

# Optometrists Act 2002 No 30

[2002-30]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

### Notes—

- **Does not include amendments by**  
[Private Health Facilities Act 2007 No 9](#) (not commenced)

### Authorisation

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# Optometrists Act 2002 No 30



New South Wales

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# Optometrists Act 2002 No 30



New South Wales

An Act to provide for the registration of optometrists; to repeal the *Optometrists Act 1930*; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Optometrists Act 2002*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Object of Act

The object of this Act is to protect the health and safety of members of the public by providing mechanisms to ensure that optometrists are fit to practise.

### 4 Definitions

(1) In this Act:

**Board** means the Optometrists Registration Board constituted under this Act.

**Chairperson** means the Chairperson of the Tribunal.

**Commission** means the Health Care Complaints Commission constituted under the *Health Care Complaints Act 1993*.

**Committee** means the Optometry Care Assessment Committee constituted under this Act.

**competence** to practise optometry has the meaning give by section 9.

**complaint** means a complaint against an optometrist under Part 4 (Complaints and disciplinary proceedings).

**conduct** means any act or omission.

**criminal finding** means a finding by a court that a person is guilty of an offence without proceeding to conviction.

**Note—**

Section 121 makes special provision with respect to the application for the purposes of this Act of the [Criminal Records Act 1991](#) in respect of criminal findings.

**Deputy Chairperson** means a Deputy Chairperson of the Tribunal.

**Director-General** means the Director-General of the Department of Health.

**exercise** a function includes perform a duty.

**function** includes a power, authority or duty.

**health registration Act** has the same meaning as in the [Health Care Complaints Act 1993](#).

**health service** has the same meaning as in the [Health Care Complaints Act 1993](#).

**Impaired Registrants Panel** means an Impaired Registrants Panel constituted under this Act.

**impairment** has the meaning given by section 10.

**Mutual Recognition laws** means the [Mutual Recognition Act 1992](#) of the Commonwealth and the [Trans-Tasman Mutual Recognition Act 1997](#) of the Commonwealth.

**professional misconduct** is defined in Part 4 (Complaints and disciplinary proceedings).

**prohibition order** has the same meaning as in section 57 (3A).

**Register** means the Register of Optometrists kept by the Board under this Act.

**registered** means registered under this Act.

**Registrar** means the Registrar of the Board holding office as such under Chapter 1A of the [Public Sector Employment and Management Act 2002](#).

**registration authority** has the same meaning as in the [Health Care Complaints Act 1993](#).

**sex/violence criminal finding** means a criminal finding for a sex/violence offence.

**sex/violence offence** means an offence involving sexual activity, acts of indecency, child pornography, physical violence or the threat of physical violence.

**Tribunal** means the Optometrists Tribunal constituted under this Act.

***unsatisfactory professional conduct*** is defined in Part 4 (Complaints and disciplinary proceedings).

## 5 Notes

Notes included in this Act are explanatory notes and do not form part of this Act.

## 6 Mutual Recognition laws

This Act does not limit or otherwise affect the operation of the Mutual Recognition laws.

## Part 2 Registration

### 7 Registration necessary for certain representations

- (1) A person who is not a registered optometrist must not indicate that the person practises optometry or is qualified to practise optometry.

Maximum penalty: 50 penalty units.

- (2) Without limiting the ways in which a person may be taken to have indicated that the person is qualified to practise optometry or that the person practises optometry, a person is taken to have so indicated if the person uses:

- (a) any name, initials, word, title, symbol or description that (having regard to the circumstances in which it is used) indicates, or is capable of being understood to indicate, or is calculated to lead a person to infer, that the person is qualified to practise optometry or that the person practises optometry, or
- (b) the title or description of “optician”, or
- (c) any name, title or description prescribed by the regulations.

#### **Note—**

Section 10AE of the [Public Health Act 1991](#) restricts the prescribing of contact lenses, spectacle lenses and other optical appliances by persons who are not registered optometrists or medical practitioners.

### 8 Qualifications for registration

- (1) A person has the necessary qualifications for registration as an optometrist if the person:

- (a) has such qualifications as may be prescribed by the regulations, or
- (b) has successfully completed a course of study that is recognised by the Board as meeting criteria prescribed by the regulations for the purposes of this paragraph, or
- (c) has such qualifications as may be approved by the Board on the recommendation of an accreditation body recognised by the Board for the purposes of this section,

or

(d) has passed an examination arranged or approved by the Board to assess the person's competence to practise optometry.

(2) An educational or training institution may apply to the Board for the recognition by the Board (under subsection (1) (b)) of a course of study offered by the institution. The institution may make application to the Administrative Decisions Tribunal for a review of the decision of the Board on the application.

(3) In determining for the purposes of subsection (1) (b) whether a particular course of study meets the criteria prescribed by the regulations, the Board may have regard to and rely on any findings made on an assessment prepared for the Board in respect of the course of study.

(4) In this section:

**qualification** means a degree, diploma, certificate or other academic award conferred or awarded for the successful completion of a course of training in optometry.

## 9 Competence

For the purposes of this Act, a person is competent to practise optometry only if the person has sufficient physical capacity, mental capacity and skill to practise optometry and has sufficient communication skills for the practice of optometry, including an adequate command of the English language.

## 10 Impairment

(1) For the purposes of this Act, a person suffers from an impairment if the person suffers from any physical or mental impairment, disability, condition or disorder that detrimentally affects or is likely to detrimentally affect the person's physical or mental capacity to practise optometry.

(2) For the purposes of this Act, a person who habitually abuses alcohol or is addicted to a deleterious drug is taken to suffer from an impairment.

## 11 Full registration

(1) A person is entitled to registration as an optometrist if the Board is satisfied that the person has the necessary qualifications for registration as an optometrist and is of good character.

(2) Registration under this section is **full registration**.

(3) An entitlement to full registration does not prevent conditions being imposed on that registration in accordance with this Act.

(4) Schedule 1 (Registration procedures) has effect with respect to full registration.

**Note—**

By virtue of section 20 of the *Mutual Recognition Act 1992* of the Commonwealth a person is entitled to be registered as an optometrist if the person is registered in another State or a Territory for an equivalent occupation (if that State or Territory participates in the mutual recognition scheme). The entitlement arises once the person lodges a notice under section 19 of that Act and, until registered under this Act, the person is then deemed (by section 25 of that Act) to be registered. See also the *Trans-Tasman Mutual Recognition Act 1997* of the Commonwealth.

## **12 Provisional registration**

- (1) Registration as an optometrist may be granted:
  - (a) to a person entitled to full registration, pending the Board's determination of the person's application for full registration, or
  - (b) to a person who will be entitled to full registration when a degree, diploma, certificate or other academic award to which the person is entitled is granted or conferred, pending its grant or conferral.
- (2) Registration under this section is **provisional registration**.
- (3) Provisional registration is granted by the Board or the President. In the President's absence it can be granted by any member of the Board authorised by the Board to do so. Provisional registration is granted by the grant of a certificate of provisional registration.
- (4) A person granted provisional registration is a registered optometrist until the registration expires or is cancelled. Provisional registration expires on the date stated in the certificate or such later date as may be fixed by the Board.
- (5) The Board may impose such conditions as it thinks fit on a person's provisional registration and may at any time remove, add to or vary those conditions by notice in writing to the registered person.
- (6) The Board may cancel a person's provisional registration for any reason that the Board considers proper. Cancellation does not affect any application for registration by the person.
- (7) If a person granted provisional registration is granted full registration before the person's provisional registration expires, the person's full registration dates from the granting of provisional registration, unless the Board decides otherwise.

## **13 Temporary registration**

- (1) Registration for a limited period may be granted to a person who is not normally resident in New South Wales, for the purpose of enabling the person to carry out educational or research activities or such other activities as the Board considers to be

in the public interest.

- (2) Registration under this section is **temporary registration**.
- (3) Temporary registration can only be granted to a person:
  - (a) who is registered as an optometrist in accordance with a law in force in the person's normal place of residence providing for the registration or certification of optometrists, or
  - (b) who holds such qualifications or has such experience in the practice of optometry as the Board considers satisfactory for the purposes of temporary registration.
- (4) Temporary registration is granted by the Board by the grant of a certificate of temporary registration.
- (5) A person granted temporary registration is a registered optometrist until the temporary registration expires or is cancelled. Temporary registration expires on the date stated in the certificate unless the period of temporary registration is extended.
- (6) The Board may extend and further extend a period of temporary registration by the issue of a further certificate of temporary registration.
- (7) The Board may cancel a person's temporary registration for any reason that the Board considers proper. Cancellation does not affect any application for full registration by the person.
- (8) The Board may impose such conditions as it thinks fit on the temporary registration of a person and may at any time remove, add to or vary those conditions by notice in writing to the registered person.

#### **14 Power to refuse or impose conditions on full registration**

- (1) The Board may refuse to register a person who would otherwise be entitled to full registration if:
  - (a) the Board is of the opinion, following an inquiry under Schedule 1, that the person is not competent to practise optometry or suffers from an impairment, or
  - (b) the person has been convicted of or made the subject of a criminal finding for an offence, either in or outside the State, and the Board is of the opinion that the circumstances of the offence are such as to render the person unfit in the public interest to practise optometry, or
  - (c) the person's registration under a health registration Act has been cancelled or suspended because of conduct that would (if the person were a registered optometrist) authorise cancellation or suspension of the person's registration under this Act, or

(d) the person's registration or certification under an optometrists registration law has been cancelled or suspended because of conduct that would (if it occurred in New South Wales and the person were a registered optometrist) authorise cancellation or suspension of the person's registration under this Act.

(2) As an alternative to refusing to register a person under subsection (1), the Board may grant the person registration subject to conditions if the Board considers that refusal of registration is not warranted and that the person should be granted registration subject to appropriate conditions.

(3) Conditions of registration may relate to the duration of registration, the aspects of the practice in which the person may be engaged, and any other matters, as the Board thinks appropriate.

**Note—**

The Mutual Recognition laws also provide for the imposition of conditions on registration. Conditions can also be imposed on a person's registration as a result of disciplinary proceedings to which the person has been subject.

(4) In this section:

***optometrists registration law*** means any law of a place outside the State that provides for the registration or certification of optometrists.

## **15 Cancellation and suspension of registration**

(1) A person ceases to be registered as an optometrist if the person's name is removed from the Register. A reference in this Act to the cancellation of an optometrist's registration is a reference to the removal of the optometrist's name from the Register.

(2) A person whose registration as an optometrist is suspended is taken not to be a registered optometrist during the period of the suspension, except for the purposes of Part 4 (Complaints and disciplinary proceedings).

## **16 Restrictions on registration of deregistered persons**

(1) A person cannot apply for registration (and any such application must be rejected) if:

(a) the person's registration is cancelled pursuant to an order of the Chairperson or a Deputy Chairperson, the Tribunal or the Supreme Court, or

(b) the Chairperson or a Deputy Chairperson, the Tribunal or the Supreme Court orders that the person not be re-registered.

(2) The only way such a person can again be registered is on a review under Division 3 of Part 6 of the order by which the person's registration was cancelled.

## 17 Appeals concerning registration

- (1) A person who is aggrieved by any of the following decisions of the Board may appeal to the Tribunal against the decision:
  - (a) the Board's refusal to grant the person full registration,
  - (b) the Board's refusal to grant the person temporary registration,
  - (c) the Board's decision to refuse to register the person under section 14 or to grant the person registration subject to conditions under that section,
  - (d) the Board's cancellation of the person's provisional registration or temporary registration,
  - (e) the Board's refusal to register the person under clause 28 (Entitlement to re-registration if fee paid) of Schedule 1.
- (2) An appeal must be made within 28 days (or such longer period as the Chairperson may allow in a particular case) after notice of the decision is given to the person. The appeal is to be lodged with the Registrar who is to refer it to the Tribunal.
- (3) If the decision in respect of which an appeal is made was made as a consequence of an inquiry held by the Board, the appeal is to be dealt with by way of rehearing and fresh evidence or evidence in addition to or in substitution for the evidence received at the inquiry may be given.
- (4) An appeal does not affect any determination with respect to which it is made until the appeal is determined.
- (5) When it determines an appeal, the Tribunal may dismiss the appeal or order that the decision of the Board be revoked and replaced by a different decision made by the Tribunal and specified in the order. The Tribunal may also make such ancillary orders as it thinks proper.
- (6) The Tribunal's decision is taken to be a decision of the Board (but this does not confer a right of appeal under this section in respect of the Tribunal's decision).
- (7) No appeal lies under this Act against a decision of the Board under the Mutual Recognition laws in relation to its functions under that Act.

### Note—

The Mutual Recognition laws provide that a person may, subject to the [Administrative Appeals Tribunal Act 1975](#) of the Commonwealth, apply to the Administrative Appeals Tribunal for a review of a decision of a local registration authority in relation to its functions under the Mutual Recognition laws. Those functions include registration, the imposition or waiver of conditions on registration and the postponement, refusal or reinstatement of registration.



## Part 3 Practice of optometry

### Note—

Section 10AE of the *Public Health Act 1991* restricts the prescribing of contact lenses, spectacle lenses and other optical appliances by persons who are not registered optometrists or medical practitioners.

## Division 1 Conduct of practice

### 18 Use of titles

- (1) A registered optometrist must not use the title “doctor” in the course of the practice of optometry unless the optometrist is the holder of a qualification conferred by a university that entitles the optometrist to use that title and that qualification is a recognised qualification at the time the optometrist uses the title.

Maximum penalty: 10 penalty units.

- (2) In this section:

**recognised qualification** means:

- (a) a qualification that is prescribed by the regulations as a recognised qualification, or
- (b) when no qualification is prescribed under paragraph (a), a qualification that is for the time being recognised by the Board for the purposes of this section.

### Note—

See also section 105 (Use of misleading titles etc) of the *Medical Practice Act 1992*.

### 19 Use of specialist title

- (1) A registered optometrist must not in the course of the practice of optometry use the title “specialist”, or any other title prescribed by the regulations for the purposes of this section, unless the use of the title by the optometrist has been approved by the Board.

Maximum penalty: 10 penalty units.

- (2) An approval under this section may be given subject to conditions and the conditions to which an approval is subject may be added to, varied or removed by the Board by notice in writing to the optometrist.
- (3) An approval under this section may be revoked by the Board by notice in writing to the optometrist.

### 20 Code of professional conduct

- (1) The Board may establish a code of professional conduct setting out guidelines that

should be observed by registered optometrists in their professional practice. The Board may from time to time amend or replace a code of professional conduct.

- (2) The Minister may require the Board to develop guidelines relating to any conduct of registered optometrists that the Minister considers should be the subject of a code of professional conduct.
- (3) For that purpose, the Minister may:
  - (a) direct the Board to establish a code of professional conduct, or
  - (b) direct the Board to amend or replace a code of professional conduct, so that the code includes guidelines relating to that conduct.
- (4) The Board is to comply with any such direction of the Minister.
- (5) The provisions of a code of professional conduct are a relevant consideration in determining for the purposes of this Act what constitutes proper and ethical conduct by an optometrist.
- (6) The procedure for the establishment of a code of professional conduct is as follows:
  - (a) the Board is to prepare a proposed code in draft form and is to prepare an impact assessment statement for the proposed code in accordance with such requirements as the Minister may from time to time determine,
  - (b) the draft code and impact assessment statement are to be publicly exhibited for a period of at least 21 days,
  - (c) the Board is to seek public comment on the draft code during the period of public exhibition and public comment may be made during the period of public exhibition and for 21 days (or such longer period as the Board may determine) after the end of that period,
  - (d) the Board is to submit the draft code to the Minister for approval together with a report by the Board giving details of public comment received during the period allowed for public comment and the Board's response to it,
  - (e) the Board is not to establish the draft code as a code of professional conduct unless the Minister approves the draft.
- (7) The procedure for the amendment or replacement of a code of professional conduct is the same as for the establishment of the code unless the Minister otherwise directs in respect of a particular amendment.

## **21 Authority for use of drugs by optometrists**

- (1) The Board may grant a registered optometrist an optometrists drug authority under

section 17B of the *Poisons and Therapeutic Goods Act 1966* if satisfied, on the basis of criteria approved under that section for assessing competency, that the optometrist meets the competency standards approved under that section in respect of the class of authority concerned.

**Note—**

Section 17B of the *Poisons and Therapeutic Goods Act 1966* authorises an optometrist who holds an optometrists drug authority to possess, use, supply or prescribe, in the practice of optometry, such poisons and restricted substances as may be approved under that section in respect of the class of authority concerned.

- (2) The Board may grant an optometrists drug authority subject to conditions and the conditions of the authority may be altered or added to by the Board at any time by notice in writing to the optometrist.
- (2A) An application for an optometrists drug authority is to be accompanied by such fee (if any) as is determined by the Minister in consultation with the Board.
- (3) An optometrists drug authority remains in force (unless sooner cancelled) for the period specified in the authority but that period is not to exceed the relevant maximum period for an authority approved under section 17B of the *Poisons and Therapeutic Goods Act 1966*. This subsection does not prevent the grant of further optometrists drug authorities to an optometrist.
- (4) The Board may withdraw an optometrists drug authority at any time by notice in writing to the optometrist.
- (5) For the purposes of the *Poisons and Therapeutic Goods Act 1966* (and despite any provision of that Act) a registered optometrist is authorised to possess and use, in the practice of optometry, such cycloplegics, local anaesthetics, mydriatics, miotics and such other drugs (being one or more of the drugs prescribed under section 29A (2) of the *Optometrists Act 1930* immediately before the repeal of that section) as may be prescribed for use by registered optometrists by the regulations under this Act, but only for such purposes as may be prescribed by those regulations.

## **22 Disclosure to patients**

- (1) The regulations may make provision for or with respect to the following:
  - (a) requiring an optometrist who refers a patient to another provider of eye care services, for the provision of eye care services to the patient, to disclose to the patient details of any financial or other interest that the optometrist has in the business of that other provider,
  - (b) requiring an optometrist who provides optometrical services in the optometrist's capacity as an employee to provide his or her name to patients.
- (2) An optometrist must comply with the requirements of the regulations under this

section.

Maximum penalty: 20 penalty units.

### **23 Ownership of optometry practices**

Nothing in this Act (except section 120D) prevents a registered optometrist from practising optometry as the director or employee of any corporation or in the course of employment by, or in association with, any body or person.

## **Division 2 Returns and information**

### **24 Annual return to be submitted**

- (1) A registered optometrist must, on or before the return date in each year, furnish in writing to the Board in a form approved by the Board a return for the return period specifying the following information:
  - (a) details of any conviction of the optometrist for an offence in this State or elsewhere during the return period (together with details of any penalty imposed for the offence),
  - (b) details of the making of a sex/violence criminal finding against the optometrist for an offence, in this State or elsewhere, during the return period (together with details of any penalty imposed for the offence),
  - (c) details of the making of a criminal finding against the optometrist for an offence committed in the course of the practice or purported practice of optometry, in this State or elsewhere, during the return period (together with details of any penalty imposed for the offence),
  - (d) details of any criminal proceedings pending against the optometrist at the end of the return period, in this State or elsewhere, for a sex/violence offence alleged to have been committed in the course of the practice or purported practice of optometry,
  - (e) details of any criminal proceedings pending against the optometrist at the end of the return period, in this State or elsewhere, for a sex/violence offence alleged to have been committed against a minor or to involve child pornography (whether or not alleged to have been committed in the course of the practice or purported practice of optometry),
  - (f) details of any significant illness (physical or mental) from which the optometrist suffered at any time during the return period and that may reasonably be thought likely to detrimentally affect the optometrist's physical or mental capacity to practise optometry,
  - (g) details of any suspension of, cancellation of, or imposition of conditions on, the

registration of the optometrist as an optometrist in another jurisdiction (either within Australia or elsewhere) during the return period,

- (h) details of any suspension of, cancellation of, or imposition of conditions on, any registration of the optometrist under a health registration Act during the return period,
- (i) a statement as to whether the optometrist is registered under a health registration Act as at the date of the return,
- (j) a statement as to whether the optometrist has been refused registration as an optometrist in another jurisdiction (either within Australia or elsewhere) during the return period,
- (k) details of any continuing professional education undertaken by the optometrist during the return period,
- (l) such other information as may be prescribed by the regulations.

(2) The Board may require a return under this section to be verified by statutory declaration.

(3) The regulations may provide that subsection (1) (a) does not apply in respect of particular offences.

(4) In this section:

**return date** means a date notified to optometrists by the Board in writing at least 1 month in advance.

**return period** means the period of 12 months ending 2 months before the return date.

## **25 Notification of convictions, criminal findings and charges**

(1) A registered optometrist must notify the Board in writing within 7 days after:

- (a) the optometrist is convicted of an offence or made the subject of a sex/violence criminal finding for an offence, in this State or elsewhere, giving details of the conviction or criminal finding and any penalty imposed for the offence, or
- (b) criminal proceedings are commenced against the optometrist, in this State or elsewhere, in respect of a sex/violence offence alleged to have been committed in the course of the practice or purported practice of optometry, or
- (c) criminal proceedings are commenced against the optometrist, in this State or elsewhere, in respect of a sex/violence offence alleged to have been committed against a minor or to involve child pornography (whether or not alleged to have been committed in the course of the practice or purported practice of optometry).

- (2) The regulations may provide that subsection (1) (a) does not apply in respect of particular offences.

## **26 Courts to provide information on convictions**

- (1) As soon as practicable after a registered optometrist is convicted of an offence or a sex/violence criminal finding is made against a registered optometrist, the Clerk or other proper officer of the court must (if the court is aware that the person is a registered optometrist) notify the Board of the conviction or criminal finding together with details of any penalty imposed for the offence.
- (2) The regulations may provide that this section does not apply in respect of particular offences.

## **27 Referral of mental health matters to Registrar**

If a registered optometrist becomes a mentally incapacitated person, the person prescribed by the regulations must cause notice of that fact to be given to the Registrar in accordance with the regulations.

# **Part 4 Complaints and disciplinary proceedings**

## **Division 1 Interpretation**

### **28 Meaning of “professional misconduct”**

For the purposes of this Act, **professional misconduct**, in relation to a registered optometrist, means unsatisfactory professional conduct of a sufficiently serious nature to justify suspension or cancellation of the optometrist’s registration.

### **29 Meaning of “unsatisfactory professional conduct”**

- (1) For the purposes of this Act, **unsatisfactory professional conduct**, in relation to a registered optometrist, includes any of the following:
- (a) any conduct that demonstrates that the knowledge, skill or judgment possessed, or care exercised, by the optometrist in the practice of optometry is significantly below the standard reasonably expected of an optometrist of an equivalent level of training or experience,
  - (b) engaging in overservicing as provided by subsection (2),
  - (c) a contravention by the optometrist of a provision of this Act or the *Poisons and Therapeutic Goods Act 1966* or the regulations under those Acts,
  - (d) a contravention by the optometrist of a condition of the optometrist’s registration or of an authority under section 21 (Authority for use of drugs by optometrists),
  - (e) a failure without reasonable excuse by the optometrist to comply with a direction

by the Board to provide information with respect to a complaint under this Part against the optometrist,

- (f) a failure by the optometrist to comply with an order made or a direction given by the Board or the Tribunal under this Act,
- (g) a contravention by the optometrist of section 34A (4) (Power of Commission to obtain information, records and evidence) of the *Health Care Complaints Act 1993*,
- (h) (Repealed)
- (i) any other improper or unethical conduct by an optometrist in the course of the practice of optometry.

(2) An optometrist engages in overservicing if the optometrist, in the course of professional practice:

- (a) provides a service in circumstances in which provision of the service is unnecessary, not reasonably required or excessive, or
- (b) engages in conduct prescribed by the regulations as constituting overservicing.

(3) (Repealed)

### **29A References to “complaint”**

In section 40 and Divisions 3, 4 and 5 of this Part and Divisions 1 and 2 of Part 6 (Appeals and review of disciplinary action), a reference to a complaint includes a reference to a matter arising out of the investigation of a complaint in accordance with this or any other Act.

## **Division 2 Complaints**

### **30 Grounds for complaints**

- (1) A complaint may be made under this Act concerning:
  - (a) the professional conduct of a registered optometrist, or
  - (b) the provision of an optometrical service by a registered optometrist.

#### **Note—**

Subsection (1) ensures consistency between this Act and the *Health Care Complaints Act 1993* with respect to the kinds of complaints that can be made about registered optometrists.

- (2) Without limiting the generality of subsection (1), a complaint may be made that a registered optometrist:
  - (a) has, either in or outside New South Wales, been convicted of or made the subject

of a criminal finding for an offence, and the circumstances of the offence are such as to render the optometrist unfit in the public interest to be registered as an optometrist, or

(b) is guilty of unsatisfactory professional conduct or professional misconduct, or

(c) is not competent to practise optometry, or

(d) suffers from an impairment, or

(e) is not of good character.

(3) A complaint need not be made in terms that are strictly in accordance with the terminology of this section.

(4) In determining for the purposes of this Act whether an optometrist is of good character regard may be had to conduct of the optometrist before becoming registered as an optometrist.

### **31 Complaint can be made even if person no longer registered**

A complaint about a registered optometrist may be made and dealt with even though the optometrist has ceased to be registered. For that purpose, a reference in this Part to an optometrist or registered optometrist includes a reference to a person who has ceased to be registered or whose registration is suspended.

### **32 Who can make a complaint**

Any person (including the Board) can make a complaint.

### **33 Complaints to be made to the Board**

Complaints are to be made to the Board and are to be lodged with the Registrar.

#### **Note—**

Complaints may also be made to the Commission.

### **34 Form of complaint**

(1) A complaint must be in writing, must identify the complainant and must contain particulars of the allegations on which it is founded.

(2) (Repealed)

(3) The Board may consider and investigate a complaint even if it does not comply with the requirements of this section (except the requirement that it identify the complainant) but must not proceed to deal with the complaint under this Part until they are complied with.

(4) The Board may require the complainant to provide further particulars of a complaint.



### **35 Board to notify Commission of complaints**

The Board must notify the Commission of any complaint made under this Part and this is to be done as soon as practicable after the complaint is made.

### **36 (Repealed)**

### **37 Investigation of complaint by Board**

The Board may make such inquiries concerning a complaint as it thinks fit.

### **38 Role of the Commission**

- (1) Before the Board deals with or refers a complaint under this Part, the Board and the Commission must consult in order to see if agreement can be reached between them as to the course of action to be taken concerning a complaint.
- (2) Division 2 of Part 2 of the *Health Care Complaints Act 1993* applies to the consultation and the outcomes of the consultation.

### **39 How complaints are dealt with**

- (1) When a complaint is made, the Board may at any time decide:
  - (a) to refer the complaint for investigation by the Commission, or
  - (b) to refer the complaint to the Commission for conciliation or to be dealt with under Division 9 of Part 2 of the *Health Care Complaints Act 1993*, or
  - (c) to refer the complaint to the Optometry Care Assessment Committee under Division 3, or
  - (d) to refer the matter to an Impaired Registrants Panel under Part 5, or
  - (e) to deal with the complaint by inquiry at a meeting of the Board under Division 4, or
  - (f) to refer the complaint to the Tribunal, or
  - (g) to deal with the complaint by directing the optometrist to attend counselling, or
  - (h) to deal with the complaint by providing advice or making recommendations to the optometrist, or
  - (i) to decline to deal with or dismiss the complaint.
- (2) If the Commission recommends to the Board in accordance with the *Health Care Complaints Act 1993* that a complaint (whether made under that Act or this Act) be dealt with by inquiry at a meeting of the Board under Division 4, the Board must comply with that recommendation (but only if the complaint is of a kind that can be

made under this Act).

- (3) The Board may decline to deal with a complaint if the optometrist concerned has ceased to be registered.
- (4) The Board may decline to deal with a complaint if the complainant fails to provide further particulars required by the Board.
- (5) A complaint may be withdrawn by the complainant at any time. The Board and the Commission are to consult as to whether the complaint should be proceeded with in the public interest.
- (6) The Board is to notify the optometrist of any action taken by the Board under this section.

#### **40 Serious complaints must be referred to Tribunal**

- (1) Both the Board and the Commission are under a duty to refer a complaint to the Tribunal if at any time either forms the opinion that it may, if substantiated, provide grounds for the suspension or cancellation of the optometrist's registration.
- (2) However, either the Board or the Commission may decide not to refer the complaint to the Tribunal if of the opinion that the allegations on which the complaint is founded (and on which any other pending complaint against the optometrist is founded) relate solely or principally to the physical or mental capacity of the optometrist to practise optometry.
- (3) If the Board decides not to refer the complaint to the Tribunal, the Board must instead deal with the complaint at a meeting of the Board under Division 4. If the Commission decides not to refer the complaint to the Tribunal, the Commission must instead refer the complaint to the Board.
- (4) This section does not require the Board or the Commission to refer a complaint that the Board or Commission thinks is frivolous or vexatious.

#### **41 Medical examination of optometrist**

- (1) The Board may, before or while taking any action under this Part or Part 5 (Impairment), by notice to the optometrist concerned, require the optometrist to undergo an examination at the Board's expense by a medical practitioner, or other appropriate health professional, specified in the notice, at any reasonable time and place specified in the notice.
- (2) A failure by an optometrist, without reasonable cause, to comply with a notice given under this section to undergo an examination is, for the purposes of this Part or any inquiry or appeal under this Part, evidence that the optometrist does not have sufficient physical and mental capacity to practise optometry.

- (3) A medical practitioner or other health professional who conducts an examination under this section is to report to the Board on the results of the examination. The Board is to provide a copy of the report to the optometrist.
- (4) A person must not directly or indirectly make a record of or divulge to any person any information contained in a report to the Board under this section that has come to the person's notice in the exercise of the person's functions under this Act, except for the purpose of exercising functions under this Act.

Maximum penalty: 50 penalty units.

- (5) A person cannot be required in civil proceedings in any court to produce or permit access to any report made to the Board under this section or to divulge the contents of any such report.
- (6) In this section:

**court** includes any tribunal, authority or person having power to require the production of documents or the answering of questions but does not include the Tribunal.

**report** includes a copy, reproduction and duplicate of the report or any part of the report, copy, reproduction or duplicate.

#### **42 Notification of orders to employer and others**

- (1) The Board is required to give notice of any order made in respect of a registered optometrist under this Act, or the placing of conditions on the registration of a registered optometrist, to the following persons:
  - (a) the employer (if any) of the optometrist concerned,
  - (b) the chief executive officer (however described) of any public health organisation (within the meaning of the [Health Services Act 1997](#)) in respect of which the optometrist concerned is a visiting practitioner or is otherwise accredited,
  - (c) the chief executive officer (however described) of any private hospital or day procedure centre (within the meaning of the [Private Hospitals and Day Procedure Centres Act 1988](#)) in respect of which the optometrist concerned is accredited,
  - (d) the chief executive officer (however described) of any nursing home (within the meaning of the [Public Health Act 1991](#)) in respect of which the optometrist concerned is accredited.
- (2) The notice is to be given within 7 days after:
  - (a) in the case of an order made or conditions imposed by the Board—the date the order is made or the conditions are imposed, or

(b) in any other case—the date the Board is given a copy of the decision of the body that made the order or imposed the conditions.

(3) The notice is to include such information as the Board considers appropriate.

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

#### **43 Kinds of complaints that can be referred to Committee**

- (1) The Board may refer a complaint to the Committee only if the Commission has decided not to investigate the complaint.
- (2) A complaint may not be referred to the Committee if it is a complaint that the optometrist is not of good character or has been convicted of or made the subject of a criminal finding for an offence.
- (3) This section does not operate to limit the Committee in the exercise of its functions under this Division in respect of any matter that arises in the course of the Committee's investigation of a complaint.

#### **44 How complaints are dealt with**

- (1) When a complaint is referred to the Committee, the Committee is to investigate the complaint and may in any particular case encourage the complainant and the optometrist against whom the complaint is made to settle the complaint by consent.
- (2) The Committee may obtain such optometrical, medical, legal, financial or other advice as it thinks necessary or desirable to enable it to exercise its functions.
- (3) The Committee may not determine a complaint referred to it except by settlement by consent.
- (4) The Committee is to make a report to the Board on a complaint referred to it whether or not it is able to effect settlement of the complaint by consent.

#### **45 Skills testing of optometrist**

- (1) The Committee may, by notice to the optometrist who is the subject of a complaint referred to the Committee, require the optometrist to undergo skills testing at the Board's expense by an appropriately qualified person specified in the notice, at any reasonable time and place specified in the notice.
- (2) A failure by an optometrist, without reasonable cause, to comply with a notice given under this section to undergo skills testing is, for the purposes of this Part or any inquiry or appeal under this Part, evidence that the optometrist does not have sufficient skill to practise optometry.

- (3) The person who conducts skills testing under this section is to report to the Committee on the results of the examination. The Committee is to provide a copy of the report to the optometrist.
- (4) A person must not directly or indirectly make a record of or divulge to any person any information contained in a report to the Committee under this section that has come to the person's notice in the exercise of the person's functions under this Act, except for the purpose of exercising functions under this Act.

Maximum penalty: 50 penalty units.

- (5) A person cannot be required in civil proceedings in any court to produce or permit access to any report made to the Committee under this section or to divulge the contents of any such report.

- (6) In this section:

**court** includes any tribunal, authority or person having power to require the production of documents or the answering of questions but does not include the Tribunal.

**report** includes a copy, reproduction and duplicate of the report or any part of the report, copy, reproduction or duplicate.

#### **46 Recommendations of the Committee**

- (1) The Committee's report to the Board may include such recommendations with respect to the complaint as the Committee considers appropriate, including (without being limited to) any of the following recommendations:
  - (a) a recommendation that the Board deal with the complaint by inquiry at a meeting of the Board as a complaint of unsatisfactory professional conduct,
  - (b) a recommendation that the Board direct the optometrist to attend counselling,
  - (c) a recommendation that the Board dismiss the complaint.
- (2) The Board is to provide the optometrist and the Commission with a copy of the Committee's report and recommendations as soon as practicable after the report is made.
- (3) The Board must comply with a recommendation of the Committee that the Board deal with the complaint by inquiry at a meeting of the Board as a complaint of unsatisfactory professional conduct.
- (4) Otherwise the Board is to allow the Commission and the optometrist at least 21 days after they have been provided with a copy of the Committee's report and recommendations to make submissions in respect of the report and recommendations.

(5) After considering the Committee's report and recommendations and any submissions made by the optometrist or the Commission in respect of the report or recommendations, the Board is to proceed to deal with the complaint as provided by section 39.

(6) This section is subject to section 40 (Serious complaints must be referred to Tribunal).

#### **47 No legal representation for parties appearing before the Committee**

A complainant and the 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**

#### **48 Procedures for dealing with complaint at meeting**

- (1) If the Board decides to deal with a complaint by inquiry at a meeting of the Board, the meeting is to be held in accordance with Schedule 3 and this Division.
- (2) The Board may be assisted by an Australian lawyer when dealing with a complaint at a meeting of the Board.
- (3) The Board is to provide the Commission with a copy of any submission made to the Board by the optometrist in respect of the complaint or in respect of any recommendation of the Committee concerning the complaint.

#### **49 General procedure**

The procedure for the calling of a meeting to deal with a complaint and for the conduct of the meeting is, subject to this Act and the regulations, to be as determined by the Board.

#### **50 Conduct of meeting**

At a meeting to deal with a complaint, the Board:

- (a) may inform itself on any matter in such manner as it thinks fit, and
- (b) may receive written or oral submissions, and
- (c) is to proceed with as little formality and technicality, and as much expedition, as the requirements of this Act and the proper consideration of the complaint permit, and
- (d) is not bound by rules of evidence, and
- (e) may proceed to deal with the complaint in the absence of the optometrist.

#### **51 Making submissions to inquiry**

- (1) The optometrist is entitled to attend the meeting during the course of the Board's inquiry and to make submissions to the Board.

- (2) The Committee may, if the Board so requires, make a submission to the Board with respect to the complaint and may for that purpose attend the meeting during the course of the Board's inquiry.
- (3) The Board is to afford the Commission the opportunity to make a submission to the Board with respect to the complaint and the Commission may for that purpose attend the meeting during the course of the Board's inquiry.
- (4) The Committee or the Commission may not be present at the meeting except while actually making a submission in accordance with this section, unless the Board otherwise determines.
- (5) Despite subsection (4), the Commission is to be present throughout the Board's inquiry where the complaint is the subject of a recommendation of the Commission under section 39 (2) that it be dealt with by inquiry at a meeting of the Board under this Division.
- (6) The optometrist is not entitled to be legally represented at the inquiry but may be accompanied by a support person. The support person can be an Australian lawyer.
- (7) The Commission is not entitled to be legally represented at the inquiry.

## **52 Decision of the Board**

- (1) 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 thinks fit, a written statement of the decision.
- (2) If the Commission made a submission to the Board with respect to the complaint, the Board is to provide the Commission with a copy of the written statement of the decision.
- (3) The written statement of a decision must give the reasons for the decision.
- (4) The Board is not required to include confidential information in any such statement. 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.
- (5) When confidential information is not included in the statement of a decision provided to a person or the statement is not provided to a person because of subsection (4), the Board must give a confidential information notice to the person.
- (6) A **confidential information notice** is a notice that indicates that confidential information is not included or that the statement will not be provided (as appropriate) and gives the reasons for this. The notice must be in writing and must be given within one month after the decision is made.
- (7) This section does not affect 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.

(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, and
- (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 (4), be required) to provide a written statement of a decision, and
- (c) is information:
  - (i) that was supplied in confidence, or
  - (ii) the publication of which would reveal a trade secret, or
  - (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.

### **53 Admissibility of Board's findings**

A finding of the Board under this Division is admissible as evidence in any legal proceedings.

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

### **54 Powers may be exercised if complaint proved or admitted**

The Board or the Tribunal may exercise any power or combination of powers conferred on it by this Division if the Board (pursuant to an inquiry at a meeting of the Board under Division 4) or the Tribunal finds the subject-matter of a complaint of a kind referred to in section 30 (2) to have been proved or the person admits to it in writing to the Board or the Tribunal.

### **55 General powers of the Board**

- (1) The Board may do any one or more of the following:
  - (a) caution or reprimand the person,
  - (b) make an order for the withholding or refunding of part or all of the payment for the optometry services that are the subject of the complaint,
  - (c) order that the person seek and undergo medical or psychiatric treatment or counselling,



- (d) direct that such conditions relating to the person's practice of optometry as it considers appropriate be imposed on the person's registration,
  - (e) order that the person complete a specified educational course or courses,
  - (f) order that the person report on his or her optometry practice at specified times, in a specified manner and to specified persons,
  - (g) order that the person seek and take advice, in relation to the management of his or her optometry practice, from a specified person or persons.
- (2) If the person is not registered, an order or direction can still be given under this section but has effect only so as to prevent the person being registered unless the order is complied with or to require the conditions concerned to be imposed when the person is registered, as appropriate.

#### **56 Power of the Board to recommend suspension or cancellation of registration**

- (1) The Board may recommend that the registration of an optometrist be suspended for a specified period or cancelled if the Board is satisfied (when it finds on a complaint about the optometrist) that the optometrist does not have sufficient physical and mental capacity to practise optometry.
- (2) If the optometrist is not registered, a recommendation can be made under this section that the optometrist not be re-registered.
- (3) The Board makes its recommendation by referring the matter with its recommendation to the Chairperson or to a Deputy Chairperson nominated by the Chairperson.
- (4) The Chairperson or Deputy Chairperson may then make an order in the terms recommended or may make such other order as to the suspension or registration of the optometrist as the Chairperson or Deputy Chairperson thinks proper based on the findings of the Board.
- (5) An order may also provide that an application for review of the order under Division 3 of Part 6 may not be made until after a specified time.
- (6) Instead of making an order under this section, the Chairperson or Deputy Chairperson may exercise any power or combination of powers of the Board under this Division.

#### **57 Powers of the Tribunal**

- (1) The Tribunal may exercise any power that the Board can exercise under this Division.
- (2) The Tribunal may by order suspend a person's registration for a specified period or direct that a person's registration be cancelled if the Tribunal is satisfied (when it finds on a complaint about the person):

- (a) that the person is not competent to practise optometry, or
  - (b) that the person is guilty of professional misconduct, or
  - (c) that the person has been convicted of or made the subject of a criminal finding for an offence, either in or outside New South Wales, and the circumstances of the offence are such as to render the person unfit in the public interest to practise optometry, or
  - (d) that the person is not of good character.
- (3) An order that a person's registration be cancelled is an order that the person's name be removed from the Register or (if the person has already ceased to be registered) that the person not be re-registered.
- (3A) If the Tribunal makes an order under subsection (2) in respect of a person and it is satisfied that the person poses a substantial risk to the health of members of the public, it may by order (a **prohibition order**) do any one or more of the following:
- (a) prohibit the person from providing health services or specified health services for the period specified in the order or permanently,
  - (b) place such conditions as the Tribunal thinks appropriate on the provision of health services or specified health services by the person for the period specified in the order or permanently.

**Note—**

Section 10AK (1) of the [Public Health Act 1991](#) provides that it is an offence for a person to provide a health service in contravention of a prohibition order.

- (3B) If the Tribunal is aware that a person in respect of whom it is proposing to make a prohibition order is registered under a health registration Act other than this Act, the Tribunal is, before making the prohibition order, to notify the board constituted under that other Act of the proposed order and give that board an opportunity to make a submission.
- (4) An order may also provide that an application for review of the order under Division 3 of Part 6 may not be made until after a specified time.

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

### **58 Suspension or conditions to protect the public**

- (1) The Board must, if at any time it is satisfied that such action is necessary for the purpose of protecting the life or physical or mental health of any person:
- (a) by order suspend the registration of a registered optometrist for such period (not exceeding 8 weeks) as is specified in the order, or

(b) impose on a registered optometrist's registration such conditions, relating to the optometrist's practising optometry, as it considers appropriate.

(2) The Board may take such action:

(a) whether or not a complaint has been made or referred to the Board about the optometrist, and

(b) whether or not proceedings in respect of such a complaint are before the Tribunal.

### **59 Power to remove or alter conditions**

The Board may at any time alter or remove conditions imposed under this Division.

### **60 Referral of matter to Commission**

(1) The Board must, as soon as practicable after taking any action under section 58 and, in any event, within 7 days after taking that action, refer the matter to the Commission for investigation.

(2) The matter is to be dealt with by the Commission as a complaint made to the Commission against the optometrist concerned.

(3) The Commission is to investigate the complaint or cause it to be investigated and, as soon as practicable after it has completed its investigation, refer the complaint to the Tribunal or to the Board to be dealt with by inquiry at a meeting of the Board under Division 4.

(4) Section 40 (Serious complaints must be referred to Tribunal) applies in respect of any such action by the Commission.

(5) This section does not apply if the Board takes action against a registered optometrist under section 58 because the Board is of the opinion that the optometrist suffers from an impairment.

### **61 Special provisions—impairment**

(1) This section applies if the Board takes action against a registered optometrist under section 58 because the Board is of the opinion that the optometrist suffers from an impairment.

(2) The Board must, as soon as practicable after taking that action and, in any event, within 7 days after taking that action, notify the Commission that it has taken that action.

(3) The Board is to consult with the Commission to see if agreement can be reached as to whether the matter should be:

(a) dealt with as a complaint against the optometrist, or

- (b) referred to an Impaired Registrants Panel.
- (4) The matter is to be dealt with as a complaint against the optometrist only if, following that consultation:
  - (a) the Board and the Commission agree that it should be dealt with as a complaint, or
  - (b) either the Board or the Commission is of the opinion that the matter should be dealt with as a complaint.
- (5) In such a case, the Board is to refer the matter to the Commission and the matter is to be dealt with by the Commission as a complaint made to the Commission against the optometrist concerned.
- (6) The Commission is to investigate the complaint or cause it to be investigated and, as soon as practicable after it has completed its investigation, refer the complaint to the Tribunal or to the Board to be dealt with by inquiry at a meeting of the Board under Division 4.
- (7) Section 40 (Serious complaints must be referred to Tribunal) applies in respect of any such action by the Commission.
- (8) If subsection (4) does not apply, the Board is to refer the matter to an Impaired Registrants Panel.
- (9) A matter may be referred to an Impaired Registrants Panel under this section even though the optometrist has been suspended under section 58. Part 5 applies in respect of such a referral as if the optometrist were a registered optometrist.

## **62 Tribunal to be notified of suspensions**

If the Board suspends the registration of a registered optometrist under section 58, the Board must notify the Chairperson that it has taken that action as soon as practicable after making the order and, in any event, within 7 days.

## **63 Extension of suspension**

A period of suspension imposed by the Board under this Division may be extended, from time to time, by the Board by order for a further period or further periods, each of not more than 8 weeks, but only if:

- (a) the extension has been approved in writing by the Chairperson or a Deputy Chairperson, and
- (b) the complaint about the optometrist has not been disposed of.

#### **64 Expiration of suspension**

On the expiration of a period of suspension imposed under this Division, the person's rights and privileges as a registered optometrist are revived, subject to any order of the Tribunal on the complaint that is referred to the Tribunal.

#### **65 Duration of conditions—complaint matters**

- (1) This section applies if the Board imposes conditions on the registration of a registered optometrist under section 58 and the matter is dealt with as a complaint against the optometrist.
- (2) The conditions imposed by the Board have effect until the complaint about the optometrist is disposed of, or the conditions are removed by the Board, whichever happens first.
- (3) This section:
  - (a) does not prevent conditions being imposed under another provision of this Act, and
  - (b) is subject to anything done by the Tribunal on an appeal under section 80.

#### **66 Duration of conditions—impairment matters**

- (1) This section applies if the Board imposes conditions on the registration of a registered optometrist under section 58 and the matter is referred to an Impaired Registrants Panel.
- (2) The conditions imposed by the Board have effect until:
  - (a) the complaint about the optometrist is disposed of if the matter is subsequently dealt with by the Board as a complaint, or
  - (b) the conditions are removed by the Board,whichever happens first.
- (3) The Board is not required to alter or remove conditions imposed under this Division merely because an optometrist agrees to the imposition of conditions on the optometrist's registration pursuant to the recommendations of an Impaired Registrants Panel (as referred to in section 75).
- (4) A registered optometrist who agrees to the imposition of conditions on the optometrist's registration pursuant to the recommendations of an Impaired Registrants Panel may, by notice in writing to the Board, request that the conditions imposed under this Division be removed or altered.
- (5) On receipt of such a request, the Board is to review the matter, and may:

- (a) refuse to remove or alter any of the conditions, or
  - (b) remove or alter the conditions.
- (6) The Board is to give the optometrist concerned notice in writing of its decision in respect of the request.
- (7) The Board may specify in the notice a period in which a further request by the optometrist under this section is not permitted. The Board may reject a request that the conditions be removed or altered if it is made during that period.
- (8) This section:
- (a) does not prevent conditions being imposed under another provision of this Act, and
  - (b) is subject to anything done by the Tribunal on an appeal under section 80.

## **Part 5 Impairment**

### **67 Referral of impairment matters concerning optometrists**

- (1) The Board may refer any matter to an Impaired Registrants Panel if the Board considers that the matter indicates that a registered optometrist suffers from an impairment. This is not limited to matters that are the subject of a complaint to the Board.
- (2) If the Board is aware that a complaint has been made to the Commission about an optometrist who is the subject of a referral to an Impaired Registrants Panel, the Board is to notify the Commission of the referral.

### **68 Persons may notify Board of impairment matters concerning optometrists**

A person may notify the Board of any matter that the person thinks indicates that a registered optometrist suffers or may suffer from an impairment.

### **69 Commission may refer impairment matters to Board**

- (1) If the Commission becomes aware of any matter that the Commission considers indicates that a registered optometrist suffers or may suffer from an impairment, the Commission may refer the matter to the Board.
- (2) This section does not affect the functions of the Board in relation to a complaint made to the Commission or a matter referred to the Commission for investigation.

### **70 Panel to inquire into matters referred to it**

- (1) An Impaired Registrants Panel is to inquire into any matter referred to it and may obtain reports and other information concerning the matter from any source it

considers appropriate.

- (2) The Panel may request a registered optometrist who is the subject of a matter referred to the Panel by the Board, to attend before the Panel for the purpose of enabling the Panel to obtain information on the matter and make an assessment.

#### **71 Panel not to take action while Commission investigating**

An Impaired Registrants Panel is not to investigate or take any other action in relation to any matter if the Panel is aware that the matter is the subject of an investigation by the Commission, while the investigation is being conducted.

#### **72 Board to give notice of proposed inquiry**

The Board is to give notice to a registered optometrist of any proposed inquiry by an Impaired Registrants Panel concerning the optometrist. The notice is to include sufficient details of the matters to which the inquiry is to relate.

#### **73 Optometrist entitled to make representations**

- (1) A registered optometrist who is the subject of any inquiry by an Impaired Registrants Panel is entitled to make oral or written representations to the Panel with respect to the matters being or to be the subject of the inquiry.
- (2) This section does not prevent the Panel from conducting an inquiry in the absence of the registered optometrist to whom it relates, as long as the optometrist has been given notice of the inquiry under section 72.

#### **74 Assessment, report and recommendations by Panel**

- (1) An Impaired Registrants Panel is to make an assessment in respect of each referral to it, based on the results of its inquiry into the matter.
- (2) On the basis of its assessment, the Panel may do any one or more of the following things:
  - (a) counsel the optometrist concerned or recommend that he or she undertake specified counselling,
  - (b) recommend that the optometrist concerned agree to conditions being imposed on his or her registration or to having his or her registration suspended for a specified period,
  - (c) make recommendations to the Board as to any action that the Panel considers should be taken in relation to the matter.
- (3) The Panel is to report in writing to the Board on each referral to the Panel. The report is to detail the results of the Panel's inquiries and assessment in respect of the referral and any action taken by the Panel under this Part in relation to it.

## **75 Voluntary suspension or conditions on registration**

The Board may place conditions on a registered optometrist's registration or suspend the optometrist's registration if:

- (a) an Impaired Registrants Panel has recommended that the Board do so, and
- (b) the Board is satisfied that the optometrist has voluntarily agreed to the recommendation.

## **76 Review of conditions**

- (1) A registered optometrist who agrees to conditions being imposed on his or her registration or to having his or her registration suspended may, by notice in writing to the Board, request:
  - (a) that those conditions be removed or altered, or
  - (b) that the suspension be terminated or shortened.
- (2) On receipt of such a request, the Board is to require an Impaired Registrants Panel to review the matter and report in writing to the Board on the results of its review.
- (3) If the Panel recommends that the Board refuse to remove or alter any of the conditions, or refuse to terminate or shorten the suspension, the Board may do so.
- (4) The Board is to give the optometrist concerned notice in writing of its decision in respect of the request.
- (5) The Board may specify in the notice a period in which a further request by the optometrist under this section is not permitted. The Board may reject a request that the conditions be removed or altered, or that the suspension be terminated or shortened, if it is made during that period.

## **77 Some matters to be dealt with as complaints**

- (1) If an Impaired Registrants Panel recommends that a registered optometrist agree to conditions being imposed on his or her registration or to having his or her registration suspended and the optometrist fails to agree in accordance with the recommendation, the Board is to deal with the matter that was the subject of the referral to the Panel as a complaint against the optometrist.
- (2) If the Panel recommends that a matter referred to it be dealt with as a complaint, the Board is to deal with the matter as a complaint against the optometrist concerned.
- (3) In any other case that the Board thinks it appropriate to do so, the Board may treat a matter that has been referred to a Panel as grounds for a complaint under this Act and may deal with the matter accordingly.



## **78 Confidentiality of Panel's report**

- (1) A report by an Impaired Registrants Panel to the Board may not be admitted or used in any civil proceedings before a court.
- (2) A person may not be compelled to produce the report or to give evidence in relation to the report or its contents in any such civil proceedings.
- (3) A person must not directly or indirectly make a record of or disclose to any person any information contained in a report by an Impaired Registrants Panel to the Board that has come to the person's notice in the exercise of the person's functions under this Act, except for the purposes of exercising functions under this Act.

Maximum penalty: 50 penalty units.

- (4) This section does not prevent the disclosure of such a report to the Commission.
- (5) In this section:

**court** includes any tribunal, authority or person having power to require the production of documents or the answering of questions, but does not include the Tribunal or the Board, or the Supreme Court (in respect of appeal proceedings under this Act).

**report** includes a copy, reproduction and duplicate of the report or any part of the report, copy, reproduction or duplicate.

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

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

#### **79 Appeals against actions of the Board on a complaint**

- (1) When a complaint has been dealt with at a meeting of the Board under Division 4 of Part 4, the optometrist or the Commission may appeal to the Tribunal against:
  - (a) a finding of the Board, or
  - (b) the exercise of any power by the Board under Division 5 (Disciplinary powers of Board and Tribunal) of Part 4.
- (2) An appeal must be made within 28 days (or such longer period as the Chairperson may allow in a particular case) after:
  - (a) the Board's written statement of the decision by which the Board's finding is made is made available to the appellant, or
  - (b) the exercise of the power against which the appeal is made.
- (3) The appeal must be lodged with the Registrar who is to refer it to the Tribunal.

- (4) The appeal is to be dealt with by way of rehearing and fresh evidence, or evidence in addition to or in substitution for the evidence received at the meeting of the Board, may be given.
- (5) The Tribunal may:
  - (a) dismiss the appeal, or
  - (b) make any finding or exercise any power or combination of powers that the Tribunal could have made or exercised if the complaint had been originally referred to the Tribunal.
- (6) An appeal under this section does not affect any finding or exercise of power with respect to which it has been made until the Tribunal makes an order on the appeal.

**80 Appeal against suspension or imposition of conditions by Board—impairment matters**

- (1) A person may appeal to the Tribunal:
  - (a) against a suspension or extension of a suspension by the Board under Division 6 (Powers of the Board for the protection of the public) of Part 4, or
  - (b) against conditions imposed by the Board on the person's registration under Division 6 of Part 4 or Part 5 or any alteration of those conditions by the Board, or
  - (c) against a refusal by the Board to alter or remove conditions imposed by the Board under Division 6 of Part 4 in accordance with a request made by the person under section 66, or
  - (d) against a refusal by the Board to remove or alter conditions imposed on the person's registration, or to shorten or terminate a suspension, imposed under Part 5 in accordance with a request made by the person under section 76.
- (2) An appeal may not be made in respect of a request by a person that is rejected by the Board because it was made during a period in which the request was not permitted under section 66 or 76.
- (3) An appeal must be made within 28 days (or such longer period as the Chairperson may allow in a particular case) after notice of the action taken by the Board, or the Board's refusal, is given to the person.
- (4) An appeal is to be lodged with the Registrar who is to refer it to the Tribunal.
- (5) On an appeal, the Tribunal may, by order, do any of the following:
  - (a) dismiss the appeal,
  - (b) remove or alter the conditions to which the optometrist's registration is subject (including by imposing new conditions on the optometrist's registration),

(c) terminate or shorten the period of the suspension concerned.

- (6) The Tribunal's order must not cause a suspension or conditions imposed by the Board to have effect beyond the day on which any related complaint about the person is disposed of.
- (7) An appeal under this section does not affect any suspension or conditions with respect to which it has been made until the Tribunal makes an order on the appeal.

### **81 Appeal on point of law**

- (1) When a complaint is dealt with at a meeting of the Board under Division 4 of Part 4, the optometrist or the Commission may appeal with respect to a point of law to the Chairperson or a Deputy Chairperson nominated by the Chairperson.
- (2) An appeal may be made in accordance with the regulations during the meeting of the Board to deal with the complaint or within the period after the date of giving of notice of the meeting and before the commencement of the meeting.
- (3) If the meeting of the Board to deal with the complaint has not been completed when an appeal is made, the Board must not continue to deal with the complaint until the appeal has been disposed of.
- (4) The Board must not make any decision that is inconsistent with the Chairperson's or Deputy Chairperson's determination with respect to the point of law.

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

### **82 Preliminary appeal on point of law**

- (1) An appeal with respect to a point of law may be made to the Supreme Court by the optometrist or the complainant during an inquiry on a complaint conducted by the Tribunal or after the complaint is referred to the Tribunal and before the commencement of the inquiry, but can only be made with the leave of the Chairperson or a Deputy Chairperson.
- (2) If an inquiry conducted by the Tribunal has not been completed when an appeal with respect to a point of law is made, the inquiry before the Tribunal is not to continue until the appeal has been disposed of.
- (3) The Tribunal must not make any decision that is inconsistent with the Supreme Court's determination with respect to the point of law when it recommences the inquiry.

### **83 Appeal against Tribunal's decisions and actions**

- (1) An optometrist about whom a complaint is referred to the Tribunal, or the complainant, may appeal to the Supreme Court against:

- (a) a decision of the Tribunal with respect to a point of law, or
  - (b) the exercise of any power by the Tribunal under Division 5 (Disciplinary powers of Board and Tribunal) of Part 4.
- (2) The appeal must be made within 28 days (or such longer period as the Court may allow in a particular case) after the Tribunal's written statement of the decision by which the Tribunal's finding is made is made available to the appellant.
- (3) The Supreme Court may stay any order made by the Tribunal, on such terms as the Court sees fit, until such time as the Court determines the appeal.

#### **84 Powers of Court on appeal**

- (1) In determining the appeal, the Supreme Court may:
- (a) dismiss the appeal, or
  - (b) make such order as it thinks proper having regard to the merits of the case and the public welfare, and in doing so may exercise any one or more of the powers of the Tribunal under this Act.
- (2) If the Court dismisses an appeal against an order of the Tribunal, the Court may by order direct that the Tribunal's order is to be taken to include provision that an application for its review under Division 3 may not be made until after a specified time.

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

#### **85 Right of review**

- (1) A person may apply to the appropriate review body for a review of a prohibition order in respect of the person or of an order of the Board, the Chairperson or a Deputy Chairperson, the Tribunal or the Supreme Court:
- (a) that the registration of the person is suspended, or
  - (b) that the person's name be removed from the Register or that the person not be re-registered, or
  - (c) that conditions be imposed on the person's registration.
- (2) A person may also apply to the appropriate review body for a review of an order made under this Division.
- (3) An application for review of an order may not be made:
- (a) while the terms of the order provide that an application for review may not be made, or

- (b) while an appeal under this Part to the Tribunal or the Supreme Court in respect of the same matter is pending.

### **86 Appropriate review body**

- (1) The **appropriate review body** is the Tribunal except in a case where the order being reviewed provides that it may be reviewed by the Board, in which case the Board is the appropriate review body.
- (2) An application for review must be lodged with the Registrar who is to refer it to the appropriate review body.

### **87 Powers on review**

- (1) The appropriate review body is to conduct an inquiry into an application for review and may then do any of the following:
  - (a) dismiss the application,
  - (b) by its order terminate or shorten the period of the suspension concerned,
  - (c) make a reinstatement order,
  - (d) make an order altering the conditions to which the person's registration is subject (including by imposing new conditions),
  - (e) by its order terminate or shorten the period of a prohibition order or alter the conditions to which the person is subject under a prohibition order (including by imposing new conditions).
- (2) A **reinstatement order** is an order that the person be registered subject to the same conditions and limitations (if any) to which the person's registration was subject immediately before the person ceased to be registered. The appropriate review body may also impose conditions on the person's registration or alter the conditions to which the person's registration is to be subject under the reinstatement order.
- (3) The Commission is entitled to make submissions in respect of the application at the inquiry into the application.
- (4) The Board is to take such action as may be necessary to give effect to a reinstatement order.
- (5) The order on a review under this section may also provide that the order is not to be reviewed under this Division until after a specified time.

### **88 Nature of review**

- (1) A review under this Division is a review to determine the appropriateness, at the time of the review, of the order concerned.

- (2) The review is not to reconsider the decision to make the order or any findings made in connection with the making of that decision, unless significant fresh evidence is produced that was not previously available for consideration and the appropriate review body is of the opinion that, in the circumstances of the case, that decision or any such finding should be reconsidered.

## **Part 7 Optometrists Registration Board**

### **89 Constitution of the Board**

There is constituted by this Act a body corporate under the corporate name of the Optometrists Registration Board.

### **90 Functions of the Board**

- (1) The Board has the following functions:
  - (a) such functions as are conferred or imposed on the Board by or under this or any other Act,
  - (b) to promote and maintain standards of optometry practice in New South Wales,
  - (c) to advise the Minister on matters relating to the registration of optometrists, standards of optometry practice and any other matter arising under or related to this Act or the regulations,
  - (d) to publish and distribute information concerning this Act and the regulations to optometrists, consumers and other interested persons.
- (2) The Board is to exercise its functions in a manner that is consistent with the object of this Act.
- (3) The Board cannot employ any staff.

**Note—**

Staff may be employed under Chapter 1A of the *Public Sector Employment and Management Act 2002* in the Government Service to enable the Board to exercise its functions.

### **91 Membership of the Board**

- (1) The Board is to consist of 9 members appointed by the Governor.
- (2) The members are to be:
  - (a) a person nominated by the Minister, being an officer of the Department of Health or an employee of an area health service, statutory health corporation or affiliated health organisation within the meaning of the *Health Services Act 1997*,
  - (b) 3 registered optometrists nominated by the Minister from a panel of optometrists nominated by the Optometrists Association Australia (New South Wales Division),

and such other bodies representing optometrists as may be determined by the Minister,

- (c) 1 registered optometrist nominated by the Minister, being a registered optometrist involved in the tertiary education of persons for qualification in New South Wales as optometrists,
- (d) 1 registered optometrist nominated by the Minister of the Minister's own choosing,
- (e) 2 persons (not being registered optometrists) nominated by the Minister to represent the community,
- (f) 1 Australian lawyer nominated by the Minister.

(3) If the panel of optometrists required to be nominated for the purposes of subsection (2) (b) is not nominated within such time or in such manner as may be specified by the Minister by notice to the association or associations concerned, the Governor may instead appoint as a member a person nominated by the Minister.

## **92 (Repealed)**

## **93 Committees**

- (1) The Board may establish committees to assist it in connection with the exercise of any of its functions.
- (2) It does not matter that any or all of the members of a committee are not members of the Board.
- (3) A member of a committee, while sitting on the committee, is entitled to be paid by the Board such amount as the Minister from time to time determines in respect of the member.
- (4) The procedure for the calling of meetings of a committee and for the conduct of business at those meetings may be determined by the Board or (subject to any determination of the Board) by the committee.

## **94 Delegation of functions**

- (1) The Board may delegate any of its functions (other than this power of delegation and the function of authorising by resolution the expenditure of money from the Optometry Education and Research Account) to:
  - (a) the President, or
  - (b) the Deputy President, or
  - (c) a committee consisting of 2 or more members of the Board, or

(d) the Registrar or any other member of staff of the Board.

(2) The Board must not delegate any of its functions under Part 4 (Complaints and disciplinary proceedings) to the Registrar or any other member of the staff of the Board.

(3) The Registrar may delegate to a member of the staff of the Board the exercise of:

(a) any of the functions of the Registrar under this Act, other than this power of delegation, or

(b) any functions delegated to the Registrar by the Board, unless the Board otherwise provides in its instrument of delegation to the Registrar.

#### **95 Other provisions relating to the Board**

(1) Schedule 2 has effect with respect to the members of the Board.

(2) Schedule 3 has effect with respect to the procedure of the Board.

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

#### **96 Constitution of the Optometry Care Assessment Committee**

There is constituted by this Act the Optometry Care Assessment Committee.

#### **97 Functions of the Committee**

The Committee has the functions conferred or imposed on it by or under this or any other Act.

#### **98 Membership of the Committee**

(1) The Committee is to consist of 4 members appointed by the Minister.

(2) Of the members:

(a) one is to be a registered optometrist nominated by the Board, and

(b) two are to be registered optometrists appointed from a panel of names furnished to the Minister by the Board, and

(c) one is to be a person appointed by the Minister to be a representative of consumers.

(3) If the Board does not furnish a panel of names within such time or in such manner as may be specified by the Minister by notice in writing to the Board, the Minister may instead appoint to be members 2 registered optometrists determined by the Minister.

(4) A person cannot be a member of the Committee while the person is a member of the



Board.

## **99 Other provisions relating to the Committee**

Schedule 4 has effect with respect to the members and the procedure of the Committee.

## **Part 9 Impaired Registrants Panels**

### **100 Impaired Registrants Panels**

There are to be Impaired Registrants Panels for the purposes of this Act. An Impaired Registrants Panel has and may exercise the jurisdiction and functions conferred or imposed on it by or under this or any other Act.

### **101 Board to constitute Panel when required**

- (1) When the Board decides to refer a matter to an Impaired Registrants Panel it is to appoint 2 persons, at least one of whom is a registered optometrist, to sit as the Panel for the purpose of dealing with the matter.
- (2) A person may be appointed to sit on an Impaired Registrants Panel whether or not the person is a member of the Board, but not if the person has previously dealt with the particular matter before the Panel in his or her capacity as a member of the Board.
- (3) A member of an Impaired Registrants Panel, while sitting on the Panel, is entitled to be paid by the Board at the rate determined by the Minister from time to time.

### **102 Decisions of a Panel**

- (1) A decision supported by both members of a Panel is the decision of the Panel.
- (2) If the members of an Impaired Registrants Panel disagree as to any matter that is dealt with by the Panel, the Panel's report to the Board is to include details of the disagreement and the reasons for it.

## **Part 10 Optometrists Tribunal**

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

#### **103 The Optometrists Tribunal**

- (1) There is to be an Optometrists Tribunal for the purposes of this Act.
- (2) The Tribunal is to be constituted in accordance with this Act to deal with a matter referred to it or an appeal or application made to it under this Act.
- (3) The Tribunal has and may exercise the jurisdiction and functions conferred or imposed on it by or under this or any other Act.

#### **104 Chairperson and Deputy Chairpersons of the Tribunal**

- (1) The Governor may appoint an Australian lawyer of at least 7 years' standing as Chairperson of the Tribunal and may appoint one or more Australian lawyers of at least 7 years' standing as Deputy Chairpersons of the Tribunal.
- (2) The Chairperson and each Deputy Chairperson hold office for such period not exceeding 7 years as may be specified in the instrument of appointment as Chairperson or Deputy Chairperson, but are eligible (if otherwise qualified) for re-appointment.
- (3) A Deputy Chairperson can be appointed by the Governor for the purpose of conducting or hearing a particular inquiry or appeal, as described in the instrument of appointment of the Deputy Chairperson.
- (4) A Deputy Chairperson, while sitting on the Tribunal, has and may exercise all the functions conferred or imposed on the Chairperson by this Act (other than those conferred by section 105 (2)).
- (4A) If the period of a person's appointment as Chairperson or a Deputy Chairperson expires while the person is sitting on the Tribunal for the purposes of an inquiry or an appeal, the person may, despite that expiry, continue to sit on the Tribunal for the purpose of that inquiry or appeal (the ***continuing inquiry or appeal***).
- (4B) For the purposes of the conduct or hearing of the continuing inquiry or appeal (and any provision of this Act or the regulations with respect to such an inquiry or an appeal), the person referred to in subsection (4A):
  - (a) is taken to be a Deputy Chairperson, and
  - (b) has and may exercise only the functions conferred or imposed on a Deputy Chairperson under this Act, and
  - (c) may exercise those functions only in respect of the continuing inquiry or appeal.
- (5) The Chairperson or a Deputy Chairperson sitting on the Tribunal is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of each of them.
- (6) The Governor may appoint a Deputy Chairperson to act in the office of Chairperson during the illness or absence of the Chairperson and the Deputy Chairperson, while so acting, has and may exercise all the functions of the Chairperson and is taken to be the Chairperson.
- (7) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of the Chairperson or a Deputy Chairperson.

### **105 Tribunal to be constituted to deal with complaints etc**

- (1) The Board is to inform the Chairperson and appoint 3 other persons to sit on the Tribunal when:
  - (a) a complaint or other matter is referred to the Tribunal, or
  - (b) the Commission decides, in accordance with the *Health Care Complaints Act 1993*, to prosecute a complaint before the Tribunal, or
  - (c) an appeal or application under this Act to the Tribunal is lodged with the Registrar.
- (2) The Chairperson is then to nominate himself or herself or a Deputy Chairperson to sit on the Tribunal for the purpose of conducting an inquiry into the complaint, matter or application or hearing the appeal.
- (3) For the purpose of conducting an inquiry or hearing an appeal, the Tribunal is to consist of:
  - (a) the Chairperson or a Deputy Chairperson, and
  - (b) 2 registered optometrists having such qualifications as may be prescribed, appointed by the Board, and
  - (c) one lay person (that is, a person who is not a registered optometrist) appointed by the Board from a panel of lay persons for the time being nominated by the Minister.
- (4) A person may not be appointed to sit on the Tribunal if the person is a member of the Board.
- (5) A person may not be appointed to sit on the Tribunal if the person has previously dealt with the particular matter before the Tribunal in his or her capacity as a member of the Board or the Committee.
- (6) The Tribunal, as constituted by different persons or the same persons, may conduct or hear more than one inquiry or appeal at the same time.

### **106 Effect of vacancy on Tribunal**

- (1) If one of the members (other than the Chairperson or Deputy Chairperson) constituting the Tribunal for the purpose of conducting a hearing vacates office for any reason before an inquiry or appeal is completed or a decision is made in respect of an inquiry or appeal, the inquiry or appeal may be continued and a determination made by the remaining members of the Tribunal.
- (2) If more than one of the members vacate office or the Chairperson or Deputy Chairperson vacates office for any reason before the Tribunal has completed an inquiry or appeal or made a determination in respect of an inquiry or appeal, the

inquiry or appeal is terminated.

- (3) When an inquiry or appeal is terminated, the Tribunal may be reconstituted in accordance with this Part for the purposes of conducting a new inquiry or appeal in respect of the matter concerned.

#### **107 Payment of non-legal Tribunal members**

A member of the Tribunal (other than the Chairperson or a Deputy Chairperson) is while sitting on the Tribunal entitled to be paid by the Board at the rate determined by the Minister from time to time.

#### **108 Seal of the Tribunal**

The Tribunal is to have a seal of which all courts and persons acting judicially are to take judicial notice.

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

#### **109 Decisions of the Tribunal**

- (1) The decision of the Chairperson or a Deputy Chairperson on any question of law or procedure arising during an inquiry or appeal at which the Chairperson or Deputy Chairperson presides is the decision of the Tribunal for the purposes of the inquiry or appeal.
- (2) A decision supported by at least 3 members of the Tribunal with respect to a question (other than with respect to a point of law or procedure) arising during an inquiry or appeal before the Tribunal is the decision of the Tribunal.
- (3) If 2 members support the decision and 2 members oppose the decision, the decision of the Chairperson or Deputy Chairperson presiding is the decision of the Tribunal.

#### **110 Time when orders take effect**

An order of the Tribunal under this Act takes effect on the day on which the order is made or on such later day as is specified in the order.

#### **111 Powers of Tribunal exercised by Supreme Court**

A power of the Tribunal exercised under this Act by the Supreme Court is, except for the purposes of any appeal, taken to have been exercised by the Tribunal.

#### **112 Registrar to be informed of disciplinary action**

The Tribunal is to inform the Registrar of the exercise of any power under Part 4 (Complaints and disciplinary proceedings) by the Tribunal.

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

### **113 Jurisdiction**

- (1) The members of the Tribunal are to conduct an inquiry into any complaint, matter or application and are to hear any appeal referred to it.
- (2) No inquiry need be conducted into a complaint if the optometrist who is the subject of the complaint admits the subject-matter of the complaint in writing to the Tribunal.

### **114 Notice of time and place of inquiry or appeal**

The Chairperson or a Deputy Chairperson nominated to sit on the Tribunal is to fix a time and place for the conducting of the inquiry or the hearing of the appeal by the Tribunal and is to give not less than 14 days' notice of the inquiry or appeal to each of the following:

- (a) the optometrist concerned,
- (b) the complainant, if any,
- (c) the Director-General and the Board,
- (d) in the case of an appeal or an inquiry into a complaint, the Commission.

### **115 Conduct of proceedings**

- (1) The Tribunal is to conduct proceedings on an inquiry or appeal as it thinks fit.
- (2) Proceedings of the Tribunal are to be open to the public except when the Tribunal otherwise directs.
- (3) The Tribunal is not to direct that proceedings are to be closed to the public unless satisfied that it is desirable to do so in the public interest for reasons connected with the subject-matter of the inquiry or appeal or the nature of the evidence to be given.
- (4) The Tribunal may proceed to determine an inquiry or appeal in the absence of the optometrist.
- (5) Schedule 5 has effect with respect to the conduct of any inquiry and the hearing of any appeal by the Tribunal.

### **116 Representation before the Tribunal**

- (1) At an inquiry conducted or appeal heard by the Tribunal, the registered optometrist and any complainant concerned are entitled to attend and to be represented by an Australian legal practitioner or another adviser.
- (2) The Tribunal may grant leave for any other person to appear (whether in person or by an Australian legal practitioner or another adviser) at an inquiry or appeal if the

Tribunal is satisfied that it is appropriate for that person to appear.

**117 Chairperson or Deputy Chairperson not to review own decisions**

The Chairperson or Deputy Chairperson must not sit on the Tribunal for the purpose of conducting any inquiry or hearing any appeal relating to a particular matter before the Tribunal if a decision has been made by the Chairperson or a Deputy Chairperson in relation to the matter.

**118 Adjournments and interlocutory orders**

- (1) The Tribunal may adjourn proceedings for any reason it thinks fit.
- (2) The Tribunal may, during any proceedings, exercise any power or combination of powers conferred on the Tribunal by section 57 (Powers of the Tribunal), except the power to caution or reprimand.

**119 Tribunal to provide details of its decision**

- (1) The Tribunal must provide a written statement of a decision on an inquiry or appeal to the complainant, to the optometrist concerned and to the Board, and must do so as soon as practicable after the decision is made (bearing in mind the public welfare and seriousness of the matter).
- (2) The statement of a decision must:
  - (a) set out any findings on material questions of fact, and
  - (b) refer to any evidence or other material on which the findings were based, and
  - (c) give the reasons for the decision.
- (3) The Tribunal may also provide the statement of a decision to such other persons as the Tribunal thinks fit.
- (4) The Board:
  - (a) must make publicly available a statement of a decision provided to it under this section if the decision is in respect of a complaint that has been proved or admitted in whole or in part, and
  - (b) may disseminate any other statement of a decision as the Board thinks fit, unless the Tribunal has ordered otherwise.

**120 Statement need not contain confidential information**

- (1) The Tribunal is not required to include confidential information in the statement of a decision. If a statement would be false or misleading if it did not include the confidential information, the Tribunal is not required to provide the statement.

- (2) When confidential information is not included in the statement of a decision provided to a person or the statement is not provided to a person because of subsection (1), the Tribunal must give a confidential information notice to the person.
- (3) A **confidential information notice** is a notice that indicates that confidential information is not included or that the statement will not be provided (as appropriate) and gives the reasons for this. The notice must be in writing and must be given within one month after the decision is made.
- (4) This section does not affect 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.
- (5) 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, and
- (b) relates to the personal or business affairs of a person, other than a person to whom the Tribunal is required (or would, but for subsection (1), be required) to provide a written statement of a decision, and
- (c) is information:
  - (i) that was supplied in confidence, or
  - (ii) the publication of which would reveal a trade secret, or
  - (iii) that was provided in compliance with a duty imposed by an enactment, or
  - (iv) the provision of which by the Tribunal would be in breach of any enactment.

## **Part 10A Prohibition against directing or inciting misconduct**

### **120A Prohibition against directing or inciting misconduct**

- (1) A person (**the employer**) who employs a registered optometrist must not direct or incite the optometrist to engage in conduct in the course of professional practice that would constitute unsatisfactory professional conduct or professional misconduct.

Maximum penalty:

- (a) in the case of a corporation, 400 penalty units for a first offence or 800 penalty units for a second or subsequent offence, or
- (b) in any other case, 200 penalty units for a first offence or 400 penalty units for a second or subsequent offence.

- (2) For the purposes of this section, any actions of an agent or employee of the employer are taken to be actions of the employer unless the employer establishes:
  - (a) that the employer had no knowledge of those actions, and
  - (b) that the employer could not, by the exercise of due diligence, have prevented those actions.
- (3) If a person is convicted of or made the subject of a criminal finding for an offence against this section in respect of the actions of an agent or employee of the person, the agent or employee is for the purposes of this Part taken to have been convicted of or made the subject of a criminal finding for the offence also.
- (4) When a court convicts or makes a criminal finding against a person for an offence against this section, the registrar or other proper officer of the court must notify the Director-General in writing of the conviction or criminal finding.
- (5) This section does not apply in respect of the employment of an optometrist by any of the following:
  - (a) a public health organisation within the meaning of the *Health Services Act 1997*,
  - (b) a private hospital or day procedure centre within the meaning of the *Private Hospitals and Day Procedure Centres Act 1988*,
  - (c) a nursing home within the meaning of the *Public Health Act 1991*.

**120B Extended concept of employment**

- (1) When a registered optometrist engages in the practice of optometry in the course of the carrying on of a business, any person who owns, manages, controls, conducts or operates that business is for the purposes of this Part taken to employ the optometrist (in addition to any person who actually employs the optometrist).
- (2) When a registered optometrist is employed by a corporation, each of the following persons is for the purposes of this Part also considered to be the employer of the optometrist (in addition to the corporation):
  - (a) a person who is a director, secretary or executive officer (as defined in the *Corporations Act 2001* of the Commonwealth) of the corporation or is concerned in the management of the corporation,
  - (b) any other employee of the corporation in accordance with whose directions the optometrist is required or expected to act.

**120C Extended concept of carrying on business**

- (1) If an optometrist engaged in the practice of optometry is provided, in the course of the carrying on of a business, with services that facilitate that practice and the



operator of the business is entitled, in connection with the provision of those services, to a share or interest in the profits or income arising from the practice of optometry by the optometrist:

- (a) that business is taken for the purposes of this Part to be a business that provides the optometrical services that are provided by the optometrist in the course of that practice, and
  - (b) the optometrist is taken for the purposes of this Part to be engaged in the practice of optometry in the course of the carrying on of that business.
- (2) Subsection (1) does not apply in respect of the practice of optometry by an optometrist in such circumstances as may be prescribed by the regulations as exempt from that subsection.
- (3) For the purposes of this Part, a person is considered to operate a business if the person:
- (a) owns, manages, controls, conducts or operates the business, or
  - (b) has (within the meaning of section 120G) a management role or substantial interest in a corporation that operates the business or a substantial interest in a trust under which the business is operated.

**120D Convicted offenders may be prohibited from carrying on business**

- (1) The Director-General may, by notice in writing given to a person who has been convicted of or made the subject of a criminal finding for an offence against this Part, prohibit the person from operating a business that provides optometrical services.
- (2) The prohibition may be expressed to be:
- (a) for a fixed period (in which case the prohibition remains in force only for that fixed period), or
  - (b) for an unlimited period subject to an entitlement to apply after a specified time for the lifting of the prohibition (in which case the prohibition remains in force until it is lifted).
- (3) A prohibition may not be imposed under this section unless the Director-General is of the opinion that the person is not a fit and proper person to operate a business that provides optometrical services. The Director-General is entitled to presume, in the absence of evidence to the contrary, that a person who has been convicted of or made the subject of a criminal finding for an offence against this Part on 2 or more occasions in any period of 10 years is not a fit and proper person to operate such a business.
- (4) A prohibition under this section may be limited in its operation in either or both of the

following ways:

- (a) it may be limited to specified premises, but only where the person concerned operates a business that provides optometrical services at those premises and at other premises,
  - (b) it may be limited to premises within a specified area.
- (5) If a prohibition under this section is subject to an entitlement to apply after a specified time for the prohibition to be lifted, such an application may be made to the Director-General after that time. The Director-General may lift the prohibition or confirm the prohibition and set a further period after which an application for the prohibition to be lifted can be made under this subsection.

#### **120E Offence of operating business while prohibited**

- (1) A person who in contravention of a prohibition under this Part operates a business that provides optometrical services is guilty of an offence.

Maximum penalty:

- (a) in the case of a corporation, 400 penalty units for a first offence or 800 penalty units for a second or subsequent offence, or
  - (b) in any other case, 200 penalty units for a first offence or 400 penalty units for a second or subsequent offence.
- (2) If a continuing state of affairs is created by an offence against this section the offender is liable to a maximum penalty of:
- (a) 100 penalty units in the case of a corporation, or
  - (b) 50 penalty units in any other case,
- in respect of each day on which that offence continues, in addition to the penalty specified in subsection (1).
- (3) If optometrical services are provided on premises on which a business is carried on, it is to be presumed for the purposes of this section, unless the contrary is established, that the business provides those optometrical services.

#### **120F Effect of appeal against conviction**

A prohibition under this Part has no effect while an appeal is pending against the conviction or criminal finding for the offence on which the prohibition is based.

#### **120G Business interests—effect of prohibition**

- (1) When a corporation or the trustee of a trust is the subject of a prohibition under this Part in connection with the operation of a business operated by the corporation or

under the trust:

- (a) each person who has a management role or substantial interest in the corporation or a substantial interest in the trust is for the purposes of this Part taken to be the subject of that prohibition also, and
  - (b) each corporation in which a person referred to in paragraph (a) has a management role or substantial interest is for the purposes of this Part taken to be the subject of that prohibition also (whether or not the corporation was in existence at the time of the relevant offence), and
  - (c) the trustee and any manager of a trust in which a person referred to in paragraph (a) has a substantial interest are for the purposes of this Part taken to be the subject of that prohibition also (whether or not the trust was in existence at the time of the relevant offence).
- (2) A person is considered to have a management role or substantial interest in a corporation if:
- (a) the person is a director, secretary or executive officer (as defined in the *Corporations Act 2001* of the Commonwealth) of the corporation, or
  - (b) the person is entitled to more than 10% of the issued share capital of the corporation (with the shares to which a person is entitled including shares in which the person or an associate of the person has a relevant interest within the meaning of the *Corporations Act 2001* of the Commonwealth).
- (3) A person is considered to have a substantial interest in a trust if the person (whether or not as the trustee of another trust) is the beneficiary in respect of more than 10% of the value of the interests in the trust.
- (4) The regulations may create exceptions to this section.

#### **120H Power to require information from convicted persons and others**

- (1) When a corporation or the trustee of a trust is convicted of or made the subject of a criminal finding for an offence against this Part in connection with the operation of a business operated by the corporation or under the trust, the Director-General may require certain persons to provide specified information to the Director-General, as provided by this section.
- (2) The corporation or trustee may be required to provide information that the Director-General may reasonably require to ascertain the identity of each person who has a management role or substantial interest in the corporation or a substantial interest in the trust.
- (3) A person whom the Director-General reasonably believes has a management role or substantial interest in the corporation or a substantial interest in the trust may be

required to provide information that the Director-General may reasonably require to ascertain:

- (a) the identity of each corporation in which that person has a management role or substantial interest, or
- (b) the identity of the trustee and any manager of a trust in which that person has a substantial interest.

- (4) A requirement to provide information is to be imposed by a direction in writing served on the person, corporation or trustee concerned. The direction must specify a period of not less than 7 days as the period within which the required information must be provided.
- (5) A person who fails without reasonable excuse to comply with a requirement under this section is guilty of an offence.

Maximum penalty:

- (a) in the case of a corporation, 400 penalty units for a first offence or 800 penalty units for a second or subsequent offence, or
- (b) in any other case, 200 penalty units for a first offence or 400 penalty units for a second or subsequent offence.

- (6) A person who in purported compliance with a requirement under this section provides information that is false or misleading in a material particular is guilty of an offence unless the person satisfies the court that the person did not know and could not reasonably be expected to have known that the information was false or misleading.

Maximum penalty:

- (a) in the case of a corporation, 400 penalty units for a first offence or 800 penalty units for a second or subsequent offence, or
- (b) in any other case, 200 penalty units for a first offence or 400 penalty units for a second or subsequent offence.

### **120I Evidentiary certificate**

- (1) The Director-General may issue a certificate to the effect that a person specified in the certificate is or was prohibited under this Part from operating a business that provides optometrical services during a period specified in the certificate.
- (2) Such a certificate is evidence of the matters certified.
- (3) A certificate purporting to be a certificate issued by the Director-General under this section is presumed to have been so issued unless the contrary is established.

## **Part 11 Miscellaneous**

### **121 Application of Criminal Records Act**

For the purposes of the application of this Act in respect of a criminal finding, the *Criminal Records Act 1991* applies in respect of a criminal finding as if section 8 (2) and (4) of that Act were omitted.

**Note—**

Section 8 (2) and (4) of the *Criminal Records Act 1991* make special provision for when criminal findings become “spent” under that Act. The omission of those subsections will mean that in determining when a criminal finding becomes spent for the purposes of this Act, criminal findings will be treated as ordinary convictions and the relevant crime-free period will be as provided by section 9 of that Act.

### **122 How notice is to be given**

- (1) A requirement of this Act that a person be given notice is a requirement that the person be given notice in writing either personally or by post.
- (2) For the purposes of section 76 of the *Interpretation Act 1987*, a notice served by post on a person for the purposes of this Act is to be treated as being properly addressed if it is addressed to the address of the person last known to the Registrar or last recorded in the Register.

### **123 Service of documents on Board**

A document (other than a complaint made under Part 4) may be served on the Board by leaving it at or sending it by post to any office of the Board. This section does not affect the operation of any provision of a law or of the rules of a court authorising a document to be served on the Board in any other manner.

### **124 Written statement of decisions**

- (1) If the Board, the Board’s President or a member authorised by the Board makes a decision concerning a person under any provision of this Act, the person may request in writing that the Board, President or member provide the person with a written statement of the decision.
- (2) Any such request is to be made no later than 60 days after the decision to which it relates.
- (3) The Board, the President or the member is to provide a written statement of the decision within 30 days after receiving such a request.
- (4) A written statement of a decision must give the reasons for the decision.
- (5) The Board, the President or the member is not required to include confidential information in the statement of a decision. If a statement would be false or misleading if it did not include the confidential information, the Board, the President or the

member is not required to provide the statement.

- (6) When confidential information is not included in the statement of a decision provided to a person or the statement is not provided to a person because of subsection (5), the Board, the President or the member must give a confidential information notice to the person.
- (7) A **confidential information notice** is a notice that indicates that confidential information is not included or that the statement will not be provided (as appropriate) and gives the reasons for this. The notice must be in writing and must be given within one month after the decision is made.
- (8) This section does not affect 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.
- (9) 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, and
- (b) relates to the personal or business affairs of a person, other than a person to whom the Board, the President or the member is required (or would, but for subsection (5), be required) to provide a written statement of a decision, and
- (c) is information:
  - (i) that was supplied in confidence, or
  - (ii) the publication of which would reveal a trade secret, or
  - (iii) that was provided in compliance with a duty imposed by an enactment, or
  - (iv) the provision of which by the Board, the President or the member would be in breach of any enactment.

## **125 Notice of disciplinary action to other Boards**

- (1) When the registration of an optometrist is cancelled or suspended or any condition is imposed on the registration of an optometrist:
  - (a) the Board must without delay notify particulars of that action to the local registration authority of each neighbouring jurisdiction, and
  - (b) the Board may notify particulars of that action to the local registration authority of any other jurisdiction.

- (2) When the registration of an optometrist is suspended or cancelled or any condition is imposed on the registration of an optometrist, and the Board is aware that the optometrist is registered under a health registration Act, the Board must without delay notify particulars of that action to the registration authority under that Act.
- (3) The Board is required or authorised to act under this section despite any law relating to secrecy or confidentiality.
- (4) This section does not affect any obligation or power to provide information under the Mutual Recognition laws.
- (5) In this section:

**local registration authority** of a jurisdiction means the person or authority in the jurisdiction having the function conferred by legislation of registering persons in connection with the carrying on of optometry in the jurisdiction.

**neighbouring jurisdiction** means each Australian State, the Australian Capital Territory, the Northern Territory and New Zealand.

**registration** includes the licensing, approval, admission, certification (including by way of practising certificates), or any other form of authorisation, of a person required by or under legislation for the carrying on of the practice of optometry.

#### **125A Cancelled registrations to be publicly available**

- (1) The Board is to make publicly available:
  - (a) the name of each person who is subject to an order of the Tribunal or the Supreme Court that the person's registration be cancelled or that the person not be re-registered, and
  - (b) such other information about the person as may be prescribed by the regulations.
- (2) The Board is to ensure that the information required to be made publicly available under subsection (1) is provided to the Commission.
- (3) The Board is not required to make publicly available information about a person:
  - (a) who is deceased, or
  - (b) who belongs to a class of persons prescribed by the regulations for the purposes of this section.

#### **125B Protection from liability for certain publications**

- (1) A publication in good faith under section 119 or 125A does not subject a protected person to any liability (including liability in defamation).

(2) In this section:

***protected person*** means:

- (a) the Board or Tribunal or a member of the Board or Tribunal, or
- (b) the proprietor, editor or publisher of a newspaper, or
- (c) the proprietor or broadcaster of a radio or television station or the producer of a radio or television show, or
- (d) an internet service provider or internet content host, or
- (e) a member of staff of or a person acting at the direction of any person or entity referred to in this definition, or
- (f) any person, or person belonging to a class of persons, prescribed by the regulations for the purposes of this section.

#### **126 False or misleading entries and statements**

A person must not:

- (a) make or cause to be made in the Register an entry that the person knows to be false or misleading or alter an entry in the Register with intent to render the entry false or misleading, or
- (b) for the purposes of obtaining registration as an optometrist either for that person or for anyone else, make a statement, whether orally or in writing, that the person knows to be false or misleading.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

#### **127 Evidentiary certificates and evidence of entry in Register**

- (1) A certificate purporting to have been signed by the Registrar to the effect that:
  - (a) a person specified in the certificate was or was not a registered optometrist at a time or during a period so specified, or
  - (b) the name of a person specified in the certificate was removed from the Register at a time so specified, or
  - (c) the registration of a person specified in the certificate was suspended from a time so specified and for a period so specified, or
  - (d) a condition, particulars of which are set out in the certificate, was, at a time or during a period so specified:
    - (i) imposed on the registration of a person so specified, or



(ii) revoked or not in force,

is, without proof of the signature of the person by whom the certificate purports to have been signed, admissible in any proceedings and is prima facie evidence of the matter certified in it.

- (2) An entry in the Register is admissible in any proceedings and is prima facie evidence of the matter stated in it.
- (3) A document purporting to be a copy of an entry in the Register, purportedly signed by the Registrar, is admissible in any proceedings and is prima facie evidence of the matter stated in it.

### **128 Authentication of certain documents**

Every certificate, summons, process, demand, order, notice, statement, direction or other document requiring authentication by the Board may be sufficiently authenticated without the seal of the Board if signed by:

- (a) the President or the Registrar, or
- (b) any officer of the Board authorised to do so by the Registrar.

### **129 Fees**

- (1) The Registrar is required to transmit to the Health Administration 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 money that is required to be dealt with in some other manner.
- (2) The Board may at any time waive payment of part or all of a fee payable under this Act, whether in a particular case or in a class of cases.
- (3) The power to waive payment of fees extends to any fee payable in relation to registration as an optometrist under the Mutual Recognition laws.

### **130 Optometry Education and Research Account**

- (1) The Board is to establish a Optometry Education and Research Account.
- (2) Such amounts as are determined by the Minister from time to time are to be paid into the Account by the Board from fees payable under this Act or the regulations.
- (3) Money in the Account may be expended by the Board for any one or more of the following:
  - (a) optometry education,
  - (b) education or research for any public purpose connected with the practice of

optometry,

(c) the publication and distribution of information concerning this Act and the regulations,

(d) meeting administrative expenditure incurred with respect to the Account and the purposes for which it is used,

or any related purpose.

(4) An expenditure of money under this section is not to be made unless it is authorised by a resolution supported by at least 5 members of the Board.

### **131 Appointment and powers of inspectors**

(1) The Director-General may appoint any person as an inspector for the purposes of this Act. The Director-General is to provide an inspector with a certificate of authority.

(2) An inspector may exercise the powers conferred by this section for the purpose of:

(a) ascertaining whether the provisions of this Act or the regulations are being complied with or have been contravened, or

(b) ascertaining whether section 10AE (Prescribing of contact lenses, spectacle lenses and other appliances) of the *Public Health Act 1991* has been contravened, or

(c) investigating a complaint made or intended to be made under Part 4.

(3) An inspector may, with the approval of the Board given on the particular occasion, enter and inspect at any reasonable time any premises that the inspector believes on reasonable grounds are being used for the carrying on of the practice of optometry.

(4) While on premises entered under this section or under the authority of a search warrant under section 132, an inspector may do any one or more of the following:

(a) require any person on those premises to produce any records in the possession or under the control of that person relating to the carrying on of the practice of optometry or a contravention of a provision of this Act or the regulations or of section 10AE of the *Public Health Act 1991*,

(b) inspect, take copies of, or extracts or notes from, any such records and, if the inspector considers it necessary to do so for the purpose of obtaining evidence, seize any such records,

(c) examine and inspect any apparatus or equipment used or apparently used in the course of the practice of optometry,

(d) take such photographs, films and audio, video and other recordings as the inspector considers necessary,

- (e) require any person on those premises to answer questions or otherwise furnish information in relation to the carrying on of the practice of optometry or a contravention of a provision of this Act or the regulations or of section 10AE of the *Public Health Act 1991*,
  - (f) require the owner or occupier of those premises to provide the inspector with such assistance and facilities as is or are reasonably necessary to enable the inspector to exercise the functions of an inspector under this section.
- (5) An inspector is not entitled to enter a part of premises used for residential purposes, except:
- (a) with the consent of the occupier of the part, or
  - (b) under the authority of a search warrant.
- (6) An inspector must, when exercising on any premises any function of the inspector under this section, produce the inspector's certificate of authority to any person apparently in charge of the premises who requests its production.
- (7) A person must not:
- (a) without reasonable excuse, refuse or fail to comply with any requirement made or to answer any question asked by an inspector under the authority of this section, or
  - (b) wilfully delay, hinder or obstruct an inspector in the exercise of the inspector's powers under this section, or
  - (c) furnish an inspector with information knowing it to be false or misleading in a material particular.

Maximum penalty: 5 penalty units.

- (8) If an inspector seizes any records under this section, they may be retained by the inspector until the completion of any proceedings (including proceedings on appeal) in which they may be evidence but only if the person from whom the records were seized is provided, within a reasonable time after the seizure, with a copy of the records certified by an inspector as a true copy.
- (9) A copy of records provided under subsection (8) is, as evidence, of equal validity to the records of which it is certified to be a copy.

### **132 Search warrants**

- (1) A person appointed under this Act as an inspector may apply to an authorised officer for the issue of a search warrant for premises if the inspector believes on reasonable grounds:

- (a) that a provision of this Act or the regulations, or of section 10AE of the *Public Health Act 1991*, is being or has been contravened on the premises, or
  - (b) that there is on the premises evidence of a contravention of a provision of this Act or the regulations.
- (2) A person appointed under this Act as an inspector must not apply for a search warrant unless the person or the Director-General has caused the President of the Board to be notified of the application.
- (3) An authorised officer to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an inspector named in the warrant:
- (a) to enter and inspect the premises, and
  - (b) to exercise on the premises any function of an inspector under section 131.
- (4) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.
- (5) In this section:

**authorised officer** has the same meaning as it has in the *Law Enforcement (Powers and Responsibilities) Act 2002*.

### **133 Liability of officers and members**

No matter or thing done or omitted to be done by:

- (a) the Board or a member of the Board, or
- (b) the Registrar or any other officer of the Board, or
- (c) the Committee or a member of the Committee, or
- (d) an Impaired Registrants Panel or a member of an Impaired Registrants Panel, or
- (e) the Tribunal or a member of the Tribunal, or
- (f) a nominal complainant,

subjects the member, or the Registrar, or officer, or nominal complainant, personally to any action, liability, claim or demand, if the matter or thing was done in the exercise, or intended exercise, of any of his or her functions or done in good faith for the purpose of executing this or any other Act.

### **134 Offences by corporations**

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or

the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.

- (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or has been convicted under the provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

### **135 Proceedings for offences**

- (1) Proceedings for an offence against this Act or the regulations are to be dealt with summarily before the Local Court.
- (2) Despite anything in any other Act, proceedings for an offence against this Act or the regulations may be instituted within the period of 12 months after the act or omission alleged to constitute the offence.

### **136 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, the regulations may make provision for or with respect to the following:
  - (a) the proceedings of the Board,
  - (b) any kinds of certificates of registration under this Act,
  - (c) the manner in which any notice under this Act may be served,
  - (d) the procedure to be followed at and any matters incidental to the holding of an inquiry or appeal by the Committee or the Tribunal, and matters relating to the custody and use of the seal of the Tribunal,
  - (e) the procedure before an Impaired Registrants Panel,
  - (f) the establishment by the Board of standards for the conduct and marking of examinations and the remuneration of examiners,
  - (g) the setting of fees by the Board in relation to examinations conducted by it,
  - (h) the forms to be used for the purposes of this Act and the regulations,
  - (i) the fees to be paid under this Act,
  - (j) the manner in which, and the extent to which, a registered optometrist or other

person may advertise optometry services,

- (k) requiring an optometrist to disclose specified information to a person to whom the optometrist provides optometry services, including information disclosing any pecuniary interest of the optometrist in any business or service provider to whom the optometrist refers such a person,
- (l) the inspection by or on behalf of the Board of optometry practices,
- (m) the making and keeping of records by registered optometrists and the obligations of optometrists to allow release of, access to, or inspection of, those records.

(3) A regulation may create an offence punishable by a penalty not exceeding 10 penalty units.

### **137 (Repealed)**

### **138 Repeals**

The *Optometrists Act 1930* and the *Optometrists Regulation 1995* are repealed.

### **139 Savings and transitional provisions**

Schedule 7 has effect.

### **140 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

## **Schedule 1 Registration procedures**

(Section 11)

### **Part 1 Applying for registration**

#### **1 Form of application**

An application for registration must be in a form approved by the Board and must be lodged with the Registrar.

## **2 Application fee**

- (1) The application is to be accompanied by the fee determined by the Minister in consultation with the Board.
- (2) Different fees may be determined in respect of different types of applications.
- (3) The Board is entitled to refuse to determine an application until the fee is paid.
- (4) The Board may in a particular case waive the requirement for a fee or reduce a fee.

## **3 Material to accompany application**

The application is to be accompanied by such evidence and other information as the Board requires.

## **4 Disclosure of convictions and charges**

- (1) The Board may require an applicant for registration to disclose:
  - (a) details of any offence for which the applicant has been convicted or made the subject of a criminal finding in this State or elsewhere (together with details of any penalty imposed for the offence), other than an offence prescribed by the regulations as not being relevant for the purposes of this clause, and
  - (b) details of any criminal proceedings pending against the applicant in this State or elsewhere for a sex/violence offence.
- (2) The Board may require a disclosure for the purposes of this clause to be in the form of a statutory declaration.
- (3) Any power of the Board to require disclosure of a conviction or criminal finding for an offence or to have regard to the conviction of or the making of a criminal finding in respect of an applicant for registration for an offence extends to a conviction or criminal finding for an offence committed before the commencement of this clause.

## **5 Time within which application to be determined**

- (1) For the purposes of an appeal under this Act, the Board is taken to have determined that an applicant for registration is not entitled to be registered and to have refused the application if the Board does not consider and determine the application within 3 months after the application is lodged with the Registrar.
- (2) The Board and the applicant may agree on a longer period than 3 months for the purposes of this clause, in which case the agreed longer period applies.

## **Part 2 Dealing with applications**

### **6 Applications to be considered and determined**

The Board is to consider and determine all applications for registration. The Board determines an application by either registering the applicant or refusing the application.

### **7 Notice to applicant of decision on application**

- (1) The Board is to give an applicant for registration notice of the Board's decision on the application as soon as practicable after the decision is made.
- (2) If the decision is to grant registration, the Board is to issue to the applicant a certificate of registration in a form approved by the Board and stating such particulars as the Board determines.

### **8 How a person is registered**

The Board registers a person by recording the person's name in the Register together with such particulars as the Board considers appropriate.

## **Part 3 Inquiries**

### **9 Board may hold inquiry into eligibility**

- (1) The Board may hold an inquiry, in such cases as it considers appropriate, into the eligibility of an applicant to be registered as an optometrist.
- (2) The inquiry may include an inquiry into the applicant's competence to practise optometry.

### **10 Commission to be notified of inquiry**

- (1) The Board must give the Commission at least 7 days' notice in writing before the Board holds an inquiry under this Part.
- (2) The Commission may appear and be heard at an inquiry under this Part.

### **11 Applicant to be notified of inquiry**

The Registrar is to fix a time and place for the holding of an inquiry and is to cause the applicant concerned to be given at least 14 days' notice in writing of the time and place for the inquiry.

### **12 Powers etc of the Board in an inquiry**

For the purposes of an inquiry conducted by the Board under this Part, the Board has the same functions that the Tribunal has under this Act. However, proceedings on an inquiry conducted by the Board are not to be open to the public.



### **13 Optometrist entitled to attend**

- (1) The person in relation to whom an inquiry is being held is entitled to attend and to be accompanied by an Australian lawyer or another adviser, but is not entitled to be represented by an Australian lawyer or other adviser.
- (2) This clause does not prevent the Board from proceeding with an inquiry in the absence of the applicant so long as the applicant has been given notice of the inquiry in accordance with clause 11.

### **14 Provisions concerning witnesses etc**

Schedule 5 applies to and in respect of a person or witness appearing or evidence given at an inquiry in the same way as it applies to a person or witness appearing or evidence given before the Tribunal.

### **15 Constitution of Board for inquiry**

- (1) If the Board decides to hold an inquiry, the Board is to appoint 3 persons to conduct the inquiry.
- (2) The persons appointed to conduct the inquiry need not be members of the Board.
- (3) The persons appointed to conduct an inquiry are taken to be members of the Board and to constitute the Board for the purposes of the inquiry and, accordingly, may exercise the functions of the Board in relation to the inquiry.

### **16 Director-General may intervene at inquiry**

The Director-General may intervene in any inquiry before the Board and is entitled to be heard personally or by being represented by an officer of the Department of Health.

### **17 Preliminary medical examinations of applicants for registration**

- (1) Before or during an inquiry under this Part, the Board may require the applicant for registration, by notice in writing given personally or by post to the applicant, to undergo at the Board's expense a medical examination by a registered medical practitioner specified in the notice, at any reasonable time and place so specified.
- (2) A failure by an applicant, without reasonable cause, to comply with such a notice is, for the purposes of this Part (including any inquiry or appeal under this Act) evidence that the applicant does not have sufficient physical and mental capacity to practise optometry.

### **18 Decisions of the Board in an inquiry**

A decision supported by at least 2 of the 3 persons appointed to conduct an inquiry under this Part on an inquiry, or on any question arising during an inquiry, is a decision of the Board.

## 19 Details of decision to be supplied to applicant

- (1) The Board must provide a written statement of a decision on an inquiry to the person in relation to whom the inquiry was held and must do so within one month after the decision is made.
- (2) The statement of a decision must:
  - (a) give the reasons for the decision, and
  - (b) include information about any appeal rights the person has under section 17.
- (3) The Board may also provide the statement of a decision to such other persons as the Board thinks fit.

## 20 Statement need not contain confidential information

- (1) The Board is not required to include confidential information in the statement of a decision. 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.
- (2) When confidential information is not included in the statement of a decision provided to a person or the statement is not provided to a person because of subclause (1), the Board must give a confidential information notice to the person.
- (3) A **confidential information notice** is a notice that indicates that confidential information is not included or that the statement will not be provided (as appropriate) and gives the reasons for this. The notice must be in writing and must be given within one month after the decision is made.
- (4) This clause does not affect 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.
- (5) In this clause:

**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, and
- (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 subclause (1), be required) to provide a written statement of a decision, and
- (c) is information:
  - (i) that was supplied in confidence, or
  - (ii) the publication of which would reveal a trade secret, or

- (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.

## **Part 4 Keeping and alteration of the Register**

### **21 Board is to keep the Register**

- (1) The Board is to keep a register, called the Register of Optometrists for New South Wales.
- (2) The Register is to be kept in such form as the Board determines.
- (3) The Register must be available for inspection by any person:
  - (a) in person at the office of the Board at all reasonable times, and
  - (b) by such other means (such as Internet access) and at such other times as the Board determines.
- (4) The Board may charge a fee for an inspection of the Register, not exceeding such amount as may be prescribed by the regulations.
- (5) The Board may carry out searches of the Register on a person's behalf and may charge such fee as it determines for the search.

### **22 Information to be recorded in Register**

- (1) The Board is to record in the Register such particulars of the registration of each registered optometrist as the Board considers appropriate, subject to the regulations. The regulations may make provision for or with respect to the information to be recorded in the Register.
- (2) Any conditions to which an optometrist's registration is subject must be recorded in the Register.
- (3) The Board may, on application by a registered optometrist and payment of the prescribed fee, record in the Register any particulars in addition to those required to be recorded in the Register, as the Board approves.
- (4) The Board must make such other recordings in the Register as may be necessary for the purpose of maintaining the Register as an accurate record of the particulars relating to each registered optometrist.

### **23 Method of removal from the Register**

- (1) The name of a registered optometrist is removed from the Register by the making in the Register of such recording as the Board directs.

- (2) The Board must cause a person to be given notice that the person's name has been removed from the Register unless the person's name was removed in accordance with an order of the Chairperson, a Deputy Chairperson, the Tribunal or the Supreme Court under this Act.

#### **24 Surrender of certificates**

- (1) The Board may by notice require a person who has ceased to be registered to furnish to the Board within a time specified in the notice a certificate issued to the person under this Act in respect of that registration.
- (2) A person on whom such a notice has been served must not, without reasonable cause, fail to comply with the requirements of the notice.

Maximum penalty: 10 penalty units.

#### **25 Making a recording in the Register—extended meaning**

A reference in this Act to the making of a recording in the Register includes a reference to amending, cancelling or deleting a recording in the Register.

### **Part 5 Annual registration fees**

#### **26 Annual registration fee payable**

- (1) A registered optometrist must, on or before a date notified by the Board in writing to the optometrist at least 1 month in advance, pay to the Board the annual registration fee determined by the Minister in consultation with the Board.
- (2) Different fees may be determined for the purposes of this clause in respect of different classes of registration.

#### **27 Optometrist's name may be removed from Register for non-payment**

- (1) The Board is to notify a registered optometrist who does not pay the annual registration fee on or before the due date that if the fee is not paid on or before a later date specified in the notification the optometrist's name will be removed from the Register.
- (2) The Board may cause to be removed from the Register the name of any registered optometrist who has been so notified and fails to pay the fee on or before that later date.

#### **28 Entitlement to re-registration if fee paid**

- (1) A person whose name has been removed from the Register for failure to pay the annual registration fee is entitled to re-registration if the person pays to the Board any unpaid annual registration fee or fees together with any applicable late payment fee.

- (2) A late payment fee is applicable when more than 3 months have elapsed since the person's name was removed from the Register. The late payment fee is such amount as the Board determines.
- (3) The Board may waive payment of a late payment fee in a particular case if the Board thinks it appropriate to do so.
- (4) The entitlement to re-registration is an entitlement to registration on the same terms and subject to the same conditions (if any) as applied to the person's registration immediately before the removal of his or her name from the Register.
- (5) The Board may refuse to register a person under this clause if the Board is of the opinion, following an inquiry under Part 3 of this Schedule, that the person is not competent to practise optometry or is not of good character.
- (6) A person registered pursuant to an entitlement to re-registration under this clause is taken to have been so registered on and from the day the person's name was removed from the Register or on and from such later day as the Board determines and notifies to the person.
- (7) An entitlement to re-registration under this clause does not override any other provision of this Act pursuant to which a person's name is authorised or required to be removed from the Register.

## **29 Board may waive registration fee**

The Board may, for such reason as it considers proper, waive the requirement that an annual registration fee be paid by a registered optometrist in any particular year.

## **Part 6 Removal from and alteration of Register**

### **30 Removal of person wrongfully registered**

- (1) The Board may remove the name of any person from the Register who has been registered by reason of any false or fraudulent representation or declaration or by reason of a mistake.
- (2) A person whose name has been removed from the Register under this clause may appeal to the Tribunal against the Board's decision.
- (3) An appeal must be made within 28 days (or such longer period as the Chairperson may allow in a particular case) after notice of the decision is given to the person. The appeal is to be lodged with the Registrar who is to refer it to the Tribunal.
- (4) An appeal does not affect the decision with respect to which it is made until the appeal is determined.
- (5) When it determines an appeal, the Tribunal may dismiss the appeal or order that the

decision of the Board be revoked and replaced by a different decision made by the Tribunal and specified in the order. The Tribunal may also make such ancillary orders as it thinks proper.

- (6) The Tribunal's decision is taken to be a decision of the Board (but this does not confer a right of appeal under this section in respect of the Tribunal's decision).

### **31 Removal on death or at own request**

The Board must remove the name of a registered optometrist from the Register if the optometrist has died or has requested the Board to remove his or her name.

### **32 Removal or amendment pursuant to disciplinary order**

- (1) The Board must remove the name of a person from the Register if removal of the person's name is required by any order under this Act of the Chairperson, a Deputy Chairperson, the Tribunal or the Supreme Court.
- (2) The Board is to make such recordings in the Register as may be necessary to give effect to any order under this Act of the Board, the Chairperson, a Deputy Chairperson, the Tribunal or the Supreme Court as to the conditions to be imposed on a person's registration.

### **33 Optometrist to be notified of action**

The Board must give the optometrist concerned notice of action taken by the Board under this Part.

## **Schedule 2 Provisions relating to the members of the Board**

(Section 95)

### **1 President and Deputy President of the Board**

- (1) Of the members of the Board:
- (a) one who is a registered optometrist is to be appointed as President of the Board, and
  - (b) one is to be appointed as Deputy President of the Board.
- (2) Those appointments may be made in and by the instrument of appointment of the relevant member as member or by another instrument executed by the Governor.
- (3) The Governor may remove a member from the office of President or Deputy President.
- (4) A person who is the President or Deputy President vacates office as President or Deputy President if the person:
- (a) is removed from that office by the Governor, or

- (b) resigns that office by instrument in writing addressed to the Minister, or
- (c) ceases to be a member.

## **2 Acting members and acting President**

- (1) The Governor may, from time to time, appoint a person to act in the office of a member during the illness or absence of the member, and the person, while so acting, has all the functions of the member and is taken to be the member.
- (2) The Deputy President of the Board may act in the office of President during the illness or absence of the President, and while so acting has all the functions of the President and is taken to be the President.
- (3) The Governor may, from time to time, appoint a member to act in the office of President during the illness or absence of both the President and Deputy President, and the member, while so acting, has all the functions of the President and is taken to be the President.
- (4) The Governor may remove any person from any office to which the person was appointed under this clause.
- (5) A person while acting in the office of a member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.
- (6) For the purposes of this clause, a vacancy in the office of a member, the President or the Deputy President is taken to be an absence from office of the member, President or Deputy President.

## **3 Terms of office**

- (1) Subject to this Schedule, a member holds office for such period (not exceeding 4 years) as may be specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.
- (2) A person may not be appointed to serve more than 3 consecutive terms of office as a member of the Board.

## **4 Remuneration**

A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

## **5 Vacancy in office of member**

- (1) The office of a member becomes vacant if the member:
  - (a) dies, or

- (b) completes a term of office and is not re-appointed, or
- (c) resigns the office by instrument in writing addressed to the Minister, or
- (d) is removed from office by the Governor under this clause or under Part 8 of the *Public Sector Management Act 1988*, or
- (e) is absent from 4 consecutive meetings of the Board of which reasonable notice has been given to the member, except on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for being absent from those meetings, or
- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
- (g) becomes a mentally incapacitated person, or
- (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
- (i) in the case of a member referred to in section 91 (2) (a), the member ceases to be an officer or an employee referred to in that paragraph, or
- (j) in the case of a member referred to in section 91 (2) (b)-(d), the member's registration under this Act is suspended or cancelled, or the member's name is for any reason removed from the Register, or
- (k) in the case of a member referred to in section 91 (2) (f), the member ceases to be an Australian lawyer.

(2) The Governor may remove a member from office at any time.

(3) Without affecting the generality of subclause (2), the Governor may remove from office a member who contravenes the provisions of clause 7.

## **6 Filling of vacancy in office of member**

If the office of any member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

## **7 Disclosure of pecuniary interests**

(1) If:

- (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Board, and



(b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.

(2) A disclosure by a member at a meeting of the Board that the member:

(a) is a member, or is in the employment, of a specified company or other body, or

(b) is a partner, or is in the employment, of a specified person, or

(c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under this clause.

(3) Particulars of any disclosure made under this clause are to be recorded by the Board in a book kept for the purpose and that book is to be open at all reasonable hours to inspection by any person on payment of the fee determined by the Board.

(4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Board otherwise determines:

(a) be present during any deliberation of the Board with respect to the matter, or

(b) take part in any decision of the Board with respect to the matter.

(5) For the purposes of the making of a determination by the Board under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:

(a) be present during any deliberation of the Board for the purpose of making the determination, or

(b) take part in the making by the Board of the determination.

(6) A contravention of this clause does not invalidate any decision of the Board.

(7) This clause does not apply to or in respect of an interest of a member in a matter that arises merely because the member is an optometrist.

(8) A reference in this clause to a meeting of the Board includes a reference to a meeting of a committee of the Board.

## **8 Effect of certain other Acts**

(1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of

the appointment of a member.

(2) If by or under any other Act provision is made:

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

that provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

## **Schedule 3 Provisions relating to the procedure of the Board**

(Section 95)

### **1 First meeting of Board**

The Minister may call the first meeting of the Board in such manner as the Minister thinks fit.

### **2 General procedure**

The procedure for the calling of meetings of the Board and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Board.

### **3 Quorum**

The quorum for a meeting of the Board is 5 members.

### **4 Presiding member**

- (1) The President or, in the absence of the President, the Deputy President or, in the absence of both of them, another member of the Board elected to chair the meeting by the members present, is to preside at a meeting of the Board.
- (2) 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 Voting**

A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.

### **6 Minutes**

The Board must cause full and accurate minutes to be kept of the proceedings of each

meeting of the Board.

## **7 Proof of certain matters not required**

In any legal proceedings, proof is not required (until evidence is given to the contrary) of:

- (a) the constitution of the Board, or
- (b) any resolution of the Board, or
- (c) the appointment of, or the holding of office by, any member of the Board, or
- (d) the presence of a quorum at any meeting of the Board.

## **Schedule 4 Provisions relating to the Committee**

(Section 99)

### **Part 1 The members**

#### **1 Chairperson of the Committee**

The member referred to in section 98 (2) (a) is to be the Chairperson of the Committee.

#### **2 Term of office**

Subject to this Schedule, a member of the Committee holds office for such period, not exceeding 4 years, as may be specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.

#### **3 Remuneration**

A member of the Committee is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

#### **4 Filling of vacancy in office of member**

If the office of any member of the Committee becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

#### **5 Casual vacancies**

(1) A member of the Committee is to be taken to have vacated office if the member:

- (a) dies, or
- (b) absents himself or herself from 4 consecutive meetings of the Committee of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by

the Minister for being absent from those meetings, or

- (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
- (d) becomes a mentally incapacitated person, or
- (e) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
- (f) resigns the office by instrument in writing addressed to the Minister, or
- (g) is removed from office by the Minister under subclause (3).

(2) Without limiting the generality of subclause (1), a member who is appointed under section 98 (2) (a) or (b) and who ceases to be a registered optometrist is to be taken to have vacated office.

(3) The Minister may remove a member from office.

## **Part 2 Procedure of the Committee**

### **6 General procedure**

The procedure for the calling of meetings of the Committee and for the conduct of business at those meetings is, subject to this Act, to be as determined by the Committee.

### **7 Quorum**

The quorum for a meeting of the Committee is 3 members.

### **8 Voting**

A decision supported by a majority of the votes cast at a meeting of the Committee at which a quorum is present is the decision of the Committee.

### **9 Presiding member**

- (1) The Chairperson of the Committee or, in the absence of the Chairperson, another member of the Committee elected to chair the meeting by the members present, is to preside at a meeting of the Committee.
- (2) The person presiding at any meeting of the Committee has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

## **Schedule 5 Proceedings before the Tribunal**

(Section 115)

### **1 Proceedings generally**

In proceedings before it, the Tribunal is not bound to observe the rules of law governing the admission of evidence, but may inform itself of any matter in such manner as it thinks fit.

### **2 Power to summon witnesses and take evidence**

- (1) The Chairperson or Deputy Chairperson may summon a person to appear in proceedings before the Tribunal, to give evidence and to produce such documents (if any) as are referred to in the summons.
- (2) The person presiding at the proceedings may require a person appearing in the proceedings to produce a document.
- (3) The Tribunal may, in proceedings before it, take evidence on oath or affirmation and, for that purpose a member of the Tribunal:
  - (a) may require a person appearing in the proceedings to give evidence either to take an oath or to make an affirmation in a form approved by the person presiding, and
  - (b) may administer an oath to or take an affirmation from a person so appearing in the proceedings.
- (4) A person served with a summons to appear in any such proceedings and to give evidence must not, without reasonable excuse:
  - (a) fail to attend as required by the summons, or
  - (b) fail to attend from day to day unless excused, or released from further attendance, by a member of the Tribunal.
- (5) A person appearing in proceedings to give evidence must not, without reasonable excuse:
  - (a) when required to be sworn or to affirm—fail to comply with the requirement, or
  - (b) fail to answer a question that the person is required to answer by the person presiding, or
  - (c) fail to produce a document that the person is required to produce by this clause.

Maximum penalty: 20 penalty units.

### **3 Power to obtain documents**

- (1) A member of the Tribunal may, by notice in writing served on a person, require the person:
  - (a) to attend, at a time and place specified in the notice, before a person specified in the notice, being a member of the Tribunal or a person authorised by the Tribunal in that behalf, and
  - (b) to produce, at that time and place, to the person so specified a document specified in the notice.
- (2) A person who fails, without reasonable excuse, to comply with a notice served on the person under this clause is guilty of an offence.

Maximum penalty: 20 penalty units.

### **4 Evidence of other proceedings**

The Tribunal may receive and admit on production, as evidence in any proceedings, such of the following as the Tribunal considers relevant to the proceedings:

- (a) the judgment and findings of any court (whether civil or criminal and whether or not of New South Wales) or tribunal,
- (b) the verdict or findings of a jury of any such court,
- (c) a certificate of the conviction of or the making of a criminal finding in respect of any person,
- (d) a transcript of the depositions or of shorthand notes, duly certified by the Registrar or clerk of the court or tribunal as correct, of the evidence of witnesses taken in any such court or tribunal.

### **5 Additional complaints**

- (1) The Tribunal may in proceedings before it deal with one or more complaints about a registered optometrist.
- (2) If, during any such proceedings, it appears to the Tribunal that, having regard to any matters that have arisen, another complaint could have been made against the optometrist concerned:
  - (a) whether instead of or in addition to the complaint that was made, and
  - (b) whether or not by the same complainant,

the Tribunal may take that other complaint to have been referred to it and may deal with it in the same proceedings.

- (3) If another complaint is taken to have been referred to the Tribunal under subclause (2), the complaint may be dealt with after such an adjournment (if any) as is, in the opinion of the Tribunal, just and equitable in the circumstances.

## **6 Release of information**

- (1) The person presiding in proceedings before the Tribunal may, if the person presiding thinks it appropriate in the particular circumstances of the case (and whether or not on the request of a complainant, the optometrist concerned or any other person):
- (a) direct that the name of any witness is not to be disclosed in the proceedings, or
  - (b) direct that all or any of the following matters are not to be published:
    - (i) the name and address of any witness,
    - (ii) the name and address of a complainant,
    - (iii) the name and address of an optometrist,
    - (iv) any specified evidence,
    - (v) the subject-matter of a complaint.
- (2) A direction may be amended or revoked at any time by the person presiding.
- (3) A direction may be given before or during proceedings, but must not be given before the proceedings unless notice is given of the time and place appointed by the person presiding for consideration of the matter to:
- (a) a person who requested the direction, and
  - (b) the complainant or the optometrist concerned, as appropriate, and
  - (c) such other persons as the person presiding thinks fit.
- (3A) For the purposes of this clause, a reference to the name of any person includes a reference to any information, picture or other material that identifies the person or is likely to lead to the identification of the person.
- (4) A person who contravenes a direction given under this clause is guilty of an offence.
- Maximum penalty: 150 penalty units in the case of a body corporate and 20 penalty units in any other case.

## **7 Authentication of documents by the Tribunal**

Every document requiring authentication by the Tribunal may be sufficiently authenticated without the seal of the Tribunal, if signed by the Chairperson or by a member of the Tribunal authorised to do so by the Chairperson.

## **8 Nominal complainant**

- (1) In any proceedings before the Tribunal, a person appointed by the Commission:
  - (a) may act as nominal complainant in place of the actual complainant, and
  - (b) when so acting, is, for the purposes of this Act and the regulations, to be taken to be the person who made the complaint.
- (2) A reference in this Act to a complainant includes a reference to a nominal complainant.

## **9 Intervention by Director-General and Commission**

- (1) Without limiting the operation of clause 8, the Director-General personally (or an officer of the Department of Health appointed by the Director-General) or a person appointed by the Commission may intervene, and has a right to be heard, in any proceedings before the Tribunal.
- (2) The Director-General and the Commission may be represented by an Australian lawyer.

## **10 Expedition of inquiries and appeals**

- (1) It is the duty of the Tribunal to hear inquiries and appeals under this Act and to determine those inquiries and appeals expeditiously.
- (2) Without affecting the generality of subclause (1), the Tribunal may postpone or adjourn proceedings before it as it thinks fit.

## **11 Evidentiary certificate**

A certificate, purporting to have been signed by the Registrar, to the effect that:

- (a) a person specified in the certificate was or was not a registered optometrist at a time or during a period so specified, or
- (b) the name of a person specified in the certificate was removed from the Register at a time so specified, or
- (c) the registration of a person specified in the certificate was suspended from a time so specified and for a period so specified, or
- (d) a condition, particulars of which are set out in the certificate, was, at a time or during a period so specified, imposed on the registration of a person so specified or revoked or not in force,

is, without proof of the signature of the person by whom the certificate purports to have been signed, to be received by the Tribunal and all courts as evidence of that fact.



## 12 Certain complaints may not be heard

- (1) The Tribunal may decide not to conduct an inquiry, or at any time to terminate an inquiry or appeal, if:
  - (a) a complainant fails to comply with a requirement made of the complainant by the Tribunal, or
  - (b) the person about whom the complaint is made ceases to be a registered optometrist.
- (2) The Tribunal must not conduct or continue any inquiry or any appeal if the optometrist concerned dies.

## 13 Tribunal can award costs

- (1) The Tribunal may order the complainant, if any, the registered optometrist concerned, or any other person entitled to appear (whether as of right or because leave to appear has been granted) at any inquiry or appeal before the Tribunal to pay such costs to such person as the Tribunal may determine.
- (2) When an order for costs has taken effect, the Tribunal is, on application by the person to whom the costs have been awarded, to issue a certificate setting out the terms of the order and stating that the order has taken effect.
- (3) The person in whose favour costs are awarded may file the certificate in the District Court, together with an affidavit by the person as to the amount of the costs unpaid, and the Registrar of the District Court is to enter judgment for the amount unpaid together with any fees paid for filing the certificate.

## Schedule 6 (Repealed)

## Schedule 7 Savings and transitional provisions

(Section 139)

### Part 1 Preliminary

#### 1 Definitions

In this Schedule:

**new Board** means the Optometrists Registration Board constituted by this Act,

**old Board** means the Board of Optometrical Registration constituted by the 1930 Act,

**the 1930 Act** means the *Optometrists Act 1930*.

## **2 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

this Act

*National Competition Policy Health and Other Amendments (Commonwealth Financial Penalties) Act 2004*, to the extent that it amends this Act

*Health Legislation Amendment (Unregistered Health Practitioners) Act 2006* (but only to the extent that it amends this Act)

- (2) Such a provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.
- (3) To the extent to which such a provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of that publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of that publication.

## **Part 2 Provisions consequent on enactment of this Act**

### **3 Members of old Board**

- (1) A person who, immediately before the repeal of the 1930 Act, held office as a member of the old Board:
- (a) ceases to hold office as such on that repeal, and
  - (b) is eligible (if otherwise qualified) to be appointed as a member of the new Board.
- (2) A person who ceases to hold office as a member of the old Board because of the operation of this Act is not entitled to be paid any remuneration or compensation because of ceasing to hold that office.

### **4 Continuity of Board**

Anything done by or in relation to the old Board and having effect immediately before the dissolution of the old Board is taken to have been done by or in relation to the new Board.

### **5 Appointments and other action before commencement**

For the purpose only of enabling the new Board to be constituted in accordance with this

Act on or after (but not before) the commencement of section 89 (Constitution of the Board), appointments may be made under this Act, and anything else may be done, before that commencement, as if the whole of this Act commenced on the date of assent to this Act, but so that no appointment as a member of the new Board as so constituted takes effect before the commencement of section 89.

## **6 The Register**

The register referred to in section 11 of the 1930 Act is, on the commencement of this clause, taken to be the Register under this Act.

## **7 Registration as optometrist**

- (1) A person whose name, immediately before the repeal of the 1930 Act, appeared in the register of optometrists compiled under section 11 of that Act is, on the commencement of this clause, taken to be registered as an optometrist under this Act. Registration under this Act is subject to the same conditions (if any) as the person's registration under the 1930 Act was subject immediately before that repeal.
- (2) A certificate of provisional registration under section 19A of the 1930 Act, in force immediately before the repeal of that Act, is taken, on the commencement of this clause, to have been granted under this Act.

## **8 Fees**

A fee paid or which remains unpaid under a provision of the 1930 Act immediately before its repeal is taken, on commencement of the relevant provision of this Act, to have been paid or to remain unpaid under the provision of this Act that corresponds to that provision and is taken to have been so paid or to so remain unpaid for or in relation to the same period as that which applied to the fee under the 1930 Act.

## **9 Applications for registration**

An application for registration under the 1930 Act which had not been determined by the old Board before the repeal of that Act is taken to be an application for registration under this Act.

## **10 Appeals to the District Court**

- (1) An appeal to the District Court under section 32 of the 1930 Act that was pending immediately before the repeal of that Act is to be continued and disposed of as if, except as provided by subclause (2), this Act had not been enacted.
- (2) The decision of the Court on any such appeal is final, and binding on the new Board and the appellant and for the purposes of this Act is taken to be the final decision of the new Board.

## 11 Continuation of complaints

- (1) A complaint made to the old Board concerning the conduct of a registered optometrist and pending immediately before the repeal of the 1930 Act is, to the extent that the conduct concerned could be the subject of a complaint under this Act, to be dealt with as a complaint under this Act.
- (2) In particular, an inquiry under section 15 of the 1930 Act that had not been completed before the repeal of that Act is, on the commencement of this clause, taken to be a complaint made to the new Board under this Act and is to be dealt with accordingly.
- (3) This clause applies for the purposes of this Act and for the purposes of the *Health Care Complaints Act 1993* (including any conciliation under that Act) in its application to any complaint or investigation pending under the 1930 Act immediately before the repeal of the 1930 Act.

## 12 Complaints relating to previous conduct

A complaint or investigation may be made under this Act with respect to conduct or any other matter or thing that occurred before, or partly before and partly after, the commencement of the provisions of this Act under which the complaint or investigation is made.

## 13 Construction of certain references

On and from the commencement of this clause, a reference in any other Act, in any instrument made under any Act or in any other instrument of any kind:

- (a) to the old Board is to be read as a reference to the new Board, and
- (b) to the registrar under the 1930 Act is to be read as a reference to the Registrar under this Act, and
- (c) to the register referred to in section 11 of the 1930 Act is to be read as a reference to the Register under this Act, and
- (d) to the registration of a person as an optometrist under the 1930 Act is to be read as a reference to the registration of the person as an optometrist under this Act.

## Part 3 Provisions consequent on enactment of **Health Legislation Amendment (Unregistered Health Practitioners) Act 2006**

### 14 Definition

In this Part:

**amending Act** means the *Health Legislation Amendment (Unregistered Health Practitioners) Act 2006*.

### **15 Prohibition orders**

The Tribunal may make a prohibition order under section 57 (3A) with respect to either or both of the following:

- (a) conduct or any other matter or thing that occurred before, or partly before and partly after, that subsection was inserted by the amending Act,
- (b) a complaint that has been made but not fully dealt with before that subsection was inserted by the amending Act.

### **16 Decisions of the Tribunal**

Section 119 (4), as substituted by the amending Act, applies only in respect of a statement of a decision that is given after the commencement of that subsection.

### **17 Cancelled registrations to be publicly available**

Section 125A, as inserted by the amending Act, extends to a person who was, immediately before the commencement of that section, subject to an order of the Tribunal or the Supreme Court that the person's registration be cancelled or that the person not be re-registered.