

Western Australia

## **Optometrists Act 2005**

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# Optometrists Act 2005

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Western Australia

## **Optometrists Act 2005**

**An Act to —**

- **provide for the regulation of the practice of optometry and registration of persons as optometrists;**
- **repeal the *Optometrists Act 1940*;**
- **make consequential amendments to various Acts, and for related purposes.**

The Parliament of Western Australia enacts as follows:

## **Part 1 — Preliminary**

**1. Short title**

This is the *Optometrists Act 2005*.

**2. Commencement**

This Act comes into operation on a day fixed by proclamation.

**3. Terms used in this Act**

In this Act, unless the contrary intention appears —

***application*** means an application for registration;

***approved*** means approved by the Board in writing;

***Board*** means the Optometrists Registration Board of Western Australia established by section 5;

***certificate of registration*** means a certificate of registration issued under section 38;

***committee*** means a committee established by the Board under this Act;

***complainant*** means a person who lodges a complaint under section 51(1) or (2);

***complaint*** means —

- (a) a complaint lodged under section 51(1) or (2);
- (b) a complaint referred under section 51(3);
- (c) a matter the complaints assessment committee has determined under section 51(4) to deal with as if it were a complaint; and
- (d) a matter the Board has referred to the impairment review committee under section 60(3);

***complaints assessment committee*** means the committee established under section 49;

***condition*** includes restriction;

**Corporations Act** means the *Corporations Act 2001* of the Commonwealth;

**Director** means the Director of the Office of Health Review under the *Health Services (Conciliation and Review) Act 1995*;

**disciplinary matter** means a matter referred to in section 47;

**document** includes any tape, disc or other device or medium on which information is recorded or stored;

**impairment** means —

- (a) mental disability;
- (b) injury;
- (c) physical illness;

**impairment matter** means a matter referred to in section 48;

**impairment review committee** means any committee established under section 50;

**investigator** means a person appointed under section 70;

**medical practitioner** means a medical practitioner registered under the *Medical Practitioners Act 2008*;

**member of the Board** includes a person acting under Schedule 1 clause 3;

**officer**, in relation to a body corporate, has the meaning given to “officer of a corporation” in the *Corporations Act* section 9 but does not include an employee of the body corporate unless the employee is concerned in the management of the body corporate;

**optometrist** means a person who is registered;

**optometry** means —

- (a) the employment of methods for the measurement of the powers of vision;
- (b) the prescribing of optical appliances to correct, remedy or relieve defects of vision;
- (c) the adaptation of lenses and prisms for the aid of the powers of vision; and

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(d) fitting contact lenses;

**presiding member** means the presiding member of the Board referred to in section 7;

**register** means the register referred to in section 36;

**registered** means registered by the Board under this Act;

**registrar** means the person engaged or employed to be registrar under section 17;

**registration** includes renewal of registration;

**respondent** means a person the subject of a complaint.

*[Section 3 amended by No. 21 of 2008 s. 687(2); No. 22 of 2008 Sch. 3 cl. 41.]*

**4. Application**

This Act does not apply to, or in respect of, or in any way affect —

- (a) the practice of a person's profession as a medical practitioner;
- (b) a person carrying out only lens grinding or spectacle making; or
- (c) a person carrying out only the making or manufacture of contact lenses.

## **Part 2 — Optometrists Registration Board and committees**

### **Division 1 — The Board**

#### **5. Board established**

- (1) A body called the Optometrists Registration Board of Western Australia is established.
- (2) The Board —
  - (a) is a body corporate;
  - (b) has perpetual succession and a common seal; and
  - (c) may sue and be sued in its corporate name.
- (3) The Board does not represent, and is not an agent of, the Crown.

#### **6. Membership of Board**

- (1) The Board consists of 8 members appointed by the Minister, of whom —
  - (a) 6 are to be optometrists;
  - (b) one is to be a person who has knowledge of and experience in representing the interests of consumers; and
  - (c) one is to be an Australian lawyer (within the meaning of that term in the *Legal Profession Act 2008* section 3).
- (2) Each member of the Board is to be a natural person.  
*[Section 6 amended by No. 21 of 2008 s. 687(3).]*

#### **7. Presiding member and deputy presiding member**

The presiding member and the deputy presiding member of the Board are to be elected by the Board from amongst its members.

**8. Constitution and proceedings**

Schedule 1 has effect with respect to the constitution and proceedings of the Board.

**9. Remuneration and allowances**

A member of the Board, or of a committee, is to be paid such remuneration and allowances (if any) as the Minister, on the recommendation of the Minister for Public Sector Management, determines from time to time.

**Division 2 — Functions and powers**

**10. Functions**

The functions of the Board are as follows —

- (a) to advise the Minister on matters to which this Act applies;
  - (b) to administer the scheme of registration under Part 4;
  - (c) to support and promote public education and research in relation to the practice of optometry;
  - (d) to monitor education in optometry, and provide advice on that education to the Minister and to any other person or body involved in that education;
  - (e) to promote and encourage —
    - (i) the continuing education of optometrists in the practice of optometry; and
    - (ii) increased levels of skill, knowledge and competence in the practice of optometry;
- and
- (f) to perform other functions that are conferred on the Board under this Act or any other Act.

**11. Powers**

The Board has all the powers it needs to perform its functions.

**12. Delegation by Board**

- (1) The Board may delegate any power or duty of the Board under another provision of this Act to —
  - (a) a member of the Board;
  - (b) a committee or a member of a committee; or
  - (c) the registrar.
- (2) The delegation must be in writing executed by the Board.
- (3) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (4) A person exercising or performing a power or duty that has been delegated to the person under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5) Nothing in this section limits the ability of the Board to perform a function through the registrar or any other member of staff or an agent.

**Division 3 — Relationship of Board with Minister**

**13. Directions by Minister**

- (1) Subject to subsection (2), the Minister may, after consulting with the Board, give directions in writing to the Board with respect to the performance of its functions either generally or in relation to a particular matter, and the Board is to give effect to any such direction.
- (2) The Minister must not under subsection (1) direct the Board with respect to the performance of its functions in respect of —
  - (a) a particular person;
  - (b) a particular qualification; or
  - (c) a particular application, complaint or proceeding.

- (3) The text of a direction given under subsection (1) must be —
- (a) laid before each House of Parliament within 14 sitting days of that House after the direction is given; and
  - (b) included in the annual report submitted by the Board under section 25(1).

**14. Minister to have access to information**

- (1) In this section —  
*information* means information specified, or of a description specified, by the Minister that relates to the functions of the Board.
- (2) The Minister is entitled —
- (a) to have information in the possession of the Board; and
  - (b) if the information is in or on a document, to have, and make and retain copies of, that document.
- (3) For the purposes of subsection (2) the Minister may —
- (a) request the Board to furnish information to the Minister;
  - (b) request the Board to give the Minister access to information;
  - (c) for the purposes of paragraph (b) make use of the staff of the Board to obtain the information and furnish it to the Minister.
- (4) The Board is to comply with a request under subsection (3) and make its staff and facilities available to the Minister for the purposes of subsection (3)(c).
- (5) The Minister is not entitled to have information under this section in a form that —
- (a) discloses the identity of a person involved in a particular application, complaint, investigation or other proceeding; or

- (b) might enable the identity of any such person to be ascertained,

unless that person has consented to the disclosure.

#### **Division 4 — Committees**

##### **15. Committees**

- (1) In addition to the complaints assessment committee and the impairment review committee the Board may from time to time establish any other committee.
- (2) The Board may —
  - (a) determine the functions, membership and constitution;
  - (b) appoint such members and other persons as it thinks fit to be members; and
  - (c) give directions with respect to the functions and procedures,of a committee established under this section.
- (3) A committee is to comply with a direction given to it under subsection (2)(c).
- (4) At the request of the Board, a committee established under this section is to report on the performance of its functions to the Board, in accordance with the Board's request.

##### **16. Provisions relating to committees**

- (1) Each member of a committee is to be a natural person.
- (2) The Board may remove a person from membership of a committee and may reconstitute or discharge a committee established by the Board.
- (3) A committee is to ensure that an accurate record is kept and preserved of the proceedings of each meeting of the committee and of each resolution passed by the committee.

- (4) Subject to this Act, a committee may determine its own procedures.
- (5) A person with special knowledge or experience may be invited to act in an advisory capacity to a committee if the committee is of the opinion that the person will assist the committee in the performance of its functions and the Board has approved the invitation.

### **Division 5 — Registrar and other staff**

#### **17. Registrar**

- (1) The Board is to engage or employ a person to be the registrar.
- (2) The registrar has the functions that are conferred under this Act or that the Board directs the registrar to perform.
- (3) The registrar may delegate to a person engaged or employed by the Board any power or duty of the registrar under another provision of this Act.
- (4) The delegation must be in writing executed by the registrar.
- (5) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (6) A delegate exercising or performing a power or duty that has been delegated to the person under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.

#### **18. Other staff**

The Board may engage or employ persons to provide such professional, technical or other assistance that the Board considers necessary to enable it to perform its functions.

### **Division 6 — General**

**19. Duty not to make improper use of information**

A member or former member of the Board or a member or former member of a committee must not, whether within or outside the State, make improper use of information acquired by virtue of that position to gain, directly or indirectly, an advantage for himself or herself or for any other person.

Penalty: \$5 000.

**20. Meetings and minutes of meetings**

- (1) Subject to this section, every meeting of the Board is to be open to members of the public.
- (2) Despite subsection (1) —
  - (a) the Board may of its own initiative order that in any particular case a meeting, or part of a meeting, of the Board is to be closed; and
  - (b) where a meeting of the Board concerns a proceeding under Part 5 relating to a disciplinary or impairment matter, a person to whom the proceedings relate may request that the meeting, or part of the meeting, be closed.
- (3) The Board is to consider a request under subsection (2)(b) and may order that the meeting, or part of the meeting, be closed if it is of the opinion that such an order is in the best interests of the parties involved or the maintenance of professional standards.
- (4) The minutes of a meeting of the Board are to be open for inspection at its principal place of business by members of the public during normal office hours without fee, other than minutes relating to —
  - (a) proceedings under Part 5 relating to a disciplinary or impairment matter;

- (b) a matter determined to be confidential under subsection (6); or
  - (c) a meeting, or part of a meeting, that the Board ordered be closed under subsection (2)(a) or (3).
- (5) A person may, on payment of the fee prescribed by the regulations, if any, obtain a copy of any minutes of the Board available for inspection under subsection (4).
- (6) The Board may determine that a matter is confidential if it considers that its disclosure is likely to infringe the reasonable privacy of any person.

**21. Execution of documents by Board**

- (1) The Board is to have a common seal.
- (2) A document is duly executed by the Board, if —
- (a) the common seal of the Board is affixed to it in accordance with subsections (3) and (4); or
  - (b) it is signed on behalf of the Board by a person or persons authorised by the Board to do so under subsection (5).
- (3) The common seal of the Board is not to be affixed to any document except as authorised by the Board.
- (4) The common seal of the Board is to be affixed to a document in the presence of 2 members of the Board or a member of the Board and the registrar and each of them is to sign the document to attest that the common seal was so affixed.
- (5) The Board may, by writing under its seal, authorise —
- (a) a member or members of the Board; or
  - (b) a member or members of staff,

to sign documents on behalf of the Board, either generally or subject to such conditions as are specified in the authorisation.

- (6) A document executed under this section without the common seal of the Board is not to be regarded as being a document under seal.
- (7) A document purporting to be executed in accordance with this section is to be presumed to be duly executed until the contrary is shown.
- (8) When a document is produced bearing a seal purporting to be the common seal of the Board, it is to be presumed that the seal is the common seal of the Board until the contrary is shown.

## **Part 3 — Finance and reports**

### **22. Funds of the Board**

- (1) The funds of the Board consist of —
  - (a) fees received by the Board;
  - (b) grants (if any) by the State, and all gifts and donations made to the Board, but subject to any trusts declared in relation to the grants, gifts or donations;
  - (c) penalties, costs and expenses received under section 59 or 81; and
  - (d) other money or property lawfully received by the Board in connection with the performance of its functions.
- (2) The funds of the Board may be applied —
  - (a) for the purposes of the administration and enforcement of this Act, including the remuneration of members of the Board and committees and of the registrar and other persons engaged or employed by the Board;
  - (b) for the payment of examinations and reports in accordance with section 64(3);
  - (c) for the furtherance of education, including public education, and research in relation to the practice of optometry;
  - (d) by way of contribution to any professional body for optometrists for the development by that body of professional standards; and
  - (e) for any other purpose that the Board may recommend and the Minister may approve to enable the Board to perform its functions.

### **23. Accounts**

- (1) The Board is to cause to be kept proper accounts and records of the transactions and affairs of the Board and is to prepare

financial statements in accordance with Australian Accounting Standards.

- (2) The financial statements are to be prepared on an accrual basis unless the Board determines otherwise.

**24. Audit**

The accounts and financial statements of the Board are to be audited at least once a year, at the expense of the Board, by a registered company auditor (as defined in paragraph (a) of the definition of that term in the Corporations Act section 9) appointed by the Board with the prior approval of the Minister.

**25. Annual report and other reports**

- (1) The Board, not later than 31 December in each year, is to 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 its financial statements for that year and the auditor's report on those statements.
- (2) The Board's annual report must include details of —
- (a) the number, nature, and outcome, of —
    - (i) investigations and inquiries undertaken under this Act during the year to which the report relates; and
    - (ii) matters that have been brought before the State Administrative Tribunal by the Board during the year to which the report relates;
  - (b) the number and nature of matters referred to in paragraph (a) that are outstanding;
  - (c) any trends or special problems that may have emerged;
  - (d) forecasts of the workload of the Board in the year after the year to which the report relates; and
  - (e) any proposals for improving the operation of the Board.

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- (3) The Minister is to cause a copy of the Board's annual report and financial statements and of the 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.
- (4) The Board is to ensure that after subsection (3) has been complied with copies of the reports and statements referred to in that subsection are available on request for inspection at its principal place of business.

## **Part 4 — Registration of optometrists**

### **Division 1 — Registration**

**26. Natural persons may be registered**

Registration under this Act may be granted only to a natural person.

**27. Registration**

(1) The Board is to register an applicant if satisfied that the applicant has —

- (a) complied with the requirements of subsection (2); and
- (b) paid the registration fee, if any, prescribed by the regulations.

(2) The requirements for registration are that the applicant —

- (a) is a fit and proper person to be registered as an optometrist;
- (b) has not been convicted of an offence the nature of which renders the person unfit to practise as an optometrist;
- (c) has adequate knowledge of the English language both written and oral;
- (d) has sufficient physical capacity, mental capacity and skill to practise optometry;
- (e) subject to subsection (3), has acquired such knowledge and has such practical experience in optometry as in the opinion of the Board is sufficient to enable that person to perform efficiently the duties of an optometrist; and
- (f) holds a qualification prescribed by the rules as a qualification for registration as an optometrist or a qualification that in the opinion of the Board is equivalent to such a qualification.

(3) Subsection (2)(e) does not apply to a person who, having been awarded a qualification referred to in subsection (2)(f) within

the 5 years preceding the application, is applying to the Board, for the first time, for registration under subsection (1).

- (4) The Board may impose such conditions on registration under subsection (1) as the Board reasonably requires to ensure the competent and safe practice of optometry by the optometrist.
- (5) A condition imposed under subsection (4) may apply indefinitely or for a period of time specified by the Board in the written notice.
- (6) The Board may, on its own motion or on the application of a person the subject of a condition imposed under this section, on reasonable grounds, revoke or vary the condition.

**28. Provisional registration**

- (1) The Board may provisionally register an applicant if satisfied that —
  - (a) the applicant has applied to be registered under section 27;
  - (b) the requisite evidence is likely to be produced to enable the Board to be satisfied as to the matters set out in section 27(2); and
  - (c) the applicant has paid the registration fee, if any, prescribed by the regulations.
- (2) Provisional registration has effect for a period of 3 months beginning on the day on which it is granted unless earlier cancelled.
- (3) The Board may impose such conditions on registration under subsection (1) as the Board reasonably requires to ensure the competent and safe practice of optometry by the optometrist.
- (4) If the Board, before the period referred to in subsection (2) expires, has reason to believe that a person granted provisional registration is not entitled to be registered as an optometrist under section 27, the Board may, without prejudice to the

person's application to be registered, cancel the person's provisional registration.

**29. Conditional registration at the discretion of the Board**

- (1) The Board may grant a person conditional registration as an optometrist if —
- (a) the Board is satisfied that the person meets the requirements of section 27(2)(a), (b), (c) and (d);
  - (b) the Board is satisfied that —
    - (i) the person meets the requirements of section 27(2)(e) and that the requisite evidence is likely to be produced to enable the Board to be satisfied as to the matters set out in section 27(2)(f);
    - (ii) the person, recognised by the Board as being a person of eminence within the field of optometry, desires registration for the purpose of enabling the person to teach and demonstrate methods and techniques of optometry; or
    - (iii) the person desires registration to enable the person to undertake particular duties of optometry of limited duration;
- and
- (c) the applicant has paid the registration fee, if any, prescribed by the regulations.
- (2) Conditional registration —
- (a) has effect until the day specified in the certificate of registration (unless registration is earlier cancelled by the Board) but that day is in no case to be later than 12 months after the issue of the certificate; and
  - (b) is not renewable.

- (3) Conditional registration, and the practice of optometry by an optometrist registered under this section, may be made subject to such conditions as the Board imposes in any particular case.
- (4) The Board may at any time cancel a conditional registration.
- (5) The Board may, on its own motion or on the application of a person the subject of a condition imposed under this section, on reasonable grounds, revoke or vary the condition.

**30. Professional indemnity insurance**

- (1) In this section —  
*professional indemnity insurance* means professional indemnity insurance that meets the minimum terms and conditions approved by the Board.
- (2) Without limiting the Board's powers under section 27, 28 or 29, the Board may impose both of the following conditions as conditions of registration under section 27, 28 or 29 —
  - (a) that —
    - (i) the optometrist must hold professional indemnity insurance;
    - (ii) the optometry services provided by the optometrist must be covered by professional indemnity insurance; or
    - (iii) the optometrist must be specified or referred to in professional indemnity insurance, whether by name or otherwise, as a person to whom the professional indemnity insurance extends even though the optometrist is not a party to the professional indemnity insurance;
  - (b) that the professional indemnity insurance must meet the minimum terms and conditions approved by the Board.
- (3) A condition imposed under this section may apply indefinitely or for a period of time specified by the Board in the written notice of the decision given under section 100.

- (4) The Board may, on its own motion or on the application of a person the subject of a condition imposed under this section, on reasonable grounds, revoke or vary the condition.

**31. Application**

- (1) An application is to be —
- (a) in writing;
  - (b) made in an approved manner and form; and
  - (c) accompanied by the application fee, if any, prescribed by the regulations.
- (2) The applicant must provide the Board or the registrar with such further information as the Board or the registrar requires, in any particular case, and if required by the Board or the registrar must verify the information by statutory declaration.
- (3) The Board may, in writing, require an applicant for registration to attend before the Board for the purpose of satisfying the Board as to a matter relevant to the application and, if the person fails to attend, may refuse the application.
- (4) The Board may refuse to register a person who does not comply with this section.

**32. Effect of registration**

Subject to this Act, registration confers on the person registered the right to carry on in the State the practice of optometry under the title of “optometrist” or “optician”.

**33. Duration of registration**

Subject to this Act, registration —

- (a) has effect for the period prescribed by the regulations; and
- (b) may be renewed in accordance with the regulations for a further period prescribed by the regulations.

**34. Renewal of registration**

- (1) An optometrist must pay to the Board a fee prescribed by the regulations for the renewal of registration, and if the fee is not paid on or before the day on which it falls due under the regulations —
  - (a) the person ceases to be registered; and
  - (b) the person's name must be removed from the register.
- (2) A person whose name is removed from the register under subsection (1) may at any time pay to the Board all fees that are in arrears, and all fees that would be in arrears if the person had continued to be registered, together with any additional amount prescribed by the regulations for the purposes of this subsection, and is then to be entitled, subject to this Act, to have his or her registration renewed and the name restored to the register.
- (3) For the purposes of Part 5, the registration of a person whose name is restored to the register under subsection (2) is taken to have continued during the period that the person's name was removed from the register under subsection (1).
- (4) The Board is to give written notice of the renewal fee to an optometrist, sent to that optometrist's address as recorded in the register, at least 42 days before the fee falls due under the regulations.
- (5) A person may apply to the Board for the remission of fees payable by the person under this section that are in arrears, and the Board may remit those fees in whole or in part.

**35. Application for registration by a person whose registration has been cancelled under section 78(1)(i)**

- (1) In this section —

***disqualified person*** means a person whose registration has been cancelled and name removed from the register under section 78(1)(i).

- (2) A disqualified person may not apply for registration for a period of 2 years after that person's registration was cancelled.
- (3) The Board cannot grant an application for registration by a disqualified person unless it has applied for, and obtained, the approval of the State Administrative Tribunal to do so.
- (4) Registration of, and the practice of optometry by, a disqualified person may be made subject to such conditions as the Board in any particular case imposes.

### **Division 2 — The register**

#### **36. The register**

The Board is required to keep an accurate and up to date register of all optometrists in such manner and form as the Board determines and in respect of each optometrist is to record —

- (a) the name of that optometrist;
- (b) the business, or other, address of that optometrist;
- (c) particulars of all of the qualifications in optometry recognised by the Board and held by that optometrist;
- (d) the provision of this Act under which the optometrist is registered;
- (e) any conditions applying to the registration;
- (f) details of the exercise of any power under Part 5 in respect of that optometrist or any order made in respect of that optometrist in a proceeding before the State Administrative Tribunal under Part 5; and
- (g) such other information, if any, as is prescribed by the regulations.

#### **37. Inspection of register**

- (1) The register must be kept in the office of the registrar.
- (2) The register must be available for inspection by members of the public during normal office hours.

- (3) The register may be made available for inspection by members of the public on an internet website maintained by the Board.
- (4) A person may, on application to the registrar in respect of the register or an entry in the register, and payment of the fee prescribed by the regulations, if any, obtain a certified copy of the register or the entry.
- (5) No fee is payable under subsection (4) if the application is made —
  - (a) by an officer of the department of the Public Service principally assisting the Minister in the administration of this Act; and
  - (b) for the purpose of carrying out the functions of an officer of that department.

**38. Certificate of registration**

- (1) On the registration of a person the Board is to issue to that person a certificate of registration in an approved form.
- (2) In the absence of evidence to the contrary a certificate of registration is evidence that the person to whom the certificate is issued is registered.

**39. Voluntary removal from register and cancellation of registration**

- (1) An optometrist may, in writing, request the registrar to remove the name of that optometrist from the register and cancel the optometrist's registration.
- (2) Upon receipt of a request under subsection (1) the registrar is to refer the request to the Board and may, if the Board so approves, remove the name of the optometrist from the register and cancel the optometrist's registration.
- (3) This section does not apply to an optometrist who is the subject of proceedings under Part 5.

**40. Removal of name and cancellation of registration of person in certain circumstances**

- (1) Subject to subsections (2) and (3), the Board is to cancel the registration of and direct the registrar to remove from the register the name of an optometrist if the Board is satisfied that the optometrist —
  - (a) has not practised optometry in the preceding period of 5 years; and
  - (b) has not maintained current knowledge and skills in optometry at an approved level.
- (2) If the Board proposes to give a direction under subsection (1), the Board is to give the optometrist written notice of the proposal and the reasons for the proposal.
- (3) A notice given under subsection (2) must state that within 28 days after the notice is given, the optometrist to whom it is given may make written representations to the Board concerning the proposal, and the Board is not to give the direction without considering any representations received within that period.

**41. Effect of removal of name from register**

If the name of a registered person is removed from the register under a provision of this Act, that person ceases to be registered.

**Division 3 — Notifications to Board**

**42. Change of address**

- (1) An optometrist must give the registrar written advice of any change to the address that is recorded in the register in relation to the person.  
Penalty: \$1 000.
- (2) The advice referred to in subsection (1) must be given no later than 30 days after the change to the address.

**43. Loss of qualifications**

- (1) An optometrist must give the registrar written advice if a qualification that enabled the person to be registered is withdrawn or cancelled by the body that conferred the qualification.

Penalty: \$1 000.

- (2) The advice referred to in subsection (1) must be given no later than 90 days after the withdrawal or cancellation.

**44. Insolvency**

- (1) In subsection (2) —

*insolvent* means a person who is an insolvent under administration as defined in the Corporations Act section 9.

- (2) An optometrist must, within 7 days of becoming an insolvent, give the registrar written advice of the insolvency.

Penalty: \$5 000.

**45. Civil or criminal proceedings**

- (1) An optometrist must give the registrar written advice of any of the following matters within 14 days after —

- (a) any civil proceedings claiming damages or other compensation arising out of the practice of optometry;
- (b) any criminal proceedings for an offence arising out of the practice of optometry,

are commenced against that optometrist.

Penalty: \$5 000.

- (2) An optometrist must give the registrar written advice of any of the following matters within 14 days after —

- (a) any proceedings of a kind referred to in subsection (1) commenced against that optometrist are withdrawn or settled;

- (b) any such proceedings are determined by a court or other tribunal.

Penalty: \$5 000.

**46. Information about professional indemnity insurance**

- (1) If it is a condition of an optometrist's registration that —
  - (a) the optometrist must hold professional indemnity insurance;
  - (b) optometry services provided by the optometrist must be covered by professional indemnity insurance; or
  - (c) the optometrist must be specified or referred to in professional indemnity insurance, whether by name or otherwise, as a person to whom the professional indemnity insurance extends even though the optometrist is not a party to the professional indemnity insurance,

the optometrist must give the registrar written advice —

- (d) if the professional indemnity insurance is cancelled; or
- (e) of any change in the terms or conditions of the professional indemnity insurance.

Penalty: \$1 000.

- (2) The advice referred to in subsection (1) must be given no later than 30 days after the cancellation or change in the terms or conditions.

## **Part 5 — Disciplinary and impairment matters**

### **Division 1 — Preliminary**

#### **47. Disciplinary matters**

The following are disciplinary matters —

- (a) that a person has contravened a condition applying to that person's registration or the practice of optometry by that person;
- (b) that a person in the course of his or her practise as an optometrist —
  - (i) acted carelessly;
  - (ii) acted incompetently;
  - (iii) acted improperly;
  - (iv) breached this Act;
  - (v) failed to comply with an undertaking given to the Board under this Act;
  - (vi) provided services that were excessive, unnecessary or not reasonably necessary for the recipient's wellbeing;
- (c) that a person has been convicted of an offence the nature of which renders the person unfit to practise as an optometrist.

#### **48. Impairment matters**

The following are impairment matters —

- (a) that a person is affected by his or her use of or dependence on alcohol or a drug to such an extent that the ability of the person to practise as an optometrist is or is likely to be affected;
- (b) that a person suffers from an impairment to such an extent that the ability of the person to practise as an optometrist is or is likely to be affected.

## **Division 2 — Committees**

### **49. Complaints assessment committee**

- (1) The Board is to establish a committee to be known as the complaints assessment committee.
- (2) The complaints assessment committee is to consist of the following 3 persons appointed in writing by the Board from time to time —
  - (a) an optometrist (who may be a member of the Board);
  - (b) a person who is not an optometrist and is not qualified to be registered as an optometrist;
  - (c) such other person (including an optometrist or member of the Board) as the Board considers appropriate.
- (3) The Board is to appoint a member of the complaints assessment committee to be the committee's chairperson.
- (4) The complaints assessment committee is to submit an annual report to the Board as soon as is practicable after 30 June in each year in respect of the functions performed by the committee during the year that ended on that day.
- (5) A notice or appointment authorised by this Act to be given or made by the complaints assessment committee is taken to have been given or made by the committee if it is signed on behalf of the committee —
  - (a) by the chairperson of the committee; or
  - (b) by some other person authorised by the committee to sign the notice or appointment.

### **50. Impairment review committee**

- (1) The Board may establish a committee to be known as the impairment review committee.

- (2) The impairment review committee is to consist of the following 3 persons appointed in writing by the Board from time to time —
  - (a) an optometrist (who may be a member of the Board);
  - (b) a medical practitioner;
  - (c) such other person (including an optometrist or member of the Board) as the Board considers appropriate.
- (3) The Board is to appoint a member of the impairment review committee to be the committee's chairperson.
- (4) A notice or appointment authorised by this Act to be given or made by the impairment review committee is taken to have been given or made by the committee if it is signed on behalf of the committee —
  - (a) by the chairperson of the committee; or
  - (b) by some other person authorised by the committee to sign the notice or appointment.

### **Division 3 — Complaints**

#### **51. Complaints**

- (1) A person may lodge a complaint in relation to an impairment matter with the complaints assessment committee in relation to a person who is an optometrist.
- (2) A person may lodge a complaint in relation to a disciplinary matter with the complaints assessment committee in relation to —
  - (a) a person who is an optometrist; or
  - (b) a person who was an optometrist when the disciplinary matter allegedly occurred but who is no longer an optometrist.
- (3) If the Director refers a complaint to the Board under the *Health Services (Conciliation and Review) Act 1995* section 31 or

43(3), the Board is to refer the complaint to the complaints assessment committee.

- (4) The complaints assessment committee may determine that an impairment matter or a disciplinary matter is to be dealt with as if it were the subject of a complaint lodged with the committee, despite no complaint having been made to it.
- (5) The complaints assessment committee is not to make a determination under subsection (4) unless it is of the opinion that —
  - (a) in respect of a person who is an optometrist when the determination is made, there is cause to investigate whether an impairment matter or a disciplinary matter exists or has occurred; or
  - (b) in respect of a person who was an optometrist when the disciplinary matter allegedly occurred, there is cause to investigate whether a disciplinary matter occurred.

**52. Complaints assessment committee to determine action required**

- (1) The complaints assessment committee is to decide in respect of a complaint —
  - (a) if the committee is of the opinion that the complaint requires action under Division 4, to refer it to the Board for action under that Division;
  - (b) to reject the complaint under section 53;
  - (c) in the case of a complaint relating to a disciplinary matter, to deal with the complaint under subsection (3) or section 57; or
  - (d) in the case of a complaint relating to an impairment matter, to refer the complaint to the impairment review committee.

- (2) To enable the complaints assessment committee to make a decision under subsection (1) the committee may make such inquiries as it considers appropriate.
- (3) If the complaint relates to a disciplinary matter referred to in section 47(b)(v), the complaints assessment committee may recommend to the Board that it make an allegation to the State Administrative Tribunal based on the complaint that gave rise to the undertaking.

**53. Complaints assessment committee may reject certain complaints**

- (1) The complaints assessment committee may at any time before deciding to —
  - (a) refer a complaint to the impairment review committee under section 52(1)(d); or
  - (b) make a recommendation to the Board under section 52(3) or 57,

reject a complaint if it is of the opinion that the complaint is frivolous, vexatious or without substance.

- (2) Within 7 days of making a decision under subsection (1), the complaints assessment committee is to give written notice to the complainant, if any, that the complaint is rejected and in the notice is to give short particulars of the reasons for the decision.

**Division 4 — Summary orders of Board**

**54. Interim orders by Board**

- (1) If the Board is of the opinion that an activity of an optometrist involves or will involve a risk of imminent injury or harm to the physical or mental health of any person, the Board may, without further inquiry, do any or all of the following —
  - (a) give to the optometrist who is carrying on that activity an order prohibiting the carrying on of the activity for a period of not more than 30 days;

- (b) give to the optometrist an order to comply, for a period of not more than 30 days, with such conditions as the Board thinks fit in relation to the practice of optometry by that optometrist;
  - (c) give to the optometrist an order suspending the person from the practice of optometry, either generally or in relation to any specified circumstances or service, for a period of not more than 30 days.
- (2) An order made under subsection (1) must —
  - (a) state that the Board is of the opinion that the activity of the optometrist involves or will involve a risk of imminent injury or harm to the physical or mental health of any person;
  - (b) specify the activity that in the Board’s opinion involves or will involve the risk and the matters that give or will give rise to the risk; and
  - (c) advise that, within 14 days of the making of the order, the Board will revoke the order or make an allegation about the matter to the State Administrative Tribunal.
- (3) The Board may, by subsequent order given to the person to whom the order made under subsection (1) was given, revoke or vary the original order at any time before making an allegation about the matter to the State Administrative Tribunal under section 55.
- (4) The Board may deal under this section with a complaint even if —
  - (a) the Board, the impairment review committee or the complaints assessment committee is already dealing with the complaint, or a complaint including elements of the first-mentioned complaint, under this Act; or
  - (b) the same complaint, or a complaint including elements of the complaint before the Board, has been made under the *Health Services (Conciliation and Review) Act 1995*

or is being treated as a complaint that was made under that Act.

**55. Complaint dealt with summarily to be referred to the State Administrative Tribunal**

- (1) Within 14 days of making an order under section 54, if that order is not revoked under section 54(3), the Board is to —
  - (a) make an allegation about the matter in respect of which the order was made to the State Administrative Tribunal; and
  - (b) order that any other proceedings under this Part in respect of the matter commenced before the making of the order be discontinued.
- (2) Upon an allegation made under subsection (1) the State Administrative Tribunal may, in addition to any other order it may make, affirm or revoke an order under section 54(1) or vary the order by extending the period for which it applies or in any other respect.

**56. Complaint not dealt with summarily to be referred to relevant committee**

If the Board does not make an order under section 54 in respect of a complaint referred to it under section 52(1)(a) then the Board is to —

- (a) refer the complaint to the complaints assessment committee, if the complaint relates to a disciplinary matter; or
- (b) refer the complaint to the impairment review committee, if the complaint relates to an impairment matter.

### **Division 5 — Disciplinary matters**

#### **57. Investigation and recommendation**

- (1) If the complaints assessment committee has made a decision to deal with a complaint relating to a disciplinary matter under this section or has had a complaint referred back to it under section 56, the complaints assessment committee is to investigate the complaint.
- (2) On completion of the investigation the complaints assessment committee is to make a recommendation to the Board —
  - (a) to make a summary order under Division 4 (unless the complaint was referred back to the committee under section 56);
  - (b) if the complaint comes within the *Health Services (Conciliation and Review) Act 1995* section 25, not being a complaint referred to the Board under section 31 or 43(3) of that Act, to give a copy of the complaint to the Director;
  - (c) if paragraph (b) does not apply, to attempt to settle the complaint by conciliation;
  - (d) to caution or reprimand the respondent;
  - (e) to accept an undertaking from the respondent to take or refrain from action specified in the recommendation;
  - (f) to make an allegation about the complaint to the State Administrative Tribunal; or
  - (g) to take no further action.
- (3) The complaints assessment committee is not to make a recommendation under subsection (2)(c) unless it is satisfied that the matter can be dealt with satisfactorily by informal procedures.
- (4) The complaints assessment committee may recommend to the Board that it take action under both subsection (2)(d) and (e) in respect of a complaint.

**58. Role of Board**

- (1) The Board is to consider the recommendation of the complaints assessment committee under section 57(2) and may either —
  - (a) act on the recommendation of the complaints assessment committee; or
  - (b) take action of a kind referred to in section 57(2) other than that recommended by the complaints assessment committee.
- (2) The Board is not to take action of a kind referred to in section 57(2)(c) unless it is satisfied that the matter can be dealt with satisfactorily by informal procedures.
- (3) The Board may take action under both section 57(2)(d) and (e) in respect of a complaint.
- (4) Within 7 days of making a decision under subsection (1), the Board is to give written notice to the complainant, if any, and the respondent of the action proposed to be taken by the Board together with short particulars of the reasons for the decision.

**59. Alternative to making allegation to the State Administrative Tribunal**

- (1) If the Board —
  - (a) is of the opinion that a proceeding before the Tribunal is not warranted by the nature of the allegation;
  - (b) has afforded to the person concerned the opportunity of giving an explanation to the Board either in person or in writing and is not satisfied by any explanation offered; and
  - (c) has afforded to the person concerned the option of the matter proceeding before the Tribunal and that option has not been taken up,

the Board, instead of making an allegation to the State Administrative Tribunal under section 58(1), may —

- (d) if the person is an optometrist, order that the particulars entered in the register in relation to that person be amended;
  - (e) caution or reprimand that person;
  - (f) if the person is an optometrist, require that person to give an undertaking to the Board, either with or without security, for such period as is specified —
    - (i) in relation to his or her future conduct as an optometrist; or
    - (ii) to comply with such conditions as are specified in relation to his or her practice;
- or
- (g) order that person to pay to the Board a penalty not exceeding \$2 500.
- (2) The Board may, in addition to or instead of imposing one or more of the penalties specified in subsection (1), order the person concerned to pay such costs and expenses of or incidental to the proceedings as the Board thinks fit.
- (3) Where any penalty, costs or expenses are ordered to be paid under this section the amount ordered to be paid is recoverable in any court of competent jurisdiction as a debt due to the Board.
- (4) Within 7 days of making a decision under subsection (1)(d) to (g) or (2), the Board is to give written notice to the complainant, if any, and the respondent of the decision together with short particulars of the reasons for the decision.

### **Division 6 — Impairment matters**

#### **60. Request by optometrist for imposition of condition**

- (1) An optometrist who believes that his or her ability to practise optometry is affected because of an impairment matter may ask

the Board to impose a condition with respect to his or her registration.

- (2) If the Board and the optometrist agree upon the condition to be imposed, the Board is to impose that condition with respect to his or her registration.
- (3) If the Board and the optometrist do not agree upon the condition to be imposed, the Board is to refer the matter to the impairment review committee for investigation under this Division.

**61. Revocation of condition**

The Board may revoke a condition imposed under section 60 if the optometrist satisfies the impairment review committee that his or her ability to practise optometry is no longer affected because of the impairment matter that gave rise to the imposition of the condition.

**62. Investigation**

The impairment review committee is to investigate a complaint referred to it.

**63. Optometrist to be notified about investigation**

- (1) The impairment review committee is to give written notice of the investigation to the optometrist to whom the complaint relates.
- (2) The notice must —
  - (a) advise the optometrist of the nature of the impairment matter to be investigated;
  - (b) if the impairment review committee considers that an examination of the optometrist is necessary, ask the optometrist to advise the committee as to whether or not he or she will agree to undergo an examination relating to the impairment matter within a period specified by the committee in the notice; and
  - (c) contain a brief summary of the effect of this Division.

**64. Examination**

- (1) If the optometrist agrees to undergo an examination within the period specified in the notice under section 63(2)(b), the optometrist is to be examined by a medical practitioner agreed upon by the impairment review committee and the optometrist.
- (2) If the impairment review committee and the optometrist are unable to agree upon the person to conduct the examination, the Board is to appoint a medical practitioner to perform the examination.
- (3) The Board is to pay for an examination conducted under this section and a report provided under section 65.
- (4) If the optometrist does not agree to undergo an examination within the period specified in the notice under section 63(2)(b) or does not abide by an agreement to undergo such an examination, the impairment review committee is to recommend to the Board that the Board make an allegation about the complaint to the State Administrative Tribunal.

**65. Report of examination**

- (1) A medical practitioner who conducts an examination under section 64 is to give a report of the examination to the impairment review committee and, not more than 7 days later, the committee is to give a copy of the report to the optometrist.
- (2) Despite subsection (1), if it appears to the impairment review committee that the disclosure to the optometrist of information in the report might be prejudicial to the physical or mental health or wellbeing of the optometrist, the committee may decide not to give that report to the optometrist but to give it instead to a medical practitioner or another optometrist nominated by the optometrist.
- (3) If the optometrist does not nominate a medical practitioner or another optometrist to the impairment review committee within 7 days of being requested to do so by the committee, the

committee may give the report to a medical practitioner or optometrist selected by the committee.

- (4) The optometrist may make written representations to the impairment review committee with respect to the report within 7 days after the report is given to him or her or the medical practitioner or optometrist nominated by him or her or selected by the committee.

**66. Role of the impairment review committee**

- (1) On completion of the investigation of an optometrist and after considering —
- (a) any report given to the committee under section 65(1); and
  - (b) any representations made by the optometrist under section 65(4),

the impairment review committee is to decide whether or not further action should be taken.

- (2) If the impairment review committee decides that further action should be taken, it is to request that the optometrist consent —
- (a) to the imposition of conditions on his or her registration;
  - (b) to being suspended from the practice of optometry for a period, not exceeding 2 years, specified by the impairment review committee; or
  - (c) to undergo counselling specified by the impairment review committee.
- (3) If the impairment review committee decides that no further action should be taken it is to give written advice to that effect to —
- (a) the Board;
  - (b) the complainant, if any; and
  - (c) the optometrist.

**67. Recommendation**

- (1) If the optometrist does not consent to a request made under section 66(2) within 10 days of the request being made, the impairment review committee is to recommend to the Board that the Board make an allegation about the complaint to the State Administrative Tribunal.
- (2) If the optometrist does consent to a request made under section 66(2) within 10 days of the request being made, the impairment review committee is to recommend to the Board that the Board take any action to which the optometrist consented.
- (3) A recommendation made under subsection (1) or (2) must be made in writing and contain details of the committee's investigation of the optometrist.

**68. Role of Board**

- (1) The Board is to consider a recommendation of the impairment review committee and may —
  - (a) decide not to take any action;
  - (b) take any action to which the optometrist consented under section 66(2); or
  - (c) make an allegation about the complaint to the State Administrative Tribunal.
- (2) For the purpose of taking action to which the optometrist consented under section 66(2), the Board may —
  - (a) impose the conditions to which the optometrist consented;
  - (b) suspend the optometrist from the practice of optometry for the period specified by the impairment review committee; or

- (c) obtain an undertaking from the optometrist to undergo the counselling specified by the impairment review committee,

as the case may require.

- (3) Within 7 days of making a decision under subsection (1) or (2), the Board is to give written notice to the optometrist and the complainant, if any, of the decision together with short particulars of the reasons for the decision.

### **Division 7 — Investigator's role and powers**

#### **69. Interpretation**

In this Division —

***appointing body***, in relation to an investigator, means the Board or the complaints assessment committee which appointed the investigator.

#### **70. Investigator**

- (1) The Board or the complaints assessment committee may appoint a person to investigate a complaint and report to the Board or committee.
- (2) An appointing body is to issue to each investigator it appoints a certificate of appointment in an approved form.
- (3) A certificate purporting to have been issued under this section is evidence in any court of the appointment to which the certificate purports to relate.

#### **71. Report of investigator**

- (1) An investigator is to —
  - (a) within such period as the appointing body requires prepare a report on the investigation, and make recommendations as to the manner in which the complaint should be dealt with; and

- (b) immediately after preparing the report, provide the appointing body with a copy of the report.
- (2) The investigator is to return his or her certificate of appointment at the time the appointing body is provided with a copy of the report.

**72. Powers of investigator**

- (1) An investigator may for the purposes of an investigation —
  - (a) enter and inspect the premises named in a warrant issued under section 74(1), and exercise the powers authorised under section 74(2)(b) and (c);
  - (b) require a person to produce to the investigator any document or other thing concerning the investigation that is in the possession or under the control of the person;
  - (c) inspect any document or other thing produced to the investigator and retain it for such reasonable period as the investigator thinks fit, and make copies of a document or any of its contents;
  - (d) require a person —
    - (i) to give the investigator such information as the investigator requires; and
    - (ii) to answer any question put to that person, in relation to the matter the subject of the investigation; and
  - (e) exercise other powers conferred on an investigator by the regulations.
- (2) A requirement made under subsection (1)(b) —
  - (a) must be made by notice in writing given to the person required to produce the document or other thing;
  - (b) must specify the time at or within which the document or other thing is to be produced;

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

inform that person that the person is required under this Act to give the information or answer the question.

- (6) An investigator is to produce his or her certificate of appointment if requested to do so by a person in respect of whom the investigator has exercised, or is about to exercise, a power under this section.

**73. Warrant to enter premises**

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

affirmation or by affidavit, and the magistrate may for that purpose administer an oath or affirmation or take an affidavit.

**74. Issue of warrant**

- (1) A magistrate to whom an application is made under section 73 may issue a warrant, if satisfied that there are reasonable grounds for believing that entry and inspection of the premises are necessary for the purpose referred to in that section.
- (2) A warrant under subsection (1) authorises the investigator —
  - (a) to enter and inspect the premises named in the warrant;
  - (b) to require a person on the premises to answer questions or produce documents or other things concerning the investigation that are in the possession or under the control of the person; and
  - (c) to inspect documents and other things, and take copies of or extracts from documents, produced in compliance with a requirement made under paragraph (b).
- (3) There must be stated in a warrant —
  - (a) the purpose for which the warrant is issued;
  - (b) the name of the person to whom the warrant is issued; and
  - (c) a description of the premises that may be entered.
- (4) A magistrate who issues a warrant is to cause a record to be made of particulars of the grounds that the magistrate has relied on to justify the issue of the warrant.

**75. Execution of warrant**

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

- (b) if it is withdrawn by the magistrate who issued it; or
  - (c) when it is executed,
- whichever occurs first.

### **Division 8 — Conciliation**

#### **76. Conciliation process**

- (1) If an attempt is to be made to settle a complaint by conciliation, the Board is to refer the complaint to the complaints assessment committee.
- (2) The complaints assessment committee is to commence conciliation procedures within 14 days of the complaint being referred to it under subsection (1) and may for that purpose —
  - (a) cause conferences of the complainant or person affected by the conduct of the respondent and the respondent, or their representatives, to be arranged and to be presided over by a person appointed in accordance with the regulations;
  - (b) give advice and make recommendations to assist in the reaching of an agreement; and
  - (c) cause the persons concerned, or any of them, either separately or together, to appear before the complaints assessment committee.
- (3) The Board may, with the consent of each of the parties to that agreement, by order give effect to an agreement negotiated under this Division.
- (4) If the Board makes an order under subsection (3) —
  - (a) the terms of the agreement reached between the parties referred to in the order are final and binding on those parties; and
  - (b) the order may include any action that might have been taken by the State Administrative Tribunal under section 78(1) or 79(1).

- (5) Evidence of anything lawfully said or done, or any record prepared and produced for the purpose of conciliation, by a person in the course of the conciliation process is not to be used in any subsequent consideration of the complaint by the Board nor, unless that person waives the right to object, is it admissible in evidence against that person in any subsequent civil proceedings concerning the subject matter of the complaint.

**77. Action if conciliation fails**

If —

- (a) the conciliation process fails to result in an agreement between the complainant or other person affected by the conduct of the respondent and the respondent;
- (b) the Board is satisfied that the parties are not cooperating with the conciliation process; or
- (c) the Board is not satisfied with the result of the conciliation process,

the Board is to —

- (d) make a summary order under Division 4;
- (e) investigate the complaint; or
- (f) make an allegation about the complaint to the State Administrative Tribunal.

**Division 9 — Role of the State Administrative Tribunal**

**78. Powers of the State Administrative Tribunal on dealing with a disciplinary matter**

- (1) If, in a proceeding commenced by an allegation under this Act against an optometrist, the State Administrative Tribunal is of the opinion that a disciplinary matter exists in relation to the person, the Tribunal may do one or more of the following —
- (a) decline to make an order or a requirement under this subsection;

- (b) order the registrar to amend the particulars entered in the register in respect of the person;
- (c) caution or reprimand the person;
- (d) require the person —
  - (i) if the patient agrees, to provide further services to a patient at no cost or at an amount determined by the Tribunal;
  - (ii) to pay, wholly or in part, for further services to be provided to a patient by another optometrist; or
  - (iii) to reduce or refund the amount of any fees paid in respect of services provided to a patient, to such an extent as is determined by the Tribunal;
- (e) order that the person comply with such conditions as the Tribunal may impose on the registration of that person;
- (f) require the person to complete educational or clinical courses, or both, as specified in the order or to practise under supervision as specified in the order for a period specified in the order;
- (g) require the person to seek and implement, within a period specified in the order, advice from a person or persons specified in the order in relation to the management and conduct of the person's practice of optometry, or the specific part or aspect of the practice specified in the order;
- (h) order the person to pay a penalty not exceeding \$25 000;
- (i) order that the person's registration be cancelled and name be removed from the register;
- (j) order that the person be suspended from the practice of optometry, either generally or in relation to any specified circumstances or service, for a period, not exceeding 2 years, specified in the order.

- (2) If, in a proceeding commenced by an allegation under this Act against a person who was an optometrist when the disciplinary matter allegedly occurred but who is no longer an optometrist, the State Administrative Tribunal is of the opinion that a disciplinary matter exists in relation to a person, the only powers that the Tribunal may exercise are the powers in subsection (1)(a), (c), (d)(ii) and (iii) and (h).

**79. Powers of the State Administrative Tribunal on dealing with an impairment matter**

- (1) If, in a proceeding commenced by an allegation under section 68(1)(c), the State Administrative Tribunal is of the opinion that an impairment matter exists in relation to that person, the Tribunal may do one or more of the following —
- (a) decline to make an order or a requirement under this subsection;
  - (b) order that the person comply with such conditions as the Tribunal may impose on the registration of that person;
  - (c) require the person to seek and undergo medical treatment or counselling specified by the Tribunal;
  - (d) order that the person be suspended from the practice of optometry, either generally or in relation to any specified circumstances or service, for the period of time, not exceeding 2 years, specified by the State Administrative Tribunal in the order.
- (2) If, during the course of hearing an allegation in respect of an impairment matter, the State Administrative Tribunal determines that the allegation involves a disciplinary matter, the Tribunal may deal with it under section 78(1) or (2) instead of under this section.

**Division 10 — Miscellaneous**

**80. Suspension**

- (1) If, under section 54(1)(c), 68(2)(b), 78(1)(j) or 79(1)(d), a person is suspended from the practice of optometry generally, the person is to be regarded as not being registered during the period of the suspension.
- (2) If, under section 54(1)(c), 78(1)(j) or 79(1)(d), a person is suspended from the practice of optometry in relation to any specified circumstances or service, the person is to be regarded as not being registered during the period of the suspension in relation to the circumstances or the performance of the service specified in the order of suspension.
- (3) The Board may, by notice in writing, revoke a suspension, either generally or to a specified extent, and may direct in the notice that the revocation has effect from a date specified in the notice.
- (4) The Board cannot revoke a suspension that was imposed by the State Administrative Tribunal under section 78(1)(j) or 79(1)(d) unless it has applied for, and obtained, the approval of the Tribunal to do so.

**81. Costs and recovery**

- (1) The Board may, in addition to or instead of exercising a power under section 58(1) or 68(1), order the respondent to pay such costs and expenses of or arising from the investigation and exercise of that power as the Board thinks fit.
- (2) Any costs or expenses ordered to be paid under this section are recoverable by the Board in a court of competent jurisdiction as a debt due to the Board.

## **Part 6 — Offences**

### **82. Persons who may practise optometry**

A person must not practise optometry unless that person is a registered person.

Penalty:

- (a) in the case of an individual —
  - (i) for a first offence, \$5 000; and a daily penalty of \$200;
  - (ii) for a second or subsequent offence, \$10 000; and a daily penalty of \$400;
- (b) in any other case —
  - (i) for a first offence, \$10 000; and a daily penalty of \$400;
  - (ii) for a second or subsequent offence, \$20 000; and a daily penalty of \$800.

### **83. Persons who may be employed or engaged to practise optometry**

A person must not employ or engage a person to practise optometry unless the person employed or engaged is a registered person.

Penalty:

- (a) in the case of an individual —
  - (i) for a first offence, \$5 000; and a daily penalty of \$200;
  - (ii) for a second or subsequent offence, \$10 000; and a daily penalty of \$400;
- (b) in any other case —
  - (i) for a first offence, \$10 000; and a daily penalty of \$400;

- (ii) for a second or subsequent offence, \$20 000; and a daily penalty of \$800.

**84. Exceptions to sections 82 and 83**

- (1) In this section —

*student* means a person who is enrolled as a student and is studying for a qualification referred to in section 27(2)(f).

- (2) For the purposes of sections 82 and 83, a person is not practising optometry only because —
  - (a) the person is a student; or
  - (b) the person employs or engages a person who practises optometry.

**85. Use of title “optometrist” or “optician”, or pretending to be registered**

A person must not —

- (a) use the title “optometrist” or “optician” unless the person is a registered person; or
- (b) advertise or otherwise hold out or imply, that the person is registered or entitled, either alone or with others, to practise optometry, unless that person is a registered person.

Penalty:

- (a) for a first offence, \$2 500; and a daily penalty of \$100;
- (b) for a second or subsequent offence, \$5 000; and a daily penalty of \$200.

**86. Undue influence**

A person must not cause or induce an optometrist to do any thing in the course of practising optometry that the person is aware, or ought reasonably to be aware, is conduct that would constitute a disciplinary matter.

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Penalty:

- (a) in the case of an individual, \$5 000;
- (b) in any other case, \$10 000.

**87. Failure to comply with disciplinary action**

A person must not contravene or fail to comply with an order of the Board given to that person under section 54 or 59.

Penalty:

- (a) in the case of an individual, \$5 000;
- (b) in any other case, \$10 000.

**88. False or misleading information**

- (1) A person must not do any of the things set out in subsection (2) —

- (a) in relation to an application;
- (b) in relation to the compliance, or purported compliance, with any requirement of this Act to give the Board or the registrar advice or information; or
- (c) in relation to an attempt at conciliation under section 76.

Penalty: \$24 000 or imprisonment for 2 years.

- (2) The things to which subsection (1) applies are —

- (a) making a statement which the person knows is false or misleading in a material particular;
- (b) making a statement which is false or misleading in a material particular, with reckless disregard as to whether or not the statement is false or misleading in a material particular;
- (c) providing, or causing to be provided, information that the person knows is false or misleading in a material particular; or
- (d) providing, or causing to be provided, information that is false or misleading in a material particular, with reckless

disregard as to whether the information is false or misleading in a material particular.

**89. Offences in relation to investigation**

- (1) Where under section 72 a person is required to give any information, answer any question, or produce any document or thing and that person, without reasonable excuse (proof of which lies on the person) —
- (a) fails to give that information or answer that question at or within the time specified in the requirement;
  - (b) gives any information or answer that is false in any particular; or
  - (c) fails to produce that document or thing at or within the time specified in the requirement,

the person commits an offence.

Penalty:

- (a) in the case of an individual, \$5 000;
  - (b) in any other case, \$10 000.
- (2) It is a defence in any proceeding for an offence under subsection (1)(a) or (c) for the accused to show —
- (a) that, in the case of an alleged offence arising out of a requirement made orally under section 72, the investigator did not, when making the requirement, inform the accused that he or she was required under this Act to give the information or answer the question, as the case may be;
  - (b) that, in the case of an alleged offence arising out of a requirement made by notice in writing under section 72, the notice did not state that he or she was required under this Act to give the information, answer the question, or produce the document or thing, as the case may be;

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- (c) that the time specified in the requirement did not afford the accused sufficient notice to enable him or her to comply with the requirement; or
- (d) that, in any case, the investigator did not, before making the requirement, have reasonable grounds to believe that compliance with the requirement would materially assist in the investigation being carried out.

**90. Obstruction of investigator**

A person must not prevent or attempt to prevent an investigator from entering premises or otherwise obstruct or impede an investigator in the exercise of his or her powers under section 72.

Penalty:

- (a) in the case of an individual, \$5 000;
- (b) in any other case, \$10 000.

**91. Assistance to execute warrant**

An optometrist, and any person —

- (a) who engages or employs the optometrist to practise optometry;
- (b) who is engaged or employed by the optometrist in the optometrist's practice; or
- (c) with whom the optometrist practises optometry in partnership,

at the premises named in the warrant is to provide all reasonable assistance to an investigator executing the warrant issued under section 74.

Penalty:

- (a) in the case of an individual, \$2 500;
- (b) in any other case, \$5 000.

**92. Surrender of certificate**

- (1) Where —
- (a) a person's registration is cancelled and name removed from the register; or
  - (b) a person is suspended from the practice of optometry,
- the person is, within 14 days after the day on which the person is notified by the Board of the cancellation and removal of name or suspension, to surrender to the Board his or her certificate of registration.
- Penalty: \$1 000.
- (2) The Board may direct in writing that a person who is suspended from the practice of optometry under section 54 is not obliged to comply with subsection (1) and, in that case, the subsection does not apply to that person.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the accused satisfies the court that the failure to surrender the certificate was due to its loss or destruction.

**93. Incriminating information, questions, or documents**

An individual is not excused from complying with a requirement under section 72 on the ground that the answer to a question or the production of a document or other thing might incriminate the individual or render the individual liable to a penalty, but neither —

- (a) an answer given by the individual that was given to comply with the requirement; nor
- (b) the fact that a document or other thing produced by the individual to comply with the requirement was produced,

is admissible in evidence in any civil or criminal proceedings against the individual other than proceedings for an offence against section 89(1)(b).

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**94.        Legal professional privilege**

Nothing in Part 5 or this Part prevents a person from refusing to answer a question, provide information or produce a document or other thing because the answer or information would relate to, or the document or thing contains, information in respect of which the person claims legal professional privilege.

## **Part 7 — Codes of practice, rules and regulations**

### **95. Codes of practice**

- (1) The Board may, with the approval of the Minister, issue codes of practice for the practice of optometry and the conduct of optometrists.
- (2) The code of practice may adopt the provisions of other publications, whether with or without modification or addition and whether in force at a particular time or from time to time.
- (3) A breach of a code of practice does not of itself constitute a disciplinary matter for the purposes of section 47 but in any proceedings under Part 5 such a breach may be asserted and may be taken into account in determining any question that arises under that Part.
- (4) Except as provided in subsection (3), no civil or criminal liability attaches to a person by reason only that the person has committed a breach of a code of practice.
- (5) The *Interpretation Act 1984* sections 41, 42, 43 and 44 apply to the code of practice as if the code of practice were regulations.

### **96. Rules**

- (1) The Board may make rules prescribing all matters required or permitted by this Act to be prescribed by rules or necessary or convenient to be prescribed for carrying out this Act.
- (2) Without limiting subsection (1), rules may be made for all or any of the following purposes —
  - (a) prescribing the courses of study and training, including practical experience, to be undertaken, and the examinations to be passed, by persons desiring to be registered under this Act, and determining the qualifications to be held by persons wanting to study optometry;

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- (b) regulating the holding of examinations and the appointment of examiners and for the issue of diplomas or certificates to persons passing the examinations;
  - (c) regulating the practice of optometry by optometrists and the manner of carrying on that practice;
  - (d) prescribing what diplomas, degrees or certificates of schools of optometry or other evidence of qualification will be recognised and accepted by the Board as a substitute for the examinations of the Board, and whether immediately or after further training;
  - (e) regulating the manner in which optometrists may advertise or display or publicise their practice of optometry.
- (3) A rule made under subsection (1) has no effect unless and until it is confirmed by the Governor.
- (4) Nothing in subsection (3) affects the operation of the *Interpretation Act 1984* Part VI.
- (5) The rules may provide that contravention of a rule is an offence, and provide, for an offence against the rules, a penalty not exceeding a fine of \$5 000.

**97. Regulations**

- (1) The Governor may make regulations —
- (a) prescribing all matters that are required or permitted by the Act to be prescribed by regulation; and
  - (b) with respect to any matter on which the Board may make rules.
- (2) Without limiting subsection (1), regulations may be made for all or any of the following purposes —
- (a) regulating the meetings and proceedings of, and the conduct of business by, the Board or a committee;

- (b) making provisions relating to registration, including applications for and the amendment or renewal of registration;
  - (c) maintaining the accuracy of the register;
  - (d) regulating the issue, display and use of certificates of registration;
  - (e) regulating the manner of making to the complaints assessment committee any complaint against or concerning a person who is, or was, registered and who may make such a complaint;
  - (f) regulating the conduct of investigations under Part 5;
  - (g) regulating the conduct of conciliation conferences under section 76 and the appointment of persons to preside over those conferences;
  - (h) prescribing the fees to be paid for the purposes of this Act and the persons liable for payment;
  - (i) prescribing returns and notices that are to be given to the Board, and the manner in which they are to be given;
  - (j) providing that information supplied to the Board may be required to be verified by statutory declaration.
- (3) Where a regulation is inconsistent with a rule the regulation prevails to the extent of the inconsistency.
- (4) The regulations may provide that contravention of a regulation is an offence, and provide, for an offence against the regulations, a penalty not exceeding a fine of \$5 000.

**98. Forms**

Forms that are convenient for the purposes of this Act may be —

- (a) prescribed by the regulations or rules; or
- (b) approved.

## **Part 8 — Miscellaneous**

### **99. Protection**

- (1) An action in tort does not lie against a person for anything that the person has done, in good faith, in the performance or purported performance of a function under this Act.
- (2) The Crown is also relieved of any liability that it might otherwise have had for another person having done anything as described in subsection (1).
- (3) The protection given by this section applies even though the thing done as described in subsection (1) may have been capable of being done whether or not this Act had been enacted.
- (4) In this section, a reference to the doing of anything includes a reference to an omission to do anything.
- (5) A person who, in relation to any investigation under Part 5 —
  - (a) performs any function under that Part; or
  - (b) is otherwise concerned in proceedings under that Part,has, in respect of any such function or concern, the same protection and immunity as a member or officer of the Supreme Court, or a witness or party before the Supreme Court, would have in respect of a function or concern of a like nature related to the jurisdiction of the Supreme Court.

### **100. Notice of decision to be given**

- (1) Subsection (2) applies to the following decisions —
  - (a) any decision refusing an application to the Board for registration;
  - (b) any decision to impose, or vary, a condition under section 27, 28, 29, 30 or 35(4), otherwise than by consent;
  - (c) any decision under section 29(4); or

- (d) any decision to remove a name from the register under section 40.
- (2) If the Board makes a decision to which this subsection applies, it is to record the grounds on which the decision was based, and its reasons, and is as soon as is practicable, but in any case not later than 30 days after making the decision, to give written notice of the decision, together with those grounds and reasons, to the person to whom the decision relates.

**101. Review**

A person who is aggrieved by —

- (a) an order under section 54 or 59; or
- (b) a decision referred to in section 100(1),

may apply to the State Administrative Tribunal for a review of the order or decision.

**102. Publication of proceedings etc.**

- (1) Subsection (2) applies to the following —
  - (a) the Board, any member of the Board, the registrar or any officer or delegate of the Board or registrar;
  - (b) any committee or any member of a committee or person referred to in section 16(5);
  - (c) any board or authority outside the State charged with regulating the registration and supervision of optometrists or any officer or agent of, or person engaged or employed by, the board or authority;
  - (d) any journalist for, the proprietor or any person concerned in the publication or operation of, any newspaper or periodical or of any electronic medium.
- (2) Without limiting the operation of section 99, no action, claim or demand lies against a person to whom this subsection applies in respect of the communication or publication in good faith of any finding, reason or decision of the Board, the complaints

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assessment committee, the impairment review committee or the State Administrative Tribunal.

- (3) The Board may give notice of a finding, reason or decision of the Board, the complaints assessment committee, the impairment review committee or the State Administrative Tribunal in respect of a person to —
- (a) any person referred to in subsection (1)(c) or (d);
  - (b) any body that has granted the person a qualification that is entered in the register;
  - (c) any relevant professional association or trade union of which the person is a member;
  - (d) any person who has engaged or employed the person to practise optometry or any person with whom the person practises optometry in partnership; and
  - (e) any other person who, in the opinion of the Board, should be made aware of the finding, reason or decision,

and may publish notice of the finding, reason or decision in the *Gazette* or in such other manner as the Board thinks fit.

**103. Legal proceedings**

- (1) Any proceedings for an offence against this Act may be taken in the name of the Board by the registrar or any other person authorised in that behalf by the Board.
- (2) All proceedings for offences against this Act are to be heard by a court of summary jurisdiction constituted by a magistrate.
- (3) In any proceedings no proof is required of —
  - (a) the appointment of a member or deputy of a member of the Board or a member of a committee; or
  - (b) the authorisation of a person under subsection (1),

but an averment in a prosecution notice that the person is so appointed or authorised is to be taken to be proved in the absence of evidence to the contrary.

- (4) In all courts and before all persons and bodies authorised to receive evidence, in the absence of evidence to the contrary —
- (a) a certificate purporting to be issued on behalf of the Board and stating that a person was or was not registered by the Board, the conditions to which a registration was subject, or that a person was suspended from the practice of optometry, on any day or days or during a period mentioned in the certificate, is evidence of the matters so stated;
  - (b) a copy of or extract from a register or any statement that purports to reproduce matters entered in the register that is certified by the registrar as a true copy, extract or statement, is evidence of the facts appearing in that copy, extract or statement; and
  - (c) judicial notice is to be taken of the fact that a person is the holder of the office of registrar and of the signature of the registrar on a certificate purporting to be issued under paragraph (b).
- (5) A notice or appointment purporting to be signed by the chairperson or a person referred to in section 49(5)(b) or 50(4)(b) is to be presumed to be duly signed until the contrary is shown.

**104. Liability of certain officers of body corporate: offences**

- (1) If a body corporate is charged with an offence under this Act, every person who was an officer of the body corporate at the time of the alleged offence may also be charged with the offence.
- (2) If a body corporate and an officer are charged as permitted by subsection (1) and the body corporate is convicted of the offence, the officer is to be taken to have also committed the offence, subject to subsection (5).
- (3) If a body corporate commits an offence under this Act, then, although the body corporate is not charged with the offence,

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every person who was an officer of the body corporate at the time the offence was committed may be charged with the offence.

- (4) If an officer is charged as permitted by subsection (3) and it is proved that the body corporate committed the offence, the officer is to be taken to have also committed the offence, subject to subsection (5).
- (5) If under this section an officer is charged with an offence it is a defence to prove —
  - (a) that the offence was committed without the officer's consent or connivance; and
  - (b) that the officer took all the measures to prevent the commission of the offence that he or she could reasonably be expected to have taken having regard to the officer's functions and to all the circumstances.

**105. Review of Act**

- (1) The Minister is to carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiration of 5 years from its commencement, and in the course of that review the Minister is to consider and have regard to —
  - (a) the effectiveness of the operations of the Board;
  - (b) the need for the continuation of the functions of the Board; and
  - (c) any other matters that appear to the Minister to be relevant to the operation and effectiveness of this Act.
- (2) The Minister is to prepare a report based on the review made under subsection (1) and as soon as is practicable after the preparation of the report, cause it to be laid before each House of Parliament.

**106. *Optometrists Act 1940* repealed**

The *Optometrists Act 1940* is repealed.

**107. *Optometrists Registration Board Rules 1941* repealed**

The *Optometrists Registration Board Rules 1941* are repealed.

**108. Transitional and savings provisions**

Schedule 2 sets out transitional and savings provisions.

**109. Consequential amendments**

Schedule 3 sets out consequential amendments.

## **Schedule 1 — Constitution and proceedings of the Board**

[s. 8]

### **Division 1 — General provisions**

#### **1. Term of office**

- (1) Subject to clause 4, a member of the Board holds office for such term, not exceeding 3 years, as is specified in the member's instrument of appointment.
- (2) Subject to subclause (3), a member of the Board is not to hold office for more than 9 years, consecutively or otherwise.
- (3) If in the opinion of the Minister there are special reasons for doing so, a person may be appointed so that he or she holds office for more than 9 years, consecutively or otherwise.

#### **2. Functions of deputy presiding member**

- (1) The deputy presiding member is to perform the functions of the presiding member when the presiding member is unable to do so by reason of illness, absence or other cause, or when the office of presiding member is vacant.
- (2) No act or omission of the deputy presiding member acting as presiding member is to be questioned on the ground that the occasion for his or her so acting had not arisen or had ceased.

#### **3. Deputy members**

- (1) The Minister may appoint an eligible person to be a deputy of a member and may terminate such an appointment at any time.
- (2) The provisions of section 6 that apply to and in relation to the appointment of a member apply, with any necessary modification, to and in relation to the appointment of the deputy of that member.
- (3) A deputy of a member may perform the functions of the member when the member is unable to do so by reason of illness, absence or other cause.

- (4) Despite anything in this Act, a deputy of a member may continue to act as a member, after the occasion for so acting has ceased, for the purpose of completing any function.
- (5) A deputy of a member, while acting as a member, has all the functions of and all the protection given to a member.
- (6) No act or omission of a person acting in place of another under this clause is to be questioned on the ground that the occasion for so acting had not arisen or had ceased.

**4. Vacation of office by member**

- (1) A member of the Board may resign from office by notice in writing given to the Minister.
- (2) A member who resigns under subclause (1) is to give a copy of the notice of resignation to the registrar.
- (3) A member of the Board may be removed from office by the Minister —
  - (a) for mental or physical disability, incompetence, neglect of duty or misconduct that impairs the performance of the member's duties;
  - (b) if the member is an insolvent under administration, as that term is defined in the Corporations Act section 9;
  - (c) if the member is absent without leave of the Board from 3 consecutive meetings of the Board of which the member has had notice; or
  - (d) for any other act or omission that in the opinion of the Minister may cause prejudice or injury to the Board.
- (4) A member of the Board must be removed from office by the Minister if the member ceases to hold a position or qualification by virtue of which the member was appointed or if, in the case of a member who is an optometrist, the registration of the member under this Act is suspended.

**5. General procedure concerning meetings**

- (1) The presiding member is to preside at all meetings of the Board at which he or she is present.

- (2) If both the presiding member and deputy presiding member are absent from a meeting the members present are to appoint one of their number to preside.
- (3) A quorum for a meeting of the Board is 4 members.
- (4) The procedure for convening meetings of the Board and the conduct of business at those meetings is, subject to this Act, to be as determined by the Board.

**6. Voting**

- (1) A decision of the majority of members at a meeting of the Board at which a quorum is present is the decision of the Board.
- (2) If the votes of members present at a meeting and voting are equally divided the member presiding at the meeting is to have a casting vote in addition to a deliberative vote.

**7. Holding meetings remotely**

The presence of a person at a meeting of the Board need not be by attendance in person but may be by that person and each other person at the meeting being simultaneously in contact by telephone, or other means of instantaneous communication.

**8. Resolution without meeting**

A resolution in writing signed by each member of the Board or assented to by each member by letter, facsimile transmission, electronic mail or other written means has effect as if it had been passed at a meeting of the Board.

**9. Minutes**

The Board is to ensure that an accurate record is kept and preserved of the proceedings at each meeting of the Board and of each resolution passed by the Board.

**Division 2 — Disclosure of interests etc.**

**10. Meaning of “member”**

In this Division —

*member* means a member of the Board or a member of a committee, as the case may be.

**11. Disclosure of interests**

- (1) A member who has a material personal interest in a matter being considered or about to be considered by the Board or a committee must, as soon as possible after the relevant facts have come to the member’s knowledge, disclose the nature of the interest at a meeting of the Board or the committee.

Penalty: \$10 000.

- (2) A disclosure under subclause (1) is to be recorded in the minutes of the meeting.

**12. Exclusion of interested member**

- (1) A member who has a material personal interest in a matter that is being considered by the Board or a committee —
- (a) must not vote, whether at a meeting or otherwise, on the matter; and
  - (b) must not be present while the matter is being considered at a meeting.
- (2) In subclause (1)(a) or (b) a reference to a matter also refers to a proposed resolution under clause 13 in respect of the matter, whether relating to that member or a different member.

**13. Board or committee may resolve that clause 12 inapplicable**

Clause 12 does not apply if the Board or a committee has at any time passed a resolution that —

- (a) specifies the member, the interest, and the matter; and
- (b) states that the members voting for the resolution are satisfied that the interest should not disqualify the member from considering or voting on the matter.

**14. Quorum where clause 12 applies**

- (1) Despite clause 5(3), when the Board is dealing with a matter in relation to which a member of the Board is disqualified under clause 12, 3 members who are entitled to vote on any motion that may be moved in relation to the matter constitute a quorum.
- (2) The Minister may deal with a matter to the extent that the Board cannot deal with it because of subclause (1).

**15. Minister may declare clauses 12 and 14 inapplicable**

- (1) The Minister may by writing declare that clause 12 or 14 does not apply in relation to a specified matter, either generally or for the purpose of dealing with particular proposed resolutions.
- (2) The Minister is to, within 14 sitting days after a declaration under subclause (1) is made, cause a copy of the declaration to be laid before each House of Parliament.

## Schedule 2 — Transitional and savings

[s. 108]

### 1. Terms used in this Schedule

In this Schedule —

*commencement day* means the day on which this Act comes into operation;

*liability* means any liability, duty or obligation whether actual, contingent or prospective, liquidated or unliquidated, or whether owed alone or jointly or jointly and severally with any other person;

*right* means any right, power, privilege or immunity whether actual, contingent or prospective;

*the former Board* means the Optometrists Registration Board established under the repealed Act;

*the new Board* means The Optometrists Registration Board of Western Australia established under this Act;

*the repealed Act* means the *Optometrists Act 1940*.

### 2. Interpretation Act 1984 not affected

The provisions of this Schedule do not prejudice or affect the application of the *Interpretation Act 1984* to and in relation to the repeals effected by sections 106 and 107.

### 3. The Optometrists Registration Board continues

- (1) The new Board is a continuation of, and the same legal entity as, the former Board and the rights and liabilities of the entity are not affected.
- (2) If in a written law or other document or instrument there is a reference to the former Board, that reference may, where the context so requires, be read as if it had been amended to be a reference to the new Board.

### 4. Board members

- (1) A member of the former Board ceases to be a member on the commencement day.

**cl. 5**

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- (2) Four of the members of the new Board as first constituted under this Act are to hold office for such term, not exceeding 18 months, as is specified in the member's instrument of appointment.

**5. The registrar and other staff**

- (1) The registrar of the former Board who held office immediately before the commencement day continues in office, under and subject to this Act, as the registrar of the new Board.
- (2) The other officers of the former Board who held office immediately before the commencement day continue in office, under and subject to this Act, as officers of the new Board.
- (3) A person mentioned in subclause (1) or (2) is to be regarded as having been engaged or employed, as is relevant, under this Act.
- (4) Except as otherwise agreed by a person mentioned in subclause (1) or (2), the remuneration, existing or accrued rights, rights under a superannuation scheme or continuity of service of the person are not affected, prejudiced or interrupted by the operation of subclause (1) or (2) or the repeal of the *Optometrists Act 1940*.
- (5) The rights under a superannuation scheme of a person who was a registrar or officer of the former Board are not affected, prejudiced or interrupted by the repeal of the *Optometrists Act 1940*.

**6. Persons registered under the repealed Act**

- (1) Subject to clause 10, a natural person who immediately before the commencement day was registered under the repealed Act and held a licence to practise under that Act is, on the commencement day, to be taken to be registered under this Act for the period that, and subject to the same conditions as, applied to that person's registration under the repealed Act.
- (2) If under subclause (1) a person is to be taken to be registered under this Act, the new Board may within 6 months of the commencement day, by notice in writing to the person, impose the conditions referred to in section 30(2) on the person's registration under this Act.

**7. Register**

The register of optometrists kept under the repealed Act section 19 immediately before the commencement day is to be taken to be the register required to be kept under section 36.

**8. Licences issued under repealed Act**

A licence issued and in force under the repealed Act immediately before the commencement day is to be taken to be a certificate of registration for the purposes of this Act until, subject to this Act, the time when that licence would have expired under the repealed Act.

**9. Restoration of certain names to the register**

If a person's name has been removed from the register under the repealed Act section 26(1), section 35 applies to that person as if the person were a disqualified person as defined in section 35(1).

**10. Suspensions**

If immediately before the commencement day a person was suspended under the repealed Act section 26(1), section 80 applies to the suspension as if the person had been suspended under section 78(1)(j).

**11. Charges or complaints being dealt with by the Board**

If immediately before the commencement day the former Board was dealing with a charge or complaint against an optometrist, the complaints assessment committee is to deal with the charge or complaint as if a complaint had been lodged under section 51.

**12. Investigations**

If immediately before the commencement day an investigator was investigating a matter under the repealed Act section 25A, the investigator is to continue investigating the matter as if —

- (a) he or she had been appointed under Part 5 Division 7; and
- (b) the appointing body were the complaints assessment committee.

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**13. Disciplinary proceedings**

If an allegation under the repealed Act section 26(1) has been made to the State Administrative Tribunal before the commencement day but not finally determined before that day, the allegation is to be dealt with and determined under this Act section 78(1) as if the allegation had been made to the Tribunal under this Act.

**14. Annual report for part of a year**

- (1) The former Board is to make and submit an annual report as required by the repealed Act section 16C, but limited to the period from 1 July preceding the commencement day to the commencement day, and that section applies as if that period were a year.
- (2) Despite the repeal of the repealed Act and this Schedule, the former Board remains in existence for the purpose of subclause (1) and is entitled to receive from the new Board and its staff such assistance as it may require for the purpose.

**15. Powers in relation to transitional provision**

- (1) If there is no sufficient provision in this Schedule for dealing with a transitional matter the Governor may make regulations prescribing all matters that are required, necessary or convenient to be prescribed in relation to that matter.
- (2) Regulations made under subclause (1) may provide that specific provisions of this Act —
  - (a) do not apply; or
  - (b) apply with specific modifications,to or in relation to any matter.
- (3) Regulations made under subclause (1) must be made within 12 months after the commencement day.
- (4) If regulations made under subclause (1) provide that a specified state of affairs is to be taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than the commencement day, the regulations have effect according to their terms.

- (5) In subclause (4) —  
*specified* means specified or described in the regulations.
- (6) If regulations contain a provision referred to in subclause (4), the provision does not operate so as —
  - (a) to affect in a manner prejudicial to any person (other than the State), the right of that person existing before the day of publication of those regulations; or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the day of publication of those regulations.

### **Schedule 3 — Consequential amendments**

[s. 109]

**1. *Civil Liability Act 2002* amended**

- (1) The amendments in this clause are to the *Civil Liability Act 2002*\*.

[\* *Act No. 35 of 2002.*

*For subsequent amendments see Western Australian Legislation Information Tables for 2004, Table 1, p. 65.]*

- (2) Section 5PA is amended in the definition of “health professional” by deleting paragraph (g) and inserting the following paragraph instead —

“

- (g) an optometrists as defined in the *Optometrists Act 2005* section 3;

”.

**2. *Constitution Acts Amendment Act 1899* amended**

- (1) The amendments in this clause are to the *Constitution Acts Amendment Act 1899*\*.

[\* *Reprint 13 as at 18 Mar 2005.*

*For subsequent amendments see Acts Nos. 1 and 2 of 2005.]*

- (2) Schedule V Part 3 is amended by deleting the item commencing “The Optometrists Registration Board” and inserting instead —

“

The Optometrists Registration Board of Western Australia established under the *Optometrists Act 2005*.

”.

**3. *Health Professionals (Special Events Exemption) Act 2000* amended**

- (1) The amendments in this clause are to the *Health Professionals (Special Events Exemption) Act 2000*\*.

[\* *Act No. 7 of 2000.*]

- (2) Section 3(1) is amended in the definition of “Health Registration Act” by deleting “*Optometrists Act 1940;*” and inserting instead —  
“ *Optometrists Act 2005;* ”.

**4. *Health Services (Conciliation and Review) Act 1995* amended**

- (1) The amendments in this clause are to the *Health Services (Conciliation and Review) Act 1995*\*.

[\* *Reprint 2 as at 18 Mar 2005.*]

- (2) Schedule 1 item 6 is deleted and the following item is inserted instead —

“

6.            Optometrists Registration Board of  
                  Western Australia established under  
                  the *Optometrists Act 2005*.

”.

**5. *Optical Dispensers Act 1966* amended**

- (1) The amendments in this clause are to the *Optical Dispensers Act 1966*\*.

[\* *Reprint 2 as at 1 Apr 2005.*]

- (2) Section 4 is amended by deleting “a registered optometrist within the meaning of the *Optometrists Act 1940.*” and inserting instead —

“

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

”.

**6. *State Administrative Tribunal Act 2004* amended**

- (1) The amendments in this clause are to the *State Administrative Tribunal Act 2004*\*.

[\* *Act No. 54 of 2004.*

*For subsequent amendments see Western Australian Legislation Information Tables for 2004, Table 1, p. 427.*]

**cl. 6**

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- (2) Schedule 1 is amended by deleting “*Optometrists Act 1940*” and inserting instead —
- “ *Optometrists Act 2005* ”.

**Notes**

<sup>1</sup> This is a compilation of the *Optometrists Act 2005* and includes the amendments made by the other written laws referred to in the following table <sup>1a</sup>.

**Compilation table**

Short title	Number and year	Assent	Commencement
<i>Optometrists Act 2005</i>	29 of 2005	12 Dec 2005	s. 1 & 2: 12 Dec 2005; Act other than s. 1 & 2: 20 Apr 2007 (see s. 2 and <i>Gazette</i> 30 Mar 2007 p. 1451)
<i>Legal Profession Act 2008</i> s. 687	21 of 2008	27 May 2008	1 Mar 2009 (see s. 2(b) and <i>Gazette</i> 27 Feb 2009 p. 511)
<i>Medical Practitioners Act 2008</i> Sch. 3 cl. 41	22 of 2008	27 May 2008	1 Dec 2008 (see s. 2 and <i>Gazette</i> 25 Nov 2008 p. 4989)

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

**Provisions that have not come into operation**

Short title	Number and year	Assent	Commencement
<i>Health and Disability Services Legislation Amendment Act 2010</i> s. 63 <sup>2</sup>	33 of 2010	30 Aug 2010	30 Nov 2010 (see s. 2(b) and <i>Gazette</i> 17 Sep 2010 p. 4757)
<i>Health Practitioner Regulation National Law (WA) Act 2010</i> s. 14(h) <sup>3</sup>	35 of 2010	30 Aug 2010	18 Oct 2010 (see s. 2(b) and <i>Gazette</i> 1 Oct 2010 p. 5075)
<i>Public Sector Reform Act 2010</i> s. 89 <sup>4</sup>	39 of 2010	1 Oct 2010	To be proclaimed (see s. 2(b))

<sup>2</sup> On the date as at which this compilation was prepared, the *Health and Disability Services Legislation Amendment Act 2010* s. 63 had not come into operation. It reads as follows:

**63. Optometrists Act 2005 amended**

- (1) This section amends the *Optometrists Act 2005*.
- (2) In section 3 delete the definition of **Director** and insert:

**Director** means the Director of the Health and Disability Services Complaints Office appointed under the *Health and Disability Services (Complaints) Act 1995*;

- (3) In sections 51(3), 54(4)(b) and 57(2)(b) delete “*Health Services (Conciliation and Review) Act 1995*” and insert:

*Health and Disability Services (Complaints) Act 1995*

<sup>3</sup> On the date as at which this compilation was prepared, the *Health Practitioner Regulation National Law (WA) Act 2010* s. 14(h) had not come into operation. It reads as follows:

**14. Acts repealed**

These Acts are repealed:

- (h) the *Optometrists Act 2005*;

<sup>4</sup> On the date as at which this compilation was prepared, the *Public Sector Reform Act 2010* s. 89 had not come into operation. It reads as follows:

**89. Various references to “Minister for Public Sector Management” amended**

- (1) This section amends the Acts listed in the Table.
- (2) In the provisions listed in the Table delete “Minister for Public Sector Management” and insert:

Public Sector Commissioner

**Table**

<i>Optometrists Act 2005</i>	s. 9
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