



TASMANIA

OPTOMETRISTS REGISTRATION ACT 1994

No. 87 of 1994

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OPTOMETRISTS REGISTRATION ACT 1994

No. 87 of 1994

AN ACT to provide for the registration of optometrists, the regulation of the practice of optometry, the repeal of the *Opticians Act 1913* and for related purposes

[Royal Assent 16 December 1994]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

PART 1

PRELIMINARY

Short title

1—This Act may be cited as the *Optometrists Registration Act 1994*.

Commencement

2—This Act commences on a day to be proclaimed.

Interpretation

- 3—(1) In this Act, unless the contrary intention appears—
- “**applicant**” means a person who submits an application to the Board;
 - “**application**” means an application to be registered as an optometrist;
 - “**approved**” means approved by the Board;
 - “**Board**” means the Optometrists Registration Board established under section 5;
 - “**business address**” means the address of the premises at or from which a person practises optometry;
 - “**certificate of registration**” means a certificate issued by the Board under section 28 or 36;
 - “**chairperson**” means chairperson of the Board;
 - “**committee**” means a committee established under section 11;
 - “**committee of inquiry**” means a committee that conducts an inquiry;
 - “**complaint**” means a complaint made under section 41;
 - “**Council of Optometry Registration Authorities**” means the body of that name established by the various optometrical registration authorities;
 - “**contravene**” includes fail to comply;
 - “**defendant**” means a registered optometrist who is the subject of a complaint;
 - “**disciplinary committee**” means a committee that conducts an investigation;
 - “**financial year**” means the 12 month period ending on 31 December in any year;
 - “**foreign optometrical law**” means a law of a jurisdiction outside this State relating to the registration, licensing or enrolment of optometrists;
 - “**functions**” includes duties;
 - “**inquiry**” means an inquiry under Division 2 of Part 3;
 - “**interim certificate of registration**” means an interim certificate of registration issued by the Registrar under section 22;
 - “**investigation**” means an investigation under Division 2 of Part 4;

- “**legal practitioner**” means a person who is a legal practitioner within the meaning of the *Legal Profession Act 1993*;
- “**medical practitioner**” means a legally-qualified medical practitioner;
- “**member**” means member of the Board and includes the chairperson;
- “**notice**” means notice in writing;
- “**optical appliance**” means an appliance that is designed or used to correct, remedy or relieve a defect of vision;
- “**optical dispenser**” means a person who dispenses optical appliances;
- “**optometrical registration authority**” means a body established under the law of another State, or of a Territory, having functions similar to the functions of the Board;
- “**optometrist**” means a person who practises optometry;
- “**optometry**” means the investigation and management of the functions of the eye and vision and the prescribing of optical appliances to correct, remedy or relieve defects of vision;
- “**prescription**” means a prescription for an optical appliance;
- “**professional indemnification agreement**” means an agreement entered into between an optometrist and an insurer providing for the indemnification of the optometrist in respect of civil liability that he or she may incur in practising optometry;
- “**register**” means the Register of Optometrists kept by the Board under section 30;
- “**registered**” means registered under this Act;
- “**registered optometrist**” means a person who is registered as an optometrist;
- “**Registrar**” means the Registrar of the Board appointed under section 12;
- “**regulations**” means regulations made and in force under this Act;
- “**report**” includes publish;

“**Secretary**” means Secretary of the Department;

“**specified**” means specified in writing by the Board.

(2) If the Council of Optometry Registration Authorities changes its name the Governor, by order, may amend this Act by substituting that body’s new name.

(3) If the Council of Optometry Registration Authorities ceases to exist the Governor, by order, may amend this Act by substituting the name of a body that the Governor is satisfied has a function similar to that of the defunct body.

Act binds Crown

4—This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.

PART 2

OPTOMETRISTS REGISTRATION BOARD

Division 1—The Board

Establishment of Board

5—(1) An Optometrists Registration Board is established.

(2) The Board is a body corporate with perpetual succession and a common seal.

(3) The Board may—

(a) acquire, hold, dispose of and otherwise deal with property; and

(b) sue and be sued in its corporate name.

Membership of Board

6—(1) The Board consists of—

- (a) one person nominated by the Minister; and
- (b) 4 registered optometrists nominated by the Minister from a list of names submitted by such bodies representing the professional interests of optometrists as the Minister determines; and
- (c) 2 persons, neither of whom is an optometrist, optical dispenser or medical practitioner, nominated by the Minister to represent the interests of the consumers of optometrical services.

(2) The members are appointed by the Governor.

(3) The Governor may appoint a member as chairperson.

(4) The Minister may request the bodies referred to in subsection (1) (b) to provide the Minister with a list of names for the purposes of that subsection.

(5) If the bodies that have been requested by the Minister to provide a list of names for the purposes of subsection (1) (b) fail to provide that list within such period of not less than 2 months as is specified in the request, the Minister may nominate persons for the purposes of that subsection.

(6) Schedule 1 has effect with respect to membership of the Board.

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

Division 2—Functions, powers and objectives

Functions of Board

7—The Board has the following functions:—

- (a) to administer the scheme of registration under Part 3;
- (b) to supervise the practice of optometry in this State;
- (c) to investigate complaints and, as necessary, undertake disciplinary action against registered optometrists;
- (d) to prosecute offences against this Act;

- (e) to monitor standards of optometrical education and training;
- (f) to advise the Minister on matters relating to this Act;
- (g) such other functions as are imposed on the Board by this or any other Act or as may be prescribed.

Powers of Board

8—The Board has power to do all things necessary or convenient to be done in connection with the performance of its functions and, in particular, has power to—

- (a) share information with optometrical registration authorities, the Council of Optometry Registration Authorities and other relevant bodies; and
- (b) support optometrical education and training; and
- (c) cause optometrical business premises to be inspected; and
- (d) hold examinations; and
- (e) do anything incidental to any of its powers.

Objectives of Board

9—The Board must perform its functions and exercise its powers so as to—

- (a) ensure that optometrical services provided to the public are of the highest possible standard; and
- (b) ensure that persons practise optometry according to the highest professional standard; and
- (c) guard against unsafe, incompetent and unethical optometrical practices.

Delegation

10—The Board may delegate any of its functions or powers, other than this power of delegation, to a member of the Board, the Registrar or a committee.

*Division 3—Miscellaneous***Committees**

11—(1) The Board is to establish such committees as from time to time it is required to establish under this Act.

(2) The Board may establish such other committees as it considers necessary for the purposes of assisting it in the performance of any of its functions or the exercise of any of its powers or advising it on any matter relating to this Act.

(3) A committee comprises such persons as the Board appoints.

(4) A member of the Board may be a member of a committee.

(5) Subject to subsection (6), a member of a committee is entitled to be paid such remuneration, including travelling and subsistence allowances, as the Board may from time to time determine and any such remuneration is to be paid by the Board.

(6) A member of a committee who is an employee or a person holding or acting in an office under the *Tasmanian State Service Act 1984*, or in an Agency within the meaning of that Act, is not entitled to remuneration under subsection (5) except with the approval of the Minister administering that Act.

(7) The Board may give written directions to a committee and the committee must comply with any such directions.

(8) A committee must keep accurate minutes of its proceedings.

(9) Except as otherwise provided in this Act, a committee may regulate its own proceedings.

Employees

12—(1) The Board must appoint a Registrar and may appoint such other employees as may be necessary for the performance of its functions and the exercise of its powers.

(2) The Registrar is to act as secretary to the Board.

(3) The *Tasmanian State Service Act 1984* does not apply to employees of the Board.

Use by Board of services of persons

13—(1) The Board may arrange with the Head of an Agency within the meaning of the *Tasmanian State Service Act 1984* for the services of persons employed in that Agency to be made available to the Board.

(2) The Board may arrange with any other person for the services of persons employed by that person to be made available to the Board.

(3) The cost of making a person's services available to the Board in accordance with this section is to be met by the Board.

Protection from liability

14—A person who is an employee of the Board or a member of a committee does not incur any personal liability for an act done or purported or omitted to be done by the person in good faith for the purpose of administering or executing this Act.

Division 4—Finance and reports**Funds of Board**

15—(1) The Board is to keep such bank accounts as it considers necessary.

(2) The funds of the Board are to be paid to the credit of such of the accounts referred to in subsection (1) as the Board determines and are to consist of—

- (a) money received by way of fees, fines, penalties and charges paid to or recovered by the Board; and
- (b) any money borrowed by the Board; and
- (c) any money received by the Board from other sources.

(3) The funds of the Board are to be applied—

- (a) in payment or discharge of the expenses, charges and obligations incurred or undertaken by the Board in the performance of its functions and the exercise of its powers; and
- (b) in the payment of any remuneration payable by the Board.

(4) The Board may invest any money that it is holding in any manner in which a trustee is authorized by law to invest trust funds.

Audit

16—(1) The accounts and records of the Board are subject to the *Financial Management and Audit Act 1990*.

(2) The Board must pay into the Consolidated Fund such amounts as the Treasurer may require towards the reasonable costs and expenses of audits conducted pursuant to this section.

Accounts

17—The Board must keep proper accounts and records of its financial affairs and, not later than 31 March after the end of each financial year, prepare a statement of accounts in a form approved by the Auditor-General exhibiting a true and correct view of the financial position and transactions of the Board for that financial year.

Annual report

18—(1) The Board must, not later than 31 August after the end of each financial year, give the Minister a report on its operations for that financial year.

(2) The report is to incorporate the audited statement of accounts prepared for the relevant financial year under section 17.

(3) The Minister may, in writing, direct the Board to prepare the report in a particular way or to include particular information in the report.

(4) The report may be appended to the annual report of the Department.

(5) Subsection (4) has effect notwithstanding section 33AB (2) of the *Tasmanian State Service Act 1984* and section 27 (2) of the *Financial Management and Audit Act 1990*.

(6) If the Board's report is not appended to the annual report of the Department, the Minister must cause the Board's report to be laid before each House of Parliament by not later than 30 November after the end of the financial year to which it relates.

PART 3

REGISTRATION

Division 1—Applying for registration

Who may apply for registration

19—A person may apply to the Board to be registered as an optometrist if he or she—

- (a) is a graduate of an institution accredited by the Council of Optometry Registration Authorities; or
- (b) has passed a qualifying examination held by the Council of Optometry Registration Authorities.

Application requirements

20—(1) An application is to be—

- (a) in a form approved by the Board; and
- (b) lodged with the Registrar; and
- (c) accompanied by the prescribed application fee and prescribed annual registration fee; and
- (d) accompanied by such information or evidence as the Board requires.

(2) The Board may require an applicant to provide such further information or evidence as it considers necessary in order to consider the application.

(3) The Board may waive the payment of all or part of the prescribed application fee or prescribed annual registration fee.

Division 2—Determination of entitlement

Entitlement to registration

21—(1) An applicant is entitled to be registered as an optometrist if the Board is satisfied that the applicant—

- (a) is eligible to apply for registration; and
- (b) has sufficient physical capacity, mental capacity and skill to practise optometry; and
- (c) is of good fame and character; and
- (d) has an adequate command of the English language; and
- (e) is an Australian citizen or resides in a State or Territory of the Commonwealth.

(2) Notwithstanding subsection (1), the Board may determine that an applicant is not entitled to be registered unless—

- (a) the applicant has entered into or acceded to an approved professional indemnification agreement; or
- (b) the Board is satisfied that, immediately upon registration, the applicant will enter into or accede to such an agreement.

Interim registration

22—(1) The Registrar may grant an applicant interim registration if the Registrar reasonably considers that the applicant is entitled to be registered as an optometrist but that it is not practicable to wait until the Board can consider the application.

(2) Interim registration may be granted unconditionally or subject to conditions.

(3) The Registrar must issue an interim certificate of registration to a person who is granted interim registration.

(4) The interim certificate of registration is to be in such form, and contain such information, as the Registrar determines.

(5) A person to whom interim registration is granted is taken to be a registered optometrist for the period during which the interim registration is in force subject to the conditions, if any, determined by the Registrar and specified in the interim certificate of registration.

(6) An interim registration is in force from the date on which it is granted until the date on which the person to whom it has been granted receives notice that the Board has—

- (a) registered the person; or
- (b) refused to register the person; or
- (c) cancelled the person's interim registration.

(7) The Board may cancel a person's interim registration for any reason it considers sufficient.

(8) If the Board decides to cancel a person's interim registration it must immediately give the person notice of its decision and the reasons for its decision.

(9) A notice under subsection (8) is to be served personally on the affected person and, on the service of the notice, the person's interim registration is cancelled.

Inquiry into entitlement

23—(1) The Board may hold an inquiry to determine the entitlement of an applicant to be registered.

(2) Unless the Board determines otherwise, an inquiry is to be conducted by a committee, called a committee of inquiry, constituted by not less than 3 persons at least 2 of whom are to be registered optometrists.

(3) Schedule 3 has effect in relation to the powers and procedures of committees of inquiry.

(4) In a case to which this section applies, the Registrar must give notice to the applicant and the Secretary of—

- (a) the reasons for holding the inquiry; and
- (b) the date, time and place set for the hearing of the inquiry.

(5) A notice under subsection (4) given to an applicant is to inform the applicant of the applicant's right to be represented in the inquiry.

(6) A notice under subsection (4) is to be given to the applicant at least 14 days before the date, or the first date, set for the hearing of the inquiry.

Recommendation of committee of inquiry

24—After conducting an inquiry, a committee of inquiry must provide the Board with a written report containing—

- (a) a recommendation as to whether the applicant is entitled to be registered as an optometrist and, if so, whether the registration should be unconditional or subject to conditions; and
- (b) if the committee recommends that the applicant is entitled to be registered subject to conditions—a further recommendation as to what those conditions should be; and
- (c) the reasons for its recommendation; and
- (d) any findings on questions of fact; and
- (e) any evidence or other material on which the findings are based.

Division 3—Grant or refusal of registration

Determination of application

25—(1) In this section, “**agreed period**” means a period agreed upon by the Board and the applicant for the purpose of this section.

(2) If the Board is satisfied that an applicant is entitled to be registered it must register the applicant and it may do so unconditionally or subject to conditions.

(3) In a case to which subsection (2) applies, the Board must give notice to the applicant of—

- (a) the applicant's registration; and
- (b) if the registration is conditional—the conditions to which the registration is subject and the applicant's rights of appeal and review in respect of those conditions.

(4) If the Board is not satisfied that an applicant is entitled to be registered, it must refuse to register the applicant.

(5) If the Board does not register an applicant within a period of 3 months or a further agreed period after his or her application is lodged, the Board is taken to have refused to register the applicant.

(6) In a case to which subsection (4) or (5) applies, the Board must—

- (a) give notice to the applicant of the refusal to register the applicant, the reasons for the refusal and the applicant's right of appeal; and
- (b) refund the annual registration fee that accompanied the application.

Special grounds for refusing to grant registration

26—Without limiting the matters that the Board may have regard to under section 21 (1) (b) or (c), the Board may determine that an applicant is not entitled to be registered as an optometrist if—

- (a) the applicant's authority to practise optometry under a foreign optometrical law has been cancelled or suspended for a reason relating to the person's professional conduct or physical or mental capacity; or
- (b) the applicant has been convicted in Tasmania or elsewhere of a crime or an offence of a kind that, in the Board's opinion, makes it not in the public interest to allow the applicant to practise optometry; or
- (c) the Board considers it is not in the public interest to grant the application because of the applicant's habitual taking of alcohol or drugs.

Review of registration conditions

27—(1) A person may, at intervals of not less than 12 months, apply to the Board for a review of a condition to which the person's registration is made subject under section 25 (2).

(2) A person's right under subsection (1) is in addition to that person's right of appeal under section 54 (1) (b).

(3) The Board, on its own motion, may at any time review a condition to which a person's registration is made subject under section 25 (2).

Certificates of registration

28—(1) The Board must issue a certificate of registration to a person who is granted registration.

(2) A certificate of registration is to—

(a) be in such form and contain such information as the Board determines; and

(b) specify the conditions, if any, to which the registration is subject.

(3) A certificate of registration is evidence that, for the period or until the date specified in the certificate—

(a) the person named in the certificate is a registered optometrist; and

(b) the person named in the certificate is entitled to practise optometry in this State subject to the conditions, if any, specified in the certificate.

(4) If the Board is satisfied that a certificate of registration has been lost or destroyed it may issue a replacement certificate, marked as such, on payment of the prescribed fee.

(5) The Board, by notice, may require a registered optometrist to surrender his or her certificate of registration to enable the Board to issue that optometrist with a new certificate of registration with amended particulars.

(6) A registered optometrist who is given a notice under subsection (5) must surrender his or her certificate of registration to the Board within 14 days after receiving the notice or within such longer period as the Board may allow.

Penalty: Fine not exceeding 15 penalty units.

Offences in relation to certificates of registration

29—A person who is issued with a certificate of registration or an interim certificate of registration must not—

- (a) lend or agree to lend that certificate to another person; or
- (b) allow that certificate to be used by another person.

Penalty: Fine not exceeding 25 penalty units.

Division 4—Register of Optometrists**Register**

30—(1) The Board must keep a register called the Register of Optometrists.

(2) The Board must record the following information in the register in relation to each person who is granted registration:—

- (a) the person's full name;
- (b) the person's business address;
- (c) the person's qualifications;
- (d) the date of the person's registration;
- (e) any conditions to which the person's registration has been made subject under section 25 (2).

(3) The Board must also record the following matters in the register:—

- (a) the renewal of a person's registration;
- (b) the suspension of a person's registration;
- (c) any conditions to which a person's registration has been made subject under section 47 (1) (d);
- (d) the removal from the register of a person's name;
- (e) the restoration to the register of a person's name;
- (f) subject to section 32 (2) and (3)—any additional qualifications gained by a registered person;
- (g) any change in the name of a registered person;
- (h) any change in the business address of a registered person.

(4) The register may contain such other information as the Board considers necessary or appropriate.

(5) A registered optometrist, or an optometrist whose registration is suspended, must, within 14 days of changing his or her name or business address, give the Board notice of the change and the new name or business address.

Penalty: Fine not exceeding 15 penalty units.

Correction of register

31—(1) Any person may apply to the Board to have an inaccurate or erroneous entry in the register corrected and, if the Board is satisfied that the entry is inaccurate or erroneous, it must correct the register accordingly.

(2) No fee is payable for an application under subsection (1).

(3) The Board may require an applicant under subsection (1) to provide such further information or evidence as it considers necessary in order to consider the application.

Additional particulars and qualifications

32—(1) A registered optometrist may apply to the Board for additional particulars or qualifications to be recorded in the register.

(2) An application under subsection (1) is to—

(a) be accompanied by the prescribed fee; and

(b) state the additional particulars or qualifications and the reasons for seeking their inclusion in the register; and

(c) in the case of additional qualifications—be accompanied by evidence of the qualifications.

(3) The Board may require an applicant under this section to provide such further information or evidence as it considers necessary in order to consider the application.

(4) On receipt of an application under subsection (1), the Board may—

(a) record the additional particulars or qualifications in the register; or

(b) refuse to record the additional particulars or qualifications in the register.

(5) In a case to which subsection (4) (b) applies, the Board must give notice to the applicant of—

- (a) its refusal to record the additional particulars or qualifications in the register and the reasons for the refusal; and
- (b) the applicant's right of appeal.

Inspection of register

33—(1) A person may, on payment of the prescribed fee, inspect the register at the office of the Board.

(2) A person inspecting the register may, on payment of the prescribed fee, obtain a copy of or extract from the register.

(3) The Board may waive the payment of all or part of the prescribed fee for inspecting or obtaining a copy of or extract from the register.

Publication of register, &c.

34—(1) The Board may publish in the *Gazette*—

- (a) a copy of the register or part of the register; or
- (b) a notice of the grant of registration to any person including any condition to which the registration has been made subject; or
- (c) a notice of the removal from the register of the name of any person; or
- (d) a notice of the restoration to the register of the name of any person; or
- (e) a notice of the suspension of the registration of any person; or
- (f) a notice of any disciplinary action taken under section 47 in respect of a registered person.

(2) The Board may provide a person with a copy of a notice referred to in subsection (1) on payment of the prescribed fee.

(3) The Board may waive the payment of all or part of the prescribed fee.

Protection of private information

35—Notwithstanding sections 33 and 34—

- (a) the register made available for public inspection need not include the information, or all the information, referred to in section 30 (4); and
- (b) a copy of the register or part of the register published in the *Gazette* need not include the information, or all of the information, referred to in section 30 (4); and
- (c) if the Board records a person's private address in the register, that address is not to appear in the register as made available for public inspection or be published in the *Gazette*.

Annual registration fees

36—(1) In this section—

“due date” means—

- (a) 31 December; or
- (b) if another date is prescribed—that date;

“registered optometrist” includes a person whose registration is suspended.

(2) A registered optometrist must, on or before the due date in each year—

- (a) pay the Board the prescribed annual registration fee; and
- (b) provide the Board with any information it requires.

(3) The Board may waive the payment of all or part of the annual registration fee.

(4) A registered optometrist who pays the prescribed annual registration fee after the due date but within 30 days after the due date is liable to pay the prescribed late fee.

(5) The Board may refuse to accept the payment of the prescribed annual registration fee if—

- (a) it is not satisfied that the registered optometrist complies with the requirements specified in section 21 (1); or
- (b) it is not satisfied that the registered optometrist is indemnified in the practice of optometry by an approved professional indemnification agreement.

(6) The Board must not accept the payment of the prescribed annual registration fee from a registered person who has not practised optometry for a period exceeding 5 years unless it is satisfied that the person complies with the requirements specified in section 21 (1).

(7) A registered optometrist whose payment of the prescribed annual registration fee is not accepted by the Board or who fails to pay the prescribed annual registration fee and the prescribed late fee within 30 days after the due date is to have his or her name removed from the register.

(8) The Board must, in respect of an optometrist where payment of the prescribed annual registration fee is accepted or waived, issue that optometrist with a new certificate of registration for the period to which the fee paid or waived relates.

Removal from register

37—(1) Subject to subsection (2)—

- (a) the Board may remove from the register the name of a person who—
 - (i) contravenes a condition subject to which the person is registered; or
 - (ii) fails to pay, within the time specified for payment, a fine imposed on the person under section 47 (1) (c); or
 - (iii) fails to comply with a requirement made of that person under section 47 (1) (e); or
 - (iv) fails to honour an undertaking given to the Board; and
- (b) the Board must remove from the register the name of a person—
 - (i) who dies; or
 - (ii) who requests the Board to remove his or her name from the register; or
 - (iii) in respect of whom the Board has made a decision under section 47 (1) (a) which has taken effect; or
 - (iv) who ceases to be registered by virtue of section 36 (7); or

- (v) who is no longer entitled to be registered; or
- (vi) whose authority to practise optometry under a foreign optometrical law has been cancelled for a reason relating to the person's professional conduct or physical or mental capacity; or
- (vii) who has been registered by reason of a false or misleading statement or declaration.

(2) The Board must not remove a person's name from the register under subsection (1) (a) or (1) (b) (v), (vi) or (vii) without first affording that person a reasonable opportunity to be heard.

(3) If the Board removes a living person's name from the register it must immediately give the person notice of the removal.

(4) A notice under subsection (3) is to—

- (a) except in a case to which subsection (1) (b) (ii) applies—specify the reasons for the removal; and
- (b) except in a case to which subsection (1) (b) (ii) or (iii) applies—inform the affected person of his or her right of appeal.

(5) A notice under subsection (3) is to be served personally on the person whose name has been removed from the register and, on the service of the notice, that person ceases to be a registered optometrist.

(6) If the Board removes a person's name from the register it may require that a specified period must elapse or that a specified condition must be fulfilled before that person may apply for registration.

Deregistered person must surrender certificate

38—A person who is given notice that his or her name has been removed from the register must surrender his or her certificate of registration to the Board within 7 days after receiving the notice or within such longer period as the Board may allow.

Penalty: Fine not exceeding 15 penalty units.

Restoring name on register

39—(1) Subject to this section, on payment of the prescribed fee the Board must restore a person's name to the register if—

- (a) the person previously requested the removal of his or her name under section 37 (1) (b) (ii) and requests that his or her name be restored to the register; or
- (b) the person pays the annual registration fee after having his or her name removed under section 37 (1) (b) (iv) for non-payment of that fee.

(2) The Board may waive the payment of all or part of the prescribed fee for restoring a name to the register.

(3) The Board may refuse to restore a person's name to the register pursuant to subsection (1) if—

- (a) it is not satisfied that the person complies with the requirements specified in section 21 (1); or
- (b) it is not satisfied that the person will be indemnified in the practice of optometry by an approved professional indemnification agreement.

(4) If the Board refuses to restore a person's name to the register it must, as soon as practicable, give the person notice of—

- (a) the refusal and the reasons for the refusal; and
- (b) the person's right of appeal.

(5) A notice under subsection (4) is to be served personally on the affected person.

Evidentiary provisions

40—(1) A copy of an entry in the register purporting to be signed by the Registrar is evidence that the entry was duly made.

(2) A certificate purporting to be signed by the Registrar and stating any one or more of the following matters is evidence of the matters stated:—

- (a) a person specified in the certificate was or was not a registered optometrist on a date or during a period specified in the certificate;
 - (b) the registration of a person specified in the certificate was subject to a condition specified in the certificate on a date or for a period specified in the certificate;
 - (c) the registration of a person specified in the certificate was suspended on a date or for a period specified in the certificate;
 - (d) the name of a person specified in the certificate was removed from the register on a date or for a period specified in the certificate.
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PART 4

DISCIPLINE

Division 1—Complaints

Making complaints

41—(1) A person who is aggrieved by the conduct of a registered optometrist may complain to the Board.

(2) A complaint may be made and dealt with under this Part even though the person who is the subject of the complaint has ceased to be a registered optometrist and, for that purpose, a reference in this Act to a registered optometrist includes a reference to a person who has ceased to be registered or whose registration is suspended.

(3) A complaint may be made or dealt with under this Part even though the registration of the person who is the subject of the complaint was suspended at the time of the matter complained of.

Specific matters in respect of which complaints may be made

42—(1) Without limiting the matters in respect of which a complaint may be made, a person may complain that a registered optometrist—

- (a) has been registered by reason of a false or misleading statement or declaration; or
- (b) no longer holds, or is no longer entitled to hold, a qualification by reason of which the optometrist was registered; or
- (c) is not entitled on other grounds to be registered; or
- (d) is guilty of professional misconduct.

(2) Without limiting the matters that may constitute professional misconduct, a registered optometrist is guilty of such misconduct if the optometrist—

- (a) contravenes section 29, 53 (4) or Part 6, or a provision of the regulations that is prescribed as a disciplinary regulation; or
- (b) contravenes a foreign optometrical law; or
- (c) contravenes a condition subject to which the optometrist is registered; or
- (d) fails to pay, within the time specified for payment, a fine imposed on the optometrist under section 47 (1) (c); or
- (e) fails to comply with a requirement made of the optometrist under section 47 (1) (e); or
- (f) fails to honour an undertaking given to the Board; or
- (g) is negligent or incompetent in the practice of optometry; or
- (h) behaves in a fraudulent or dishonest manner in the practice of optometry.

Complaints procedure

43—(1) A complaint is to—

- (a) be made in writing; and
- (b) contain particulars of the matter complained of; and

- (c) identify the registered optometrist against whom the complaint is being made; and
- (d) identify the person making the complaint; and
- (e) be lodged with the Registrar.

(2) The Registrar must ensure that a person who wishes to make a complaint is given such reasonable assistance as is necessary to enable that person to make the complaint in accordance with this section.

(3) On receipt of a complaint, the Registrar must—

- (a) make a record of the date on which the complaint was received; and
- (b) place the complaint before the Board without undue delay.

(4) The Board may require the complainant to provide further particulars of the complaint.

Division 2—Investigation of complaints

Investigations

44—(1) Subject to section 45, the Board must investigate each complaint made to it.

(2) The Board, on its own motion, may investigate any matter that could be grounds for a complaint and sections 41 (2) and (3) apply to such an investigation as if it were a complaint.

(3) Unless the Board otherwise determines, an investigation is to be conducted by a committee, called a disciplinary committee, constituted by not less than 3 persons at least one of whom is to be a registered optometrist.

(4) Schedule 3 has effect in relation to the powers and procedures of disciplinary committees.

(5) The Board may join any person as a party to proceedings in an investigation.

(6) A party to proceedings in an investigation is entitled to tender evidence to the disciplinary committee or other body or person conducting the investigation and to examine any person who tenders evidence in that investigation.

Exceptions to conducting investigations

45—(1) The Board need not investigate a complaint if it considers that the complaint is frivolous or vexatious or that the matter complained of is unsubstantial.

(2) If the Board considers that a matter giving rise to a complaint against a registered optometrist may not be sufficiently serious to warrant investigation, it may serve on that optometrist a notice requiring the optometrist to appear before it at a specified date, time and place for the purpose of enabling the optometrist to give an explanation of the matter.

(3) The date specified in a notice referred to in subsection (2) is to be not less than 14 days after the date on which the notice is served.

(4) If, after hearing an explanation of a matter to which a notice under subsection (2) relates, the Board is not satisfied that the optometrist is guilty in respect of the matter it must dismiss the complaint.

(5) If, after hearing an explanation of a matter to which a notice under subsection (2) relates, the Board is satisfied that the optometrist is guilty in respect of the matter but that the matter is not sufficiently serious to warrant investigation the Board may do either or both of the following:—

(a) caution or reprimand that optometrist;

(b) accept an undertaking from the optometrist to take or refrain from taking specified action.

(6) If, in a case to which subsection (5) applies, the optometrist does not concede, or disputes, his or her guilt in respect of the matter to which the complaint relates, the Board must proceed to hold an investigation.

(7) If, in the course of hearing an explanation of a matter to which a notice under subsection (2) relates, it becomes apparent to the Board that the matter is sufficiently serious to warrant investigation, it must discontinue the hearing and proceed to hold an investigation.

(8) If a person who is served with a notice under subsection (2) fails to comply with that notice, the Board may proceed to hold an investigation.

Recommendation of disciplinary committee

46—After conducting an investigation, a disciplinary committee or other person or body that conducted the investigation must provide the Board with a written report on the investigation and its findings and recommendations, including any recommendations as to costs.

Division 3—Action following investigation**Actions that may be taken by the Board**

47—(1) On receipt of the report referred to in section 46, the Board, in its discretion, may take any one or more of the following actions:—

- (a) remove the defendant's name from the register;
- (b) suspend the defendant's registration for a period not exceeding 12 months;
- (c) impose on the defendant a fine not exceeding 50 penalty units;
- (d) impose on the defendant's registration a condition subject to which the defendant may continue to practise optometry;
- (e) require the defendant to take or refrain from taking specified action;
- (f) caution or reprimand the defendant;
- (g) dismiss the complaint or, in a case to which section 44 (2) applies, clear the defendant.

(2) In the case of an investigation relating to a matter referred to in section 42 (1) (b), the Board must, unless it dismisses the complaint or clears the defendant, take at least the action specified in subsection (1) (a).

(3) If the Board imposes a fine under subsection (1) (c), it must specify a period within which the fine is to be paid.

(4) For the purposes of subsection (1) (e) but without limiting the generality of that subsection, the Board may require the defendant to do any one or more of the following:—

- (a) carry out specified work for a specified person either free of charge or for a specified fee;
- (b) repay or waive the whole or any part of any fees paid by or charged to a specified person in respect of specified work;
- (c) be subject to periodic supervision or inspection by a specified person;
- (d) seek specified advice in relation to the management of his or her practice.

(5) The Board, as an alternative to taking action under subsection (1) (a), (b), (c), (d), (e) or (f), may accept an undertaking from the defendant to take or refrain from taking specified action, either generally or within a specified period of time.

Costs and expenses of investigations

48—(1) The Board may, in addition to exercising its powers under section 47, order the defendant to pay such costs and expenses of or arising from the investigation as the Board thinks fit.

(2) Subsection (1) does not apply if the Board decides to dismiss the complaint against the defendant or, in a case to which section 44 (2) applies, clear the defendant.

(3) If the Board decides to dismiss the complaint or clear the defendant it may, if it considers it fair to do so, pay the costs and expenses or any part of the costs and expenses incurred by the defendant in respect of the investigation.

(4) Any costs or expenses ordered to be paid under subsection (1) are recoverable as a debt due to the Board.

Notice of decision

49—(1) When the Board has decided what action to take under section 47, it must give the defendant notice of—

- (a) the decision and the reasons for the decision; and
- (b) unless section 47 (1) (g) applies—the defendant's right of appeal.

(2) A notice under subsection (1) is to be served personally on the defendant.

(3) A decision of the Board under section 47 (1) (a), (b), (c), (d), (e) or (f) does not take effect until—

- (a) the expiration of the period within which the defendant may lodge an appeal against the decision; or
- (b) if the defendant lodges an appeal against the decision—the decision is confirmed or the appeal is withdrawn.

(4) The period referred to in subsection (3) (a) is taken to have commenced when notice of the Board's decision is served on the defendant.

(5) If the Board's decision takes effect, it may do any or all of the following:—

- (a) give notice of its decision to the Council of Optometry Registration Authorities;
- (b) give notice of its decision to such optometrical registration authorities as it considers appropriate to notify;
- (c) cause notice of its decision to be published in any professional publication related to the practice of optometry;
- (d) cause notice of its decision to be published in any newspaper published and circulated generally in this State;
- (e) cause notice of its decision to be published in the *Gazette*.

Division 4—Suspension

Suspension of registration

50—(1) The Board may suspend the registration of an optometrist for such period not exceeding 12 months as the Board in the circumstances considers necessary or appropriate if—

- (a) the optometrist contravenes a condition subject to which the optometrist is registered; or
- (b) the optometrist's authority to practise optometry under a foreign optometrical law has been suspended for a reason relating to the optometrist's professional conduct or physical or mental capacity; or

- (c) the optometrist fails to pay, within the time specified for payment, a fine imposed under section 47 (1) (c); or
- (d) the optometrist fails to comply with a requirement made of that optometrist under section 47 (1) (e); or
- (e) the optometrist fails to honour an undertaking given to the Board; or
- (f) the Board reasonably considers it necessary for the purposes of investigating a complaint made against that optometrist or investigating on its own motion a matter that could be the subject of a complaint against that optometrist; or
- (g) the Board reasonably considers that it is in the public interest to suspend the registration.

(2) The power of the Board to suspend an optometrist's registration under this section is in addition to the power of the Board to suspend that optometrist's registration under section 47 (1) (b).

(3) If the Board decides to suspend an optometrist's registration under this section it may afford that optometrist an opportunity to be heard but it is not required to do so.

(4) If the Board decides to suspend an optometrist's registration under this section it must make an appropriate note of the suspension and the reasons for the suspension in the register and give the optometrist notice of—

- (a) the suspension and the reasons for the suspension; and
- (b) the optometrist's right of appeal.

(5) A notice under subsection (4) is to be served personally on the person whose registration is suspended and, on the service of the notice, the person ceases to be a registered optometrist until the period of suspension specified in the notice expires or the suspension is revoked by the Supreme Court under Part 5 or by the Board under section 51.

(6) An optometrist whose registration has been suspended must, if directed in writing to do so by the Board, return his or her certificate of registration to the Board within 7 days after receiving that direction or within such longer period as the Board may allow.

Penalty: Fine not exceeding 15 penalty units.

Revocation of suspension

51—If the Board suspends an optometrist's registration under section 50 it may at any time, for any reason it considers sufficient, revoke the suspension.

Division 5—Miscellaneous

Evidence of facts found in other proceedings

52—A finding of fact in relation to the conduct of an optometrist made in any proceedings in a court or other tribunal to which that optometrist is a party, whether in this State or elsewhere, is evidence of that fact in proceedings under this Part.

Inspections

53—(1) If the Board reasonably suspects—

- (a) that an unregistered person may be practising optometry; or
- (b) that there may be grounds for a complaint against a registered optometrist; or
- (c) that there may be grounds for removing a person's name from the register or suspending a person's registration; or
- (d) that a registered optometrist may lack the physical capacity, mental capacity or skill to practise optometry—

it may, in writing, authorize a person to act as an inspector to investigate the matter.

(2) For the purposes of conducting an investigation under subsection (1), on production of his or her authorization an inspector may at any reasonable time enter the business premises of a registered optometrist or premises from which a person is apparently practising or purporting to practise optometry and do any or all of the following:—

- (a) inspect the premises generally;
- (b) require the person apparently in charge of the premises to produce for inspection any document held at the premises;

- (c) inspect and take notes of or extracts from any such document;
- (d) make a copy of any such document;
- (e) ask questions of and require answers from persons on the premises;
- (f) take photographs;
- (g) open and inspect containers or packages which the inspector reasonably suspects are used for the purpose of, or in connection with, the provision of optometrical services;
- (h) examine or test any equipment held on the premises;
- (i) require a person registered or claiming to be registered to produce a certificate of registration;
- (j) if the inspector reasonably suspects that an offence has been committed against this Act, seize and, on furnishing a receipt, remove anything that in the reasonable opinion of the inspector is evidence of the offence;
- (k) remove, on furnishing a receipt, any document found on the premises to the custody and control of the Board for as long as the Board considers necessary or expedient.

(3) If the Board is satisfied that for legitimate reasons a registered optometrist needs access to a document that has been removed from the optometrist's business premises to the custody and control of the Board under subsection (2) (k), the Board in its discretion may—

- (a) grant the optometrist reasonable access to the document or to a copy of the document; or
- (b) provide the optometrist with a copy or certified copy of the document; or
- (c) retain a copy of the document and return the original to the optometrist.

(4) A person must not give, agree to give or offer to an inspector a gift, reward or other inducement to do or abstain from doing anything in relation to an inspection under this section.

Penalty: Fine not exceeding 25 penalty units.

PART 5**APPEALS****Right of appeal**

54—(1) A person may appeal to the Supreme Court against any of the following:—

- (a) the refusal of the Board to register the person;
- (b) a condition to which a person's registration is made subject under section 25 (2);
- (c) the removal of the person's name from the register other than under section 37 (1) (b) (ii) or (iii);
- (d) the refusal of the Board to restore the person's name to the register under section 39;
- (e) the suspension of the person's registration under section 50;
- (f) the refusal of the Board to record in the register additional particulars or qualifications in respect of that person;
- (g) the refusal of the Board to accept payment of the prescribed annual registration fee from that person;
- (h) a decision of the Board under section 47 in respect of that person.

(2) An appeal is to be made within 30 days after notice of the Board's decision is given to the affected person.

Hearing of appeals

55—At the hearing of an appeal, the Supreme Court may—

- (a) confirm the decision taken by the Board; or
 - (b) set aside the decision taken by the Board; or
 - (c) set aside the decision taken by the Board and substitute such other decision as the Board has jurisdiction to take as the court specifies.
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PART 6**OFFENCES*****Division 1—Protection of the profession*****Offence to practise optometry if unregistered**

56—(1) A person who is not a registered optometrist must not practise optometry.

Penalty: Fine not exceeding 50 penalty units and a daily fine not exceeding 5 penalty units.

(2) Subsection (1) does not apply to a medical practitioner.

False claims

57—(1) A person who is not a registered optometrist must not hold himself or herself out, or allow himself or herself to be held out, as being a registered optometrist or as being in any way authorized or qualified to practise optometry.

Penalty: Fine not exceeding 25 penalty units and a daily fine not exceeding 2·5 penalty units.

(2) Subsection (1) does not apply to a medical practitioner.

Unauthorized use of certain titles

58—A person who is not a registered optometrist must not practise a profession or trade under any one or more of the following titles:—

(a) optometrist, registered optometrist, certified optometrist, licensed optometrist or qualified optometrist;

(b) optician, registered optician, certified optician, licensed optician or qualified optician;

(c) such other title as may be prescribed.

Penalty: Fine not exceeding 25 penalty units and a daily fine not exceeding 2·5 penalty units.

Optometrical services provided by bodies corporate

59—A body corporate that provides optometrical services is not guilty of an offence under section 56, 57 or 58 if those services are provided in its name or on its behalf by a registered optometrist.

Ownership of bodies corporate providing optometrical services

60—A body corporate must not provide an optometrical service, or cause or allow an optometrical service to be provided in its name or on its behalf, unless each member of that body corporate is a registered optometrist.

Penalty: Fine not exceeding 50 penalty units and a daily fine not exceeding 5 penalty units.

Advertising offences

61—(1) A person must not advertise an optometrical practice or optometrical services in a manner that—

- (a) is or is intended to be false or misleading; or
- (b) offers a discount, gift or other inducement to attract patients unless the advertisement also sets out the conditions of that offer; or
- (c) refers to or cites actual or purported testimonials; or
- (d) unfavourably compares that optometrical practice or those optometrical services with other optometrical practices or services.

Penalty:

- (a) in the case of a body corporate—a fine not exceeding 50 penalty units; or
- (b) in any other case—a fine not exceeding 25 penalty units.

(2) A person who, in good faith, publishes or prints an advertisement that contravenes subsection (1) on behalf of another person is not guilty of an offence under that subsection.

Division 2—Prescriptions and dispensing

Unauthorized dispensing of optical appliances

62—A person must not dispense an optical appliance except—

- (a) on and in accordance with the prescription of a medical practitioner or registered optometrist; or
- (b) by way of copying or duplicating an optical appliance other than a contact lens, or part of an optical appliance other than a contact lens, that the person has no reasonable grounds to suspect was made otherwise than pursuant to the prescription of a medical practitioner or registered optometrist.

Penalty: Fine not exceeding 50 penalty units.

Dispensing expired prescription

63—(1) A person must not dispense an optical appliance pursuant to an expired prescription.

Penalty: Fine not exceeding 50 penalty units.

(2) For the purposes of subsection (1)—

- (a) a prescription for a contact lens expires 18 months after the date on which it is written; and
- (b) a prescription for an optical appliance other than a contact lens expires 3 years after the date on which it is written.

Failure to offer prescription

64—A registered optometrist who determines that a patient requires an optical appliance to correct, remedy or relieve a defect of vision must offer to give the patient a prescription for that optical appliance unless the patient clearly indicates that he or she does not wish to be given a prescription.

Penalty: Fine not exceeding 25 penalty units.

Unauthorized fitting of contact lenses

65—(1) A person who is not a registered optometrist must not—

- (a) fit a contact lens on a person's eye or remove a contact lens from a person's eye; or
- (b) teach a person how to fit a contact lens on a person's eye or remove a contact lens from a person's eye.

Penalty: Fine not exceeding 50 penalty units.

(2) Subsection (1) does not apply to—

- (a) a medical practitioner; or
- (b) the fitting or removal of a contact lens under the direct supervision of a medical practitioner or registered optometrist; or
- (c) the fitting or removal of a contact lens by the person to whom it has been dispensed.

Division 3—General offences**Unauthorized use of scheduled substances**

66—(1) In this section “**scheduled substance**” means a scheduled substance within the meaning of the *Poisons Act 1971*.

(2) A registered optometrist must not use a scheduled substance in the practice of optometry except as authorized under the *Poisons Act 1971*.

Penalty: Fine not exceeding 50 penalty units.

Failure to display name on business premises

67—A person must not practise optometry in or from any premises unless that person's full name, or surname with initials, is clearly displayed on the outside of those premises in a position where it may be readily seen by a member of the public approaching or passing by the entrance to those premises.

Penalty: Fine not exceeding 15 penalty units.

Failure to notify Board of civil claims

68—(1) A registered optometrist must give the Board notice within 14 days after any proceedings claiming damages or other compensation for alleged negligence in the practice of optometry are commenced against that registered optometrist.

Penalty: Fine not exceeding 15 penalty units.

(2) A registered optometrist must give the Board notice within 14 days after—

- (a) any proceedings claiming damages or other compensation for alleged negligence by the optometrist in the practice of optometry are withdrawn or settled; or
- (b) a court or other tribunal makes an order in respect of any such proceedings.

Penalty: Fine not exceeding 15 penalty units.

Offences of dishonesty

69—(1) A person must not make or produce, or cause to be made or produced, a false or misleading statement, either orally or in writing, in connection with—

- (a) an application, inquiry or investigation; or
- (b) an investigation by an inspector under section 53.

Penalty: Fine not exceeding 25 penalty units.

(2) A person must not forge or change a certificate of registration or an interim certificate of registration.

Penalty: Fine not exceeding 25 penalty units.

(3) A person must not forge or change a degree, diploma or other evidence of qualifications for registration under this Act.

Penalty: Fine not exceeding 25 penalty units.

Obstruction, &c.

70—A person must not obstruct, hinder, threaten or intimidate another person—

- (a) in the exercise by that other person of a power conferred by this Act; or
- (b) in the performance of a duty imposed on that other person by this Act.

Penalty: Fine not exceeding 25 penalty units.

Offences relating to inquiries and investigations, &c.

71—(1) A person must not, without reasonable excuse—

- (a) fail to attend an inquiry or investigation as required by summons or from day to day or place to place during the inquiry or investigation; or
- (b) fail in an inquiry or an investigation to comply with the requirement to affirm or be sworn; or
- (c) fail to produce a document when required by a committee of inquiry or a disciplinary committee to do so; or
- (d) fail to answer questions required by a committee of inquiry or a disciplinary committee to be answered.

Penalty: Fine not exceeding 25 penalty units.

(2) A person may be required by a committee of inquiry or a disciplinary committee to answer a question or produce a document notwithstanding that the answer to the question or the contents of the document may tend to incriminate that person.

(3) If in an inquiry or investigation a person objects to answering a question or producing a document on the grounds that to do so may tend to incriminate that person, the answer to the question or the contents of the document are not admissible in evidence in any other proceedings in respect of the person, other than proceedings in respect of an offence under section 69 or in respect of an appeal under Part 5.

Failure to comply with orders

72—(1) A person must not—

- (a) fail to leave the hearing of an inquiry or investigation when ordered to do so by the committee conducting the inquiry or investigation; or
- (b) fail to leave a meeting of the Board when ordered to do so by the Board.

Penalty: Fine not exceeding 25 penalty units.

(2) A person must not—

- (a) report or otherwise disclose any proceedings of a committee of inquiry or a disciplinary committee contrary to an order of that committee; or
- (b) report or otherwise disclose any information in respect of the proceedings of a committee of inquiry or disciplinary committee contrary to an order of that committee.

Penalty:

- (a) in the case of a body corporate—a fine not exceeding 50 penalty units; or
- (b) in any other case—a fine not exceeding 25 penalty units.

(3) A person must not—

- (a) report or otherwise disclose any proceedings of a meeting of the Board contrary to an order of the Board; or
- (b) report or otherwise disclose any information in respect of a meeting of the Board contrary to an order of the Board.

Penalty:

- (a) in the case of a body corporate—a fine not exceeding 50 penalty units; or
 - (b) in any other case—a fine not exceeding 25 penalty units.
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PART 7**MISCELLANEOUS AND SUPPLEMENTAL*****Division 1—Obligations to provide information*****Medical practitioners' notices relating to fitness to practise**

73—A medical practitioner who signs a medical recommendation within the meaning of the *Mental Health Act 1963*, a medical affidavit within the meaning of that Act or a medical recommendation within the meaning of the *Alcohol and Drug Dependency Act 1968* in respect of a person who the medical practitioner knows or believes to be a registered optometrist must, as soon as practicable after so signing, give notice to the Board of that fact.

Penalty: Fine not exceeding 5 penalty units.

Provision of information by bodies corporate

74—A body corporate that provides optometrical services must, if the Board by notice requires it to do so, give the Board any or all of the following within the time provided by the notice:—

- (a) a copy of its memorandum and articles of association;
- (b) any information required by the notice concerning its membership, shareholdings, officers or employees;
- (c) any other information required by the notice concerning the body corporate's structure, management or operations.

Penalty: Fine not exceeding 50 penalty units.

Division 2—Administrative and legal**Service of documents**

75—A document may be served on the Board or a committee—

- (a) by leaving it at, or sending it by post to, the Board's address; or
- (b) by sending it by way of facsimile transmission to the Board's facsimile number.

Common seal of Board

76—(1) The common seal of the Board is to be kept and used as authorized by the Board.

(2) All courts and persons acting judicially must take judicial notice of the imprint of the common seal on a document and presume that it was duly sealed by the Board.

Presumptions

77—In any proceedings unless evidence is given to the contrary, proof is not required of—

- (a) the constitution of the Board or of a committee; or
- (b) any resolution of the Board or of a committee; or
- (c) the appointment of any member of the Board or of a committee; or
- (d) the presence of a quorum at any meeting of the Board or of a committee.

Appropriation of fees, penalties and fines

78—(1) All fees payable and all penalties imposed and recovered under this Act are to be paid to the Board.

(2) A fee payable under this Act may be recovered as a debt due to the Board.

(3) A fine imposed on a person under section 47 (1) (c) may be recovered as a debt due to the Board.

No right of recovery by unregistered person, &c.

79—(1) A person is not entitled to recover a fee or other remuneration for an optometrical service that he or she has provided on his or her own account unless he or she was a registered optometrist at the time the service was provided.

(2) A body corporate that provides optometrical services is not entitled to recover a fee or other remuneration for or in connection with an optometrical service provided in its name or on its behalf unless the service was provided by a registered optometrist.

(3) An optometrist or optical dispenser is not entitled to recover a fee or other remuneration for or in connection with an optical appliance if that optometrist or optical dispenser has been convicted of an offence under section 62 or 63 in respect of that optical appliance.

(4) In an action for the recovery of a fee or other remuneration for an optometrical service it is sufficient to state in the particulars of claim or demand the words "for optometrical services".

Punishment of conduct constituting an offence

80—If conduct that constitutes an offence against this Act is also grounds for disciplinary action under section 45, 47 or 50 of this Act—

- (a) the taking of the disciplinary action is not a bar to conviction and punishment for the offence; and
- (b) conviction and punishment for the offence is not a bar to the disciplinary action under this Act.

Offences by bodies corporate

81—(1) If a body corporate commits an offence against this Act, each person concerned in the management of that body corporate is taken also to have committed the offence and may be convicted of the offence unless the person proves that the act or omission constituting the offence took place without that person's knowledge or consent.

(2) A person referred to in subsection (1) may be convicted of an offence against this Act whether or not the body corporate is charged with or convicted of the offence.

Regulations

82—(1) The Governor may make regulations for the purposes of this Act.

(2) Without limiting the generality of subsection (1), the regulations may prescribe precautions to be taken to control the risk of infection in the practice of optometry and other precautions to be taken for the comfort, safety and welfare of optometrical patients.

- (3) Regulations made under this section may—
- (a) apply generally or be limited in their application by reference to specified exemptions or specified factors; and
 - (b) apply differently according to different factors, limitations or restrictions of a specified kind; and
 - (c) authorize any matter to be from time to time determined, applied or regulated by the Board.
- (4) Regulations made under this section may—
- (a) provide that a contravention of any of the regulations is an offence; and
 - (b) in respect of any such offence, provide for the imposition of a fine not exceeding 25 penalty units and, in the case of a continuing offence, a further penalty of a fine not exceeding 2.5 penalty units for each day during which the offence continues.
- (5) Regulations made under this Act may contain provisions of a savings or transitional nature consequent on the enactment of this Act.
- (6) A provision of a regulation made pursuant to subsection (5) may, if the regulation so provides, take effect on the day referred to in section 2 or a later date.

Division 3—Consequential and transitional

Repeals

83—The *Opticians Act 1913* and the *Opticians Amendment Act 1980* are repealed.

Consequential amendments

84—The Acts specified in Schedule 4 are amended as set out in that Schedule.

Savings and transitional provisions

85—The savings and transitional provisions set out in Schedule 5 have effect.

Interim fees

86—Until fees are prescribed for the purposes of this Act, the fees specified in Schedule 6 are the fees that are payable under this Act in respect of the various matters to which they respectively relate.

Administration of Act

87—Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990*—

- (a) the administration of this Act is assigned to the Minister for Community and Health Services; and
 - (b) the Department responsible to the Minister for Community and Health Services in relation to the administration of this Act is the Department of Community and Health Services.
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SCHEDULE 1

Section 6 (6)

PROVISIONS WITH RESPECT TO MEMBERSHIP OF BOARD

Term of office

1—(1) A member is to be appointed for such period, not exceeding 3 years, as is specified in the member's instrument of appointment.

(2) A member is eligible to serve any number of terms of office but may not serve more than 2 of those terms in succession.

Holding other office

2—The holder of an office who is required under any Act to devote the whole of his or her time to the duties of that office is not disqualified from—

- (a) holding that office and also the office of a member;
or
- (b) accepting any remuneration payable to a member.

Remuneration of members

3—A member is entitled to be paid such remuneration, including travelling and subsistence allowances, as the Minister determines.

Vacation of office

4—(1) A member vacates office if he or she—

- (a) dies; or
- (b) resigns; or
- (c) is removed from office under subclause (2) or (3); or
- (d) ceases to be qualified for office by virtue of subclause (4).

SCHEDULE 1—*continued*

(2) The Governor may remove a member from office if the member—

- (a) is absent from 3 consecutive meetings of the Board without the permission of the other members of the Board; or
- (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's remuneration or estate for their benefit; or
- (c) is convicted, in Tasmania or elsewhere, of a crime or an offence punishable by imprisonment for a period exceeding 12 months; or
- (d) fails, without reasonable excuse, to comply with the obligation referred to in clause 5 of Schedule 2; or
- (e) is convicted of an offence against this Act.

(3) The Governor may remove a member from office if satisfied that the member is unable to perform the duties of office competently.

(4) A member appointed under section 6 (1) (b) vacates office if he or she ceases to be a registered optometrist.

Filling of vacancies

5—(1) If the office of a member becomes vacant, the Governor may appoint a person to the vacant office for the remainder of that member's term of office.

(2) In the case of a vacancy in the office of a member referred to in section 6 (1) (b), the person appointed to the vacant office is to be a registered optometrist.

Validity of proceedings, &c.

6—(1) An act or proceeding of the Board or of a person acting under the direction of the Board is not invalid by reason only that at the time when the act or proceeding was done, taken or commenced there was a vacancy in the membership of the Board.

SCHEDULE 1—*continued*

(2) An act or proceeding of the Board or of a person acting under the direction of the Board is valid even if—

- (a) the appointment of a member of the Board was defective; or
 - (b) a person appointed as a member of the Board was disqualified from acting as, or incapable of being, such a member.
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SCHEDULE 2

Section 6 (7)

PROVISIONS WITH RESPECT TO MEETINGS OF BOARD**Convening of meetings**

1—A meeting of the Board may be convened by the chairperson or by any 2 members.

Procedure at meetings

2—(1) Four members form a quorum at any duly convened meeting of the Board.

(2) Any duly convened meeting of the Board at which a quorum is present is competent to transact any business of the Board.

(3) Questions arising at a meeting of the Board are to be determined by a majority of votes of the members present and voting.

Who presides at meetings

3—(1) The chairperson is to preside at all meetings of the Board at which he or she is present.

(2) If the chairperson is not present at a meeting of the Board, a member elected by the members present is to preside at that meeting.

(3) The person presiding at a meeting of the Board has a deliberate vote and, in the event of an equality of votes, also a casting vote.

Minutes

4—The Board must keep accurate minutes of its meetings.

SCHEDULE 2—*continued***Disclosure of interest**

5—(1) A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Board must, as soon as practicable after the relevant facts come to the knowledge of the member, disclose the nature of that interest at a meeting of the Board.

(2) A disclosure under subclause (1) is to be recorded in the minutes and the member must not, unless the Board exclusive of that member determines otherwise—

- (a) be present during any deliberations of the Board in relation to that matter; or
- (b) take part in any decision of the Board in relation to that matter.

Meetings to be open to public

6—(1) Except as provided in subclause (2), a meeting of the Board is to be open to the public.

(2) The Board may do either or both of the following at a meeting if it considers that there are compelling grounds to do so:—

- (a) make an order excluding any person who is not a member from the meeting;
- (b) make an order prohibiting the reporting or other disclosure of all or any of the proceedings at the meeting or prohibiting the reporting or other disclosure of particular information in respect of the meeting.

(3) Without limiting the range of grounds that may be relevant for the purposes of subclause (2), the Board may exercise its power under that subclause if—

- (a) it is dealing with privileged information or information that has been communicated to the Board in confidence; or
- (b) it is dealing with information concerning the personal affairs, finances or business arrangements of a registered optometrist; or
- (c) the disclosure of the proceedings or the information may be unfairly prejudicial to the reputation of a registered optometrist or any other person.

SCHEDULE 2—*continued***General procedures**

7—(1) Subject to this Schedule, the procedure for calling meetings of the Board and for the conduct of business at meetings of the Board is as determined by the Board.

(2) The Board may permit members to participate in a particular meeting by a telephone or other means of communication.

(3) A member who participates in a meeting under a permission granted under subclause (2) is taken to be present at the meeting.

(4) The Board may allow a person to attend a meeting for the purpose of advising or informing it on any matter.

SCHEDULE 3

Sections 23 (3) and 44 (4)

**POWERS AND PROCEDURES OF COMMITTEES OF INQUIRY AND
DISCIPLINARY COMMITTEES**

Interpretation

1—In this Schedule—

“**committee**” means a committee of inquiry or disciplinary committee;

“**proceedings**” includes inquiries and investigations.

Powers

2—A committee may—

- (a) summon any person to appear before it to give evidence and produce any document specified in the summons; and
- (b) require any person appearing before it to produce any document; and
- (c) require any person appearing before it to give evidence on oath or affirmation; and
- (d) require any person appearing before it to answer questions; and
- (e) proceed with and determine any proceedings notwithstanding the absence of a person who has been summoned to appear; and
- (f) adjourn the hearing of any proceedings from time to time and from place to place.

SCHEDULE 3—*continued***Procedure****3—A committee—**

- (a) must conduct its proceedings with as little formality and with as much expedition as a proper consideration of the matter before it permits; and
- (b) is not bound by the rules of evidence; and
- (c) may inform itself on any matter in any way it considers appropriate; and
- (d) must observe the rules of natural justice.

Medical examinations

4—(1) In this clause, “**medical examination**” includes an examination of the physical, psychological and mental capacities of a person.

(2) A committee, by notice, may require an applicant or defendant to have a medical examination at the Board’s expense.

(3) Notwithstanding subclause (2), a disciplinary committee must not require a defendant to have a medical examination unless, having regard to the matter being investigated, it is reasonable to require that examination.

(4) A notice under subsection (2) is to specify—

- (a) the name of the medical practitioner who is to carry out the medical examination; and
- (b) the date, time and place of the medical examination.

(5) The time and place specified for a medical examination must be reasonable.

(6) The medical practitioner who carries out the medical examination must provide the committee and the person examined with a written report of the results of that examination.

SCHEDULE 3—*continued***Proceedings to be open to public**

5—(1) Except as provided in subclause (2), the proceedings of a committee are to be open to the public.

(2) A committee hearing any proceedings may, on the application of a party to the proceedings or on its own motion, do either or both of the following if it considers that there are compelling grounds to do so:—

- (a) make an order excluding any person from the hearing;
- (b) make an order prohibiting the reporting or other disclosure of all or any of the proceedings or prohibiting the reporting or other disclosure of particular information in respect of the proceedings.

(3) Without limiting the range of grounds that may be relevant for the purposes of subclause (2), a committee may exercise its power under that subclause if—

- (a) it is dealing with privileged information or information that has been communicated to the Board or the committee in confidence; or
- (b) it is dealing with information concerning the personal affairs, finances or business arrangements of a registered optometrist; or
- (c) the disclosure of the proceedings or the information may be unfairly prejudicial to the reputation of a registered optometrist or any other person.

Representation, &c.

6—(1) An applicant is entitled to attend an inquiry and to be represented by a legal practitioner or any other person.

(2) A defendant is entitled to attend an investigation and to be represented by a legal practitioner or any other person.

(3) The Board, at its own expense, may appoint a legal practitioner to assist a committee in conducting any proceedings.

SCHEDULE 3—*continued*

- (4) The Secretary may—
- (a) become a party to any proceedings; and
 - (b) be represented in the proceedings by an employee of the Department.
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SCHEDULE 4

Section 84

CONSEQUENTIAL AMENDMENTS

Industrial Relations Act 1984

Section 66 (5) is amended by omitting paragraph (c) and substituting the following paragraph:—

- (c) registered optometrists within the meaning of the *Optometrists Registration Act 1994*;

Jury Act 1899

Schedule I is amended by omitting paragraph (c) of clause 4 and substituting the following paragraph:—

- (c) *Optometrists Registration Act 1994*;

Poisons Act 1971

Section 38 (1) is amended by inserting the following paragraph after paragraph (e):—

- (ea) the administration to a person's eye of a substance to which section 26 applies or a restricted substance by a person who is a registered optometrist under the *Optometrists Registration Act 1994* in the lawful practice of the profession of optometry;

Workers Compensation Act 1988

Section 74 is amended as follows:—

- (a) by omitting "optician" from paragraphs (a) and (e) of the definition of "medical services" and substituting, in each case, "optometrist";
- (b) by omitting the definition of "optician" and substituting the following definition:—

"**optometrist**" means a registered optometrist within the meaning of the *Optometrists Registration Act 1994*;

SCHEDULE 5

Section 85

SAVINGS AND TRANSITIONAL PROVISIONS

Interpretation

1—In this Schedule, unless the contrary intention appears—

“**commencement day**” means the day proclaimed under section 2;

“**former Board**” means the Board of Optical Registration constituted under the repealed Act;

“**former Registrar**” means the person appointed or acting as Registrar under the repealed Act immediately before the commencement day;

“**repealed Act**” means the *Opticians Act 1913*.

Continuation of register and entitlements, &c.

2—(1) The Register of Opticians kept under section 19 of the repealed Act is, on and after the commencement day, taken to be a part of the register for the purposes of this Act.

(2) A person who, immediately before the commencement day, was registered under section 19 of the repealed Act is, on and after the commencement day, taken to be a registered optometrist under and subject to this Act on the same conditions, if any, as applied to the former registration.

(3) Subclause (2) applies to a registration even if it is suspended, but that subclause is not to be taken as revoking or reducing any period of suspension to which the former registration was subject immediately before the commencement day.

(4) A person who, immediately before the commencement day, was entitled to practise optometry under the repealed Act is, on and after that day, taken to be entitled to practise optometry under and subject to this Act.

(5) An application for registration made under the repealed Act and not determined by the former Board immediately before the commencement day is to be determined by the Board as if it were a valid application made under this Act.

SCHEDULE 5—*continued*

(6) Where an inquiry or investigation begun under the repealed Act had not been concluded immediately before the commencement day, the Board may determine that that inquiry or investigation is to be—

- (a) terminated and reinstated under this Act; or
- (b) continued and concluded as if this Act had not been enacted.

Validation

3—(1) All acts, matters and things done or omitted to be done by, or done or suffered in relation to, the former Board or the former Registrar before the commencement day have, on and after that day, the same force and effect as if they had been done by, or suffered in relation to, the Board.

(2) A person purporting to perform the functions and exercise the powers of Registrar under the repealed Act before the commencement day is taken—

- (a) to have been validly appointed under the repealed Act as the former Registrar; and
- (b) to have held that office under the repealed Act during the period in which that person was so purporting to perform those functions and exercise those powers.

Proceedings

4—Any proceedings that, immediately before the commencement day, might have been brought or continued by or against the former Board may be brought or continued by or against the Board.

Assets and liabilities

5—On the commencement day, all assets and liabilities of the former Board vest in and become assets and liabilities of the Board.

SCHEDULE 5—*continued***Bank accounts**

6—A bank account kept in the name of the former Board immediately before the commencement day is, on the commencement day, taken to be a bank account of the Board kept under section 15.

Registrar

7—(1) The person who, immediately before the commencement day, was the former Registrar is the first Registrar under this Act.

(2) Unless the Board otherwise determines, the first Registrar continues to hold office on the same terms and conditions as those which applied to the former Registrar.

Reimbursement of Crown costs under repealed Act

8—The Board must, if directed in writing to do so by the Treasurer, pay into the Consolidated Fund such amount as the Treasurer specifies in the direction towards defraying the reasonable costs contributed by the Crown towards the costs of administering the repealed Act.

Qualifications

9—Until the Council of Optometry Registration Authorities accredits institutions and holds examinations for the purposes of section 19, a person is taken to be eligible to apply to the Board to be registered as an optometrist if he or she is a graduate of a prescribed institution or has passed a prescribed examination.

SCHEDULE 6

Section 86

INTERIM FEES

	\$
1. Application for registration: section 20 (1) (c)	100
2. Annual registration fee: section 36 (2) (a)	250
3. Late fee: section 36 (4)	50
4. Fee to restore name to register: section 39 (1).....	75
5. Fee for replacement certificate of registration: section 28 (4)	50
6. Application for additional particulars or qualifications to be added in register: section 32 (2) (a)	25
7. Fee to inspect register: section 33 (1)...	10
8. Fee to obtain copy of or extract from register: section 33 (2).....	5 per page
9. Fee to obtain copy of notice: section 34 (2).....	5 per page

*[Second reading presentation speech made in:—
House of Assembly on 29 November 1994
Legislative Council on 30 November 1994]*