

OPTICAL DISPENSERS ACT.

Act No. 35, 1963.

An Act to make provision for the licensing of optical dispensers; to regulate the qualifications for and the effect of such licensing; to provide for the constitution of an Optical Dispensers Licensing Board and to define the powers and functions of that board; and for purposes connected therewith. Elizabeth II,
No. 35, 1963
[Assented to, 2nd October, 1963.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the "Optical Dispensers Act, 1963". Short title
and com-
mencement.

(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

2. In this Act, unless the context or subject matter otherwise indicates or requires— Definitions.

"Board" means Optical Dispensers Licensing Board constituted under this Act.

"Optical appliance" means appliance designed to correct, remedy or relieve any refractive abnormality or optical defect of sight.

"Optical

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“Optical dispenser” means a person licensed under this Act.

“Optical dispensing” means the doing or performing of any one or more of the following acts, matters or things, that is to say, the interpretation and dispensing of prescriptions for optical appliances, and the taking of facial measurements for and the fitting and sale of optical appliances, but does not include the fitting of contact lenses, nor any sale of optical appliances to any optical dispenser nor any sale of optical appliances preceding their sale to any optical dispenser.

“Prescribed” means prescribed by this Act or the regulations.

“Register” means Register of Optical Dispensers for New South Wales.

“Regulations” means regulations under this Act.

“Secretary” means secretary to the board.

Application
of Act.

3. This Act shall not apply to and in respect of any legally qualified medical practitioner or any optometrist registered under the Optometrists Act, 1930, as amended by subsequent Acts.

Optical
Dispensers
Licensing
Board.

4. There shall be constituted a board, to be called the Optical Dispensers Licensing Board, which shall have and may exercise and discharge the powers, authorities, duties and functions conferred and imposed upon the board by or under this Act.

First board.

5. (1) The board first constituted under this Act shall consist of seven members who shall be appointed by the Governor.

(2) Of the members so appointed—

(a) one shall be the Under Secretary, Department of Public Health;

(b)

- (b) one shall be a person nominated by the Australian No 35, 1963
Association of Dispensing Opticians;
- (c) one shall be a person nominated by The Guild of
Dispensing Opticians (Australia) Limited;
- (d) one shall be a person nominated by the Association
of Spectacle Makers Limited;
- (e) one shall be a legally qualified medical practitioner
who is practising as an ophthalmologist, nominated
by the New South Wales Branch of the Australian
Medical Association;
- (f) one shall be a registered optometrist nominated by
The Board of Optometrical Registration;
- (g) one shall be a person nominated by the Minister.

(3) The members of the board first constituted under this Act shall, subject to the provisions of this Act, hold office until the constitution of the board referred to in subsection one of section six of this Act and shall be eligible for re-appointment.

6. (1) On and from the first day of July, one thousand ^{Subsequent}
nine hundred and sixty-four, the board shall consist of seven ^{boards.}
members who shall be appointed by the Governor.

(2) Of the members so appointed—

- (a) one shall be the Under Secretary, Department of
Public Health;
- (b) one shall be an optical dispenser nominated by the
Australian Association of Dispensing Opticians;
- (c) one shall be an optical dispenser nominated by The
Guild of Dispensing Opticians (Australia) Limited;
- (d) one shall be an optical dispenser nominated by the
Association of Spectacle Makers Limited;
- (e) one shall be a legally qualified medical practitioner
who is practising as an ophthalmologist, nominated
by the New South Wales Branch of the Australian
Medical Association;

(f)

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(f) one shall be a registered optometrist nominated by
The Board of Optometrical Registration;

(g) one shall be a person nominated by the Minister.

(3) If for any reason any nomination referred to in paragraph (b), (c), (d), (e) or (f) of subsection two of this section or of section five of this Act is not made the Governor may make the appointment and the person appointed shall be deemed to have been validly nominated.

Under Secretary, Department of Public Health, may appoint deputy to act at first or subsequent board.

7. The Under Secretary, Department of Public Health, may appoint a deputy to act on his behalf at any meeting of the board at which he is unable to attend, whether constituted under section five or six of this Act, and a deputy so appointed shall be entitled so to act and, while so acting, shall be deemed to be a member of the board.

Qualification for appointment.

8. A person of or above the age of seventy years shall not be qualified for appointment to the board.

Term of office.

9. The members of the board shall, subject to this Act, hold office for a period of three years, and shall be eligible for re-appointment.

Public Service Act not to apply to appointment.

10. The provisions of the Public Service Act, 1902, as amended by subsequent Acts, shall not apply to any appointment of members of the board, and such members shall not in their capacity as members of the board be subject to the provisions of any such Act.

Remuneration of members.

11. Each member of the board shall, if he is not a member of the Public Service, be paid such fees as the Governor may direct.

Chairman.

12. (1) The Governor shall appoint one of the members as the chairman of the board.

(2)

(2) The chairman, when present, shall preside at all No. 35, 1963 meetings of the board.

In the absence of the chairman from any meeting of the board, the members present shall elect one of their number to preside at the meeting.

(3) The person presiding for the time being shall have a casting vote as well as a deliberative vote.

13. A member shall be deemed to have vacated his office Vacation of office. if—

- (a) he dies;
- (b) he resigns his office by writing under his hand addressed to the Governor;
- (c) he becomes a mentally ill person, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, as amended by subsequent Acts;
- (d) he is absent without the leave of the board from three consecutive meetings of the board;
- (e) he is removed from office by the Governor;
- (f) he attains the age of seventy years;
- (g) being an optical dispenser, his license under this Act is suspended or cancelled or his name is for any reason removed from the register; or
- (h) he ceases to hold the qualification by virtue of which he was appointed as a member.

14. The Governor may, for any cause which appears to Removal from office. him to be sufficient, remove any member from office.

15. Where a casual vacancy occurs in the office of a Casual vacancies. member, the Governor may appoint a person to the vacant office. The person so appointed shall have the like prescribed qualification and nomination (if any) as that of the member whose

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No. 35, 1963 — whose office has become vacant and shall, subject to this Act, hold office for the residue of his predecessor's term of office, but shall be eligible for re-appointment.

Quorum and procedure of board. **16.** (1) At any meeting of the board four members shall constitute a quorum.

(2) The procedure for the calling of meetings of the board and for the conduct of business at such meetings shall be as determined by the board.

Validation of proceedings. **17.** All acts and proceedings of the board shall be valid, notwithstanding any vacancy in the board or any irregularity in the appointment, nomination or continuance in office of any member of the board, and notwithstanding that any person not qualified or ceasing to be qualified may have acted as a member of the board.

Secretary and officers. **18.** The Governor may from time to time under and subject to the provisions of the Public Service Act, 1902, as amended by subsequent Acts, appoint a secretary to the board and such other officers as he may deem necessary for the purposes of this Act.

Protection of board and officers. **19.** No matter or thing done or suffered by the board, or by any member or by the secretary or any officer of the board, bona fide in the execution, or intended execution, of this Act, or the exercise or discharge, or intended exercise or discharge, of any of its or his powers or duties, shall subject the board or any member, or the secretary, or any officer, or any other person, or the Crown, to any liability in respect thereof.

Powers and duties of board. **20.** Subject to this Act, the powers and duties of the board shall be—

- (a) to recommend the course of training to be undertaken and the examinations to be completed by persons desirous of becoming optical dispensers;
- (b)

- (b) to arrange for the conduct of such course of training No. 35, 1963 and examinations;
- (c) to issue, suspend or cancel licenses under this Act and to annul any such suspension or cancellation;
- (d) generally, to do any other act or exercise any other power or perform any other duty necessary for carrying the provisions of this Act into effect.

21. (1) The board shall keep a register, to be called the ^{Register.} "Register of Optical Dispensers for New South Wales".

(2) A person shall be licensed by the entering in the register of—

- (a) his full name and address;
- (b) the date upon which he is licensed;
- (c) particulars of the qualification or qualifications in respect of which his license is granted.

(3) The register shall at all reasonable times be open to inspection at the office of the board by any person on payment of the prescribed fee.

(4) The secretary shall, as early as possible each year, transmit a list of the names and addresses entered in the register to the Minister and if the Minister so directs, such list shall be printed and published by the Government Printer.

22. (1) Any person who proves to the satisfaction of the board that he is of good character and has attained the age of eighteen years shall upon payment of the prescribed license fee be entitled to be licensed as an optical dispenser if—

- (a) he has completed the prescribed course of training and passed the examinations, referred to in paragraph (a) of section twenty of this Act;

(b)

<sup>Qualifica-
tions for
licensing.</sup>

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- (b) he is the holder of a diploma or a certificate of competency in optical dispensing obtained by examination after a course of study and training from any body in New South Wales approved by the board;
- (c) he is the holder of a recognised certificate as defined in subsection two of this section and has passed such examination as the board may in any particular case require; or
- (d) he establishes to the satisfaction of the board that he had been bona fide engaged in New South Wales in carrying out optical dispensing before the day upon which Her Majesty's assent to this Act is signified, and for a period of, or periods totalling, at least twelve months during the period of three years immediately preceding the commencement of this Act.

(2) Any certificate, diploma, membership, degree, license, letters, testimonial or other title, status or document granted by any body, association or institution in any country, whether British or foreign (other than New South Wales) and which is recognised by the board as furnishing sufficient guarantee of the possession of the requisite knowledge and skill for the efficient carrying out of optical dispensing in New South Wales, shall be deemed to be a recognised certificate for the purposes of this Act.

(3) No person referred to in paragraph (d) of subsection one of this section shall be entitled to be licensed as an optical dispenser unless he makes application for licensing within twelve months after the commencement of this Act or within such further time as the board may in any particular case allow.

Roll fee.

23. (1) Every optical dispenser shall in or before the month of March in each year pay to the secretary a roll fee of such amount as may be prescribed for the following year commencing on the first day of July.

(2)

(2) If any optical dispenser does not pay the prescribed roll fee before the thirty-first day of March in any year the board shall forthwith notify him by letter addressed to him at his address appearing in the register that if the fee be not paid before the first day of July next following his name will be removed from the register. If any optical dispenser who has been so notified fails to pay such fee before the said first day of July, the board shall remove his name from the register. No. 35, 1963

(3) If the name of any optical dispenser is removed from the register under this section, the board shall, upon application in the prescribed form, restore his name to the register upon payment of such fees as are prescribed. The regulations may provide for the waiver of such part of the fees as the board may in any particular case deem proper.

(4) Together with the roll fee the optical dispenser shall furnish particulars of his address for entry in the register.

(5) Where the name of an optical dispenser has been removed from the register and until his name has been restored thereto, the optical dispenser shall be deemed not to be licensed under this Act.

24. The board shall cause to be removed from the register the names of—

- (a) every deceased optical dispenser;
- (b) every optical dispenser who has ceased to possess or does not possess the qualifications in respect of which he was licensed;
- (c) every optical dispenser who has become a mentally ill person, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, as amended by subsequent Acts.

Removal of name of deceased optical dispenser, etc.

25. (1) Where—

- (a) an optical dispenser has been convicted, either in New South Wales of a felony or misdemeanour, or elsewhere of an offence which, if committed in New South Wales, would have been a felony or misdemeanour; or

Removal of name on account of misconduct, etc.

(b)

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(b) the board after inquiry is satisfied that an optical dispenser—

- (i) has been guilty of habitual drunkenness or of addiction to any deleterious drug; or
- (ii) has been guilty of misconduct in his practice as an optical dispenser which renders him unfit in the public interest to practise optical dispensing,

the board may reprimand or caution such person or may remove his name from the register or suspend his license for such period as the board shall think fit.

(2) In the case of a conviction as aforesaid, no person shall have his name removed from the register or have his license suspended on account thereof if such offence does not, either from its trivial nature or from the circumstances under which it was committed, render such person unfit in the public interest to practise optical dispensing.

(3) In making any such inquiry, the board shall sit as in open court, and the person charged shall be afforded an opportunity of defence either in person or by counsel.

(4) Whenever the license of an optical dispenser is suspended under the provisions of this section the secretary shall enter in the register a memorandum of that fact and of the date and cause thereof.

Restora-
tion of
name to
register.

26. Where the board directs the removal from the register of the name of any person, the name of that person shall not be again entered on the register, except by direction of the board or by order of a court of competent jurisdiction. The board may, if it thinks fit in any particular case, direct the secretary to restore to the register any name removed therefrom without fee, or on payment of such fee, not exceeding the prescribed license fee, as the board may from time to time direct, and the secretary shall restore the name accordingly.

27.

27. (1) Any person who thinks himself aggrieved by any decision, ruling, order or direction of the board or secretary, or by any failure to register his name in the register, as the case may be, may in manner prescribed by rules of court, and until so prescribed by summons in chambers, appeal to a judge of a district court.

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Right of
appeal.

(2) No appeal shall be entertained unless it is made within two months next after the notification to such person of the decision, ruling, order or direction, or within six months after the date on which he applied to be registered, as the case may be, nor unless ten days' notice in writing of appeal, stating the nature and grounds thereof, is given to the secretary.

(3) An appeal against refusal to register or the removal of a person from the register shall be by way of rehearing.

(4) The judge may make such order as he thinks just (including any order as to costs) and such order shall be final and without appeal, and shall be observed by the board or secretary and by every person concerned.

28. (1) On and after a day to be appointed by the Governor and notified by proclamation published in the Gazette, no person other than an optical dispenser shall—

Practice
by un-
licensed
persons
prohibited.

- (a) for fee or reward carry out optical dispensing; or
- (b) take or use any name, initials, word, title, addition, symbol or description which, having regard to the circumstances in which it is taken or used, indicates, or is capable of being understood to indicate, or is calculated to lead persons to infer, that he is licensed under this Act as an optical dispenser, or take or use the name or title of optical dispenser.

(2) Nothing in this section shall operate to prevent—

- (a) the carrying out of optical dispensing or the taking or using of the name or title of optical dispenser by a corporation or a friendly society registered under the Friendly Societies Act, 1912, as amended by subsequent Acts, which employs only optical dispensers

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dispensers to perform the work of optical dispensing undertaken by such corporation or friendly society;

- (b) the carrying out of optical dispensing by a person undergoing the prescribed course of training referred to in paragraph (a) of section twenty of this Act: Provided that such optical dispensing is carried out under the direct instructions and personal supervision of a registered optometrist or an optical dispenser.

Use of certain titles prohibited.

29. No optical dispenser shall without the consent of the board take or use in connection with the carrying out of optical dispensing any title, designation, addition or description other than that of "optical dispenser".

Falsification of register.

30. Any person who wilfully makes or causes to be made any false entry in or falsification of the register, and any person who wilfully procures or attempts to procure himself or any other person to be licensed under this Act by making or producing, or causing to be made or produced, any false or fraudulent representation or declaration, either verbally or in writing, and any person aiding or assisting therein, shall be guilty of a misdemeanour and shall, on conviction, be liable to be imprisoned for a period not exceeding twelve months.

Board may examine witnesses on oath.

31. The board may examine any person upon oath or take a solemn declaration from any person for the purposes of this Act, and if any person wilfully makes any false statement upon such examination or in such declaration, or utters or attempts to utter, or put off as true before the board any false, forged or counterfeit certificate, diploma, membership, degree, license, letters, testimonial or other title, document or writing he shall be guilty of a misdemeanour and shall, on conviction, be liable to be imprisoned for a period not exceeding twelve months.

Offences and penalties.

32. Any person who contravenes any of the provisions of this Act for which a penalty is not expressly provided or who contravenes any provision of the regulations shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding fifty pounds.

All

All informations for offences against this Act and the regulations shall be laid by the secretary or by some other person appointed by the board for the purpose, either generally or in any particular case, or a member of the police force. All such penalties may be recovered before any stipendiary magistrate or any two justices in petty sessions.

33. A document purporting to be a certificate under the hand of the secretary and stating any one or more of the following matters—

- (a) that any person was or was not on any date or during any period mentioned in the certificate licensed under this Act; or
- (b) that on any date or during any period mentioned in the certificate the license of any person was suspended,

shall, in all courts and before all persons and bodies authorised by law to receive evidence, be prima facie evidence of the facts stated therein.

34. (1) The fees payable under this Act and the regulations shall be paid to the secretary who shall transmit them to the Treasurer to be carried to the Consolidated Revenue Fund.

(2) The expenses of the board in carrying out the administration of this Act shall be paid out of moneys provided by Parliament.

35. (1) The Governor, on the recommendation of the board, may make regulations not inconsistent with this Act for or with respect to—

- (a) licenses under this Act;
- (b) prescribing the manner in which a complaint in respect of any matter referred to in subsection one of section twenty-five of this Act may be preferred to the board;
- (c) prescribing the procedure to be followed at and any matters incidental to the holding of an inquiry in respect of any complaint as aforesaid;
- (d) prescribing the course of training for persons desirous of becoming optical dispensers;

(e)

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- (e) regulating and supervising the conduct and prescribing the subjects and standard of examinations and the remuneration of examiners under this Act;
 - (f) prescribing the fees to be paid under this Act;
 - (g) all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Act.
- (2) Such regulations shall—
- (a) be published in the Gazette;
 - (b) take effect from the date of such publication or from a later date to be specified in the regulations; and
 - (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is then in session, and, if not, then within fourteen sitting days after the commencement of the next session.
- (3) If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the regulations have been laid before such House disallowing any regulation or part thereof, the regulation or part shall thereupon cease to have effect.
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