

Western Australia

Optical Dispensers Act 1966

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Optical Dispensers Act 1966

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Optical Dispensers Act 1966

An Act relating to the licensing of optical dispensers and for incidental and other purposes.

1. Short title

This Act may be cited as the *Optical Dispensers Act 1966*¹.

2. Commencement

Subject to section 9(2), this Act shall come into operation on a date to be fixed by proclamation¹.

3. Interpretation

In this Act, unless the contrary intention appears —

“chief executive officer” means the chief executive officer under the *Public Sector Management Act 1994* of the department principally assisting the Minister with the administration of this Act;

“licence” means a licence issued pursuant to section 5;

“optical appliance” means an appliance designed to correct, remedy or relieve any refractive abnormality or optical defect of sight, and includes a haptic lens but does not include a corneal lens;

“optical dispenser” means a person in respect of whom a licence is in force;

“optical dispensing” means the interpretation and dispensing of prescriptions for optical appliances, and the taking of facial measurements for, and the fitting and sale of, optical appliances;

“qualifications” includes courses and periods of training;

“sale of optical appliances” does not include the sale of optical appliances to an optical dispenser or a sale of optical appliances preceding their sale to an optical dispenser.

[Section 3 amended by No. 28 of 1984 s. 84; No. 55 of 2004 s. 823.]

4. Application of Act

Nothing in this Act extends or applies to, or in any manner affects the practice of his profession by, or any rights or privileges of, a medical practitioner within the meaning of the *Medical Act 1894* or a registered optometrist within the meaning of the *Optometrists Act 1940*.

5. Licences

(1) A person may, by application in the prescribed form and upon payment of a fee of \$5, apply to the chief executive officer for the issue to him of a licence.

(2) Where the chief executive officer is satisfied that an applicant for a licence is of good character and that the applicant holds any of the prescribed qualifications, the chief executive officer shall issue to the applicant a licence, in the prescribed form, to carry out optical dispensing, except in relation to haptic lenses.

[(3) repealed]

(4) A person aggrieved by the refusal of the chief executive officer to issue him with a licence may apply to the State Administrative Tribunal for a review of the refusal.

[Section 5 amended by No. 28 of 1984 s. 85; No. 55 of 2004 s. 824.]

6. Dispensing etc., of haptic lenses

(1) Where an optical dispenser satisfies the chief executive officer that he has such qualifications in the interpretation and

dispensing of prescriptions for, and the fitting and sale of, haptic lenses as are, in the opinion of the chief executive officer, necessary for the purpose, the chief executive officer shall enter the prescribed endorsement on the licence of that optical dispenser.

- (2) An optical dispenser whose licence does not bear the prescribed endorsement shall not interpret and dispense a prescription for, or fit, a haptic lens.

Penalty: \$200.

[Section 6 amended by No. 28 of 1984 s. 85; No. 55 of 2004 s. 825.]

6A. Investigator

- (1) If the chief executive officer has reason to investigate any matter relevant to the performance of the chief executive officer's functions under this Act, the chief executive officer may designate a person employed in the chief executive officer's department to investigate the matter and report to the chief executive officer.
- (2) The chief executive officer is to issue to each person designated a certificate in an approved form of that person's designation as an investigator.
- (3) A certificate purporting to have been issued under this section is evidence in any court of the designation to which the certificate purports to relate.

[Section 6A inserted by No. 55 of 2004 s. 826.]

6B. Report of investigator

- (1) An investigator must —
 - (a) within such period as the chief executive officer requires prepare a report on the investigation, and make recommendations as to the manner in which the matter should be dealt with; and

- (b) immediately after preparing the report, provide the chief executive officer with a copy of the report.
- (2) The investigator must return his or her certificate of designation at the time the chief executive officer is provided with a copy of the report.

[Section 6B inserted by No. 55 of 2004 s. 826.]

6C. Powers of investigator

- (1) An investigator may for the purposes of an investigation —
 - (a) enter and inspect the premises of a person named in a warrant issued under section 6E(1), and exercise the powers referred to in section 6E(2)(b) and (c);
 - (b) require a person to produce to the investigator any document or other thing concerning the investigation that is in the possession or under the control of the person;
 - (c) inspect any document or other thing produced to the investigator and retain it for such reasonable period as the investigator thinks fit, and make copies of a document or any of its contents;
 - (d) require a person —
 - (i) to give the investigator such information as the investigator requires; and
 - (ii) to answer any question put to that person, in relation to the matter the subject of the investigation; and
 - (e) exercise other powers conferred on an investigator by the regulations.
- (2) A requirement made under subsection (1)(b) —
 - (a) must be made by notice in writing given to the person required to produce the document or other thing;

- (b) must specify the time at or within which the document or other thing is to be produced;
 - (c) may, by its terms, require that the document or other thing required be produced at a place and by means specified in the requirement; and
 - (d) where the document required is not in a readable format, must be treated as a requirement to produce —
 - (i) the document itself; and
 - (ii) the contents of the document in a readable format.
- (3) A requirement made under subsection (1)(d) —
- (a) may be made orally or by notice in writing served on the person required to give information or answer a question, as the case may be;
 - (b) must specify the time at or within which the information is to be given or the question is to be answered, as the case may be; and
 - (c) may, by its terms, require that the information or answer required —
 - (i) be given orally or in writing;
 - (ii) be given at or sent or delivered to a place specified in the requirement;
 - (iii) in the case of written information or answers be sent or delivered by means specified in the requirement; and
 - (iv) be verified by statutory declaration.
- (4) If under subsection (1)(d) an investigator requires a person to give information or answer a question, the investigator must inform that person that the person is required under this Act to give the information or answer the question.
- (5) An investigator must produce his or her certificate of designation if requested to do so by a person in respect of whom

the investigator has exercised, or is about to exercise, a power under this section.

[Section 6C inserted by No. 55 of 2004 s. 826.]

6D. Warrant to enter premises

- (1) If the chief executive officer has determined in a particular case that an investigator has reasonable grounds for believing that entry to premises is necessary for the purpose of investigating a matter that may involve a threat to the physical or mental health of a person the investigator may apply to a magistrate for a warrant to be issued in respect of those premises.
- (2) An application for a warrant must —
 - (a) be in writing;
 - (b) be accompanied by a notice in writing from the chief executive officer stating that it has determined in the particular case that the investigator has reasonable grounds for believing that entry to premises is necessary for the purpose of investigating a matter that may involve a threat to the physical or mental health of a person;
 - (c) set out the grounds for seeking the warrant; and
 - (d) describe the premises that are to be entered.
- (3) A magistrate to whom an application is made under this section must refuse it if —
 - (a) the application does not comply with the requirements of this Act; or
 - (b) when required to do so by the magistrate, the investigator does not give to the magistrate more information about the application.
- (4) The information in an application or given to a magistrate under this section must be verified before the magistrate on oath or affirmation or by affidavit, and the magistrate may for that purpose administer an oath or affirmation or take an affidavit.

[Section 6D inserted by No. 55 of 2004 s. 826.]

6E. Issue of warrant

- (1) A magistrate to whom an application is made under section 6D may issue a warrant, if satisfied that there are reasonable grounds for believing that entry and inspection of the premises are necessary for the purpose referred to in that section.
- (2) A warrant under subsection (1) authorises the investigator —
 - (a) to enter and inspect the premises named in the warrant;
 - (b) to require a person on the premises to answer questions or produce documents or other things in the person's possession concerning the investigation; and
 - (c) to inspect documents and other things, and take copies of or extracts from documents, produced in compliance with a requirement made under paragraph (b).
- (3) There must be stated in a warrant —
 - (a) the purpose for which the warrant is issued;
 - (b) the name of the person to whom the warrant is issued; and
 - (c) a description of the premises that may be entered.
- (4) A magistrate who issues a warrant must cause a record to be made of particulars of the grounds that the magistrate has relied on to justify the issue of the warrant.

[Section 6E inserted by No. 55 of 2004 s. 826.]

6F. Execution of warrant

- (1) If asked by the occupier or a person in charge of the premises, the person executing a warrant must produce it for inspection.
- (2) A warrant ceases to have effect —
 - (a) at the end of the period of one month after its issue;
 - (b) if it is withdrawn by the magistrate who issued it; or

s. 6G

(c) when it is executed,
whichever occurs first.

[Section 6F inserted by No. 55 of 2004 s. 826.]

6G. Incriminating information, questions, or documents

Without prejudice to the provisions of section 11 of the *Evidence Act 1906*, where under section 6C a person is required to —

- (a) give any information;
- (b) answer any question; or
- (c) produce any document,

he or she shall not refuse to comply with that requirement on the ground that the information, answer, or document may tend to incriminate the person or render the person liable to any penalty, but the information or answer given, or document produced, by the person shall not be admissible in evidence in any proceedings against the person other than proceedings in respect of an offence against section 6H(1)(b).

[Section 6G inserted by No. 55 of 2004 s. 826.]

6H. Failure to comply with investigation

- (1) Where under section 6C a person is required to give any information, answer any question, or produce any document and that person, without reasonable excuse (proof of which shall lie on him or her) —

- (a) fails to give that information or answer that question at or within the time specified in the requirement;
- (b) gives any information or answer that is false in any particular; or
- (c) fails to produce that document at or within the time specified in the requirement,

the person commits an offence.

Penalty: \$2 000.

- (2) It is a defence in any proceeding for an offence under subsection (1)(a) or (c) for the defendant to show —
- (a) that, in the case of an alleged offence arising out of a requirement made orally under section 6C, the investigator did not, when making the requirement, inform the defendant that he or she was required under this Act to give the information or answer the question, as the case may be;
 - (b) that, in the case of an alleged offence arising out of a requirement made by notice in writing under section 6C, the notice did not state that he or she was required under this Act to give the information, answer the question, or produce the document or thing, as the case may be;
 - (c) that the time specified in the requirement did not afford the defendant sufficient notice to enable him to comply with the requirement; or
 - (d) that, in any case, the investigator did not, before making the requirement, have reasonable grounds to believe that compliance with the requirement would materially assist in the investigation being carried out.

[Section 6H inserted by No. 55 of 2004 s. 826.]

6I. Obstruction of investigator

A person shall not prevent or attempt to prevent an investigator from entering premises or otherwise obstruct or impede an investigator in the exercise of his or her powers under section 6C.

Penalty: \$2 000.

[Section 6I inserted by No. 55 of 2004 s. 826.]

7. Revocation of licences

- (1) Where the chief executive officer, after due inquiry, is satisfied that an optical dispenser is no longer a fit and proper person to continue to be the holder of a licence, the may allege to the State Administrative Tribunal that there are grounds for the Tribunal to revoke the licence of that optical dispenser and if the Tribunal finds that the optical dispenser is no longer a fit and proper person to continue to be the holder of a licence, it may order that the licence is revoked.

[(2) repealed]

- (3) A person whose licence has been revoked pursuant to this section may apply in writing to the chief executive officer, at any time after the expiration of a period of one year from the revocation of that licence, for the restoration of his licence, and the chief executive officer may restore the licence to that person.
- (4) The chief executive officer cannot grant an application under subsection (3) unless it has applied for, and obtained, the approval of the State Administrative Tribunal to do so.

[Section 7 amended by No. 28 of 1984 s. 85; No. 55 of 2004 s. 827.]

8. Record of licences

- (1) The chief executive officer shall maintain a record of licences issued under this Act, and shall strike from the record the name of any optical dispenser who dies, or whose licence is revoked pursuant to section 7(1), and shall enter in the record the name of any person whose licence is restored pursuant to section 7(3).
- (2) The record kept pursuant to this section may be inspected at any reasonable time on payment of the prescribed fee.

[Section 8 amended by No. 28 of 1984 s. 85; No. 55 of 2004 s. 828.]

9. Unlicensed persons not to engage in optical dispensing

- (1) A person who is not an optical dispenser shall not —
- (a) carry out optical dispensing; or
 - (b) take or use the name or title, optical dispenser, or hold himself out as being an optical dispenser.

Penalty: \$200.

- (2) This section shall come into operation 3 months after the date fixed pursuant to section 2.

10. False statements

- (1) Any person who knowingly makes any false or misleading statement, either orally or in writing, to the chief executive officer for the purposes of, or in relation to, an application by him for a licence, or for the restoration of a licence previously held, by him, commits an offence.

Penalty: \$200.

- (2) The chief executive officer may, without further inquiry, revoke the licence held by an optical dispenser convicted of an offence against this section.

[Section 10 amended by No. 28 of 1984 s. 85; No. 55 of 2004 s. 829.]

11. Evidence

A certificate in writing under the hand of the chief executive officer certifying that a person is, or is not, an optical dispenser is evidence of the facts contained therein.

[Section 11 amended by No. 28 of 1984 s. 85; No. 55 of 2004 s. 830.]

11A. Reporting

The annual report under the *Financial Administration and Audit Act 1985* of the department principally assisting the Minister in the administration of this Act is to include details of —

- (a) the number, nature, and outcome, of —
 - (i) investigations and inquiries undertaken by, or at the direction of, the chief executive officer; and
 - (ii) matters that have been brought before the State Administrative Tribunal by the chief executive officer;
- (b) the number and nature of matters referred to in paragraph (a) that are outstanding;
- (c) any trends or special problems that may have emerged;
- (d) forecasts of the workload under this Act of the department in the year after the year to which the report relates; and
- (e) any proposals for improving the performance of functions under this Act.

[Section 11A inserted by No. 55 of 2004 s. 831.]

12. Regulations

The Governor may make regulations —

- (a) prescribing forms and fees for the purposes of this Act;
- (b) prescribing the qualifications referred to in section 5;
- (c) prescribing all other matters and things necessary or convenient to be prescribed for the administration of this Act; and
- (d) prescribing penalties, not exceeding \$50 in any case, for any contravention or failure to comply with the regulations.

Notes

¹ This is a compilation of the *Optical Dispensers Act 1966* and includes the amendments made by the other written laws referred to in the following table ^{1a}. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Optical Dispensers Act 1966</i>	44 of 1966	18 Nov 1966	Act other than s. 9: 30 Jun 1967 (see s. 2 and <i>Gazette</i> 30 Jun 1967 p. 1695); s. 9: 30 Sep 1967 (see s. 9(2))
<i>Health Legislation Amendment Act 1984 Pt. XVIII</i>	28 of 1984	31 May 1984	1 Jul 1984 (see s. 2 and <i>Gazette</i> 15 Jun 1984 p. 1629)
Reprint of the <i>Optical Dispensers Act 1966</i> as at 21 Jan 1986 (includes amendments listed above)			
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004 Pt. 2 Div. 90²</i>	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
Reprint 2: The <i>Optical Dispensers Act 1966</i> as at 1 Apr 2005 (includes amendments listed above)			

^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Optometrists Act 2005</i> s. 109 ³	29 of 2005	12 Dec 2005	To be proclaimed (see s. 2)

² The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004 Pt. 5*, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.

³ On the date as at which this compilation was prepared, the *Optometrists Act 2005* s. 109, which gives effect to Sch. 3, had not come into operation. It reads as follows:

“

109. Consequential amendments

Schedule 3 sets out consequential amendments.

”.

Schedule 3 cl. 5 reads as follows:

“

Schedule 3 — Consequential amendments

[s. 109]

5. *Optical Dispensers Act 1966* amended

- (1) The amendments in this clause are to the *Optical Dispensers Act 1966*.
- (2) Section 4 is amended by deleting “a registered optometrist within the meaning of the *Optometrists Act 1940*.” and inserting instead —

“

an optometrist as defined in the *Optometrists Act 2005* section 3.

”.

”.