

# **Nurses Act 1993**

**No. 111 of 1993**

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**Victoria**

**No. 111 of 1993**

## **Nurses Act 1993**

[Assented to 7 December 1993]

**The Parliament of Victoria enacts as follows:**

### **PART 1—PRELIMINARY**

#### **1. *Purposes***

The main purposes of this Act are—

- (a) to protect the public by providing for the registration of nurses and the investigation into the professional conduct and fitness to practise of registered nurses; and
- (b) to establish the Nurses Board of Victoria and the Nurses Board Fund of Victoria; and
- (c) to repeal the **Nurses Act 1958**; and
- (d) to provide for other related matters.

## **2. Commencement**

- (1) Section 1 and this section come into operation on the day on which this Act receives the Royal Assent.
- (2) Section 96 is deemed to have come into operation on 9 November 1993.
- (3) Subject to sub-section (4), the remaining provisions of this Act come into operation on a day or days to be proclaimed.
- (4) If a provision referred to in sub-section (3) does not come into operation within the period of 12 months beginning on, and including, the day on which this Act receives the Royal Assent, it comes into operation on the first day after the end of that period.

## **3. Definitions**

In this Act—

**“Administrative Appeals Tribunal”** means the Administrative Appeals Tribunal established under the **Administrative Appeals Tribunal Act 1984**;

**“alcoholic”** has the same meaning as in the **Alcoholics and Drug-dependent Persons Act 1968**;

**“Board”** means the Nurses Board of Victoria established under Part 6;

**“drug-dependent person”** has the same meaning as in the **Alcoholics and Drug-dependent Persons Act 1968**;

**“Fund”** means the Nurses Board Fund established under Part 7;

**“Health Services Commissioner”** means the Health Services Commissioner within the meaning of the **Health Services (Conciliation and Review) Act 1987**;

**“health service establishment”** has the same meaning as in the **Health Services Act 1988**;

“**lawyer**” means a person admitted to practise as a barrister and solicitor of the Supreme Court;

“**medical practitioner**” means a medical practitioner registered under the **Medical Practitioners Act 1970**;

“**nurse’s agent**” means a person who, for fee or reward, carries on the business or practice of arranging the supply of the services of nurses registered under this Act;

“**register**” means the register of nurses kept under Part 2;

“**registered funded agency**” has the same meaning as in the **Health Services Act 1988**;

“**registered nurse**” means a person registered under Part 2;

“**Secretary**” means—

(a) in relation to any act to which section 6 (3) of the **Health Act 1958** applies, the body corporate established under section 6 of that Act; and

(b) in any other case, the Department Head, within the meaning of the **Public Sector Management Act 1992**, to the Department of Health and Community Services;

“**unprofessional conduct**” means all or any of the following—

(a) professional conduct which is of a lesser standard than that which the public might reasonably expect of a registered nurse; or

(b) professional misconduct; or

(c) a finding of guilt of—

(i) an indictable offence; or

(ii) an offence which affects the nurse’s ability to continue to practise; or

(iii) an offence against this Act or the regulations.

**PART 2—REGISTRATION**

**Division 1—Procedure for Obtaining Registration**

**4. *Mutual Recognition***

The **Mutual Recognition (Victoria) Act 1993** applies to the occupation of nursing.

**5. *Application for registration***

- (1) An application for registration under this Part may be made to the Board.
- (2) An application must be—
  - (a) in writing in the prescribed form and accompanied by evidence of the qualifications which the applicant claims entitle her or him to be registered under this Part; and
  - (b) accompanied by the fee determined by the Board.
- (3) The Board—
  - (a) may require the applicant to provide further information or material in respect of the application; and
  - (b) may require that the information in the application be verified by a declaration under section 107 of the **Evidence Act 1958**; and
  - (c) may require proof of identity of the person making the application.

**6. *Qualifications for registration***

- (1) A person is qualified to be registered in division 1 of the register if that person—
  - (a) has successfully completed a course of study accredited by the Board; or
  - (b) in the opinion of the Board, has a qualification that is substantially equivalent or is based on similar competencies to an accredited course; or



- (c) has a qualification that is recognised in another State or Territory of the Commonwealth for the purposes of undertaking work of a similar nature to that which a person, who holds a qualification to which paragraph (a) or (b) applies, is qualified to undertake.
- (2) A person is qualified to be registered in division 2 of the register if that person—
- (a) has successfully completed a course conducted by a registered funded agency and approved by the Board, or, an examination conducted by a registered funded agency and set by the Board, or, if the Board so requires, both a course approved by the Board and examination set by the Board; or
  - (b) in the opinion of the Board, has a qualification that is substantially equivalent or is based on similar competencies to a course or examination to which paragraph (a) applies; or
  - (c) has a qualification that is recognised in another State or Territory of the Commonwealth for the purposes of undertaking work of a similar nature to that which a person, who holds a qualification to which paragraph (a) or (b) applies, is qualified to undertake.
- (3) A person is qualified to be registered in division 3 of the register if that person has successfully completed a course in psychiatric nursing in the State.
- (4) A person is qualified to be registered in division 4 of the register if that person has successfully completed a course in mental retardation nursing in the State.
- (5) A person is qualified to be registered in division 5 of the register if that person has successfully completed a course in mothercraft nursing in the State.

## **7. Registration**

- (1) The Board must grant registration in a division of the register to an applicant, if—

- (a) the applicant is qualified for registration in that division; and
  - (b) there are no grounds under sub-section (2) under which the Board may refuse to grant registration to the applicant; and
  - (c) the applicant has paid the prescribed fee.
- (2) The Board may refuse to grant registration in a division of the register to an applicant on any one or more of the following grounds—
- (a) that the character of the applicant is such that it would not be in the public interest to allow the applicant to practise as a registered nurse;
  - (b) that the applicant is unfit to practise as a registered nurse because she or he is an alcoholic or drug-dependent person;
  - (c) that the applicant has been convicted of an indictable offence in Victoria or an equivalent offence in another jurisdiction and the offence is of such a nature that it affects the applicant's capacity to practise as a registered nurse, or, is of such a nature that it is not in the public interest to allow the applicant to practise as a registered nurse;
  - (d) that the applicant had previously been registered under this Act or any corresponding previous enactment and during the course of that registration had had proceedings under Part 3 of this Act or similar proceedings under the previous enactment brought against her or him and those proceedings had never been finalised;
  - (e) that, in the opinion of the Board, the applicant is unfit to be registered because she or he has a physical or mental impairment which significantly impairs her or his capacity to practise as a registered nurse;
  - (f) that the applicant's competency in speaking or communicating in English is not sufficient for that person to practise as a registered nurse;

- (g) that the right of the applicant to the equivalent of registration as a nurse in another country—
  - (i) has been cancelled or suspended and not restored; and
  - (ii) the reason for the suspension or cancellation was conduct which, if committed in Victoria would have entitled the Board to suspend or cancel registration.
- (3) Despite sub-section (1), the Board must not grant registration to an applicant in division 3, 4 or 5 unless—
  - (a) the applicant was, on 31 December 1993, or had been before that date, enrolled in the course upon which the applicant is relying in his or her application as the qualification for registration; or
  - (b) the applicant had been, at any time before the commencement of this section, registered under the **Nurses Act 1958**—
    - (i) in the case of division 3, in the part of the register under that Act for the branch of nursing for psychiatric nurses; or
    - (ii) in the case of division 4, in the part of the register under that Act for the branch of nursing for mental retardation nurses; or
    - (iii) in the case of division 5, in the part of the register under that Act for the branch of nursing for mothercraft nurses.

### **8. *Restricted registration***

- (1) The Board may grant registration to an applicant, subject to restrictions, in the division of the register for which the applicant is qualified, or, if the applicant is not so qualified, in that division of the register the qualifications for which most nearly approximate the applicant's qualifications, in the following circumstances—
  - (a) where the applicant is otherwise qualified to be registered but has a disability or illness which

may interfere with her or his ability to practise as a registered nurse; or

(b) where—

(i) the applicant's qualifications are not recognised in Victoria; or

(ii) the applicant's competency in speaking or communicating in English is not sufficient for that person to practise as a registered nurse—

but the Board is of the opinion that, in the public interest, it is necessary for persons having qualifications of the type which the applicant has to be registered to provide nursing services to a particular group within the community.

- (2) The Board may revoke any restriction on the registration of a person under this section and if the Board revokes all the restrictions on the registration of a particular person, the registration of that person is deemed to be unrestricted.
- (3) If the Board grants registration subject to restrictions under this section, the Board must give reasons to the applicant for the grant of that registration within 28 days of the grant.

#### **9. *Conditions, limitations or restrictions on registration***

- (1) The Board may, upon the grant or renewal of registration, impose any conditions, limitation or restrictions on the registration of a nurse that it considers appropriate.
- (2) The Board may, at any time, amend, vary or revoke any condition, limitation or restriction that it has imposed on the registration of a nurse.

#### **10. *Entitlement of applicant to make submissions***

If the Board is proposing to refuse an application for registration or impose conditions, limitations or

restrictions on an application, the Board must not do so until—

- (a) it has given the applicant notice of this proposal; and
- (b) it has given the applicant an opportunity to make submissions to the Board about the proposal.

### **11. *Notification of outcome of application***

- (1) Upon determining an application for registration under this Part, the Board must notify the applicant as to whether or not registration has been granted to the applicant.
- (2) A notice under sub-section (1) must include the following information—
  - (a) if the registration has been granted—
    - (i) the division of the register in which the applicant has been registered; and
    - (ii) whether or not any conditions, limitations or restrictions have been imposed on the registration and, if so, the reasons for imposing the conditions, limitations or restrictions; or
  - (b) if the registration has not been granted—
    - (i) the reasons why it has not been granted; and
    - (ii) a statement that the applicant has a right to obtain a review of the decision not to grant registration.

### **12. *Duration and renewal of registration***

- (1) The registration of a nurse under this Part or renewal of such registration continues in force until 31 December next following that registration or renewal.
- (2) If a person has applied for registration under this Part and that person—

- (a) holds a right to practise as a nurse in another Country which is recognised as a qualification for registration under this Part; and
- (b) has applied for registration for the purposes of studying or teaching nursing within the State or demonstrating nursing techniques within the State—

despite sub-section (1), if the Board grants registration to that person, the Board may determine that that registration remain in force for any period that the Board sees fit.

### **13. *Application for renewal of registration***

- (1) An application for renewal of registration under this Part—
  - (a) must be made to the Board before the existing registration expires; and
  - (b) must be accompanied by the fee determined by the Board.
- (2) If a person does not apply for renewal of registration before the end of the existing registration period, the Board may renew that person's registration if application is made within 3 months after the end of the registration period and the applicant pays an additional renewal fee of not more than 50% of the original fee.
- (3) For a period of 3 months after a person's registration has expired without being renewed that person is deemed to be registered, at the end of that period, if that person has not renewed her or his registration, the Board must remove that person's name from the register.

### **14. *Refusal to renew registration***

The Board may refuse to renew the registration of an applicant under this Part—

- (a) if the Board is satisfied that the applicant for renewal has not had sufficient nursing experience in the preceding 5 years to be able to practise as a nurse having the particular registration which the applicant is seeking to have renewed; or
- (b) on any other ground upon which the Board might refuse to grant registration.

**15. *Effect of suspension of registration***

For the purposes of this Act, a nurse whose registration is suspended is deemed not to be registered for the period of that suspension.

**16. *Withdrawal of registration***

- (1) If the Board believes that the registration of a nurse has been obtained by fraud or misrepresentation or that the qualifications upon which the nurse relied for registration have been withdrawn, the Board must conduct a hearing into the matter.
- (2) The Board must give notice of the time and place of the hearing to the nurse.
- (3) The provisions applying to the conduct of a formal hearing under Part 3 apply to a hearing under this section as if a hearing under this section were a formal hearing.
- (4) If, at the end of the hearing, the Board determines that the registration of the nurse has been obtained by fraud or misrepresentation or that the qualifications upon which the nurse has relied for registration have been withdrawn, the Board must withdraw the registration of the nurse.

**Division 2—The Register**

**17. The Register**

- (1) The Board must cause to be kept a register of all nurses to whom the Board has granted registration under this Part.
- (2) The register is to be called the register of nurses and is to be divided into the following divisions—
  - (a) division 1, which is to be a list of the names of every registered person whose qualifications for registration are those set out in section 6 (1);
  - (b) division 2, which is to be a list of the names of every registered person whose qualifications for registration are those set out in section 6 (2);
  - (c) division 3, which is to be a list of the names of every registered person whose qualifications for registration are those set out in section 6 (3);
  - (d) division 4, which is to be list of the names of every registered person whose qualifications for registration are those set out in section 6 (4);
  - (e) division 5, which is to be a list of the names of every registered person whose qualifications for registration are those set out in section 6 (5).
- (3) The following particulars must be included on the register against the name of the registered nurse to whom they apply—
  - (a) any current suspension or cancellation of the registration of the nurse;
  - (b) any current condition, limitation or restriction imposed on the registration of the nurse;
  - (c) the prescribed information.
- (4) The register may be inspected at the office of the Board by any person during ordinary office hours without charge.
- (5) A person may obtain a copy of or an extract from the register on payment of the fee determined by the Board.



- (6) A private address of a person whose name appears on the register must not appear on that part of the register which is open to the public for inspection, unless the person so authorises.

### **18. Certificates**

- (1) Upon—

- (a) granting registration to a person under this Part;  
or  
(b) renewing the registration of a person under this Part—

the Board must issue a certificate of registration to that person.

- (2) The following particulars must be included on a certificate of registration—

- (a) any condition, limitation or restriction imposed on the registration of the nurse; and  
(b) the prescribed information.

- (3) If a nurse's registration under this Part has been suspended or cancelled, that nurse must return her or his certificate of registration to the Board.

Penalty: 20 penalty units

### **19. Use of certificate as evidence**

A certificate purporting to be signed by the President or any two members of the Board to the effect that—

- (a) a nurse is or is not or was or was not, at any specified date, registered; or  
(b) that any disciplinary or other action is or is not or was or was not, at any specified date, being taken against that nurse—

is evidence, and, in the absence of evidence to the contrary, is proof of the matters stated in it.

**PART 3—INVESTIGATIONS INTO REGISTERED NURSES**

**Division 1—Preliminary investigation into professional conduct**

**20. *Complaints about nurses***

A person may make a complaint about a registered nurse to the Board.

**21. *When complaints are to be investigated into by Health Services Commissioner***

- (1) If the Board receives a complaint about a registered nurse and the complaint is of a kind which may be made under section 16 of the **Health Services (Conciliation and Review) Act 1987** the Board must notify the Health Services Commissioner and give a copy of the complaint to the Health Services Commissioner as soon as possible after it has received the complaint.
- (2) The Board, in consultation with the Health Services Commissioner, must determine whether or not the complaint is to be dealt with by the Commissioner or the Board.
- (3) The **Health Services (Conciliation and Review) Act 1987** applies to a complaint made under this Part which is to be dealt with by the Health Services Commissioner as if the complaint were made under section 16 of that Act.
- (4) The Board must not deal further with a complaint made under this Part that is to be dealt with by the Health Services Commissioner unless the Health Services Commissioner refers the matter back to the Board under section 19 (6) of the **Health Services (Conciliation and Review) Act 1987**.

**22. *When complaints about professional conduct are to be investigated by the Board***

- (1) The Board must investigate a complaint if the complaint concerns the professional conduct of a registered nurse and if the complaint is not to be dealt with by the Health Services Commissioner under section 21 or the Board has not determined the complaint to be frivolous or vexatious.
- (2) In order to determine whether or not it is necessary to conduct a formal or informal hearing into a complaint, the Board must conduct a preliminary investigation into the complaint.
- (3) The Board may, in writing, delegate to—
  - (a) an officer of the Board; or
  - (b) a solicitor or investigator retained by the Board; or
  - (c) a sub-committee of the Board, consisting of not more than 3 members of the Board—

its power to conduct a preliminary investigation, other than its power to make determinations upon a preliminary investigation.

**23. *Outcome of preliminary investigation***

- (1) Upon completing a preliminary investigation, the person conducting the investigation may make one of the following recommendations—
  - (a) that the investigation into of the matter should not proceed further; or
  - (b) that an informal or formal hearing should be held into the matter.
- (2) The Board must determine whether or not to act on the recommendations of the person conducting the preliminary investigation.

**24. Board may institute a hearing into professional conduct**

The Board, of its own motion, may determine to conduct a formal or informal hearing into the professional conduct of a registered nurse without conducting a preliminary investigation.

**25. Suspension of registration**

(1) The Board, upon making a determination—

- (a) to conduct a preliminary investigation into a complaint made to the Board about the professional conduct of a registered nurse; or
- (b) to conduct a formal or informal hearing into the professional conduct of a registered nurse without preliminary investigation—

may suspend the registration of the nurse until any hearing into the matter is completed if the Board is of the opinion that it is necessary to do so because there is a serious risk that the health and safety of the public will be endangered.

(2) If the Board has suspended the registration of a nurse under sub-section (1), it must ensure that the matter is investigated as soon as possible after that suspension.

**Division 2—Preliminary investigation into the health of registered nurses****26. Commencement of preliminary investigation**

(1) If the Board believes that the ability of a registered nurse to practise nursing may be affected because—

- (a) of the physical or mental health of the nurse; or
- (b) the nurse has an incapacity; or
- (c) the nurse is an alcoholic or drug dependent person—

the Board may appoint one of its members to determine whether or not a preliminary investigation should be conducted into the matter.

- (2) The person appointed by the Board must conduct a preliminary investigation into the matter and must advise the Board of whether or not she or he is of the opinion that the ability of the nurse to practise nursing may be affected.

**27. Notification to nurse**

- (1) If the Board has made a decision to investigate the matter, the Board must give notice of the investigation to the nurse.
- (2) A notice under sub-section (1) must—
  - (a) be in writing; and
  - (b) be sent by registered post, as soon as possible after the Board's decision has been made; and
  - (c) advise the nurse of the nature of the matter to be investigated; and
  - (d) ask the nurse to advise the Board as to whether or not she or he will agree to undergo a medical examination within 28 days of receiving the notice; and
  - (e) advise the nurse of the procedures that can be taken under this Part.

**28. Medical examination**

- (1) If the nurse agrees to undergo a medical examination within 28 days she or he must be examined by a medical practitioner who is not a member of the Board and who is agreed upon by the Board and the nurse.
- (2) If the Board and the nurse are unable to agree upon a medical practitioner, the Secretary must appoint a medical practitioner to perform the examination.
- (3) The Board must pay for the examination.

**29. Reports**

- (1) The examining medical practitioner must give a report of her or his examination to the member of the Board

appointed to investigate the matter, and, not more than 7 days later, to the nurse.

- (2) The person appointed to conduct the preliminary investigation must discuss the report with the nurse, and, in the case of an adverse finding in the report, the possible ways of dealing with that finding.
- (3) After discussing the report with the nurse, the person appointed to conduct the preliminary investigation must report to the Board.
- (4) Despite sub-section (1), if the report contains information of a medical or psychiatric nature concerning the nurse and it appears to the person appointed to conduct the investigation that the disclosure of that information to the nurse might be prejudicial to the physical or mental health or well being of the nurse, the investigator may decide not to give that information to the nurse but to give it instead to a medical practitioner nominated by the nurse.
- (5) Before acting under sub-section (4), the investigator must report to the Board and, if the investigator is not a medical practitioner and the Board is of the opinion that it is necessary for the investigation of the matter to be continued by a medical practitioner, the Board may appoint a medical practitioner to continue the investigation.

### **30. Outcome of preliminary investigation**

- (1) If after considering the reports given under section 29, the Board decides that further action must be taken, the Board must ask the nurse whether or not she or he is prepared to agree to—
  - (a) alter the way in which she or he practises nursing;  
or
  - (b) the imposition of conditions, limitations or restrictions on her or his registration; or
  - (c) the suspension of her or his registration for the period of time specified by the Board.

- (2) The Board may take any action that is necessary to implement an agreement under sub-section (1).

**31. Referral to formal hearing**

If a nurse who is the subject of a preliminary investigation under this Division—

- (a) does not agree to undergo the medical examination or does not abide by an agreement to undergo a medical examination; or
- (b) does not reach an agreement with the Board under section 30 or does not abide by an agreement reached with the Board under section 30—

the Board may refer the matter to a formal hearing.

**32. Request for conditions limitations or restrictions**

- (1) A registered nurse who believes that her or his ability to practise nursing is affected because—
- (a) of her or his mental or physical health; or
  - (b) she or he has an incapacity; or
  - (c) she or he is an alcoholic or drug dependent person—

may ask the Board to impose a condition, limitation or restriction on her or his registration.

- (2) If the Board and the nurse agree upon the condition, limitation or restriction to be imposed, the Board may impose it.
- (3) If the nurse and the Board do not agree upon the condition, limitation or restriction to be imposed, the Board must refer the matter to a formal hearing.

**33. Revocation of condition, limitation or restriction imposed on the nurse**

The Board may revoke a condition limitation or restriction imposed on the registration of a registered nurse or the suspension of a nurse's registration, if the

nurse satisfies the Board that her or his ability to practise as a nurse is no longer affected.

**34. *Immediate suspension of registration***

If the Board has referred a matter to a formal hearing under this Division, the Board may suspend the registration of the nurse until the hearing is completed, if the Board is of the opinion that the ability of the nurse to practise nursing is affected to such an extent that to allow the nurse to continue practising would pose a serious risk that the health and safety of the public will be endangered.

**35. *Requirement to notify the Board of change of address***

A registered nurse must notify the Board of any change of her or his address within 14 days of that change having been made.

Penalty: 10 penalty units.

**36. *Immunity from liability***

A health practitioner in a working or treating relationship with a registered nurse is not subject to any civil liability for reporting to the Board that she or he believes that nurse to be incapacitated, if the report is made in good faith.

**Division 3—Formal and Informal Hearings**

**37. *Establishment and notification of an informal hearing***

If the Board has determined under section 23 or 24 that an informal hearing be held into the professional conduct of a nurse, the Board must—

- (a) subject to section 38 (2), appoint a panel to hold the hearing; and
- (b) fix a time and place for the hearing to be held; and



- (c) serve a notice on the nurse by registered post which complies with section 39.

**38. Constitution of a panel for an informal hearing**

- (1) Subject to sub-section (2), a panel appointed by the Board under section 37 is to consist of not more than 3 members of the Board, of whom at least 1 must be a registered nurse.

(2) If—

- (a) the Board is unable to appoint a panel because there are not enough members available to sit on it; or
- (b) the Board is of the opinion that a person with special expertise is required for the hearing—

the Governor in Council may appoint persons, other than Board members, to fill the vacant positions on the panel.

- (3) A person who has undertaken a preliminary investigation of the matter is not entitled to be a member of the panel.

**39. Notice of an informal hearing**

A notice of an informal hearing under section 37 must—

- (a) state the nature of the hearing and the allegations made against the nurse; and
- (b) give the time and place of the hearing; and
- (c) state that the nurse may choose to have the matter determined by a formal hearing and state the differences between a formal and informal hearing; and
- (d) state that there is no right to representation at the hearing but that the nurse is entitled to be present and make submissions, that the hearing is not

open to the public and list the possible findings the panel can make or orders the panel can give.

**40. *Conduct of an informal hearing***

At an informal hearing—

- (a) the panel must hear and determine the matter before it; and
- (b) the nurse who is the subject of the hearing is entitled to be present, to make submissions and to be accompanied by another person but is not entitled to be represented; and
- (c) the proceedings of the hearing must not be open to the public.

**41. *Findings and determinations of an informal hearing***

- (1) After considering all the submissions made to the hearing the panel may find either—
  - (a) that the nurse has, whether by act or omission, engaged in unprofessional conduct which is not of a serious nature; or
  - (b) that the nurse has not engaged in unprofessional conduct.
- (2) If the panel finds that the nurse has, whether by act or omission, engaged in unprofessional conduct which is not of a serious nature, the panel may make one or more of the following determinations—
  - (a) that the nurse undergo counselling;
  - (b) that the nurse be cautioned;
  - (c) that the nurse be reprimanded.

**42. *Change of informal to formal hearing during the course of the hearing***

If, before the end of the hearing—

- (a) the nurse who is the subject of the hearing fails to attend the hearing without good cause; or

- (b) the nurse requests that a formal hearing be held;  
or
- (c) the panel is of the opinion that a formal hearing should be held—

the panel must abandon the informal hearing and refer the matter to a formal hearing.

**43. *Request for formal hearing at the end of informal hearing***

Upon the completion of an informal hearing, the nurse who was the subject of the hearing may request that a formal hearing be held to review any findings and determinations of the informal hearing.

**44. *Establishment and notification of formal hearing***

If—

- (a) the Board has determined under section 23 or 24 that a formal hearing be held or has referred a matter to a formal hearing under section 31 or 32 (3); or
- (b) a nurse has requested that a formal hearing be held under section 43; or
- (c) a panel has referred a matter to a formal hearing under section 42—

the Board must—

- (d) subject to section 45 (2), appoint a panel to hold the hearing; and
- (e) fix a time and place for the hearing to be held; and
- (f) serve a notice on the nurse by registered post which complies with section 46; and
- (g) if the hearing arises out of a complaint, serve notice on the complainant of the time and place of the hearing.

**45. *Constitution of a hearing panel for a formal hearing***

- (1) Subject to sub-section (2), a panel appointed by the Board under section 44 is to consist of not less than 3

members of the Board, of whom 1 must be a lawyer and at least 1 must be a registered nurse.

(2) If—

- (a) the Board is unable to appoint a panel because there are not enough members available to sit on it; or
- (b) the Board is of the opinion that a person with special expertise is required for the hearing—

the Governor in Council may appoint persons, other than Board members, to fill the vacant positions on the panel.

(3) The following people are not entitled to be members of a panel—

- (a) a person who has undertaken a preliminary investigation of the matter which is the subject of the hearing;
- (b) a person who has been a member of a panel which held an informal hearing into the matter.

**46. *Notice of a formal hearing***

A notice of a formal hearing under section 44 must—

- (a) state the nature of the hearing and the allegations made against the nurse; and
- (b) give the time and place of the hearing; and
- (c) state that there is a right to make submissions and to be represented, that the hearing is open to the public, list the possible findings the panel can make and state that there is a right to apply for review of the panel's findings.

**47. *Conduct of a formal hearing***

At a formal hearing—

- (a) the hearing panel must hear and determine the matter before it; and

- (b) the nurse who is the subject of the hearing is entitled to be present to make submissions and to be represented; and
- (c) if the hearing arises out of a complaint, the complainant—
  - (i) is entitled to be present; and
  - (ii) if not called as a witness, may make submissions with the permission of the Board; and
- (d) the proceedings are to be open to the public unless the panel determines that the proceedings should be closed because the hearing is taking evidence of intimate, personal or financial matters.

**48. *Findings and determinations of a formal hearing into conduct***

- (1) After considering all the submissions made to a formal hearing into the professional conduct of a nurse, the panel may find that—
  - (a) the nurse has, whether by act or omission, engaged in unprofessional conduct of a serious nature; or
  - (b) the nurse has, whether by act or omission, engaged in unprofessional conduct which is not of a serious nature; or
  - (c) the nurse has not engaged in unprofessional conduct.
- (2) If the panel finds that the nurse has, whether by act or omission, engaged in unprofessional conduct of a serious nature the panel may make one or more of the following determinations—
  - (a) require the nurse to undergo counselling;
  - (b) caution the nurse;
  - (c) reprimand the nurse;
  - (d) require the nurse to undertake further education of the kind stated in the determination and to

complete it within the period specified in the determination;

- (e) impose conditions, limitations or restrictions on the registration of the nurse;
  - (f) impose a fine on the nurse of not more than 10 penalty units;
  - (g) suspend the registration of the nurse for the period specified in the determination; or
  - (h) cancel the registration of the nurse.
- (3) If a panel finds under sub-section (1) (b) that the nurse has, whether by act or omission, engaged in unprofessional conduct which is not of a serious nature, the panel may make any determination which a panel at an informal hearing is able to make upon such a finding.
- (4) The panel must not impose a fine where the conduct which is the subject of the finding has resulted in a fine being imposed by another tribunal or court of law.
- (5) If the panel has made an order under sub-section (2) (a) or (d) and the nurse has not complied with the order within the time specified in the order, the Board may suspend the nurse's registration until the order is complied with.

**49. *Findings and determinations of a formal hearing into ability to practise***

- (1) After considering all the submissions made to a formal hearing into the ability to practise of a registered nurse, the panel may find that the ability of the nurse to practise nursing is affected because—
- (a) of the physical or mental health of the nurse; or
  - (b) the nurse has an incapacity; or
  - (c) the nurse is an alcoholic or drug dependent person.
- (2) If the panel makes a finding under sub-section (1), the panel may make one or more of the following determinations—

- (a) to impose conditions, limitations or restrictions on the registration of the nurse;
- (b) to suspend the registration of the nurse for the period and subject to the conditions, limitations and restrictions, if any, specified in the determination.

#### **Division 4—General Provisions relating to Investigations**

##### **50. Procedure at formal and informal hearings**

At a formal or informal hearing—

- (a) subject to this Part, the procedure of a panel is in its discretion; and
- (b) the proceedings must be conducted with as little formality and technicality as the requirements of this Act and the proper consideration of the matter permit; and
- (c) a panel is not bound by rules of evidence but may inform itself in any way it thinks fit; and
- (d) a panel is bound by the rules of natural justice.

##### **51. Powers of panel conducting a formal hearing**

Sections 14, 15, 16 and 21A of the **Evidence Act 1958** apply to a panel in the conduct of a formal hearing as if it were a Board or the Chairman of a Board appointed by the Governor in Council.

##### **52. Determinations**

- (1) A determination made on a formal or informal hearing by a panel comes into operation on its making or at any later time stated in the determination.
- (2) A determination of a panel is to have effect as if it were a determination of the Board.
- (3) If a fine is imposed by a panel it may be recovered by the Board as a debt due to the Board.

**53. *Removal of suspension, condition, limitation or restriction***

- (1) If the Board has suspended the registration of a nurse until the completion of a hearing, and at the completion of the hearing the panel determines that the suspension should be removed, the Board must remove the suspension.
- (2) If a condition, limitation or restriction has been imposed on the registration of a nurse, and, at the completion of a hearing, the panel determines that the condition, limitation or restriction should be removed, the Board must remove that condition, limitation or restriction.

**54. *Reasons for determinations of panel***

- (1) A panel must give reasons for a determination made under this Part to the nurse who was the subject of the determination within 28 days of the making of the determination.
- (2) A person affected by a determination of a panel may apply to the panel for the reasons for that determination.
- (3) An application under sub-section (2), must be made within 28 days of the making of the determination and reasons must be given to the applicant within 28 days of receiving the application.

**55. *Notification of determinations***

- (1) If a determination has been made by a panel—
  - (a) imposing conditions, limitations or restrictions on the registration of a nurse; or
  - (b) suspending the registration of a nurse; or
  - (c) cancelling the registration of a nurse—the Board must give notice of the determination—
  - (d) in the Government Gazette; and
  - (e) to the nursing registration authorities in all other States or Territories of the Commonwealth; and



- (f) to the Australian Nursing Council; and
  - (g) where the nurse is an employee, to her or his employer; and
  - (h) as far as is possible, to all nurses' agents.
- (2) Notice under sub-section (1) must be given as soon as possible after the determination has been made.
  - (3) No action for defamation lies against the Board or its members for giving a notice under this section.

**56. Notification of complainant**

If a complaint has been made to the Board, the Board must notify the complainant—

- (a) of whether or not a formal or informal hearing is to be held into the matter; and
- (b) in the case of a formal or informal hearing, of whether or not the complainant has a right to make submissions at the hearing; and
- (c) of the findings and determinations of any hearing arising from the complaint and the reasons for those findings and determinations, within 28 days of their having been made.

**57. Terms and conditions of appointment of panel members**

- (1) A member of a panel is appointed on the terms and conditions determined by the Board for that member.
- (2) A member of a panel, other than a member who is an officer or temporary employee of the public service, is entitled to receive the fees that are fixed from time to time by the Governor in Council for members of panels.
- (3) A member of a panel is entitled to receive the allowances that are fixed from time to time by the Governor in Council.
- (4) In fixing fees under sub-section (2), the Governor in Council may fix different fees for different classes of cases.

- (5) The Governor in Council may fix these fees and allowances by reference to the regulations or guidelines made under the **Public Sector Management Act 1992**.

**PART 4—REVIEW BY ADMINISTRATIVE APPEALS  
TRIBUNAL**

**58. Review by AAT**

- (1) Without limiting section 27 of the **Administrative Appeals Tribunal Act 1984** a person may apply to the Administrative Appeals Tribunal for review of—
- (a) a decision to refuse a person's application for registration or renewal of registration; or
  - (b) a decision to impose conditions, limitations or restrictions on a person's registration; or
  - (c) a decision of the Board to suspend the registration of a person, if the Board has not instituted a investigation into the professional conduct or physical or mental health of that person within a reasonable time of having suspended that registration; or
  - (d) a finding or determination made at a formal hearing under Part 3.
- (2) The application must be made within 28 days of the date on which the Board gives notice of the decision or determination to the person concerned.
- (3) If a provision of this section is inconsistent with a provision of the **Administrative Appeals Tribunal Act 1984**, the provision of this section prevails.

**59. Notification**

If a decision or determination has been reviewed by the Administrative Appeals Tribunal, the Board must notify any person who was notified of the original decision or determination of any change to that

decision or determination by the Administrative Appeals Tribunal.

**PART 5—OFFENCES AND RELATED PROVISIONS**

**60. *Claims by persons as to registration***

- (1) A person who is not a registered nurse must not—
- (a) take or use the title of registered nurse or any other title calculated to induce a belief that the person is registered under this Act; or
  - (b) claim to be registered under this Act or hold herself or himself out as being registered under this Act.

Penalty: 50 penalty units.

- (2) A registered nurse must not—
- (a) take or use any title calculated to induce a belief that the nurse is registered in a division of the register in which the nurse is not registered; or
  - (b) claim to be or hold herself or himself out as being registered in a division of the register in which the nurse is not registered.

Penalty: 50 penalty units.

- (3) A registered nurse whose registration is restricted must not—
- (a) take or use any title calculated to induce a belief that the nurse's registration is not restricted; or
  - (b) claim to have or hold herself or himself out as having unrestricted registration.

Penalty: 50 penalty units.

- (4) A registered nurse whose registration is subject to a condition, limitation or restriction must not—
- (a) take or use any title calculated to induce a belief that the nurse's registration is not subject to any condition, limitation or restriction; or

- (b) claim to have or hold herself or himself out as having a registration which is not subject to any condition, limitation or restriction.

Penalty: 50 penalty units.

- (5) A person must not hold out another person as being registered under this Act, if the person knows or ought reasonably to know that the other person is not so registered.

Penalty: 50 penalty units.

- (6) A person must not hold a registered nurse out as being registered in a division of the Register in which that nurse is not registered if that person knows or ought reasonably to know that the other person is not so registered.

Penalty: 50 penalty units.

- (7) A person must not hold a nurse whose registration is restricted out as having unrestricted registration if that person knows or ought reasonably to know that the other person's registration is restricted.

Penalty: 50 penalty units.

### **61. *Effect of registration in Division 1***

A nurse registered in division 1 of the register—

- (a) may do the work usually done by persons registered in any other division of the register without being registered in that division; and
- (b) does not commit an offence under section 60 because she or he does that work.

### **62. *Claims as to additional qualifications***

A registered nurse who has not successfully completed a course in midwifery approved by the Board must not—

- (a) take or use the title of "midwife" or any other title calculated to induce a belief that the person is a midwife; or

(b) claim to be a midwife or hold herself or himself out as being a midwife.

Penalty: 50 penalty units.

**63. Offence to provide unregistered nurses**

(1) A nurse's agent must not arrange for a person who is not a registered nurse to work as a registered nurse.

Penalty: 50 penalty units.

(2) A nurse's agent must not arrange for a registered nurse to work in contravention of the terms of that nurse's registration.

Penalty: 50 penalty units.

**64. Offence by bodies corporate**

If a body corporate is guilty of an offence under section 63, any person who is concerned in or takes part in the management of that body corporate who was, in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the commission of the offence is also guilty of the offence.

**PART 6—ADMINISTRATION**

**Division 1—The Board**

**65. Establishment of Board**

(1) There is established a Board called the Nurses Board of Victoria.

(2) The Board—

(a) is a body corporate with perpetual succession; and

(b) has a common seal; and

(c) may sue and be sued in its corporate name; and

(d) may acquire, hold and dispose of real and personal property; and

- (e) may do and suffer all acts and things that a body corporate may, by law, do and suffer.
- (3) The common seal must be kept as directed by the Board and must not be used except as authorised by the Board.
- (4) All courts must take judicial notice of the seal of the Board on a document and, until the contrary is proved, must presume that the document was properly sealed.

**66. Powers, functions and consultation requirements**

- (1) The Board has the following functions—
  - (a) to regulate the standards of practice of nursing in the public interest;
  - (b) to register persons who comply with the requirements of this Act as to registration so that they may practise nursing in Victoria;
  - (c) to approve registered funded agencies or courses conducted by registered funded agencies which provide qualifications for registration purposes and which provide qualifications in addition to those required for registration;
  - (d) to set and conduct examinations and to establish standards for the conduct of examinations in registered funded agencies;
  - (e) to accredit courses which provide qualifications for registration purposes and which provide qualifications in addition to those required for registration;
  - (f) to investigate the professional conduct or fitness to practise of persons registered under the Act and impose sanctions where necessary;
  - (g) identify and distinguish between the principal functions that may be carried out by nurses registered in each division of the register;
  - (h) to issue guidelines about appropriate standards of nursing practice;

- (i) to exchange information with registration boards in other jurisdictions about registered persons or persons who have sought to become registered in Victoria;
  - (j) to provide information to the Australian Nursing Council about registered persons or persons who have sought to become registered in Victoria;
  - (k) when so requested by the Minister, give to the Minister any information reasonably required by the Minister;
  - (l) to administer this Act;
  - (m) to advise the Minister on any matters relating to its functions;
  - (n) any other functions conferred on the Board by this Act.
- (2) The Board has all the powers necessary to enable it to perform its functions.
- (3) The Board must consult with the Minister and have regard to the Minister's advice in carrying out its functions and exercising its powers.

**67. Membership of the Board**

- (1) The Board consists of 12 members nominated by the Minister and appointed by the Governor in Council.
- (2) Of the persons appointed to the Board—
- (a) 9 must be nurses registered under this Act of whom 2 must be registered nurses who are registered in division 2 of the register; and
  - (b) 1 must be a lawyer; and
  - (c) 2 must be persons who are not nurses.

**68. Terms of office**

- (1) A member of the Board holds office for 3 years from the date of her or his appointment.
- (2) A member of the Board is eligible for reappointment.

- (3) A member is, in respect of that appointment as member, subject to Part 9 of the **Public Sector Management Act 1992**, but is not otherwise, in respect of that appointment, subject to that Act.

**69. Resignation and Removal**

- (1) A member of the Board ceases to be a member if she or he is absent, without leave first being granted by the Board, from 3 consecutive meetings of which reasonable notice has been given to that member, either personally or by post.
- (2) A member of the Board may resign the office of member by writing signed by the member and addressed to the Governor in Council.
- (3) The Governor in Council may at any time remove a member of the Board from office.
- (4) If a member of the Board dies, resigns or is removed from office, the Governor in Council may, in accordance with this Act, on the recommendation of the Minister, fill the vacant office.
- (5) A member appointed under sub-section (4) holds office for the rest of the term of appointment of the member whose place she or he fills.

**70. President and Deputy President**

- (1) The Governor in Council may appoint members of the Board who are registered nurses to be President and Deputy President of the Board.
- (2) A person appointed to an office under sub-section (1) holds office for the term specified in her or his instrument of appointment and is eligible for reappointment.
- (3) A person appointed to an office under sub-section (1) may resign that office by writing signed by the person and addressed to the Governor in Council.



- (4) The Governor in Council may at any time remove a person appointed under sub-section (1) from office.
- (5) A person appointed to an office under sub-section (1) ceases to hold that office on ceasing to be a member of the Board.

### **71. *Acting member***

- (1) If a member of the Board is unable to perform the duties or functions of the office, the Governor in Council may appoint a person qualified to be appointed as that member to act as the member during the period of inability.
- (2) The Governor in Council—
  - (a) subject to this Act, may determine the terms and conditions of appointment of an acting member; and
  - (b) may at any time terminate the appointment.
- (3) While the appointment of an acting member remains in force, the acting member has and may exercise all the powers and perform all the duties and functions of the member.

### **72. *Payment of members***

- (1) A member or acting member of the Board, other than a member who is an officer or employee of the public service, is entitled to receive the fees that are fixed from time to time by the Governor in Council for that member.
- (2) Each member or acting member of the Board is entitled to receive the allowances that are fixed from time to time by of the Governor in Council.
- (3) The Governor in Council may fix these fees or allowances by reference to regulations or guidelines made under the **Public Sector Management Act 1992**.

**73. Procedure of Board**

- (1) The President or, in the absence of the President, the Deputy President, must preside at a meeting of the Board at which she or he is present.
- (2) If neither the President nor Deputy President are present at a meeting the members present may elect a member to preside at the meeting.
- (3) The person presiding at a meeting has a deliberative vote and a second or casting vote.
- (4) A majority of the members of the Board currently holding office constitutes a quorum.
- (5) Subject to this Act the Board may regulate its own proceedings.

**74. Effect of vacancy or defect**

An act or decision of the Board is not invalid only because of—

- (a) a vacancy in its membership; or
- (b) a defect or irregularity in the appointment of any of its members.

**75. Member's pecuniary interest**

- (1) A member who has a pecuniary interest in any matter in which the Board is concerned must—
  - (a) if the member is present at a meeting of the Board at which the matter is to be considered, disclose the nature of the interest immediately before the consideration of that matter; or
  - (b) if the member is aware that the matter is to be considered at a meeting of the Board at which the member does not intend to be present, disclose the nature of the interest to the President or Deputy President of the Board before the meeting is held.
- (2) The member—
  - (a) may take part in the discussion at the meeting; and

- (b) must leave the meeting while any vote is taken on a question relating to the matter.

**76. Immunity**

- (1) A member of the Board or the person responsible for keeping the register is not personally liable for anything done or omitted to be done in good faith and without negligence—
  - (a) in the exercise of a power or the discharge of a duty under this Act; or
  - (b) in the reasonable belief that the act or omission was in the exercise of a power or the discharge of a duty under this Act.
- (2) Any liability resulting from an act or omission that would, but for sub-section (1), attach to a member of the Board or the person responsible for keeping the register, attaches instead to the Board.

**77. Staff**

- (1) The Board may employ a person to be responsible for maintaining the register and any other officers that are necessary for the purposes of administering this Act.
- (2) Persons employed by the Board under sub-section (1) are not subject to the **Public Sector Management Act 1992**.

**78. Delegation**

The Board may, in writing, delegate to—

- (a) a member of the Board; or
- (b) the person responsible for maintaining the register or any other member of the staff of the Board—

its powers and functions under this Act, other than—

- (c) the power to refuse to grant or refuse to renew registration; and

- (d) the power to impose or to amend, vary or revoke conditions, limitations or restrictions on registration; or
- (e) the power to suspend registration; or
- (f) the power to conduct any hearing or make any determination under Part 2 or Part 3; or
- (g) this power to delegate.

### **Division 2—Advisory Committees**

#### **79. *Establishment of committees***

- (1) The Board may establish advisory committees for the purposes of obtaining expert advice on nursing matters.
- (2) The Board may determine the matters to be considered by a committee.

#### **80. *Membership of committees***

The members of a committee are to be appointed by the Board, and of the persons appointed by the Board—

- (a) at least 1 person is to be a member of the Board; and
- (b) the persons appointed are to have expertise in the matters to be considered by the committee; and
- (c) the chairperson is to be one of the members of the committee who is also a member of the Board.

#### **81. *Payment of members***

- (1) A member of a committee, other than a member who is an officer or temporary employee of the public service, is entitled to receive the fees that are fixed from time to time by the Governor in Council for that member.
- (2) A member of the committee is entitled to receive the allowances that are fixed from time to time by the Governor in Council.

- (3) The Governor in Council may fix these fees and allowances by reference to the regulations or guidelines made under the **Public Sector Management Act 1992**.

## **PART 7—REPORTING AND FINANCIAL PROVISIONS**

### **82. *Nurses Board Fund***

- (1) The Board must establish and keep a Nurses Board Fund.
- (2) All fees, fines and penalties paid or recovered by the Board under this Act must be paid into the Fund.
- (3) The Board must pay any other money received by it into the Fund, including income from the investment of the Fund.
- (4) Out of the Fund, the Board must pay—
  - (a) the expenses incurred by it in carrying out its functions, powers and duties; and
  - (b) any other expenses incurred in the administration of this Act; and
  - (c) any payments to be made to members of the Board under this Act and any payments to be made to other persons under this Act; and
  - (d) any other payments approved by the Minister.

### **83. *Investment powers***

The Board may invest money credited to the Fund that it does not immediately require—

- (a) in any manner authorised by section 4 (1) of the **Trustee Act 1958**; or
- (b) in any other manner that the Minister approves.

### **84. *Accounts and records***

- (1) The Board must ensure that there are kept proper accounts and records of the transactions and affairs of

the Board and such other records as sufficiently explain the financial position of the Board.

- (2) The Board must do all things necessary to do each of the following—
- (a) ensure that all money payable to the Board is properly collected;
  - (b) ensure that all money expended by the Board is properly authorised;
  - (c) ensure that adequate control is maintained over assets secured by, or in the custody of, the Board;
  - (d) ensure that all liabilities incurred by the Board are properly authorised;
  - (e) ensure efficiency and economy of operations and avoidance of waste and extravagance;
  - (f) develop and maintain an adequate budgeting and accounting system;
  - (g) develop and maintain an adequate internal audit system.

### **85. Annual report**

- (1) The Board must, in respect of each year ending 30 June, prepare an annual report containing—
- (a) a report of its operations during the year; and
  - (b) financial statements for the year—
- and submit the report to the Minister not later than 30 September next following.
- (2) The report of operations referred to in sub-section (1) (a)—
- (a) must be prepared in a form and contain information determined by the Board to be appropriate; and
  - (b) must contain any further information required by the Minister.
- (3) The financial statements referred to in sub-section (1) (b)—

- (a) must contain information determined by the Minister administering the **Annual Reporting Act 1983** to be appropriate; and
  - (b) must be prepared in a manner and form approved by the Minister administering the **Annual Reporting Act 1983**; and
  - (c) must present fairly the results of the financial transactions of the Board during the year to which they relate and the financial position as at the end of that year; and
  - (d) must be signed by the principal accounting officer (by whatever name called) of the Board and another member of the Board who shall—
    - (i) state whether, in their opinion, the financial statements present fairly the results of the financial transactions of the Board during the year to which they relate and whether they sufficiently explain the financial position of the Board as at the end of the year; and
    - (ii) state whether, at the date of signing the financial statements, they were aware of any circumstances that render any particulars included in the statements misleading or inaccurate and, if so, particulars of the circumstances; and
  - (e) must be audited as required by section 86 (1).
- (4) The Minister must cause each annual report submitted to the Minister under this section to be laid before the Legislative Council and the Legislative Assembly before the expiration of the seventh sitting day of the Legislative Council or the Legislative Assembly, as the case may be, after the annual report has been received by the Minister.
- (5) If the Board fails to submit an annual report to the Minister—
- (a) if an extension has not been granted under sub-section (7)—by 30 September in any year; or

(b) if such an extension has been granted—by the date to which the extension was granted—

the Minister must report or cause to be reported that failure and the reasons for the failure to each House of the Parliament.

- (6) The Board may apply in writing to the Minister for an extension of the date by which an annual report is to be submitted to the Minister.
- (7) The Minister may in writing grant to the Board an extension to such date as the Minister determines.
- (8) The Minister must advise or cause to be advised each House of the Parliament of each extension granted under this section and the reasons for the extension.
- (9) This section does not apply to the Board if, as a result of an order made under the **Annual Reporting Act 1983**, the Board is required to submit an annual report under that Act.

#### **86. Audit**

- (1) The financial statements referred to in section 85 must be audited by the Auditor-General.
- (2) The Auditor-General has, in respect of the audit of the financial statements, all the powers conferred on the Auditor-General by any law relating to the audit of the public accounts.
- (3) Without limiting the generality of sub-section (2), the Auditor-General and each officer of the Auditor-General—
  - (a) has right of access at all times to the books of the Board; and
  - (b) may require from an officer or employee of the Board any information, assistance and explanations necessary for the performance of the duties of the Auditor-General in relation to the audit.



- (4) The Board must pay to the Consolidated Fund an amount to be determined by the Auditor-General to defray the costs and expenses of any audit by the Auditor-General.

## **PART 8—ENFORCEMENT AND SUPPLEMENTARY POWERS**

### **87. *Proceedings for offences***

- (1) The person responsible for maintaining the register or any other officer authorised by the Board may take proceedings under this Act.
- (2) Any prosecution instituted in the name of the Board must, in the absence of evidence to the contrary, be taken to have been instituted by the Board.

### **88. *Powers of entry***

- (1) The Board may apply to a magistrate for the issue of a search warrant if the Board believes, on reasonable grounds—
  - (a) that there is or has been a contravention of this Act or the regulations on any premises; or
  - (b) that entry into or onto any premises is necessary for the purpose of investigating a complaint made under this Act which, if substantiated, may provide grounds for the suspension or cancellation of registration of a nurse.
- (2) A magistrate to whom such an application is made, if satisfied by evidence on oath or by affidavit that there are reasonable grounds for doing so, may issue, in accordance with the **Magistrates' Courts Act 1989**, a search warrant in the prescribed form authorising the person named in the warrant to—
  - (a) enter any premises named in the warrant;
  - (b) inspect those premises;
  - (c) require any person on the premises to answer questions or produce documents relevant to the matter being investigated;

- (d) inspect and take copies of or extracts from any documents so produced;
  - (e) take away from those premises any document found there, for as long as is necessary to take copies of it.
- (3) Despite anything to the contrary in sub-section (2)—
- (a) a person may refuse to answer a question or produce a document if the information which would be divulged would be information in respect of which that person could claim legal professional privilege; or
  - (b) a person may refuse to answer a question or produce a document if the information which would be divulged would tend to incriminate that person;
  - (c) a person may refuse to answer a question relating to medical records or may refuse to produce medical records unless the medical records relate to the subject matter of a complaint made under this Act and the person to whom the records relate has consented to the disclosure of the information in the records.

**89. *Offence to obstruct a person executing a warrant***

A person must not obstruct, threaten or hinder a person executing a warrant in accordance with this Part.

Penalty: 10 penalty units.

**90. *Power of Board to accredit courses, approve education programs and conduct examinations***

- (1) The Board may—
- (a) approve a registered funded agency for the purpose of conducting courses or programs which provide qualifications for registration purposes or qualifications in addition to those required for registration purposes; or

- (b) approve a course or program conducted by a registered funded agency which provides qualifications for registration purposes or qualifications in addition to those required for registration purposes; or
  - (c) accredit courses which provide qualifications for registration purposes or qualifications in addition to those required for registration purposes.
- (2) The Board may require the governing body of a registered funded agency which has been approved or which conducts a course or program which has been approved to issue certificates to persons who complete courses or programs in respect of which approval has been given.
  - (3) The Board may vary or revoke any approval or accreditation given under this section and may impose conditions, limitations or restrictions on any such approval or accreditation.
  - (4) The Board may set and conduct examinations for persons who have successfully completed courses conducted by registered funded agencies and may require persons who sit examinations set by the Board to pay the fees fixed by the Board for the conduct of those examinations.

**91. Powers of Board in relation to fees**

- (1) In the case of any fee which the Board is empowered to fix under this Act—
  - (a) the Board must fix the fee for a period of 12 months and may amend or vary the fee at the end of that period; and
  - (b) the Board may fix a different fee for a different case and may allow for the reduction, waiver or refund in whole or in part of any fee; and
  - (c) the Board must publish any fee it has fixed in the Government Gazette.
- (2) In fixing fees under this Act the Board is entitled to ensure that the amount of money collected in fees

under this Act is sufficient to cover the cost to the Board of administering this Act.

## PART 9—REGULATIONS

### 92. *Supreme Court—Limitation of jurisdiction*

It is the intention of this section to alter or vary section 85 of the **Constitution Act 1975** to the extent necessary to prevent the bringing before the Supreme Court of actions of the kind referred to in sections 36, 55 (3) or 76.

### 93. *Regulations*

- (1) The Governor in Council may make regulations for or with respect to—
  - (a) registration, including periods of registration, and renewal of registration, and applications for registration, and renewal of registration;
  - (b) the register, including particulars to be noted on the register and the manner of keeping the register;
  - (c) examinations conducted by the Board;
  - (d) forms for the purposes of this Act;
  - (e) time limits for the purposes of this Act;
  - (f) penalties, not exceeding 10 penalty units, for breaches of the regulations;
  - (g) any matter or thing required or permitted to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) The regulations—
  - (a) may be of general or limited application; and
  - (b) may differ according to differences in time, place or circumstance; and
  - (c) may apply, adopt or incorporate any matter contained in any document, code, standard, rule,

specification, or method, formulated, issued, prescribed or published by any person whether—

- (i) wholly or partially or as amended by the regulations; or
  - (ii) as formulated, issued, prescribed or published at the time the regulations are made or at any time before then; or
  - (iii) as formulated, issued, prescribed or published from time to time; and
- (d) may leave anything for the approval or satisfaction of a specified person.

#### **PART 10—SAVINGS AND TRANSITIONAL**

##### **94. Definitions**

In this Part—

“**Council**” means the Victorian Nursing Council established under the old Act;

“**old Act**” means the Nurses Act 1958 as in force immediately before its repeal.

##### **95. Repeals**

The Nurses Act 1958 and the Nurses (Amendment) Act 1985 are repealed.

##### **96. Continuation in office of members of Council**

- (1) If the term of office of a member of the Council expires before the abolition of the Council under this Act, despite that expiry, that member continues to hold that office until the abolition of the Council, unless the member dies or otherwise vacates that office or is removed by the Governor in Council.
- (2) If the office of a member of the Council becomes vacant, before the abolition of the Council under this Act because the member has died, vacated the office or been removed

by the Governor in Council, the Governor in Council may appoint a person to fill that vacancy.

- (3) Anything done by the Council after 9 November 1993 and before the commencement of this section is as valid as if it had been done after the commencement of this section.

**97. Board succeeds Council**

- (1) On the commencement of this section—
- (a) except for the purpose of giving effect to section 98, the Council is abolished and its members go out of office; and
  - (b) the Board is the successor in law of the Council; and
  - (c) all rights, assets, liabilities and obligations of the Council, immediately before its abolition, become rights, assets, liabilities and obligations of the Board; and
  - (d) the Board is substituted for the Council as a party in any proceeding, contract, agreement or arrangement commenced or made by, against or in relation to the Council; and
  - (e) the Board may continue and complete any other continuing matter or thing commenced by, against or in relation to the Council; and
  - (f) any reference to the Council in—
    - (i) an Act other than this Act; or
    - (ii) a subordinate instrument within the meaning of the **Interpretation of Legislation Act 1984**; or
    - (iii) any document whatever—
- must, so far as it relates to any period on or after the commencement of this section, and if not inconsistent with the context or subject matter, be taken to be a reference to the Board.

- (2) On and from the commencement of this section, the assets that become assets of the Board under sub-section (1)—
- (a) if they are moneys or amounts standing to the credit of the Victorian Nursing Council Fund or any other fund or account of Council, must be taken to form part of the Nurses Board Fund; and
  - (b) if they are assets in which the funds of the Council have been invested, must be taken to be investments of the Nurses Board Fund.
- (3) On and from the commencement of this section any unpaid fees, fines or penalties that become payable to the Board under sub-section (1) must be paid into the Nurses Board Fund.

**98. *Proceedings before the Council***

- (1) If an investigation or inquiry into the health or professional conduct of a nurse by the Council has been commenced but not completed under the old Act before the commencement of Part 3 of this Act—
- (a) that investigation or inquiry may be completed on and after that date; and
  - (b) any appeal or other further proceedings which might have been taken in relation to that investigation or inquiry under the old Act might be taken on and after that date—
- as if this Act had not been enacted.
- (2) If any procedure inquiring into the cancellation or suspension of the registration of a nurse or the imposition of conditions, limitations or restrictions on the registration of a nurse or any other similar procedure has been commenced but not completed under the old Act before the commencement of Part 3 of this Act—
- (a) that procedure may be completed on and after that date; and
  - (b) any appeal or further proceedings which might have been taken in relation to that procedure

under the old Act might be taken on and after that date—

as if this Act had not been enacted.

- (3) The Board must give effect to a decision made on an inquiry, investigation, appeal or other proceeding to which sub-section (1) or (2) applies as if it were a decision under this Act.

**99. Existing registrations**

- (1) A person who was registered under the old Act immediately before the commencement of Part 2 of this Act—
- (a) in the branch of the register for general nurses, is deemed to be registered in division 1 of the register; or
  - (b) in the branch of the register for midwives, is deemed to be registered in division 1 of the register; or
  - (c) in the branch of the register for psychiatric nurses, is deemed to be registered in division 3 of the register; or
  - (d) in the branch of the register for mental retardation nurses, is deemed to be registered in division 4 of the register; or
  - (e) in the branch of the register for mothercraft nurses, is deemed to be registered in division 5 of the register; or
  - (f) in the branch of the register for State enrolled nurses, is deemed to be registered in division 2 of the register; or
  - (g) in the branch of the register for maternal and child health nurses, is deemed to be registered in division 1 of the register.
- (2) A person to whom sub-section (1) (b) applies, who, immediately before the coming into operation of this Act, was qualified to be registered only in the branch of the register for midwives under the old Act, is deemed



to be registered under this Act subject to the restriction that that person may only practise as a midwife.

- (3) Despite section 62, a person to whom sub-section (2) applies may—
- (a) take or use the title “midwife” or any other title calculated to induce a belief that the person is a midwife; or
  - (b) claim to be a midwife or hold herself or himself out as being a midwife—

and does not commit an offence for so doing.

- (4) If a person is deemed to be registered under sub-section (1) and the registration of that person under the old Act was, immediately before the commencement of this Act, suspended, the registration of that person under this Act is deemed to be suspended for the remainder of the period for which that person’s registration would have been suspended under the old Act.
- (5) If a person is deemed to be registered under sub-section (1) and the registration of that person under the old Act, immediately before the commencement of this Act, was subject to conditions, limitations or restrictions, the registration of that person under this Act is deemed to be subject to the same conditions limitations or restrictions as those to which the previous registration was subject.
- (6) The registration of a person who is deemed to be registered under sub-section (1) expires (unless sooner cancelled) on 31 December next following the date of commencement of Part 2.

### **100. *Temporary saving of statutory rules***

- (1) The following statutory rules, as in force immediately before the coming into operation of this section continue in operation until 31 December 1995—

- (a) Parts I to IV and Parts VI and VII of and the Second, Third, Fourth and Fifth Schedules to the Midwives Regulations 1985;
  - (b) Parts 1, 3 and 4 of and the Second, Third, Fourth and Fifth Schedules to the Nursing Council Regulations 1985.
- (2) Unless sooner revoked, a statutory rule referred to in sub-section (1) is revoked on 1 January 1996.
  - (3) Statutory rules continued in force by this section have effect as if made under this Act and may be amended or revoked accordingly.
  - (4) If a provision of this Act is inconsistent with a provision of the continued statutory rules, the provision of this Act prevails.
  - (5) Section 3A of the **Subordinate Legislation Act 1962** does not apply to the continued statutory rules.

### 101. References

In—

- (a) an Act; or
- (b) a subordinate instrument within the meaning of the **Interpretation of Legislation Act 1984**; or
- (c) any document whatever—

in relation to any period occurring on or after the commencement of this section and, unless inconsistent with the context or subject-matter, a reference in Column 1 of the table below must be taken to be the reference listed opposite it in Column 2.

**Table-References**

Nurses Act 1958	Nurses Act 1993
Victorian Nursing Council	Nurses Board of Victoria
general nurse	person registered under division 1 of the register kept under the <b>Nurses Act 1993</b>
midwife	person registered under division 1 of the register kept under the <b>Nurses Act 1993</b>
psychiatric nurse	person registered under division 3 of the register kept under the <b>Nurses Act 1993</b>

<b>Nurses Act 1958</b>	<b>Nurses Act 1993</b>
mental retardation nurse	person registered under division 4 of the register kept under the <b>Nurses Act 1993</b>
mothercraft nurse	person registered under division 5 of the register kept under the <b>Nurses Act 1993</b>
State enrolled nurse	person registered under division 2 of the register kept under the <b>Nurses Act 1993</b>
maternal and child health nurse	person registered under division 1 of the register kept under the <b>Nurses Act 1993</b>

### ***102. Amendment of Children and Young Persons Act 1989***

In section 64 (1c) of the **Children and Young Persons Act 1989**, for paragraph (c) substitute—

“(c) a person registered under the **Nurses Act 1993**.”

Act No.  
56/1989.  
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#### NOTES

1. *Minister's second reading speech—*

*Legislative Assembly: 21 October 1993*

*Legislative Council: 23 November 1993*

2. The long title for the Bill for this Act was “A Bill to make provision for the registration of nurses, investigation into the professional conduct and fitness to practise of registered nurses, to establish the Nurses Board of Victoria and the Nurses Board Fund of Victoria, to repeal the Nurses Act 1958 and for other purposes.”

3. **Constitution Act 1975:**

*Section 85 (5) statement:*

*Legislative Assembly: 21 October 1993*

*Legislative Council: 23 November 1993*

*Absolute majorities:*

*Legislative Assembly: 17 and 19 November 1993*

*Legislative Council: 24 November 1993*

4. Section headings appear in bold italics and are not part of the Act. (See **Interpretation of Legislation Act 1984**.)