

First print



New South Wales

## **Nurses Amendment Bill 1996**

### **Explanatory note**

This explanatory note relates to this Bill as introduced into Parliament.

### **Overview of Bill**

The objects of this Bill are:

- (a) to increase the membership of the Nurses Registration Board from 10 to 13 members (the additional members being a registered nurse authorised to practise midwifery, a registered nurse practising in the mental health area, and an additional consumer representative nominated by the Minister), and
  - (b) to provide for the constitution of Impaired Nurses Panels to deal with complaints and other referred matters concerning nurses who suffer from an impairment (ie, any physical or mental impairment, disability, condition or disorder, such as habitual drunkenness or addiction to a deleterious drug, which detrimentally affects or is likely to detrimentally affect the person's physical or mental capacity to practise nursing).
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## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** is a formal provision giving effect to the amendments to the *Nurses Act 1991* set out in Schedules 1 and 2.

### **Schedule 1 Amendments relating to membership of the Nurses Registration Board**

**Schedule 1 [1]** increases the membership of the Nurses Registration Board from 10 to 13. The additional members will be a registered nurse who is authorised to practise midwifery and who is elected in accordance with the regulations (see **Schedule 1 [2]**), a registered nurse nominated by the Minister who practises nursing in the mental health area (see **Schedule 1 [3]**), and an additional representative of consumers who is nominated by the Minister (see **Schedule 1 [4]**).

**Schedule 1 [5]** consequentially increases the size of a quorum for a meeting of the Board from 6 to 8 members.

**Schedule 1 [7]** provides that until elections are held under the regulations for the purposes of electing the new elected member of the Board, the person appointed is to be a registered nurse authorised to practise midwifery who is nominated by the Minister. **Schedule 1 [6]** enables savings and transitional regulations to be made as a consequence of the proposed Act.

### **Schedule 2 Amendments relating to impairment matters**

**Schedule 2 [4]** inserts Division 4 of Part 5 in order to provide an alternative to the current disciplinary procedures that follow the making of complaints about nurses. The proposed Division provides for references to or notifications of, and inquiry by, Impaired Nurses Panels and the Board when it appears (whether or not a complaint has been made) that a nurse suffers from an impairment. Section 4A of the Act presently provides that a person suffers from an impairment for the purposes of the Act if the person suffers from any physical or mental impairment, disability, condition or disorder which detrimentally affects (or is likely to detrimentally affect) the person's physical or mental capacity to practise nursing. This includes habitual drunkenness or addiction to a deleterious drug.

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Various actions can be taken if the nurse concerned is found to suffer an impairment. A Panel may, for example, recommend counselling or that the Board suspend the nurse from practising nursing for a specified period. Such a recommendation requires the voluntary consent of the nurse to be put into effect. The provisions ensure that such a nurse is notified of a proposed inquiry, is entitled to make representations and have his or her privacy protected.

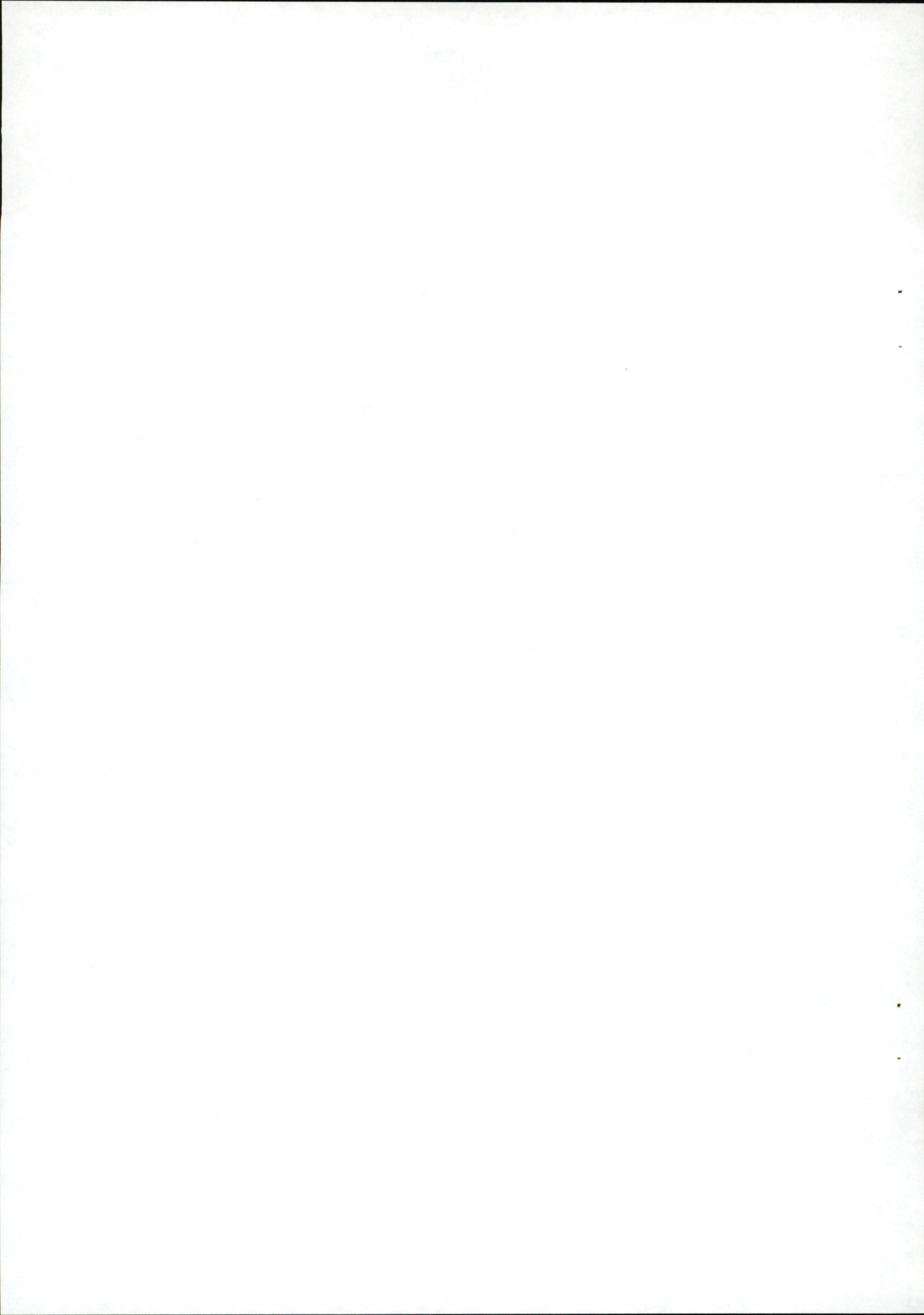
Similar provisions apply under the *Medical Practice Act 1992* in respect of medical practitioners who suffer an impairment.

**Schedule 2 [4]** also inserts Division 5 of Part 5 to provide for the constitution of Panels. A Panel is constituted when the Board decides to refer a matter concerning a nurse suffering from an impairment and the Board appoints 3 persons to sit as an Impaired Nurses Panel. At least one of the appointed persons is to be a medical practitioner and at least one is to be a registered nurse.

**Schedule 2 [1]** defines *Panel* as an Impaired Nurses Panel constituted under the proposed Division 5 of Part 5. **Schedule 2 [2]** enables the Board to refer a complaint to such a Panel, and **Schedule 2 [3]** is a consequential amendment.

**Schedule 2 [5]** provides protection for Panel members from liability for things done in good faith for the purposes of executing their functions under the Act.

**Schedule 2 [6]** enables regulations to be made to deal with procedure before a Panel.





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## Nurses Amendment Bill 1996

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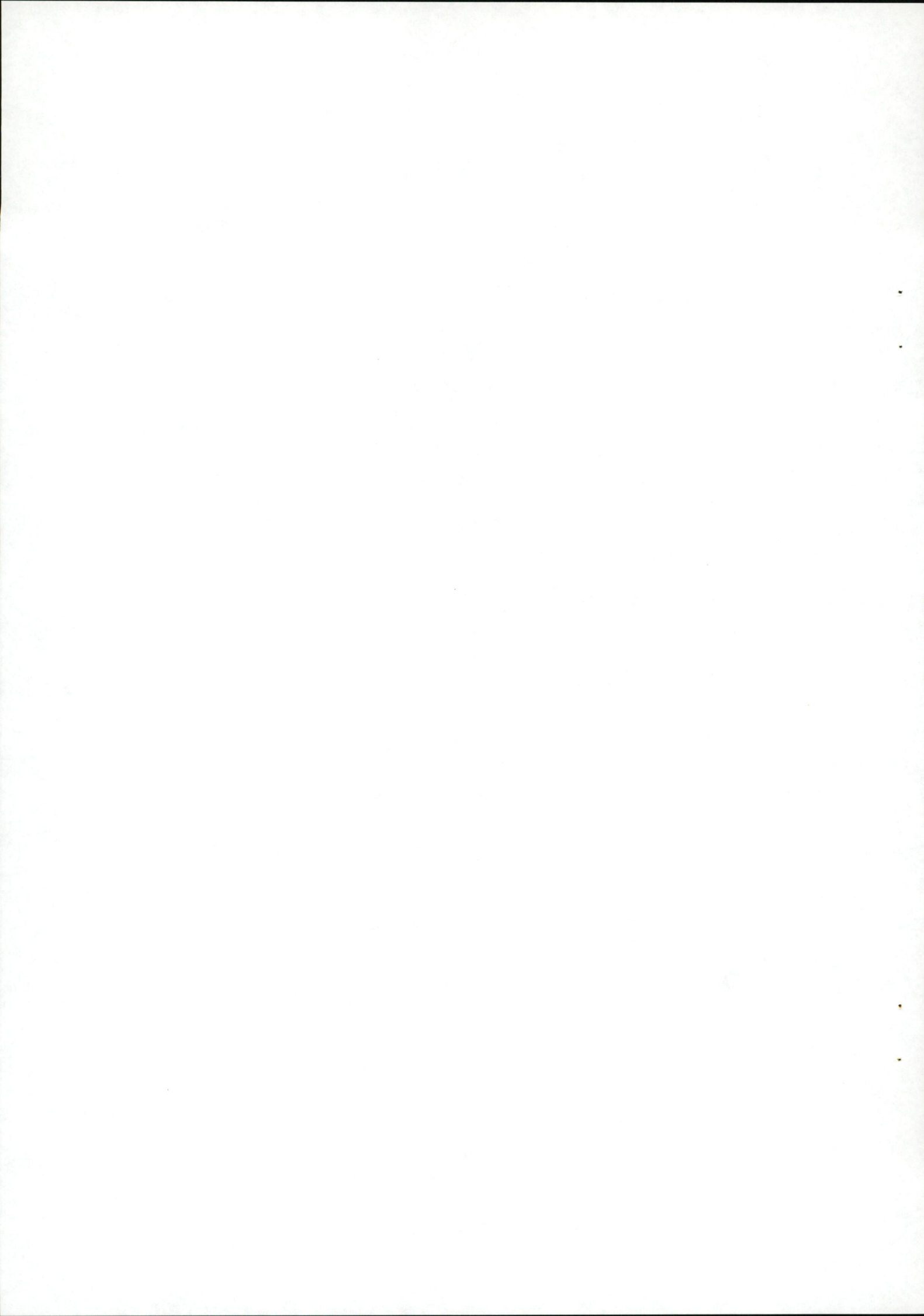
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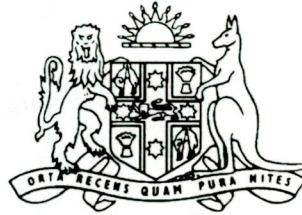
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New South Wales

## Nurses Amendment Bill 1996

No. , 1996

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### **A Bill for**

An Act to amend the *Nurses Act 1991* with respect to the membership of the Nurses Registration Board and to make further provision with respect to impairment matters concerning accredited nurses; and for related purposes.

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

**1 Name of Act**

This Act is the *Nurses Amendment Act 1996*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.          5

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

The *Nurses Act 1991* is amended as set out in Schedules 1 and 2.



**Schedule 1 Amendments relating to membership  
of the Nurses Registration Board**

(Section 3)

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

Omit "10" from section 9 (1). Insert instead "13". 5

**[2] Section 9 (2) (b1)**

Insert after section 9 (2) (b):

(b1) 1 is to be a registered nurse authorised by the Board to practise midwifery who is elected in accordance with the regulations by registered nurses who are eligible to vote at elections held for the purposes of this paragraph, 10

**[3] Section 9 (2) (f1)**

Insert after section 9 (2) (f):

(f1) 1 is to be a registered nurse who is nominated by the Minister and who practises nursing in the area of mental health, 15

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

Omit the paragraph. Insert instead:

(h) 2 are to be persons nominated by the Minister as representatives of consumers. 20

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

Omit "6" from clause 11. Insert instead "8".

Nurses Amendment Bill 1996

Schedule 1 Amendments relating to membership of the Nurses Registration Board

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

Omit "this Act." from clause 2 (1). Insert instead:

the following Acts:

this Act

*Nurses Amendment Act 1996*

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**[7] Schedule 3**

Insert after Part 2:

**Part 3 Provisions consequent on enactment of  
Nurses Amendment Act 1996**

**19 Appointment of new elected member of the Board**

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

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**Schedule 2 Amendments relating to impairment matters**

(Section 3)

**[1] Section 3 Definitions**

Insert in alphabetical order in section 3 (1):

5

*Panel* means an Impaired Nurses Panel constituted under Division 5 of Part 5.

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

Omit "a Committee" from section 45 (1) (a).

Insert instead "an Impaired Nurses Panel, a Committee".

10

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

Insert "or an Impaired Nurses Panel" after "Committee" in section 46 (4).

**[4] Part 5, Divisions 4 and 5**

Insert after Division 3 of Part 5:

15

**Division 4 Impairment matters concerning nurses**

**70A Referral of impairment matters concerning nurses**

(1) The Board may refer any matter to an Impaired Nurses Panel if the Board considers that the matter indicates that an accredited nurse suffers from an impairment. This is not limited to matters that are the subject of a complaint to the Board.

20

(2) If the Board is aware that a complaint has been made to the Commission about an accredited nurse who is the subject of a referral to a Panel, the Board is to notify the Commission of the referral.

25

**70B Persons may notify Board of impairment matters concerning nurses**

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

30

**70C Commission may refer impairment matters to Board**

- (1) If the Commission becomes aware of any matter that the Commission considers indicates that an accredited nurse suffers or may suffer from an impairment, the Commission may refer the matter to the Board. 5
- (2) This section does not affect the functions of the Board in relation to a complaint made to the Commission or a matter referred to the Commission for investigation.

**70D Panel to inquire into matter referred to it**

- (1) An Impaired Nurses Panel is to inquire into any matter referred to it and may obtain reports and other information concerning the matter from any source it considers appropriate. 10
- (2) The Panel may request an accredited nurse who is the subject of a matter referred to the Panel, to attend before the Panel for the purpose of enabling the Panel to obtain information on the matter and make an assessment. 15

**70E Panel not to take action while Commission is investigating**

A Panel is not to investigate or take any other action in relation to any matter if the Panel is aware that the matter is the subject of an investigation by the Commission, while the investigation is being conducted. 20

**70F Board to give notice of proposed inquiry**

The Board is to give notice to an accredited nurse of any proposed inquiry by a Panel concerning the nurse. The notice is to include sufficient details of the matters to which the inquiry relates. 25

**70G Nurse entitled to make representations**

An accredited nurse who is the subject of any inquiry by a Panel is entitled to make oral or written representations to the Panel with respect to the matters being or to be the subject of the inquiry. 30



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**70H Assessment, report and recommendations by Panel**

- (1) A Panel is to make an assessment in respect of each referral to it, based on the results of its inquiry into the matter.
- (2) On the basis of its assessment, the Panel may do any one or more of the following things:
  - (a) counsel the accredited nurse concerned or recommend that the nurse undertake specified counselling, 5
  - (b) recommend that the nurse consent to conditions being placed on the nurse's accreditation or to being suspended from practising nursing for a specified period, 10
  - (c) make recommendations to the Board as to any action that the Panel considers should be taken in relation to the matter. 15
- (3) The Panel is to report in writing to the Board on each referral to the Panel. The report is to detail the results of the Panel's inquiries and assessment in respect of the referral and any action taken by the Panel under this Division in relation to it. 20

**70I Voluntary suspension or conditions on accreditation**

- (1) The Board may place conditions on an accredited nurse's accreditation, or suspend the nurse from practising nursing, if a Panel has recommended that the Board do so and the Board is satisfied that the nurse has voluntarily consented to the recommendation. 25
- (2) Because the nurse's action is voluntary, the nurse is entitled at any time to have those conditions removed or altered or the suspension lifted or shortened by requesting the Board in writing to do so. 30
- (3) However, the Panel that made the recommendation for the conditions or suspension must then review the matter and report in writing to the Board on the results of the review. 35



- (4) The Panel may recommend in its report that no further action be taken in respect of the matter, or it may recommend that the matter be dealt with as a complaint against the nurse (in which case the Board must deal with it as a complaint). 5

**70J Some matters to be dealt with as complaints**

- (1) If a Panel recommends that an accredited nurse consent to conditions being placed on the nurse's accreditation, or to the suspension of the nurse's accreditation, and the nurse fails to comply with the recommendation, the Board is to deal with the matter that was the subject of the referral to the Panel as a complaint against the nurse. 10
- (2) If the Panel recommends that a matter referred to it be dealt with as a complaint, the Board is to deal with the matter as a complaint against the nurse concerned. 15
- (3) In any other case that the Board thinks it appropriate to do so, the Board may treat a matter which has been referred to a Panel as grounds for a complaint under this Division and may deal with the matter accordingly.

**70K Confidentiality of Panel's report to Board** 20

- (1) A person must not directly or indirectly make a record of or divulge to any person any information contained in a report by a Panel to the Board that has come to the person's notice in the exercise of the person's functions under this Act, except for the purpose of exercising functions under this Act. 25

Maximum penalty: 50 penalty units.

- (2) A person cannot be required in civil proceedings in any court to produce or permit access to any report made by a Panel to the Board or to divulge the contents of any such report. 30
- (3) In this section:  
*court* includes any tribunal, authority or person having power to require the production of documents or the answering of questions, but does not include the Tribunal or a Committee. 35

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**70L Board to consider Panel's reports when assessing application for accreditation**

- (1) The Board is to take the following matters into account when considering a person's application for accreditation under this Act: 5
- (a) any report of a Panel concerning any matter involving the person (including any recommendations made in the report),
  - (b) any failure by the person to attend before a Panel in accordance with a request of the Panel. 10
- (2) This section does not limit the matters that the Board may take into account when it considers an application for accreditation.

**Division 5 Impaired Nurses Panels**

**70M Impaired Nurses Panels** 15

- (1) There are to be Impaired Nurses Panels for the purposes of this Act.
- (2) A Panel has and may exercise the jurisdiction and functions conferred or imposed on it by or under this or any other Act. 20

**70N Board to constitute Panel when required**

- (1) If the Board decides to refer a matter to an Impaired Nurses Panel, it is to appoint 3 persons to sit as the Panel for the purpose of dealing with the matter.
- (2) At least one of the appointed persons must be a registered nurse, and at least one must be a registered medical practitioner. 25
- (3) A person may be appointed to sit on a Panel whether or not the person is a member of the Board, but not if the person has previously dealt with the particular matter before the Panel in the person's capacity as a member of the Board. 30
- (4) A member of a Panel, while sitting on the Panel, is entitled to be paid at the rate determined by the Minister.

**700 Decisions of Panel**

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

5

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

Insert at the end of section 77 (d):

or

- (e) an Impaired Nurses Panel or a member of a Panel,

**[6] Section 78 Regulations**

10

Insert after section 78 (2) (l):

- (m) the procedure before an Impaired Nurses Panel.



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# Nurses Amendment Act 1996 No 61

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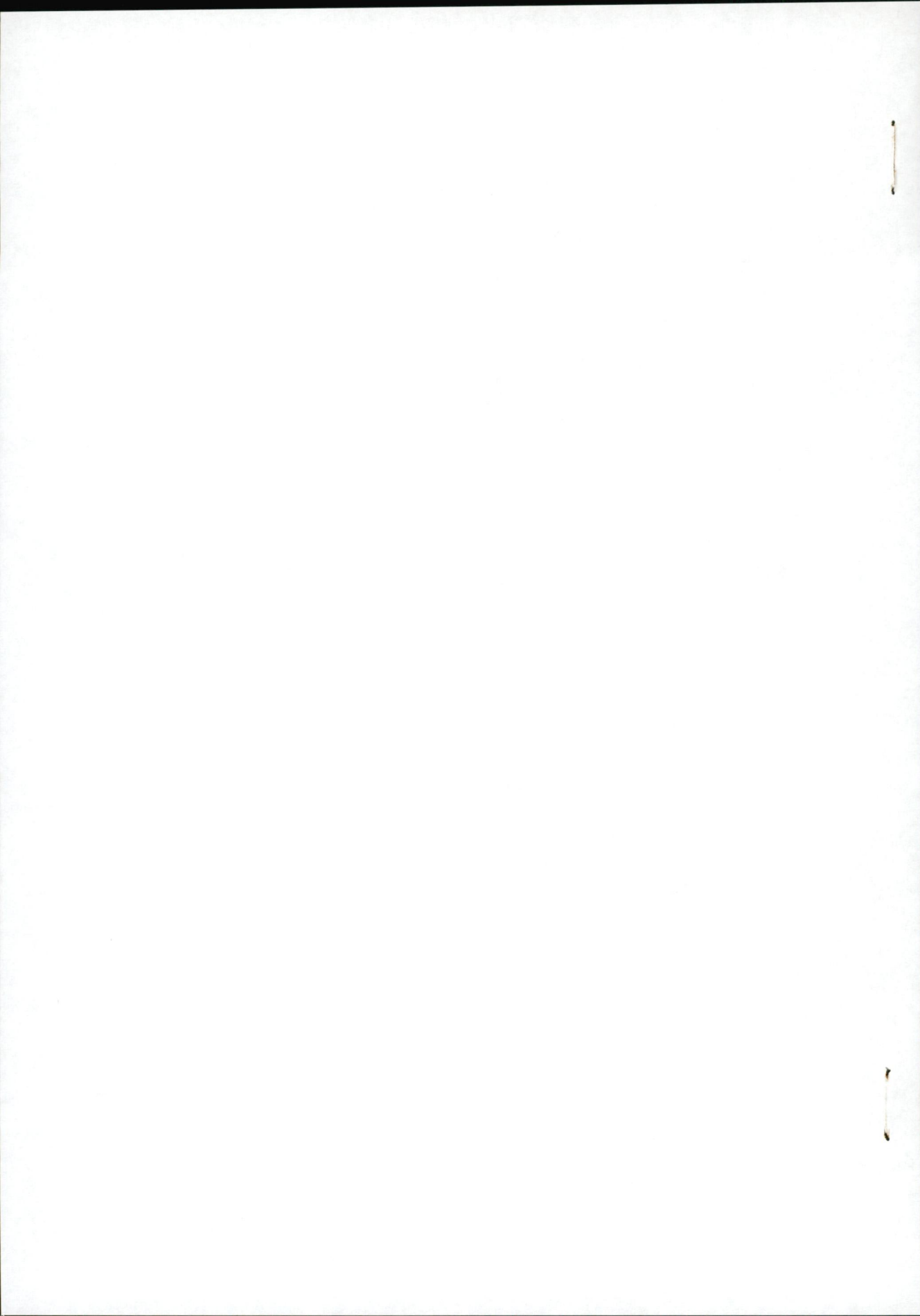
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New South Wales

## **Nurses Amendment Act 1996 No 61**

Act No 61, 1996

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An Act to amend the *Nurses Act 1991* with respect to the membership of the Nurses Registration Board and to make further provision with respect to impairment matters concerning accredited nurses; and for related purposes.  
[Assented to 19 September 1996]

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

**1 Name of Act**

This Act is the *Nurses Amendment Act 1996*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

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

The *Nurses Act 1991* is amended as set out in Schedules 1 and 2.

## **Schedule 1 Amendments relating to membership of the Nurses Registration Board**

(Section 3)

### **[1] Section 9 Membership of the Board**

Omit "10" from section 9 (1). Insert instead "13".

### **[2] Section 9 (2) (b1)**

Insert after section 9 (2) (b):

(b1) 1 is to be a registered nurse authorised by the Board to practise midwifery who is elected in accordance with the regulations by registered nurses who are eligible to vote at elections held for the purposes of this paragraph,

### **[3] Section 9 (2) (f1)**

Insert after section 9 (2) (f):

(f1) 1 is to be a registered nurse who is nominated by the Minister and who practises nursing in the area of mental health,

### **[4] Section 9 (2) (h)**

Omit the paragraph. Insert instead:

(h) 2 are to be persons nominated by the Minister as representatives of consumers.

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

Omit "6" from clause 11. Insert instead "8".

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

Omit "this Act." from clause 2 (1). Insert instead:

the following Acts:

this Act

*Nurses Amendment Act 1996*

**[7] Schedule 3**

Insert after Part 2:

**Part 3 Provisions consequent on enactment of  
Nurses Amendment Act 1996**

**19 Appointment of new elected member of the Board**

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

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(Section 3)

### **[1] Section 3 Definitions**

Insert in alphabetical order in section 3 (1):

*Panel* means an Impaired Nurses Panel constituted under Division 5 of Part 5.

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Omit "a Committee" from section 45 (1) (a).

Insert instead "an Impaired Nurses Panel, a Committee".

### **[3] Section 46 Role of Health Care Complaints Commission**

Insert "or an Impaired Nurses Panel" after "Committee" in section 46 (4).

### **[4] Part 5, Divisions 4 and 5**

Insert after Division 3 of Part 5:

#### **Division 4 Impairment matters concerning nurses**

##### **70A Referral of impairment matters concerning nurses**

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

##### **70B Persons may notify Board of impairment matters concerning nurses**

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



**70C Commission may refer impairment matters to Board**

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

**70D Panel to inquire into matter referred to it**

- (1) An Impaired Nurses Panel is to inquire into any matter referred to it and may obtain reports and other information concerning the matter from any source it considers appropriate.
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**70E Panel not to take action while Commission is investigating**

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**70F Board to give notice of proposed inquiry**

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**70G Nurse entitled to make representations**

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### **70I Voluntary suspension or conditions on accreditation**

- (1) The Board may place conditions on an accredited nurse's accreditation, or suspend the nurse from practising nursing, if a Panel has recommended that the Board do so and the Board is satisfied that the nurse has voluntarily consented to the recommendation.
- (2) Because the nurse's action is voluntary, the nurse is entitled at any time to have those conditions removed or altered or the suspension lifted or shortened by requesting the Board in writing to do so.
- (3) However, the Panel that made the recommendation for the conditions or suspension must then review the matter and report in writing to the Board on the results of the review.

- (4) The Panel may recommend in its report that no further action be taken in respect of the matter, or it may recommend that the matter be dealt with as a complaint against the nurse (in which case the Board must deal with it as a complaint).

#### **70J Some matters to be dealt with as complaints**

- (1) If a Panel recommends that an accredited nurse consent to conditions being placed on the nurse's accreditation, or to the suspension of the nurse's accreditation, and the nurse fails to comply with the recommendation, the Board is to deal with the matter that was the subject of the referral to the Panel as a complaint against the nurse.
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#### **70K Confidentiality of Panel's report to Board**

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Maximum penalty: 50 penalty units.

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

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



**70L Board to consider Panel's reports when assessing application for accreditation**

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

**Division 5 Impaired Nurses Panels**

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

**700 Decisions of Panel**

- (1) A decision supported by any 2 members of a Panel is the decision of the Panel.
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**[5] Section 77 Protection from liability**

Insert at the end of section 77 (d):

or

- (e) an Impaired Nurses Panel or a member of a Panel,

**[6] Section 78 Regulations**

Insert after section 78 (2) (l):

- (m) the procedure before an Impaired Nurses Panel.

[Minister's second reading speech made in—  
Legislative Assembly on 29 May 1996  
Legislative Council on 11 September 1996]