

[Act 2002 No 30]



New South Wales

## Optometrists Bill 2002

### Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

#### Overview of Bill

The object of this Bill is to provide for the registration of optometrists.

The Bill repeals and re-enacts the *Optometrists Act 1930* with the following modifications:

- (a) a statement of the object of the Act is included,
  - (b) additional mechanisms are provided for the accreditation and recognition of qualifications entitling a person to registration as an optometrist,
  - (c) competence becomes an express requirement for registration and the Optometrists Registration Board (*the Board*) is given power to inquire into competence,
  - (d) a mechanism for establishing a code of professional conduct is provided for and the operation of a code is clarified,
  - (e) registered optometrists are required to submit an annual return to the Board detailing matters that establish their continuing competence and good character,
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- (f) registered optometrists are required to notify the Board of convictions and criminal findings (findings of guilt without proceeding to a conviction) for various offences, and courts are required to notify the Board of certain convictions and criminal findings against registered optometrists,
- (g) definitions of unsatisfactory professional conduct and professional misconduct are introduced,
- (h) a complaint against an optometrist can be made and dealt with even if the optometrist has ceased to be registered,
- (i) the Board is required to notify an optometrist of a complaint made against the optometrist,
- (j) the Optometry Care Assessment Committee is established to inquire into less serious complaints about optometrists and to make recommendations to the Board with respect to the determination of those complaints,
- (k) the Optometry Care Assessment Committee will be able to conduct skills testing of a registered optometrist about whom a complaint is made,
- (l) mechanisms are provided to enable the Board to monitor and manage optometrists who are impaired in their ability to practise,
- (m) determination of complaints by Professional Standards Committees is replaced with determination by a hearing of the Board,
- (n) the Board is authorised to make orders with respect to fees charged for optometry services when determining a complaint,
- (o) the Board is to have 9 members (comprising 5 optometrists, an officer of the Department of Health or a public health service, 2 persons to represent the community, and a legal practitioner) and members are limited to serving 3 consecutive 4-year terms,
- (p) the Board is given power to delegate its functions,
- (q) the operation of the *Criminal Records Act 1991* is modified to facilitate the reporting of and consideration of criminal findings affecting applicants for registration and optometrists,
- (r) the Board is required to notify other optometrist registration authorities of disciplinary action taken against an optometrist,
- (s) proceedings for an offence under the Act will be able to be taken within 12 months after the offence,
- (t) any conditions on an optometrist's registration will be recorded in the Register.

The Bill also enacts consequential savings and transitional provisions and makes consequential amendments to other Acts.

## Outline of provisions

### Part 1 Preliminary

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** sets out the object of the proposed Act.

**Clause 4** defines certain words and expressions used in the proposed Act.

**Clause 5** provides that notes in the proposed Act are explanatory only and do not form part of the Act.

**Clause 6** provides that the proposed Act does not limit or otherwise affect the operation of the Mutual Recognition laws of the Commonwealth.

### Part 2 Registration

**Clause 7** prohibits a person from indicating that the person practises, or is qualified to practise, optometry unless the person is registered under the proposed Act.

**Clause 8** specifies the qualifications required for registration as an optometrist.

**Clause 9** defines *competence to practise* for the purposes of the proposed Act.

**Clause 10** defines *impairment* for the purposes of the proposed Act.

**Clause 11** specifies the circumstances in which a person is entitled to be registered as an optometrist under the proposed Act.

**Clause 12** provides for provisional registration under the proposed Act for persons who are entitled to registration but whose applications for registration have not been dealt with by the Board, and for persons entitled to the qualification required for registration who have not yet had the qualification conferred on them.

**Clause 13** provides for temporary registration under the proposed Act in certain circumstances.

**Clause 14** specifies the circumstances in which the Board may refuse to register a person under the proposed Act.

**Clause 15** specifies the effect of the removal of a person's name from the Register and the suspension of a person's registration as an optometrist.

**Clause 16** restricts the re-registration of deregistered persons and certain other persons.

**Clause 17** provides for an appeal to the Optometrists Tribunal where the Board has refused to grant registration or cancelled registration and in certain other cases.

## **Part 3 Practice of optometry**

### **Division 1 Conduct of practice**

**Clause 18** prohibits registered optometrists from using the title "doctor" unless the optometrist holds a recognised university qualification entitling the optometrist to use that title.

**Clause 19** prevents an optometrist using the title "specialist" (and other titles prescribed by the regulations) except with the approval of the Board.

**Clause 20** provides that the Board may establish a code of professional conduct and provides for the use of, and procedure for the establishment of, that code.

**Clause 21** provides for the Board to issue an authority to an optometrist that will enable the optometrist to possess, use, supply or prescribe certain poisons and restricted substances.

**Clause 22** authorises the making of regulations to require optometrists to disclose various matters to their patients.

**Clause 23** restricts the carrying on of the business of the practice of optometry to registered optometrists, incorporated practices, existing optometry businesses, persons carrying on the business of a deceased optometrist for a limited period and others as permitted by the regulations.

## **Division 2      Returns and information**

**Clause 24** provides that registered optometrists must furnish annual returns to the Board containing specified information. The Board may require the return to be verified by statutory declaration.

**Clause 25** provides that a registered optometrist must notify the Board within 7 days if the optometrist is convicted of an offence or made the subject of a sex/violence criminal finding for an offence or certain criminal proceedings are commenced against the optometrist.

**Clause 26** provides for the Courts to notify the Board, as soon as is practicable, of the conviction of a registered optometrist of an offence or the making of a sex/violence criminal finding against an optometrist.

**Clause 27** requires notice to be given to the Registrar in accordance with the regulations when a registered optometrist becomes a mentally incapacitated person.

## **Part 4   Complaints and disciplinary proceedings**

### **Division 1      Interpretation**

**Clause 28** defines “professional misconduct”.

**Clause 29** defines “unsatisfactory professional conduct”.

### **Division 2      Complaints**

**Clause 30** sets out the grounds for the making of complaints about registered optometrists.

**Clause 31** allows a complaint to be made even if the optometrist has ceased to be registered.

**Clause 32** provides that any person (including the Board) may make a complaint.

**Clause 33** provides that complaints are to be made to the Board and lodged with the Registrar.

**Clause 34** sets out the form in which a complaint is to be made.

**Clause 35** provides that the Board is to notify the Health Care Complaints Commission of complaints under this Part of the proposed Act.

**Clause 36** sets out the manner that notice of the complaint is to be given to the optometrist against whom the complaint is made and the circumstances where notice is not required to be given.

**Clause 37** provides that the Board may make inquiries concerning the complaint as it sees fit.

**Clause 38** requires the Board to consult with the Health Care Complaints Commission before dealing with a complaint or referring it to another body under this Part of the proposed Act.

**Clause 39** sets out how complaints are to be dealt with.

**Clause 40** provides that serious complaints should be referred to the Tribunal. In general, the Board must refer any complaint which may warrant the suspension or deregistration of a registered optometrist to the Tribunal.

**Clause 41** allows the Board to require a registered optometrist to undergo a medical examination.

**Clause 42** sets out the persons to whom the Board must give notice of any order made relating to a registered optometrist.

### **Division 3            Referral of complaints to Optometry Care                                  Assessment Committee**

**Clause 43** provides for the kinds of complaints that can be referred to the Committee.

**Clause 44** provides that the Committee is to investigate complaints referred to it and may encourage the settlement of the complaint by consent and authorises the Committee to obtain such optometrical, medical, legal, financial or other advice as it thinks necessary or desirable to enable it to carry out its functions.

**Clause 45** provides that the Committee may require a registered optometrist to undergo specified skills testing.

**Clause 46** provides for the Committee to report and make recommendations to the Board.

**Clause 47** provides that a complainant and optometrist against whom the complaint is made are not entitled to be legally represented at any appearance before the Committee.

#### **Division 4      Dealing with complaint by inquiry at a meeting of the Board**

**Clause 48** provides that if the Board is to deal with a complaint at a meeting of the Board, that complaint is to be dealt with in accordance with this Division and Schedule 3 (Provisions relating to the procedure of the Board).

**Clause 49** allows the procedure for the calling of a meeting to deal with a complaint and for the conduct of the meeting, subject to the proposed Act and the regulations made under it, to be determined by the Board.

**Clause 50** sets out certain provisions relating to the conduct of the meeting.

**Clause 51** deals with the making of submissions to the meeting of the Board by the optometrist about whom the complaint has been made, the Committee and the Health Care Complaints Commission.

**Clause 52** provides that the Board must, within 30 days of making its decision on a complaint, make available to the complainant, the optometrist concerned and such other persons as it sees fit, a written statement of the decision.

**Clause 53** provides that a finding of the Board under this Division of the proposed Act is admissible as evidence in any legal proceedings.

#### **Division 5      Disciplinary powers of Board and Tribunal**

**Clause 54** allows the Board or the Tribunal to exercise any of the powers or combination of powers conferred under this Division of the proposed Act if it finds the subject-matter of a complaint proved or the optometrist concerned admits to the complaint in writing to the Board or Tribunal.

**Clause 55** sets out the general disciplinary powers of the Board.

**Clause 56** provides for the making of a recommendation by the Board for the suspension or deregistration of an optometrist on the grounds that the optometrist does not have sufficient physical and mental capacity to practise optometry.

**Clause 57** sets out the disciplinary powers of the Tribunal.

## **Division 6      Powers of the Board for the protection of the public**

**Clause 58** empowers the Board to suspend (for not more than 8 weeks), or impose conditions on the registration of, a registered optometrist if it is satisfied that such action is necessary for the purpose of protecting the life, or the physical or mental health, of any person.

**Clause 59** provides that the Board may at any time alter or remove conditions imposed under this Division of the proposed Act.

**Clause 60** requires the Board to refer the matter to the Health Care Complaints Commission for investigation after taking any action under clause 58. The Commission is to investigate the matter and then refer it as a complaint to the Tribunal or to the Board to be dealt with by inquiry at a meeting of the Board.

**Clause 61** sets out special provisions to be followed if the Board takes action against a registered optometrist under clause 58 because the Board is of the opinion that the optometrist suffers from an impairment.

**Clause 62** requires the Board to notify the Chairperson of the Tribunal if the Board has suspended a registered optometrist under clause 58.

**Clause 63** provides that a period of suspension may be extended for a period or further period of not more than 8 weeks but only if the extension has been approved in writing by the Chairperson or a Deputy Chairperson of the Tribunal and the complaint about the optometrist has not been disposed of.

**Clause 64** deals with the rights and privileges of persons on the expiration of their period of suspension as a registered optometrist.

**Clause 65** deals with conditions imposed on a registered optometrist under clause 58 where the matter is dealt with as a complaint against the optometrist.

**Clause 66** deals with conditions imposed on a registered optometrist under clause 58 where the matter is referred to an Impaired Registrants Panel.

## **Part 5 Impairment**

**Clause 67** provides for matters to be referred to an Impaired Registrants Panel.

**Clause 68** allows a person to notify the Board of any matter that the person thinks indicates that a registered optometrist suffers from or may suffer from an impairment.

**Clause 69** allows the Health Care Complaints Commission to refer to the Board any matter that indicates that a registered optometrist suffers from or may suffer from an impairment.

**Clause 70** provides that an Impaired Registrants Panel is to inquire into any matter referred to it. The Panel may request that the registered optometrist concerned attend before the Panel for the purpose of enabling it to obtain information on the matter and make an assessment.

**Clause 71** provides that an Impaired Registrants Panel is not to investigate or take any other action if it is aware that the matter is the subject of an investigation by the Health Care Complaints Commission.

**Clause 72** requires the Board to notify the registered optometrist of any proposed inquiry by an Impaired Registrants Panel.

**Clause 73** allows a registered optometrist who is the subject of a matter referred to an Impaired Registrants Panel to make oral or written representations to the Panel.

**Clause 74** provides that an Impaired Registrants Panel is to make an assessment in respect of each referral to it based on its inquiry and may counsel the optometrist concerned or recommend that he or she undertake counselling, recommend that the optometrist consent to conditions being placed on his or her registration or to his or her suspension for a specified period or make other recommendations to the Board.

**Clause 75** allows the Board to place conditions on the registration of a registered optometrist or suspend the registered optometrist if an Impaired Registrants Panel has recommended it and the Board is satisfied that the optometrist has voluntarily consented to that recommendation.

**Clause 76** deals with the review of conditions placed on the registration of a registered optometrist or the suspension of the registered optometrist where the optometrist had voluntarily consented to the conditions or suspension.

**Clause 77** provides that certain matters referred to an Impaired Registrants Panel are to be dealt with as complaints against the optometrist concerned.

**Clause 78** deals with the confidentiality of reports by an Impaired Registrants Panel to the Board.

## **Part 6 Appeals and review of disciplinary action**

### **Division 1 Appeals against actions of the Board**

**Clause 79** deals with appeals to the Tribunal against any finding of the Board or any exercise of any power of the Board under Division 5 of Part 4 of the proposed Act (Disciplinary powers of Board and Tribunal).

**Clause 80** deals with appeals to the Tribunal relating to suspensions of, or impositions of conditions on, the registration of optometrists.

**Clause 81** allows an appeal with respect to a point of law to be made to the Chairperson of the Tribunal, or a Deputy Chairperson nominated by the Chairperson, when a complaint is dealt with at a meeting of the Board.

### **Division 2 Appeals against actions of Tribunal**

**Clause 82** allows a preliminary appeal (during an inquiry on a complaint by the Tribunal or before the commencement of the inquiry but after the complaint has been referred to the Tribunal) with respect to a point of law to be made to the Supreme Court by the optometrist concerned or the complainant, but only with the leave of the Chairperson or a Deputy Chairperson.

**Clause 83** deals with appeals to the Supreme Court by the optometrist about whom a complaint has been referred to the Tribunal or the complainant regarding a decision of the Tribunal as to a point of law or the exercise of any power of the Tribunal under Division 5 of Part 4 of the proposed Act (Disciplinary powers of Board and Tribunal).

**Clause 84** sets out the powers of the Supreme Court in determining an appeal.

### **Division 3      Review of suspension, cancellation or conditions**

**Clause 85** deals with the right of a person to apply for a review of an order of the Board, the Chairperson or a Deputy Chairperson, the Tribunal or the Supreme Court that the registration of the person be suspended, that the person's name be removed from the Register or not be re-registered, or that conditions be placed on the person's registration.

**Clause 86** provides that the *appropriate review body* to deal with an application for review is the Tribunal except where the order being reviewed provides that it may be reviewed by the Board, in which case the Board is the appropriate review body.

**Clause 87** deals with the powers of the appropriate review body on undertaking a review.

**Clause 88** deals with the nature of the review.

### **Part 7   Optometrists Registration Board**

**Clause 89** constitutes the Optometrists Registration Board.

**Clause 90** specifies the functions of the Board.

**Clause 91** provides for the membership of the Board.

**Clause 92** provides for the appointment of a Registrar and other staff necessary to enable the Board to exercise its functions.

**Clause 93** enables the Board to establish committees to assist it to exercise its functions.

**Clause 94** provides for the delegation of the Board's and the Registrar's functions.

**Clause 95** gives effect to Schedules 2 and 3 which contain further provisions relating to the membership and procedure of the Board.

### **Part 8   Optometry Care Assessment Committee**

**Clause 96** constitutes the Optometry Care Assessment Committee.

**Clause 97** specifies the functions of the Committee.

**Clause 98** provides for the membership of the Committee.

**Clause 99** gives effect to Schedule 4 which contains further provisions relating to the membership and procedure of the Committee.

## **Part 9 Impaired Registrants Panels**

**Clause 100** provides for the establishment of Impaired Registrants Panels for the purposes of the proposed Act. The Panels are to have, and may exercise, such jurisdiction and functions as are conferred or imposed on them by or under the proposed Act or any other Act.

**Clause 101** requires the Board, when it decides to refer a matter to an Impaired Registrants Panel, to appoint 2 persons to sit as the Panel.

**Clause 102** provides that only decisions supported by both members of an Impaired Registrants Panel are to be considered decisions of the Panel. Disagreements between members of a Panel are to be reported to the Board.

## **Part 10 Optometrists Tribunal**

### **Division 1 Constitution of the Tribunal**

**Clause 103** provides for the establishment of the Optometrists Tribunal. The Tribunal is to be constituted in accordance with the proposed Act to deal with a matter referred to it or an appeal or application made to it under the proposed Act.

**Clause 104** provides for experienced legal practitioners to be appointed as the Chairperson and Deputy Chairpersons of the Tribunal.

**Clause 105** deals with the appointment of persons to sit on the Tribunal when a complaint or other matter is referred to the Tribunal, the Health Care Complaints Commission decides to prosecute a complaint before the Tribunal under the *Health Care Complaints Act 1993* or an appeal or application under the proposed Act to the Tribunal is lodged with the Registrar.

**Clause 106** provides that the Tribunal may continue and come to a determination despite a vacancy in its membership which occurs when a matter is part-heard. This provision does not apply if it is the Chairperson or a Deputy Chairperson who vacates office, or more than one vacancy occurs.

**Clause 107** deals with payment of non-legal Tribunal members.

**Clause 108** provides for a seal of the Tribunal of which courts and persons acting judicially are to take notice.

## **Division 2      Proceedings of the Tribunal**

**Clause 109** provides that the decision of the Chairperson or a Deputy Chairperson on any question of law or procedure arising during an inquiry or appeal at which that person presides is the decision of the Tribunal for the purposes of the inquiry or appeal. All other decisions must be supported by at least 3 members of the Tribunal. In cases where 2 members support and 2 oppose a decision, the decision of the Chairperson or Deputy Chairperson presiding prevails.

**Clause 110** deals with the time at which orders of the Tribunal take effect.

**Clause 111** provides that a power of the Tribunal exercised under the proposed Act by the Supreme Court (except for the purposes of any appeal) is taken to have been exercised by the Tribunal.

**Clause 112** requires the Tribunal to inform the Registrar of the exercise of any power under Part 4 of the proposed Act (Complaints and disciplinary proceedings).

## **Division 3      Inquiries, appeals etc before the Tribunal**

**Clause 113** deals with the jurisdiction of the Tribunal to conduct an inquiry into any complaint, matter or application and to hear any appeal referred to it.

**Clause 114** provides for the fixing of the time and place for the conduct of an inquiry or the hearing of an appeal and the notice that must be given of that time and place.

**Clause 115** deals with the conduct of proceedings before the Tribunal.

**Clause 116** enables a complainant or a registered optometrist about whom a complaint is made to be represented by a legal practitioner or another adviser in proceedings before the Tribunal.

**Clause 117** prohibits the Chairperson or a Deputy Chairperson from sitting on an inquiry or appeal concerning a matter on which he or she has already made a decision.

**Clause 118** provides for adjournments and interlocutory orders.

**Clause 119** requires the Tribunal to provide a written statement of its decision on an inquiry or appeal to the complainant, the optometrist concerned and the Board. The statement must set out any findings on material questions of fact, refer to any evidence or other material on which findings were based and give the reasons for the decision.

**Clause 120** provides that the Tribunal is not required to include confidential information in its statement of a decision. If the statement would be false or misleading without the confidential information the Tribunal is not required to provide the statement. However, a confidential information notice must then be provided indicating that confidential information is not given or the statement will not be provided.

## **Part 11 Miscellaneous**

**Clause 121** deals with the application of the *Criminal Records Act 1991*.

**Clause 122** provides for the service of notices.

**Clause 123** provides for the service of documents on the Board.

**Clause 124** requires the Board, the President or an authorised member of the Board to provide on request a written statement of the reasons for a decision.

**Clause 125** requires the Board to notify various health professional registration authorities of the taking of disciplinary action against an optometrist.

**Clause 126** makes it an offence to make a false entry in the Register (or, by fraud, to procure such an entry) or to make a false statement to obtain registration. The offence carries a maximum penalty of 50 penalty units (\$5,500) or 12 months imprisonment, or both.

**Clause 127** provides for certain documents under the hand of the Registrar and entries in the Register to be evidence in proceedings.

**Clause 128** provides for the authentication of official documents of the Board by signature instead of seal.

**Clause 129** provides for the disbursement of money received by the Board and empowers the Board to waive the payment of fees.

**Clause 130** requires the Board to establish an Optometry Education and Research Account (for education and research in optometry). The clause provides for money to be paid into the Account and specifies the purposes for which that money may be expended.

**Clause 131** provides for the appointment and powers of inspectors.

**Clause 132** enables an inspector to obtain a search warrant.

**Clause 133** provides that certain persons given functions under the proposed Act do not incur personal liability for things done in good faith in carrying out those functions.

**Clause 134** provides that if a corporation contravenes any provision of the proposed Act or the regulations, each director or other person concerned in the management of the corporation is also taken to have contravened the provision.

**Clause 135** provides that proceedings for offences against the proposed Act and regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone. Such proceedings are to be instituted within 12 months of the act or omission alleged to constitute the offence.

**Clause 136** provides for the making of regulations under the proposed Act.

**Clause 137** is a formal provision giving effect to Schedule 6 to amend certain other Acts set out in that Schedule.

**Clause 138** repeals the *Optometrists Act 1930* and the *Optometrists Regulation 1995*.

**Clause 139** is a formal provision giving effect to Schedule 7 (Savings and transitional provisions).

**Clause 140** requires the Minister to review the Act after 5 years.

## Schedules

**Schedule 1** contains provisions relating to the making of applications for registration, procedures for dealing with applications, inquiries concerning entitlement to and eligibility for registration, the keeping and alteration of the Register, annual registration fees and removal from and alteration of the Register.

**Schedule 2** contains provisions relating to the members of the Board.

**Schedule 3** contains provisions relating to the procedure of the Board.

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Explanatory note

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**Schedule 4** contains provisions relating to the members and procedure of the Committee.

**Schedule 5** contains provisions relating to proceedings before the Tribunal.

**Schedule 6** makes consequential amendments to various Acts.

**Schedule 7** contains savings and transitional provisions consequent on the enactment of the proposed Act.