

Optical Dispensers Act 1963 No 35

[1963-35]



New South Wales

Status Information

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**

Licensing and Registration (Uniform Procedures) Act 2002 No 28 (not commenced)

Health Legislation Further Amendment Act 2004 No 87 (not commenced — to commence on 1.1.2005)

Authorisation

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New South Wales

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Optical Dispensers Act 1963 No 35



New South Wales

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.

1 Name of Act and commencement

- (1) This Act may be cited as the *Optical Dispensers Act 1963*.
- (2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

2 Definitions

- (1) In this Act, unless the context or subject matter otherwise indicates or requires:

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

Corporation means the Health Administration Corporation constituted by the *Health Administration Act 1982*.

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

Optical dispenser means a person licensed under this Act.

Optical dispensing means the doing or performing of any act, matter or thing that is within one or more of the following classes of acts, matters or things:

- (a) the interpretation and dispensing of prescriptions for optical appliances,
- (b) the taking of facial measurements for optical appliances,
- (c) the fitting of optical appliances for the purposes of the sale thereof, and
- (d) the 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 an

optical dispenser, nor the doing or performing of any act, matter or thing deemed not to be optical dispensing in pursuance of subsection (2).

Register means Register of Optical Dispensers for New South Wales.

Regulations means regulations under this Act.

Sale includes:

- (a) offering or exposing for sale,
- (b) keeping or having in possession for sale,
- (c) bartering or exchanging,
- (d) agreeing to sell,
- (e) sending, forwarding or delivering for sale or on sale, and
- (f) authorising, directing, causing, permitting or suffering any of those acts, matters or things.

Secretary means secretary to the board.

- (2) The regulations may provide that the doing or performing of any act, matter or thing that:
- (a) is specified in the regulations, and
 - (b) would otherwise be within one of the classes of acts, matters or things specified in paragraphs (a), (b), (c) and (d) of the definition of **Optical dispensing** in subsection (1),

shall be deemed not to be optical dispensing for the purposes of this Act.

3 Application of Act

This Act shall not apply to and in respect of any medical practitioner or any optometrist registered under the [Optometrists Act 1930](#).

4 Optical Dispensers Licensing Board

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.

5 (Repealed)

6 The board

- (1) The board shall consist of seven members who shall be appointed by the Governor.

(2) Of the members so appointed:

- (a) one shall be an officer of the Department of Health nominated by the Minister,
- (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 Australian Medical Association (NSW) Limited,
- (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 subsection (2) (b), (c), (d), (e) or (f) is not made the Governor may make the appointment and the person appointed shall be deemed to have been validly nominated.

7 Deputy of member from Department of Health

The member appointed under section 6 (2) (a) may appoint a deputy to act on the member's behalf at any meeting of the board at which the member is unable to attend, 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.

8 (Repealed)

9 Term of office

The members of the board shall, subject to this Act, hold office for such term, not exceeding 3 years, as is specified in the instrument of their respective appointments and shall be eligible for re-appointment.

10 Public Service Act not to apply to appointment

The provisions of the [Public Service Act 1979](#) 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 that Act.

11 Remuneration of members

A member of the board is entitled to be paid such remuneration (including travelling and

subsistence allowance) as the Minister may from time to time determine in respect of the member.

12 President and deputy president

- (1) Of the members of the board, one member (being an optical dispenser) shall, in and by the relevant instrument of appointment as such a member, or by another instrument executed by the Governor, be appointed as president of the board and one member shall be so appointed as deputy president of the board.
- (2) The deputy president, during the absence or illness of the president, shall act in the office of the president and, while so acting, has (except as provided by section 22A) all the powers, authorities, duties and functions of the president.
- (3) The president or, in the absence of the president, the deputy president or, in the absence of both the president and the deputy president, another member of the board elected to chair the meeting by the members present shall preside at a meeting of the board.
- (4) The person presiding at any meeting of the board has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.
- (5) The Governor may remove a member of the board from the office of president or deputy president at any time.
- (6) A person vacates office as president or deputy president if the person:
 - (a) is removed from that office by the Governor,
 - (b) resigns that office by instrument in writing addressed to the Minister, or
 - (c) ceases to be a member of the board.

13 Vacation of office

A member shall be deemed to have vacated the member's office if:

- (a) the member dies,
- (b) the member resigns the member's office by writing under the member's hand addressed to the Governor,
- (c) the member becomes a mentally ill person, a protected person or an incapable person within the meaning of the [Mental Health Act 1958](#),
- (d) the member is absent without the leave of the board from three consecutive meetings of the board,
- (e) the member is removed from office by the Governor,

- (f) (Repealed)
- (g) being an optical dispenser, the member's licence under this Act is suspended or cancelled or the member's name is for any reason removed from the register, or
- (h) the member ceases to hold the qualification by virtue of which the member was appointed as a member.

14 Removal from office

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

15 Casual vacancies

- (1) Where a casual vacancy occurs in the office of a member the Governor may appoint a person to the vacant office.
- (2) The person so appointed shall have the like prescribed qualification and nomination (if any) as that of the member whose office has become vacant and shall, subject to this Act, hold office for the residue of the person's predecessor's term of office, but shall be eligible for re-appointment.

16 Quorum and procedure of board

- (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.

17 Validation of proceedings

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.

18 Staff

A secretary to the board and such other staff as may be necessary to enable the board to exercise and perform its powers, authorities, duties and functions are to be employed under the [Health Administration Act 1982](#) by the Corporation.

19 Protection of board and staff

No matter or thing done or suffered by the board, or by any member or by the secretary or any member of staff 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, the board's or the secretary's powers or duties, shall subject the board or any member, or the

secretary, or any member of staff, or any other person, or the Crown, to any liability in respect thereof.

20 Powers and duties of board

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 licences 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.

21 Register

- (1) The board shall keep a register, to be called the "Register of Optical Dispensers for New South Wales".
- (2) A person shall be licensed by the entering in the register of:
 - (a) the person's full name,
 - (b) the date upon which the person is licensed,
 - (c) particulars of the qualification or qualifications in respect of which the person's licence is granted.
- (2A) The board is to keep a separate record of the address of each person licensed as an optical dispenser.
- (2B) Such a record is not to be made available to members of the public for inspection.
- (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) (Repealed)

22 Qualifications for licensing

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 licence 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,
- (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).

22A Provisional licence

- (1) In this section:

prescribed person means the president 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 licence in or to the effect of the prescribed form.
- (3) Where a person has been granted a provisional licence, the person shall be deemed to be licensed under this Act until:

(a) the date of expiry stated in the provisional licence, 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 licence.

- (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 licence without prejudice to the application of the holder of the provisional licence to be licensed under section 22.
- (5) If a person to whom a provisional licence has been granted becomes licensed under section 22, the licence under section 22 shall, unless otherwise decided by the board, date from the granting of the provisional licence.
- (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 licence.

22B Approval to practise in certain cases

(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 licence 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

(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.

23 Roll fee

- (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) 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 the optical dispenser by letter addressed to the optical dispenser at the optical dispenser's address appearing in the record kept by the board under section 21 (2A) that if the fee be not paid before the first day of July next following the optical dispenser's name will be removed from the register.
- (2A) 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 the optical dispenser's name from the register.
- (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 the name to the register upon payment of such fees as are prescribed.
- (3A) 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 the optical dispenser's address for entry in the record kept by the board under section 21 (2A).
- (5) Where the name of an optical dispenser has been removed from the register and until the name has been restored thereto, the optical dispenser shall be deemed not to be licensed under this Act.

24 Removal of name of deceased optical dispenser etc

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 the optical dispenser 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](#).

25 Removal of name on account of misconduct

(1) Where:

- (a) an optical dispenser has been convicted, either in New South Wales of an indictable offence, or elsewhere of an offence which, if committed in New South Wales, would have been an indictable offence, or
- (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 the optical dispenser's practice as an optical dispenser which renders the optical dispenser unfit in the public interest to practise optical dispensing,

the board may reprimand or caution such person or may remove the optical dispenser's name from the register or suspend the optical dispenser's licence for such period as the board shall think fit.

- (2) In the case of a conviction as aforesaid, no person shall have his or her name removed from the register or have his or her licence 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 licence 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.

25A Notification of complaints to, and their investigation by, the Health Care Complaints Commission

- (1) The board must notify the Health Care Complaints Commission of any complaint made to it concerning the carrying out of optical dispensing by an optical dispenser. The complaint is to be notified as soon as practicable after the complaint is made.
- (2) The board may, instead of making inquiry under section 25, refer the matter that would otherwise be the subject of inquiry for investigation by the Health Care Complaints Commission under the [Health Care Complaints Act 1993](#).
- (3) Such an investigation by the Health Care Complaints Commission is taken, for the purposes of this Act, to be an inquiry made by the board but does not prevent the board from making any further or additional inquiry.

26 Restoration of name to register

- (1) 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.
- (2) 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 licence fee, as the board may from time to time direct, and the secretary shall restore the name accordingly.

26A Written statements of decisions

- (1) If the board decides under section 25 to reprimand or caution a person, to remove a person's name from the register or to suspend a person's licence, the board shall, within one month of its decision, provide the person, and such other persons as it considers appropriate, with a written statement of its decision.
- (2) If the board makes a decision in relation to a person under any provision of this Act, other than section 25, the person may request in writing that the board provide the person with a written statement of the decision.
- (3) Any such request shall be made within 60 days after the decision to which it relates.
- (4) The board shall provide a written statement of the decision within one month of receipt of such a request.
- (5) A written statement of a decision shall:
 - (a) set out any findings on material questions of fact,
 - (b) refer to any evidence or other material on which the findings were based, and
 - (c) give the reasons for the decision.
- (6) Despite any other provision of this section, the board is not required to include confidential information in any such statement, and if a statement would be false or misleading if it did not include the confidential information, the board is not required to provide the statement.
- (7) If, because of subsection (6), confidential information is not included in a written statement of a decision or such a statement is not provided to a person, the board shall, within one month of a decision under section 25 or receipt of a request under subsection (2), give notice in writing to the person to whom the board is required (or would, but for subsection (6), be required) to provide the statement, indicating that:
 - (a) the confidential information is not included, or
 - (b) the statement will not be provided,

as appropriate, and giving the reasons why the confidential information is not included or the statement will not be provided.

(8) In this section:

confidential information means information that:

- (a) has not previously been published or made available to the public when a written statement of a decision to which it is or may be relevant is being prepared,
- (b) relates to the personal or business affairs of a person, other than a person to whom the board is required (or would, but for subsection (6), be required) to provide a written statement of a decision, and
- (c) is information:
 - (i) that was supplied in confidence,
 - (ii) the publication of which would reveal a trade secret,
 - (iii) that was provided in compliance with a duty imposed by an enactment, or
 - (iv) the provision of which by the board would be in breach of any enactment.

(9) Nothing in this section affects the power of a court to make an order for the discovery of documents or to require the giving of evidence or the production of documents to a court.

27 Right of appeal

- (1) Any person claiming to be aggrieved by any decision, ruling, order or direction of the board or secretary, or by any failure to register the person's 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.
- (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 the person 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 the judge 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 Practice by unlicensed persons prohibited

- (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:
- (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 the person is licensed under this Act as an optical dispenser, or take or use the name or title of optical dispenser.

Penalty: 10 penalty units.

Editorial note—

Day appointed under this subsection: 1.10.1964—see Gazette No 112 of 25.9.1964, p 3018.

- (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 which employs only optical 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 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.

29 Use of certain titles

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”.

Penalty: 5 penalty units.

29A Supply of optical appliance pursuant to prescription

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
- (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).

Penalty: 10 penalty units.

30 Falsification of register

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 the person 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 an indictable offence and shall, on conviction, be liable to be imprisoned for a period not exceeding twelve months.

31 Board may examine witnesses on oath

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, licence, letters, testimonial or other title, document or writing, the person shall be guilty of an indictable offence and shall, on conviction, be liable to be imprisoned for a period not exceeding twelve months.

32 Offences and penalties

- (1) 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 10 penalty units in the case of a contravention of a provision of this Act and not exceeding 5 penalty units in the case of a contravention of a provision of a regulation.
- (2) 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.
- (3) A penalty under this Act may be recovered before a Local Court constituted by a Magistrate sitting alone.

33 Evidence

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 licence under section 22,
 - (ii) the holder of a provisional licence 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 licence under section 22 of any person so mentioned was suspended,
 - (ii) the provisional licence 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.

34 Fees etc

The secretary is required to transmit to the Corporation for payment into an account established under section 13A of the [Health Administration Act 1982](#) all money received by the board (whether for fees or otherwise), not being fines or penalties or money which is required to be dealt with in some other manner.

35 Regulations

- (1) The Governor may make regulations not inconsistent with this Act for or with respect to:
- (a) licences under this Act,
 - (b) prescribing the manner in which a complaint in respect of any matter referred to in section 25 (1) 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 a diploma or other award for the purposes of section 22 (a),
 - (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) Before a regulation is made, the Minister is to give the board an opportunity to comment on the proposal concerned.
- (3) (Repealed)