

Version No. 043
Nurses Act 1993
Act No. 111/1993

Version incorporating amendments as at 3 August 2005

TABLE OF PROVISIONS

<i>Section</i>	<i>Page</i>
PART 1—PRELIMINARY	1
1. Purposes	1
2. Commencement	1
3. Definitions	2
PART 2—REGISTRATION	6
Division 1—Procedure for Obtaining Registration	6
4. <i>Repealed</i>	6
5. Application for registration	6
6. Qualifications for registration	7
7. Registration	8
8. Restricted registration	11
8A. Notation	12
8B. Endorsement of registration for nurse practitioners	13
8C. Endorsement of registration—medication administration by division 2 nurses	15
9. Conditions, limitations or restrictions on registration or endorsement	16
10. Entitlement of applicant to make submissions	17
11. Notification of outcome of application	17
12. Duration and renewal of registration	19
13. Application for renewal of registration or endorsement	19
13A. Restoration of name to register	21
14. Refusal to renew registration or endorsement	21
14A. Special qualifications or training	22
15. Effect of suspension of registration or endorsement	23
16. Withdrawal of registration or endorsement	23

<i>Section</i>	<i>Page</i>
Division 2—Other requirements	24
17. The Register	24
18. Certificates	26
19. Use of certificate as evidence	27
19A. Provision of information	28
PART 3—INVESTIGATIONS INTO REGISTERED NURSES	29
Division 1—Preliminary investigation into professional conduct	29
20. Complaints about nurses	29
21. When complaints are to be investigated by Health Services Commissioner	29
21A. Board may deal with health records complaint	30
22. When complaints about professional conduct are to be investigated by the Board	31
23. Outcome of preliminary investigation	32
24. Investigations and hearings on the Board's motion	32
25. Suspension of registration or endorsement	32
Division 2—Preliminary investigation into the health of registered nurses	33
26. Commencement of preliminary investigation	33
27. Notification to nurse	34
28. Medical examination	34
29. Reports	35
30. Outcome of preliminary investigation	36
31. Referral to formal hearing	36
32. Request for conditions limitations or restrictions	36
33. <i>Repealed</i>	37
34. Immediate suspension of registration or endorsement	37
35. Requirement to notify the Board of change of address	38
36. Immunity from liability	38
Division 3—Formal and Informal Hearings	38
37. Establishment and notification of an informal hearing	38
38. Constitution of a panel for an informal hearing	39
39. Notice of an informal hearing	40
40. Conduct of an informal hearing	40
41. Findings and determinations of an informal hearing	40
42. Change of informal to formal hearing during the course of the hearing	41
43. Request for formal hearing at the end of informal hearing	41
44. Establishment and notification of formal hearing	42
45. Constitution of a hearing panel for a formal hearing	42
46. Notice of a formal hearing	43
47. Conduct of a formal hearing	44

<i>Section</i>	<i>Page</i>
48. Findings and determinations of a formal hearing into conduct	45
49. Findings and determinations of a formal hearing into ability to practise	46
Division 4—General Provisions relating to Investigations	47
49A. Investigation may continue even if person no longer registered	47
49B. Employees of the Board	48
49C. Agreements to amend, vary or revoke conditions or revoke suspensions	48
50. Procedure at formal and informal hearings	49
51. Powers of panel conducting a formal hearing	49
52. Determinations	49
53. Removal of suspension, condition, limitation or restriction	50
54. Reasons for determinations of panel	50
55. Notification of determinations	51
56. Notification of complainant	52
56A. Offence to disclose information identifying complainant	52
57. Terms and conditions of appointment of panel members	53
 PART 4—REVIEW BY VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL	 54
58. Review by Victorian Civil and Administrative Tribunal	54
59. Notification	55
 PART 5—OFFENCES AND RELATED PROVISIONS	 56
60. Claims by persons as to registration	56
61. Effect of registration in Division 1	58
62. Claims as to additional qualifications	58
62A. Fraud, forgery and false representation	59
63. Offence to provide unregistered nurses	60
63A. Prohibition against directing or inciting unprofessional conduct	61
63B. Extended concept of arranging the supply of services	61
63C. Convicted offenders may be prohibited from carrying on business	62
63D. Offence of carrying on business or practice while prohibited	64
63E. Effect of appeal against conviction	64
63F. Power to require information from convicted persons and others	65
63G. Meaning of management role and substantial interest	66
63H. Register of prohibitions	67
63I. Evidentiary certificate	67
63J. Secretary to notify Board of prohibitions	68
64. Offence by bodies corporate	68
64A. Advertising	68
64B. Advertising guidelines	69

<i>Section</i>	<i>Page</i>
64C. Power of the courts to require corrective advertising	70
64D. Exemptions	71
64E. Extension of time	71
PART 6—ADMINISTRATION	72
Division 1—The Board	72
65. Establishment of Board	72
66. Powers, functions and consultation requirements	72
67. Membership of the Board	75
68. Terms of office	76
69. Resignation and Removal	77
70. President and Deputy President	77
71. Acting member	78
72. Payment of members	78
73. Procedure of Board	79
74. Effect of vacancy or defect	79
75. Member's pecuniary interest	79
75A. Resolutions without meetings	80
75B. Approved methods of communication for Board	81
76. Immunity	81
77. Staff	82
78. Delegation	82
Division 2—Advisory Committees	83
79. Establishment of committees	83
80. Membership of committees	84
81. Payment of members	85
PART 7—FINANCIAL PROVISIONS	86
82. Nurses Board Fund	86
83. Investment powers	86
84–86. <i>Repealed</i>	87
PART 8—ENFORCEMENT AND SUPPLEMENTARY POWERS	88
87. Proceedings for offences	88
88. Identification	88
88A. Powers of entry with warrant	89
88B. Announcement before entry	90
88C. Copy of warrant to be given to occupier	91
88D. Copies or receipts to be given	91
89. Offence to obstruct a person executing a warrant	91
90. Power of Board to accredit courses, approve education programs and conduct examinations	92
91. Powers of Board in relation to fees	93

<i>Section</i>	<i>Page</i>
PART 9—REGULATIONS	94
92. Supreme Court—Limitation of jurisdiction	94
93. Regulations	94
PART 10—SAVINGS AND TRANSITIONAL	96
94. Definitions	96
95. Repeals	96
96. Continuation in office of members of Council	96
97. Board succeeds Council	97
98. Proceedings before the Council	98
98A. Application of this Act to conduct occurring before the commencement of this Act	99
99. Existing registrations	99
100. Temporary saving of statutory rules	101
101. References	102
102. Further transitional provisions	103
<hr style="border-top: 3px double #000;"/>	
ENDNOTES	104
1. General Information	104
2. Table of Amendments	105
3. Explanatory Details	108

Version No. 043
Nurses Act 1993
Act No. 111/1993

Version incorporating amendments as at 3 August 2005

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

(1) In this Act—

S. 3(1)
amended by
No. 46/1998
s. 7(Sch. 1)
(ILA s. 39B(1)).

S. 3(1) def. of
"Adminis-
trative
Appeals
Tribunal"
repealed by
No. 52/1998
s. 311(Sch. 1
item 66.1).

* * * * *

"**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**;

"**endorsement**" means—

- (a) endorsement of registration as a nurse practitioner under section 8B;
- (b) in the case of a nurse registered in division 2 of the register, endorsement of registration under section 8C;

"**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**;

S. 3(1) def. of
"endorse-
ment"
inserted by
No. 94/2000
s. 3(c),
substituted by
No. 1/2004
s. 4.

"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;

* * * * * S. 3(1) def. of "medical practitioner" repealed by No. 23/1994 s. 119(Sch. 2 item 1(a)).

"nurse practitioner" means a nurse whose registration has been endorsed in accordance with section 8B; S. 3(1) def. of "nurse practitioner" inserted by No. 94/2000 s. 3(c).

"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;

"professional indemnity insurance" means insurance against civil liability in connection with the practice of nursing; S. 3(1) def. of "professional indemnity insurance" inserted by No. 94/2000 s. 3(c).

"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 medical practitioner" means a registered medical practitioner within the meaning of the **Medical Practice Act 1994**; S. 3(1) def. of "registered medical practitioner" inserted by No. 23/1994 s. 119(Sch. 2 item 1(b)).

"registered nurse" means a person registered under Part 2;

Nurses Act 1993
Act No. 111/1993

Part 1—Preliminary

s. 3

S. 3(1) def. of
"Secretary"
amended by
Nos 46/1998
s. 7(Sch. 1),
108/2004
s. 117(1)
(Sch. 3
item 142.1).

"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 Administration Act 2004**, of the Department of Human Services;

S. 3(1) def. of
"unprofessional
conduct"
amended by
Nos 23/1994
s. 119(Sch. 2
item 2),
74/2000
s. 3(Sch. 1
item 90.1),
94/2000
s. 3(a)(b),
11/2002
s. 3(Sch. 1
item 48(a)(b)).

"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 in Victoria or an equivalent offence in another jurisdiction; or
 - (ii) an offence where the nurse's ability to continue to practise as a registered nurse is likely to be affected because of the finding of guilt, or where it is not in the public interest to allow the nurse to continue to practise because of the finding of guilt; or
 - (iii) an offence against this Act or the regulations; or
 - (iv) in the case of a nurse practitioner, an offence as a nurse practitioner under any other Act or regulations; or

-
- (d) professional conduct which is of a lesser standard than that which might reasonably be expected of a registered nurse by her or his peers; or
 - (e) providing a person with nursing services of a kind that is excessive, unnecessary or not reasonably required for that person's well-being; or
 - (f) influencing or attempting to influence the conduct of a nurse's practice in such a way that patient care may be compromised; or
 - (g) the failure to act as a nurse when required under an Act or regulations to do so; or
 - (h) the contravention of or failure to comply with a condition, limitation or restriction on the registration or endorsement of registration of the nurse imposed by or under this Act.
- (2) If under the **Public Administration Act 2004** the name of the Department of Human Services is changed, the reference in the definition of "Secretary" in sub-section (1) to that Department must, from the date when the name is changed, be treated as a reference to the Department by its new name.
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S. 3(2)
inserted by
No. 46/1998
s. 7(Sch. 1),
amended by
No. 108/2004
s. 117(1)
(Sch. 3
item 142.2).

PART 2—REGISTRATION

Division 1—Procedure for Obtaining Registration

S. 4
repealed by
No. 62/1998
s. 8(4)

* * * * *

5. Application for registration

S. 5(2)
substituted by
No. 94/2000
s. 4(1).

- (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
 - (b) accompanied by—
 - (i) evidence of the qualifications which the applicant claims entitle her or him to the type of registration applied for; and
 - (ii) the information referred to in section 19A; and
 - (iii) the fee fixed 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; and

S. 5(3)(c)
amended by
No. 94/2000
s. 4(2).

- (d) may require the applicant to provide evidence that the applicant is or will be covered by professional indemnity insurance that meets the minimum terms and conditions set out in guidelines of the Board.

S. 5(3)(d)
inserted by
No. 94/2000
s. 4(2).

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 approved by the Board or an examination set by the Board or, if the Board so requires, both a course approved by the Board and an examination set by the Board; or
- (ab) has successfully completed units in a course of study accredited by the Board for the purposes of sub-section (1) that the Board is satisfied are substantially equivalent or based on similar competencies to a course or examination to which paragraph (a) applies; or

S. 6(2)(a)
substituted by
No. 67/2003
s. 12.

S. 6(2)(ab)
inserted by
No. 67/2003
s. 12.

- (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 fee determined by the Board.

S. 7(1)(c)
amended by
No. 23/1994
s. 119(Sch. 2
item 3(a)).

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- (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 found guilty of—
 - (i) an indictable offence in Victoria an equivalent offence in another jurisdiction; or
 - (ii) an offence where the ability of the applicant to practise is likely to be affected because of the finding of guilt or where it is not in the public interest to allow the applicant to practise because of the finding of guilt;
 - (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;

S. 7(2)(c)
substituted by
No. 23/1994
s. 119(Sch. 2
item 3(b)).

Nurses Act 1993
Act No. 111/1993
Part 2—Registration

s. 7

- (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;
- (h) that, in the opinion of the Board, the nurse does not have adequate arrangements for professional indemnity insurance that meet the minimum terms and conditions set out in the guidelines of the Board.

S. 7(2)(h)
inserted by
No. 94/2000
s. 5(1).

- (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 and had commenced 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

S. 7(3)(a)
amended by
No. 49/1995
s. 9.

- (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; or

(ba) if the Board is of the opinion that, in order to meet an identified need for a nurse, it is necessary for a person having qualifications and training in the nature of the applicant's to practise as a nurse in Victoria; or

S. 8(1)(b)
amended by
No. 49/1995
s. 10.

S. 8(1)(ba)
inserted by
No. 42/2005
s. 31(1).

s. 8A

S. 8(1)(c)
inserted by
No. 49/1995
s. 10.

- (c) where the applicant's qualifications are not recognised in Victoria but the Board is of the opinion that the applicant should be registered to enable her or him to carry out further study or training in Victoria.
- (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.

S. 8A
inserted by
No. 18/2000
s. 111(Sch.
item 4.1) (as
amended by
No. 94/2000
s. 53(a)(i)–(iii)).

8A. Notation

S. 8A(1)
substituted by
No. 98/2003
s. 7(1).

- (1) The Board may note the registration of a nurse to the effect that the nurse is qualified to be exempt with respect to the practise of acupuncture from section 61(1)(c) and (d) and (3) of the **Chinese Medicine Registration Act 2000** if—
- (a) the Board is satisfied that the nurse has satisfactorily completed a course of study or training in acupuncture that is approved by the Board; or
- (b) the nurse has passed an examination relating to the practise of acupuncture that is set by or on behalf of the Board.
- (2) The Board may impose any condition, limitation or restriction on a notation under sub-section (1).

-
- (3) The Board may refuse to note the registration of the nurse under sub-section (1) if the Board is not satisfied that the nurse has the appropriate qualifications or training required by the Board.
 - (4) An applicant for registration under section 7 or a person registered under section 7 may apply to the Board for a notation under this section.
 - (5) An application must be—
 - (a) in writing in the prescribed form and accompanied by evidence of the qualifications or training which the applicant claims qualify him or her for the notation applied for; and
 - (b) accompanied by the fee determined by the Board.

8B. Endorsement of registration for nurse practitioners

S. 8B
inserted by
No. 94/2000
s. 6.

- (1) If the Board is satisfied that a nurse registered under Division 1, 3 or 4 of the Register has satisfactorily completed a course of study and undertaken clinical experience that, in the opinion of the Board, qualifies the nurse to use the title nurse practitioner, the Board may endorse the registration of the nurse and specify in the endorsement the category or categories of nurse practitioner recognised by the Board with respect to which the nurse practitioner is qualified to use the title.
- (2) If the Board is satisfied that a registered nurse referred to in sub-section (1) has satisfactorily completed a course of study which, in the opinion of the Board, qualifies the nurse to obtain and have in her or his possession and to use, sell or supply the Schedule 2, 3, 4 and 8 poisons within the meaning of the **Drugs, Poisons and Controlled Substances Act 1981** that are prescribed under that Act with respect to a

category of nurse practitioner, the Board may endorse the registration of the nurse with that category of nurse practitioner.

- (3) An applicant for registration as a nurse under Division 1, 3 or 4 of the Register or a nurse registered under Division 1, 3 or 4 of the Register may apply to the Board for an endorsement under this section.
 - (4) An application must be—
 - (a) in writing in the prescribed form and accompanied by evidence of the qualifications and clinical experience which the applicant claims qualify her or him for the endorsement applied for; and
 - (b) accompanied by the fee determined by the Board.
 - (5) 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**.
 - (6) The Board must ensure that, if any category of nurse practitioner is recognised by the Board for the purposes of endorsement of registration as a nurse practitioner under this section, the category of nurse practitioner is notified in the Government Gazette and in any relevant publication circulating among nurses generally.
 - (7) The endorsement of the registration of the nurse or nurse practitioner continues in force for the period that the registration is in force.
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8C. Endorsement of registration—medication administration by division 2 nurses

S. 8C
inserted by
No. 1/2004
s. 5.

- (1) The Board may endorse the registration of a nurse registered under division 2 of the register if the Board is satisfied that the nurse—
 - (a) has satisfactorily completed a course of study in medication administration approved by the Board; or
 - (b) has satisfactorily completed a course of study or has a qualification which, in the opinion of the Board, is substantially equivalent or is based on similar competencies to a course referred to in paragraph (a).
- (2) An applicant for registration as a nurse under division 2 of the register or a nurse registered under division 2 of the register may apply to the Board for an endorsement under this section.
- (3) An application must be—
 - (a) in writing in the prescribed form and accompanied by evidence of the qualifications which the applicant claims qualify her or him for endorsement under this section; and
 - (b) accompanied by the fee determined by the Board.
- (4) 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**.

- (5) The endorsement of the registration of a nurse under this section continues in force for the period that the registration is in force.

9. Conditions, limitations or restrictions on registration or endorsement

S. 9(1)
amended by
No. 94/2000
s. 7.

- (1) The Board may, upon the grant or renewal of registration or endorsement of registration, impose any conditions, limitation or restrictions on the registration or endorsement of registration of a nurse that it considers appropriate.

S. 9(1A)
inserted by
No. 94/2000
s. 5(2).

- (1A) Without limiting the Board's powers under subsection (1) it may impose a condition—
- (a) that—
- (i) the nurse must hold professional indemnity insurance; or
 - (ii) the nursing care provided by the nurse must be covered by professional indemnity insurance; or
 - (iii) the nurse must be specified or referred to in professional indemnity insurance, whether by name or otherwise, as a person to whom the professional indemnity insurance extends even though the nurse is not a party to the professional indemnity insurance; and
- (b) that the professional indemnity insurance must meet the minimum terms and conditions set out in the guidelines of the Board.

S. 9(2)
amended by
No. 94/2000
s. 7.

- (2) The Board may, at any time, amend, vary or revoke any condition, limitation or restriction that it has imposed on the registration or endorsement of registration of a nurse.

10. Entitlement of applicant to make submissions

If the Board is proposing to refuse an application for registration or endorsement or notation of registration or impose conditions, limitations or restrictions on the registration or endorsement or notation of registration, the Board must not do so until—

S. 10
amended by
Nos 94/2000
s. 8(a)(b),
98/2003
s. 7(2).

- (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 or endorsement or notation of registration under this Part, the Board must notify the applicant as to whether or not registration or endorsement or notation of 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

S. 11(1)
amended by
Nos 94/2000
s. 9(a),
98/2003
s. 7(3)(a).

Nurses Act 1993
Act No. 111/1993

Part 2—Registration

s. 11

S. 11(2)(b)(ii)
amended by
No. 94/2000
s. 9(b).

(ii) a statement that the applicant has a right to obtain a review of the decision not to grant registration; or

S. 11(2)(c)
inserted by
No. 94/2000
s. 9(b),
amended by
No. 1/2004
s. 6(a).

- (c) if the endorsement of registration under section 8B has been granted—
- (i) the category of nurse practitioner that the nurse's registration is endorsed for; and
 - (ii) whether or not any conditions, limitations or restrictions have been imposed on the endorsement of registration and, if so, the reasons for imposing the conditions, limitations or restrictions; or

S. 11(2)(ca)
inserted by
No. 1/2004
s. 6(b).

- (ca) if the endorsement of registration under section 8C has been granted, whether or not any conditions, limitations or restrictions have been imposed on the endorsement of registration and, if so, the reasons for imposing the conditions, limitations or restrictions; or

S. 11(2)(d)
inserted by
No. 94/2000
s. 9(b),
amended by
No. 1/2004
s. 6(c).

- (d) if the endorsement of registration under section 8B or 8C has not been granted—
- (i) the reasons why it has not been granted; and

S. 11(2)(d)(ii)
amended by
No. 98/2003
s. 7(3)(b).

(ii) a statement that the applicant has a right to obtain a review of the decision not to grant endorsement of registration; or

S. 11(2)(e)
inserted by
No. 98/2003
s. 7(3)(c).

- (e) if the registration has been noted, whether or not any conditions, limitations or restrictions have been imposed on the notation and, if so, the reasons for imposing the conditions, limitations or restrictions; or

- (f) if the notation of registration has been refused—
- (i) the reasons why it has been refused; and
 - (ii) a statement that the applicant has a right to obtain a review of the decision to refuse to note the registration.

S. 11(2)(f)
inserted by
No. 98/2003
s. 7(3)(c).

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 or endorsement

- (1) An application for renewal of registration must be—
- (a) made to the Board before the existing registration expires; and

S. 13(1)
substituted by
No. 94/2000
s. 5(3).

Nurses Act 1993
Act No. 111/1993
Part 2—Registration

s. 13

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- (b) accompanied by the information referred to in section 19A; and
 - (c) accompanied by the fee determined by the Board.

S. 13(1A)
inserted by
No. 94/2000
s. 5(3).

- (1A) The Board may require an applicant to provide evidence that the applicant will be covered by professional indemnity insurance that meets the minimum terms and conditions set out in guidelines of the Board.

S. 13(1B)
inserted by
No. 94/2000
s. 10.

- (1B) If an application for renewal relates to a registration that is endorsed under section 8B, the applicant may include an application to have the endorsement of registration renewed for the period of registration.

S. 13(1C)
inserted by
No. 1/2004
s. 7.

- (1C) If an application for renewal relates to a registration that is endorsed under section 8C, the applicant may include an application to have the endorsement of registration renewed for the period of registration.
- (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.

13A. Restoration of name to register

If a person whose name has been removed from the register under section 13(3)—

S. 13A
inserted by
No. 94/2000
s. 11.

- (a) applies to the Board within 2 years from the date of that removal to have her or his name restored to the register and the renewal of the registration; and
- (b) pays to the Board the fee fixed by the Board for those purposes within that period—

the Board may restore that person's name to the register and renew the registration in accordance with this Part until 31 December next following that renewal.

14. Refusal to renew registration or endorsement

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

S. 14
amended by
No. 94/2000
s. 12 (ILA
s. 39B(1)).

- (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.

(2) The Board must not refuse to renew the registration of a nurse under sub-section (1)(b) unless the Board has—

S. 14(2)
inserted by
No. 94/2000
s. 12.

- (a) notified the nurse of its intention; and
 - (b) given the nurse an opportunity to make a submission to the Board or to provide written submissions from any registered nurse about the nurse's nursing experience or competence in nursing; and
 - (c) considered those submissions.
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s. 14A

S. 14(3)
inserted by
No. 1/2004
s. 8.

(3) Without limiting the powers of the Board under sub-sections (1) and (2), the Board may refuse to renew the endorsement of registration under section 8C of an applicant under this Part if the Board is satisfied that the applicant for renewal has not maintained the required competencies in medication administration for that endorsement.

S. 14(4)
inserted by
No. 1/2004
s. 8.

(4) The Board must not refuse to renew the endorsement of registration under section 8C of a nurse under sub-section (3) unless the Board has—

- (a) notified the nurse of its intention; and
- (b) given the nurse an opportunity to make a submission to the Board or to provide written submissions from any registered nurse about the nurse's maintenance of the required competencies in medication administration; and
- (c) considered those submissions.

S. 14A
inserted by
No. 94/2000
s. 13.

14A. Special qualifications or training

- (1) The Board, from time to time, may recognise any qualification or training that the Board considers to be relevant to the practise of nursing in addition to those approved for registration.
- (2) An applicant for registration or a registered person may apply to the Board to have particulars of any qualification or training that is recognised by the Board, in addition to those approved for registration, noted on the register against the name of that nurse.
- (3) An application must be in writing and be accompanied by the fee (if any) for the application fixed by the Board together with evidence of the qualifications or training that the applicant wants to have noted on the register in addition to the qualifications approved for registration purposes.

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- (4) The Board must publish a list of the qualifications and training recognised under this section at least once a year in a publication circulating among nurses generally and make the list available for inspection during normal business hours at the office of the Board without charge.

15. Effect of suspension of registration or endorsement

- (1) For the purposes of this Act, a nurse whose registration is suspended is deemed not to be registered for the period of that suspension.
- (2) For the purposes of this Act and the **Drugs, Poisons and Controlled Substances Act 1981**, a nurse practitioner whose endorsement of registration is suspended is deemed not to have her or his registration endorsed for the period of that suspension.
- (3) For the purposes of this Act, a nurse whose endorsement of registration under section 8C is suspended is deemed not to have her or his registration endorsed under that section for the period of that suspension.

S. 15
amended by
No. 94/2000
s. 14 (ILA
s. 39B(1)).

S. 15(2)
inserted by
No. 94/2000
s. 14.

S. 15(3)
inserted by
No. 1/2004
s. 9.

16. Withdrawal of registration or endorsement

- (1) If the Board believes that the registration or endorsement of registration of a nurse has been obtained by fraud or misrepresentation or that the qualifications upon which the nurse relied for registration or endorsement of 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.

S. 16(1)
amended by
No. 94/2000
s. 15(1).

Nurses Act 1993
Act No. 111/1993
Part 2—Registration

s. 17

S. 16(4)
amended by
No. 94/2000
s. 15(2).

(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 cancel the registration of the nurse.

S. 16(5)
amended by
No. 94/2000
s. 15(3).

(5) If, at the end of the hearing, the Board determines that the endorsement of registration of the nurse has been obtained by fraud or misrepresentation or that the qualifications upon which the nurse has relied for endorsement of registration have been withdrawn, the Board must cancel the endorsement of registration of the nurse.

Pt. 2 Div. 2
(Heading)
substituted by
No. 94/2000
s. 16.

Division 2—Other requirements

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);

S. 17(2)(c)
amended by
No. 74/2000
s. 3(Sch. 1
item 90.2).

Nurses Act 1993
Act No. 111/1993
Part 2—Registration

s. 17

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- (d) division 4, which is to be a list of the names of every registered person whose qualifications for registration are those set out in section 6(4); **S. 17(2)(d) amended by No. 74/2000 s. 3(Sch. 1 item 90.3).**
- (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 of the registration of the nurse; **S. 17(3)(a) amended by No. 23/1994 s. 119(Sch. 2 item 4).**
- (b) any current condition, limitation or restriction imposed on the registration of the nurse;
- (ba) any current notation referred to in section 8A; **S. 17(3)(ba) inserted by No. 18/2000 s. 111(Sch. item 4.2) (as amended by No. 94/2000 s. 53(b)).**
- (bb) details of any endorsement under section 8B; **S. 17(3)(bb) inserted by No. 94/2000 s. 17(a).**
- (bc) details of any endorsement under section 8C; **S. 17(3)(bc) inserted by No. 1/2004 s. 10(1).**
- (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.
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- (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
 - (ab) any current notation referred to in section 8A; and

S. 18(2)(ab) inserted by No. 18/2000 s. 111(Sch. item 4.3) (as amended by No. 94/2000 s. 53(b)).

S. 18(2)(b) amended by No. 94/2000 s. 18(1).

S. 18(2)(ba) inserted by No. 94/2000 s. 18(1), amended by No. 1/2004 s. 10(2).

(b) the prescribed information; and

(ba) details of any endorsement under section 8B; and

(bb) details of any endorsement under section 8C.

S. 18(2)(bb)
inserted by
No. 1/2004
s. 10(3).

(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

(4) If the Board notifies a nurse of any condition, limitation or restriction it has imposed on the nurse's registration or endorsement of registration, the nurse must return the current certificate of registration to the Board within 28 days of that notice for notation of that condition, limitation or restriction on the certificate.

S. 18(4)
inserted by
No. 94/2000
s. 18(2).

Penalty: 10 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; or
- (c) the registration of the nurse is or is not or was or was not, at any specified date, endorsed under section 8B or section 8C—

S. 19(b)
amended by
No. 94/2000
s. 17(b).

S. 19(c)
inserted by
No. 94/2000
s. 17(b),
amended by
No. 1/2004
s. 10(4).

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

S. 19A
inserted by
No. 94/2000
s. 19.

19A. Provision of information

- (1) If a person has claimed damages or other compensation from a registered nurse or the employer of a registered nurse for alleged negligence of the registered nurse in the course of providing nursing care, the nurse must provide the Board with information about the amount of damages or other compensation the nurse or the employer is ordered by a court to pay within 30 days after the order is made.
- (2) Sub-section (1) does not apply if—
 - (a) the amount is less than the amount fixed by the Board for the purposes of this section; or
 - (b) the court orders that the terms of the order should not be disclosed.
- (3) If a registered nurse has in respect of an indictable offence—
 - (a) been committed for trial; or
 - (b) been convicted or found guilty of the offence—

the nurse must notify the Board within 30 days after that committal for trial, conviction or finding of guilt.
- (4) An applicant for registration or renewal of registration as a nurse must ensure that details of any of the matters required to be notified by sub-section (1) or (3) are set out in the application.
- (5) The Board, by notice published in the Government Gazette, may fix an amount of damages or compensation referred to in this section.

Nurses Act 1993
Act No. 111/1993

Part 3—Investigations into Registered Nurses

s. 20

PART 3—INVESTIGATIONS INTO REGISTERED NURSES

Division 1—Preliminary investigation into professional conduct

20. Complaints about nurses

- (1) A person may make a complaint about a registered nurse to the Board.
- (2) A person may make a complaint to the Board about the conduct of a person who is no longer a registered nurse if—
 - (a) that person was a registered nurse at the time when the conduct was alleged to have occurred; and
 - (b) the complaint is made within 2 years after the nurse ceased to be registered.
- (3) The Board may accept a complaint made more than 2 years after a nurse ceased to be registered if the Board considers that it is necessary to do so to protect the public.

S. 20 amended by No. 94/2000 s. 20 (ILA s. 39B(1)).

S. 20(2) inserted by No. 94/2000 s. 20.

S. 20(3) inserted by No. 94/2000 s. 20.

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

- (1) If the Board receives a complaint referred to in section 20 and the complaint is of a kind which may be made under section 16 of the **Health Services (Conciliation and Review) Act 1987** or the **Health Records Act 2001** 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.

S. 21(1) amended by Nos 94/2000 s. 21, 2/2001 s. 126(1).

Nurses Act 1993
Act No. 111/1993

Part 3—Investigations into Registered Nurses

s. 21A

S. 21(3)
amended by
No. 2/2001
s. 126(2).

- (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 under that Act as if the complaint were made under section 16 of that Act.

S. 21(3A)
inserted by
No. 2/2001
s. 126(3).

- (3A) The **Health Records Act 2001** applies to a complaint made under this Part which is to be dealt with by the Health Services Commissioner under that Act as if the complaint were made under section 45(1) of that Act.

S. 21(4)
amended by
No. 2/2001
s. 126(4).

- (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** or section 52 of the **Health Records Act 2001**.

S. 21(5)
inserted by
No. 23/1994
s. 119(Sch. 2
item 5).

- (5) If a complaint has been referred to and is being dealt with by the Health Services Commissioner, the Commissioner must advise the Board, when the matter is completed, of the outcome of the matter.

S. 21A
inserted by
No. 2/2001
s. 127.

21A. Board may deal with health records complaint

- (1) The Board—
- (a) may accept a complaint, or part of a complaint, relating to a registered nurse that the Health Services Commissioner proposes to refer to the Board under section 52 of the **Health Records Act 2001**; and
 - (b) must treat a complaint, or part of a complaint, referred to it under section 52 of the **Health Records Act 2001** as if it were made under this Act.

Nurses Act 1993
Act No. 111/1993

Part 3—Investigations into Registered Nurses

s. 22

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- (2) If a complaint has been referred to the Board by the Health Services Commissioner under section 52 of the **Health Records Act 2001**, the Board must advise the Health Services Commissioner of the progress of the matter, when required by the Health Services Commissioner to do so, and, when the matter is completed, of the outcome of the matter.
 - (3) Advice under sub-section (2) must include any information that the Health Services Commissioner specifies by written notice to the Board.

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 legal practitioner or an 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.

S. 22(3)(b)
amended by
No. 35/1996
s. 453(Sch. 1
item 61).

Nurses Act 1993
Act No. 111/1993

Part 3—Investigations into Registered Nurses

s. 23

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 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.

S. 23(1)(a)
amended by
No. 23/1994
s. 119(Sch. 2
item 6).

24. Investigations and hearings on the Board's motion

- (1) The Board, of its own motion, may determine to conduct a preliminary investigation into the professional conduct of a registered nurse.
- (2) The Board, of its own motion, may determine to conduct a formal or informal hearing into the professional conduct of a registered nurse with or without conducting a preliminary investigation.
- (3) If the Board determines to conduct a preliminary investigation into the professional conduct of a registered nurse under sub-section (1), sections 22(3) and 23 apply to that investigation.

S. 24
substituted by
No. 94/2000
s. 22.

25. Suspension of registration or endorsement

- (1) The Board, after making a determination—
 - (a) to conduct a preliminary investigation about the professional conduct of a registered nurse; or

S. 25(1)
amended by
No. 94/2000
ss 23(a), 24.

S. 25(1)(a)
amended by
No. 94/2000
s. 23(b).

Nurses Act 1993
Act No. 111/1993

Part 3—Investigations into Registered Nurses

s. 26

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

may suspend the registration or endorsement of 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 or endorsement of registration of a registered nurse under sub-section (1), it must—

- (a) immediately notify the nurse of that suspension; and
(b) ensure that the matter is investigated as soon as possible after that suspension.

S. 25(2)
substituted by
No. 23/1994
s. 119(Sch. 2
item 7),
amended by
No. 94/2000
s. 24.

Division 2—Preliminary investigation into the health of registered nurses

26. Commencement of preliminary investigation

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 or an officer employed by the Board to conduct a preliminary investigation into the matter.

S. 26
amended by
Nos 23/1994
s. 119(Sch. 2
item 8(a)(i)(ii)),
94/2000
s. 25(a).

* * * * *

S. 26(2)
repealed by
No. 23/1994
s. 119(Sch. 2
item 8(b)).

Nurses Act 1993
Act No. 111/1993

Part 3—Investigations into Registered Nurses

s. 27

27. Notification to nurse

S. 27(1)
substituted by
No. 23/1994
s. 119(Sch. 2
item 9),
amended by
No. 94/2000
s 25(b).

- (1) The person appointed to investigate the matter, must give notice of the preliminary 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

S. 28(1)
amended by
No. 23/1994
s. 119(Sch. 2
item 10).

- (1) If the nurse agrees to undergo a medical examination within 28 days she or he must be examined by a registered medical practitioner who is not a member of the Board and who is agreed upon by the Board and the nurse.

S. 28(2)
amended by
No. 23/1994
s. 119(Sch. 2
item 10).

- (2) If the Board and the nurse are unable to agree upon a registered medical practitioner, the Secretary must appoint a registered medical practitioner to perform the examination.
- (3) The Board must pay for the examination.

Nurses Act 1993
Act No. 111/1993

Part 3—Investigations into Registered Nurses

s. 29

29. Reports

- (1) The examining registered medical practitioner must give a report of her or his examination to the person 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 registered 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 registered medical practitioner and the Board is of the opinion that it is necessary for the investigation of the matter to be continued by a registered medical practitioner, the Board may appoint a registered medical practitioner to continue the investigation.

S. 29(1)
amended by
Nos 23/1994
s. 119(Sch. 2
item 11),
94/2000
s. 25(b).

S. 29(4)
amended by
No. 23/1994
s. 119(Sch. 2
item 11).

S. 29(5)
amended by
No. 23/1994
s. 119(Sch. 2
item 11).

Nurses Act 1993
Act No. 111/1993

Part 3—Investigations into Registered Nurses

s. 30

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 endorsement of registration; or
 - (c) the suspension of her or his registration or endorsement of 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).

S. 30(1)(b)
amended by
No. 94/2000
s. 26.

S. 30(1)(c)
amended by
No. 94/2000
s. 26.

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

S. 32(1)
amended by
No. 94/2000
s. 27(a).

Nurses Act 1993
Act No. 111/1993

Part 3—Investigations into Registered Nurses

s. 34

(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 or endorsement of registration or to suspend the nurse's registration or endorsement of registration.

(2) If the Board and the nurse agree upon the suspension or the condition, limitation or restriction to be imposed, the Board may impose it.

S. 32(2)
amended by
No. 94/2000
s. 27(b).

(3) If the nurse and the Board do not agree upon the suspension or the condition, limitation or restriction to be imposed, the Board must refer the matter to a preliminary investigation.

S. 32(3)
amended by
Nos 23/1994
s. 119(Sch. 2
item 12),
94/2000
s. 27(b).

* * * * *

S. 33
amended by
No. 94/2000
s. 28,
repealed by
No. 42/2005
s. 32(2).

34. Immediate suspension of registration or endorsement

S. 34
amended by
No. 23/1994
s. 119(Sch. 2
item 13(a)).

(1) If the Board has referred a matter to a formal hearing under this Division, the Board may suspend the registration or endorsement of 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.

S. 34(1)
amended by
No. 94/2000
s. 29.

Nurses Act 1993
Act No. 111/1993

Part 3—Investigations into Registered Nurses

s. 35

S. 34(2)
inserted by
No. 23/1994
s. 119(Sch. 2
item 13(b)),
amended by
No. 94/2000
s. 29.

- (2) If the Board has suspended the registration or endorsement of registration of a nurse under subsection (1), it must—
- (a) immediately notify the nurse of that suspension; and
 - (b) ensure that the matter is investigated as soon as possible after that suspension.

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;

Nurses Act 1993
Act No. 111/1993

Part 3—Investigations into Registered Nurses

s. 38

- (d) serve a notice on the complainant by registered post which complies with section 56.

S. 37(d)
inserted by
No. 23/1994
s. 119(Sch. 2
item 14).

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—

S. 38(2)
substituted by
No. 94/2000
s. 31(1).

the President or, in the absence of the President, the Deputy President may fill the vacant positions on the panel by appointing persons who are not members of the Board from a list of persons approved by the Governor in Council under sub-section (4).

- (3) A person who has undertaken a preliminary investigation of the matter is not entitled to be a member of the panel.
- (4) The Governor in Council, on the recommendation of the Minister, may approve persons who are not members of the Board to be available to be appointed to a panel under sub-section (2).

S. 38(4)
inserted by
No. 94/2000
s. 31(2).

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;

(d) that the nurse undertake further education of the kind stated in the determination and complete it within the period specified in the determination.

S. 41(2)(d)
inserted by
No. 94/2000
s. 30.

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.

Nurses Act 1993
Act No. 111/1993

Part 3—Investigations into Registered Nurses

s. 44

44. Establishment and notification of formal hearing

If—

S. 44(a)
amended by
No. 23/1994
s. 119(Sch. 2
item 15(a)).

- (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
- (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—

S. 44(g)
substituted by
No. 23/1994
s. 119(Sch. 2
item 15(b)).

- (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) serve a notice on the complainant by registered post which complies with section 56.

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.

S. 45(2)
substituted by
No. 94/2000
s. 31(1).

- (2) If—
 - (a) the Board is unable to appoint a panel because there are not enough members available to sit on it; or

Nurses Act 1993
Act No. 111/1993

Part 3—Investigations into Registered Nurses

s. 46

(b) the Board is of the opinion that a person with special expertise is required for the hearing—

the President or, in the absence of the President, the Deputy President may fill the vacant positions on the panel by appointing persons who are not members of the Board from a list of persons approved by the Governor in Council under sub-section (4).

- (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.
- (4) The Governor in Council, on the recommendation of the Minister, may approve persons who are not members of the Board to be available to be appointed to a panel under sub-section (2).

S. 45(4)
inserted by
No. 94/2000
s. 31(2).

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.

Nurses Act 1993
Act No. 111/1993

Part 3—Investigations into Registered Nurses

s. 47

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 identity of the complainant is not to be published or broadcast and the complainant—
 - (i) in the case of a proceeding which has not been closed under paragraph (d), 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 and, if the panel has determined that the proceedings are closed, the panel may determine that the identity of any witness giving evidence in the proceedings is not to be published or broadcast; and
- (e) the panel may determine that any information that might enable the registered nurse who is the subject of the hearing to be identified must not be published or broadcast prior to the making of a final determination if the panel considers it necessary to do so to avoid prejudicing the administration of justice or for any other reason in the interests of justice.

S. 47(c)
substituted by
No. 23/1994
s. 119(Sch. 2
item 16(a)).

S. 47(d)
amended by
Nos 23/1994
s. 119(Sch. 2
item 16(b)),
94/2000
s. 31(3).

S. 47(e)
inserted by
No. 94/2000
s. 31(3).

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 or endorsement of registration of the nurse;
 - (f) impose a fine on the nurse of not more than 10 penalty units;
 - (g) suspend the registration or endorsement of registration of the nurse for the period specified in the determination; or

S. 48(2)(e)
amended by
No. 94/2000
s. 32(1).

S. 48(2)(g)
amended by
No. 94/2000
s. 32(1).

Nurses Act 1993
Act No. 111/1993

Part 3—Investigations into Registered Nurses

s. 49

S. 48(2)(h)
amended by
No. 94/2000
s. 32(1).

(h) cancel the registration or endorsement of 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.

S. 48(5)
amended by
No. 94/2000
s. 32(1).

(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 or endorsement of registration until the order is complied with.

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

S. 49(1)
substituted by
No. 23/1994
s. 119(Sch. 2
item 17).

(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—

(a) the ability of the nurse to practise is affected because—

(i) of the physical or mental health of the nurse; or

(ii) the nurse has an incapacity; or

(iii) the nurse is an alcoholic or drug dependent person; or

(b) the ability of the nurse is not affected.

Nurses Act 1993
Act No. 111/1993

Part 3—Investigations into Registered Nurses

s. 49A

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

S. 49(2)(a)
amended by
No. 94/2000
s. 32(2).

S. 49(2)(b)
amended by
No. 94/2000
s. 32(2).

Division 4—General Provisions relating to Investigations

49A. Investigation may continue even if person no longer registered

S. 49A
inserted by
No. 94/2000
s. 33.

- (1) The Board may—
- (a) conduct an investigation into a complaint referred to in section 20(2) and make a finding or determination under this Part;
 - (b) conduct a hearing and make a finding or determination under this Part in relation to a complaint referred to in section 20(2)—
- as if the person referred to in that complaint were a registered nurse.
- (2) The Board may—
- (a) conduct or continue to conduct an investigation into the professional conduct of a person who is no longer a registered nurse but who was a registered nurse at the time the conduct is alleged to have occurred or the Board had determined to conduct an investigation into the conduct and make a finding or determination under this Part;

Nurses Act 1993
Act No. 111/1993

Part 3—Investigations into Registered Nurses

s. 49B

- (b) conduct or continue to conduct a hearing and make a finding or determination under this Part in relation to a person who is no longer a registered nurse but who was a registered nurse at the time the Board had determined to conduct the hearing—

as if the person were a registered nurse.

S. 49B
inserted by
No. 94/2000
s. 34.

49B. Employees of the Board

If a person employed by the Board under section 77 makes a complaint under this Act, that person must not conduct a preliminary investigation into the matter and is not eligible to be appointed to a panel to conduct a hearing into the matter but otherwise is subject to the provisions of this Act applying to or in relation to complainants.

S. 49C
inserted by
No. 42/2005
s. 32(1).

49C. Agreements to amend, vary or revoke conditions or revoke suspensions

- (1) The Board may, if the registered nurse so agrees—
- (a) amend, vary or revoke any condition imposed on the nurse's registration by the Board without conducting an informal or formal hearing; or
 - (b) revoke a suspension of the nurse's registration and impose a condition on the registration; or
 - (c) revoke a suspension of the nurse's registration if the nurse satisfies the Board that her or his ability to practise as a nurse is no longer affected.
- (2) If the Board and the registered nurse fail to agree under sub-section (1), the Board may refer the matter to a formal hearing.

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.

Nurses Act 1993
Act No. 111/1993

Part 3—Investigations into Registered Nurses

s. 53

53. Removal of suspension, condition, limitation or restriction

S. 53(1)
amended by
No. 94/2000
s. 35.

- (1) If the Board has suspended the registration or endorsement of 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.

S. 53(2)
amended by
No. 94/2000
s. 35.

- (2) If a condition, limitation or restriction has been imposed on the registration or endorsement of 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

S. 54(3)
amended by
No. 23/1994
s. 119(Sch. 2
item 18).

- (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 45 days of the making of the determination and reasons must be given to the applicant within 45 days of receiving the application.

Nurses Act 1993
Act No. 111/1993

Part 3—Investigations into Registered Nurses

s. 55

55. Notification of determinations

(1) If a determination has been made by a panel—

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| (a) imposing conditions, limitations or restrictions on the registration or endorsement of registration of a nurse; or | S. 55(1)(a) amended by No. 94/2000 s. 36. |
| (b) suspending the registration or endorsement of registration of a nurse; or | S. 55(1)(b) amended by No. 94/2000 s. 36. |
| (c) cancelling the registration or endorsement of registration of a nurse— | S. 55(1)(c) amended by No. 94/2000 s. 36. |

the Board must give notice of the determination—

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|---|---|
| (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; and | S. 55(1)(h) amended by No. 23/1994 s. 119(Sch. 2 item 19). |
| (i) if the Board has received a request for information about the person in respect of whom the determination has been made from a nurses registration authority outside Australia, that authority. | S. 55(1)(i) inserted by No. 23/1994 s. 119(Sch. 2 item 19). |

Nurses Act 1993
Act No. 111/1993

Part 3—Investigations into Registered Nurses

s. 56

- (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—

S. 56(a)
amended by
No. 23/1994
s. 119(Sch. 2
item 20).

- (a) of whether or not a formal or informal hearing is to be held into the matter and if so, of the time and place of the hearing and, in the case of a formal hearing, of the fact that the complainant's identity is not to be published or broadcast; 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.

56A. Offence to disclose information identifying complainant

A person must not publish or broadcast or cause to be published or broadcast any report of a formal hearing under this Part which contains information which would enable—

S. 56A
inserted by
No. 23/1994
s. 119(Sch. 2
item 21),
amended by
No. 94/2000
s. 37(b).

- (a) the complainant to be identified; or
- (b) if the panel has made a determination prohibiting the publication or broadcast of the identity of a witness, that witness to be identified; or

S. 56A(b)
amended by
No. 94/2000
s. 37(a).

Nurses Act 1993
Act No. 111/1993

Part 3—Investigations into Registered Nurses

s. 57

- (c) if the panel has made a determination prohibiting the publication or broadcast of the identity of the registered nurse prior to the making of a final determination, that nurse to be identified prior to the making of the final determination—

S. 56A(c)
inserted by
No. 94/2000
s. 37(a).

unless the complainant, witness or nurse has, before publication or broadcast, consented to this.

Penalty: 50 penalty units for a natural person or 100 penalty units for a body corporate.

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 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.

S. 57(2)
amended by
No. 46/1998
s. 7(Sch. 1).

* * * * *

S. 57(5)
repealed by
No. 46/1998
s. 7(Sch. 1).

Nurses Act 1993
Act No. 111/1993

Part 4—Review by Victorian Civil and Administrative Tribunal

s. 58

Pt 4 (Heading)
amended by
No. 52/1998
s. 311(Sch. 1
item 66.2).

**PART 4—REVIEW BY VICTORIAN CIVIL AND
ADMINISTRATIVE TRIBUNAL**

**58. Review by Victorian Civil and Administrative
Tribunal**

S. 58(1)
amended by
No. 52/1998
s. 311(Sch. 1
item 66.3(a)).

(1) A person whose interests are affected by the relevant decision, finding or determination may apply to the Victorian Civil and Administrative Tribunal for review of—

S. 58(1)(a)
amended by
No. 94/2000
s. 38(1).

(a) a decision to refuse a person's application for registration or endorsement of registration or renewal of registration; or

S. 58(1)(b)
amended by
No. 94/2000
s. 38(1).

(b) a decision to impose conditions, limitations or restrictions on a person's registration or endorsement of registration; or

S. 58(1)(ba)
inserted by
No. 18/2000
s. 111(Sch.
item 4.4) (as
amended by
No. 94/2000
s. 53(c)).

(ba) a decision to refuse to note the registration of the nurse under section 8A; or

S. 58(1)(c)
amended by
No. 94/2000
s. 38(1).

(c) a decision of the Board to suspend the registration or endorsement of 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 endorsement of registration; or

(d) a finding or determination made at a formal hearing under Part 3.

Nurses Act 1993
Act No. 111/1993

Part 4—Review by Victorian Civil and Administrative Tribunal

s. 59

-
- (2) The application must be made within 28 days of the date on which the Board gives notice of the decision, finding or determination to the person concerned.
- (3) If a finding has been made at a formal hearing under Part 3 but no final determination has been made at that hearing, an application for review under this section can only be made with the leave of the Tribunal.

S. 58(2)
amended by
No. 52/1998
s. 311(Sch. 1
item 66.3(b)).

S. 58(3)
substituted by
No. 52/1998
s. 311(Sch. 1
item 66.4).

59. Notification

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

S. 59
amended by
Nos 52/1998
s. 311(Sch. 1
item 66.5(a)
(b)), 94/2000
s. 38(2).

Nurses Act 1993
Act No. 111/1993

Part 5—Offences and Related Provisions

s. 60

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

S. 60(1)(b)
amended by
No. 94/2000
s. 39(1).

(b) claim to be registered under this Act or hold herself or himself out as being registered under this Act; or

S. 60(1)(c)
inserted by
No. 94/2000
s. 39(1).

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

S. 60(1)(d)
inserted by
No. 94/2000
s. 39(1).

(d) claim to be registered under this Act with endorsement as a nurse practitioner or hold herself or himself out as being so registered.

Penalty: 50 penalty units.

S. 60(1A)
inserted by
No. 1/2004
s. 11(1).

(1A) A person who is not a registered nurse must not claim to be registered under this Act with endorsement under section 8C or hold herself or himself out as being so registered.

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.

Nurses Act 1993
Act No. 111/1993

Part 5—Offences and Related Provisions

s. 60

(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.

Nurses Act 1993
Act No. 111/1993

Part 5—Offences and Related Provisions

s. 61

- (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

- (1) 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.

- (2) A registered nurse whose registration is not endorsed under section 8B must not—
- (a) take or use the title of "nurse practitioner" or any other title calculated to induce a belief that the person is a nurse practitioner; or
- (b) claim to be a nurse practitioner or hold herself or himself out as being a nurse practitioner.

Penalty: 50 penalty units.

S. 62
amended by
No. 94/2000
s. 39(2) (LA
s. 39B(1)).

S. 62(2)
inserted by
No. 94/2000
s. 39(2).

Nurses Act 1993
Act No. 111/1993

Part 5—Offences and Related Provisions

s. 62A

(3) A registered nurse whose registration is not endorsed under section 8B with respect to a particular category of nurse practitioner must not—

S. 62(3)
inserted by
No. 94/2000
s. 39(2).

- (a) take or use any title calculated to induce a belief that the nurse is a nurse practitioner whose registration is endorsed with respect to that category of nurse practitioner; or
- (b) claim to be a nurse practitioner whose registration is endorsed with respect to that category of nurse practitioner or hold herself or himself out as being a nurse practitioner whose registration is endorsed with respect to that category of nurse practitioner.

Penalty: 50 penalty units.

(4) A nurse whose registration is not endorsed under section 8C must not—

S. 62(4)
inserted by
No. 1/2004
s. 11(2).

- (a) claim to be a nurse whose registration is endorsed under section 8C; or
- (b) hold herself or himself out as being a nurse whose registration is endorsed under section 8C.

Penalty: 50 penalty units.

62A. Fraud, forgery and false representation

S. 62A
inserted by
No. 23/1994
s. 119(Sch. 2
item 22).

A person must not—

- (a) fraudulently or by false representation or declaration (either orally or in writing) obtain registration under the Act; or
- (b) fraudulently or by false representation (either orally or in writing) procure any person to be registered under the Act; or

Nurses Act 1993
Act No. 111/1993

Part 5—Offences and Related Provisions

s. 63

(c) aid in the commission of an offence under paragraph (a) or (b).

Penalty: 50 penalty units.

63. Offence to provide unregistered nurses

S. 63(1)
amended by
No. 14/2002
s. 36.

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

Penalty: For a natural person, 50 penalty units.

For a body corporate, 100 penalty units.

S. 63(2)
amended by
No. 14/2002
s. 36.

(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: For a natural person, 50 penalty units.

For a body corporate, 100 penalty units.

S. 63(3)
inserted by
No. 94/2000
s. 40,
amended by
No. 14/2002
s. 36.

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

Penalty: For a natural person, 50 penalty units.

For a body corporate, 100 penalty units.

S. 63(4)
inserted by
No. 94/2000
s. 40,
amended by
No. 14/2002
s. 36.

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

Penalty: For a natural person, 50 penalty units.

For a body corporate, 100 penalty units.

S. 63(5)
inserted by
No. 1/2004
s. 11(3).

(5) A nurse's agent must not arrange for a nurse whose registration is endorsed under section 8C to work in contravention of the terms of that nurse's endorsement of registration.

Penalty: For a natural person, 50 penalty units.

For a body corporate, 100 penalty units.

Nurses Act 1993
Act No. 111/1993

Part 5—Offences and Related Provisions

s. 63A

- (6) A nurse's agent must not arrange for a nurse whose registration is not endorsed under section 8C to work as a nurse whose registration is endorsed under section 8C.

S. 63(6)
inserted by
No. 1/2004
s. 11(3).

Penalty: For a natural person, 50 penalty units.

For a body corporate, 100 penalty units.

63A. Prohibition against directing or inciting unprofessional conduct

S. 63A
inserted by
No. 14/2002
s. 37.

- (1) A nurse's agent who arranges for the supply of the services of a registered nurse must not direct or incite the nurse to engage in conduct, in the course of professional practice, that would constitute unprofessional conduct.

Penalty: For a natural person, 200 penalty units for a first offence or 400 penalty units for a second or subsequent offence.

For a body corporate, 400 penalty units for a first offence or 800 penalty units for a second or subsequent offence.

- (2) If a court convicts or finds a person guilty of an offence against this section, the Clerk or other proper officer of the court must notify the Secretary in writing of the conviction or finding.

63B. Extended concept of arranging the supply of services

S. 63B
inserted by
No. 14/2002
s. 37.

- (1) If the supply of the services of registered nurses is arranged for in the carrying out of a business or practice of a nurse's agent, any person who owns, manages, controls or operates that business is for the purposes of this Part to be treated as arranging for the supply of those services (in addition to any person who actually arranges for the supply of those services).

Nurses Act 1993
Act No. 111/1993

Part 5—Offences and Related Provisions

s. 63C

- (2) If a supply of the services of a registered nurse is arranged for in the carrying out of a business or practice of a nurse's agent by a body corporate, each of the following persons is for the purposes of this Part also to be treated as being the nurse's agent who arranges for the supply of the services of a registered nurse (in addition to the body corporate)—
- (a) a person who has (within the meaning of section 63G) a management role or a substantial interest in the body corporate;
 - (b) any other employee of the body corporate in accordance with whose directions the registered nurse is required or expected to act.

S. 63C
inserted by
No. 14/2002
s. 37.

63C. Convicted offenders may be prohibited from carrying on business

- (1) The Secretary may by notice in writing given to a person who has been convicted of or found guilty of an offence against section 63A prohibit the person from carrying on the business or practice of a nurse's agent.
- (2) The prohibition may be expressed to be—
- (a) for a fixed period (in which case the prohibition remains in force only for that fixed period); or
 - (b) for an unlimited period subject to an entitlement to apply after a specified time for the lifting of the prohibition (in which case the prohibition remains in force until it is lifted).

Nurses Act 1993
Act No. 111/1993

Part 5—Offences and Related Provisions

s. 63C

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- (3) A prohibition may not be imposed under this section unless the Secretary is of the opinion that the person is not a fit and proper person to carry on the business or practice of a nurse's agent.
 - (4) The Secretary is entitled to presume, in the absence of evidence to the contrary, that a person who has been convicted of or found guilty of an offence against section 63A on 2 or more occasions in any period of 10 years is not a fit and proper person to carry on the business or practice of a nurse's agent.
 - (5) A prohibition under this section may be limited in its operation in any of the following ways—
 - (a) it may be limited to specified premises, but only where the person concerned is carrying on the business or practice of a nurse's agent at those premises and at other premises;
 - (b) it may be limited to premises within a specified area;
 - (c) it may be limited in any other way specified by the Secretary.
 - (6) If a prohibition under this section is subject to an entitlement to apply after a specified time for the prohibition to be lifted, the application may be made to the Secretary after that time.
 - (7) The Secretary may lift the prohibition or confirm the prohibition and set a further period after which an application for the prohibition to be lifted can be made under this section.
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s. 63D

S. 63D
inserted by
No. 14/2002
s. 37.

63D. Offence of carrying on business or practice while prohibited

- (1) A person must not in contravention of a prohibition under this Part carry on the business or practice of a nurse's agent.

Penalty: For a natural person, 200 penalty units for a first offence or 400 penalty units for a second or subsequent offence.

For a body corporate, 400 penalty units for a first offence or 800 penalty units for a second or subsequent offence.

- (2) For a continuing offence against this section the offender is liable to a maximum penalty of—
- (a) 50 penalty units for a natural person; or
 - (b) 100 penalty units for a body corporate—
- in respect of each day on which that offence continues after conviction under sub-section (1) or a notice is given under section 63C, in addition to the penalty specified in sub-section (1).
- (3) If the services of a nurse's agent are provided on premises on which a business or practice is carried on, it is to be presumed for the purposes of this section, unless the contrary is established, that the business or practice carried on or provided is the business or practice of a nurse's agent.

S. 63E
inserted by
No. 14/2002
s. 37.

63E. Effect of appeal against conviction

A prohibition under this Part has no effect while an appeal is pending against the conviction or finding of guilt for the offence on which the prohibition is based.

63F. Power to require information from convicted persons and others

S. 63F
inserted by
No. 14/2002
s. 37.

- (1) If a body corporate is convicted of or made the subject of a finding of guilt for an offence against section 63A or 63D in connection with the carrying on of the business or practice by the body corporate the Secretary may require certain persons to provide specified information to the Secretary, as provided by this section.
- (2) The body corporate may be required to provide information that the Secretary may reasonably require to ascertain the identity of each person who has a management role or substantial interest in the body corporate.
- (3) A person whom the Secretary reasonably believes has a management role or substantial interest in the body corporate may be required to provide information that the Secretary may reasonably require to ascertain the identity of each body corporate in which that person has a management role or substantial interest.
- (4) A requirement to provide information is to be imposed by direction in writing served on the person or body corporate concerned.
- (5) The direction must specify a period of not less than 7 days as the period within which the required information must be provided.
- (6) A person must not fail without reasonable excuse to comply with a requirement under this section.

Penalty: For a natural person, 200 penalty units for a first offence or 400 penalty units for a second or subsequent offence.

For a body corporate, 400 penalty units for a first offence or 800 penalty units for a second or subsequent offence.

Nurses Act 1993
Act No. 111/1993

Part 5—Offences and Related Provisions

s. 63G

- (7) A person must not provide information that the person believes is false or misleading in a material particular.

Penalty: For a natural person, 200 penalty units for a first offence or 400 penalty units for a second or subsequent offence.

For a body corporate, 400 penalty units for a first offence or 800 penalty units for a second or subsequent offence.

- (8) It is a reasonable excuse for a natural person to refuse or fail to give information that the person is required to do by or under this section, if the giving of the information would tend to incriminate the person.
- (9) Despite sub-section (8), it is not a reasonable excuse for a natural person to refuse or fail to produce a document that the person is required to produce by or under this section, if the production of the document would tend to incriminate the person.

S. 63G
inserted by
No. 14/2002
s. 37.

63G. Meaning of management role and substantial interest

For the purposes of sections 63A to 63F a person is to be treated as having a management role or substantial interest in a body corporate if—

- (a) the person is a director, secretary or executive officer of the body corporate; or
- (b) in the case of a body corporate that is incorporated as a corporation limited by shares, the person is entitled to more than 10% of the issued share capital of the corporation (with the shares to which a person is entitled including shares in which the person or an associate of the person has a relevant interest within the meaning of the Corporations Act).

Nurses Act 1993
Act No. 111/1993

Part 5—Offences and Related Provisions

s. 63H

63H. Register of prohibitions

- (1) The Secretary must cause to be kept a register of all persons who are prohibited under section 63C from carrying on the business or practice of a nurse's agent.
- (2) The following particulars must be included on the register against the name of the person to whom they apply—
 - (a) any current prohibition under section 63C;
 - (b) the period for which the prohibition is in force;
 - (c) if the prohibition is limited to specified premises, the address or a description of those premises;
 - (d) if the prohibition is limited to premises in a specified area, a description of the area;
 - (e) if the prohibition is limited in any other way by the Secretary, a description of that limitation.
- (3) The register may be inspected at the head office of the Secretary by any person during ordinary office hours without charge.
- (4) A person may obtain a copy of or an extract from the register without charge.

S. 63H
inserted by
No. 14/2002
s. 37.

63I. Evidentiary certificate

A certificate purporting to be signed by the Secretary to the effect that the person specified in the certificate is or was prohibited under this Part from carrying on the business or practice of a nurse's agent during a period specified in the certificate is evidence, and, in the absence of evidence to the contrary, is proof of the matters stated in it.

S. 63I
inserted by
No. 14/2002
s. 37.

Nurses Act 1993
Act No. 111/1993

Part 5—Offences and Related Provisions

s. 63J

S. 63J
inserted by
No. 14/2002
s. 37.

63J. Secretary to notify Board of prohibitions

If the Secretary has given notice of a prohibition under section 63C, the Secretary must advise the following of that prohibition—

- (a) the Board; and
- (b) denominational hospitals, health service establishments, private hospitals, privately operated hospitals and public hospitals within the meaning of the **Health Services Act 1988**.

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.

S. 64A
inserted by
No. 94/2000
s. 41.

64A. Advertising

- (1) A person must not advertise nursing services in a manner which—
 - (a) is or is intended to be false, misleading or deceptive; or
 - (b) offers a discount, gift or other inducement to attract patients to a nurse or a nurse's services unless the advertisement also sets out the terms and conditions of that offer; or
 - (c) refers to, uses or quotes from testimonials or purported testimonials; or
 - (d) creates an unreasonable expectation of beneficial treatment.

Penalty: 50 penalty units for a natural person or
100 penalty units for a body corporate.

Nurses Act 1993
Act No. 111/1993

Part 5—Offences and Related Provisions

s. 64B

- (2) If a body corporate contravenes sub-section (1), 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 also commits an offence under sub-section (1) and is liable for the penalty applicable to a natural person for that offence.
- (3) A person who, in good faith, publishes or prints an advertisement which contravenes sub-section (1) on behalf of another person, is not guilty of an offence under that sub-section.

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S. 64A(4)
repealed by
No. 14/2002
s. 39(2).

- (5) A person who advertises nursing services in a manner otherwise than in compliance with this section is guilty of a continuing offence and may be convicted in respect of each day on which the offence continues.

64B. Advertising guidelines

S. 64B
inserted by
No. 94/2000
s. 41.

- (1) The Governor in Council may, on the recommendation of the Minister, by notice published in the Government Gazette, issue guidelines about the minimum standards formulated by the Board and approved by the Minister for or with respect to the advertising of nursing services.
- (2) The Board must consult with any person nominated by the Minister in formulating guidelines for the consideration of the Minister.

S. 64B(1)
amended by
No. 14/2002
s. 38(a)(i)(ii).

S. 64B(2)
amended by
No. 14/2002
s. 38(b).

Nurses Act 1993
Act No. 111/1993

Part 5—Offences and Related Provisions

s. 64C

S. 64B(3)
amended by
No. 14/2002
s. 38(c)(i)(ii).

(3) The Board must ensure that any guidelines that it has formulated for approval of the Minister have been notified with a request for public comment in the Government Gazette, a newspaper circulating generally throughout Victoria and in any professional magazine, newsletter or journal circulating amongst nurses in Victoria at least 60 days before the guidelines are forwarded to the Minister for consideration.

S. 64B(4)
amended by
No. 14/2002
s. 38(d).

(4) The Board must have regard to any comments received pursuant to a notice under this section in formulating guidelines for the approval of the Minister.

(5) The Board must have regard to any guidelines issued by the Governor in Council under this section.

(6) A court may have regard to any guidelines issued by the Governor in Council under this section.

S. 64C
inserted by
No. 94/2000
s. 41.

64C. Power of the courts to require corrective advertising

If, on the application of the Minister, a court is satisfied that there has been a contravention of section 64A or 5 or a code of practice, the court may make either or both of the following orders—

(a) an order requiring any person involved in the contravention to disclose any information which is in the person's possession or to which the person has access, which is information or of a class of information specified in the order—

(i) to the public or any person or class of persons specified in the order; and

(ii) in the manner specified in the order;

Nurses Act 1993
Act No. 111/1993

Part 5—Offences and Related Provisions

s. 64D

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- (b) an order requiring any person involved in the contravention to publish an advertisement in the terms specified or determined in accordance with the order—
- (i) at the expense of the person; and
 - (ii) in the manner and at the times specified in the order.

64D. Exemptions

S. 64D
inserted by
No. 94/2000
s. 41.

Nothing in section 60 or 62 applies to the giving or performance of any nursing advice, service or attendance by a person registered as a nurse under the law in force in another State or Territory or New Zealand—

- (a) in an emergency if no registered nurse is available; or
- (b) if the person is acting in accordance with that registration for the purpose of assisting with tissue removal or transplantation in accordance with the **Human Tissue Act 1982**; or
- (c) if the person is acting in accordance with that registration for the purpose of assisting with a patient who is being transported into or out of Victoria for medical treatment.

64E. Extension of time

S. 64E
inserted by
No. 14/2002
s. 39(1).

Despite section 26 of the **Magistrates' Court Act 1989**, proceedings for an offence under this Act may be commenced within 3 years after the commission of the alleged 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;

Nurses Act 1993
Act No. 111/1993

Part 6—Administration

s. 66

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- (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;
- (ca) to endorse the registration of nurses who comply with the requirements of this Act as to endorsement of registration; **S. 66(1)(ca) inserted by No. 94/2000 s. 42(1).**
- (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;
- (ea) to determine the categories of nurse practitioner for the purposes of endorsement under section 8B; **S. 66(1)(ea) inserted by No. 94/2000 s. 42(2).**
- (eb) to accredit courses of study or recognise clinical experience that provides competence for each category of nurse practitioner for which registration may be endorsed under section 8B; **S. 66(1)(eb) inserted by No. 94/2000 s. 42(2).**
- (ec) to approve courses of study that provide competence for which registration may be endorsed under section 8C and to determine the manner in which competencies for such endorsement may be maintained; **S. 66(1)(ec) inserted by No. 1/2004 s. 12.**
- (f) to investigate the professional conduct or fitness to practise of persons registered under the Act and impose sanctions where necessary;
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Nurses Act 1993
Act No. 111/1993

Part 6—Administration

s. 66

S. 66(1)(h)
substituted by
No. 94/2000
s. 42(3).

S. 66(1)(ha)
inserted by
No. 94/2000
s. 42(3).

- (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 and publish codes for the guidance of registered nurses about standards recommended by the Board relating to the practise of nursing;
 - (ha) to issue and publish guidelines about the minimum terms and conditions of professional indemnity insurance for registered nurses;
 - (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.

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- (4) The Board must notify registered nurses about any codes proposed to be made under sub-section (1)(h) and call for and consider any submissions from registered nurses about the proposed codes before issuing and publishing those codes. **S. 66(4) inserted by No. 94/2000 s. 42(4).**
- (5) In exercising its functions under sub-section (1)(ea) and (eb) in relation to categories of nurse practitioner for which a nurse's registration can be endorsed under section 8B(2), the Board must have regard to the advice of the nurse practitioner advisory committee established under section 79. **S. 66(5) inserted by No. 94/2000 s. 42(4).**

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— **S. 67(2)(a) substituted by No. 94/2000 s. 43.**
- (i) one must be registered in Division 1 of the Register;
 - (ii) 2 must be registered in Division 2 of the Register and at least one of those must be a person who, at the time of nomination, is a person employed in aged care services;
 - (iii) one must be registered in Division 3 of the Register or be a registered nurse with qualifications in psychiatric nursing;
 - (iv) one must, at the time of nomination, be employed as a director of nursing in a rural or regional hospital;
 - (v) one must, at the time of nomination, be employed as a director of nursing in a metropolitan hospital;

- (vi) one must, at the time of nomination, be employed as a charge nurse;
 - (vii) one must, at the time of nomination, be employed as a grade 2 clinical nurse specialist;
 - (viii) one must, at the time of nomination, be employed as or have experience as a nursing academic or educator; and
- (b) 1 must be a lawyer; and
 - (c) 2 must be persons who are not nurses.

68. Terms of office

S. 68(1)
substituted by
No. 49/1995
s. 11.

- (1) A member of the Board holds office for the period specified in his or her instrument of appointment, which must not be more than 3 years.
- (2) A member of the Board is eligible for reappointment.
- (3) The **Public Administration Act 2004** (other than Part 5 of that Act) does not apply to a member of the Board in respect of the office of member.

S. 68(3)
substituted by
Nos 46/1998
s. 7(Sch. 1),
108/2004
s. 117(1)
(Sch. 3
item 142.3).

- (4) Despite sub-section (1) and anything to the contrary in the member's instrument of appointment, a member may, with the consent of the Minister, continue to hold office at the end of her or his appointment for a period not exceeding 3 months to enable the vacancy in the member's office to be filled.

S. 68(4)
inserted by
No. 42/2005
s. 31(2).

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 subsection (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 the Governor in Council.

S. 72(2)
amended by
No. 23/1994
s. 119(Sch. 2
item 23).

S. 72(3)
repealed by
No. 46/1998
s. 7(Sch. 1).

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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; or
- (c) in the case of an acting member, the occasion for that member so acting had not arisen or had ceased.

S. 74(b)
amended by
No. 23/1994
s. 119(Sch. 2
item 24(a)).

S. 74(c)
inserted by
No. 23/1994
s. 119(Sch. 2
item 24(b)).

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.

S. 75A
inserted by
No. 94/2000
s. 44.

75A. Resolutions without meetings

(1) If—

(a) the Board has taken reasonable steps to give notice to each member setting out the terms of a proposed resolution; and

(b) a majority of the members for the time being sign a document containing a statement that they are in favour of the resolution in the terms set out in the document—

a resolution in those terms is deemed to have been passed at a meeting of the Board held on the day on which the document is signed or, if the members referred to in paragraph (b) do not sign it on the same day, on the day on which the last of those members signs the document.

(2) If a resolution is, under sub-section (1), deemed to have been passed at a meeting of the Board, each member must as soon as practicable be advised of the matter and given a copy of the resolution.

(3) For the purposes of sub-section (1), 2 or more separate documents containing a statement in identical terms, each of which is signed by one or more members, are deemed to constitute one document.

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- (4) The majority of members referred to in sub-section (1)(b) must not include a member who, because of section 75, is not entitled to vote on the resolution.
 - (5) This section does not apply to any resolution of the Board relating to a matter being considered under Part 3.

75B. Approved methods of communication for Board

S. 75B
inserted by
No. 94/2000
s. 44.

- (1) If not less than two-thirds of the members of the Board for the time being holding office so agree, a meeting of the Board may be held by means of a method of communication, or by means of a combination of methods of communication, approved by the President of the Board for the purposes of that meeting.
- (2) For the purposes of this Part, a member of the Board who participates in a meeting held as permitted by sub-section (1) is present at the meeting even if he or she is not physically present at the same place as another member participating in the meeting.
- (3) This section—
 - (a) applies to a meeting or a part of a meeting;
 - (b) does not apply to a meeting conducted for the purposes of Part 3.

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 Administration Act 2004**.

S. 77(2)
amended by
Nos 46/1998
s. 7(Sch. 1),
108/2004
s. 117(1)
(Sch. 3
item 142.4).

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.
- (3) The Board must establish a nurse practitioner advisory committee to advise the Board about the following—
 - (a) the categories of nurse practitioner for which a nurse's registration may be endorsed under section 8B(2);
 - (b) the curriculum, content and standard of courses of study that provide competence for each category of nurse practitioner for which registration may be endorsed under section 8B(2);
 - (c) the content and standard of clinical experience that provide competence for each category of nurse practitioner for which registration may be endorsed under section 8B(2);
 - (d) the clinical practice guidelines for nurse practitioners whose registration is endorsed in a category of nurse practitioner under section 8B(2);

S. 79(3)
inserted by
No. 94/2000
s. 45(1).

- (e) the Schedule 2, 3, 4 and 8 poisons within the meaning of the **Drugs, Poisons and Controlled Substances Act 1981** that nurse practitioners whose registration is endorsed in a category of nurse practitioner under section 8B(2) should be authorised to obtain and have in her or his possession and use, sell or supply under that Act;
- (f) the requirements for the on-going education of nurse practitioners whose registration is endorsed in a category of nurse practitioner under section 8B(2).

S. 79(4)
inserted by
No. 94/2000
s. 45(1).

- (4) A nurse practitioner advisory committee may advise the Board about any other matter relating to the endorsement of registration of nurses under section 8B(2) or about nurse practitioners whose registration is endorsed under that sub-section.

S. 80
amended by
No. 94/2000
s. 45(2) (ILA
s. 39B(1)).

80. Membership of committees

- (1) 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.
- (2) Without limiting sub-section (1), the members of a committee appointed for the purposes of section 79(3) must include—
 - (a) a registered medical practitioner with expertise in clinical pharmacology;

S. 80(2)
inserted by
No. 94/2000
s. 45(2).

- (b) unless paragraph (c) applies—
 - (i) a registered nurse with clinical expertise relevant to nurse practitioners or a category of nurse practitioner;
 - (ii) a registered medical practitioner with clinical expertise relevant to nurse practitioners or a category of nurse practitioner;
- (c) if the committee is considering a matter relating to a particular category of nurse practitioner—
 - (i) a registered medical practitioner with clinical expertise relevant to that category of nurse practitioner;
 - (ii) a registered nurse with clinical expertise relevant to that category of nurse practitioner;
- (d) an academic or educator in pharmacology;
- (e) a nursing academic or educator.

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.

* * * * *

S. 81(3)
repealed by
No. 46/1998
s. 7(Sch. 1).

Pt 7
(Heading)
amended by
No. 31/1994
s. 4(Sch. 2
item 60.1).

PART 7—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 in which money may be invested under the **Trustee Act 1958**; or
- (b) in any other manner that the Minister approves.

S. 83(a)
amended by
No. 104/1995
s. 6(Sch. 1
item 22).

Nurses Act 1993
Act No. 111/1993

Part 7—Financial Provisions

s. 84

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**Ss 84–86
repealed by
No. 31/1994
s. 4(Sch. 2
item 60.2).**

**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.
- (3) A person authorised by the Secretary under the **Health Act 1958** may, in addition to any other person referred to in sub-section (1), take proceedings for an offence against section 63A, 63D or 63F.

S. 87(3)
inserted by
No. 14/2002
s. 40.

- (4) A person authorised by the Secretary under the **Health Act 1958**, in relation to a contravention of section 63A, 63D or 63F, may carry out the functions and may exercise the powers of a person authorised or appointed by the Board for the purposes of this Part.

S. 87(4)
inserted by
No. 14/2002
s. 40.

88. Identification

- (1) The Board must issue an identification card to each person appointed by the Board to apply for or execute search warrants for the purposes of this Act.
- (2) A person appointed by the Board must, in the course of performing her or his functions under this Act, produce her or his identification card to any person who requests its production.

S. 88
amended by
No. 23/1994
s. 119(Sch. 2
item 25),
substituted by
No. 94/2000
s. 46.

Nurses Act 1993
Act No. 111/1993

Part 8—Enforcement and Supplementary Powers

s. 88A

88A. Powers of entry with warrant

S. 88A
inserted by
No. 94/2000
s. 46.

- (1) A person appointed for that purpose by the Board may apply to a magistrate for the issue of a search warrant in relation to particular premises if that person believes, on reasonable grounds—
 - (a) that there is or has been a contravention of this Act or the regulations on the premises; or
 - (b) that entry into or onto the 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 or endorsement of registration of a nurse.
- (2) If a magistrate is satisfied by evidence on oath, whether oral or by affidavit, that there are reasonable grounds for suspecting that there is on the premises a particular thing that may be evidence of the commission of an offence against this Act or the regulations or of grounds for the suspension or cancellation of the registration or endorsement of registration of a nurse, the magistrate may issue a search warrant authorising any person named in the warrant—
 - (a) to enter the premises or the part of the premises named or described in the warrant; and
 - (b) to search for and seize a thing named or described in the warrant; and
 - (c) to bring the thing before the Court so that the matter may be dealt with according to law.

Nurses Act 1993
Act No. 111/1993

Part 8—Enforcement and Supplementary Powers

s. 88B

- (3) In addition to any other requirement, a search warrant issued for the purposes of this section must state—
 - (a) the offence or grounds of suspension or cancellation suspected; and
 - (b) the premises to be searched; and
 - (c) the name or a description of the thing to be searched for; and
 - (d) any conditions to which the warrant is subject; and
 - (e) whether entry is authorised to be made at any time or during stated hours; and
 - (f) a day, not later than 7 days after the issue of the warrant, on which the warrant ceases to have effect.
- (4) A search warrant must be issued in accordance with the **Magistrates' Court Act 1989** and in a form prescribed under that Act.
- (5) The rules to be observed with respect to search warrants mentioned in the **Magistrates' Court Act 1989** extend and apply to warrants under this section.

S. 88B
inserted by
No. 94/2000
s. 46.

88B. Announcement before entry

- (1) Immediately before executing a search warrant, a person named in the warrant must announce that he or she is authorised by the warrant to enter the premises.
- (2) The person need not comply with sub-section (1) if she or he believes on reasonable grounds that immediate entry to the premises is required to ensure the safety of any person or that the effective execution of the search warrant is not frustrated.

Nurses Act 1993
Act No. 111/1993

Part 8—Enforcement and Supplementary Powers

s. 88C

88C. Copy of warrant to be given to occupier

If the occupier or another person who apparently represents the occupier is present at premises when a search warrant is being executed, the person or persons named in the warrant must—

- (a) identify themselves to that person by producing their identification card for inspection by that person; and
- (b) give to that person a copy of the execution copy of the warrant.

S. 88C
inserted by
No. 94/2000
s. 46.

88D. Copies or receipts to be given

(1) If a person seizes—

- (a) a document, disk or tape or other thing that can be readily copied; or
- (b) a storage device the information in which can be readily copied—

under a warrant the person, on request by the occupier, must give a copy of the thing or information to the occupier as soon as practicable after the seizure.

(2) If a person seizes a thing under a warrant and has not provided a copy of the thing or information under sub-section (1) the person must provide a receipt for that thing as soon as practicable after the seizure.

S. 88D
inserted by
No. 94/2000
s. 46.

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.
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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 or endorsement of registration, including periods of registration or endorsement of registration, and renewal of registration or endorsement of registration, and applications for registration or endorsement of registration, and renewal of registration or endorsement 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

S. 93(1)(a)
amended by
No. 94/2000
s. 47.

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- (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.
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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.

Nurses Act 1993
Act No. 111/1993

Part 10—Savings and Transitional

s. 98

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- (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—
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Nurses Act 1993
Act No. 111/1993

Part 10—Savings and Transitional

s. 98A

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- (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.

98A. Application of this Act to conduct occurring before the commencement of this Act

S. 98A
inserted by
No. 49/1995
s. 12.

- (1) This Act applies to the activities of a nurse which occurred before the commencement of Part 3 of this Act in so far as there was power to cancel registration under section 23C(1) of the old Act with respect to those activities.
- (2) Sub-section (1) does not apply to activities which are the subject of proceedings or procedures to which section 98 applies.

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

Nurses Act 1993
Act No. 111/1993

Part 10—Savings and Transitional

s. 99

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- (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.
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Nurses Act 1993
Act No. 111/1993

Part 10—Savings and Transitional

s. 100

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- (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 I, III and IV 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.

S. 100(1)(b)
amended by
No. 23/1994
s. 119(Sch. 2
item 26).

Nurses Act 1993
Act No. 111/1993

Part 10—Savings and Transitional

s. 101

- (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 Nurses Act 1993
midwife	person registered under division 1 of the register kept under the Nurses Act 1993
psychiatric nurse	person registered under division 3 of the register kept under the Nurses Act 1993
mental retardation nurse	person registered under division 4 of the register kept under the Nurses Act 1993
mothercraft nurse	person registered under division 5 of the register kept under the Nurses Act 1993

Nurses Act 1993
Act No. 111/1993

Part 10—Savings and Transitional

s. 102

Nurses Act 1958	Nurses Act 1993
State enrolled nurse	person registered under division 2 of the register kept under the Nurses Act 1993
maternal and child health nurse	person registered under division 1 of the register kept under the Nurses Act 1993

102. Further transitional provisions

Section 64E does not apply to an offence under this Act (except an offence under section 64A) that is alleged to have been committed before the commencement of section 39 of the **Health Practitioner Acts (Further Amendments) Act 2002**.

S. 102
substituted by
No. 14/2002
s. 41.

ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 21 October 1993

Legislative Council: 23 November 1993

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."

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

The **Nurses Act 1993** was assented to on 7 December 1993 and came into operation as follows:

Sections 1, 2 on 7 December 1993: section 2(1); section 96 on 9 November 1993: section 2(2); rest of Act on 1 July 1994: Government Gazette 16 June 1994 page 1576.

Nurses Act 1993
Act No. 111/1993

Endnotes

2. Table of Amendments

This Version incorporates amendments made to the **Nurses Act 1993** by Acts and subordinate instruments.

Medical Practice Act 1994, No. 23/1994

Assent Date: 17.5.94
Commencement Date: Ss 1, 2 on 17.5.94: s. 2(1); rest of Act on 1.7.94:
Government Gazette 23.6.94 p. 1672
Current State: All of Act in operation

Financial Management (Consequential Amendments) Act 1994, No. 31/1994 (as amended by No. 43/1995)

Assent Date: 31.5.94
Commencement Date: Ss 1, 2 on 31.5.94: s. 2(1); s. 3, Sch. 1 (*except* item 60)
on 7.7.94: Government Gazette 7.7.94 p. 1878—see
Interpretation of Legislation Act 1984; s. 4, Sch. 2
on 1.1.95: Government Gazette 28.7.94 p. 2055
Current State: All of Act in operation

Medical Practice and Nurses Acts (Amendment) Act 1995, No. 49/1995

Assent Date: 14.6.95
Commencement Date: Ss 6, 7, 9, 12 on 1.7.94: s. 2(1); rest of Act on 14.6.95:
s. 2(2)
Current State: All of Act in operation

Trustee and Trustee Companies (Amendment) Act 1995, No. 104/1995

Assent Date: 5.12.95
Commencement Date: 1.1.96: s. 2
Current State: All of Act in operation

Legal Practice Act 1996, No. 35/1996

Assent Date: 6.11.96
Commencement Date: S. 453(Sch. 1 item 61) on 1.1.97: s. 2(3)
Current State: This information relates only to the provision/s
amending the **Nurses Act 1993**

Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998

Assent Date: 26.5.98
Commencement Date: S. 7(Sch. 1) on 1.7.98: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Nurses Act 1993**

Tribunals and Licensing Authorities (Miscellaneous Amendments) Act 1998, No. 52/1998

Assent Date: 2.6.98
Commencement Date: S. 311(Sch. 1 item 66) on 1.7.98: Government Gazette
18.6.98 p. 1512
Current State: This information relates only to the provision/s
amending the **Nurses Act 1993**

Nurses Act 1993
Act No. 111/1993

Endnotes

Mutual Recognition (Victoria) Act 1998, No. 62/1998

Assent Date: 27.10.98
Commencement Date: S. 8(4) on 27.10.98: s. 2(1)
Current State: This information relates only to the provision/s amending the **Nurses Act 1993**

Chinese Medicine Registration Act 2000, No. 18/2000 (as amended by No. 94/2000)

Assent Date: 16.5.00
Commencement Date: S. 111(Sch. items 4.1–4.4) on 1.1.02: Government Gazette 4.10.01 p. 2511
Current State: This information relates only to the provision/s amending the **Nurses Act 1993**

Statute Law Revision Act 2000, No. 74/2000

Assent Date: 21.11.00
Commencement Date: S. 3(Sch. 1 item 90) on 22.11.00: s. 2(1)
Current State: This information relates only to the provision/s amending the **Nurses Act 1993**

Nurses (Amendment) Act 2000, No. 94/2000

Assent Date: 5.12.00
Commencement Date: Ss 3(b), 22, 25, 30, 31, 34, 37, 44 on 1.8.01: Government Gazette 12.7.01 p. 1623; ss 3(a)(c), 4–21, 23, 24, 26–29, 32, 33, 35, 36, 38–43, 45–47 on 1.11.01: s. 2(3)
Current State: This information relates only to the provision/s amending the **Nurses Act 1993**

Health Records Act 2001, No. 2/2001

Assent Date: 10.4.01
Commencement Date: Ss 126, 127 on 1.7.02: s. 2(2)
Current State: This information relates only to the provision/s amending the **Nurses Act 1993**

Statute Law (Further Revision) Act 2002, No. 11/2002

Assent Date: 23.4.02
Commencement Date: S. 3(Sch. 1 item 48) on 24.4.02: s. 2(1)
Current State: This information relates only to the provision/s amending the **Nurses Act 1993**

Health Practitioner Acts (Further Amendments) Act 2002, No. 14/2002

Assent Date: 7.5.02
Commencement Date: S. 38 on 8.5.02: s. 2(1); ss 36, 39, 41 on 1.7.03: Government Gazette 26.6.03 p. 1548; ss 37, 40 on 30.6.04: s. 2(3)
Current State: This information relates only to the provision/s amending the **Nurses Act 1993**

Health Legislation (Amendment) Act 2003, No. 67/2003

Assent Date: 14.10.03
Commencement Date: S. 12 on 15.10.03: s. 2(1)
Current State: This information relates only to the provision/s amending the **Nurses Act 1993**

Nurses Act 1993
Act No. 111/1993

Endnotes

Health Legislation (Further Amendment) Act 2003, No. 98/2003

Assent Date: 2.12.03
Commencement Date: S. 7 on 1.1.04: s. 2(3)
Current State: This information relates only to the provision/s amending the **Nurses Act 1993**

Nurses (Amendment) Act 2004, No. 1/2004

Assent Date: 6.4.04
Commencement Date: 7.4.04: s. 2
Current State: All of Act in operation

Public Administration Act 2004, No. 108/2004

Assent Date: 21.12.04
Commencement Date: S. 117(1)(Sch. 3 item 142) on 5.4.05: Government Gazette 31.3.05 p. 602
Current State: This information relates only to the provision/s amending the **Nurses Act 1993**

Health Legislation (Miscellaneous Amendments) Act, No. 42/2005

Assent Date: 2.8.05
Commencement Date: Ss 31, 32 on 3.8.05: s. 2
Current State: This information relates only to the provision/s amending the **Nurses Act 1993**

Endnotes

3. Explanatory Details

No entries at date of publication.