

Passed by both Houses



New South Wales

Occupational Licensing Legislation Amendment (Regulatory Reform) Bill 2009

Contents

	Page
1 Name of Act	2
2 Commencement	2
Schedule 1 Repeal of optical dispensers legislation	3
Schedule 2 Amendment of Home Building Act 1989 No 147	4
Schedule 3 Amendment of Home Building Regulation 2004	13
Schedule 4 Consequential amendment of Acts and Regulations	18

I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2009*



New South Wales

Occupational Licensing Legislation Amendment (Regulatory Reform) Bill 2009

Act No , 2009

An Act to amend the *Home Building Act 1989* and to repeal and amend other legislation to remove licensing requirements for certain occupations.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Occupational Licensing Legislation Amendment (Regulatory Reform) Act 2009*.

2 Commencement

- (1) Except as provided by subsection (2), this Act commences on 1 July 2009 or the date of assent to this Act, whichever is the later.
- (2) Schedules 1, 4.1–4.4, 4.6 [2] and [4], 4.7 and 4.9–4.11 commence on 1 July 2010.

Schedule 1 Repeal of optical dispensers legislation

The following Act and Regulation are repealed:

Optical Dispensers Act 1963 No 35

Optical Dispensers Regulation 2007

Schedule 2 Amendment of Home Building Act 1989 No 147

- [1] Section 3 Definitions**
Omit paragraph (d) of the definition of *authority* in section 3 (1).
- [2] Section 3 (1), definitions of “building consultancy licence” and “building consultancy work”**
Omit the definitions.
- [3] Section 3 (1), definition of “close associate”**
Omit “or building consultancy licence”.
- [4] Section 3 (1), definition of “contractor licence”**
Omit “, 5 or 16A”. Insert instead “or 5”.
- [5] Section 3 (3)**
Omit “a building consultancy licence,”.
- [6] Section 3AA Meaning of “close associate” of applicant for, or holder of, licence**
Omit “or building consultancy licence” from section 3AA (1).
- [7] Section 16A Unlicensed contracting or supplying**
Omit the section.
- [8] Section 16B Promotion by or for unlicensed person**
Omit the section.
- [9] Section 16C Application of requirements for contracts**
Omit “the holder of a contractor licence” from section 16C (1).
Insert instead “a person (a *kit home supplier*)”.
- [10] Section 16D Form of contracts for kit homes**
Omit section 16D (2) (a) and (b). Insert instead:
(a) the names of the parties, and
- [11] Section 16D (6) and (7)**
Omit the subsections.

[12] Section 16DAA Consumer information

Omit “A holder of a licence must, before entering into a contract that the holder is authorised by this Act to enter” from section 16DAA (1).

Insert instead “A kit home supplier must, before entering into a contract”.

[13] Sections 16DB and 16DD (1), (2) and (3) (b)

Omit “holder of a contractor licence” wherever occurring.

Insert instead “kit home supplier”.

[14] Section 16DBA Cooling-off period: person may rescind kit home contract within 5 days without penalty

Omit “the holder of a licence for the supply of a kit home” from section 16DBA (1).

Insert instead “a kit home supplier”.

[15] Sections 16DBA (2), (3) (b)–(d), (4), (5) (b) and (d) and (7) and 16DBB (3) and (7)

Omit “holder of the licence” wherever occurring.

Insert instead “kit home supplier”.

[16] Section 16DBA (3) (b)

Omit “holder” where secondly and thirdly occurring.

Insert instead “kit home supplier”.

[17] Section 16DBA (3) (c)

Omit “holder” where secondly occurring. Insert instead “kit home supplier”.

[18] Section 16DBA (4)

Omit “holder’s”. Insert instead “kit home supplier’s”.

[19] Section 16DBB Person may rescind kit home contract if cooling-off warning not given

Omit “holder of a licence” wherever occurring in section 16DBB (2) and (8).

Insert instead “kit home supplier”.

[20] Sections 16DBB (8) and 16F (3) (b)

Omit “the holder” wherever occurring. Insert instead “the kit home supplier”.

[21] Section 16DD Interests in land under contract

Omit “holder of the contractor licence” from section 16DD (3) (c).
Insert instead “kit home supplier”.

[22] Section 16F Exhibition homes

Omit “the holder of a contractor licence” from section 16F (3) (a).
Insert instead “a kit home supplier”.

[23] Section 16G

Omit the section. Insert instead:

16G Enforceability of contracts

- (1) A person who contracts to supply a kit home:
 - (a) under a contract to which the requirements of section 16D apply that is not in writing or that does not have sufficient description of the kit home to which it relates, or
 - (b) in contravention of any other provision of this Act or the regulations that is prescribed for the purposes of this paragraph,
is not entitled to damages or to enforce any other remedy in respect of a breach of the contract committed by any other party to the contract, and the contract is unenforceable by the person who contracted to supply the kit home. However, the person is liable for damages and subject to any other remedy in respect of a breach of the contract committed by the person.
- (2) This section does not affect the liability of the person for an offence against a provision of or made under this or any other Act.

[24] Section 17 Misrepresentations about contractor licences or certificates

Omit section 17 (1) (b) and (c). Insert instead:

- (b) is the holder of a contractor licence authorising its holder to contract to do residential building work, or specialist work, knowing that the individual, partnership or corporation is not the holder of an appropriate contractor licence.

[25] Part 2D Regulation of building consultants

Omit the Part.

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- [26] **Part 3, heading**
Omit “, **building consultancy licences**”.
- [27] **Sections 20 (3) (c), 22A (1) and (2) and 40 (2A)**
Omit “, or the supplying of a kit home,” wherever occurring.
- [28] **Section 21 Authority conferred by contractor licences**
Omit section 21 (1) (c).
- [29] **Section 22 Cancellation of contractor licences**
Omit section 22 (2).
- [30] **Section 23 Warning notices**
Omit “or the supply of kit homes” from section 23 (1).
- [31] **Section 23 (2)**
Omit “or in supplying kit homes”.
- [32] **Part 3, Division 3A Building consultancy licences**
Omit the Division.
- [33] **Part 3, Division 4, heading**
Omit “, **building consultancy licences**”.
- [34] **Section 33 Definition**
Omit paragraphs (c) and (d) of the definition of *authority*. Insert instead:
(c) an owner-builder permit.
- [35] **Sections 40 (2B) and 51 (4)**
Omit “or building consultancy licence” wherever occurring.
- [36] **Section 40 Renewal or restoration of authorities**
Omit section 40 (2F).
- [37] **Section 42A Automatic suspension of licence for failure to comply with order to pay money in relation to building claim**
Omit the definition of *licence* from section 42A (1). Insert instead:
licence means a contractor licence (whether or not an endorsed contractor licence).

- [38] **Sections 47 (a), (b) and (d), 48, 60 (1), 89D (1) and (3), 133 (1) (a) and 140 (2) (c)**
Omit “, building consultancy work” wherever occurring.
- [39] **Section 47 Production of authority**
Omit section 47 (b1).
- [40] **Section 48A Definitions**
Omit “, specialist work or building consultancy work” from the definition of *building goods or services* in section 48A (1).
Insert instead “or specialist work”.
- [41] **Section 48B Definitions**
Insert in alphabetical order:
 kit home supplier—see section 16C.
- [42] **Section 48C Notification of building dispute**
Omit section 48C (1). Insert instead:
 (1) Any person may notify the Director-General, in such manner as the Director-General may approve, that the person has a dispute with:
 (a) the holder of a contractor licence with respect to residential building work or specialist work done by the contractor, or
 (b) a kit home supplier with respect to the supply of a kit home by that person.
- [43] **Section 48E Inspector may make rectification order**
Omit “contractor” wherever occurring in section 48E (2).
Insert instead “kit home supplier”.
- [44] **Section 50 Application of Part to former holders and others**
Omit section 50 (1) (b1).
- [45] **Sections 50 (3) and 127 (1)**
Omit “, a building consultancy licence” wherever occurring.
- [46] **Section 51 Improper conduct: generally**
Omit section 51 (1A) and (2A).

[47] Section 51 (4)

Omit “or (2A) (f)”.

[48] Section 52

Omit the section. Insert instead:

52 Improper conduct: assisting others

The holder of a contractor licence, or of a supervisor or tradesperson certificate, is guilty of improper conduct if the holder aids or abets, or is knowingly concerned in any way in, the doing of any thing by another person in connection with residential building work or specialist work if the thing done:

- (a) constitutes improper conduct on the part of the person who did it, or
- (b) would constitute such conduct if the person who did it was authorised, by a contractor licence or certificate, to contract to do, or to do, the work concerned.

[49] Section 54 Improper conduct: members of partnerships or officers of corporations

Omit “or a building consultancy licence” from section 54 (1).

[50] Section 55 Definition of “authority”

Omit paragraphs (c) and (d) of the definition of *authority*. Insert instead:

- (c) a tradesperson certificate.

[51] Section 56A Grounds for taking disciplinary action against holder of a building consultancy licence

Omit the section.

[52] Section 60 Investigation by Director-General

Omit “or any kit home” from section 60 (1) (a).

[53] Section 65 When disciplinary action becomes effective

Omit section 65 (3) (b). Insert instead:

- (b) do any work for which this Act requires an authority to be held.

[54] Section 83A Definitions

Omit paragraph (c1) of the definition of *authority*.

- [55] Section 90 Definitions**
Omit the definition of *supplier* from section 90 (1).
- [56] Section 91 When Part applies**
Omit section 91 (2).
- [57] Section 92 Contract work must be insured**
Omit “Except as provided by section 94 (1A), a” from section 92 (2).
Insert instead “A”.
- [58] Sections 93–93B and 94A**
Omit the sections.
- [59] Section 97 Exemptions from insurance requirements**
Omit “(except sections 94 and 94A)” from section 97 (1A).
- [60] Section 100 Requirements for insurance for kit homes**
Omit the section.
- [61] Section 102A Approval of alternative home building indemnity schemes or arrangements**
Omit “or the supply of a kit home if the work or supply is” from section 102A (1).
Insert instead “if the work is”.
- [62] Section 103B Period of cover**
Omit “or the supply of the kit home, or the end of the contract relating to the work or supply” wherever occurring in section 103B (2).
Insert instead “, or the end of the contract relating to the work”.
- [63] Section 103N Guarantee Corporation may require builder to make payments or rectify work**
Omit “or the non-supply of a kit home or supply of a defective kit home” from section 103N (1).
- [64] Section 103N (1)**
Omit “, or the supply of the kit home or the replacement of the defective kit home” wherever occurring.

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- [65] Section 114 Home Building Administration Fund**
Omit “, owner-builder permits or building consultancy licences” from section 114 (2) (a).
Insert instead “or owner-builder permits”.
- [66] Sections 120 (1) (a) and 140 (2) (a)**
Omit “, building consultancy licences” wherever occurring.
- [67] Sections 120 (3) and (4), 127 (1) and 131 (g)**
Omit “, building consultancy licence” wherever occurring.
- [68] Section 120 Register**
Omit “, or kit homes supplied,” from section 120 (3) (d).
- [69] Section 131 Certificate evidence**
Omit “or to supply any kit home so specified” from section 131 (a).
- [70] Section 131 (b1)**
Omit the paragraph.
- [71] Section 133 Evidence of publication**
Omit “or to indicate that a person is prepared to supply a kit home” from section 133 (1) (a).
- [72] Section 133 (1) (b) (i) and (ii)**
Omit “or kit home” and “or kit homes” wherever occurring.
- [73] Section 140 Regulations**
Omit “and building consultancy licences” from section 140 (2) (a).
- [74] Section 140 (2) (a2)**
Omit the paragraph.
- [75] Section 140 (2) (c) and (d)**
Omit “or the supply of kit homes” wherever occurring.
- [76] Section 140 (2) (g)**
Omit “or building consultancy licences”.

[77] Schedule 4 Savings and transitional provisions

Insert at the end of clause 2 (1):

Occupational Licensing Legislation Amendment (Regulatory Reform) Act 2009

[78] Schedule 4

Insert at the end of the Schedule with appropriate Part and clause numbering:

Part Provisions consequent on Occupational Licensing Legislation Amendment (Regulatory Reform) Act 2009

Refund of application fees for certain authorities

- (1) This clause applies to an application fee paid by or on behalf of a person for an authority that the person is no longer required to hold because of the amendments made by the *Occupational Licensing Legislation Amendment (Regulatory Reform) Act 2009*.
- (2) A person may apply to the Director-General for a refund of an application fee to which this clause applies if the person:
 - (a) paid the application fee, or
 - (b) is applying for or on behalf of the person who paid the application fee.
- (3) The fixed component of the application fee is to be refunded, on a pro rata basis, to a person who makes an application under subclause (2).
- (4) In this clause:

application fee means any of the following:

 - (a) an application fee for the grant of a new authority,
 - (b) an application fee for the renewal of an authority,
 - (c) an application fee for the restoration of an authority.

fixed component of an application fee is the amount set out in Column 4 of Schedule 4 to the *Home Building Regulation 2004* in relation to the fee.

Schedule 3 Amendment of Home Building Regulation 2004

[1] Clause 3 Interpretation

Omit “, a building consultancy licence” from the definition of *authority* in clause 3 (1).

[2] Clause 4 Work excluded from the definition of “building consultancy work”

Omit the clause.

[3] Clause 8

Omit the clause. Insert instead:

8 Definition of “residential building work”—installation of certain fixtures and apparatus included

For the purposes of the definition of *residential building work* in section 3 (1) of the Act, any fixture or fixed apparatus designed for the heating or cooling of water, food or the atmosphere or for air ventilation or the filtration of water in a swimming pool or spa is prescribed.

[4] Clause 9 Definition of “residential building work”—certain work excluded

Insert after clause 9 (1) (h):

- (i) any work involved in the installation of any material that forms an upper layer or wearing surface of a floor (even if installed as a fixture) that does not include any structural changes to the floor,
- (j) any work that involves the installation or maintenance of any fixed apparatus such as a lift, an escalator, an inclinor or a garage door by means of which persons or things are raised or lowered or moved in some direction that is restricted by fixed guides.

[5] Part 3, heading

Omit “, building consultancy work”.

[6] Clause 18 Exemptions from requirements for contracts with holders of building consultancy licences

Omit the clause.

- [7] **Clause 19 Exemptions relating to provision of information by holders of building consultancy licences**
Omit the clause.
- [8] **Part 4, heading, Division 1 of Part 4, heading and Division 2 of Part 4, heading**
Omit “, **building consultancy licences**” wherever occurring.
- [9] **Clause 27 Additional requirements for obtaining building consultancy licences**
Omit the clause.
- [10] **Clause 35 Building consultancy licences**
Omit the clause.
- [11] **Clause 42 Application fees**
Omit clause 42 (5).
- [12] **Clause 42A Refund of application fees for certain 3-year licences and certificates**
Omit the definition of *licence* from clause 42A (4). Insert instead:
licence means a contractor licence.
- [13] **Clause 46 Categories of residential building work or specialist work**
Omit clause 46 (1) (g).
- [14] **Clause 46 (1) (y)**
Omit the paragraph.
- [15] **Clause 47 Category of building consultancy work**
Omit the clause.
- [16] **Clause 48 Exemption from requirement to show insurance has been obtained**
Omit “, or to supply kit homes,” from clause 48 (1).
- [17] **Clause 48 (1) (m), (z), (aa) and (ab)**
Omit the paragraphs.
- [18] **Clause 52 Definitions**
Omit the definition of *supplier* from clause 52 (1).

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- [19] **Clause 52 (3)**
Omit “, supplier” wherever occurring.
- [20] **Clause 54 Persons who may arrange insurance contracts**
Omit “contractor or supplier, or by a beneficiary in respect of the work done or kit home supplied”.
Insert instead “contractor, or by a beneficiary in respect of the work done”.
- [21] **Clause 55 Beneficiaries**
Omit clause 55 (1) (a) (ii).
- [22] **Clause 56 Losses indemnified**
Omit clause 56 (2).
- [23] **Clause 56 (3)**
Omit “or supply”, “or supplier” and “or supplier’s” wherever occurring.
- [24] **Clause 56 (5)**
Omit “, supplier”.
- [25] **Clause 58 Limitations on liability and cover**
Omit clause 58 (1) (e). Insert instead:
(e) the contract may exclude a claim in relation to damage caused by the normal drying out of the building work, if the damage has occurred despite the contractor taking all reasonable precautions in allowing for the normal drying out when carrying out the building work,
- [26] **Clause 58 (1) (k) (x)**
Omit “or supplier of a kit home”.
- [27] **Clause 61 Period of cover**
Omit clause 61 (2).
- [28] **Clause 62 Misrepresentation or non-disclosure**
Omit “, owner-builder or supplier”. Insert instead “or owner-builder”.
- [29] **Clause 66 Certificates evidencing insurance**
Omit clause 66 (2).

[30] Clause 68 Access for work

Omit “or supplier” and “or a kit home” from clause 68 (1).

[31] Clause 72 Persons entitled to apply for exemptions from insurance requirements

Omit “or supplying kit homes” from clause 72 (b).

[32] Clause 73 Temporary exemption from section 92B requirements

Omit clause 73 (2).

[33] Clause 80 Register

Omit “or the kind of kit home the contractor licence authorises the holder to contract to supply (as may be appropriate)” from clause 80 (a) (ii).

[34] Clause 80 (a) (v)

Omit “, or the kind of kit home the contractor licence authorises the holder to contract to supply (as may be appropriate),”.

[35] Clause 80 (a) (xiv)

Omit “, or kit homes supplied,”.

[36] Clause 80 (b)

Omit the paragraph.

[37] Clause 85

Omit the clause. Insert instead:

85 Advertising

In any advertisement of any kind relating to the doing or contracting to do residential building work or specialist work by the holder of a contractor licence, the following details must be included:

- (a) if the holder is an individual:
 - (i) the holder’s name or, if the holder has a business name registered under the *Business Names Act 2002* in respect of the work to which the contractor licence applies—that business name, and
 - (ii) the number of the contractor licence held by the individual,

- (b) if the holder is a partnership:
 - (i) the names of all the members of the partnership or, if the partnership has a business name registered under the *Business Names Act 2002* in respect of the work to which the contractor licence applies—that business name, and
 - (ii) the number of the contractor licence held by the partnership,
- (c) if the holder is a corporation:
 - (i) the name of the corporation or, if the corporation has a business name registered under the *Business Names Act 2002* in respect of the work to which the contractor licence applies—that business name, and
 - (ii) the number of the contractor licence held by the corporation.

Maximum penalty: 20 penalty units in the case of a corporation and 10 penalty units in any other case.

[38] Schedule 1 Forms

Omit Form 2.

[39] Schedule 4 Application fees (as substituted by the Home Building Amendment (Fees) Regulation 2009)

Omit “or supplier of kit homes”.

[40] Schedule 4 (as substituted by the Home Building Amendment (Fees) Regulation 2009)

Omit the matter relating to the Building consultancy licence.

[41] Schedule 4 (as substituted by the Home Building Amendment (Fees) Regulation 2009)

Omit the heading “**Replacement contractor licence, building consultancy licence, certificate or owner-builder permit**”.

Insert instead “**Replacement contractor licence, certificate or owner-builder permit**”.

Schedule 4 Consequential amendment of Acts and Regulations

4.1 Health Administration Act 1982 No 135

Schedule 2A Health professional boards

Omit the following:

- * Optical Dispensers Licensing Board established under the *Optical Dispensers Act 1963*

4.2 Health Care Complaints Act 1993 No 105

[1] Section 4 Definitions

Omit “*Optical Dispensers Act 1963*” from the definition of **health registration Act**.

[2] Section 4, definition of “health service”

Omit “, psychologists and optical dispensers” from paragraph (i).

Insert instead “and psychologists”.

[3] Section 4, definition of “health service”

Insert “optical dispensers,” after “services provided by” in paragraph (j).

[4] Section 94B Tribunal decisions and names of de-registered practitioners to be publicly available

Omit section 94B (1) (b) (ii).

[5] Section 94B (3)

Omit the subsection. Insert instead:

- (3) For the purposes of this section, a person’s registration as a health practitioner under a health registration Act is cancelled if any of the following happen as a result of an action, decision, determination or order of a registration board, tribunal or court under that Act:
 - (a) the person’s registration is cancelled,
 - (b) the person is de-registered,

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- (c) the person's name is removed from, or struck off, a register or a roll,
 - (d) the person's practising certificate is cancelled.

4.3 Health Professionals (Special Events Exemption) Act 1997 No 90

[1] Section 3 Definitions

Omit “, psychologists and optical dispensers” from paragraph (a) of the definition of *health care services*.

Insert instead “and psychologists”.

[2] Section 3, definition of “Health Registration Act”

Omit “*Optical Dispensers Act 1963*”.

4.4 Health Records and Information Privacy Act 2002 No 71

[1] Section 4 Definitions

Omit “, psychologists and optical dispensers” from paragraph (i) of the definition of *health service* in section 4 (1).

Insert instead “and psychologists”.

[2] Section 4 (1), definition of “health service”

Insert “optical dispensers,” after “services provided by” in paragraph (j).

4.5 Home Building Legislation Amendment Act 2001 No 51

Schedule 3 Amendments relating to building consultancy work

Omit the Schedule.

4.6 Licensing and Registration (Uniform Procedures) Act 2002 No 28

[1] Schedule 1 Licences to which Part 2 of Act applies

Omit “section 32A (1), building consultancy licence” from the matter relating to the *Home Building Act 1989*.

[2] Schedule 3 Registration to which Part 4 of Act applies

Omit the matter relating to the *Optical Dispensers Act 1963*.

[3] Schedule 3A Licences and registration to which Part 4A of Act applies

Omit “section 32A (1), building consultancy licence” from the matter relating to the *Home Building Act 1989*.

[4] Schedule 4.20 and 4.31

Omit the Subschedules.

4.7 Minors (Property and Contracts) Act 1970 No 60

Second Schedule Saving of specific enactments

Omit the matter relating to Optical Dispensers.

4.8 Optical Dispensers Act 1963 No 35

[1] Schedule 1 Savings and transitional provisions

Insert at the end of clause 1 (1):

Occupational Licensing Legislation Amendment (Regulatory Reform) Act 2009

[2] Schedule 1, Part 3

Insert at the end of the Schedule:

**Part 3 Provisions consequent on Occupational
Licensing Legislation Amendment
(Regulatory Reform) Act 2009**

6 Roll fee

Despite section 23, an optical dispenser is not required to pay any roll fee for the year commencing 1 July 2010 or any following year.

4.9 Privacy Code of Practice (General) 2003

Schedule 2 Modification of Part 6 of the Act

Omit item 12 from all of the columns.

4.10 Public Finance and Audit Act 1983 No 152

Schedule 2 Statutory bodies

Omit “Optical Dispensers Licensing Board”.

4.11 Public Health Act 1991 No 10

[1] Section 10AA Definitions

Omit “*Optical Dispensers Act 1963*” from the definition of *health registration Act* in the note to the definitions of *health practitioner*, *health registration Act*, *health service* and *registration authority*.

[2] Section 10AA, definition of “health service” in note

Omit “, psychologists and optical dispensers” from paragraph (i).
Insert instead “and psychologists”.

[3] Section 10AA, definition of “health service” in note

Insert “optical dispensers,” after “services provided by” in paragraph (j).

[4] Section 10AJ Definitions

Omit section 10AJ (2). Insert instead:

- (2) For the purposes of this Division, a person’s registration as a health practitioner under a health registration Act or corresponding health registration legislation is cancelled if any of the following happen as a result of an action, decision, determination or order of a registration board, tribunal or court under that Act or legislation:
 - (a) the person’s registration is cancelled,
 - (b) the person is de-registered,
 - (c) the person’s name is removed from, or struck off, a register or a roll,
 - (d) the person’s practising certificate is cancelled.

Occupational Licensing Legislation Amendment (Regulatory Reform)
Bill 2009

Schedule 4 Consequential amendment of Acts and Regulations

[5] Schedule 4 Savings and transitional provisions

Insert at the end of clause 1 (2A):

Occupational Licensing Legislation Amendment (Regulatory Reform) Act 2009 (but only to the extent that it amends this Act or repeals the *Optical Dispensers Act 1963*)