



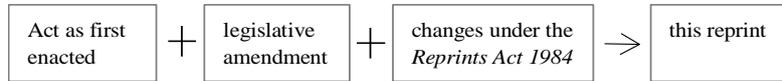
estern Australia

Optometrists Act 1940

Reprint 3: The Act as at 7 March 2003

Guide for using this reprint

What the reprint includes



Endnotes, Compilation table, and Table of provisions that have not come into operation

1. Details about the original Act and legislation that has amended its text are shown in the Compilation table in endnote 1, at the back of the reprint. The table also shows any previous reprint.
2. Validation, transitional, savings, or other provisions identified in the Compilation table may be important. The table may refer to another endnote setting out the text of these provisions in full.
3. A table of provisions that have not come into operation, to be found in endnote 1a if it is needed, lists any provisions of the Act being reprinted that have not come into operation and any amendments that have not come into operation. The full text is set out in another endnote that is referred to in the table.

Notes amongst text (italicised and within square brackets)

1. If the reprint includes a section that was inserted, or has been amended, since the Act being reprinted was passed, editorial notes at the foot of the section give some history of how the section came to be as it is. If the section replaced an earlier section, no history of the earlier section is given (the full history of the Act is in the Compilation table).

Notes of this kind may also be at the foot of Schedules or headings.

2. The other kind of editorial note shows something has been —
 - removed (because it was repealed or deleted from the law); or
 - omitted under the *Reprints Act 1984* s. 7(4) (because, although still technically part of the text, it no longer has any effect).

The text of anything removed or omitted can be found in an earlier reprint (if there is one) or one of the written laws identified in the Compilation table.

Reprint numbering and date

1. The reprint number (in the footer of each page of the document) shows how many times the Act has been reprinted. For example, numbering a reprint as “Reprint 3” would mean that the reprint was the 3rd reprint since the Act was passed. Reprint numbering was implemented as from 1 January 2003.
2. The information in the reprint is current on the date shown as the date as at which the Act is reprinted. That date is not the date when the reprint was published by the State Law Publisher and it is probably not the date when the most recent amendment had effect.

Western Australia

Optometrists Act 1940

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Western Australia

Reprinted under the
Reprints Act 1984 as
at 7 March 2003

Optometrists Act 1940

An Act relating to optometrists.

1. Short title and commencement

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

[2. *Repealed by No. 10 of 1998 s. 76.*]

Part I — Preliminary

3. Interpretation

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.

[Section 3 amended by No. 79 of 1960 s. 2; No. 45 of 1966 s. 3.]

4. This Act not to affect medical practitioners

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

5. Establishment of Board

- (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 8 members, to be appointed by the Governor.
- (3) Of the members so appointed —
 - (a) 2 shall be registered optometrists nominated by the Minister;
 - (b) 3 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 3 members pursuant to paragraph (b) of subsection (3) 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) is made by the persons mentioned in that paragraph within 14 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 subsection (3)(b) and (c) have been duly nominated, the Governor may appoint 4 other persons, namely —
- (a) 3 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 3 persons to be appointed by the Governor pursuant to subsection (3)(a) 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

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instead a person who at the commencement of this Act is practising optometry in this State.

[Section 5 amended by No. 79 of 1960 s. 3.]

6. Tenure of office

Subject to section 5(6), the members of the Board shall be appointed and hold office for such period not exceeding 3 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.

7. Board to be a body corporate

- (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.
- (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.
- (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. Proceedings of the Board

- (1) Any 4 members of the Board shall form a quorum thereof.

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 4.

[(2) *deleted*]

- (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 meeting 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.

[Section 8 amended by No. 79 of 1960 s. 4.]

9. Resignation

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

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10. Disqualification

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.

11. Vacancies

- (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 4 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 5 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.

12. Deputy members

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 3 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. Meetings of the Board

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.

14. Officers of the Board

- (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.
- (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. Remuneration

- (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.
- (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.

[Section 15 amended by No. 79 of 1960 s. 5.]

16. Funds of the Board

- (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.

*[Section 16 amended by No. 28 of 1947 s. 3; No. 79 of 1960
s. 6; No. 77 of 1987 s. 3.]*

16A. Accounts

- (1) The Board shall cause to be kept proper accounts and records of the transactions and affairs of the Board and shall prepare financial statements in accordance with Australian Accounting Standards.
- (2) The financial statements shall be prepared on an accrual basis unless the Board determines otherwise.

[Section 16A inserted by No. 77 of 1987 s. 3.]

16B. Audit

The accounts and financial statements of the Board shall be audited at least once a year, at the expense of the Board, by an auditor appointed by the Board with the prior approval of the Minister.

[Section 16B inserted by No. 77 of 1987 s. 3.]

16C. Annual report

- (1) The Board shall on or before 30 September in each year make and submit to the Minister an annual report of its proceedings for the preceding year ending on 30 June together with a copy of the financial statements and the auditor's report.
- (2) The Minister shall cause a copy of each annual report, financial statements and auditor's report submitted under subsection (1) to be laid before each House of Parliament within 14 sitting days of that House after receipt of the report by the Minister.

[Section 16C inserted by No. 77 of 1987 s. 3.]

17. Rules

- (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;
 - (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, licences 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, licences, 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, licence, 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) 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 ².
- (2) Where, by any rule made under subsection (1), a duty or obligation is imposed upon any person to do or not to do any

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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 \$20.

- (3) Nothing in subsection (1) 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), 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.

[Section 17 amended by No. 23 of 1951 s. 3; No. 79 of 1960 s. 7; No. 113 of 1965 s. 8.]

18. Conduct of proceedings on behalf of Board

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

19. Register to be kept

- (1) For the purposes of this Act there shall be kept by the Registrar, in the manner and form prescribed a 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.

[Section 19 amended by No. 79 of 1960 s. 8.]

20. Register open to inspection

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.

21. Withdrawal of name from Register

- (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

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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.

- (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.

22. Name of person may be re-entered in Register

- (1) Any person whose name has been withdrawn from the Register as provided for in section 21 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), 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 licence 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 \$21, whichever is the less, together with the prescribed fee, which shall not be more than \$2.10, for such re-entry.

[Section 22 amended by No. 113 of 1965 s. 8.]

23. Registrar to remove names of deceased persons from Register

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

24. Registrar to amend Register to insure accuracy

- (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 50 cents, amend the said particulars accordingly.

[Section 24 amended by No. 113 of 1965 s. 8.]

25. Publication of Register and evidentiary provisions

- (1) In the month of May next following the commencement of this Act, the Board shall cause a copy of the Register, corrected to 30 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 15 January then last past, to be published in the *Government Gazette*.
- (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

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made in or from the Register during the then next preceding 12 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.
- (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.

[Section 25 amended by No. 28 of 1947 s. 4.]

26. Registered optometrists may be suspended or be struck off Register

- (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**

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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.

27. Board may require attendance at inquiries

- (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. Board may annul suspension or restore name to Register

- (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 26, 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.
- (2) The Board may refuse or grant any application made under subsection (1).

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- (3) Notwithstanding that an application has not been made under subsection (1) for the annulment of the suspension of any registered optometrist who has been suspended as provided for in section 26, 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 26, 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), 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 licence 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 \$21, whichever is the less, together with the fee prescribed for such re-entry, which shall not be more than \$2.10.

[Section 28 amended by No. 113 of 1965 s. 8.]

29. Effect of suspension and of removal of name from Register

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.

30. Person struck off Register to surrender certificate of registration to the Board

- (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 14 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: \$40.

[Section 30 amended by No. 113 of 1965 s. 8.]

31. Appeal

- (1) Whenever the Board —
 - (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 3 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

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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

32. Practice of optometry by persons not registered prohibited

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

Penalty: \$200, and, in addition, a daily penalty of \$10 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 6 months after the commencement of this Act if, before the expiration of such period of 6 months, they apply for registration, become registered optometrists and obtain the requisite licence 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 his 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.

[Section 32 amended by No. 28 of 1947 s. 5; No. 79 of 1960 s. 9; No. 113 of 1965 s. 8.]

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33. Effect of registration

- (1) Registration under this Act shall, whilst such registration continues, and subject to payment of the annual licence fee hereinafter provided for, entitle the person so registered to practise optometry and to dispense prescriptions for spectacles given or issued by medical practitioners.
- (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: \$40.

[Section 33 amended by No. 113 of 1965 s. 8.]

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

Any person who within 6 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 —

- (a) he is over the age of 21 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 5 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 3 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.

[34A-34C. Omitted under the Reprints Act 1984 s. 7(4)(e).]

35. Qualifications for registration as optometrist

- (1) Subject to section 34, 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*]

- (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) 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.

[Section 35 amended by No. 70 of 1978 s. 3.]

Part V — Miscellaneous

36. Licences and licence fees

- (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 licence so to do issued to him by the Board.
Penalty: \$200 and, in addition, a daily penalty of \$10 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 licence fee, to the issue to him of a licence by the Board under this section; but whether such registered optometrist applies to the Board for such licence or not he shall, whilst his name continues to appear in the Register, be liable to pay and shall pay the prescribed annual licence fee.
- (3) The annual licence fee to be paid by a registered optometrist shall be such sum as may from time to time be prescribed by the rules.
- (4) Licences 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, licences issued by the Board under this section shall have effect for one year ending on 31 December in each year.

Provided that —

- (i) licences issued for the first time after the commencement of this Act, and before 31 December next following the commencement of this Act, shall have effect only until such 31 December; and
- (ii) licences issued under this section at any time of a year shall have effect only until 31 December next following the issue thereof.

- (6) The licence fee payable under this section shall, subject to subsection (5), be due and payable not later than 15 January in each and every year, or within 14 days after the name of the optometrist is registered 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.

[Section 36 amended by No. 23 of 1951 s. 4; No. 79 of 1960 s. 11; No. 113 of 1965 s. 8.]

[36A. Repealed by No. 45 of 1966 s. 3.]

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

Subject as hereinafter provided, the name of any registered optometrist who fails or neglects to pay the annual licence fee payable by him under this Act within the time prescribed by section 36 for the payment of such licence 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 licence 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.

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38. Examinations and course of training

- (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 \$2.10.

[Section 38 amended by No. 113 of 1965 s. 8.]

39. Executor or administrator of deceased optometrist may continue practice

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 2 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 licence to practise optometry under this Act.

40. Prohibition against use of drugs as method of measuring powers of vision

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 6 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: \$100.

[Section 40 amended by No. 113 of 1965 s. 8.]

41. Provisions relating to practice of optometry by firms and companies

- (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 —
 - (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

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continual personal supervision and management of a registered optometrist; and

- (ii) the whole of the practice of optometry 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 6 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) shall be guilty of an offence.

Penalty: \$100 and, in addition, a daily penalty of \$10 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: \$100.

42. Offences

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 licence issued or issuable under this Act; or
- (d) utters or uses any forged, altered, or counterfeited certificate of registration or annual licence 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 of any annual licence under this Act which has been issued to another person; or
- (g) sells any certificate of registration or annual licence issued under this Act,

shall be guilty of an offence against this Act.

Penalty: \$100, or imprisonment for 6 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

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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: \$100.

- (3) Where the person contravening subsection (2) 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.

[Section 42 amended by No. 113 of 1965 s. 8; No. 51 of 1992 s. 16(1).]

43. Board may apply for injunction

- (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 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) 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).

44. General penalty

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 \$40.

[Section 44 amended by No. 113 of 1965 s. 8.]

45. Proceedings for offences

Proceedings for an offence against this Act shall be dealt with summarily in a court of summary jurisdiction.

[Section 45 inserted by No. 78 of 1995 s. 97.]

46. Provisions relating to prosecutions

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;
- (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

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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. Regulations

- (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.
- (2) Regulations made by the Governor under this section may impose penalties, not exceeding \$40 in respect of any contravention of any of the regulations.

[Section 47 amended by No. 113 of 1965 s. 8.]



Notes

- ¹ This reprint is a compilation as at 7 March 2003 of the *Optometrists Act 1940* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Optometrists Act 1940</i>	33 of 1940	16 Dec 1940	17 Jan 1941 (see s. 1 and <i>Gazette</i> 17 Jan 1941 p. 103)
<i>Optometrists Act Amendment Act 1944</i>	44 of 1944	24 Jan 1945	24 Jan 1945
<i>Optometrists Act Amendment Act 1947</i>	28 of 1947	18 Nov 1947	18 Nov 1947
<i>Optometrists Act Amendment Act 1951</i>	23 of 1951	27 Nov 1951	27 Nov 1951
<i>Optometrists Act Amendment Act 1957</i>	45 of 1957	26 Nov 1957	26 Nov 1957
Reprint of the <i>Optometrists Act 1940</i> approved 13 Feb 1959 in Vol. 14 of Reprinted Acts (includes amendments listed above)			
<i>Optometrists Act Amendment Act 1960</i>	79 of 1960	12 Dec 1960	12 Dec 1960
<i>Decimal Currency Act 1965</i>	113 of 1965	21 Dec 1965	s. 4-9: 14 Feb 1966 (see s. 2(2)); balance: 21 Dec 1965 (see s. 2(1))
<i>Optometrists Act Amendment Act 1966</i>	45 of 1966	18 Nov 1966	30 Jun 1967 (see s. 2 and <i>Gazette</i> 30 Jun 1967 p. 1696)
<i>Acts Amendment (Qualifying Ages Alteration) Act 1978 s. 3</i>	70 of 1978	26 Sep 1978	30 Mar 1979 (see s. 2 and <i>Gazette</i> 30 Mar 1979 p. 839)
Reprint of the <i>Optometrists Act 1940</i> approved 8 May 1980 (includes amendments listed above)			
<i>Acts Amendment (Financial provisions of regulatory bodies) Act 1987 s. 3</i>	77 of 1987	26 Nov 1987	1 Jan 1988 (see s. 2)
<i>Criminal Law Amendment Act (No. 2) 1992 s. 16(1)</i>	51 of 1992	9 Dec 1992	6 Jan 1993
<i>Sentencing (Consequential Provisions) Act 1995 Pt. 58</i>	78 of 1995	16 Jan 1996	4 Nov 1996 (see s. 2 and <i>Gazette</i> 25 Oct 1996 p. 5632)

Optometrists Act 1940

Short title	Number and year	Assent	Commencement
<i>Statutes (Repeals and Minor Amendments) Act (No. 2) 1998 s. 76</i>	10 of 1998	30 Apr 1998	30 Apr 1998 (see s. 2(1))
Reprint 3: The <i>Optometrists Act 1940</i> as at 7 Mar 2003 (includes amendments listed above)			

² See declaration in *Gazette* 2/10/53, p. 2029 which reads, in part, as follows:

“

His Excellency the Governor in Executive Council declares the following to be matters in respect of which rules may be made by the Board:

- (i) For regulating the conduct of optometrists in the practice of their profession.
- (ii) 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.

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