provided to a person because of subclause (1), the Board must give a confidential information notice to the person.
- (3) A confidential information notice is a notice that indicates that confidential information is not included or that the statement will not be provided (as appropriate) and gives the reasons for this. The notice must be in writing and must be given within one month after the decision is made.
- (4) This clause does not affect 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.

(5) In this clause:

*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 is required (or would, but for subclause (1), 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 would be in breach of any enactment.

**[216] Schedule 2 Proceedings before a Committee and the Tribunal**

Omit “an accredited nurse” from clause 5 (1).

Insert instead “a nurse or midwife”.

**[217] Schedule 2, clause 5 (2)**

Insert “or midwife” after “nurse”.

**[218] Schedule 2, clause 6 (1)**

Omit “accredited nurse”. Insert instead “nurse or midwife”.

**[219] Schedule 2, clause 6 (1) (b) (iii)**

Insert “or midwife” after “nurse”.

**[220] Schedule 2, clause 6 (1) (b)**

Omit “or nursing profession”.

Insert instead “, nursing or midwifery profession”.

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**[221] Schedule 2, clause 6 (3) (b)**

Insert “or midwife” after “nurse”.

**[222] Schedule 2, clause 11 (1) (b)**

Omit “an accredited nurse”. Insert instead “a nurse or midwife”.

**[223] Schedule 2, clause 11 (1) (c)**

Insert after clause 11 (1) (b):

, or

(c) the complaint before the Committee or Tribunal is withdrawn.

**[224] Schedule 2, clause 11 (2)**

Omit “accredited nurse”. Insert instead “nurse or midwife”.

**[225] Schedule 3 Savings and transitional provisions**

Insert at the end of clause 2 (1):

*Nurses Amendment Act 2003*

**[226] Schedule 3, Part 4**

Insert after Part 3:

**Part 4 Provisions consequent on enactment of  
Nurses Amendment Act 2003**

**20 Definitions**

In this Part:

*former Register* means the Register of Nurses kept by the Board immediately before the commencement of clause 21.

*the 2003 amendment Act* means the *Nurses Amendment Act 2003*.

**21 Registration as nurse or midwife**

- (1) A person who is registered in List “A” of the former Register immediately before the commencement of this clause is on that commencement:

- (a) taken to be registered as a nurse, and
  - (b) (if the person is also authorised to practise midwifery immediately before that commencement) also taken to be registered as a midwife.
- (2) A person who is registered in List “B” of the former Register immediately before the commencement of this clause is on that commencement taken to be registered as a nurse unless the person is also authorised to practise midwifery immediately before that commencement.
  - (3) A person who is registered in List “B” of the former Register immediately before the commencement of this clause and also authorised to practise midwifery immediately before that commencement is on that commencement taken to be registered as a midwife, unless the person is the subject of a determination under subclause (4).
  - (4) The Board may determine that a person who is registered in List “B” of the former Register immediately before the commencement of this clause and also authorised to practise midwifery immediately before that commencement is, on that commencement, taken to be registered as both a nurse and a midwife (and such a determination has effect accordingly).

## **22 Reconstitution of Board**

- (1) The Nurses and Midwives Board is a continuation of the Nurses Registration Board constituted under section 8 immediately before the commencement of this clause.
- (2) A person who, immediately before the substitution of section 9 (2) by the 2003 amendment Act, held office as a member of the Board continues to hold office as a member of the Board, and for that purpose is taken to have been elected or appointed under the provision of section 9 (2) (as so substituted) that the Minister determines is the provision that corresponds to the provision of that subsection under which the person was actually appointed or elected.
- (3) For the purposes of clause 3 (2) of Schedule 1 (which limits a person to no more than 3 consecutive terms of office as an appointed member of the Board), a term of office for which a person is taken to be appointed under this clause constitutes the person’s first term of office as a member of the Board.

- (4) A vacancy in the office of a member of the Board that results from the substitution of section 9 (2) by the 2003 amendment Act (and the operation of this clause) is to be filled in accordance with this Act. Despite such a vacancy, the Board is taken to be properly constituted pending the filling of the vacancy.

**23 Term of nurse practitioner authorisation**

On the commencement of the amendment to section 19A by the 2003 amendment Act, the period specified in an authorisation to practise as a nurse practitioner in force immediately before that commencement is extended by 2 years, and the period specified in the authorisation as the period for which it has effect is taken to be amended accordingly.

**24 Appeals pending in District Court**

An appeal to the District Court made under section 32 before the substitution of that section by the 2003 amendment Act is to proceed and be dealt with, and the decision on appeal is to be given effect to, under that section as if it had not been substituted by the 2003 amendment Act.

**25 Member of Board sitting on Tribunal**

Section 59 (6), as substituted by the 2003 amendment Act, does not prevent a member of the Board sitting as a member of the Tribunal pursuant to an appointment made before the commencement of that substitution.

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## Schedule 2 Amendment of other Acts

(Section 4)

### 2.1 Crimes Act 1900 No 40

#### [1] Section 45 Prohibition of female genital mutilation

Omit “a person authorised to practise midwifery under the *Nurses Act 1991*” from paragraph (a) of the definition of *authorised professional* in section 45 (7).

Insert instead “a midwife within the meaning of the *Nurses and Midwives Act 1991*”.

#### [2] Section 45 (7), definition of “authorised professional”

Omit “Nurses Registration Board” from paragraph (b) of the definition.

Insert instead “Nurses and Midwives Board”.

#### [3] Section 428A Definitions

Omit “a person authorised under the *Nurses Act 1991* to practise as a nurse practitioner” from the definition of *self-induced intoxication*.

Insert instead “a person authorised under the *Nurses and Midwives Act 1991* to practise as a nurse practitioner or a midwife practitioner”.

### 2.2 Drug Misuse and Trafficking Act 1985 No 226

#### [1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

*midwife* means a registered midwife within the meaning of the *Nurses and Midwives Act 1991*.

*midwife practitioner* means a person authorised under the *Nurses and Midwives Act 1991* to practise as a midwife practitioner.

#### [2] Section 3 (1), definition of “nurse”

Omit “*Nurses Registration Act 1953*”.

Insert instead “*Nurses and Midwives Act 1991*”.

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**[3] Section 3 (1), definition of “nurse practitioner”**

Omit “*Nurses Act 1991*”. Insert instead “*Nurses and Midwives Act 1991*”.

**[4] Section 11 Possession of equipment for administration of prohibited drugs**

Omit “or nurse” from section 11 (2) (a).

Insert instead “, nurse or midwife”.

**[5] Section 15 Forging etc prescriptions**

Insert “, midwife practitioner” after “nurse practitioner”.

**[6] Section 16 Obtaining etc prescription by false representation**

Insert “, midwife practitioner” after “nurse practitioner” in section 16 (a) (i).

**[7] Section 17 Obtaining prohibited drug by false representation**

Insert “midwife practitioner,” after “nurse practitioner,”.

**[8] Section 18 Obtaining prohibited drugs from medical practitioners, nurse practitioners or midwife practitioners**

Omit “or nurse practitioner” from the definition of *authorised person* in section 18 (2).

Insert instead “, nurse practitioner or midwife practitioner”.

**[9] Section 29 Traffickable quantity—possession taken to be for supply**

Insert “midwife practitioner,” after “nurse practitioner,” in section 29 (b).

**2.3 Health Administration Act 1982 No 135**

**Schedule 2A Health professional boards**

Omit the matter relating to the Nurses Registration Board.

Insert instead:

\* Nurses and Midwives Board established under the *Nurses and Midwives Act 1991*



## **2.4 Health Care Complaints Act 1993 No 105**

### **[1] Section 4 Definitions**

Omit “*Nurses Act 1991*” from the definition of *health registration Act*.

Insert instead “*Nurses and Midwives Act 1991*”.

### **[2] Section 40 Opportunity for persons investigated to make submissions**

Omit “*Nurses Act 1991*” from the note to the section.

Insert instead “*Nurses and Midwives Act 1991*”.

## **2.5 Health Professionals (Special Events Exemption) Act 1997 No 90**

### **Section 3 Definitions**

Omit “*Nurses Act 1991*” from the definition of *Health Registration Act*.

Insert instead “*Nurses and Midwives Act 1991*”.

## **2.6 Health Services Act 1997 No 154**

### **Section 117 Duty to report certain criminal conduct and disciplinary matters**

Omit paragraph (e) of the definition of *relevant health professional registration Act* in section 117 (3).

Insert instead:

- (e) in relation to an employee who is employed as a nurse or midwife—the *Nurses and Midwives Act 1991*, or

## **2.7 Human Tissue Act 1983 No 164**

### **[1] Section 4 Definitions**

Omit the definitions of *nurse* and *nursing aide* from section 4 (1).

Insert instead:

*nurse* has the same meaning as in the *Nurses and Midwives Act 1991*.

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**[2] Section 16 Revocation of consent**

Omit “or nursing aide” from section 16 (2) (a) (iii).

**[3] Section 17 Child no longer in agreement with removal or transplantation**

Omit “or nursing aide” from section 17 (1) (a) (iii).

**2.8 Law Enforcement (Powers and Responsibilities) Act 2002 No 103**

**Schedule 2 Search warrants under other Acts**

Insert in alphabetical order:

*Nurses and Midwives Act 1991*, section 77B

**2.9 Liquor Act 1982 No 147**

**Section 6 Application of Act**

Omit section 6 (1) (d). Insert instead:

- (d) liquor where the sale is for medicinal purposes only and is made by:
  - (i) a registered medical practitioner, or
  - (ii) a nurse authorised under the *Nurses and Midwives Act 1991* to practise as a nurse practitioner, or
  - (iii) a midwife authorised under that Act to practise as a midwife practitioner, or
  - (iv) a pharmacist under the *Pharmacy Act 1964*,

**2.10 Medical Practice Act 1992 No 94**

**Section 111 Other health care professionals not affected**

Insert “registered midwife,” after “registered nurse,” in section 111 (1).

**2.11 Nurses and Midwives Act 1991 No 9**

**[1] Section 77B Search warrants**

Omit “authorised justice” wherever occurring in section 77B (1) and (3).

Insert instead “authorised officer”.

**[2] Section 77B (4)**

Omit “Part 3 of the *Search Warrants Act 1985*”.

Insert instead “Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002*”.

**[3] Section 77B (5)**

Omit the subsection. Insert instead:

(5) In this section:

*authorised officer* has the same meaning as in the *Law Enforcement (Powers and Responsibilities) Act 2002*.

**2.12 Nursing Homes Act 1988 No 124**

**Section 3 Definitions**

Omit “*Nurses Registration Act 1953*” from the definition of *registered nurse* in section 3 (1).

Insert instead “*Nurses and Midwives Act 1991*”.

**2.13 Pharmacy Act 1964 No 48**

**Section 3 Definitions**

Omit the definition of *nurse practitioner* in section 3 (1). Insert instead:

*nurse practitioner* means a person authorised under the *Nurses and Midwives Act 1991* to practise as a nurse practitioner or midwife practitioner.

**2.14 Physiotherapists Act 2001 No 67**

**Section 133 Regulations**

Insert after section 133 (2) (n):

(o) infection control standards to be followed by physiotherapists in the practice of physiotherapy.

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## **2.15 Poisons and Therapeutic Goods Act 1966 No 31**

### **[1] Section 4 Definitions**

Insert in alphabetical order in section 4 (1):

*midwife practitioner* means a person authorised under the *Nurses and Midwives Act 1991* to practise as a midwife practitioner.

### **[2] Section 4 (1), definition of “nurse practitioner”**

Omit “*Nurses Act 1991*”. Insert instead “*Nurses and Midwives Act 1991*”.

### **[3] Section 8 Poisons List**

Insert “midwife practitioners authorised under that section,” after “nurse practitioners authorised under section 17A,” in the matter relating to Schedule One in section 8 (2).

### **[4] Section 8 (2)**

Insert “midwife practitioner authorised to prescribe the substance under that section,” after “nurse practitioner authorised to prescribe the substance under section 17A,” in the matter relating to Schedule Four.

### **[5] Section 10 Prohibition on supply of certain substances otherwise than by wholesale**

Insert as section 10 (2) (a3):

(a3) by a midwife practitioner who is authorised under section 17A to supply the substance in the lawful practice of his or her profession as such, or

### **[6] Section 10 (4) (a3)**

Insert as section 10 (4) (a3):

(a3) by a midwife practitioner who is authorised under section 17A to supply the substance in the lawful practice of his or her profession as such, or

### **[7] Section 10 (4) (b)**

Insert “midwife practitioner,” after “nurse practitioner,”.

**[8] Section 10 (4) (c) and (c1)**

Insert “, midwife practitioner” after “nurse practitioner” wherever occurring.

**[9] Section 11 Restriction on wholesale supply of certain substances**

Insert as section 11 (2) (a3):

- (a3) a midwife practitioner authorised under section 17A to supply or use, or have possession of, the substance concerned, or

**[10] Section 12 Obtaining substances by false representation**

Insert as section 12 (2) (a3):

- (a3) a midwife practitioner authorised under section 17A to supply or use, or have possession, of, the substance concerned, or

**[11] Section 16 Offences relating to prescribed restricted substances**

Insert as section 16 (1) (a3):

- (a3) the person is a midwife practitioner who is authorised under section 17A to possess the substance and the person obtains possession or attempts to obtain possession of it in the lawful practice of his or her profession,

**[12] Section 16 (1) (b)**

Insert “midwife practitioner,” after “nurse practitioner,”.

**[13] Section 16 (1) (d1)**

Insert “, midwife practitioner” after “nurse practitioner”.

**[14] Section 16 (2)**

Insert “, midwife practitioner” after “nurse practitioner”.

**[15] Section 16 (3) (a) (i)**

Insert “midwife practitioner,” after “nurse practitioner,”.

**[16] Section 16 (5)**

Insert “midwife practitioner,” after “nurse practitioner,” wherever occurring.

**[17] Section 17 Regulations under Part 3**

Insert “, midwife practitioner” after “nurse practitioner” in section 17 (1) (j1).

**[18] Section 17A Director-General may authorise nurse practitioners and midwife practitioners to possess, use, prescribe or supply substances**

Insert after section 17A (1):

- (1A) The Director-General may, by means of a written authorisation, authorise a midwife practitioner, or a class of midwife practitioners, to possess, use, supply or prescribe any poison or restricted substance for the purposes of the practice of a midwife practitioner’s profession.

**[19] Section 17A (2)**

Omit the subsection. Insert instead:

- (2) Such an authority is to be given only if the Director-General approves guidelines, under section 78A of the *Nurses and Midwives Act 1991*, that provide for the possession, use, supply or prescription of poisons or restricted substances by nurse practitioners or midwife practitioners and is to be given in accordance with those guidelines.

**[20] Section 18A Evidentiary provisions**

Insert “midwife practitioner,” after “nurse practitioner,” in section 18A (1) (b).

**[21] Section 34 Hawking of poisons and therapeutic goods**

Insert “midwife practitioner authorised under that section,” after “nurse practitioner authorised under section 17A,” in paragraph (b) of the definition of *public place* in section 34 (4).

## **2.16 Private Hospitals and Day Procedure Centres Act 1988 No 123**

### **Section 3 Definitions**

Omit “*Nurses Registration Act 1953*” from the definition of *registered nurse* in section 3 (1).

Insert instead “*Nurses and Midwives Act 1991*”.

## **2.17 Public Finance and Audit Act 1983 No 152**

### **Schedule 2 Statutory bodies**

Omit “Nurses Registration Board”.

Insert instead “Nurses and Midwives Board”.

## **2.18 Public Health Act 1991 No 10**

### **[1] Section 10AC Spinal manipulation not to be practised by unregistered person**

Omit section 10AC (1). Insert instead:

- (1) A person must not engage in spinal manipulation in the course of providing a health service (as defined in the *Health Care Complaints Act 1993*) unless the person:
  - (a) is a registered chiropractor, or a chiropractic student acting under the appropriate supervision of a registered chiropractor, or
  - (b) is a registered medical practitioner, or a medical student acting under the appropriate supervision of a registered medical practitioner, or
  - (c) is a registered osteopath, or an osteopathy student acting under the appropriate supervision of a registered osteopath, or
  - (d) is a registered physiotherapist, or a physiotherapy student acting under the appropriate supervision of a registered physiotherapist.

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

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**[2] Section 10AD Prescribed electrophysical treatments not to be provided by unregistered person**

Omit section 10AD (1). Insert instead:

- (1) A person must not provide a prescribed electrophysical treatment in the course of providing a health service (as defined in the *Health Care Complaints Act 1993*) unless the person:
  - (a) is a registered chiropractor, or a chiropractic student acting under the appropriate supervision of a registered chiropractor, or
  - (b) is a registered medical practitioner, or a medical student acting under the appropriate supervision of a registered medical practitioner, or
  - (c) is a registered osteopath, or an osteopathy student acting under the appropriate supervision of a registered osteopath, or
  - (d) is a registered physiotherapist, or a physiotherapy student acting under the appropriate supervision of a registered physiotherapist, or
  - (e) is a podiatrist registered under the *Podiatrists Act 1989*, or a podiatry student acting under the appropriate supervision of such a podiatrist.

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

**[3] Section 10AG**

Insert as section 10AG:

**10AG Restrictions on certain birthing practices**

- (1) A person must not engage in a restricted birthing practice unless the person is:
  - (a) a registered midwife under the *Nurses and Midwives Act 1991*, or
  - (b) a medical practitioner, or
  - (c) a medical student, or a registered nurse under the *Nurses and Midwives Act 1991*, acting under the appropriate supervision of a registered midwife under that Act or of a medical practitioner, or



- (d) a midwifery student acting under the appropriate supervision of a registered midwife under the *Nurses and Midwives Act 1991*.

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

- (2) Proceedings for an offence against this section may be instituted within 12 months after the act or omission alleged to constitute the offence.
- (3) This section does not apply to the rendering of assistance to a woman who is giving birth to a child where the assistance is rendered in an emergency.
- (4) For the purpose of ascertaining whether the provisions of this section are being complied with, an authorised officer has and may exercise all the functions that the authorised officer has under the officer's Act for the purpose of ascertaining whether a provision of that Act is being complied with, and for that purpose:
- (a) those functions of the authorised officer under the officer's Act apply in respect of premises on which a person engages in a restricted birthing practice in the same way as those functions apply in respect of premises on which a person engages in professional practice under the officer's Act, and
  - (b) those functions of the authorised officer under the officer's Act apply in respect of the engaging in a restricted birthing practice in the same way as they apply in respect of professional practice engaged in under the officer's Act, and
  - (c) the provisions of the officer's Act with respect to the functions of an authorised officer (including any provision that creates an offence in connection with the functions of an authorised officer) extend to apply in respect of the exercise of functions of an authorised officer under this section.
- (5) In this section:
- authorised officer*** means an inspector or authorised person under any of the following Acts:
- (a) *Nurses and Midwives Act 1991*,
  - (b) *Medical Practice Act 1992*.

*medical student* has the same meaning as in the *Medical Practice Act 1992*.

*officer's Act*, in relation to an authorised officer, means the Act under which the authorised officer is appointed as an inspector, authorised officer or authorised person.

*restricted birthing practice* means the care of a pregnant woman involving the management of the 3 stages of labour and child birth.

**[4] Section 42E Definitions**

Omit paragraph (b) of the definition of *health practitioner*.

Insert instead:

- (b) a registered nurse within the meaning of the *Nurses and Midwives Act 1991*, or a registered midwife within the meaning of that Act, or

**2.19 Search Warrants Act 1985 No 37**

**Section 10 Definitions**

Insert in the definition of *search warrant* in alphabetical order of Acts:  
section 77B of the *Nurses and Midwives Act 1991*,

**2.20 Shops and Industries Act 1962 No 43**

**Section 89A Sale of medicinal or surgical goods**

Insert “or a midwife practitioner” after “nurse practitioner” in section 89A (a).