

**PATHOLOGY LABORATORIES ACCREDITATION ACT,
1981, No. 51**

New South Wales



ANNO TRICESIMO

ELIZABETHÆ II REGINÆ

Act No. 51, 1981.

An Act to provide for the accreditation of pathology laboratories. [Assented to, 21st May, 1981.]

Pathology Laboratories Accreditation.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.**PRELIMINARY.****Short title.**

1. This Act may be cited as the "Pathology Laboratories Accreditation Act, 1981".

Commencement.

2. (1) This section and section 1 shall commence on the date of assent to this Act.

(2) Sections 4–10, 44, 46 and 47 and Schedules 1 and 2 shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

(3) Except as provided in subsections (1), (2) and (4), this Act shall commence on such day (being a day that is after the day appointed and notified under subsection (2)) as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

(4) Section 34 shall commence on such day (being a day that is at least 6 months after the day appointed and notified under subsection (3)) as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Arrangement.

3. This Act is divided as follows:—

PART I.—PRELIMINARY—ss. 1–4.

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PART II.—THE PATHOLOGY LABORATORIES ACCREDITATION BOARD—
ss. 5–10.

PART III.—ACCREDITATION OF PATHOLOGY LABORATORIES—ss. 11–
22.

PART IV.—SUPERVISION OF PATHOLOGY LABORATORIES—ss. 23–32.

PART V.—APPEALS—s. 33.

PART VI.—OFFENCES—ss. 34–40.

PART VII.—GENERAL—ss. 41–48.

SCHEDULE 1.—PROVISIONS RELATING TO CONSTITUTION AND
MEMBERSHIP OF THE BOARD.

SCHEDULE 2.—PROVISIONS RELATING TO MEETINGS OF THE BOARD.

SCHEDULE 3.—CATEGORIES OF ACCREDITATION OF PATHOLOGY
LABORATORIES.

Interpretation.

4. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

“accreditation standards” means the standards prescribed pursuant to section 12;

“accredited” means accredited pursuant to this Act;

“Board” means the Pathology Laboratories Accreditation Board constituted under section 5;

“category”, in relation to accredited pathology laboratories, means a category specified in Schedule 3;

“Chairman” means the Chairman of the Board;

“director”, in relation to a pathology laboratory, means the natural person who supervises the supply of pathology services in the laboratory;

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“function” includes power, authority and duty;

“member” means a member of the Board;

“pathology laboratory” means any premises in which pathology services are supplied;

“pathology service” means the analysis of a sample of human tissue or fluid or of any other product of the human body for the purpose of preventing, diagnosing or treating disease, and includes the collection, preparation, preservation and storage of any such sample, but does not include any service which—

(a) is prescribed as exempt for the purposes of this definition;
and

(b) is supplied in accordance with such requirements (if any) as may be prescribed;

“regulations” means regulations made under this Act.

(2) A reference in this Act to the exercise of a function includes, where the function is a duty, a reference to the discharge of that duty.

(3) Where 2 or more premises are used together for the supply of pathology services, those premises shall, if so determined by the Board, be deemed to be a single pathology laboratory for the purposes of this Act.

(4) For the purposes of this Act—

(a) a pathology laboratory is accredited by the issue of a certificate of accreditation to the applicant for accreditation; and

(b) the accreditation of a pathology laboratory is suspended or cancelled by the suspension or cancellation, as the case may be, of the certificate of accreditation in respect of that laboratory.

(5) A reference in this Act to a person who supplies pathology services is a reference—

(a) to a corporation which supplies those services; or

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- (b) to a natural person who supplies those services except where that person supplies those services only in his capacity as a servant or agent.

PART II.

THE PATHOLOGY LABORATORIES ACCREDITATION BOARD.

Constitution of Board.

5. (1) There is hereby constituted a corporation under the corporate name of the "Pathology Laboratories Accreditation Board".

(2) The Board shall, in the exercise of its functions (except in relation to the contents of any report or recommendation given or made by it to the Minister), be subject to the control and direction of the Minister.

Members of Board.

6. (1) The Board shall consist of 10 members, appointed by the Governor, of whom—

- (a) one shall be a commissioner or officer of the Health Commission of New South Wales nominated by the Minister;
- (b) three shall be pathologists chosen by the Minister from a panel of 6 pathologists nominated by the New South Wales State Committee of the Royal College of Pathologists of Australasia;
- (c) one shall be a scientist chosen by the Minister from a panel of 3 scientists nominated by the New South Wales Branch of the Australian Association of Clinical Biochemists;
- (d) one shall be a scientist chosen by the Minister from a panel of 3 scientists nominated by the New South Wales Branch of the Australian Institute of Medical Laboratory Scientists;

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- (e) one shall be a physician chosen by the Minister from a panel of 3 physicians nominated by the New South Wales State Committee of the Royal Australasian College of Physicians;
- (f) one shall be a medical practitioner chosen by the Minister from a panel of 3 medical practitioners nominated by the New South Wales Branch of the Australian Medical Association;
- (g) one shall be a person chosen by the Minister from a panel of 3 persons nominated by the Labor Council of New South Wales; and
- (h) one shall be a barrister admitted by, or a solicitor of, the Supreme Court of New South Wales nominated by the Minister.

(2) The member referred to in subsection (1) (a) shall be the Chairman of the Board.

Provisions relating to the constitution, membership and meetings of the Board.

7. (1) Schedule 1 has effect with respect to the constitution and membership of the Board.

(2) Schedule 2 has effect with respect to the meetings of the Board.

Functions of the Board.

8. The Board—

- (a) shall have and may exercise the functions conferred or imposed on it by or under this or any other Act;
- (b) may provide the Minister with advice relating to accreditation standards or any other matter relating to the administration or execution of this Act; and
- (c) may provide any person with advice relating to the supply of pathology services.

Officers and employees.

9. Such officers and temporary employees as may be necessary for the purpose of carrying out the provisions of this Act shall be appointed or employed under and in accordance with the Public Service Act, 1979.

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Committees of Board.

10. (1) The Board may establish committees to advise the Board on such matters relating to the functions of the Board as are referred to them by the Board.

(2) A committee shall consist of such persons, whether members or not, as may be appointed by the Board.

(3) The procedure for the calling of, and for the conduct of business at, meetings of a committee shall, subject to any directions given to it by the Board, be determined by the committee.

PART III.

ACCREDITATION OF PATHOLOGY LABORATORIES.

Categories of accreditation of pathology laboratories.

11. (1) A pathology laboratory may be accredited as a laboratory of any category specified in Schedule 3.

(2) The Governor may, by regulation, amend or substitute Schedule 3.

(3) The Governor may make regulations containing provisions of a savings or transitional nature consequent on any amendment or substitution of Schedule 3.

Accreditation standards.

12. (1) For the purposes of this Act, standards may be prescribed by the regulations for or with respect to the supply of pathology services in pathology laboratories.

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(2) Without affecting the generality of subsection (1), a standard for or with respect to the supply of pathology services in a pathology laboratory may relate to—

- (a) the structure and fittings of the laboratory;
- (b) the manner in which, or the methods by which, pathology services are supplied in the laboratory;
- (c) the maintenance of equipment and materials used in the laboratory;
- (d) systems of quality control used in the supply of pathology services in the laboratory;
- (e) the recording, reporting and communication of results obtained from the analysis of any sample in the laboratory;
- (f) the number, qualifications and experience of persons employed in the supply of pathology services in the laboratory;
- (g) the duties of the director of the laboratory and of other persons employed in the supply of pathology services in the laboratory;
- (h) the appointment of new or acting directors of the laboratory;
- (i) advertising, offering inducements or otherwise soliciting for business in respect of the supply of pathology services in the laboratory; or
- (j) the sharing of, or the manner of charging, fees for the supply of pathology services in the laboratory.

Applications for accreditation.

13. (1) An application for accreditation of a pathology laboratory may be made to the Board by the person who supplies or intends to supply pathology services in the laboratory.

(2) An application under subsection (1) shall—

- (a) be in or to the effect of the form approved by the Board;
- (b) specify any one category in respect of which accreditation is sought;

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- (c) where that category is a category in which only a class of pathology services may be supplied—specify the class of pathology services proposed to be supplied in the pathology laboratory;
- (d) specify some natural person (whether the applicant or some other person) who is to be the director of the pathology laboratory; and
- (e) be accompanied by such fee as may be prescribed in relation to the application.

(3) An applicant may, with the approval of the Board, amend his application.

Grant or refusal of accreditation.

14. (1) Subject to this Part, the Board shall, after considering an application for accreditation of a pathology laboratory made under section 13 and an inspection report furnished under section 25 on the laboratory—

- (a) accredit the laboratory as a pathology laboratory of the category in respect of which accreditation is sought; or
- (b) refuse to accredit the laboratory.

(2) Where the Board accredits a pathology laboratory, it shall—

- (a) cause the category in respect of which accreditation is granted to be specified on the certificate of accreditation in respect of the laboratory; and
- (b) where necessary, determine the class of pathology services that may be supplied in the laboratory and cause that class to be specified on that certificate.

(3) Where the Board refuses to accredit a pathology laboratory, it shall cause a notice which sets out the reasons for the refusal to be served on the applicant for accreditation.

(4) The Board may, by notice in writing, require an applicant for accreditation of a pathology laboratory, or a person acting on his behalf, to attend before the Board to give such information as the Board may require

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in order to deal with the application and, if the applicant or person so acting fails to attend and to give that information, the Board may refuse to accredit the laboratory.

When accreditation may be granted.

15. Subject to section 22, the Board shall not accredit a pathology laboratory unless it is satisfied that—

- (a) the laboratory and the class of pathology services proposed to be supplied in the laboratory are such that the laboratory may be accredited as a pathology laboratory of the category in respect of which accreditation is sought;
- (b) the accreditation standards applicable to the supply of pathology services in a pathology laboratory so accredited are capable of being complied with in respect of the laboratory;
- (c) the applicant is a fit and proper person to be the holder of the certificate of accreditation in respect of the laboratory;
- (d) the proposed director of the laboratory has the qualifications and experience (if any) required by or under this Act and is a fit and proper person to be such a director; and
- (e) such other requirements as may be prescribed for the purposes of this section have been met.

Refusal to accredit laboratories in certain areas.

16. (1) The Health Commission of New South Wales may, if it is of the opinion that the accreditation in a specified area of the State of pathology laboratories of a particular category or other description would be prejudicial to the economic and efficient delivery of health services in the State, direct the Board, by an order in writing, to refuse to accredit any such laboratories in that area.

(2) The Board shall comply with an order under subsection (1) unless the Health Commission of New South Wales—

- (a) has revoked the order; or
- (b) has exempted the pathology laboratory concerned from the order by notice in writing to the Board.

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Duration of accreditation.

17. (1) Except as provided in section 22 (3), the accreditation of a pathology laboratory remains in force until cancelled under this Act.

(2) Notwithstanding anything in subsection (1), the accreditation of a pathology laboratory that is suspended under this Act shall, for the purposes of section 34, be deemed not to be in force while it is suspended.

Annual accreditation fee.

18. The holder of a certificate of accreditation in respect of a pathology laboratory (including the holder of a suspended certificate of accreditation) shall, on or before each anniversary of the date of issue of the certificate, pay to the Board such annual accreditation fee as may be prescribed in relation to the laboratory.

Alteration of class of services supplied in accredited laboratory.

19. (1) The class of pathology services specified on the certificate of accreditation in respect of a pathology laboratory of a particular category as the class of pathology services that may be supplied in the laboratory may, upon application being made in accordance with subsection (2), be altered by the Board to a different class by an endorsement on that certificate of accreditation.

(2) An application made for the purposes of subsection (1) shall—

- (a) be in or to the effect of the form approved by the Board;
- (b) be accompanied by the certificate to be endorsed; and
- (c) be accompanied by such fee as may be prescribed in relation to the application.

(3) The class of pathology services that may be supplied in an accredited pathology laboratory of a particular category shall not be altered to a different class unless the Board could have accredited the laboratory as a laboratory of that category supplying pathology services of that different class had an application been made for that accreditation at the time the application was made under this section.

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Transfer of certificate of accreditation to another holder.

20. (1) A certificate of accreditation in respect of a pathology laboratory may, upon application being made in accordance with subsection (2), be transferred by the Board to the person who intends to supply pathology services in the laboratory by an endorsement on the certificate.

(2) An application to transfer a certificate of accreditation for the purposes of subsection (1) shall—

- (a) be in or to the effect of the form approved by the Board;
- (b) be accompanied by that certificate; and
- (c) be accompanied by such fee as may be prescribed in relation to the application.

(3) A certificate of accreditation shall not be transferred under this section unless the Board is satisfied that the person to whom it is to be transferred is a fit and proper person to be the holder of that certificate.

Cancellation of accreditation without inquiry.

21. The Board may cancel the accreditation of a pathology laboratory without holding an inquiry under Part IV—

- (a) if the annual accreditation fee payable under section 18 in respect of the laboratory has not been paid by the due date;
- (b) if the holder of the certificate of accreditation in respect of the laboratory requests the Board in writing to cancel the accreditation of the laboratory; or
- (c) where the certificate of accreditation in respect of the laboratory has been designated by the Board as a provisional certificate of accreditation—if the Board considers that it is appropriate to do so.

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Provisional accreditation.

22. (1) The Board may accredit a pathology laboratory notwithstanding—

- (a) that an inspection report has not been furnished under section 25 on the laboratory; or
- (b) any of the provisions of section 15.

(2) The certificate of accreditation issued in respect of a pathology laboratory accredited pursuant to this section shall be designated by the Board as a provisional certificate of accreditation.

(3) The accreditation of a pathology laboratory pursuant to this section remains in force—

- (a) for such period, not exceeding 12 months, as may be specified on the certificate of accreditation in respect of the laboratory; or
- (b) until it is cancelled,

whichever first occurs.

(4) If the accreditation of a pathology laboratory pursuant to this section ceases to be in force, the Board may again accredit the laboratory pursuant to this section.

(5) The accreditation standards prescribed pursuant to section 12 do not apply to a pathology laboratory accredited pursuant to this section.

PART IV.**SUPERVISION OF PATHOLOGY LABORATORIES.****Interpretation: Pt. IV.**

23. In this Part—

“delegate” means a person who is appointed by the Board as its delegate under section 28 (1) (b);

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“inquiry” means an inquiry under this Part;

“inspector” means a person authorised by the Board to be an inspector for the purposes of this Part;

“respondent” means the holder of a certificate of accreditation on whom a notice to show cause is served under section 28.

Powers of inspectors.

- 24.** An inspector may enter and inspect at any reasonable time—
- (a) an accredited pathology laboratory;
 - (b) a pathology laboratory which is the subject of an application made to the Board for accreditation; or
 - (c) any premises in which the inspector has reasonable grounds for believing that pathology services are supplied.

Reports by inspectors.

25. An inspector shall carry out such inspections under section 24 as the Board may require and submit written reports on those inspections to the Board within such time as the Board may require.

Report of laboratory not complying with accreditation standards.

26. Where an inspector states in a report under section 25 that the accreditation standards applicable to the supply of pathology services in an accredited pathology laboratory are not being complied with, the Board may cause to be served on the holder of the certificate of accreditation in respect of the laboratory a notice in writing stating that, unless the measures specified in the notice are taken to secure compliance with those standards within the time so specified, the Board may impose restrictions on the supply of pathology services in the laboratory or suspend or cancel the accreditation of the laboratory.

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Restriction on use of laboratory.

27. (1) Where the holder of a certificate of accreditation in respect of a pathology laboratory has been served with a notice under section 26 and has not, within the time specified in the notice, taken the measures so specified, the Board may, without prejudice to any other action it may take under this Part, impose restrictions on the supply of pathology services in the laboratory.

(2) A restriction imposed under subsection (1) in respect of a pathology laboratory shall—

- (a) take effect from the date upon which the holder of the certificate of accreditation in respect of the laboratory is served with a notice informing him of the restriction; and
- (b) continue to have effect until—
 - (i) the expiration of such period, if any, as may be specified in the notice; or
 - (ii) it is terminated by the Board by a further notice served on that holder,whichever first occurs.

Holding of inquiry.

28. (1) The Board shall, if it is of the opinion that as a result of a report under section 25 or as a result of its own investigation the holder of a certificate of accreditation in respect of a pathology laboratory should be required to show cause why the accreditation of the laboratory should not be suspended or cancelled under this Part—

- (a) fix a time and place for the holding of an inquiry;
- (b) if it determines that the inquiry should be held by its delegate, appoint a member of the Board or a public servant as its delegate; and
- (c) serve on the holder a notice in accordance with subsection (2).

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(2) A notice served under subsection (1) shall—

- (a) inform the respondent that the Board or its delegate, as the case may be, will hold an inquiry into a matter in respect of which he is required to show cause why the accreditation of the pathology laboratory should not be suspended or cancelled under this Part;
- (b) give particulars of that matter; and
- (c) specify the time and place for the holding of the inquiry.

(3) At the time and place fixed under subsection (1) (a) or at such later time and at such place as may be fixed by the Board and specified in a notice served on the respondent, the Board or its delegate, as the case may be, shall hold an inquiry into the matter in respect of which the respondent is required to show cause.

Inquiries—how held.

29. (1) An inquiry shall be held as in open court at a meeting of the Board at which a quorum is present or before the Board's delegate, as the case may be.

(2) At an inquiry—

- (a) the respondent may appear by himself or may be represented by a barrister, solicitor or agent; and
- (b) the Board or its delegate—
 - (i) may conduct the inquiry in such manner as it or he thinks fit;
 - (ii) is not bound to observe rules of law governing the admission of evidence but may inform itself or himself of any matter in such manner as it or he thinks fit;
 - (iii) may allow an inspector or other person to appear for the purpose of presenting and adducing evidence to establish any matter in respect of which the respondent is required to show cause;
 - (iv) may receive in evidence any written submission made by the respondent;

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- (v) may from time to time as it or he thinks fit adjourn the inquiry; and
- (vi) may, subject to section 13 of the Oaths Act, 1900, require any evidence to be given on oath.

(3) An inquiry may be held in the absence of the respondent if the Board or its delegate, as the case may be, is satisfied that the respondent was served with reasonable notice of the time and place of the inquiry.

(4) Where an inquiry is held before the Board's delegate, he shall at the completion of the inquiry forward to the Board a report on the inquiry and his recommendation as to whether the accreditation of the pathology laboratory concerned should be suspended or cancelled under this Part.

Subpoenas.

30. (1) The Board or its delegate may of its or his own motion or on the application of the respondent issue a subpoena in or to the effect of the prescribed form requiring the person to whom the subpoena is addressed to do both or either of the following things, namely:—

- (a) to attend as a witness at an inquiry;
- (b) to attend at an inquiry and to produce any documents in his possession or under his control relating to any matter relevant to the inquiry and specified in the subpoena.

(2) The regulations may make provisions for or with respect to authorising compliance with a subpoena to produce any documents by the production of the documents at the office of the Board at any time before the inquiry.

(3) A person to whom a subpoena is addressed is entitled to receive—

- (a) where the subpoena was issued by the Board or a delegate on its or his own motion, from the Board; or

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- (b) where the subpoena was issued by the Board or a delegate on the application of the respondent, from the respondent,

his reasonable costs, including any loss of earnings, incurred by him in obeying the subpoena, calculated in accordance with the scales relating to subpoenas issued out of the District Court.

Suspension or cancellation of accreditation.

31. (1) Where the Board is satisfied after an inquiry that—

- (a) a pathology laboratory was accredited as a result of a statement that was false or misleading in a material particular;
- (b) the holder of the certificate of accreditation in respect of a pathology laboratory is not a fit and proper person to be the holder of such a certificate;
- (c) the director of a pathology laboratory does not have the qualifications and experience (if any) required by or under this Act or is not a fit and proper person to be such a director;
- (d) the holder of the certificate of accreditation in respect of a pathology laboratory—
 - (i) has not, within the time specified in a notice under section 26, taken the measures specified in the notice; or
 - (ii) has supplied pathology services in the laboratory contrary to a restriction imposed under section 27;
- (e) where the class of pathology services that may be supplied in a pathology laboratory is specified on the certificate of accreditation in respect of the laboratory—a different class of pathology services is being supplied in the laboratory; or
- (f) an accredited pathology laboratory has otherwise ceased to be a pathology laboratory of the category in respect of which it is accredited,

the Board may—

- (g) suspend the accreditation of the pathology laboratory for such period, not exceeding 12 months, as it thinks fit; or
- (b) cancel the accreditation of the pathology laboratory.

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(2) The suspension or cancellation of the accreditation of a pathology laboratory under this Part shall not take effect—

- (a) until the expiration of the period of 21 days after notice of the determination of the Board to do so has been given to the holder of the certificate of accreditation in respect of the laboratory; or
- (b) where the holder of that certificate lodges an appeal under section 33 (1) before the expiration of the period referred to in paragraph (a)—until the appeal is dealt with or withdrawn.

Board to record grounds, etc., for determination.

32. Where the Board suspends or cancels the accreditation of a pathology laboratory under this Part, it shall record its findings on any material questions of fact and the grounds for the suspension or cancellation and shall, at the request of the holder of the certificate of accreditation in respect of the laboratory, furnish the holder with a copy of the record of those findings and grounds.

PART V.

APPEALS.

Appeals to District Court.

33. (1) A person aggrieved—

- (a) by the refusal of the Board to accredit a pathology laboratory;
- (b) by the refusal of the Board to alter the class of pathology services that may be supplied in an accredited pathology laboratory;
- (c) by the refusal of the Board to transfer a certificate of accreditation in respect of a pathology laboratory to another person;
- (d) by the neglect or delay of the Board to give, within 90 days after receipt by the Board of an application under this Act, a decision with respect thereto;

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- (e) by the determination of the Board to impose a restriction on the supply of pathology services in an accredited pathology laboratory under section 27; or
- (f) by a determination of the Board to suspend or cancel the accreditation of a pathology laboratory under Part IV,

may appeal to the District Court in accordance with the rules of court.

(2) An appeal under subsection (1) in respect of a decision of the Board shall be dealt with by way of rehearing, but fresh evidence or evidence in addition to, or substitution for, the evidence given on the making of the decision shall not be given on the appeal unless the District Court considers that there was good cause for the evidence not having been given on the making of the decision.

(3) The District Court, in deciding an appeal under subsection (1), may—

- (a) in respect of an appeal under subsection (1) (a)-(c) (not being an appeal referred to in subsection (4))—confirm the refusal or order that the pathology laboratory be accredited, the class of pathology services that may be supplied be altered or the certificate of accreditation be transferred, as the case may be;
- (b) in respect of an appeal under subsection (1) (d)—order that the application be granted or refused; or
- (c) in respect of an appeal under subsection (1) (e) or (f)—uphold the appeal, confirm the determination of the Board or substitute for that determination any other determination that the Board might have made.

(4) In deciding an appeal under subsection (1) (a) in relation to the refusal of the Board to accredit a pathology laboratory pursuant to section 16, the District Court may—

- (a) confirm the refusal; or
- (b) order the Board to consider the application for accreditation in accordance with the provisions of this Act other than section 16.

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(5) The decision of the District Court in respect of an appeal under subsection (1) shall be final and conclusive and shall be given effect to by the Board.

PART VI.

OFFENCES.

Supply of pathology services in laboratory not accredited.

34. A person shall not supply, or advertise that he is willing to supply, pathology services in a pathology laboratory unless—

- (a) the laboratory is accredited; and
- (b) he is the holder of the certificate of accreditation in respect of the laboratory.

Penalty: \$2,000 or imprisonment for 6 months or both.

False, etc., statements.

35. A person shall not—

- (a) in any application under this Act or in support of any such application; or
- (b) in any written submission received in evidence at an inquiry under Part IV,

wilfully make a statement that is false or misleading in a material particular.

Penalty: \$500 or imprisonment for 3 months or both.

Failure to comply with subpoena.

36. A person who is served with a subpoena addressed to him pursuant to section 30 and to whom, at the time of service, is tendered an amount that is sufficient to cover his travelling and other out-of-pocket expenses in attending the inquiry specified in the subpoena and producing anything required

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by the subpoena to be produced shall not, without reasonable cause, fail or refuse to obey the subpoena.

Penalty: \$500.

Disclosure of information.

37. A person shall not disclose any information obtained by him in connection with the administration or execution of this Act, unless the disclosure is made—

- (a) with the consent of the person from whom the information was obtained;
- (b) in connection with the administration or execution of this Act;
- (c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings;
- (d) in accordance with a requirement imposed under the Ombudsman Act, 1974;
- (e) for the purpose of an inquiry held under Part IV; or
- (f) in any other prescribed circumstances.

Penalty: \$500.

Obstruction, etc., of inspectors.

38. A person shall not wilfully delay or obstruct an inspector in the exercise of his powers under section 24 or, being the occupier of any premises, refuse to permit or to assist an inspector to exercise those powers in respect of the premises.

Penalty: \$500.

Offences by corporation.

39. (1) Where a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each director of the corporation, and each officer concerned with the management of the corporation, shall

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be deemed to have contravened the same provision unless he satisfies the court that—

- (a) the corporation contravened the provision without his knowledge;
- (b) he was not in a position to influence the conduct of the corporation in relation to its contravention of the provision; or
- (c) he, being in such a position, used all due diligence to prevent the contravention of the provision by the corporation.

(2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or been convicted under that provision.

(3) Nothing in subsection (1) prejudices or affects any liability imposed by a provision of this Act or the regulations on any corporation by which an offence against the provision is actually committed.

Proceedings for offences.

40. Proceedings for an offence against this Act or the regulations shall be disposed of summarily before a court of petty sessions constituted by a stipendiary magistrate sitting alone.

PART VII.**GENERAL.****Register.**

41. (1) The Board shall keep a Register of Accredited Pathology Laboratories of New South Wales which shall be open to inspection, upon payment of the prescribed fee, by any person at the office of the Board at all times when that office is open for business.

(2) The register referred to in subsection (1) shall contain in relation to each accredited pathology laboratory such particulars as the Board thinks fit or as may be prescribed.

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Delegation.

42. (1) The Board may, by instrument in writing, delegate—

- (a) to any member; or
- (b) to any officer or temporary employee appointed or employed under section 9,

the exercise of such of the functions (other than this power of delegation) conferred or imposed on the Board by or under this or any other Act as may be specified in the instrument of delegation and may, by such an instrument, revoke wholly or in part any such delegation.

(2) A function, the exercise of which has been delegated under this section, may, while the delegation remains unrevoked, be exercised from time to time in accordance with the terms of the delegation by the delegate to whom the exercise thereof has been delegated.

(3) A delegation under this section may be made subject to such conditions or limitations as to the exercise of any of the functions delegated, or as to time or circumstance, as may be specified in the instrument of delegation.

(4) Notwithstanding any delegation made under this section, the Board may continue to exercise all or any of the functions delegated.

(5) Any act or thing done or suffered by a delegate while acting in the exercise of a delegation under this section shall have the same force and effect as if the act or thing had been done or suffered by the Board.

(6) An instrument purporting to be signed by a delegate of the Board in his capacity as such a delegate shall in all courts and before all persons acting judicially be received in evidence as if it were an instrument executed by the Board and, until the contrary is proved, shall be deemed to be an instrument signed by a delegate of the Board under this section.

Certificate as to accreditation.

43. A certificate purporting to be under the hand of a prescribed officer certifying—

- (a) that a pathology laboratory specified in the certificate was or was not, on a date so specified, accredited;

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- (b) that a person so specified was or was not, on a date so specified, the holder of a certificate of accreditation in respect of a pathology laboratory of a category so specified;
 - (c) that the accreditation of a pathology laboratory so specified was—
 - (i) suspended for a period so specified; or
 - (ii) cancelled on a date so specified; or
 - (d) that, on a date so specified, a pathology laboratory so specified was subject to such restrictions imposed under section 27 upon the supply of pathology services in the laboratory as are so specified,
- is admissible in evidence in any proceedings and is prima facie evidence of the matters stated therein.

Proof of certain matters not required.

44. In any legal proceedings by or against the Board no proof shall be required (until evidence is given to the contrary) of—

- (a) the due constitution of the Board;
- (b) any resolution of the Board;
- (c) the appointment of any member; or
- (d) the presence of a quorum at any meeting at which any determination is made or any act is done by the Board.

Service of notice, etc.

45. (1) Where by or under this Act a notice or other document is required to be, or may be, given or served, that notice or other document may be given to or served on—

- (a) an individual—
 - (i) by delivering it to him personally;
 - (ii) by leaving it at his place of residence last known to the Board with a person who apparently resides there or, if he is the holder of a certificate of accreditation in respect

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of a pathology laboratory, by leaving it at the laboratory with a person apparently employed in the laboratory, being in either case a person who has or who apparently has attained the age of 16 years; or

(iii) by sending it by prepaid post addressed to him at that place of residence or laboratory; or

(b) a corporation—

(i) by delivering it to a person who is or is apparently concerned in the management of the corporation;

(ii) by leaving it at the registered office of the corporation with a person apparently employed at that office or, if the corporation is the holder of a certificate of accreditation in respect of a pathology laboratory, by leaving it at the laboratory with a person apparently employed in the laboratory, being in either case a person who has or who apparently has attained the age of 16 years; or

(iii) by sending it by prepaid post addressed to the corporation at that registered office or laboratory.

(2) A notice or other document that is delivered, left or sent by post in accordance with subsection (1) shall be deemed to have been given or served on its being so delivered or left or, if it is sent by post, shall, in the absence of evidence to the contrary, be prima facie deemed to have been given or served when it would have been delivered in the ordinary course of post.

Service of notice, etc., on the Board.

46. (1) A notice, summons, writ or other proceeding required to be served on the Board may be served—

(a) by being left with a person apparently employed in the administration of this Act at the office of the Board; or

(b) in the case of a notice, by sending it by prepaid post addressed to the Board at its office.

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- (2) Any document referred to in subsection (1) shall—
- (a) be deemed to have been served on its being so left; or
 - (b) in the case of a notice sent by post, be prima facie deemed to have been served when it would have been delivered in the ordinary course of post.

Cost of administration of Act.

47. (1) The expenses of the Board in administering this Act shall be paid out of money provided by Parliament.

(2) The fees and charges payable under this Act or the regulations shall be paid to the Board and shall be carried to the Consolidated Revenue Fund.

Regulations.

48. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to—

- (a) the refund of fees payable under this Act or the regulations;
- (b) the display of signs in connection with accredited pathology laboratories;
- (c) inquiries held for the purposes of Part IV and appeals under Part V;
- (d) the form of certificates of accreditation in respect of pathology laboratories;
- (e) the alteration of the category in respect of which a pathology laboratory is accredited; and
- (f) the furnishing of information in respect of accredited pathology laboratories.

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(2) A provision of a regulation may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind;
or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

(3) A regulation (other than a regulation prescribing an accreditation standard) may impose a penalty not exceeding \$200 for any offence against the regulation.

SCHEDULE 1.

(Sec. 7 (1).)

PROVISIONS RELATING TO CONSTITUTION AND MEMBERSHIP OF THE BOARD.

Nomination of members.

1. (1) Where, for the purpose of section 6, nominations of persons to constitute a panel are not made within the time or in the manner specified by the Minister in a written notice given to the body entitled to make the nominations, the Governor may appoint a person to be a member instead of the person required to be appointed from that panel.

(2) Where a body referred to in any provision of section 6 changes its name and the Minister is satisfied that the change of name is not accompanied by any material change in the nature of the body, he may, by order published in the Gazette, so certify and, subject to subclause (3), as from the date of that publication, the reference in the provision shall be deemed to be a reference to the body under that changed name.

(3) The power of the Minister under subclause (2) may be exercised in relation to a body under a changed name as if that body, under that changed name, were referred to in section 6.

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SCHEDULE 1—*continued.*

PROVISIONS RELATING TO CONSTITUTION AND MEMBERSHIP OF THE
BOARD—*continued.*

Age of member.

2. A person who is of or above the age of 70 years shall not be eligible to be appointed as a member.

Public Service Act, 1979, not to apply to member.

3. The provisions of the Public Service Act, 1979, do not apply to or in respect of the appointment of a member and a member is not, in his capacity as a member, subject to the provisions of that Act during his term of office.

Term of office.

4. A member shall, subject to this Act, be appointed for such term, not exceeding 3 years, as is specified in the instrument of his appointment and shall, if otherwise qualified, be eligible for re-appointment from time to time.

Member holding other office.

5. Where, by or under any Act, provision is made requiring the holder of an office specified thereunder to devote the whole of his time to the duties of his office, or prohibiting him from engaging in employment outside the duties of his office, that provision shall not operate to disqualify him from holding that office and also the office of a member or from accepting and retaining any remuneration (including travelling and subsistence allowances) paid to him under clause 6.

Remuneration of members.

6. Each member (other than the Chairman) is entitled to be paid such remuneration (including travelling and subsistence allowances) for attending meetings and transacting the business of the Board as the Minister may from time to time determine in respect of him.

Vacation of office.

7. (1) A member shall be deemed to have vacated his office—
(a) if he dies;

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SCHEDULE 1—*continued.*PROVISIONS RELATING TO CONSTITUTION AND MEMBERSHIP OF THE
BOARD—*continued.*

- (b) if he becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act;
- (c) if he becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration or estate for their benefit;
- (d) if he is convicted in New South Wales of a crime or offence punishable by imprisonment for a period of 12 months or more, or if he is convicted elsewhere than in New South Wales of a crime or offence which, if committed in New South Wales, would be a crime or offence so punishable;
- (e) if he resigns his office in writing under his hand addressed to the Minister and the Minister accepts his resignation;
- (f) if he is absent from 3 consecutive meetings of the Board of which reasonable notice has been given to him personally or by post, except on leave granted by the Board, and is not, within 6 weeks after the last of those meetings, excused by the Board for his absence from those meetings;
- (g) if he is removed from office by the Governor;
- (h) if he ceases to hold the qualification (if any) by virtue of which he was appointed; or
- (i) on his attaining the age of 70 years.

(2) The Governor may remove a member from office for any cause which to him seems sufficient.

Filling of casual vacancies.

3. (1) On the occurrence of a vacancy in the office of a member otherwise than by the expiration of the term for which he was appointed, the Governor may appoint a person to the vacant office so that the Board is constituted as required by section 6.

(2) A member appointed pursuant to subclause (1) is, if otherwise qualified, eligible for re-appointment.

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SCHEDULE 1—*continued.*

PROVISIONS RELATING TO CONSTITUTION AND MEMBERSHIP OF THE
BOARD—*continued.*

Alternate member to Chairman.

9. The Chairman may nominate a commissioner or an officer of the Health Commission of New South Wales to act in his place as Chairman during his absence through illness or other cause and a person so acting shall be deemed to be a member and shall be Chairman at any meeting of the Board at which he is present.

Protection from liability.

10. No matter or thing done or suffered by the Board, a member or any officer or employee or any other person acting under the direction of the Board bona fide in the execution or intended execution of this Act, or in the exercise, or intended exercise, of its or his functions, shall subject any member or the officer or employee or other person personally to any action, liability, claim or demand.

SCHEDULE 2.

(Sec. 7 (2).)

PROVISIONS RELATING TO MEETINGS OF THE BOARD.

Quorum.

1. The number of members which constitutes a quorum at any meeting of the Board is 6 and any duly convened meeting of the Board at which a quorum is present shall be competent to transact any business of the Board.

Decisions.

2. Questions arising at a meeting of the Board shall be determined by a majority of the votes of the members present and voting.

Presiding member.

3. At any meeting of the Board, the Chairman or, in his absence, his nominee shall preside, but if the Chairman and his nominee are both absent from that meeting, a person elected from among their number by the members present shall preside at that meeting.

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SCHEDULE 2—*continued.*PROVISIONS RELATING TO MEETINGS OF THE BOARD—*continued.***Casting vote.**

4. The person presiding at any meeting of the Board shall have a deliberative vote and, in the event of an equality of votes, a casting vote.

Disclosure of interest.

5. (1) A member present at a meeting of the Board who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Board, otherwise than as a member of, and in common with the other members of, an incorporated company consisting of more than 25 persons, shall, as soon as practicable after the commencement of the meeting, disclose the nature of his interest.

(2) A member of the Board who has made a disclosure under subclause (1)—

- (a) shall not take part, after the disclosure, in any deliberation or decision of the Board with respect to that matter; and
- (b) shall be disregarded for the purpose of constituting a quorum of the Board for any such deliberation or decision.

Frequency of meetings.

6. The Board shall meet at least once in any period of 6 months.

General procedure.

7. (1) The procedure for the calling of, and for the conduct of business at, meetings of the Board shall, subject to any procedure that is specified in this Act or prescribed, be as determined by the Board.

(2) The first meeting of the Board shall be called in such manner as the Minister directs.

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SCHEDULE 3.

(Sec. 11.)

CATEGORIES OF ACCREDITATION OF PATHOLOGY LABORATORIES.

CATEGORY 1.

A pathology laboratory where—

- (a) pathology services of any class are supplied; and
- (b) the director is a pathologist with such qualifications and experience in pathology as may be prescribed.

CATEGORY 2.

A pathology laboratory where—

- (a) the pathology services supplied are within a class (being a division of pathology) specified on the certificate of accreditation in respect of the laboratory; and
- (b) the director is—
 - (i) a pathologist, or other medical practitioner, with such qualifications and experience in that division of pathology as may be prescribed; or
 - (ii) a scientist who has such qualifications as may be prescribed and who has not less than 10 years' full-time experience in respect of that division of pathology.

CATEGORY 3.

A pathology laboratory where—

- (a) the pathology services supplied are within a class specified on the certificate of accreditation in respect of the laboratory; and
- (b) the director is a director of a pathology laboratory accredited as a Category 1 or Category 2 laboratory.

CATEGORY 4.

A pathology laboratory of a recognised hospital within the meaning of the Health Insurance Act 1973 of the Parliament of the Commonwealth, not being a laboratory referred to in Category 1, 2 or 3.

CATEGORY 5.

A pathology laboratory where—

- (a) the pathology services supplied are within a class specified on the certificate of accreditation in respect of the laboratory;
- (b) the director is a medical practitioner; and

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SCHEDULE 3—continued.**CATEGORIES OF ACCREDITATION OF PATHOLOGY LABORATORIES—continued.**

- (c) the services are supplied for the patients of the medical practitioner and as part of the medical practitioner's practice.

CATEGORY 6.

A pathology laboratory where—

- (a) the pathology services supplied are within a limited class of a specialised nature specified on the certificate of accreditation in respect of the laboratory;
and
(b) the director has special qualifications or skills in the field of those services.

CATEGORY 7.

A pathology laboratory located in an isolated area where pathology services supplied are within a class specified on the certificate of accreditation in respect of the laboratory.

CATEGORY 8.

A pathology laboratory where the pathology services supplied are within a class specified on the certificate of accreditation in respect of the laboratory, not being a laboratory referred to in Categories 1–7.
