

Approved for Reprint 8th May, 1980.

WESTERN AUSTRALIA.

OPTOMETRISTS.

4° and 5° Geo. VI., No. XXXIII.

No. 33 of 1940.¹

(Affected by Act No. 113 of 1965, s. 8.)

[As amended by Acts:

No. 44 of 1944, assented to 24th January, 1945;

No. 28 of 1947, assented to 18th November, 1947;

No. 23 of 1951, assented to 27th November, 1951;

No. 45 of 1957, assented to 26th November, 1957;

No. 79 of 1960, assented to 12th December, 1960;

No. 94 of 1965,² assented to 8th December, 1965;

No. 45 of 1966,³ assented to 18th November, 1966;

No. 70 of 1978,⁴ assented to 26th September, 1978;

and reprinted pursuant to the Amendments Incorporation Act, 1938.]

AN ACT relating to Optometrists.

[Assented to 16th December, 1940.]

BE it enacted—

1. This Act may be cited as the *Optometrists Act, 1940-1978*, and shall come into operation on a day to be fixed by Proclamation.

Short title and commencement.
Amended by No. 70 of 1978, s. 1.

2. This Act is divided into Parts, as follows:—

Act divided into Parts.

PART I.—ss. 3 and 4: PRELIMINARY.

PART II.—ss. 5 to 18: THE OPTOMETRISTS
REGISTRATION BOARD.

¹ Came into operation 17th January, 1941, see *Gazette* 17th January, 1941, p. 103.

² Act not proclaimed. Repealed by No. 45 of 1966, s. 3.

³ Came into operation 30th June, 1967, see *Gazette* 30th June, 1967, p. 1695.

⁴ Came into operation 30th March, 1979, see *Gazette* 30th March, 1979, p. 839.

PART III.—ss. 19 to 31: THE REGISTER OF OPTOMETRISTS.

PART IV.—ss. 32 to 35: REGISTRATION OF OPTOMETRISTS.

PART V.—ss. 36 to 47: MISCELLANEOUS.

PART I.—PRELIMINARY.

Interpretation.
Amended by
No. 79 of
1960, s. 2;
No. 45 of
1966, s. 3.

3. In this Act, unless the context otherwise requires—

“Advertisement” includes any publication or representation to the public or a member thereof (whether by means of printed or spoken words, or of signs, or any other graphic matter, or by means of wireless or other mechanical process, or by means of any other mode of representing or reproducing words, sounds, signs, or any other graphic matter) which contains, refers to or mentions the name of any optometrist or any firm or business in which he is a partner, or by whom or which he is employed, or of any company engaged in the practice or business of optometry, and “advertise” includes either directly or indirectly authorising, permitting, or suffering any advertisement.

“Board” means the Optometrists Registration Board established by this Act.

“Company” means any incorporated body or incorporated association.

“Medical Practitioner” means a medical practitioner duly registered under the Medical Act, 1894.

“Minister” means the Minister of the Crown charged with the administration of this Act.

“Optical dispensing” has the same meaning as is from time to time ascribed thereto by the Optical Dispensers Act, 1966.

“Optometrist” and “optician” shall be deemed to be synonymous and mean a person who practises optometry and dispenses the prescriptions for spectacles made or given by oculists. These terms do not include a person engaged only in the actual craft or occupation of lens-grinding or of spectacles-making or a person engaged only in optical dispensing.

“Optometry” or “the practice of optometry” means—

- (a) the employment of methods, other than methods which involve the use of drugs, for the measurement of the powers of vision; or
- (b) the adaptation of lenses and prisms for the aid of the powers of vision; or
- (c) both such employment and such adaptation.

These terms do not include optical dispensing or the actual craft of lens-grinding and spectacles-making when engaged in by a person who is not an optometrist as hereinbefore defined.

“Register” means the Register of Optometrists to be kept by the Registrar for the purposes of this Act.

“Registered optometrist” means a person who is registered as an optometrist as required by this Act.

“Registrar” means the person who, for the time being and from time to time, is appointed by and holds office under the Board as Registrar.

The term includes an acting Registrar.

“Rules” means rules made by the Board under the authority of this Act.

This Act not
to affect
medical
practitioners.

4. Nothing in this Act shall extend or apply to or in any manner affect the practice of his profession by, or any rights or privileges of, any medical practitioner.

PART II.—THE OPTOMETRISTS REGISTRATION BOARD.

Establish-
ment of
Board.
Amended by
No. 79 of
1960, s. 3.

5. (1) A Board, to be called "The Optometrists Registration Board," is hereby established for the purposes of this Act.

(2) The Board shall consist of eight members, to be appointed by the Governor.

(3) Of the members so appointed—

- (a) two shall be registered optometrists nominated by the Minister;
- (b) three shall be registered optometrists nominated by the registered optometrists;
- (c) one shall be a member of the teaching staff of the Physics Department of the University of Western Australia nominated by the Faculty in the said University which controls the said Physics Department;
- (d) one shall be a practising ophthalmologist nominated by the British Medical Association (Western Australian Branch);
- (e) one, who shall not be a registered optometrist or registered medical practitioner, shall be nominated by the Minister to be chairman of the Board.

(4) The nomination of the three members pursuant to paragraph (b) of subsection (3) hereof shall be made in the manner prescribed; and the nomination of the one member pursuant to paragraph (c) of the said subsection shall be made by a resolution of the Faculty mentioned in the said paragraph (c) duly passed at a duly convened meeting of that Faculty.

(5) If no nomination or no sufficient nomination of a person or persons for appointment as members

of the Board pursuant to paragraph (b) of subsection (3) hereof is made by the persons mentioned in that paragraph within fourteen days after the prescribed nomination day, or if no nomination or no sufficient nomination of a person for appointment as a member of the Board pursuant to paragraph (c) or paragraph (d) is made by the body mentioned in the relative paragraph aforesaid within one month after the service by the Minister of a notice in writing to such body requesting the necessary nomination, the Governor may, on the recommendation of the Minister, appoint any person or persons, whether an optometrist or not, as a member or as members of the Board as the representative or representatives of the persons or bodies aforesaid who or which have failed to make the nomination or the sufficient nomination as aforesaid:

Provided that, where possible, the Minister, when making his recommendation to the Governor under this subsection, shall recommend a person or persons who would have been eligible for nomination by the persons or bodies who or which have failed to make the nomination or the sufficient nomination as aforesaid.

(6) Until the first representatives under paragraphs (b), and (c) of subsection (3) hereof have been duly nominated, the Governor may appoint four other persons, namely:—

- (a) three persons who at the commencement of this Act are practising optometry in this State; and
- (b) one member of the teaching staff of the Physics Department of the University of Western Australia

to act in the place of such first representatives aforesaid, together with the three persons to be appointed by the Governor pursuant to paragraph (a) of the said subsection (3) as the Board; and the first Board as so constituted may exercise and perform all the powers, functions, and duties of the Board under this Act until the first-mentioned first

representatives have been nominated in accordance with this section and have been appointed by the Governor:

Provided that, if there be no member of the teaching staff of the Physics Department of the University aforesaid available for appointment under this subsection, the Governor may appoint instead a person who at the commencement of this Act is practising optometry in this State.

Tenure of office.

6. Subject to subsection (6) of section five of this Act, the members of the Board shall be appointed and hold office for such period not exceeding three years, as the Governor shall in each and every case determine, and the term of every such appointment shall be computed from the date of the appointment. Unless disqualified by this Act, any person retiring from membership on the Board shall be eligible for renomination and reappointment as a member of the Board.

The Board to be a body corporate.

7. (1) The Board shall be a body corporate, under the name "The Optometrists Registration Board," with perpetual succession and a common seal, and shall be capable of suing and being sued in its corporate name, and of acquiring, holding, and disposing of real and personal property, and of doing and suffering such acts and things as bodies corporate may by law do and suffer.

Judicial notice of seal and signatories.

(2) The seal of the Board and the signature of the chairman and of every member of the Board shall be judicially noticed by all courts and persons authorised by law to receive evidence on oath.

Acts of Board not invalidated by vacancy or defect in nomination or appointment.

(3) No act or proceeding of the Board shall be invalid or be prejudiced by reason only of the fact that at the time when such act or proceeding is done, taken, or commenced—

- (a) there is a vacancy in the office of any member; or

- (b) there was some defect in the nomination or appointment of any member of the Board; or
- (c) that any member of the Board was disqualified or not authorised to do or participate in the doing of anything done by the Board or by such member.

8. (1) Any four members of the Board shall form a quorum thereof.

Proceedings
of the Board.
Amended by
No. 79 of
1960, s. 4.

Provided that no act or proceeding of the Board shall be invalid or prejudiced by reason of the fact that at the time when such act or proceeding is done, taken, or commenced the members of the Board were, without the knowledge of the Board, reduced below four.

(2) [*Deleted by No. 79 of 1960, s. 4.*]

(3) If by reason of sickness absence from the State or any other reason the chairman is unable to discharge his duties as such chairman, the members of the Board may appoint one of the optometrist members to be acting chairman, who shall have full right to and may exercise all the powers, functions, and authorities and shall perform all the duties of chairman until the chairman resumes his duties.

(4) At all meetings of the Board the chairman, or, in his absence, the acting chairman (if any) shall preside. In the absence of both the chairman and the acting chairman (if any) from any meeting of the Board, the members present shall elect one of their number to be chairman of the meeting.

(5) Whenever the members are not unanimous as to any matter, such matter shall be decided by the majority of votes, and the decision so arrived at shall be the decision of the Board.

(6) Each member of the Board shall have one vote and the chairman presiding at any meeting of the

Board shall have a deliberative vote, and, in case of an equality of votes, shall also have a casting vote.

Resignation.

9. Any member of the Board may resign from the Board by notice in writing signed by him and given to the Minister.

Disqualification.

10. Any person who has his affairs under liquidation, or is an undischarged bankrupt, or insolvent, or has been convicted of an indictable offence, or becomes an insane person, or is a drug addict, or being a registered optometrist, is struck off the Register, shall be disqualified from being nominated or appointed or from continuing to hold office as a member of the Board.

Vacancies.

11. (1) The office of a member of the Board shall be vacated—

- (a) if he is or has become disqualified under this Act; or
- (b) if, without leave obtained from the Board in that behalf, he has been absent from four consecutive meetings of the Board; or
- (c) upon death or resignation.

(2) Where the office of any member of the Board becomes vacant, a person eligible for nomination and appointment shall be nominated and appointed in accordance with section five of this Act to fill the vacancy, but the person so nominated and appointed to fill such vacancy shall hold office only for the unexpired portion of the term of office of his predecessor.

Deputy Members

12. In the case of illness, other incapacity, or absence from the State of any member of the Board, by reason whereof the member is likely to be unable to perform his duties for three months, the Governor may, on the recommendation of the chairman of the Board, appoint some other eligible person to act as a member of the Board in the place of such member during his illness, incapacity, or absence aforesaid.

13. The first meeting of the Board as first constituted after the commencement of this Act shall be held on such day, at such place and at such time as the Minister shall appoint, but thereafter the Board shall meet on such days at such place and at such time as the Board itself may decide.

Meetings of the Board.

14. (1) The Board shall appoint a Registrar, and may appoint such examiners and other officers and servants as it considers necessary to enable the Board to carry out its duties and functions.

Officers of the Board.

(2) The Registrar shall also be the secretary of the Board.

(3) Any one or more members of the Board may be appointed as examiners in connection with examinations conducted by the Board.

(4) The remuneration of the Registrar, examiners and other officers and servants of the Board shall be paid out of the funds of the Board. Such remuneration shall be paid according to such rates as the Board may from time to time fix and determine.

15. (1) Each member of the Board is entitled to remuneration for his services as member of the Board as prescribed from time to time by the rules, and in addition thereto to reimbursement of travelling and other expenses incurred in carrying out his functions under this Act at the rate or rates prescribed from time to time by the rules.

Members of Board not to receive remuneration but may receive certain fees and expenses. Amended by No. 79 of 1960, s. 5.

(2) Where a member of the Board acts as an examiner, he shall be entitled to receive and shall be paid a fee at the same rate as that fixed for the payment of fees to persons, other than members of the Board, who are appointed examiners by the Board.

(3) [*Deleted by No. 79 of 1960, s. 5.*]

Funds of the Board.
Accounts.
Audit.
Amended by
No. 28 of
1947, s. 3;
No. 79 of
1960, s. 6.

16. (1) The funds of the Board shall consist of—
- (a) all fees prescribed by or under this Act and payable to the Board; and
 - (b) grants by the Government of the State (if any), and all gifts and donations made by any person to the Board but subject to any trusts declared in relation thereto; and
 - (c) all other moneys (not being fines and penalties imposed and recovered upon conviction for offences against this Act) which may come into the hands of the Board under and for the purposes of this Act.
- (2) The funds of the Board shall be charged with the following payments—
- (a) the payment of salaries and other allowances of the Registrar and other officers and servants of the Board;
 - (b) the payment of the fees of examiners;
 - (c) the payment of the remuneration to which the members of the Board are entitled, and of the travelling and other expenses incurred by them in carrying out their function under this Act;
 - (d) the payment of all expenses connected with examinations conducted by the Board;
 - (e) the payment of any expenses incurred by the Board in relation to such purposes as the Board thinks proper in connection with the education and training of persons desiring to be registered as optometrists under this Act;
 - (f) the payment of the general administration expenses of the Board incurred in the exercise of its functions and the performance of its duties under this Act; and
 - (g) the payment of any expenses which the Board may incur in relation to such purposes as the Board thinks proper in

connection with the post-graduate education and training of persons registered under this Act.

(3) [*Deleted by No. 28 of 1947, s. 3.*]

(4) The Board shall, as soon as practicable after the thirtieth day of June in each and every year, prepare a financial statement made up to that date, showing the income and expenditure of the Board during the preceding twelve months, and shall submit such statement, together with the books, accounts, vouchers, and other documents relevant thereto, to the Auditor General for examination and audit.

(5) The Auditor General, and any officer appointed by him to conduct such examination and audit, shall have, and may exercise in relation to such examination and audit, all or any of the powers conferred by the Audit Act, 1904, with reference to the auditing of public accounts.

(6) The Auditor General's charges for such examination and audit shall be borne by the Board and be paid out of its funds.

(7) The Board shall, on or before the thirtieth day of September in each and every year, submit to the Minister—

- (a) a copy of the financial statement aforesaid, with the report of the Auditor General as to his examination and audit thereof; and
- (b) a report of its proceedings and transactions under this Act during the twelve months ended on the next preceding thirtieth day of June.

17. (1) Subject to this Act the Board may, with the approval of the Governor, make rules in relation to all or any of the following matters, namely:—

- (a) for regulating the meetings and proceedings of the Board and the conduct of its business;

Board may make rules. Amended by No. 23 of 1951, s. 3; No. 79 of 1960, s. 7; No. 113 of 1965, s. 8.

- (aa) for prescribing the remuneration to be paid to members of the Board for their services and the rate or rates of travelling and other expenses of which when incurred by those members in carrying out their functions under this Act they are entitled to reimbursement;
- (b) for the custody and use of the common seal of the Board;
- (c) for enabling the Board to constitute committees and authorising the delegation to committees of any of the powers of the Board, and for regulating the proceedings of committees;
- (d) for prescribing the course of study and training, including practical experience, for persons desiring to be registered as optometrists under this Act;
- (e) for prescribing examinations to be passed by such persons and for the issue of diplomas to persons passing the examinations;
- (f) for regulating the holding of examinations and the appointment of examiners;
- (g) for regulating the keeping of the register and the particulars to be entered therein or erased therefrom;
- (h) for regulating the manner of making any application and the issue of any certificates, licenses, or permits under this Act;
- (i) for regulating the manner of making to the Board any charge or complaint against or concerning any registered optometrist, and the inquiry by the Board into such charge or complaint;
- (j) for prescribing the forms of certificates, licenses, permits and any other forms required under this Act;
- (k) for prescribing fees to be charged in respect of any matter, proceeding, examination,

charge, or complaint made to the Board, and of registration, and in respect of the granting of any certificate, license, or permit under this Act;

- (l) for regulating the suspension of any registered optometrist from the privileges conferred by registration under this Act or the removal from the Register of the name of any registered optometrist;
- (m) for regulating the annulment of any such suspension, and the restoration in the Register of the name of any optometrist whose name has previously been removed from the Register;
- (n) for prescribing the fee or charge to be paid by persons who desire to have their names restored to the Register;
- (o) for prescribing the conditions under which and the manner in which registered optometrists may be suspended from the privileges conferred by registration under this Act, or the names of registered optometrists may be removed from the Register;
- (p) for prescribing what certificates or evidence of qualification will be recognised by the Board as a substitute for the examinations of the Board, and whether immediately or after further training;
- (q) for prescribing post-graduate courses of study and training, including practical experience, for persons registered under this Act; and
- (r)¹ for any other matter which the Governor may declare to be a matter in respect of which rules may be made by the Board under this section.

¹ See notice in G.G. 2/10/53, p. 2029; whereby the Governor declared the following to be matters in respect of which rules may be made by the Board:—

- (1) For regulating the conduct of optometrists in the practice of their profession.
- (11) For regulating and prohibiting the method and manner in which an optometrist may make known the place or places where and the fact that he is practising optometry.

(2) Where, by any rule made under subsection (1) hereof, a duty or obligation is imposed upon any person to do or not to do any act, matter or thing specified in such rule, any contravention by such person of such rule shall be a breach of the rule punishable on conviction by a penalty of a sum not exceeding twenty dollars.

(3) Nothing in subsection (1) of this section shall affect or limit the power of the Governor under this Act to make regulations for or in respect of any matters mentioned in subsection (1) aforesaid, and where the Board has made a rule and the Governor makes a regulation in respect of the same matter, and there exists any inconsistency between such rule and such regulation, the rule shall, to the extent of such inconsistency, be superseded by the regulation and shall be read and have effect subject to the regulation.

(4) Before proceeding to make any rule under this section for or with respect to prescribing standards and conditions with respect to examinations, or prescribing the course of training for qualification as an optometrist, and the periods of such courses of training, the Board shall ascertain the opinion of, and, if necessary, confer with, representatives of the University of Western Australia, and give due consideration to any recommendations made by such representatives.

Registrar or other authorised person may take and defend proceedings.

18. The Registrar or any other person authorised in that behalf, either generally or in respect of a particular matter, by writing signed by the chairman of the Board may, subject to the direction of the Board, commence, carry on, prosecute and defend any action, complaint, information or other proceeding in the name of the Board.

PART III.—THE REGISTER OF OPTOMETRISTS.

Register to be kept.
Amended by No. 79 of 1960, s. 8.

19. (1) For the purposes of this Act there shall be kept by the Registrar, in the manner and form prescribed by the Register, to be called the Register of Optometrists.

(2) The Registrar shall enter in the Register of Optometrists the names, addresses, descriptions, and qualifications of all optometrists who for the time being and from time to time are qualified for registration and required to be registered under this Act, together with such other particulars relating to such optometrists as may be prescribed.

(3) Every optometrist whose name is entered in the Register in accordance with this section shall, on payment of the registration fee and the certificate fee respectively prescribed by the rules, be entitled to the issue to him by the Board of a certificate in the prescribed form that he is a registered optometrist.

20. The Register of Optometrists kept by the Registrar shall be open to inspection by any person at the office of the Registrar on the days and during the hours prescribed, on payment of a prescribed fee for such inspection.

Register
open to
inspection.

21. (1) Any person whose name is entered on the Register may at any time, by notice in writing in the prescribed form, signed by him, request the Board to withdraw his name from the Register, and upon receipt of such notice, but subject as hereinafter provided, the Registrar shall, by striking out the same, withdraw the name of such person from the Register. Provided that if, at the time when notice is given to the Board as aforesaid, an allegation or charge of an offence against or under this Act or of misconduct in a professional respect is pending against the person giving the notice, the name of such person shall not be withdrawn from the Register until such allegation or charge has been duly inquired into or heard and has been determined by the Court or the Board, as the case may require.

Withdrawal
of name
from
Register.

(2) When the name of any person is withdrawn from the Register under this section he shall cease to be registered, and until his name is re-entered in the Register he shall cease to have and enjoy, and

shall not be entitled to derive or exercise, any benefit which accrues to a person by virtue of his name being entered in the Register.

Name of person may be re-entered in Register. Amended by No. 113 of 1965, s. 8.

22. (1) Any person whose name has been withdrawn from the Register as provided for in section twenty-one of this Act may, at any time thereafter, make application in the prescribed form to the Board for the re-entry of his name in the Register.

(2) Upon receipt of such application, but subject to this Act and the rules and regulations, the Board shall direct the Registrar, upon payment by the applicant of a sum, to be assessed in accordance with subsection (3) hereof, to enter again the name of the applicant in the Register, and upon payment by the applicant of such sum the Registrar shall comply with the direction of the Board.

(3) The sum to be paid by an applicant for the re-entry of his name in the Register under this section shall be a sum equal to the aggregate amount of all the annual license fees which he would have been liable to pay if his name had not been withdrawn from the Register and which he has not paid by reason of his name having been so withdrawn, or the sum of twenty-one dollars, whichever is the less, together with the prescribed fee, which shall not be more than two dollars ten cents, for such re-entry.

Registrar to remove names of deceased persons from Register.

23. When any person who is a registered optometrist dies the Registrar shall, upon being satisfied as to the death of such person, strike or erase the name of such person from the Register.

Registrar to amend Register to insure accuracy. Amended by No. 113 of 1965, s. 8.

24. (1) Subject to the direction of the Board, the registrar shall from time to time, as occasion requires, make such amendments, additions, alterations, and corrections in the Register kept by him as may be necessary to make the Register

an accurate record of the names, addresses, descriptions, and qualifications of all registered optometrists.

(2) Any person whose name is entered in the Register may at any time apply to the Board for the amendment of any of the particulars as entered in the Register relating to such person, and if satisfied that such amendment may properly be made the Registrar shall, on payment of the prescribed amendment fee, which shall not exceed fifty cents, amend the said particulars accordingly.

25. (1) In the month of May next following the commencement of this Act, the Board shall cause a copy of the Register, corrected to the thirtieth day of April then last past, to be published in the *Government Gazette*, and thereafter, in the month of February in every year, when the Minister so directs, the Board shall cause a copy of the Register, corrected to the fifteenth day of January then last past, to be published in the *Government Gazette*.

Lists to be
published.
Amended by
No. 28 of
1947, s. 4.

(2) In the month of February in every year in which a copy of the Register is not required by the Minister to be published as aforesaid, the Board shall cause a supplementary list showing all alterations, additions, revisions, withdrawals, and removals made in or from the Register during the then next preceding twelve months to be published in the *Government Gazette*.

(3) Every supplementary list so published shall be deemed to be part of the last published copy of the Register, and such last published copy of the Register shall be read and construed and have effect as subject to every such supplementary list.

(4) Every copy of the register published as aforesaid shall be *prima facie* evidence that the persons specified therein as registered are or were at the date of the publication of such copy registered optometrists under this Act, and the absence of the

name of any person from such published copy of the Register shall be *prima facie* evidence that at the date of the publication of such copy, the person whose name does not appear therein is not or was not a registered optometrist under this Act.

Copy or
extract of
Register
to be
prima facie
evidence.

(5) A copy of or an extract from the Register certified as a true copy or as a true extract by the Registrar shall, in all courts of law, be *prima facie* evidence of all the facts appearing therein.

(6) A written certificate purporting to be signed by the Registrar stating that at a date or between the dates therein mentioned a person therein named was or was not a registered optometrist shall be *prima facie* evidence of the truth of such statement.

Registered
optometrists
may be
suspended or
be struck off
Register.

26. (1) The Board may suspend from the privileges conferred by registration under this Act any registered optometrist, or cause the name of any registered optometrist to be removed from the Register, if the Board, after inquiry as prescribed and by reason of the conclusive proof of the complaint, allegation or charge made, is satisfied that—

- (a) the registration has been obtained by fraud or misrepresentation; or
- (b) the qualification or part of the qualification upon which the registration was obtained has been withdrawn or cancelled by the public authority through which it was acquired or by which it was awarded, for reasons other than the non-payment of a fee for which the person relying on such qualification was liable; or
- (c) before or after registration by the Board he was or has been convicted in any part of Her Majesty's Dominions or elsewhere of any crime or misdemeanour within the meaning of those terms under the criminal law of this State; or
- (d) he has been convicted of an offence against this Act or the rules or regulations; or

- (e) he is guilty of habitual drunkenness or habitual addiction to any deleterious drug;
- or
- (f) he has been guilty of some act or omission which by the rules or regulations is prescribed as a cause or reason upon which or for which suspension may be ordered by the Board; or
- (g) he has been guilty of infamous conduct in any professional respect.

(2) Subject as hereinafter provided, the expression "infamous misconduct in a professional respect" means any action or omission which, in the opinion of the Board, is improper or infamous on the part of the person guilty thereof, when due regard is had to the ethics of the profession or practice of optometry. Also, a registered optometrist shall be guilty of infamous misconduct in a professional respect when, in the opinion of the Board, he permits or suffers any premises or place occupied or used by him for the practice of optometry therein to be open for the practice of optometry therein whilst he is not personally in full attendance thereat, unless during his absence a registered optometrist employed by him is in such full time attendance for the purpose of practice or supervision. Provided that the expression "infamous misconduct in a professional respect" shall not include any misconduct which, either from its trivial nature or from the surrounding circumstances, does not in the public interest require that the registered optometrist concerned should be disqualified from practising optometry.

(3) A charge of infamous misconduct in a professional respect may be made against a registered optometrist by any person, but shall be made to the Board in the manner prescribed.

(4) The Board, when holding an inquiry into any charge against a registered optometrist, shall, if so required by the person charged, sit and conduct its inquiry as if it were an open court.

(5) The person charged shall, on the inquiry by the Board, be afforded an opportunity to answer the charge either in person or by solicitor or counsel.

(6) Before suspending any registered optometrist from the privileges conferred by registration under this Act, or before removing the name of any person from the Register in circumstances other than the death of such person, or withdrawal of his name from the Register at his request, the Board shall—

- (a) send to such person notice in writing of the complaint or allegation made against him; and
- (b) afford him an opportunity of giving to the Board an explanation personally or in writing.

(7) Before removing the name of any person from the Register in circumstances other than the death of such person, or the withdrawal of his name from the Register at his request, the Board shall hold a full inquiry, as prescribed, into the matter of the complaint or allegation made against such person.

Board may
require
attendance
at inquiries.

27. (1) The Board may by a summons in the prescribed form require—

- (a) the attendance of any registered optometrist at any inquiry by the Board into a complaint or allegation made against a registered optometrist, and may also require the attendance at such inquiry of any person who in the opinion of the Board can give evidence in connection with such complaint or allegation; and
- (b) the attendance before the Board of any applicant for registration under this Act and of any other person who in the opinion of the Board can give evidence in connection with the application of such applicant.

(2) The Board may examine on oath or affirmation all persons attending before the Board pursuant to the requisition of the Board under this section, or voluntarily attending to give evidence, and for such purpose the chairman or other member of the Board acting as chairman during the inquiry by the Board, or during the meeting of the Board, at which any person is required or desires to give evidence, may administer an oath or affirmation.

(3) Every summons issued by the Board to any person under this section may also require the production of any documents by the person summoned, and shall have the same effect as a subpoena *ad testificandum* or *duces tecum*, as the case may be, issued by the Supreme Court in a civil action, and the obedience to such summons may be enforced by the Supreme Court, or a Judge thereof, on application by the Board in the same manner as in the case of the disobedience or non-observance of a subpoena issued by the said Court.

28. (1) Any registered optometrist who has been suspended by the Board, or whose name has been removed from the Register as provided for in section twenty-six of this Act, may at any time thereafter apply to the Board, in the manner prescribed, to have such suspension annulled, or to have his name re-entered in the Register, as the case may be.

Board may annul suspension or restore name to Register.

Amended by No. 113 of 1965, s. 8.

(2) The Board may refuse or grant any application made under subsection (1) hereof.

(3) Notwithstanding that an application has not been made under subsection (1) hereof for the annulment of the suspension of any registered optometrist who has been suspended as provided for in section twenty-six of this Act, the Board may of its own motion annul any such suspension, as it may think fit.

(4) When the Board grants an application for the re-entry of the name of a person in the Register from which it had previously been removed as

provided for in section twenty-six of this Act, the Board shall direct the Registrar, on payment to him by the applicant of a fee, or charge to be assessed in accordance with subsection (5) hereof, to re-enter the name of the applicant in the Register, and on payment being made as aforesaid the Registrar shall comply with the direction of the Board.

(5) The fee or charge payable by an applicant for the re-entry of his name in the Register under this section shall be a sum equal to the aggregate amount of all the annual license fees which he would have been liable to pay if his name had not been removed from the Register, and which he has not paid by reason of his name having been removed as aforesaid, or the sum of twenty-one dollars, whichever is the less, together with the fee prescribed for such re-entry, which shall not be more than two dollars ten cents.

Effect of suspension and of removal of name from Register.

29. When a registered optometrist is suspended from the privileges conferred by registration under this Act, and until such suspension is annulled by the Board as provided for by this Act, and when the name of any person has been removed from the Register, and until his name is re-entered on the Register, such registered optometrist who has been suspended, or such person whose name has been so removed, shall cease to have, and shall not be entitled to enjoy, any of the privileges conferred by registration under this Act.

Person struck off Register to surrender certificate of registration to the Board. Amended by No. 113 of 1965, s. 8.

30. (1) Any person whose name is withdrawn from the Register at his request, or is removed from the Register by the order or direction of the Board shall, within fourteen days after the receipt by him of notification by the Board to him by registered post of the withdrawal or of the removal of his name from the Register as aforesaid, surrender to the Board the certificate of registration (if any) issued to him upon the entry of his name in the Register in accordance with this Act.

(2) Any person who in contravention of this section fails to surrender such certificate as aforesaid shall be guilty of an offence against this Act.

Penalty—Forty dollars.

31. (1) Whenever the Board—

Appeal.

- (a) refuses to register any person as an optometrist; or
- (b) causes any registered optometrist to be suspended from the privileges conferred by registration under this Act; or
- (c) causes the name of any person to be removed from the register; or
- (d) refuses to annul the suspension of any registered optometrist who has been suspended as aforesaid; or
- (e) refuses to re-enter in the Register the name of any person whose name has previously been withdrawn from or removed from the Register—

the person affected by the decision of the Board may, within three months after the date of the decision of the Board by which he is so affected, make application in writing to the Board, in the prescribed manner, for a statement by the Board in writing of its reasons for such decision, and the Board shall, as soon as reasonably may be after receipt of such application, furnish the applicant with the statement aforesaid.

(2) Within one month after receipt of the statement from the Board as aforesaid, the person affected by the decision of the Board as aforesaid may appeal from such decision to a Judge of the Supreme Court.

(3) Such appeal shall be brought and the proceedings shall be had in such manner as may be prescribed by the regulations under this Act.

(4) The hearing and determination of the appeal shall be in the nature of a rehearing, and no appeal

shall lie to any court of appeal from the decision of the Judge who hears the appeal, except upon a point of law.

PART IV.—REGISTRATION OF OPTOMETRISTS.

Practice of
optometry
by persons
not
registered
prohibited.
Amended by
No. 28 of
1947, s. 5;
No. 79 of
1960, s. 9;
No. 113 of
1965, s. 8.

32. (1) Subject as hereinafter provided, no person other than a registered optometrist who holds a current annual license from the Board shall practise optometry.

Penalty: Two hundred dollars, and, in addition, a daily penalty of ten dollars for every day during which the offence is continued.

(2) Provided that persons who at the commencement of this Act are practising as or carrying on business as optometrists or opticians shall not be deemed to be committing any contravention of this section by reason of continuing so to practise or carry on business without being registered as optometrists under this Act for the period of six months after the commencement of this Act if, before the expiration of such period of six months, they apply for registration, become registered optometrists and obtain the requisite license under this Act.

(3) Any person who—

- (a) has secured a pass in respect of both the first and second year examinations of the optometry course of the University of Western Australia;
- (b) is attending either the third or fourth year of that course, and
- (c) is approved in writing by the Board as a fit and proper person to do so,

may, without contravention of this section, practise optometry under the supervision of a registered optometrist at any premises or place occupied or used by the registered optometrist for the practice of optometry therein, and while a registered optometrist is personally in full-time attendance thereat.

33. (1) Registration under this Act shall, whilst such registration continues, and subject to payment of the annual license fee hereinafter provided for, entitle the person so registered to practise optometry and to dispense prescriptions for spectacles given or issued by medical practitioners.

Effect of
registration.
Amended by
No. 113 of
1965, s. 8.

(2) Registration under this Act shall not confer upon the person registered any right or title to assume the title or designation of "oculist" or any name, title, or designation implying—

- (a) that he is by law recognised as a medical practitioner or pharmaceutical chemist; or
- (b) that he is qualified to practise as a medical practitioner or as a pharmaceutical chemist; or
- (c) that he is qualified to employ any method for the measurement of the powers of vision which involves the use of drugs.

(3) Any person who by any act or omission in any respect contravenes any of the provisions of this section shall be guilty of an offence against this Act.

Penalty: Forty dollars.

34. Any person who within six months, after the commencement of this Act makes application in the prescribed manner to the Board for registration under this Act, and proves to the satisfaction of the Board, and, if so required after personal attendance before the Board, that—

Registration of persons practising as optometrists or opticians at the commencement of this Act.

- (a) he is over the age of twenty-one years and is a person of good character; and
- (b) immediately prior to the commencement of this Act he had been continuously and *bona fide* engaged within Australia for not less than five years in the practice of optometry, either as an optometrist or optician, or as an employee of an

optometrist or optician, or partly as such optometrist or optician and partly as such employee; or

- (c) immediately prior to the commencement of this Act he had been continuously and *bona fide* engaged within Australia for not less than three years in the practice of optometry as an optometrist or optician, or as an employee of an optometrist or optician or partly as such optometrist or optician and partly as such employee, and passes to the satisfaction of the Board a reasonable practical test of his competency to practise optometry,

shall be entitled, on payment of the prescribed registration fee and the prescribed certificate fee, to be registered as an optometrist under this Act, and shall be so registered by the Board.

Registrations
before
30/6/45.
Added by
No. 44 of
1944, s. 2.

34A. Any person who not later than the thirtieth day of June, One thousand nine hundred and forty-five, makes application in the prescribed manner to the Board for registration under this Act, and proves to the satisfaction of the Board and, if so required, after personal attendance before the Board, that—

- (a) he is over the age of twenty-one years and is a person of good character; and
- (b) being a British subject or naturalised British subject, he had, for not less than five years immediately prior to the commencement of the war with Germany in which the Commonwealth is engaged, been continuously and *bona fide* engaged in the practice of optometry either as an optometrist or optician; and
- (c) has passed a reasonable test in the work of an optometrist prescribed by the Board,

shall be entitled on payment of the prescribed registration fee and the prescribed certificate fee to be registered as an optometrist under this Act and shall be so registered by the Board.

34B. Any person who not later than the thirtieth day of June One thousand nine hundred and fifty-eight makes application in the prescribed manner to the Board for registration under this Act, and proves to the satisfaction of the Board that—

Registrations
before
30/6/58.
Added by
No. 45 of
1957, s. 2.

- (a) he is over the age of twenty-one years and is of good character; and
- (b) being a natural born, or a naturalised, British subject, he has resided continuously in the Commonwealth of Australia for not less than five years during which period he has resided in Western Australia for at least two years; and
- (c) he had, for not less than five years immediately prior to his coming to the Commonwealth of Australia, been continuously and *bona fide* engaged in the practice of optometry, either as an optometrist or optician; and
- (d) he has passed theoretical and practical tests in optometry to the usual standard as prescribed by the Board,

shall be entitled on payment of the prescribed registration fee and the prescribed certificate fee to be registered as an optometrist under this Act, and shall be so registered by the Board.

34C. (1) Any person who has for a period of not less than eighteen months immediately prior to the commencement of the Optometrists Act Amendment Act, 1960, been continuously, solely and *bona fide* engaged in the dispensing of prescriptions made or given by oculists or optometrists, may not later than the thirty-first day of March, one thousand nine hundred and sixty-one, apply in writing to the Board for permission to continue such dispensing, and the Board, upon payment of the prescribed fee and upon proof to its satisfaction that the applicant—

Registrations
before
30/3/61.
Added by
No. 79 of
1960, s. 10.

- (a) has attained the age of twenty-one years and is of good character; and

- (b) is a natural born or a naturalised British subject, and has resided continuously in the Commonwealth for not less than five years during which time he has resided in this State for at least two years; and
- (c) has in fact for the period aforesaid been continuously, solely and *bona fide* engaged in the dispensing of prescriptions made or given by oculists or optometrists,

shall grant to the applicant the permission applied for, but no such permission shall entitle, or be deemed to entitle, the applicant to measure the power of vision.

(2) The Board may prescribe an annual fee to be paid by persons granted permission pursuant to the provisions of this section.

Qualifica-
tions for
registration
as
optometrist.
Amended by
No. 70 of
1978, s. 3.

35. (1) Subject to section thirty-four of this Act, no person shall be qualified for registration as an optometrist under this Act unless and until he proves to the satisfaction of the Board, and, if so required after personal attendance before the Board, that—

- (a) [*Deleted by No. 70 of 1978, s. 3.*];
- (b) he has in all respects complied with the requirements of this Act and the rules and regulations; and
- (c) he is a person of good character; and
- (d) (i) he has completed the prescribed course of training and has passed the prescribed examinations; or
 - (ii) he holds a certificate or other evidence of qualification prescribed by the rules or the regulations to be sufficient to qualify him for registration as an optometrist under this Act; or
 - (iii) he holds a certificate or other sufficient evidence that he is registered or certified as a registered optometrist or a registered optician in any part of Her Majesty's Dominions beyond this State

in which there is at the commencement of this Act or hereafter in force a law—

- (a) which provides for the training and registration or certification of optometrists or opticians under a public authority; and
- (b) under which, upon reciprocal terms, optometrists registered under this Act are or will be admitted to the Register or Roll for registered or certificated optometrists or opticians, or are or will be granted certificates to practise as optometrists or opticians in such other part of Her Majesty's Dominions in which such law as aforesaid is in force.

Provided that no person shall, by reason of the qualification mentioned in this present subparagraph (iii), be qualified for registration under this Act unless the standard of training and examination required by the law in the other part of Her Majesty's Dominions aforesaid under which he is so registered or certificated is in the opinion of the Board substantially equivalent to the standard of training and examination required by and prescribed under this Act.

(2) Any person who satisfies the Board that in accordance with the provisions of subsection (1) hereof he is qualified for registration as an optometrist under this Act shall, subject to this Act and the rules and regulations, and upon payment of the prescribed registration fee and the prescribed certificate fee, be entitled to be and shall be registered in the Register of Optometrists kept in accordance with this Act.

PART V.—MISCELLANEOUS.

Annual license fees to be paid by registered optometrists. Amended by No. 23 of 1951, s. 4; No. 79 of 1960, s. 11; No. 113 of 1965, s. 8.

36. (1) Notwithstanding anything to the contrary contained in this Act, no registered optometrist shall practise optometry, or engage in the practice of optometry, or dispense the prescriptions for spectacles made or given by oculists, unless he holds a license so to do issued to him by the Board.

Penalty—Two hundred dollars and, in addition, a daily penalty of ten dollars for every day during which the offence is continued.

(2) Every registered optometrist shall, while he continues so registered, be entitled, on payment of the prescribed annual license fee, to the issue to him of a license by the Board under this section; but whether such registered optometrist applies to the Board for such license or not he shall, whilst his name continues to appear in the Register, be liable to pay and shall pay the prescribed annual license fee.

(3) The annual license fee to be paid by a registered optometrist shall be such sum as may from time to time be prescribed by the rules.

(4) Licenses issued by the Board under this section shall be in the prescribed form and shall be signed by the Registrar.

(5) Subject as hereinafter provided, licenses issued by the Board under this section shall have effect for one year ending on the thirty-first day of December in each year.

Provided that—

- (i) licenses issued for the first time after the commencement of this Act, and before the thirty-first day of December next following the commencement of this Act, shall have effect only until such thirty-first day of December; and

- (ii) licenses issued under this section at any time of a year shall have effect only until the thirty-first day of December next following the issue thereof.

(6) The license fee payable under this section shall, subject to subsection (5) hereof, be due and payable not later than the fifteenth day of January in each and every year, or within fourteen days after the name of the optometrist is registered in the Register of Optometrists, as the case may be, and, when such fee is paid within the time hereinbefore prescribed for the payment thereof, such payment shall be deemed to have been made as from and including the first day of the month of January in which it is paid or as from and including the date of registration, as the case may be.

36A. [*Added by No. 94 of 1965, s. 4; repealed by No. 45 of 1966, s. 3.*]

37. Subject as hereinafter provided, the name of any registered optometrist who fails or neglects to pay the annual license fee payable by him under this Act within the time prescribed by section thirty-six of this Act for the payment of such license fee, shall be removed from the Register forthwith, upon such registered optometrist making default as aforesaid. Provided that, where the name of a registered optometrist is removed from the Register in accordance with this section, the Board shall restore the name of such registered optometrist to the Register upon receipt of an application in writing signed by such optometrist asking that his name be so restored and upon payment by the applicant of a sum equal to the aggregate amount of all the annual license fees which he would have been liable to pay if his name had not been removed as aforesaid from the Register as at the date of his application, together with the prescribed re-entry fee, and such fine or penalty as may be prescribed as the Board, according to the circumstances of the case, may think fit to impose.

Optometrist making default in payment of license fee may be struck off.

Examinations and course of training. Amended by No. 113 of 1965, s. 8.

38. (1) The Board shall, in accordance with the powers conferred by this Act, and as soon as reasonably may be after the commencement of this Act, make rules prescribing the course of training and the nature thereof, the lectures (if any) and the examinations, excluding any medical teaching, but not excluding anatomy, and physiology of the eye, both theoretical and practical, for persons who desire by means of such course of training and the passing of such examinations to qualify themselves for registration as optometrists under this Act.

(2) Examination fees to be paid by persons taking any examinations aforesaid may be prescribed on the basis of the number of subjects taken at the examination.

Provided that in such case the examination fee per subject shall not exceed two dollars ten cents.

Executor or administrator of deceased optometrist may continue practice.

39. Notwithstanding anything to the contrary contained in this Act, in case of the decease of any registered optometrist carrying on the practice of optometry immediately prior to his death, it shall be lawful for any executor of the will of such optometrist, or for any administrator of his estate, to continue the business or practice of such deceased optometrist for a period of two months after the death of such optometrist, or for such longer period as the Board, in writing, may permit.

Provided that such business or practice so continued shall be conducted *bona fide* by an optometrist who during such period is registered and holds a license to practise optometry under this Act.

Prohibition against use of drugs as method of measuring powers of vision. Amended by No. 113 of 1965, s. 8.

40. No person, other than a medical practitioner, whether a registered optometrist or not, or whether lawfully continuing the practice of optometry without prior registration under this Act during the period of six months next following the commencement of this Act or not, shall, either for fee or reward or otherwise, employ any method for

the measurement of the powers of vision which involves the use of drugs, or shall use, supply or prescribe any drug whatsoever for the purpose of the measurement of the powers of vision, or for the purpose of treating any affection of the eyes.

Penalty: One hundred dollars.

41. (1) Subject as hereinafter provided, no firm or company shall carry on either as the whole or as a part of its ordinary business the practice of optometry, or take or use or exhibit, or have attached to or exhibited at any place, or advertise or cause to be advertised in connection with their said business, either alone or in combination with any other words or letters, the name or title of "registered optometrist" or "registered optician," or any name, title, addition, or description implying or tending to the belief that such firm or corporation is entitled to carry on the practice of optometry unless—

Provisions relating to practice of optometry by firms and companies.

- (a) all the members of the firm, or all the employees or agents of the company engaged in the practice of optometry for such company, as the case may be, are registered optometrists; or
- (b) (i) the whole or, as the case may be, the portion of every shop or place of business of such firm or company in which the practice of optometry is conducted is at all times under the actual and continual personal supervision and management of a registered optometrist; and
- (ii) the whole of the practice of optometry in such shop or place is conducted only by a registered optometrist; and
- (iii) every advertisement by such firm or company relating to the practice of optometry by it includes a statement that the practice is carried on under the personal supervision of a registered optometrist.

Provided that firms and corporations who at the commencement of this Act are practising as or carrying on business as optometrists or opticians shall not be deemed to be committing any contravention of this section by reason of continuing so to practise or carry on business contrary to the provisions of this section for the period of six months after the commencement of this Act.

(2) Every member of any firm and any company who or which in any respect contravenes any of the provisions of subsection (1) hereof shall be guilty of an offence.

Penalty: One hundred dollars and, in addition, a daily penalty of ten dollars for every day during which the offence is continued.

(3) If any chairman, member of the governing body, director, manager, secretary, or officer of any company knowingly authorises or permits or suffers the commission by the company of any offence under this section, he also shall be personally guilty of an offence.

Penalty: One hundred dollars.

Offences.
Amended by
No. 113 of
1965, s. 8.

42. Any person who—

- (a) procures or attempts to procure registration or a certificate of registration under this Act by knowingly making or producing, or causing to be made or produced, any false or fraudulent declaration, certificate, application, or representation, whether in writing or otherwise; or
- (b) wilfully makes or causes to be made any falsification in the Register; or
- (c) forges, alters, or counterfeits any certificate of registration or annual license issued or issuable under this Act; or

- (d) utters or uses any forged, altered, or counterfeited certificate of registration or annual license issued or issuable under this Act, knowing the same to have been forged, altered, or counterfeited; or
- (e) personates a registered optometrist; or
- (f) buys or fraudulently obtains a certificate of registration or any annual license under this Act which has been issued to another person; or
- (g) sells any certificate of registration or annual license issued under this Act—

shall be guilty of an offence against this Act.

Penalty: One hundred dollars, or imprisonment with or without hard labour for six months.

(2) Any person, not being a registered optometrist, or being a registered optometrist under suspension by the Board as provided for by this Act, who takes or uses or exhibits, or has attached to or exhibited at any place, or causes to be advertised by any advertisement, either alone or in combination with any other words or letters, the name or title of "optometrist" or "optician" or "registered optometrist" or "registered optician" or any other name, title, or description implying or tending to the belief that such person is registered under this Act, or is recognised by law as a registered optometrist, or that such person is entitled to carry on the practice of optometry, shall be guilty of an offence against this Act.

Penalty: One hundred dollars.

(3) Where the person contravening subsection (2) hereof is a registered optometrist under suspension by the Board as provided for by this Act, upon conviction of such person of such contravention, the Board may remove the name of such person from the Register.

43. (1) The Board may, subject to the Rules of the Supreme Court, apply to the Supreme Court, or a Judge thereof, for an injunction to restrain

Board may apply for injunction.

any person doing or continuing to do any act, matter, or thing which by this Act is declared to be an offence and which is of a continuing nature, from doing or continuing to do such act, matter, or thing, and on the hearing of such application, such injunction may be granted and such order may be made as to costs and otherwise as to the Court or Judge may seem fit.

(2) Any proceeding by the Board under subsection (1) hereof shall not in any way affect the liability of the person, whose act is complained of, to prosecution for an offence against this Act in relation to which the proceeding is taken by the Board under subsection (1) hereof.

General
penalty.
Amended by
No. 113 of
1965, s. 8.

44. Any person, firm, or corporation who or which does or permits or suffers to be done any act, matter, or thing which by this Act such person, firm, or company is forbidden to do, shall be guilty of an offence, and, where no special penalty is prescribed by this Act in respect of such offence, shall be liable to a penalty not exceeding forty dollars.

Offences to
be dealt with
summarily.

45. All offences under this Act or the rules or regulations may be prosecuted, tried, and determined, and all penalties and fines shall be enforced and recovered summarily in accordance with the provisions of the Justices Act, 1902-1936.¹

Provisions
relating to
prosecutions.

46. The following provisions relating to prosecutions for offences against this Act or the rules or the regulations shall apply, that is to say—

- (a) the production of any advertisement or of a photograph of any such advertisement which purports to contain the name of or to refer to the person charged or to the shop or business place of such person, shall be *prima facie* evidence that the person charged authorised or permitted such advertisement;

¹ Now Justices Act, 1902-1979.

- (b) it shall not be necessary for the prosecution to prove—
 - (i) that the defendant received any remuneration or reward in connection with the act, matter, or thing complained of; or
 - (ii) the election, nomination, and constitution of the Board, or the election or appointment of the chairman or any member of the Board purporting to act or sign any document as such, or the appointment of the Registrar; or
 - (iii) that any offence was committed with a view to enabling the defendant to practise optometry or to claim the privileges conferred by this Act upon a registered optometrist;
- (c) in a prosecution for unlawfully practising optometry, proof that the defendant gave advice or did any other act in relation to optometry in a room or other place in or adjoining which there was or were any optometrical equipment, apparatus, appliances, or instruments pertaining to the practice of optometry shall be evidence that the defendant was practising optometry.

47. (1) The Governor may make regulations, not inconsistent with this Act, prescribing all matters required or permitted to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Act, or for more effectually achieving the objects of this Act, and for facilitating the exercise by the Board of its powers under this Act.

Regulations.
Amended by
No. 113 of
1965, s. 8.

(2) Regulations made by the Governor under this section may impose penalties, not exceeding forty dollars in respect of any contravention of any of the regulations.

