

Nurses and Midwives Act 1991 No 9

[1991-9]



New South Wales

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Previously named**
Nurses Act 1991
- **Does not include amendments by**
[Nurses and Midwives Amendment \(Performance Assessment\) Act 2004 No 100](#) (not commenced)
- **See also**
[Health Legislation Amendment \(Unregistered Health Practitioners\) Bill 2006](#)

Authorisation

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New South Wales

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Nurses and Midwives Act 1991 No 9



New South Wales

An Act to regulate the practice of nursing and midwifery and to repeal the *Nurses Registration Act 1953*.

Part 1 Preliminary

1 Name of Act

This Act may be cited as the *Nurses and Midwives Act 1991*.

2 Commencement

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

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.

3 Definitions

- (1) In this Act:

Board means the Nurses and Midwives Board.

Chairperson means the Chairperson of the Tribunal.

Commission means the Health Care Complaints Commission constituted under the *Health Care Complaints Act 1993*.

Committee means a Professional Standards Committee referred to in section 50.

conduct means any act or omission.

Corporation means the Health Administration Corporation constituted under the [Health Administration Act 1982](#).

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

Deputy Chairperson means a Deputy Chairperson of the Tribunal.

Director-General means the Director-General of the Department of Health.

enrolled nurse means a person who is enrolled under this Act in 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](#).

member means a member of the Board.

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.

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

Panel means an Impairment Panel constituted under Division 5 of Part 5.

President means the President of the Board.

professional misconduct is defined in section 4.

recognised means recognised by the Board.

Register means the Register of Nurses 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.

Registrar means the Registrar of the Board.

Roll means the Roll of Nurses kept by the Board under section 26.

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.

suffer from an impairment has the meaning given by section 4A.

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

unsatisfactory professional conduct is defined in section 4.

(2) In this Act:

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

3A Notes

Notes included in this Act do not form part of this Act.

4 Meaning of “professional misconduct” and “unsatisfactory professional conduct”

- (1) For the purposes of this Act, **professional misconduct**, in relation to a nurse or midwife, means unsatisfactory professional conduct of a sufficiently serious nature to justify the removal of the nurse’s or midwife’s name from a Register or the Roll.
- (2) For the purposes of this Act, **unsatisfactory professional conduct**, in relation to a nurse or midwife, includes any of the following:
 - (a) any conduct that demonstrates that the knowledge, skill or judgment possessed, or care exercised, by the nurse or midwife in the practice of nursing or midwifery is significantly below the standard reasonably expected of a nurse or midwife of an equivalent level of training or experience,
 - (b) the nurse’s or midwife’s contravening (whether by act or omission) a provision of this Act or the regulations,
 - (c) the nurse’s or midwife’s failure to comply with an order or determination made or

a direction given under section 48, 55 or 64 or with a condition of registration or enrolment,

(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,

(d1) a contravention by the nurse or midwife of section 34A (4) (Power of Commission to obtain information, records and evidence) of the [Health Care Complaints Act 1993](#),

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

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).

4A Meaning of “suffer from an impairment”

For the purposes of this Act, a person is considered to suffer from an impairment if the person suffers from any physical or mental impairment, disability, condition or disorder which detrimentally affects or is likely to detrimentally affect the person's physical or mental capacity to practise nursing or midwifery. Habitual drunkenness or addiction to a deleterious drug is considered to be a physical or mental disorder.

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.

4C References to “complaint”

In Part 5 (except section 44 and Divisions 4 and 5), a reference to a complaint includes a reference to a matter arising out of the investigation of a complaint in accordance with this or any other Act.

Part 2 Requirement for registration or enrolment

5 Unregistered and unenrolled persons not to hold themselves out as registered or enrolled

(1) A person must not:

(a) claim to be or hold himself or herself out as being, or

(b) take or use any name, initials, word, title, addition, symbol or description which, having regard to the circumstances in which it is taken or used:

(i) indicates, or

(ii) is capable of being understood to indicate, or

(iii) is likely to lead persons to infer,

that the person is,

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

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

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

Maximum penalty: 5 penalty units.

5A Unauthorised persons not to hold themselves out as nurse practitioners or midwife practitioners

A person must not:

(a) claim to be or hold himself or herself out as being a nurse practitioner or a midwife practitioner or entitled to practise as a nurse practitioner or a midwife practitioner, or

(b) take or use any name, initials, word, title, addition, symbol or description which, having regard to the circumstances in which it is taken or used:

(i) indicates, or

(ii) is capable of being understood to indicate, or

(iii) is likely to lead persons to infer,

that the person is a nurse practitioner or a midwife practitioner or entitled to practise as a nurse practitioner or a midwife practitioner,

unless the person is a nurse practitioner or a midwife practitioner (as appropriate).

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

6, 7 (Repealed)

Part 3 Nurses and Midwives Board

8 Constitution of the Board

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

9 Membership of the Board

- (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 an Australian lawyer nominated by the Minister, and
 - (k) 3 are to be persons nominated by the Minister as representatives of the community.
- (3) If the New South Wales Nurses' Association or the NSW College of Nursing does not nominate a registered nurse or registered midwife within such time or in such manner

as may be specified by the Minister by notice in writing to the Association or College, the Governor may instead appoint to be a member a person nominated by the Minister.

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,
- (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).

(3) The Board cannot employ any staff.

Note—

Staff may be employed under Chapter 1A of the *Public Sector Employment and Management Act 2002* in the Government Service to enable the Board to exercise its functions.

11 Ministerial control

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

12 Committees

- (1) The Board may establish committees to assist it in connection with the exercise of any of its functions.
- (2) The committees may include professional practice committees and professional liaison committees.
- (3) It does not matter if any or all of the members of a committee are not members of the Board.
- (4) It does not matter if all the members of a committee are not nurses or midwives, but the majority of members of a committee must be nurses or midwives.
- (5) The President and Deputy President of the Board are ex officio members of each committee.
- (6) A member of a committee, while sitting on the committee, is entitled to be paid by the Board such amount as the Minister from time to time determines in respect of the member.
- (7) The procedure for the calling of meetings of any such committee and for the conduct of business at those meetings is to be as determined by the Board or (subject to any determination of the Board) by the committee.

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.

13 (Repealed)

14 Delegation of functions

- (1) The Board may delegate any of its functions (other than this power of delegation and the function under section 76 (5)) to:
 - (a) the President, or
 - (b) the Deputy President, or
 - (c) a committee comprised of 2 or more members of the Board, or
 - (d) the Registrar or any other member of staff of the Board.
- (2) The Board must not delegate any of its functions under Part 5 to the Registrar or any other member of staff of the Board.

15 Other provisions relating to the Board

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

Part 4 Registration and enrolment

Division 1 Register of Nurses and Register of Midwives

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.

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.

Division 2 Registration

18 Qualifications for registration as a nurse

- (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 nurse and to be issued with a certificate of that registration if:
 - (a) the person satisfies the Board that he or she has completed a course of training as a nurse at 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
 - (b) the person satisfies the Board that he or she would, but for the commencement of Schedule 2 (3) to the *Nurses Registration (Amendment) Act 1985*, have been entitled to be registered under the *Nurses Registration Act 1953* as a general nurse, a mental retardation nurse or a psychiatric nurse, or
 - (c) the person satisfies the Board that he or she:
 - (i) has undergone a course of training as a nurse in any place outside Australia in

which a law providing for the registration of nurses 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 as a nurse under that law,

and the Board is of the opinion that the standards of that training and of the examinations leading to that degree, diploma, certificate or other qualification are not lower than the standards provided for by or under this Act for the registration of nurses, or

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

- (i) has undergone a course of training as a nurse, and
- (ii) is the holder of a 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.

- (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.

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 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, and authorised to practise midwifery, under this Act or the [Nurses Registration Act 1953](#), being registration and authorisation properly granted on the basis of qualifications actually possessed by the person at the time of that previous registration and authorisation.

(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.

19A Nurse practitioners

- (1) Any person who is registered or entitled to be registered as a nurse may apply to the Board for authorisation to practise as a nurse practitioner.
- (2) The Board may authorise a person to practise as a nurse 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 nurse practitioner.
- (3) An authorisation to practise as a nurse 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 nurse 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 nurses as nurse practitioners. The guidelines may include provision for the possession, use, supply or prescription of certain substances by nurse practitioners.

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.

21 Consideration and determination of applications

- (1) As soon as practicable after receiving an application made under section 18, 19, 19A or 20, the Board must consider the application and, if satisfied as to the entitlement of an applicant, must register the applicant or, as the case may be, authorise the applicant to practise as a nurse practitioner or as a midwife practitioner and direct the Registrar to enter the relevant particulars of the applicant in the appropriate Register, but if the Board is not so satisfied, it must refuse the application.
- (2) The Board must not refuse an application made under section 18, 19, 19A or 20 unless it has afforded the applicant an opportunity to be heard in relation to the matter.
- (3) Where the Board holds a hearing for the purposes of subsection (2), it:
 - (a) may conduct the hearing in such manner as it considers appropriate, and
 - (b) is not bound to observe rules of law governing the admission of evidence but may inform itself of any matter in such manner as it considers appropriate, and
 - (c) may call and receive evidence as to any matter relevant to the hearing, and
 - (d) may, from time to time as it considers appropriate, adjourn the hearing.
- (4) Where the Board refuses an application made under section 18, 19, 19A or 20, 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 or midwifery.

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.

23 Provisional registration

- (1) The President may grant to a person a certificate of provisional registration as a nurse or a midwife if the person:

- (a) is entitled to a degree, diploma, certificate or other award referred to in section 18 (1) (a) or (d) (ii) or 19 (1) (a) or (c) (ii), and
 - (b) will have the degree, diploma, certificate or other award conferred or granted in due course according to the practice of the body, association or institution conferring or granting the degree, diploma, certificate or other award, and
 - (c) is of good character, and
 - (d) applies to be registered as a nurse or a midwife and pays the fee prescribed by the regulations.
- (2) A certificate of provisional registration 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 registration granted by the President.
- (4) The Board may, at any time before the date of expiry, for such cause as to it seems proper, cancel a certificate of provisional registration without prejudice to any application for registration of the person who was the holder of the certificate.
- (5) If a person to whom a certificate of provisional registration has been granted becomes registered under this Act during the currency of the certificate, the person's registration dates from the granting of the certificate, unless otherwise decided by the Board.

24 Temporary registration

- (1) The Board may, on the application in writing of any person who wishes to obtain a certificate of temporary registration and on being paid the prescribed fee, issue to the person a certificate of temporary registration in the prescribed form on being satisfied that:
- (a) the person has adequate qualifications to practise nursing or to practise midwifery in New South Wales and proposes while in New South Wales to undertake teaching or research work in nursing or in midwifery, or
 - (b) for a reason accepted by the Board the person should be permitted to practise nursing or to practise midwifery in New South Wales temporarily.
- (2) A certificate of temporary registration:
- (a) may be issued unconditionally or subject to such conditions, including a condition as to the capacity in which the person to whom it is issued may practise as a nurse or as a midwife, as the Board considers appropriate, and
 - (b) if the Board thinks fit, may authorise that person to practise as a nurse practitioner or as a midwife practitioner.

- (3) A person to whom a certificate of temporary registration has been issued is, while the certificate is in force and the person complies with any conditions endorsed on the certificate, taken to be registered as a nurse or as a midwife (as appropriate) for the purposes of sections 5 and 37 but, if applicable, only in the capacity specified in the certificate and, if the Board has granted to the person an authorisation under subsection (2) (b), is taken for the purposes of section 5A to be a nurse practitioner or a midwife practitioner (as appropriate).
- (4) A certificate of temporary registration issued under this section, unless sooner cancelled under subsection (5), remains in force for such period not exceeding 12 months as the Board may determine, but the Board may from time to time renew such a certificate for a further period not exceeding 12 months.
- (5) The Board may, by notice given by post to the holder of the certificate at the last address of the holder shown in the record kept under section 16 (4), cancel a certificate of temporary registration in force under this section for failure to comply with any condition subject to which the certificate is issued or for any other reason that it considers appropriate and, on any such notice being given to the holder of such a certificate, the certificate ceases to be in force.
- (6) For the purposes of this section, a reference to a certificate of temporary registration includes a reference to such a certificate that is renewed under subsection (4).

25 When registration not required

A person who:

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

is, during that period, to be considered to be a registered nurse or a registered midwife (as appropriate) for the purposes of sections 5 and 37.

Division 3 The Roll of Nurses

26 Roll of Nurses

- (1) The Board is required to keep a roll, to be called the Roll of Nurses.
- (2) The Roll is to be divided as follows:

- (a) List "A" in which are to be entered the relevant particulars of enrolled nurses,
 - (b) List "B" in which are to be entered the relevant particulars of enrolled nurses (mothercraft).
- (3) The Registrar is required to enter in the appropriate list of the Roll on payment of the prescribed fee:
- (a) the full name of every person entitled to enrolment in the list, and
 - (b) the date of the person's enrolment, and
 - (c) particulars of the qualification or qualifications in respect of which the person is enrolled.
- (4) The Board is to keep a separate record of the address of each person enrolled as a nurse.
- (5) Such a record is not to be made available to members of the public for inspection.
- (6) The Roll must 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.

Division 4 Enrolment

27 Qualifications for enrolment—List "A" of the Roll

- (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 enrolled as a nurse in List "A" of the Roll and to be issued with a certificate of that enrolment, if:
- (a) the person satisfies the Board that he or she:
 - (i) 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

- (ii) has received the prescribed tuition and passed the prescribed examinations, or
 - (b) the person satisfies the Board that he or she would, immediately before the commencement of Schedule 2 (6) to the *Nurses Registration (Amendment) Act 1987*, have been entitled to be enrolled as a nurses aide under the *Nurses Registration Act 1953*, or
 - (c) the person satisfies the Board that he or she:
 - (i) has undergone an equivalent course of training in any place outside Australia, and
 - (ii) is the holder of a diploma, certificate or other qualification to the effect that the person has successfully completed the course of training, and
 - (iii) is enrolled as a nurse or equivalent and with equivalent qualifications under the law in force in that place,and the Board is of the opinion that the standard of that training and of each examination leading to that diploma, certificate or qualification is not lower than the standard provided for by or under this Act for the enrolment of nurses in List "A" of the Roll, or
 - (d) the person satisfies the Board that he or she:
 - (i) has undergone an equivalent course of training to obtain enrolment or equivalent qualifications, and
 - (ii) is the holder of a diploma, certificate or other qualification approved by the Board from an institution, person, or body in any place in or outside Australia to the effect that the person has successfully completed the course of training, and
 - (iii) has passed such examinations, and has successfully completed such additional training, as the Board may in the particular case require,and the Board is satisfied that the qualifications of the person are adequate for the purposes of enrolment as a nurse in List "A" of the Roll, 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.
- (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.

28 Qualifications for enrolment—List “B” of the Roll

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 enrolled as a nurse in List “B” of the Roll and to be issued with a certificate of that enrolment, if:

- (a) the person satisfies the Board that he or she holds a 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
- (b) the person satisfies the Board that he or she would, immediately before the commencement of Schedule 2 (6) to the *Nurses Registration (Amendment) Act 1987*, have been entitled to be registered as a mothercraft nurse under the *Nurses Registration Act 1953*, or
- (c) the person satisfies the Board that he or she:
- (i) has undergone a course in mothercraft nursing or equivalent training in any place, other than New South Wales, and
 - (ii) is the holder of a diploma, certificate or other qualification to the effect that the person has successfully completed the course of training, and
 - (iii) is registered or enrolled as a nurse with mothercraft or equivalent qualifications under the law in force at that place,

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

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

training, as the Board may in the particular case require,

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

- (e) the person was previously enrolled as a nurse in List "B" of the Roll 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.

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 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.

29 Issue of certificate of enrolment

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

Division 5 Supplementary

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.

30 Effect of discontinuation or other change in registered courses

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

31 Adequacy of language

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

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.

33 Annual practising fee

- (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.
- (4) If the registration or enrolment of any person is cancelled under subsection (3), the Board may, on application in writing by that person and on payment to the Board of such fees as are prescribed, restore that person's registration or enrolment.
- (5) When determining an application under subsection (4), the Board may waive such part of the fees referred to in that subsection as the Board in any particular case considers appropriate.
- (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.

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.

35 Notice of incapacity

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

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.

37 Badges

A nurse or midwife is entitled to wear a badge which is of a design prescribed by the regulations and which is issued by the Board.

Division 6 Offences

38 (Repealed)

39 Misrepresentation concerning enrolment

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

- (a) claim to be, or
- (b) represent himself or herself to be,
enrolled in a different list of the Roll.

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

40 (Repealed)

41 False or misleading entries and statements

A person:

- (a) who makes or causes to be made in a Register or the Roll an entry which that person knows to be false or misleading or alters an entry in a Register or the Roll with intent to render the entry false or misleading, or
- (b) who, for the purposes of obtaining registration as a nurse 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,

is guilty of an offence.

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

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.

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.

Part 5 Complaints and disciplinary proceedings

Division 1 Complaints

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.
- (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.

44 Complaints

- (1) A complaint may be made that a nurse or midwife:
- (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
 - (b) suffers from an impairment, or
 - (c) has been guilty of unsatisfactory professional conduct, or
 - (d) has been guilty of professional misconduct, or
 - (e) does not have sufficient physical or mental capacity to practise nursing or midwifery, or
 - (f) is not of good character.
- (2) Any person (including the Board) may make a complaint to the Board.
- (3) A complaint must:
- (a) be in writing, and
 - (b) contain particulars of the allegations on which it is founded, and
 - (c) (Repealed)
 - (d) be lodged with the Registrar.
- (4) The Board must notify the Commission of a complaint as soon as practicable after the complaint is made.
- (5) The Board may require the complainant to provide further particulars of the complaint.
- (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).

45 Referral or dismissal of complaints by Board

- (1) The Board must, as soon as practicable after a complaint is lodged with the Registrar or the Board has decided to make a complaint:
- (a) refer the complaint to a Panel, a Committee or the Tribunal (which is to be constituted in accordance with this Act to deal with the complaint), as the Board thinks fit, despite any previous action taken by the Board or the Commission, or
 - (b) direct the nurse or midwife concerned to attend for counselling, or
 - (c) determine that no further action should be taken, except where the Board has decided to make the complaint.
- (2) The Board must refer a complaint to the Tribunal if the complaint is that the nurse 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.
- (4) Two or more members of the Board may be appointed by the Board for the purpose of carrying out the functions of the Board under this section, and in this Act and the regulations a reference to the referral of a complaint by the Board is taken to include a reference to a referral of a complaint by those members.
- (5) The Board may, before taking any action under this section, require the nurse 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.

(8) This section is subject to section 46.

46 Role of Health Care Complaints Commission

(1) Before the Board takes any action under section 45, the Board and the Commission must consult in order to see if agreement can be reached between them as to the course of action to be taken concerning a complaint.

(2) Division 2 of Part 2 of the *Health Care Complaints Act 1993* applies to the consultation.

(3) A complaint must not be referred to the Tribunal or a Committee until the complaint has been investigated by the Commission under the *Health Care Complaints Act 1993*.

(4) If the Commission recommends to the Board in accordance with the *Health Care Complaints Act 1993* that a complaint (whether made under that Act or this Act) be referred to the Tribunal, the Board must comply with that recommendation. This applies only to a complaint of a kind that could be made under this Act. A recommendation by the Commission for referral to the Tribunal is to be complied with even if the complaint has already been referred to a Committee or a Panel.

47 (Repealed)

48 Suspension etc by Board

- (1) The Board may at any time:
 - (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,if it is satisfied that such action is necessary for the purpose of protecting the life, or the physical or mental health, of any person.
- (2) The Board may take action under this section whether or not a complaint has been made to the Board about the nurse or midwife.
- (3) Subject to section 48A, the Board must, at or before the time it takes action under this section, refer:
 - (a) any complaint about the nurse or midwife, and
 - (b) particulars of the action taken and the Board's reasons for taking the action,to the Tribunal, or, if the matter is one which could be referred to a Committee under section 45 (3), it may refer it to a Committee, and the matter is taken to be a complaint referred to the Tribunal or the Committee by the Board.
- (4) The Tribunal or a Committee is to be constituted in accordance with this Act to deal with a matter referred to it under this section.
- (5) The Board is to inform the Director-General and the Commission when it takes any action under this section.
- (6) A period of suspension imposed by the Board under this section may be extended, from time to time, by the Board by its order for a further period or further periods, each of not more than 8 weeks, if:
 - (a) the extension has been approved in writing by the Chairperson or a Deputy Chairperson, and
 - (b) the complaint about the nurse or midwife has not been disposed of.
- (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.
- (8) On the expiry of such a period of suspension, the person's rights and privileges as a

nurse or midwife are revived, subject to any order made by the Tribunal.

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

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.

49 Appeals against suspension etc by Board

- (1) A person:
 - (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,may appeal to the Tribunal against the suspension or conditions or any extension under that section of the period of suspension.
- (2) An appeal under this section is to be lodged with the Registrar who is to refer it to the Tribunal (which is to be constituted in accordance with this Act to deal with the appeal).
- (3) An appeal under this section against an order made or conditions imposed under section 48 is to be lodged not later than 21 days after notice of the order or notice of the imposition of the conditions is given to the affected person.
- (4) On an appeal under this section, the Tribunal may by its order:
 - (a) terminate, vary or confirm the period of suspension, or
 - (b) revoke, vary or confirm the conditions,as it thinks proper, but only so that the order does not have effect beyond the day on which any related complaint about the person is disposed of.
- (5) An appeal under this section does not affect any suspension or conditions with respect to which it has been made until an order is made under subsection (4).

Division 2 Hearing of complaints by Professional Standards Committees

50 Professional Standards Committees

- (1) There are to be Professional Standards Committees.
- (2) The Committees are to have and may exercise the jurisdiction and functions conferred or imposed on them by or under this Act.
- (3) When the Board decides to refer a complaint to a Committee, the Board is to appoint 3 persons to sit as the Committee for the purpose of conducting an inquiry into the complaint.

51 Constitution of Committees

- (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.
- (2) The Board is to appoint one of the members of a Committee as chairperson of the Committee.
 - (3) A person who is a member of the Board may not be appointed to sit on a Committee.
 - (4) One or more Committees may conduct more than one inquiry at the same time.
 - (5) A member of a Committee, while sitting on the Committee, is entitled to be paid by the Board in accordance with the regulations.

52 Proceedings before a Committee

- (1) A Committee appointed under section 50 is to hold an inquiry into any complaint referred to it.
- (2) On appointment under section 51, the chairperson of a Committee is to fix a time and place for the holding of an inquiry by the Committee into the complaint and is to give not less than 7 days' notice of the inquiry to:
 - (a) the nurse or midwife concerned, and
 - (b) the complainant, if any, and
 - (c) the Director-General, the Commission and the Board.
- (3) In conducting an inquiry, a Committee is, unless it otherwise directs, to sit in the absence of the public and may conduct the proceedings as it thinks fit.
- (4) A Committee may be assisted by a legally qualified officer appointed by the Registrar for that purpose on the request of the Committee.
- (5) Schedule 2 has effect with respect to the conduct of any inquiry by a Committee.

53 Representation before a Committee

- (1) At an inquiry conducted by a Committee:
 - (a) the nurse or midwife concerned, and
 - (b) the complainant, if any,are entitled to attend and to be accompanied by an Australian lawyer or another adviser, but are not entitled to be represented at the inquiry by the Australian lawyer

or other adviser, except as provided by subsection (1A) or (3).

- (1A) An adviser (other than an Australian lawyer) of a nurse or midwife may represent the nurse or midwife before the Committee at an inquiry.
- (1B) Subsection (1A) does not prevent the Committee from addressing questions directly to the nurse or midwife.
- (2) A Committee may grant leave for any other person (not being an Australian lawyer or another adviser representing any person) to appear at an inquiry if the Committee is satisfied that it is appropriate for that person to appear.
- (3) A Committee may grant leave for an Australian lawyer to represent a nurse or midwife at an inquiry into a complaint concerning the physical or mental capacity of the nurse or midwife if the Committee is satisfied that it is appropriate to do so.

54 Referral of certain matters to the Tribunal

- (1) A Committee must forthwith terminate an inquiry if, before or during the inquiry, the Committee:
 - (a) forms the opinion that the complaint (not being a complaint referred under section 45 (3)), may provide grounds for the suspension or cancellation of the nurse's or midwife's registration or enrolment, or
 - (b) becomes aware that the Board has referred the complaint or another complaint about the nurse or midwife concerned to the Tribunal.
- (2) The Committee must refer the complaint to the Tribunal unless it has already been referred to the Tribunal.
- (3) The Tribunal to which the complaint is referred may be the Tribunal as already constituted to deal with another complaint or the Tribunal as constituted in accordance with this Act to deal with the referred complaint.
- (4) A Committee is to inform the Board, the Director-General and the Commission when it takes any action under this section.

55 Determinations of a Committee

- (1) A Committee may make one or more of the following determinations if it finds the subject-matter of a complaint made against a person to have been proved:
 - (a) caution or reprimand the person,
 - (b) order that the person seek medical or psychiatric treatment or counselling,
 - (c) direct that such conditions, relating to the person's practice, as it considers appropriate be imposed on the person's registration or enrolment,

- (d) order that the person complete such educational courses as are specified by the Committee,
 - (e) order that the person report on his or her practice at the times, in the manner and to the persons specified by the Committee,
 - (f) order that the person seek and take advice, in relation to the management of his or her practice, from such persons as are specified by the Committee.
- (2) A power conferred by subsection (1) (b)-(f) may not be exercised unless the person concerned is registered or enrolled.
 - (3) An order may be made by a Committee that a person who is not registered or enrolled may be registered or enrolled subject only to compliance with an order made under subsection (1) (b), (d), (e) or (f) or conditions that might, if the person were registered or enrolled, be imposed under subsection (1) (c).
 - (4) The Board may refer to the Tribunal any failure by a person to comply with the following orders or conditions imposed by a Committee:
 - (a) an order under subsection (1) (b), (d), (e) or (f),
 - (b) conditions imposed under subsection (1) (c), or
 - (c) an order under subsection (3).
 - (5) The Tribunal may, if it finds the failure to have been proved:
 - (a) exercise any power that the Tribunal may exercise under section 64 (1) or (5) (if the person is registered or enrolled), or
 - (b) make any order that the Tribunal may make under section 64 (2) or (5) (if the person is not registered or enrolled).
 - (6) An order made by a Committee or the Tribunal under this section takes effect on the day on which the order is made or on such later day as is specified in the order.
 - (7) A Committee is to inform the Registrar of the exercise of any power under this section by the Committee.
 - (8) A power of a Committee is taken to have been exercised by the Committee if any person other than the Committee exercises the power under this section.

56 Decisions of a Committee

- (1) A decision supported by at least 2 members of a Committee on any question arising during an inquiry is the decision of the Committee.
- (2) A Committee must, within 30 days of making the decision resulting from any such

inquiry, make available to the complainant, the nurse or midwife concerned and such other persons as it thinks fit, a written statement of the decision.

- (3) A written statement of a decision must:
- (a) set out any findings on material questions of fact, and
 - (b) refer to any evidence or other material on which the findings were based, and
 - (c) give the reasons for the decision.
- (4) A Committee is not required to include confidential information in any such statement (despite any other provision of this section), and if a statement would be false or misleading if it did not include the confidential information, the Committee is not required to provide the statement.
- (5) If, because of subsection (4), confidential information is not included or such a statement is not provided, a Committee must, within 30 days of the decision, give notice in writing to the person indicating that:
- (a) the confidential information is not included, or
 - (b) the statement will not be provided,
- as appropriate, and giving the reasons why the confidential information is not included or the statement will not be provided.
- (6) In this section:
- confidential information** means information that:
- (a) has not previously been published or made available to the public when a written statement of a decision to which it is or may be relevant is being prepared, and
 - (b) relates to the personal or business affairs of a person, other than a person to whom a Committee is required (or would, but for subsection (4), be required) to provide a written statement of a decision, and
 - (c) is information:
 - (i) that was supplied in confidence, or
 - (ii) the publication of which would reveal a trade secret, or
 - (iii) that was provided in compliance with a duty imposed by an enactment, or
 - (iv) the provision of which by a Committee would be in breach of any enactment.
- (7) Nothing in this section affects the power of a court to make an order for the discovery of documents or to require the giving of evidence or the production of documents to a

court.

57 Appeals against decisions of a Committee etc

- (1) A nurse or midwife about whom a complaint is referred to a Committee, or the complainant, may appeal to the Tribunal against:
 - (a) a finding of the Committee, or
 - (b) the exercise by the Committee of any power under section 55, within the prescribed time.
- (2) The appeal is to be lodged with the Registrar who is to refer it to the Tribunal (which is to be constituted in accordance with this Act to deal with the appeal).
- (3) The appeal is to be dealt with by way of a new hearing and new evidence may be given in addition to or in substitution for any evidence received at the inquiry.
- (4) On the appeal, the Tribunal may:
 - (a) dismiss the appeal, or
 - (b) make any finding or exercise any power that the Tribunal could have made or exercised if the complaint had been originally referred to the Tribunal.
- (5) The appeal does not affect any finding or exercise of power with respect to which it has been made until an order is made under subsection (4) (b).

58 Appeals with respect to points of law

- (1) A nurse or midwife about whom a complaint is referred to a Committee, or the complainant, may appeal to the Chairperson, or a Deputy Chairperson nominated by the Chairperson, with respect to a point of law.
- (2) The appeal may be made in accordance with the regulations during the inquiry conducted by the Committee or within the prescribed time.
- (3) The inquiry by the Committee is not to continue until the appeal has been disposed of (if the inquiry has not been completed).
- (4) The Committee, on recommending the inquiry, is not to make any decision that is inconsistent with the Chairperson's or Deputy Chairperson's determination with respect to the point of law.

Division 3 Hearing of matters by the Nurses and Midwives Tribunal

59 The Nurses and Midwives Tribunal

- (1) There is to be a Nurses and Midwives Tribunal.

- (2) The Tribunal has and may exercise the jurisdiction and functions conferred or imposed on it by or under this or any other Act.
- (3) The Board must inform the Chairperson and appoint 3 other persons to sit on the Tribunal when:
 - (a) a complaint or other matter is referred to the Tribunal, or
 - (b) the Commission decides, in accordance with the *Health Care Complaints Act 1993*, to prosecute a complaint before the Tribunal, or
 - (c) an appeal or application under section 68 to the Tribunal is lodged with the Registrar.
- (4) On being informed of a complaint, matter, appeal or application under this section, the Chairperson is to nominate:
 - (a) himself or herself, or
 - (b) a Deputy Chairperson,to sit on the Tribunal for the purpose of conducting an inquiry into the complaint, matter or application or hearing the appeal.
- (5) For the purpose of conducting an inquiry or hearing an appeal, the Tribunal is to consist of:
 - (a) the Chairperson or a Deputy Chairperson, and
 - (b) 2 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.
- (6) A person is not to be appointed to sit on the Tribunal if the person is a member of the Board.
- (7) The Tribunal, as constituted by different persons or the same persons, may conduct or hear more than one inquiry or appeal at the same time.
- (8) A member of the Tribunal (other than the Chairperson or a Deputy Chairperson), while sitting on the Tribunal, is entitled to be paid in accordance with the regulations.
- (9) The Tribunal is to have a seal of which all courts and persons acting judicially are to take judicial notice.

60 Chairperson and Deputy Chairpersons of the Tribunal

- (1) The Governor may appoint:
 - (a) a qualified person as Chairperson of the Tribunal, and
 - (b) 1 or more qualified persons as Deputy Chairpersons of the Tribunal.
- (1A) A person is qualified for appointment as Chairperson, or as a Deputy Chairperson, if the person:
 - (a) is a Judge of the District Court, or
 - (b) is an Australian lawyer of at least 7 years' standing.
- (2) The Chairperson and each Deputy Chairperson hold office for such period not exceeding 7 years as may be specified in the instrument of appointment as Chairperson or Deputy Chairperson, but are eligible (if otherwise qualified) for re-appointment.
- (3) A Deputy Chairperson may be appointed by the Governor for the purpose only of conducting or hearing a particular inquiry or appeal described in the instrument of appointment of the Deputy Chairperson (without limiting the generality of this section).
- (4) A Deputy Chairperson, while sitting on the Tribunal, has and may exercise all the functions conferred or imposed on the Chairperson by this Act (other than those conferred by section 59 (4)).
- (5) The Chairperson or a Deputy Chairperson sitting on the Tribunal is entitled to be paid in accordance with the regulations.
- (6) The Governor may appoint a Deputy Chairperson to act in the office of Chairperson during the illness or absence of the Chairperson.
- (7) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of the Chairperson or a Deputy Chairperson.
- (8) (Repealed)

61 Proceedings before the Tribunal

- (1) The members of the Tribunal nominated and appointed under section 59 are to conduct an inquiry into any complaint, matter or application and are to hear any appeal referred to it.
- (2) On nomination under section 59, the Chairperson or a Deputy Chairperson is to fix a time and place for the conducting of the inquiry or the hearing of the appeal by the Tribunal and is to give not less than 7 days' notice of the inquiry or appeal to the

following persons:

- (a) the nurse or midwife concerned,
 - (b) the complainant, if any,
 - (c) the Director-General, the Commission and the Board,
 - (d) the Chairperson of the relevant Committee, if appropriate.
- (3) In conducting an inquiry or hearing an appeal, the Tribunal is, unless it otherwise directs, to be open to the public and may conduct the proceedings as it thinks fit.
- (4) Schedule 2 has effect with respect to the conduct of any inquiry and the hearing of any appeal by the Tribunal.

62 Representation before the Tribunal

- (1) At an inquiry conducted or appeal heard by the Tribunal:
- (a) the nurse or midwife concerned, and
 - (b) the complainant, if any,
- are entitled to attend and to be represented by an Australian legal practitioner or another adviser.
- (2) The Tribunal may grant leave for any other person to appear (whether in person or by an Australian legal practitioner or another adviser) at an inquiry or appeal if the Tribunal is satisfied that it is appropriate for that person to appear.

63 Chairperson or Deputy Chairperson not to review own decisions

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

64 Determinations of the Tribunal

- (1) The Tribunal may determine to do any one or more of the following if it finds the subject-matter of a complaint made against a person to have been proved:
- (a) caution or reprimand the person,
 - (b) order that the person seek medical or psychiatric treatment or counselling,
 - (c) direct that such conditions, relating to the person's practice, as it considers appropriate be imposed on the person's registration or enrolment,
 - (d) order that the person complete such educational courses as are specified by the

Tribunal,

- (e) order that the person report on his or her practice at the times, in the manner and to the persons specified by the Tribunal,
 - (f) order that the person seek and take advice, in relation to the management of his or her practice, from such persons as are specified by the Tribunal,
 - (g) by its order:
 - (i) suspend the person from practising for such period as it specifies, or
 - (ii) direct that the person's name be removed from the Register of Nurses or the Register of Midwives, or both, or from the Roll.
- (2) A power conferred by subsection (1) (b)-(g) may not be exercised unless the person is registered or enrolled but an order may be made by the Tribunal that a person who is not registered or enrolled may be registered or enrolled only subject to compliance with an order under subsection (1) (b), (d), (e) or (f) or conditions that might, if the person were registered or enrolled, be imposed under subsection (1) (c).
- (3) If the Board has reason to believe that a person in respect of whom the Tribunal has:
- (a) made an order under subsection (1) (b), (d), (e) or (f), or
 - (b) imposed conditions under subsection (1) (c), or
 - (c) made any order under subsection (2),
- has failed to comply with the order or conditions, the Board may refer the matter to the Tribunal.
- (4) The Tribunal may, if it finds the failure to have been proved:
- (a) exercise any power that it may exercise under subsection (1) or (5) (if the person is registered or enrolled), or
 - (b) make an order that the Tribunal may make under subsection (2) or (5) (if the person is not registered or enrolled).
- (5) If the Tribunal makes an order under subsection (1) (g) (ii) or the Tribunal finds the subject-matter of a complaint against a person who has ceased to be registered or enrolled to be proved:
- (a) the Tribunal may by its order fix a time after which the person whose name is removed from a Register or the Roll, or a person who has ceased to be registered or enrolled, may apply to be registered or enrolled, and
 - (b) if a time has been so fixed, the person is not entitled to be registered or enrolled

before that time, despite Part 4.

- (6) The Tribunal may award costs, but only if it is satisfied that there are special circumstances warranting an award of costs.
- (7) An order made by the Tribunal under this section takes effect on the day on which the order is made or on such later day as is specified in the order.
- (8) The Tribunal is to inform the Board of the exercise of any power under this section by the Tribunal.
- (9) A power of the Tribunal exercised by the Supreme Court under this section is taken to have been exercised by the Tribunal, except for the purposes of any appeal.

65 Suspension orders

- (1) A person subject to a suspension order is taken not to be a nurse or midwife, except in the application to the person of a provision of Part 4 or this Part.
- (2) On the expiry of such a period of suspension the person's rights and privileges as a nurse or midwife are revived.
- (3) In this section, **suspension order** means an order suspending a person from practising under section 55, 64 or 67 which is in force.

66 Decisions of the Tribunal

- (1) The decision of the Chairperson, or a Deputy Chairperson, on any question of law or procedure arising during an inquiry or appeal at which the Chairperson or Deputy Chairperson presides is the decision of the Tribunal for the purposes of the inquiry or appeal.
- (2) A decision supported by at least 3 members of the Tribunal with respect to a question (other than with respect to a point of law or procedure) arising during an inquiry or appeal before the Tribunal is the decision of the Tribunal or, if 2 members support the decision and 2 members oppose the decision, the decision of the Chairperson or Deputy Chairperson presiding is the decision of the Tribunal.
- (3) The Tribunal must, within 30 days of making the decision resulting from any such inquiry or appeal, make available to the complainant, the nurse or midwife concerned and such other persons as it thinks fit a written statement of the decision.
- (4) A written statement of a decision must:
 - (a) set out any findings on material questions of fact, and
 - (b) refer to any evidence or other material on which the findings were based, and
 - (c) give the reasons for the decision.

- (5) The Tribunal is not required to include confidential information in any such statement (despite any other provision of this section) and if a statement would be false or misleading if it did not include the confidential information, the Tribunal is not required to provide the statement.
- (6) If, because of subsection (5), confidential information is not included or such a statement is not provided, the Tribunal must, within 30 days of the decision, give notice in writing to the person indicating that:
- (a) the confidential information is not included, or
 - (b) the statement will not be provided,
- as appropriate, and giving the reasons why the confidential information is not included or the statement will not be provided.
- (7) In this section:
- confidential information** means information that:
- (a) has not previously been published or made available to the public when a written statement of a decision to which it is or may be relevant is being prepared, and
 - (b) relates to the personal or business affairs of a person, other than a person to whom the Tribunal is required (or would, but for subsection (5), be required) to provide a written statement of a decision, and
 - (c) is information:
 - (i) that was supplied in confidence, or
 - (ii) the publication of which would reveal a trade secret, or
 - (iii) that was provided in compliance with a duty imposed by an enactment, or
 - (iv) the provision of which by the Tribunal would be in breach of any enactment.
- (8) Nothing in this section affects the power of a court to make an order for the discovery of documents or to require the giving of evidence or the production of documents to a court.

67 Appeals against decisions of the Tribunal

- (1) A person about whom a complaint is referred to the Tribunal under section 45, 46 or 54, or the complainant, may appeal to the Supreme Court against:
- (a) a decision of the Tribunal with respect to a point of law, or
 - (b) the exercise of any power under section 64 by the Tribunal,

within the prescribed time.

- (2) The Supreme Court may stay any order made by the Tribunal, on such terms as the Court sees fit, until such time as the Court determines an appeal made under this section.
- (3) In determining an appeal under this section, the Supreme Court may:
 - (a) dismiss the appeal, or
 - (b) make such order as it thinks proper having regard to the merits of the case and the public welfare and, in doing so, may exercise any one or more of the powers of the Tribunal under section 64.
- (4) In any case where the Supreme Court dismisses an appeal against an order directing that the name of a nurse or midwife be removed from a Register or the Roll or a person has ceased to be registered or enrolled:
 - (a) the Court may by its order fix a time after which the person whose name is removed from a Register or the Roll, or the person who has ceased to be registered or enrolled, may apply to be registered or enrolled, and
 - (b) if a time has been so fixed, the person is not entitled to be registered or enrolled before that time despite Part 4.
- (5) An appeal under this section with respect to a point of law may be made during an inquiry conducted by the Tribunal or within the prescribed time.
- (6) The inquiry before the Tribunal is not to continue until the appeal with respect to the point of law has been disposed of (if the inquiry has not been completed).
- (7) The Tribunal, on recommencing the inquiry, is not to make any decision that is inconsistent with the Supreme Court's determination with respect to the point of law.

68 Review of suspension or cancellation of registration or enrolment by the Tribunal

- (1) A person:
 - (a) whose registration or enrolment has been suspended under section 55 (5) or 64, or
 - (b) whose name has been removed from a Register or the Roll under section 55 (5), 64 or 67,may apply to the Tribunal for a review of the suspension or removal.
- (2) An application under this section is to be lodged with the Registrar who is to refer it to the Tribunal (which is to be constituted in accordance with this Act to deal with the application).

- (3) An application under this section:
- (a) may not be made by a person while the person is subject to an order fixing a time after which the person may apply to be registered or enrolled, and
 - (b) may not be made if an appeal to the Supreme Court in respect of the same matter under section 67 has not been disposed of.
- (4) On an application being made under this section, the Tribunal may, after such inquiry as it thinks fit:
- (a) dismiss the application, or
 - (b) by its order, terminate any suspension, or
 - (c) order:
 - (i) that a person whose name has been removed from a Register or the Roll be registered or enrolled under the provision of this Act under which the person was registered or enrolled immediately before the person ceased to be registered or enrolled or under any equivalent provision of this Act, and
 - (ii) that such conditions, if any, as the Tribunal may impose on the person's registration or enrolment and as are specified in the order be imposed on the person's registration or enrolment.
- (5) The Tribunal may award costs but only if it is satisfied that there are special circumstances warranting an award of costs.
- (6) A person registered or enrolled pursuant to an order referred to in subsection (4) (c) (i) is taken to be registered or enrolled pursuant to a determination made by the Board under Part 4.
- (7) A condition imposed pursuant to an order referred to in subsection (4) (c) (ii) is taken to be a condition that has been imposed by the Board under section 18, 19, 27 or 28, as the case requires.

69 Inquiries etc where other proceedings

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

70 Giving of information to other Australian registration bodies

The Board is authorised to inform any body which, under the law of another State or a Territory, is responsible for the registration, enrolment or authorisation to practise (however described) of nurses or midwives of a determination of the Tribunal under

section 64.

Division 4 Impairment matters concerning nurses and midwives

70A Referral of impairment matters concerning nurses and midwives

- (1) The Board may refer any matter to a Panel if the Board considers that the matter indicates that a nurse or midwife suffers from an impairment. This is not limited to matters that are the subject of a complaint to the Board.
- (2) If the Board is aware that a complaint has been made to the Commission about a nurse or midwife who is the subject of a referral to a Panel, the Board is to notify the Commission of the referral.

70B Persons may notify Board of impairment matters concerning nurses or midwives

A person may notify the Board of any matter which the person thinks indicates that a nurse or midwife suffers or may suffer from an impairment.

70C Commission may refer impairment matters to Board

- (1) If the Commission becomes aware of any matter that the Commission considers indicates that a nurse or midwife suffers or may suffer from an impairment, the Commission may refer the matter to the Board.
- (2) This section does not affect the functions of the Board in relation to a complaint made to the Commission or a matter referred to the Commission for investigation.

70D Panel to inquire into matter referred to it

- (1) A Panel is to inquire into any matter referred to it and may obtain reports and other information concerning the matter from any source it considers appropriate.
- (2) The Panel may request a nurse or midwife who is the subject of a matter referred to the Panel, to attend before the Panel for the purpose of enabling the Panel to obtain information on the matter and make an assessment.

70E Panel not to take action while Commission is investigating

A Panel is not to investigate or take any other action in relation to any matter if the Panel is aware that the matter is the subject of an investigation by the Commission, while the investigation is being conducted.

70F Board to give notice of proposed inquiry

The Board is to give notice to a nurse or midwife of any proposed inquiry by a Panel concerning the nurse or midwife. The notice is to include sufficient details of the matters to which the inquiry relates.

70G Nurse or midwife entitled to make representations

A nurse or midwife who is the subject of any inquiry by a Panel is entitled to make oral or written representations to the Panel with respect to the matters being or to be the subject of the inquiry.

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.

70H Assessment, report and recommendations by Panel

- (1) A Panel is to make an assessment in respect of each referral to it, based on the results of its inquiry into the matter.
- (2) On the basis of its assessment, the Panel may do any one or more of the following things:
 - (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,
 - (c) make recommendations to the Board as to any action that the Panel considers should be taken in relation to the matter.
- (3) The Panel is to report in writing to the Board on each referral to the Panel. The report is to detail the results of the Panel's inquiries and assessment in respect of the referral and any action taken by the Panel under this Division in relation to it.

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.
- (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.

70J Some matters to be dealt with as complaints

- (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.
- (2) If the Panel recommends that a matter referred to it be dealt with as a complaint, the Board is to deal with the matter as a complaint against the nurse or midwife concerned.
- (3) In any other case that the Board thinks it appropriate to do so, the Board may treat a matter which has been referred to a Panel as grounds for a complaint under this

Division and may deal with the matter accordingly.

70K Confidentiality of Panel's report to Board

- (1) A person must not directly or indirectly make a record of or divulge to any person any information contained in a report by a Panel to the Board that has come to the person's notice in the exercise of the person's functions under this Act, except for the purpose of exercising functions under this Act.

Maximum penalty: 50 penalty units.

- (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.
- (2) A person cannot be required in civil proceedings in any court to produce or permit access to any report made by a Panel to the Board or to divulge the contents of any such report.
- (3) In this section:

court includes any tribunal, authority or person having power to require the production of documents or the answering of questions, but does not include the Tribunal or a Committee.

70L Board to consider Panel's report when assessing application

- (1) The Board is to take the following matters into account when considering a person's application for registration or enrolment under this Act:
 - (a) any report of a Panel concerning any matter involving the person (including any recommendations made in the report),
 - (b) any failure by the person to attend before a Panel in accordance with a request of the Panel.
- (2) This section does not limit the matters that the Board may take into account when it considers an application for registration or enrolment.

Division 5 Impairment Panels

70M Impairment Panels

- (1) There are to be Impairment Panels for the purposes of this Act.
- (2) A Panel has and may exercise the jurisdiction and functions conferred or imposed on it by or under this or any other Act.

70N Board to constitute Panel when required

- (1) If the Board decides to refer a matter to a Panel, it is to appoint 3 persons to sit as the Panel for the purpose of dealing with the matter.
- (2) At least one of the appointed persons must be a nurse or midwife, and at least one must be a registered medical practitioner.
- (3) A person may be appointed to sit on a Panel whether or not the person is a member of the Board, but not if the person has previously dealt with the particular matter before the Panel in the person's capacity as a member of the Board.
- (4) A member of a Panel, while sitting on the Panel, is entitled to be paid at the rate determined by the Minister.

70O Decisions of Panel

- (1) A decision supported by any 2 members of a Panel is the decision of the Panel.
- (2) The Panel's report to the Board is to include any minority decision.

Part 6 Miscellaneous

71 Written statement of decisions

- (1) If the Board, the President or a member authorised by the Board makes a decision in relation to a person under any provision of this Act, other than Part 5, the person may request in writing that the Board, President or member provide the person with a written statement of the decision.
- (2) Any such request is to be made no later than 60 days after the decision to which it relates.
- (3) The Board, the President or the member is to provide a written statement of the decision within 30 days of receiving such a request.
- (4) A written statement of a decision must:
 - (a) set out any findings on material questions of fact, and
 - (b) refer to any evidence or other material on which the findings are based, and
 - (c) give the reasons for the decision.
- (5) Despite any other provision of this section, the Board, the President or the member is not required to include confidential information in any such statement, and if a statement would be false or misleading if it did not include the confidential information, the Board, the President or the member is not required to provide the statement.

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

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

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

(7) In this section:

confidential information means information that:

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

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

72 Alternative means of giving notices

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

73 Document under hand of Registrar to be prima facie evidence

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

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

- (iaa) the registration of a particular person as a midwife was suspended for a specified period,
- (ia) the authorisation of a particular person to practise as a nurse practitioner was suspended for a specified period,
- (ii) the authorisation of a particular person to practise as a midwife practitioner was suspended for a specified period,
- (iii) the enrolment of a particular person as an enrolled nurse or enrolled nurse (mothercraft) was suspended for a specified period,

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

74 Proceedings for offences

- (1) Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.
- (2) All informations for offences against this Act and the regulations are to be laid by the Registrar or by some other person appointed by the Board for that purpose, or a police officer.
- (3) All penalties when recovered are to be paid to the Registrar, who is to pay them into the Nurses and Midwives Board Education and Research Account.

75 Fees etc

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

75A Board may waive fees

The Board may, for any reason the Board considers sufficient, exempt a person from the requirement to pay a fee, or waive or wholly or partly refund a fee, that would otherwise be payable or has been paid in accordance with this Act or the regulations.

76 Nurses and Midwives Board Education and Research Account

- (1) The Board is to establish a Nurses and Midwives Board Education and Research Account.
- (2) The Board is to pay into the Account, from practising fees payable under this Act by registered nurses, registered midwives, enrolled nurses and enrolled nurses (mothercraft), such amounts as are determined by the Minister from time to time.

- (3) The Minister may not determine an amount under this section without first consulting with the Board.
- (4) Money in the Account may be expended by the Board for or towards any one or more of the following:
 - (a) education (including postgraduate education) and research in nursing and midwifery,
 - (b) any public purpose connected with the practice of nursing or midwifery,
 - (c) meeting administrative expenditure incurred with respect to the Account and the purposes for which it is used,or any related purpose.
- (5) Any expenditure of money under this section must not be made unless it is authorised by a resolution of the Board supported by at least 8 members of the Board.

77 Protection from liability

No matter or thing done by:

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

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

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:
 - (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 officer 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 officer 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) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.
- (5) In this section:

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

78 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, the regulations may make provision for or with respect to the following:
 - (a) the proceedings of the Board,
 - (b) the issue and surrender of badges, authorities to practise referred to in section 33 and certificates of registration and enrolment and the fees payable for such badges and certificates,
 - (c) the circumstances in which and the conditions on which and the persons to whom provisional certificates of registration or enrolment may be issued and the effect of those certificates,
 - (d) the period that a person is required to serve or attend at a hospital, a nursing home or an educational or other institution as a prerequisite to being granted registration as a nurse, 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),
 - (e) the conditions under or subject to which a hospital, a nursing home or an educational or other institution may be recognised by the Board under section 10 (1) (h),
 - (f) the qualifications that a person is required to have as a prerequisite to being permitted to undertake a course of training or education leading to registration as a nurse, 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),
 - (h) the fees payable for examinations, registration, enrolment, restoration to a Register or the Roll and inspection of a Register or the Roll,
 - (i) the practising fees payable by registered nurses, registered midwives and enrolled nurses and enrolled nurses (mothercraft),
 - (i1) the regulation and supervision of the practice of nurse practitioners and midwife

practitioners,

(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,

(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,

(l) the promotion and maintenance of professional standards of nursing practice and midwifery practice,

(m) the procedure before a Panel.

(3) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.

78A Guidelines relating to functions of nurse practitioners and midwife practitioners

(1) The Director-General may from time to time approve guidelines relating to the functions of nurse practitioners or midwife practitioners.

(2) The guidelines may make provision for the possession, use, supply or prescription by a nurse practitioner or midwife practitioner of any poison or restricted substance, including by specifying:

(a) the poisons or restricted substances (if any) that may be possessed, used, supplied or prescribed by a nurse practitioner or midwife practitioner, and

(b) the circumstances (if any) in which a poison or restricted substance may be so possessed, used, supplied or prescribed.

(2A) The guidelines may make provision for the possession, use, supply or prescription by nurse practitioners or midwife practitioners of any drug of addiction, including by specifying:

(a) the drugs of addiction (if any) that may be possessed, used, supplied or prescribed by nurse practitioners or midwife practitioners, and

(b) the circumstances (if any) in which a drug of addiction may be so possessed, used, supplied or prescribed.

(3) The guidelines may include such other matters relating to the functions of nurse practitioners or midwife practitioners as the Director-General considers appropriate.

- (4) The guidelines may apply differently to different nurse practitioners or midwife practitioners according to the factors specified in the guidelines.
- (5) A contravention by a nurse practitioner or midwife practitioner of the approved guidelines does not give rise to an offence but may constitute professional misconduct or unsatisfactory professional conduct.
- (6) In this section:

drug of addiction has the same meaning as in the *Poisons and Therapeutic Goods Act 1966*.

poison has the same meaning as in the *Poisons and Therapeutic Goods Act 1966*.

restricted substance has the same meaning as in the *Poisons and Therapeutic Goods Act 1966*.

Note—

This provision allows the Director-General to approve guidelines for the possession, use, supply and prescription by nurse practitioners or midwife practitioners of any substance specified in the Poisons List (as proclaimed under the *Poisons and Therapeutic Goods Act 1966*). Authorisation for nurse practitioners or midwife practitioners to actually possess, use, supply or prescribe any such substance is dealt with under the *Poisons and Therapeutic Goods Act 1966*.

79 Repeal of Nurses Registration Act 1953 No 10

The *Nurses Registration Act 1953* is repealed.

80 Repeal of certain regulations

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

81 Savings and transitional provisions

Schedule 3 has effect.

Schedule 1 Provisions relating to the members and procedure of the Board

(Section 15)

Part 1 The members

1 President and Deputy President of the Board

- (1) Of the members of the Board, one who is a nurse or midwife is (in and by the relevant instrument of appointment as such a member, or by another instrument executed by the Governor) to be appointed as President of the Board and one (who need not be a

nurse or midwife) is to be so appointed as Deputy President of the Board.

- (2) The Governor may remove a member from the office of President or Deputy President.
- (3) A person who is the President or Deputy President vacates office as President or Deputy President if the person:
 - (a) is removed from that office by the Governor, or
 - (b) resigns that office by instrument in writing addressed to the Minister, or
 - (c) ceases to be a member.

2 Acting members and acting President

- (1) The Governor may, from time to time, appoint a person to act in the office of a member during the illness or absence of the member, and the person, while so acting, has all the functions of the member and is taken to be a member.
- (2) The Deputy President of the Board may act in the office of President during the illness or absence of the President, and while so acting has all the functions of the President and is taken to be the President.
- (3) The Governor may, from time to time, appoint a member who is a nurse or midwife to act in the office of President during the illness or absence of both the President and Deputy President, and the member, while so acting, has all the functions of the President and is taken to be the President.
- (4) The Governor may remove any person from any office to which the person was appointed under this clause.
- (5) A person while acting in the office of a member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.
- (6) For the purposes of this clause, a vacancy in the office of a member, the President or the Deputy President is taken to be an absence from office of the member, President or Deputy President.

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.

4 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.

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 Minister, or
- (d) is removed from office by the Governor under this clause or under Part 8 of the *Public Sector Management Act 1988*, or
- (e) is absent from 4 consecutive meetings of the Board of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for being absent from those meetings, or
- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
- (g) becomes a mentally incapacitated person, or
- (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 Governor may remove a member from office at any time.

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

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 Board, and

(b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

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

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

(a) is a member, or is in the employment, of a specified company or other body, or

(b) is a partner, or is in the employment, of a specified person, or

(c) has some other specified interest relating to a specified company or other body or to a specified person,

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

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

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

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

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

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

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

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

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

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

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

8 Effect of certain other Acts

(1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of

the appointment of a member.

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

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

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

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

Part 2 The procedure of the Board

9 First meeting of Board

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

10 General procedure

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

11 Quorum

The quorum for a meeting of the Board is 9 members.

12 Presiding member

- (1) The President or, in the absence of the President, the Deputy President of the Board or, in the absence of both of them, another member of the Board elected to chair the meeting by the members present, is to preside at a meeting of the Board.
- (2) The person presiding at any meeting of the Board has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

13 Voting

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

14 Minutes

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

15 Proof of certain matters not required

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

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

Schedule 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.
- (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 an Australian lawyer or another adviser, but is not entitled to be represented by an Australian lawyer 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.

Schedule 2 Proceedings before a Committee and the Tribunal

(Sections 52, 61)

1 Proceedings generally

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

2 Power to summon witnesses and take evidence

- (1) A member of a Committee or the Tribunal may summon a person to appear in proceedings before the Committee or the Tribunal, to give evidence and to produce such documents (if any) as are referred to in the summons.
- (2) The person presiding at the proceedings may require a person appearing in the proceedings to produce a document.
- (3) A Committee or the Tribunal may, in proceedings before it, take evidence on oath or affirmation and, for that purpose a member of the Committee or the Tribunal:
 - (a) may require a person appearing in the proceedings to give evidence either to take an oath or to make an affirmation in a form approved by the person presiding, and
 - (b) may administer an oath to or take an affirmation from a person so appearing.
- (4) A person served with a summons to appear in any such proceedings and to give evidence shall not, without reasonable excuse:
 - (a) fail to attend as required by the summons, or
 - (b) fail to attend from day to day unless excused, or released from further attendance, by a member of a Committee or the Tribunal.
- (5) A person appearing in proceedings to give evidence shall not, without reasonable

excuse:

- (a) when required to be sworn or affirm—fail to comply with the requirement, or
- (b) fail to answer a question that the person is required to answer by the person presiding, or
- (c) fail to produce a document that the person is required to produce by this clause.

Maximum penalty: 20 penalty units.

3 Power to obtain documents

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

Maximum penalty: 20 penalty units.

4 Evidence of other proceedings

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

- (a) the judgment and findings of any court (whether civil or criminal and whether or not of New South Wales) or tribunal, or
- (b) the verdict or findings of a jury of any such court, or
- (c) a certificate of the conviction of any person, or
- (d) a transcript of the depositions or of shorthand notes, duly certified by the registrar or clerk of the court or tribunal as correct, of the evidence of witnesses taken in any such court or tribunal,

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

5 Additional complaints

- (1) A Committee or the Tribunal may in proceedings before it deal with one or more

complaints about a nurse or midwife.

- (2) If, during any such proceedings, it appears to a Committee or the Tribunal that, having regard to any matters that have arisen, another complaint could have been made against the nurse or midwife concerned:
 - (a) whether instead of or in addition to the complaint which was made, and
 - (b) whether or not by the same complainant,the Committee or the Tribunal may take that other complaint to have been referred to it and may deal with it in the same proceedings.
- (3) If another complaint is taken to have been referred to a Committee or the Tribunal under subclause (2), the complaint may be dealt with after such an adjournment (if any) as is, in the opinion of the Committee or the Tribunal, just and equitable in the circumstances.

6 Release of information

- (1) The person presiding in proceedings before a Committee or the Tribunal may, on the request of a complainant, the nurse or midwife concerned or any other person, if the person presiding thinks it appropriate in the particular circumstances of the case:
 - (a) direct that the name of any witness is not to be disclosed in the proceedings, or
 - (b) direct that all or any of the following matters:
 - (i) the name and address of any witness,
 - (ii) the name and address of a complainant,
 - (iii) the name and address of a nurse or midwife,
 - (iv) any specified evidence,
 - (v) the subject-matter of a complaint,are not to be published, except in a publication intended primarily for the use of members of the legal, nursing or midwifery profession.
- (2) A direction may be amended or revoked at any time by the person presiding.
- (3) A direction may be given before or during proceedings, but is not to be given before the proceedings unless notice is given to:
 - (a) the person who requested the direction, and
 - (b) the complainant or the nurse or midwife concerned, as appropriate, and

(c) such other persons as the person presiding thinks fit,
of the time and place appointed by the person presiding for consideration of the request.

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

Maximum penalty: 20 penalty units.

7 Authentication of documents by a Committee or the Tribunal

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

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

8 Nominal complainant

In any proceedings before a Committee or the Tribunal, a person appointed by the Commission:

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

9 Intervention by Director-General and Commission

- (1) Without limiting the operation of clause 8, the Director-General personally (or an officer of the Department of Health appointed by the Director-General) or a person appointed by the Commission may intervene, and has a right to be heard, in any proceedings before a Committee or the Tribunal.
- (2) In the case of proceedings before the Tribunal, the Director-General and the Commission may be represented by an Australian lawyer.

10 Expedition of inquiries and appeals

- (1) It is the duty of a Committee and the Tribunal to hear inquiries and appeals under this Act and to determine those inquiries and appeals as soon as is reasonably practicable.
- (2) Without affecting the generality of subclause (1), a Committee or the Tribunal may postpone or adjourn proceedings before it as it thinks fit.

11 Certain complaints may not be heard

- (1) A Committee or the Tribunal may decide not to conduct an inquiry, or at any time to terminate an inquiry or appeal, if:
 - (a) a complaint fails to comply with a requirement made of the complainant by the Committee or the Tribunal, or
 - (b) the person about whom the complaint is made ceases to be a nurse or midwife, or
 - (c) the complaint before the Committee or Tribunal is withdrawn.
- (2) A Committee or the Tribunal is not to conduct or continue any inquiry or any appeal if the nurse or midwife concerned dies.

Schedule 3 Savings and transitional provisions

(Section 81)

Part 1 Preliminary

1 Definitions

In this Schedule:

new Board means the Nurses Registration Board constituted by section 8.

old Board means the Nurses Registration Board constituted under the 1953 Act.

the 1953 Act means the *Nurses Registration Act 1953*.

2 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
 - this Act
 - Nurses Amendment Act 1996*
 - Nurses Amendment (Nurse Practitioners) Act 1998*
 - Nurses Amendment Act 2003*
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to this Act or a later day.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an

authority of the State), the rights of that person existing before the date of its publication, or

- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of the publication.

Part 2 Provisions consequent on enactment of this Act

3 Members of old Board

- (1) A person who, immediately before the repeal of the 1953 Act, held office as a member of the old Board:
 - (a) ceases to hold office as such on that repeal, and
 - (b) is eligible (if otherwise qualified) to be appointed as a member of the new Board.
- (2) A person who ceases to hold office as a member of the old Board because of the operation of this Act is not entitled to be paid any remuneration or compensation because of ceasing to hold that office.

4 Continuity of Board

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

5 Appointments etc before commencement

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

6 The secretary and other officers

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

7 The Register

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

8 The Roll

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

9 Registration as nurse

- (1) A person who, immediately before the repeal of the 1953 Act, was registered as a nurse under that Act in List "A" of the Register under that Act is, on the commencement of section 18 of this Act, taken to be registered as a nurse under this Act in List "A" of the Register under this Act.
- (2) A person who, immediately before the repeal of the 1953 Act, was registered as a nurse under that Act in List "B" of the Register under that Act is, on the commencement of section 19 of this Act, taken to be registered as a nurse under this Act in List "B" of the Register under this Act.
- (3) A certificate of temporary registration under section 16A of the 1953 Act, in force immediately before the repeal of the 1953 Act, is taken, on the commencement of section 24 of this Act, to have been issued under section 24 of this Act.

10 Authorisation as midwife

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

11 Enrolment as nurse

- (1) A person who, immediately before the repeal of the 1953 Act, was enrolled as an enrolled nurse in List "A" of the Roll under that Act is, on the commencement of section 27 of this Act, taken to be enrolled as an enrolled nurse under this Act in List "A" of the Roll under this Act.
- (2) A person who, immediately before the repeal of the 1953 Act, was enrolled as an enrolled nurse (mothercraft) in List "B" of the Roll under that Act is, on the commencement of section 28 of this Act, taken to be enrolled as an enrolled nurse (mothercraft) under this Act in List "B" of the Roll under this Act.

12 Fees

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

13 Applications for registration

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

14 Applications for authorisation as midwife

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

15 Applications for enrolment

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

16 Appeals to the District Court

- (1) An appeal to the District Court under section 19A of the 1953 Act pending immediately before the repeal of that Act is to be continued and disposed of as if, except as provided by subclause (2), this Act had not been enacted.
- (2) The decision of the District Court on any such appeal is to be final, is to be binding on the new Board and the appellant and for the purposes of this Act is taken to be the final decision of the new Board.

17 Complaints

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

18 Construction of certain references

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

- (a) to the old Board is, on the commencement of section 8 of this Act, to be read as a reference to the new Board, and
- (b) to the Registrar under the 1953 Act is, on the commencement of section 13 of this Act, to be read as a reference to the Registrar under this Act, and
- (c) to the Register referred to in section 16 of the 1953 Act is, on the commencement of section 16 of this Act, to be read as a reference to the Register referred to in section 16 of this Act, and

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

Part 3 Provisions consequent on enactment of [Nurses Amendment Act 1996](#)

19 Appointment of new elected member of the Board

Until such time as an election is held in accordance with the regulations for the purposes of section 9 (2) (b1) of this Act (as inserted by the [Nurses Amendment Act 1996](#)), the member of the Board as referred to in that paragraph is to be a registered nurse authorised by the Board to practise midwifery who is nominated by the Minister.

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.