

OPTICAL DISPENSERS (AMENDMENT) ACT, 1985, No. 68

New South Wales



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ELIZABETHÆ II REGINÆ

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Act No. 68, 1985.

An Act to amend the Optical Dispensers Act, 1963, with respect to the licensing of optical dispensers and the approval of persons who may practise optical dispensing; to regulate further the sale of optical appliances; and for other purposes. [Assented to, 15th May, 1985.]

Optical Dispensers (Amendment) 1985

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:-

Short title.

1. This Act may be cited as the "Optical Dispensers (Amendment) Act, 1985".

Commencement.

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Principal Act.

3. The Optical Dispensers Act, 1963, is referred to in this Act as the Principal Act.

Schedules.

4. This Act contains the following Schedules:—

SCHEDULE 1.—AMENDMENTS TO THE PRINCIPAL ACT.

SCHEDULE 2.—AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION.

SCHEDULE 3.—SAVINGS PROVISIONS.

Amendment of Act No. 35, 1963.

5. The Principal Act is amended in the manner set forth in Schedules 1 and 2.

Savings provisions.

6. Schedule 3 has effect.

SCHEDULE 1.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT.

(1) Section 20—

Omit the section, insert instead:—

Powers and duties of board.

20. Subject to this Act, the powers and duties of the board are—

- (a) to license optical dispensers;
- (b) to recommend the prescription of diplomas or other awards for the purposes of section 22 (a);
- (c) to provide or approve courses of study, examinations and practical training for the purposes of section 22 (b) (ii);
- (d) to give approvals to persons to practise optical dispensing for specified periods and subject to specified conditions;
- (e) to issue or suspend licenses under section 22;
- (f) to revoke or vary approvals referred to in paragraph (d); and
- (g) generally, to do any other act or exercise any other power or perform any other duty necessary or convenient for carrying the provisions of this Act into effect.

(2) Sections 22, 22A, 22B—

Omit section 22, insert instead:—

Qualifications for licensing.

22. A person who is, in the opinion of the board, of good character and who has attained such age as may be prescribed shall, upon payment of the prescribed license fee, be entitled to be licensed as an optical dispenser if—

- (a) the person is the holder of a diploma or other award prescribed for the purposes of this paragraph;

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (b) the board is satisfied that the person has the requisite knowledge and skill to practise optical dispensing in New South Wales by reason that—
- (i) the person has undertaken a course of study or practical training, or both, or has practised optical dispensing in any place (whether in New South Wales or elsewhere); and
 - (ii) the person has done any one or more of the following, namely—
 - (A) undertaken such courses of study;
 - (B) passed such examinations;
 - (C) undertaken such practical training,as the board may require in any particular case or class of cases; or
- (c) the person had been licensed under this Act as an optical dispenser before the commencement of the Optical Dispensers (Amendment) Act, 1985, and had ceased, whether before or after that commencement, to be licensed otherwise than by virtue of section 24 (b).

Provisional license.

22A. (1) In this section—

“prescribed person” means the chairman of the board or the secretary or, in the absence of both those persons, any member of the board authorised generally by the board for the purposes of this section.

(2) Where a person applies to be licensed, the prescribed person, if of the opinion that the applicant has satisfied all the requirements for a diploma or other award referred to in section 22 (a) and, but for the fact that the diploma or other award has not yet been conferred or awarded, would be entitled to be licensed under this Act, may, upon payment of the prescribed fee, grant to the applicant a provisional license in or to the effect of the prescribed form.

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(3) Where a person has been granted a provisional license, the person shall be deemed to be licensed under this Act until—

- (a) the date of expiry stated in the provisional license; or
- (b) such later date as may be fixed by the board,

which date shall, in either case, be not later than 3 months after the granting of the provisional license.

(4) The board may, at any time before the date so stated or fixed, for such cause as to it seems proper, cancel a provisional license without prejudice to the application of the holder of the provisional license to be licensed under section 22.

(5) If a person to whom a provisional license has been granted becomes licensed under section 22, the license under section 22 shall, unless otherwise decided by the board, date from the granting of the provisional license.

(6) Nothing in section 21 requires an entry to be made in the register in respect of a person who is the holder of a provisional license.

Approval to practise in certain cases.

22B. (1) In this section—

“prescribed member” means a member of the board who is an optical dispenser and who is authorised by the board for the purposes of this section.

(2) The board or a prescribed member may, in relation to a person who proposes to practise optical dispensing for the purpose of qualifying for a license pursuant to section 22 (a) or (b), or who is undertaking practical training in optical dispensing for that purpose, approve of the person’s practising optical dispensing for that purpose in accordance with this section.

(3) Where a person—

- (a) practises optical dispensing outside New South Wales or is undertaking a course of study and practical training in optical dispensing outside New South Wales; and

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (b) proposes to practise optical dispensing in New South Wales temporarily for the purpose of undertaking clinical activities, research or teaching or obtaining tuition,

the board or a prescribed member may approve of the person's practising optical dispensing for that purpose in accordance with this section.

- (4) An approval under this section may be given—

(a) for such period as may be specified in the approval, being a period not exceeding 3 years from the day on which the approval is given; and

(b) subject to such conditions as may be specified in the approval.

(5) A subsequent approval or subsequent approvals may be given under this section in respect of the same person.

(6) An approval under this section may, at any time, be revoked or varied by the board or by a prescribed member.

- (3) Section 28 (2) (b)—

Omit the paragraph, insert instead:—

(b) the carrying out of optical dispensing by a person who has been given an approval under section 22B, where the optical dispensing is carried out within such period and subject to such conditions as may have been specified in the approval.

- (4) Section 29A—

After section 29, insert:—

Supply of optical appliance pursuant to prescription.

29A. An optical dispenser shall not supply an optical appliance to any person unless the optical dispenser does so—

- (a) pursuant to a prescription written by a person whom the optical dispenser reasonably believes to be qualified, pursuant to any Act or law, to write a prescription for an optical appliance, for the person who is to use the optical appliance; or

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (b) by way of the copying or duplication of an optical appliance, or part of an optical appliance, furnished to the optical dispenser by or on behalf of the person, not being an optical appliance, or part, which the optical dispenser ought reasonably to have suspected had been supplied to the person otherwise than pursuant to a prescription referred to in paragraph (a).

(5) Section 33—

Omit the section, insert instead:—

Evidence.

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—
- (i) the holder of a license under section 22;
 - (ii) the holder of a provisional license under section 22A;
or
 - (iii) a person to whom an approval under section 22B was given;
- (b) that on any date or during any period mentioned in the certificate—
- (i) the license under section 22 of any person so mentioned was suspended;
 - (ii) the provisional license under section 22A of any person so mentioned was cancelled; or
 - (iii) the approval under section 22B of any person so mentioned was revoked or varied,

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.

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(6) Section 35 (1) (d)—

Omit the paragraph, insert instead:—

- (d) prescribing a diploma or other award for the purposes of section 22 (a);
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SCHEDULE 2.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION.

- (1) Section 2, definition of “Prescribed”—
Omit the definition.
- (2) (a) Section 3—
Omit “legally qualified”.
- (b) Section 3—
Omit “, as amended by subsequent Acts”.
- (3) Section 5—
Omit the section.
- (4) (a) Section 6 (1)—
Omit “On and from the first day of July, one thousand nine hundred and sixty-four, the”, insert instead “The”.
- (b) Section 6 (3)—
Omit “paragraph (b), (c), (d), (e) or (f) of subsection (2) or of section 5”, insert instead “subsection (2) (b), (c), (d), (e) or (f)”.
- (5) Section 7—
Omit “paragraph (a) of subsection (2) of section 6”, insert instead “section 6 (2) (a)”.
- (6) (a) Section 10—
Omit “1902, as amended by subsequent Acts”, insert instead “1979”.
- (b) Section 10—
Omit “any such Act”, insert instead “that Act”.
- (7) Section 12—
Before “In the absence”, insert “(2A)”.
- (8) Section 13 (c)—
Omit “, as amended by subsequent Acts”.

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SCHEDULE 2—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION—*continued.*

- (9) (a) Section 15—
 After “15.”, insert “(1)”.
- (b) Section 15—
 Before “The person”, insert “(2)”.
- (10) Section 18—
 Omit “1902, as amended by subsequent Acts”, insert instead “1979”.
- (11) (a) Section 23—
 Before “If any optical dispenser who”, insert “(2A)”.
- (b) Section 23—
 Before “The regulations”, insert “(3A)”.
- (12) Section 24 (c)—
 Omit “, as amended by subsequent Acts”.
- (13) (a) Section 26—
 After “26.”, insert “(1)”.
- (b) Section 26—
 Before “The board”, insert “(2)”.
- (14) Section 28 (2) (a)—
 Omit “as amended by subsequent Acts”.
- (15) (a) Section 32—
 After “32.”, insert “(1)”.
- (b) Section 32—
 Before “All informations”, insert “(2)”.
- (c) Section 32—
 Omit “All such penalties may be recovered before any stipendiary magistrate or any two justices in petty sessions.”, insert instead:—
 (3) A penalty under this Act may be recovered before a Local Court constituted by a Magistrate sitting alone.
- (16) Section 34 (1)—
 Omit “Revenue”.
- (17) Section 35 (1) (b)—
 Omit “subsection (1) of section 25”, insert instead “section 25 (1)”.

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SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION—*continued.*

(18) Section 35 (2), (3)—

Omit the subsections, insert instead:—

(2) Section 41 of the Interpretation Act, 1897, applies in respect of a regulation as if this Act had been passed after the commencement of the Interpretation (Amendment) Act, 1969.

SCHEDULE 3.

(Sec. 6.)

SAVINGS PROVISIONS.

Saving of certain applications.

1. An application for a license that was made, under section 22 of the Principal Act, before the commencement of this Act and that had not been determined or withdrawn before the commencement of this Act shall be deemed to be an application for a license made pursuant to section 22 of the Principal Act, as amended by this Act.

Saving of certain licenses.

2. A person who was, immediately before the commencement of this Act, licensed under the Principal Act shall, on and from the commencement of this Act, be deemed, subject to the Principal Act, as amended by this Act, to be licensed pursuant to section 22 of the Principal Act, as amended by this Act.
