



New South Wales

Optometrists Bill 2002

Explanatory note

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

Overview of Bill

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

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

- (a) a statement of the object of the Act is included,
- (b) additional mechanisms are provided for the accreditation and recognition of qualifications entitling a person to registration as an optometrist,
- (c) competence becomes an express requirement for registration and the Optometrists Registration Board (*the Board*) is given power to inquire into competence,
- (d) a mechanism for establishing a code of professional conduct is provided for and the operation of a code is clarified,
- (e) registered optometrists are required to submit an annual return to the Board detailing matters that establish their continuing competence and good character,

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

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

Outline of provisions

Part 1 Preliminary

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

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

Clause 3 sets out the object of the proposed Act.

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

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

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

Part 2 Registration

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

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

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

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

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

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

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

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

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

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

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

Part 3 Practice of optometry

Division 1 Conduct of practice

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

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

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

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

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

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

Division 2 Returns and information

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

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

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

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

Part 4 Complaints and disciplinary proceedings

Division 1 Interpretation

Clause 28 defines “professional misconduct”.

Clause 29 defines “unsatisfactory professional conduct”.

Division 2 Complaints

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

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

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

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

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

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

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

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

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

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

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

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

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

Division 3 Referral of complaints to Optometry Care Assessment Committee

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

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

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

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

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

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

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

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

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

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

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

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

Division 5 Disciplinary powers of Board and Tribunal

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

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

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

Clause 57 sets out the disciplinary powers of the Tribunal.

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

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

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

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

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

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

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

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

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

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

Part 5 Impairment

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

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

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

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

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

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

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

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

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

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

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

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

Part 6 Appeals and review of disciplinary action

Division 1 Appeals against actions of the Board

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

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

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

Division 2 Appeals against actions of Tribunal

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

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

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

Division 3 Review of suspension, cancellation or conditions

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

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

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

Clause 88 deals with the nature of the review.

Part 7 Optometrists Registration Board

Clause 89 constitutes the Optometrists Registration Board.

Clause 90 specifies the functions of the Board.

Clause 91 provides for the membership of the Board.

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

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

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

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

Part 8 Optometry Care Assessment Committee

Clause 96 constitutes the Optometry Care Assessment Committee.

Clause 97 specifies the functions of the Committee.

Clause 98 provides for the membership of the Committee.

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

Part 9 Impaired Registrants Panels

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

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

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

Part 10 Optometrists Tribunal

Division 1 Constitution of the Tribunal

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

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

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

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

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

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

Division 2 Proceedings of the Tribunal

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

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

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

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

Division 3 Inquiries, appeals etc before the Tribunal

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

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

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

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

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

Clause 118 provides for adjournments and interlocutory orders.

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

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

Part 11 Miscellaneous

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

Clause 122 provides for the service of notices.

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

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

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

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

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

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

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

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

Clause 131 provides for the appointment and powers of inspectors.

Clause 132 enables an inspector to obtain a search warrant.

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

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

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

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

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

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

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

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

Schedules

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

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

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

Optometrists Bill 2002

Explanatory note

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

Schedule 5 contains provisions relating to proceedings before the Tribunal.

Schedule 6 makes consequential amendments to various Acts.

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



New South Wales

Optometrists Bill 2002

Contents

	Page
Part 1 Preliminary	
1 Name of Act	2
2 Commencement	2
3 Object of Act	2
4 Definitions	2
5 Notes	3
6 Mutual Recognition laws	3
Part 2 Registration	
7 Registration necessary for certain representations	4
8 Qualifications for registration	4
9 Competence	5
10 Impairment	5
11 Full registration	5
12 Provisional registration	6
13 Temporary registration	7
14 Power to refuse or impose conditions on full registration	8
15 Cancellation and suspension of registration	9
16 Restrictions on registration of deregistered persons	9
17 Appeals concerning registration	9

	Page
Part 3 Practice of optometry	
Division 1 Conduct of practice	
18 Use of titles	11
19 Use of specialist title	11
20 Code of professional conduct	12
21 Authority for use of drugs by optometrists	13
22 Disclosure to patients	13
23 Restrictions on carrying on business of optometry	14
Division 2 Returns and information	
24 Annual return to be submitted	15
25 Notification of convictions, criminal findings and charges	17
26 Courts to provide information on convictions	18
27 Referral of mental health matters to Registrar	18
Part 4 Complaints and disciplinary proceedings	
Division 1 Interpretation	
28 Meaning of "professional misconduct"	19
29 Meaning of "unsatisfactory professional conduct"	19
Division 2 Complaints	
30 Grounds for complaints	20
31 Complaint can be made even if person no longer registered	21
32 Who can make a complaint	21
33 Complaints to be made to the Board	21
34 Form of complaint	22
35 Board to notify Commission of complaints	22
36 Board to notify person against whom complaint is made	22
37 Investigation of complaint by Board	23
38 Role of the Commission	23
39 How complaints are dealt with	23
40 Serious complaints must be referred to Tribunal	24
41 Medical examination of optometrist	25
42 Notification of orders to employer and others	25

	Page
Division 3 Referral of complaints to Optometry Care Assessment Committee	
43 Kinds of complaints that can be referred to Committee	26
44 How complaints are dealt with	27
45 Skills testing of optometrist	27
46 Recommendations of the Committee	28
47 No legal representation for parties appearing before the Committee	29
Division 4 Dealing with complaint by inquiry at a meeting of the Board	
48 Procedures for dealing with complaint at meeting	29
49 General procedure	29
50 Conduct of meeting	29
51 Making submissions to inquiry	30
52 Decision of the Board	30
53 Admissibility of Board's findings	31
Division 5 Disciplinary powers of Board and Tribunal	
54 Powers may be exercised if complaint proved or admitted	32
55 General powers of the Board	32
56 Power of the Board to recommend suspension or cancellation of registration	33
57 Powers of the Tribunal	33
Division 6 Powers of the Board for the protection of the public	
58 Suspension or conditions to protect the public	34
59 Power to remove or alter conditions	34
60 Referral of matter to Commission	34
61 Special provisions—impairment	35
62 Tribunal to be notified of suspensions	36
63 Extension of suspension	36
64 Expiration of suspension	36
65 Duration of conditions—complaint matters	36
66 Duration of conditions—impairment matters	37
Part 5 Impairment	
67 Referral of impairment matters concerning optometrists	39

	Page
68 Persons may notify Board of impairment matters concerning optometrists	39
69 Commission may refer impairment matters to Board	39
70 Panel to inquire into matters referred to it	39
71 Panel not to take action while Commission investigating	40
72 Board to give notice of proposed inquiry	40
73 Optometrist entitled to make representations	40
74 Assessment, report and recommendations by Panel	40
75 Voluntary suspension or conditions on registration	41
76 Review of conditions	41
77 Some matters to be dealt with as complaints	41
78 Confidentiality of Panel's report	42
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	43
80 Appeal against suspension or imposition of conditions by Board—impairment matters	44
81 Appeal on point of law	45
Division 2 Appeals against actions of Tribunal	
82 Preliminary appeal on point of law	45
83 Appeal against Tribunal's decisions and actions	45
84 Powers of Court on appeal	46
Division 3 Review of suspension, cancellation or conditions	
85 Right of review	46
86 Appropriate review body	47
87 Powers on review	47
88 Nature of review	48
Part 7 Optometrists Registration Board	
89 Constitution of the Board	49
90 Functions of the Board	49
91 Membership of the Board	49
92 Staff	50
93 Committees	50
94 Delegation of functions	50
95 Other provisions relating to the Board	51

	Page
Part 8 Optometry Care Assessment Committee	
96 Constitution of the Optometry Care Assessment Committee	52
97 Functions of the Committee	52
98 Membership of the Committee	52
99 Other provisions relating to the Committee	52
Part 9 Impaired Registrants Panels	
100 Impaired Registrants Panels	53
101 Board to constitute Panel when required	53
102 Decisions of a Panel	53
Part 10 Optometrists Tribunal	
Division 1 Constitution of the Tribunal	
103 The Optometrists Tribunal	54
104 Chairperson and Deputy Chairpersons of the Tribunal	54
105 Tribunal to be constituted to deal with complaints etc	55
106 Effect of vacancy on Tribunal	56
107 Payment of non-legal Tribunal members	56
108 Seal of the Tribunal	56
Division 2 Proceedings of the Tribunal	
109 Decisions of the Tribunal	56
110 Time when orders take effect	57
111 Powers of Tribunal exercised by Supreme Court	57
112 Registrar to be informed of disciplinary action	57
Division 3 Inquiries, appeals etc before the Tribunal	
113 Jurisdiction	57
114 Notice of time and place of inquiry or appeal	57
115 Conduct of proceedings	58
116 Representation before the Tribunal	58
117 Chairperson or Deputy Chairperson not to review own decisions	58
118 Adjournments and interlocutory orders	59
119 Tribunal to provide details of its decision	59
120 Statement need not contain confidential information	59

	Page	
Part 11	Miscellaneous	
121	Application of Criminal Records Act	61
122	How notice is to be given	61
123	Service of documents on Board	61
124	Written statement of decisions	61
125	Notice of disciplinary action to other Boards	63
126	False or misleading entries and statements	63
127	Evidentiary certificates and evidence of entry in Register	64
128	Authentication of certain documents	64
129	Fees	65
130	Optometry Education and Research Account	65
131	Appointment and powers of inspectors	66
132	Search warrants	68
133	Liability of officers and members	68
134	Offences by corporations	69
135	Proceedings for offences	69
136	Regulations	69
137	Amendment of other Acts	70
138	Repeals	70
139	Savings and transitional provisions	70
140	Review of Act	71
Schedules		
1	Registration procedures	72
2	Provisions relating to the members of the Board	82
3	Provisions relating to the procedure of the Board	87
4	Provisions relating to the Committee	89
5	Proceedings before the Tribunal	92
6	Amendment of other Acts	98
7	Savings and transitional provisions	112



New South Wales

Optometrists Bill 2002

No. , 2002

A Bill for

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

Clause 1 Optometrists Bill 2002

Part 1 Preliminary

The Legislature of New South Wales enacts: 1

Part 1 Preliminary 2

1 Name of Act 3

This Act is the *Optometrists Act 2002*. 4

2 Commencement 5

This Act commences on a day or days to be appointed by proclamation. 6
7

3 Object of Act 8

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. 9
10
11

4 Definitions 12

(1) In this Act: 13

Board means the Optometrists Registration Board constituted under this Act. 14
15

Chairperson means the Chairperson of the Tribunal. 16

Commission means the Health Care Complaints Commission constituted under the *Health Care Complaints Act 1993*. 17
18

Committee means the Optometry Care Assessment Committee constituted under this Act. 19
20

competence to practise optometry has the meaning give by section 9. 21

complaint means a complaint against an optometrist under Part 4 (Complaints and disciplinary proceedings). 22
23

conduct means any act or omission. 24

criminal finding means a finding by a court that a person is guilty of an offence without proceeding to conviction. 25
26

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. 27
28
29

Deputy Chairperson means a Deputy Chairperson of the Tribunal. 30

<i>Director-General</i> means the Director-General of the Department of Health.	1 2
<i>exercise</i> a function includes perform a duty.	3
<i>function</i> includes a power, authority or duty.	4
<i>health registration Act</i> has the same meaning as in the <i>Health Care Complaints Act 1993</i> .	5 6
<i>Impaired Registrants Panel</i> means an Impaired Registrants Panel constituted under this Act.	7 8
<i>impairment</i> has the meaning given by section 10.	9
<i>Mutual Recognition laws</i> means the <i>Mutual Recognition Act 1992</i> of the Commonwealth and the <i>Trans-Tasman Mutual Recognition Act 1997</i> of the Commonwealth.	10 11 12
<i>professional misconduct</i> is defined in Part 4 (Complaints and disciplinary proceedings).	13 14
<i>Register</i> means the Register of Optometrists kept by the Board under this Act.	15 16
<i>registered</i> means registered under this Act.	17
<i>Registrar</i> means the Registrar of the Board.	18
<i>registration authority</i> has the same meaning as in the <i>Health Care Complaints Act 1993</i> .	19 20
<i>sex/violence criminal finding</i> means a criminal finding for a sex/violence offence.	21 22
<i>sex/violence offence</i> means an offence involving sexual activity, acts of indecency, child pornography, physical violence or the threat of physical violence.	23 24 25
<i>Tribunal</i> means the Optometrists Tribunal constituted under this Act.	26
<i>unsatisfactory professional conduct</i> is defined in Part 4 (Complaints and disciplinary proceedings).	27 28
5 Notes	29
Notes included in this Act are explanatory notes and do not form part of this Act.	30 31
6 Mutual Recognition laws	32
This Act does not limit or otherwise affect the operation of the Mutual Recognition laws.	33 34

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. 1
2
3
4
5
- (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. 6
7
8
9
10
- (4) In this section: 11
qualification means a degree, diploma, certificate or other academic award conferred or awarded for the successful completion of a course of training in optometry. 12
13
14
- 9 Competence** 15
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. 16
17
18
19
20
- 10 Impairment** 21
(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. 22
23
24
25
26
- (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. 27
28
29
- 11 Full registration** 30
(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. 31
32
33
- (2) Registration under this section is *full registration*. 34

- (3) An entitlement to full registration does not prevent conditions being imposed on that registration in accordance with this Act. 1
2
- (4) Schedule 1 (Registration procedures) has effect with respect to full registration. 3
4
- 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. 5
6
7
8
9
10
11
12

12 Provisional registration 13

- (1) Registration as an optometrist may be granted: 14
- (a) to a person entitled to full registration, pending the Board's determination of the person's application for full registration, or 15
16
- (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. 17
18
19
20
- (2) Registration under this section is *provisional registration*. 21
- (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. 22
23
24
25
- (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. 26
27
28
29
- (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. 30
31
32
- (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. 33
34
35

-
- (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. 1
2
3
4
- 13 Temporary registration** 5
- (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. 6
7
8
9
- (2) Registration under this section is *temporary registration*. 10
- (3) Temporary registration can only be granted to a person: 11
- (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 12
13
14
- (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. 15
16
17
- (4) Temporary registration is granted by the Board by the grant of a certificate of temporary registration. 18
19
- (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. 20
21
22
23
- (6) The Board may extend and further extend a period of temporary registration by the issue of a further certificate of temporary registration. 24
25
26
- (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. 27
28
29
- (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. 30
31
32
-

14	Power to refuse or impose conditions on full registration	1
(1)	The Board may refuse to register a person who would otherwise be entitled to full registration if:	2
		3
(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	4
		5
		6
(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	7
		8
		9
		10
		11
(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	12
		13
		14
		15
(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.	16
		17
		18
		19
		20
(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.	21
		22
		23
		24
		25
(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.	26
		27
		28
	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.	29
		30
		31
(4)	In this section:	32
	<i>optometrists registration law</i> means any law of a place outside the State that provides for the registration or certification of optometrists.	33
		34

15	Cancellation and suspension of registration	1
(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 3 4 5
(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).	6 7 8 9
16	Restrictions on registration of deregistered persons	10
(1)	A person cannot apply for registration (and any such application must be rejected) if:	11 12
(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	13 14 15
(b)	the Chairperson or a Deputy Chairperson, the Tribunal or the Supreme Court orders that the person not be re-registered.	16 17
(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.	18 19 20
17	Appeals concerning registration	21
(1)	A person who is aggrieved by any of the following decisions of the Board may appeal to the Tribunal against the decision:	22 23
(a)	the Board's refusal to grant the person full registration,	24
(b)	the Board's refusal to grant the person temporary registration,	25
(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,	26 27 28
(d)	the Board's cancellation of the person's provisional registration or temporary registration,	29 30
(e)	the Board's refusal to register the person under clause 28 (Entitlement to re-registration if fee paid) of Schedule 1.	31 32

- (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. 1
2
3
4
- (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. 5
6
7
8
- (4) An appeal does not affect any determination with respect to which it is made until the appeal is determined. 9
10
- (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. 11
12
13
14
- (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). 15
16
17
- (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. 18
19
- 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. 20
21
22
23
24
25

Part 3 Practice of optometry	1
Note. Section 10AE of the <i>Public Health Act 1991</i> restricts the prescribing of contact lenses, spectacle lenses and other optical appliances by persons who are not registered optometrists or medical practitioners.	2 3 4
Division 1 Conduct of practice	5
18 Use of titles	6
(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.	7 8 9 10 11
Maximum penalty: 10 penalty units.	12
(2) In this section:	13
<i>recognised qualification</i> means:	14
(a) a qualification that is prescribed by the regulations as a recognised qualification, or	15 16
(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.	17 18 19
Note. See also section 105 (Use of misleading titles etc) of the <i>Medical Practice Act 1992</i> .	20 21
19 Use of specialist title	22
(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.	23 24 25 26
Maximum penalty: 10 penalty units.	27
(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.	28 29 30
(3) An approval under this section may be revoked by the Board by notice in writing to the optometrist.	31 32

20	Code of professional conduct	1
(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 3 4 5
(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.	6 7 8
(3)	For that purpose, the Minister may:	9
(a)	direct the Board to establish a code of professional conduct, or	10
(b)	direct the Board to amend or replace a code of professional conduct,	11 12
	so that the code includes guidelines relating to that conduct.	13
(4)	The Board is to comply with any such direction of the Minister.	14
(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.	15 16 17
(6)	The procedure for the establishment of a code of professional conduct is as follows:	18 19
(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,	20 21 22 23
(b)	the draft code and impact assessment statement are to be publicly exhibited for a period of at least 21 days,	24 25
(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,	26 27 28 29 30
(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,	31 32 33 34
(e)	the Board is not to establish the draft code as a code of professional conduct unless the Minister approves the draft.	35 36

- (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. 1
2
3
4
- 21 Authority for use of drugs by optometrists** 5
- (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. 6
7
8
9
10
11
- 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. 12
13
14
15
- (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. 16
17
18
- (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. 19
20
21
22
23
24
- (4) The Board may withdraw an optometrists drug authority at any time by notice in writing to the optometrist. 25
26
- (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 and miotics 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. 27
28
29
30
31
32
- 22 Disclosure to patients** 33
- (1) The regulations may make provision for or with respect to the following: 34
35
- (a) requiring an optometrist who refers a patient to another provider of eye care services, for the provision of eye care 36
37

Clause 22 Optometrists Bill 2002

Part 3 Practice of optometry

Division 1 Conduct of practice

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,	1 2 3
(b) requiring an optometrist who provides optometrical services in the optometrist's capacity as an employee to provide his or her name to patients.	4 5 6
(2) An optometrist must comply with the requirements of the regulations under this section.	7 8
Maximum penalty: 20 penalty units.	9
23 Restrictions on carrying on business of optometry	10
(1) A person (including a body corporate) must not carry on the business of the practice of optometry unless the person:	11 12
(a) is a registered optometrist, or	13
(b) is an incorporated practice, or	14
(c) is an exempt person and is carrying on that business in accordance with the conditions imposed by subsection (2), or	15 16
(d) is a person approved by the Minister for the purposes of this section and carries on the business in accordance with the terms and any conditions of the approval, or	17 18 19
(e) carries on the business as or for the legal personal representative of a deceased optometrist who before death carried on that business, and the business is not carried on for a period exceeding 12 months following the death of the deceased optometrist, or such further period as the Board may allow in writing, or	20 21 22 23 24 25
(f) is a person, or a member of a class of persons, prescribed by the regulations as entitled to carry on the business of the practice of optometry.	26 27 28
Maximum penalty: 50 penalty units.	29
(2) An exempt person may carry on the business of the practice of optometry if the business is carried on:	30 31
(a) only at premises at which the person could lawfully have carried on that business in accordance with section 35 of the <i>Optometrists Act 1930</i> immediately before its repeal, and	32 33 34

(b)	without any alteration in the name under which the business was being carried on immediately before that repeal, and	1 2
(c)	by or under the personal supervision and control of a registered optometrist whose name is prominently and legibly displayed upon the premises at which the business is carried on, and	3 4 5
(d)	in accordance with any conditions or limitations imposed by the regulations.	6 7
(3)	In this section:	8
	<i>de facto partner</i> of a director means a person with whom the director has a de facto relationship (within the meaning of the <i>Property (Relationships) Act 1984</i>).	9 10 11
	<i>exempt person</i> means a person who was, immediately before the repeal of section 35 of the <i>Optometrists Act 1930</i> , lawfully carrying on the business of the practice of optometry under that section.	12 13 14
	<i>family member</i> of a director means:	15
(a)	a spouse, de facto partner, parent, child, brother or sister of the director, or	16 17
(b)	a person who has a relationship with the director that is prescribed by the regulations for the purposes of this definition.	18 19
	<i>incorporated practice</i> means a body corporate that has the following attributes:	20 21
(a)	all the shareholders and directors of the corporation are either registered optometrists or family members of a director or directors who is or are registered optometrists,	22 23 24
(b)	the controlling interest in the body corporate is held by a person who is a registered optometrist or by persons who are registered optometrists.	25 26 27
Division 2	Returns and information	28
24	Annual return to be submitted	29
(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:	30 31 32

(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),	1 2 3
(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),	4 5 6 7
(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),	8 9 10 11 12
(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,	13 14 15 16 17
(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),	18 19 20 21 22 23
(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,	24 25 26 27 28
(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,	29 30 31 32
(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,	33 34 35
(i)	a statement as to whether the optometrist is registered under a health registration Act as at the date of the return,	36 37

(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,	1 2 3
(k)	details of any continuing professional education undertaken by the optometrist during the return period,	4 5
(l)	such other information as may be prescribed by the regulations.	6
(2)	The Board may require a return under this section to be verified by statutory declaration.	7 8
(3)	The regulations may provide that subsection (1) (a) does not apply in respect of particular offences.	9 10
(4)	In this section:	11
	<i>return date</i> means a date notified to optometrists by the Board in writing at least 1 month in advance.	12 13
	<i>return period</i> means the period of 12 months ending 2 months before the return date.	14 15
25	Notification of convictions, criminal findings and charges	16
(1)	A registered optometrist must notify the Board in writing within 7 days after:	17 18
(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	19 20 21 22
(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	23 24 25 26
(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).	27 28 29 30 31 32
(2)	The regulations may provide that subsection (1) (a) does not apply in respect of particular offences.	33 34

Clause 26	Optometrists Bill 2002
Part 3	Practice of optometry
Division 2	Returns and information

26	Courts to provide information on convictions	1
(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 3 4 5 6 7
(2)	The regulations may provide that this section does not apply in respect of particular offences.	8 9
27	Referral of mental health matters to Registrar	10
	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.	11 12 13

Part 4	Complaints and disciplinary proceedings	1
Division 1	Interpretation	2
28	Meaning of “professional misconduct”	3
	For the purposes of this Act, <i>professional misconduct</i> , 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.	4 5 6 7
29	Meaning of “unsatisfactory professional conduct”	8
(1)	For the purposes of this Act, <i>unsatisfactory professional conduct</i> , in relation to a registered optometrist, includes any of the following:	9 10
(a)	any conduct by the optometrist that demonstrates a lack of adequate knowledge, skill, judgment or care in the practice of optometry,	11 12 13
(b)	engaging in overservicing as provided by subsection (2),	14
(c)	a contravention by the optometrist of a provision of this Act or the <i>Poisons and Therapeutic Goods Act 1966</i> or the regulations under those Acts,	15 16 17
(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),	18 19 20
(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,	21 22 23 24
(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,	25 26
(g)	providing optometry services under a name other than the optometrist’s own name, unless:	27 28
(i)	the optometrist’s own name is used in conjunction with the other name and the other name is that of an incorporated practice of which the optometrist is a director, or	29 30 31 32

- (ii) the optometrist's own name is used in conjunction with the other name and the other name is a registered business name of the optometrist or of an incorporated practice of which the optometrist is a director, or 1
2
3
4
 - (iii) the optometrist's own name is used in conjunction with the other name, and the other name is the name of a registered optometrist who (or incorporated practice which) employs the optometrist concerned, or is the registered business name of a registered optometrist who (or incorporated practice which) employs the optometrist concerned, or 5
6
7
8
9
10
11
 - (iv) the optometrist is acting as the locum tenens of another optometrist, 12
13
 - (h) allowing the optometrist's name to be used in connection with the practice of optometry at premises at which the optometrist, or a locum tenens of the optometrist, is not in regular attendance for the purposes of practising optometry, 14
15
16
17
 - (i) any other improper or unethical conduct by an optometrist in the course of the practice of optometry. 18
19
- (2) An optometrist engages in overservicing if the optometrist, in the course of professional practice: 20
21
- (a) provides a service in circumstances in which provision of the service is unnecessary, not reasonably required or excessive, or 22
23
 - (b) engages in conduct prescribed by the regulations as constituting overservicing. 24
25
- (3) In this section: 26
incorporated practice has the same meaning as in section 23. 27

Division 2 Complaints 28

30 Grounds for complaints 29

- (1) A complaint may be made under this Act concerning: 30
 - (a) the professional conduct of a registered optometrist, or 31

(b)	the provision of an optometrical service by a registered optometrist.	1 2
	Note. Subsection (1) ensures consistency between this Act and the <i>Health Care Complaints Act 1993</i> with respect to the kinds of complaints that can be made about registered optometrists.	3 4 5
(2)	Without limiting the generality of subsection (1), a complaint may be made that a registered optometrist:	6 7
(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	8 9 10 11 12
(b)	is guilty of unsatisfactory professional conduct or professional misconduct, or	13 14
(c)	is not competent to practise optometry, or	15
(d)	suffers from an impairment, or	16
(e)	is not of good character.	17
(3)	A complaint need not be made in terms that are strictly in accordance with the terminology of this section.	18 19
(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.	20 21 22
31	Complaint can be made even if person no longer registered	23
	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.	24 25 26 27 28
32	Who can make a complaint	29
	Any person (including the Board) can make a complaint.	30
33	Complaints to be made to the Board	31
	Complaints are to be made to the Board and are to be lodged with the Registrar.	32 33
	Note. Complaints may also be made to the Commission.	34

34	Form of complaint	1
(1)	A complaint must be in writing, must identify the complainant and must contain particulars of the allegations on which it is founded.	2 3
(2)	A complaint must be verified by statutory declaration unless the complaint is made by:	4 5
(a)	a judicial officer within the meaning of the <i>Judicial Officers Act 1986</i> , or	6 7
(b)	a coroner, or	8
(c)	the Minister, or	9
(d)	the Director-General, or	10
(e)	the chief executive officer (however described) of a public health organisation (within the meaning of the <i>Health Services Act 1997</i>), or	11 12 13
(f)	the Commission, or	14
(g)	a person or body prescribed by the regulations.	15
(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.	16 17 18 19
(4)	The Board may require the complainant to provide further particulars of a complaint.	20 21
35	Board to notify Commission of complaints	22
	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.	23 24 25
36	Board to notify person against whom complaint is made	26
(1)	Written notice of the making of a complaint, the nature of the complaint and the identity of the complainant is to be given by the Board to the optometrist against whom the complaint is made, as soon as practicable after the complaint is made.	27 28 29 30
(2)	Notice is not required to be given if the Commission is handling the complaint.	31 32

(3)	Notice is not required to be given if the giving of the notice will or is likely to:	1
		2
(a)	prejudice the investigation of the complaint, or	3
(b)	place the health or safety of a person at risk, or	4
(c)	place the complainant or another person at risk of intimidation or harassment.	5
		6
37	Investigation of complaint by Board	7
	The Board may make such inquiries concerning a complaint as it thinks fit.	8
		9
38	Role of the Commission	10
(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.	11
		12
		13
		14
(2)	Division 2 of Part 2 of the <i>Health Care Complaints Act 1993</i> applies to the consultation and the outcomes of the consultation.	15
		16
39	How complaints are dealt with	17
(1)	When a complaint is made, the Board may at any time decide:	18
(a)	to refer the complaint for investigation by the Commission, or	19
(b)	to refer the complaint for conciliation in accordance with section 13 (2) of the <i>Health Care Complaints Act 1993</i> , or	20
		21
(c)	to refer the complaint to the Optometry Care Assessment Committee under Division 3, or	22
		23
(d)	to refer the matter to an Impaired Registrants Panel under Part 5, or	24
		25
(e)	to deal with the complaint by inquiry at a meeting of the Board under Division 4, or	26
		27
(f)	to refer the complaint to the Tribunal, or	28
(g)	to deal with the complaint by directing the optometrist to attend counselling, or	29
		30
(h)	to deal with the complaint by providing advice or making recommendations to the optometrist, or	31
		32
(i)	to decline to deal with or dismiss the complaint.	33

- (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). 1
2
3
4
5
6
- (3) The Board may decline to deal with a complaint if the optometrist concerned has ceased to be registered. 7
8
- (4) The Board may decline to deal with a complaint if the complainant fails to provide further particulars required by the Board. 9
10
- (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. 11
12
13
- (6) The Board is to notify the optometrist of any action taken by the Board under this section. 14
15
- 40 Serious complaints must be referred to Tribunal** 16
- (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. 17
18
19
20
- (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. 21
22
23
24
25
26
- (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. 27
28
29
30
31
- (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. 32
33
34

41	Medical examination of optometrist	1
(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 3 4 5 6
(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.	7 8 9 10 11
(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.	12 13 14 15
(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.	16 17 18 19 20 21
(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.	22 23 24
(6)	In this section: <i>court</i> 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. <i>report</i> includes a copy, reproduction and duplicate of the report or any part of the report, copy, reproduction or duplicate.	25 26 27 28 29 30
42	Notification of orders to employer and others	31
(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:	32 33 34
(a)	the employer (if any) of the optometrist concerned,	35

Clause 42	Optometrists Bill 2002	
Part 4	Complaints and disciplinary proceedings	
Division 2	Complaints	
<hr/>		
	(b) the chief executive officer (however described) of any public health organisation (within the meaning of the <i>Health Services Act 1997</i>) in respect of which the optometrist concerned is a visiting practitioner or is otherwise accredited,	1 2 3 4
	(c) the chief executive officer (however described) of any private hospital or day procedure centre (within the meaning of the <i>Private Hospitals and Day Procedure Centres Act 1988</i>) in respect of which the optometrist concerned is accredited,	5 6 7 8
	(d) the chief executive officer (however described) of any nursing home (within the meaning of the <i>Nursing Homes Act 1988</i>) in respect of which the optometrist concerned is accredited.	9 10 11
	(2) The notice is to be given within 7 days after:	12
	(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	13 14 15
	(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.	16 17 18
	(3) The notice is to include such information as the Board considers appropriate.	19 20
Division 3	Referral of complaints to Optometry Care Assessment Committee	21 22
43	Kinds of complaints that can be referred to Committee	23
	(1) The Board may refer a complaint to the Committee only if the Commission has decided not to investigate the complaint.	24 25
	(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.	26 27 28
	(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.	29 30 31

44	How complaints are dealt with	1
(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 3 4 5
(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.	6 7 8
(3)	The Committee may not determine a complaint referred to it except by settlement by consent.	9 10
(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.	11 12 13
45	Skills testing of optometrist	14
(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.	15 16 17 18 19
(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.	20 21 22 23
(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.	24 25 26
(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.	27 28 29 30 31 32
(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.	33 34 35

Clause 45	Optometrists Bill 2002
Part 4	Complaints and disciplinary proceedings
Division 3	Referral of complaints to Optometry Care Assessment Committee

(6)	In this section:	1
	<i>court</i> 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.	2 3 4
	<i>report</i> includes a copy, reproduction and duplicate of the report or any part of the report, copy, reproduction or duplicate.	5 6
46	Recommendations of the Committee	7
(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:	8 9 10 11
(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,	12 13 14
(b)	a recommendation that the Board direct the optometrist to attend counselling,	15 16
(c)	a recommendation that the Board dismiss the complaint.	17
(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.	18 19 20
(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.	21 22 23
(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.	24 25 26 27
(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.	28 29 30 31
(6)	This section is subject to section 40 (Serious complaints must be referred to Tribunal).	32 33

47	No legal representation for parties appearing before the Committee	1
	A complainant and the optometrist against whom the complaint is made are not entitled to be legally represented at any appearance before the Committee.	2 3 4
Division 4	Dealing with complaint by inquiry at a meeting of the Board	5 6
48	Procedures for dealing with complaint at meeting	7
	(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.	8 9 10
	(2) The Board may be assisted by a legal practitioner when dealing with a complaint at a meeting of the Board.	11 12
	(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.	13 14 15 16
49	General procedure	17
	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.	18 19 20
50	Conduct of meeting	21
	At a meeting to deal with a complaint, the Board:	22
	(a) may inform itself on any matter in such manner as it thinks fit, and	23 24
	(b) may receive written or oral submissions, and	25
	(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	26 27 28
	(d) is not bound by rules of evidence, and	29
	(e) may proceed to deal with the complaint in the absence of the optometrist.	30 31

51	Making submissions to inquiry	1
(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 3
(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.	4 5 6
(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.	7 8 9 10
(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.	11 12 13
(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.	14 15 16 17
(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 a legal practitioner.	18 19 20
(7)	The Commission is not entitled to be legally represented at the inquiry.	21
52	Decision of the Board	22
(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.	23 24 25
(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.	26 27 28
(3)	The written statement of a decision must give the reasons for the decision.	29 30
(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.	31 32 33 34

- (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. 1
2
3
4
- (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. 5
6
7
8
9
- (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. 10
11
12
- (8) In this section: 13
- confidential information* means information that: 14
- (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 15
16
17
- (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 18
19
20
21
- (c) is information: 22
- (i) that was supplied in confidence, or 23
- (ii) the publication of which would reveal a trade secret, or 24
- (iii) that was provided in compliance with a duty imposed by an enactment, or 25
26
- (iv) the provision of which by the Board would be in breach of any enactment. 27
28
- 53 Admissibility of Board's findings** 29
- A finding of the Board under this Division is admissible as evidence in any legal proceedings. 30
31

Clause 54	Optometrists Bill 2002
Part 4	Complaints and disciplinary proceedings
Division 5	Disciplinary powers of Board and Tribunal

Division 5	Disciplinary powers of Board and Tribunal	1
54	Powers may be exercised if complaint proved or admitted	2
	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.	3 4 5 6 7 8
55	General powers of the Board	9
	(1) The Board may do any one or more of the following:	10
	(a) caution or reprimand the person,	11
	(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,	12 13 14
	(c) order that the person seek and undergo medical or psychiatric treatment or counselling,	15 16
	(d) direct that such conditions relating to the person's practice of optometry as it considers appropriate be imposed on the person's registration,	17 18 19
	(e) order that the person complete a specified educational course or courses,	20 21
	(f) order that the person report on his or her optometry practice at specified times, in a specified manner and to specified persons,	22 23
	(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.	24 25 26
	(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.	27 28 29 30

56	Power of the Board to recommend suspension or cancellation of registration	1
		2
(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.	3
		4
		5
		6
		7
(2)	If the optometrist is not registered, a recommendation can be made under this section that the optometrist not be re-registered.	8
		9
(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.	10
		11
		12
(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.	13
		14
		15
		16
(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.	17
		18
(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.	19
		20
		21
57	Powers of the Tribunal	22
(1)	The Tribunal may exercise any power that the Board can exercise under this Division.	23
		24
(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):	25
		26
		27
(a)	that the person is not competent to practise optometry, or	28
(b)	that the person is guilty of professional misconduct, or	29
(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	30
		31
		32
		33
		34
(d)	that the person is not of good character.	35

Clause 57 Optometrists Bill 2002

Part 4 Complaints and disciplinary proceedings

Division 5 Disciplinary powers of Board and Tribunal

- (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. 1
2
3
- (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. 4
5

Division 6 Powers of the Board for the protection of the public 6
7

58 Suspension or conditions to protect the public 8

- (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: 9
10
11
- (a) by order suspend the registration of a registered optometrist for such period (not exceeding 8 weeks) as is specified in the order, or 12
13
14
- (b) impose on a registered optometrist's registration such conditions, relating to the optometrist's practising optometry, as it considers appropriate. 15
16
17
- (2) The Board may take such action: 18
- (a) whether or not a complaint has been made or referred to the Board about the optometrist, and 19
20
- (b) whether or not proceedings in respect of such a complaint are before the Tribunal. 21
22

59 Power to remove or alter conditions 23

The Board may at any time alter or remove conditions imposed under this Division. 24
25

60 Referral of matter to Commission 26

- (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. 27
28
29
- (2) The matter is to be dealt with by the Commission as a complaint made to the Commission against the optometrist concerned. 30
31

-
- (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. 1
2
3
4
- (4) Section 40 (Serious complaints must be referred to Tribunal) applies in respect of any such action by the Commission. 5
6
- (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. 7
8
9
- 61 Special provisions—impairment** 10
- (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. 11
12
13
- (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. 14
15
16
- (3) The Board is to consult with the Commission to see if agreement can be reached as to whether the matter should be: 17
18
- (a) dealt with as a complaint against the optometrist, or 19
- (b) referred to an Impaired Registrants Panel. 20
- (4) The matter is to be dealt with as a complaint against the optometrist only if, following that consultation: 21
22
- (a) the Board and the Commission agree that it should be dealt with as a complaint, or 23
24
- (b) either the Board or the Commission is of the opinion that the matter should be dealt with as a complaint. 25
26
- (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. 27
28
29
- (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. 30
31
32
33
- (7) Section 40 (Serious complaints must be referred to Tribunal) applies in respect of any such action by the Commission. 34
35

(8) If subsection (4) does not apply, the Board is to refer the matter to an Impaired Registrants Panel.	1 2
(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.	3 4 5 6
62 Tribunal to be notified of suspensions	7
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.	8 9 10 11
63 Extension of suspension	12
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:	13 14 15
(a) the extension has been approved in writing by the Chairperson or a Deputy Chairperson, and	16 17
(b) the complaint about the optometrist has not been disposed of.	18
64 Expiration of suspension	19
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.	20 21 22 23
65 Duration of conditions—complaint matters	24
(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.	25 26 27
(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.	28 29 30
(3) This section:	31
(a) does not prevent conditions being imposed under another provision of this Act, and	32 33

- (b) is subject to anything done by the Tribunal on an appeal under section 80. 1
2

66 Duration of conditions—impairment matters 3

- (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. 4
5
6
- (2) The conditions imposed by the Board have effect until: 7
- (a) the complaint about the optometrist is disposed of if the matter is subsequently dealt with by the Board as a complaint, or 8
9
- (b) the conditions are removed by the Board, 10
whichever happens first. 11
- (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). 12
13
14
15
16
- (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. 17
18
19
20
21
- (5) On receipt of such a request, the Board is to review the matter, and may: 22
23
- (a) refuse to remove or alter any of the conditions, or 24
- (b) remove or alter the conditions. 25
- (6) The Board is to give the optometrist concerned notice in writing of its decision in respect of the request. 26
27
- (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. 28
29
30
31

Clause 66	Optometrists Bill 2002
Part 4	Complaints and disciplinary proceedings
Division 6	Powers of the Board for the protection of the public

(8) This section:	1
(a) does not prevent conditions being imposed under another provision of this Act, and	2 3
(b) is subject to anything done by the Tribunal on an appeal under section 80.	4 5

Part 5 Impairment

1

67 Referral of impairment matters concerning optometrists

2

- (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.
 - 3
 - 4
 - 5
 - 6
- (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.
 - 7
 - 8
 - 9
 - 10

68 Persons may notify Board of impairment matters concerning optometrists

11

12

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.

13

14

15

69 Commission may refer impairment matters to Board

16

- (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.
 - 17
 - 18
 - 19
 - 20
- (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.
 - 21
 - 22
 - 23

70 Panel to inquire into matters referred to it

24

- (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.
 - 25
 - 26
 - 27
- (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.
 - 28
 - 29
 - 30
 - 31

71	Panel not to take action while Commission investigating	1
	An Impaired Registrants Panel is not to investigate or take any other	2
	action in relation to any matter if the Panel is aware that the matter is	3
	the subject of an investigation by the Commission, while the	4
	investigation is being conducted.	5
72	Board to give notice of proposed inquiry	6
	The Board is to give notice to a registered optometrist of any proposed	7
	inquiry by an Impaired Registrants Panel concerning the optometrist.	8
	The notice is to include sufficient details of the matters to which the	9
	inquiry is to relate.	10
73	Optometrist entitled to make representations	11
	(1) A registered optometrist who is the subject of any inquiry by an	12
	Impaired Registrants Panel is entitled to make oral or written	13
	representations to the Panel with respect to the matters being or to be	14
	the subject of the inquiry.	15
	(2) This section does not prevent the Panel from conducting an inquiry in	16
	the absence of the registered optometrist to whom it relates, as long as	17
	the optometrist has been given notice of the inquiry under section 72.	18
74	Assessment, report and recommendations by Panel	19
	(1) An Impaired Registrants Panel is to make an assessment in respect of	20
	each referral to it, based on the results of its inquiry into the matter.	21
	(2) On the basis of its assessment, the Panel may do any one or more of	22
	the following things:	23
	(a) counsel the optometrist concerned or recommend that he or she	24
	undertake specified counselling,	25
	(b) recommend that the optometrist concerned agree to conditions	26
	being imposed on his or her registration or to having his or her	27
	registration suspended for a specified period,	28
	(c) make recommendations to the Board as to any action that the	29
	Panel considers should be taken in relation to the matter.	30
	(3) The Panel is to report in writing to the Board on each referral to the	31
	Panel. The report is to detail the results of the Panel's inquiries and	32
	assessment in respect of the referral and any action taken by the Panel	33
	under this Part in relation to it.	34

75	Voluntary suspension or conditions on registration	1
	The Board may place conditions on a registered optometrist's registration or suspend the optometrist's registration if:	2
		3
	(a) an Impaired Registrants Panel has recommended that the Board do so, and	4
		5
	(b) the Board is satisfied that the optometrist has voluntarily agreed to the recommendation.	6
		7
76	Review of conditions	8
	(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:	9
		10
		11
	(a) that those conditions be removed or altered, or	12
	(b) that the suspension be terminated or shortened.	13
	(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.	14
		15
		16
	(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.	17
		18
		19
	(4) The Board is to give the optometrist concerned notice in writing of its decision in respect of the request.	20
		21
	(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.	22
		23
		24
		25
		26
77	Some matters to be dealt with as complaints	27
	(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.	28
		29
		30
		31
		32
		33

- (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. 1
2
3
- (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. 4
5
6
7

78 Confidentiality of Panel's report 8

- (1) A report by an Impaired Registrants Panel to the Board may not be admitted or used in any civil proceedings before a court. 9
10
- (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. 11
12
13
- (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. 14
15
16
17
18
Maximum penalty: 50 penalty units. 19
- (4) This section does not prevent the disclosure of such a report to the Commission. 20
21
- (5) In this section: 22
 - 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). 23
24
25
26
 - report* includes a copy, reproduction and duplicate of the report or any part of the report, copy, reproduction or duplicate. 27
28

Part 6 Appeals and review of disciplinary action	1
Division 1 Appeals against actions of the Board	2
79 Appeals against actions of the Board on a complaint	3
(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:	4
(a) a finding of the Board, or	5
(b) the exercise of any power by the Board under Division 5 (Disciplinary powers of Board and Tribunal) of Part 4.	6
(2) An appeal must be made within 28 days (or such longer period as the Chairperson may allow in a particular case) after:	7
(a) the Board's written statement of the decision by which the Board's finding is made is made available to the appellant, or	8
(b) the exercise of the power against which the appeal is made.	9
(3) The appeal must be lodged with the Registrar who is to refer it to the Tribunal.	10
(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.	11
(5) The Tribunal may:	12
(a) dismiss the appeal, or	13
(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.	14
(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.	15
	16
	17
	18
	19
	20
	21
	22
	23
	24
	25
	26
	27

80 Appeal against suspension or imposition of conditions by Board—impairment matters	1
	2
(1) A person may appeal to the Tribunal:	3
(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	4 5 6
(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	7 8 9
(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	10 11 12
(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.	13 14 15 16
(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.	17 18 19
(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.	20 21 22
(4) An appeal is to be lodged with the Registrar who is to refer it to the Tribunal.	23 24
(5) On an appeal, the Tribunal may, by order, do any of the following:	25
(a) dismiss the appeal,	26
(b) remove or alter the conditions to which the optometrist’s registration is subject (including by imposing new conditions on the optometrist’s registration),	27 28 29
(c) terminate or shorten the period of the suspension concerned.	30
(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.	31 32 33
(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.	34 35 36

81	Appeal on point of law	1
(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 3 4 5
(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.	6 7 8 9
(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.	10 11 12
(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.	13 14 15
Division 2	Appeals against actions of Tribunal	16
82	Preliminary appeal on point of law	17
(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.	18 19 20 21 22 23
(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.	24 25 26
(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.	27 28 29
83	Appeal against Tribunal's decisions and actions	30
(1)	An optometrist about whom a complaint is referred to the Tribunal, or the complainant, may appeal to the Supreme Court against:	31 32
(a)	a decision of the Tribunal with respect to a point of law, or	33

Clause 83 Optometrists Bill 2002

Part 6 Appeals and review of disciplinary action

Division 2 Appeals against actions of Tribunal

(b)	the exercise of any power by the Tribunal under Division 5 (Disciplinary powers of Board and Tribunal) of Part 4.	1 2
(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 4 5 6
(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.	7 8 9
84	Powers of Court on appeal	10
(1)	In determining the appeal, the Supreme Court may:	11
(a)	dismiss the appeal, or	12
(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.	13 14 15
(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.	16 17 18 19
Division 3	Review of suspension, cancellation or conditions	20
85	Right of review	21
(1)	A person may apply to the appropriate review body for a review of an order of the Board, the Chairperson or a Deputy Chairperson, the Tribunal or the Supreme Court:	22 23 24
(a)	that the registration of the person is suspended, or	25
(b)	that the person's name be removed from the Register or that the person not be re-registered, or	26 27
(c)	that conditions be imposed on the person's registration.	28
(2)	A person may also apply to the appropriate review body for a review of an order made under this Division.	29 30

-
- (3) An application for review of an order may not be made: 1
- (a) while the terms of the order provide that an application for 2
review may not be made, or 3
- (b) while an appeal under this Part to the Tribunal or the Supreme 4
Court in respect of the same matter is pending. 5
- 86 Appropriate review body 6**
- (1) The *appropriate review body* is the Tribunal except in a case where 7
the order being reviewed provides that it may be reviewed by the 8
Board, in which case the Board is the appropriate review body. 9
- (2) An application for review must be lodged with the Registrar who is to 10
refer it to the appropriate review body. 11
- 87 Powers on review 12**
- (1) The appropriate review body is to conduct an inquiry into an 13
application for review and may then do any of the following: 14
- (a) dismiss the application, 15
- (b) by its order terminate or shorten the period of the suspension 16
concerned, 17
- (c) make a reinstatement order, 18
- (d) make an order altering the conditions to which the person's 19
registration is subject (including by imposing new conditions). 20
- (2) A *reinstatement order* is an order that the person be registered subject 21
to the same conditions and limitations (if any) to which the person's 22
registration was subject immediately before the person ceased to be 23
registered. The appropriate review body may also impose conditions 24
on the person's registration or alter the conditions to which the 25
person's registration is to be subject under the reinstatement order. 26
- (3) The Commission is entitled to make submissions in respect of the 27
application at the inquiry into the application. 28
- (4) The Board is to take such action as may be necessary to give effect to 29
a reinstatement order. 30
- (5) The order on a review under this section may also provide that the 31
order is not to be reviewed under this Division until after a specified 32
time. 33
-

Clause 88	Optometrists Bill 2002
Part 6	Appeals and review of disciplinary action
Division 3	Review of suspension, cancellation or conditions

88	Nature of review	1
(1)	A review under this Division is a review to determine the appropriateness, at the time of the review, of the order concerned.	2 3
(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.	4 5 6 7 8 9

Part 7 Optometrists Registration Board	1
89 Constitution of the Board	2
There is constituted by this Act a body corporate under the corporate name of the Optometrists Registration Board.	3 4
90 Functions of the Board	5
(1) The Board has the following functions:	6
(a) such functions as are conferred or imposed on the Board by or under this or any other Act,	7 8
(b) to promote and maintain standards of optometry practice in New South Wales,	9 10
(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,	11 12 13
(d) to publish and distribute information concerning this Act and the regulations to optometrists, consumers and other interested persons.	14 15 16
(2) The Board is to exercise its functions in a manner that is consistent with the object of this Act.	17 18
91 Membership of the Board	19
(1) The Board is to consist of 9 members appointed by the Governor.	20
(2) The members are to be:	21
(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 <i>Health Services Act 1997</i> ,	22 23 24 25
(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,	26 27 28 29 30
(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,	31 32 33

(d)	1 registered optometrist nominated by the Minister of the Minister's own choosing,	1 2
(e)	2 persons (not being registered optometrists) nominated by the Minister to represent the community,	3 4
(f)	1 legal practitioner nominated by the Minister.	5
(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.	6 7 8 9 10
92	Staff	11
	A Registrar and such other staff as may be necessary to enable the Board to exercise its functions are to be employed under the <i>Health Administration Act 1982</i> by the Health Administration Corporation.	12 13 14
93	Committees	15
(1)	The Board may establish committees to assist it in connection with the exercise of any of its functions.	16 17
(2)	It does not matter that any or all of the members of a committee are not members of the Board.	18 19
(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.	20 21 22
(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.	23 24 25
94	Delegation of functions	26
(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:	27 28 29 30
(a)	the President, or	31
(b)	the Deputy President, or	32
(c)	a committee consisting of 2 or more members of the Board, or	33
(d)	the Registrar or any other member of staff of the Board.	34

-
- (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. 1
2
3
- (3) The Registrar may delegate to a member of the staff of the Board the exercise of: 4
5
- (a) any of the functions of the Registrar under this Act, other than this power of delegation, or 6
7
- (b) any functions delegated to the Registrar by the Board, unless the Board otherwise provides in its instrument of delegation to the Registrar. 8
9
10
- 95 Other provisions relating to the Board** 11
- (1) Schedule 2 has effect with respect to the members of the Board. 12
- (2) Schedule 3 has effect with respect to the procedure of the Board. 13

Part 8	Optometry Care Assessment Committee	1
96	Constitution of the Optometry Care Assessment Committee	2
	There is constituted by this Act the Optometry Care Assessment Committee.	3 4
97	Functions of the Committee	5
	The Committee has the functions conferred or imposed on it by or under this or any other Act.	6 7
98	Membership of the Committee	8
	(1) The Committee is to consist of 4 members appointed by the Minister.	9
	(2) Of the members:	10
	(a) one is to be a registered optometrist nominated by the Board, and	11 12
	(b) two are to be registered optometrists appointed from a panel of names furnished to the Minister by the Board, and	13 14
	(c) one is to be a person appointed by the Minister to be a representative of consumers.	15 16
	(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.	17 18 19 20
	(4) A person cannot be a member of the Committee while the person is a member of the Board.	21 22
99	Other provisions relating to the Committee	23
	Schedule 4 has effect with respect to the members and the procedure of the Committee.	24 25

Part 9 Impaired Registrants Panels	1
100 Impaired Registrants Panels	2
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.	3 4 5 6
101 Board to constitute Panel when required	7
(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.	8 9 10 11
(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.	12 13 14 15
(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.	16 17 18
102 Decisions of a Panel	19
(1) A decision supported by both members of a Panel is the decision of the Panel.	20 21
(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.	22 23 24

Clause 103	Optometrists Bill 2002
Part 10	Optometrists Tribunal
Division 1	Constitution of the Tribunal

Part 10	Optometrists Tribunal	1
Division 1	Constitution of the Tribunal	2
103	The Optometrists Tribunal	3
(1)	There is to be an Optometrists Tribunal for the purposes of this Act.	4
(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.	5 6 7
(3)	The Tribunal has and may exercise the jurisdiction and functions conferred or imposed on it by or under this or any other Act.	8 9
104	Chairperson and Deputy Chairpersons of the Tribunal	10
(1)	The Governor may appoint a legal practitioner of at least 7 years' standing as Chairperson of the Tribunal and may appoint one or more legal practitioners of at least 7 years' standing as Deputy Chairpersons of the Tribunal.	11 12 13 14
(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.	15 16 17 18
(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.	19 20 21
(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)).	22 23 24
(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.	25 26 27 28
(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.	29 30 31 32

(7) Part 2 of the <i>Public Sector Management Act 1988</i> does not apply to or in respect of the appointment of the Chairperson or a Deputy Chairperson.	1 2 3
105 Tribunal to be constituted to deal with complaints etc	4
(1) The Board is to inform the Chairperson and appoint 3 other persons to sit on the Tribunal when:	5 6
(a) a complaint or other matter is referred to the Tribunal, or	7
(b) the Commission decides, in accordance with the <i>Health Care Complaints Act 1993</i> , to prosecute a complaint before the Tribunal, or	8 9 10
(c) an appeal or application under this Act to the Tribunal is lodged with the Registrar.	11 12
(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.	13 14 15
(3) For the purpose of conducting an inquiry or hearing an appeal, the Tribunal is to consist of:	16 17
(a) the Chairperson or a Deputy Chairperson, and	18
(b) 2 registered optometrists having such qualifications as may be prescribed, appointed by the Board, and	19 20
(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.	21 22 23
(4) A person may not be appointed to sit on the Tribunal if the person is a member of the Board.	24 25
(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.	26 27 28
(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.	29 30

106	Effect of vacancy on Tribunal	1
(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 3 4 5 6 7
(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.	8 9 10 11
(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.	12 13 14
107	Payment of non-legal Tribunal members	15
	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.	16 17 18
108	Seal of the Tribunal	19
	The Tribunal is to have a seal of which all courts and persons acting judicially are to take judicial notice.	20 21
Division 2	Proceedings of the Tribunal	22
109	Decisions of the Tribunal	23
(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.	24 25 26 27
(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.	28 29 30 31

(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.	1 2 3
110 Time when orders take effect	4
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.	5 6 7
111 Powers of Tribunal exercised by Supreme Court	8
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.	9 10 11
112 Registrar to be informed of disciplinary action	12
The Tribunal is to inform the Registrar of the exercise of any power under Part 4 (Complaints and disciplinary proceedings) by the Tribunal.	13 14 15
Division 3 Inquiries, appeals etc before the Tribunal	16
113 Jurisdiction	17
(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.	18 19 20
(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.	21 22 23
114 Notice of time and place of inquiry or appeal	24
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:	25 26 27 28
(a) the optometrist concerned,	29
(b) the complainant, if any,	30
(c) the Director-General and the Board,	31

118	Adjournments and interlocutory orders	1
(1)	The Tribunal may adjourn proceedings for any reason it thinks fit.	2
(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.	3 4 5
119	Tribunal to provide details of its decision	6
(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).	7 8 9 10 11
(2)	The statement of a decision must:	12
(a)	set out any findings on material questions of fact, and	13
(b)	refer to any evidence or other material on which the findings were based, and	14 15
(c)	give the reasons for the decision.	16
(3)	The Tribunal may also provide the statement of a decision to such other persons as the Tribunal thinks fit.	17 18
(4)	The Board may disseminate the statement of a decision provided to it under this section as the Board thinks fit, unless the Tribunal has ordered otherwise.	19 20 21
120	Statement need not contain confidential information	22
(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.	23 24 25 26
(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.	27 28 29 30
(3)	A <i>confidential information notice</i> 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.	31 32 33 34 35

- (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. 1
2
3
- (5) In this section: 4
- confidential information* means information that: 5
- (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 6
7
8
- (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 9
10
11
12
- (c) is information: 13
- (i) that was supplied in confidence, or 14
- (ii) the publication of which would reveal a trade secret, or 15
- (iii) that was provided in compliance with a duty imposed by an enactment, or 16
17
- (iv) the provision of which by the Tribunal would be in breach of any enactment. 18
19

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. 1
2
- (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. 3
4
5
6
7
- (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. 8
9
10
11
- (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. 12
13
14
15
16
- (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. 17
18
19
- (9) In this section: 20
- confidential information** means information that: 21
- (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 22
23
24
- (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 25
26
27
28
- (c) is information: 29
- (i) that was supplied in confidence, or 30
- (ii) the publication of which would reveal a trade secret, or 31
- (iii) that was provided in compliance with a duty imposed by an enactment, or 32
33
- (iv) the provision of which by the Board, the President or the member would be in breach of any enactment. 34
35

125	Notice of disciplinary action to other Boards	1
(1)	When the registration of an optometrist is cancelled or suspended or any condition is imposed on the registration of an optometrist:	2
		3
(a)	the Board must without delay notify particulars of that action to the local registration authority of each neighbouring jurisdiction, and	4
		5
		6
(b)	the Board may notify particulars of that action to the local registration authority of any other jurisdiction.	7
		8
(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.	9
		10
		11
		12
		13
(3)	The Board is required or authorised to act under this section despite any law relating to secrecy or confidentiality.	14
		15
(4)	This section does not affect any obligation or power to provide information under the Mutual Recognition laws.	16
		17
(5)	In this section:	18
	<i>local registration authority</i> 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.	19
		20
		21
		22
	<i>neighbouring jurisdiction</i> means each Australian State, the Australian Capital Territory, the Northern Territory and New Zealand.	23
		24
	<i>registration</i> 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.	25
		26
		27
		28
126	False or misleading entries and statements	29
	A person must not:	30
(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	31
		32
		33

- (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. 1
2
3
4

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both. 5
6

127 Evidentiary certificates and evidence of entry in Register 7

- (1) A certificate purporting to have been signed by the Registrar to the effect that: 8
9

(a) a person specified in the certificate was or was not a registered optometrist at a time or during a period so specified, or 10
11

(b) the name of a person specified in the certificate was removed from the Register at a time so specified, or 12
13

(c) the registration of a person specified in the certificate was suspended from a time so specified and for a period so specified, or 14
15
16

(d) a condition, particulars of which are set out in the certificate, was, at a time or during a period so specified: 17
18

(i) imposed on the registration of a person so specified, or 19

(ii) revoked or not in force, 20

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. 21
22
23

- (2) An entry in the Register is admissible in any proceedings and is prima facie evidence of the matter stated in it. 24
25

- (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. 26
27
28

128 Authentication of certain documents 29

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: 30
31
32

(a) the President or the Registrar, or 33

(b) any officer of the Board authorised to do so by the Registrar. 34

129	Fees	1
(1)	The Registrar is required to transmit to the Health Administration Corporation for payment into an account established under section 13A of the <i>Health Administration Act 1982</i> 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 3 4 5 6
(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.	7 8 9
(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.	10 11 12
130	Optometry Education and Research Account	13
(1)	The Board is to establish a Optometry Education and Research Account.	14 15
(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.	16 17 18
(3)	Money in the Account may be expended by the Board for any one or more of the following:	19 20
(a)	optometry education,	21
(b)	education or research for any public purpose connected with the practice of optometry,	22 23
(c)	the publication and distribution of information concerning this Act and the regulations,	24 25
(d)	meeting administrative expenditure incurred with respect to the Account and the purposes for which it is used,	26 27
	or any related purpose.	28
(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.	29 30 31

131	Appointment and powers of inspectors	1
(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 3 4
(2)	An inspector may exercise the powers conferred by this section for the purpose of:	5 6
(a)	ascertaining whether the provisions of this Act or the regulations are being complied with or have been contravened, or	7 8 9
(b)	ascertaining whether section 10AE (Prescribing of contact lenses, spectacle lenses and other appliances) of the <i>Public Health Act 1991</i> has been contravened, or	10 11 12
(c)	investigating a complaint made or intended to be made under Part 4.	13 14
(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.	15 16 17 18
(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:	19 20 21
(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 <i>Public Health Act 1991</i> ,	22 23 24 25 26
(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,	27 28 29
(c)	examine and inspect any apparatus or equipment used or apparently used in the course of the practice of optometry,	30 31
(d)	take such photographs, films and audio, video and other recordings as the inspector considers necessary,	32 33

-
- | | | |
|-----|---|----------------------------------|
| (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 <i>Public Health Act 1991</i> , | 1
2
3
4
5 |
| (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. | 6
7
8
9 |
| (5) | An inspector is not entitled to enter a part of premises used for residential purposes, except: | 10
11 |
| (a) | with the consent of the occupier of the part, or | 12 |
| (b) | under the authority of a search warrant. | 13 |
| (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. | 14
15
16
17 |
| (7) | A person must not: | 18 |
| (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 | 19
20
21 |
| (b) | wilfully delay, hinder or obstruct an inspector in the exercise of the inspector's powers under this section, or | 22
23 |
| (c) | furnish an inspector with information knowing it to be false or misleading in a material particular. | 24
25 |
| | Maximum penalty: 5 penalty units. | 26 |
| (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. | 27
28
29
30
31
32 |
| (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. | 33
34 |

132	Search warrants	1
(1)	A person appointed under this Act as an inspector may apply to an authorised justice for the issue of a search warrant for premises if the inspector believes on reasonable grounds:	2
		3
		4
(a)	that a provision of this Act or the regulations, or of section 10AE of the <i>Public Health Act 1991</i> , is being or has been contravened on the premises, or	5
		6
		7
(b)	that there is on the premises evidence of a contravention of a provision of this Act or the regulations.	8
		9
(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.	10
		11
		12
(3)	An authorised justice 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:	13
		14
		15
(a)	to enter and inspect the premises, and	16
(b)	to exercise on the premises any function of an inspector under section 131.	17
		18
(4)	Part 3 of the <i>Search Warrants Act 1985</i> applies to a search warrant issued under this section.	19
		20
(5)	In this section, <i>authorised justice</i> has the same meaning as in the <i>Search Warrants Act 1985</i> .	21
		22
133	Liability of officers and members	23
	No matter or thing done or omitted to be done by:	24
(a)	the Board or a member of the Board, or	25
(b)	the Registrar or any other officer of the Board, or	26
(c)	the Committee or a member of the Committee, or	27
(d)	an Impaired Registrants Panel or a member of an Impaired Registrants Panel, or	28
		29
(e)	the Tribunal or a member of the Tribunal, or	30
(f)	a nominal complainant,	31

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.	1 2 3 4 5
134 Offences by corporations	6
(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.	7 8 9 10 11
(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.	12 13 14
(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.	15 16 17
135 Proceedings for offences	18
(1) Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.	19 20 21
(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.	22 23 24
136 Regulations	25
(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.	26 27 28 29
(2) In particular, the regulations may make provision for or with respect to the following:	30 31
(a) the proceedings of the Board,	32
(b) any kinds of certificates of registration under this Act,	33
(c) the manner in which any notice under this Act may be served,	34

(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,	1 2 3 4
(e)	the procedure before an Impaired Registrants Panel,	5
(f)	the establishment by the Board of standards for the conduct and marking of examinations and the remuneration of examiners,	6 7
(g)	the setting of fees by the Board in relation to examinations conducted by it,	8 9
(h)	the forms to be used for the purposes of this Act and the regulations,	10 11
(i)	the fees to be paid under this Act,	12
(j)	the manner in which, and the extent to which, a registered optometrist or other person may advertise optometry services,	13 14
(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,	15 16 17 18 19
(l)	the inspection by or on behalf of the Board of optometry practices,	20 21
(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.	22 23 24
(3)	A regulation may create an offence punishable by a penalty not exceeding 10 penalty units.	25 26
137	Amendment of other Acts	27
	Each Act specified in Schedule 6 is amended as set out in that Schedule.	28 29
138	Repeals	30
	The <i>Optometrists Act 1930</i> and the <i>Optometrists Regulation 1995</i> are repealed.	31 32
139	Savings and transitional provisions	33
	Schedule 7 has effect.	34

140 Review of Act

- | | |
|--|-------------|
| | 1 |
| (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
3
4 |
| (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. | 5
6 |
| (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. | 7
8 |

Schedule 1	Registration procedures	1
	(Section 11)	2
Part 1	Applying for registration	3
1	Form of application	4
	An application for registration must be in a form approved by the Board and must be lodged with the Registrar.	5 6
2	Application fee	7
(1)	The application is to be accompanied by the fee determined by the Minister in consultation with the Board.	8 9
(2)	Different fees may be determined in respect of different types of applications.	10 11
(3)	The Board is entitled to refuse to determine an application until the fee is paid.	12 13
(4)	The Board may in a particular case waive the requirement for a fee or reduce a fee.	14 15
3	Material to accompany application	16
	The application is to be accompanied by such evidence and other information as the Board requires.	17 18
4	Disclosure of convictions and charges	19
(1)	The Board may require an applicant for registration to disclose:	20
(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	21 22 23 24 25
(b)	details of any criminal proceedings pending against the applicant in this State or elsewhere for a sex/violence offence.	26 27
(2)	The Board may require a disclosure for the purposes of this clause to be in the form of a statutory declaration.	28 29

(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.	1 2 3 4 5
5 Time within which application to be determined	6
(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.	7 8 9 10 11
(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.	12 13 14
Part 2 Dealing with applications	15
6 Applications to be considered and determined	16
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.	17 18 19
7 Notice to applicant of decision on application	20
(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.	21 22 23
(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.	24 25 26
8 How a person is registered	27
The Board registers a person by recording the person's name in the Register together with such particulars as the Board considers appropriate.	28 29 30

Part 3 Inquiries	1
9 Board may hold inquiry into eligibility	2
(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.	3 4 5
(2) The inquiry may include an inquiry into the applicant's competence to practise optometry.	6 7
10 Commission to be notified of inquiry	8
(1) The Board must give the Commission at least 7 days' notice in writing before the Board holds an inquiry under this Part.	9 10
(2) The Commission may appear and be heard at an inquiry under this Part.	11 12
11 Applicant to be notified of inquiry	13
The President 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.	14 15 16
12 Powers etc of the Board in an inquiry	17
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.	18 19 20 21
13 Optometrist entitled to attend	22
(1) The person in relation to whom an inquiry is being held is entitled to attend and to be accompanied by a legal practitioner or another adviser, but is not entitled to be represented by a legal practitioner or other adviser.	23 24 25 26
(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.	27 28 29

14	Provisions concerning witnesses etc	1
	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.	2 3 4
15	Constitution of Board for inquiry	5
	(1) If the Board decides to hold an inquiry, the Board is to appoint 3 persons to conduct the inquiry.	6 7
	(2) The persons appointed to conduct the inquiry need not be members of the Board.	8 9
	(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.	10 11 12 13
16	Director-General may intervene at inquiry	14
	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.	15 16 17
17	Preliminary medical examinations of applicants for registration	18
	(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.	19 20 21 22 23
	(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.	24 25 26 27
18	Decisions of the Board in an inquiry	28
	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.	29 30 31

19	Details of decision to be supplied to applicant	1
(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 3 4
(2)	The statement of a decision must:	5
(a)	give the reasons for the decision, and	6
(b)	include information about any appeal rights the person has under section 17.	7 8
(3)	The Board may also provide the statement of a decision to such other persons as the Board thinks fit.	9 10
20	Statement need not contain confidential information	11
(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.	12 13 14 15
(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.	16 17 18 19
(3)	A <i>confidential information notice</i> 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.	20 21 22 23 24
(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.	25 26 27
(5)	In this clause:	28
	<i>confidential information</i> means information that:	29
(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	30 31 32

-
- | | | |
|-------|---|------------------|
| (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 | 1
2
3
4 |
| (c) | is information: | 5 |
| (i) | that was supplied in confidence, or | 6 |
| (ii) | the publication of which would reveal a trade secret, or | 7 |
| (iii) | that was provided in compliance with a duty imposed by an enactment, or | 8
9 |
| (iv) | the provision of which by the Board would be in breach of any enactment. | 10
11 |

Part 4 Keeping and alteration of the Register 12

21 Board is to keep the Register 13

- | | | |
|-----|--|----------|
| (1) | The Board is to keep a register, called the Register of Optometrists for New South Wales. | 14
15 |
| (2) | The Register is to be kept in such form as the Board determines. | 16 |
| (3) | The Register must be available for inspection by any person: | 17 |
| (a) | in person at the office of the Board at all reasonable times, and | 18 |
| (b) | by such other means (such as Internet access) and at such other times as the Board determines. | 19
20 |
| (4) | The Board may charge a fee for an inspection of the Register, not exceeding such amount as may be prescribed by the regulations. | 21
22 |
| (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. | 23
24 |

22 Information to be recorded in Register 25

- | | | |
|-----|--|----------------------------|
| (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. | 26
27
28
29
30 |
| (2) | Any conditions to which an optometrist's registration is subject must be recorded in the Register. | 31
32 |

(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.	1 2 3 4
(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.	5 6 7
23	Method of removal from the Register	8
(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.	9 10
(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.	11 12 13 14
24	Surrender of certificates	15
(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.	16 17 18 19
(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.	20 21 22
25	Making a recording in the Register—extended meaning	23
	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.	24 25 26

Part 5 Annual registration fees	1
26 Annual registration fee payable	2
(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.	3 4 5 6
(2) Different fees may be determined for the purposes of this clause in respect of different classes of registration.	7 8
27 Optometrist's name may be removed from Register for non-payment	9
(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.	10 11 12 13
(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.	14 15 16
28 Entitlement to re-registration if fee paid	17
(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.	18 19 20 21
(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.	22 23 24
(3) The Board may waive payment of a late payment fee in a particular case if the Board thinks it appropriate to do so.	25 26
(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.	27 28 29 30
(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.	31 32 33 34

- (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. 1
2
3
4
- (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. 5
6
7

29 Board may waive registration fee 8

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. 9
10
11

Part 6 Removal from and alteration of Register 12

30 Removal of person wrongfully registered 13

- (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. 14
15
16
- (2) A person whose name has been removed from the Register under this clause may appeal to the Tribunal against the Board's decision. 17
18
- (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. 19
20
21
22
- (4) An appeal does not affect the decision with respect to which it is made until the appeal is determined. 23
24
- (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. 25
26
27
28
- (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). 29
30
31

31	Removal on death or at own request	1
	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.	2 3 4
32	Removal or amendment pursuant to disciplinary order	5
(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.	6 7 8 9
(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.	10 11 12 13
33	Optometrist to be notified of action	14
	The Board must give the optometrist concerned notice of action taken by the Board under this Part.	15 16

Schedule 2	Provisions relating to the members of the Board	1
		2
	(Section 95)	3
1	President and Deputy President of the Board	4
(1)	Of the members of the Board:	5
(a)	one who is a registered optometrist is to be appointed as President of the Board, and	6
		7
(b)	one is to be appointed as Deputy President of the Board.	8
(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.	9
		10
		11
(3)	The Governor may remove a member from the office of President or Deputy President.	12
		13
(4)	A person who is the President or Deputy President vacates office as President or Deputy President if the person:	14
		15
(a)	is removed from that office by the Governor, or	16
(b)	resigns that office by instrument in writing addressed to the Minister, or	17
		18
(c)	ceases to be a member.	19
2	Acting members and acting President	20
(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.	21
		22
		23
		24
(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.	25
		26
		27
(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.	28
		29
		30
		31

(4) The Governor may remove any person from any office to which the person was appointed under this clause.	1 2
(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.	3 4 5 6
(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.	7 8 9
3 Terms of office	10
(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.	11 12 13 14
(2) A person may not be appointed to serve more than 3 consecutive terms of office as a member of the Board.	15 16
4 Remuneration	17
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.	18 19 20
5 Vacancy in office of member	21
(1) The office of a member becomes vacant if the member:	22
(a) dies, or	23
(b) completes a term of office and is not re-appointed, or	24
(c) resigns the office by instrument in writing addressed to the Minister, or	25 26
(d) is removed from office by the Governor under this clause or under Part 8 of the <i>Public Sector Management Act 1988</i> , or	27 28
(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	29 30 31 32 33 34

(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	1 2 3 4
(g)	becomes a mentally incapacitated person, or	5
(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	6 7 8 9 10
(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	11 12 13
(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	14 15 16 17
(k)	in the case of a member referred to in section 91 (2) (f), the member ceases to be a legal practitioner.	18 19
(2)	The Governor may remove a member from office at any time.	20
(3)	Without affecting the generality of subclause (2), the Governor may remove from office a member who contravenes the provisions of clause 7.	21 22 23
6	Filling of vacancy in office of member	24
	If the office of any member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.	25 26
7	Disclosure of pecuniary interests	27
(1)	If:	28
(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	29 30 31
(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,	32 33 34

-
- | | |
|--|----------------------|
| 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. | 1
2
3 |
| (2) A disclosure by a member at a meeting of the Board that the member: | 4 |
| (a) is a member, or is in the employment, of a specified company or other body, or | 5
6 |
| (b) is a partner, or is in the employment, of a specified person, or | 7 |
| (c) has some other specified interest relating to a specified company or other body or to a specified person, | 8
9 |
| 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. | 10
11
12
13 |
| (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. | 14
15
16
17 |
| (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: | 18
19
20 |
| (a) be present during any deliberation of the Board with respect to the matter, or | 21
22 |
| (b) take part in any decision of the Board with respect to the matter. | 23
24 |
| (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: | 25
26
27 |
| (a) be present during any deliberation of the Board for the purpose of making the determination, or | 28
29 |
| (b) take part in the making by the Board of the determination. | 30 |
| (6) A contravention of this clause does not invalidate any decision of the Board. | 31
32 |
| (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. | 33
34 |
| (8) A reference in this clause to a meeting of the Board includes a reference to a meeting of a committee of the Board. | 35
36 |
-

8 Effect of certain other Acts	1
(1) Part 2 of the <i>Public Sector Management Act 1988</i> does not apply to or in respect of the appointment of a member.	2 3
(2) If by or under any other Act provision is made:	4
(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	5 6 7
(b) prohibiting the person from engaging in employment outside the duties of that office,	8 9
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.	10 11 12 13

Schedule 3	Provisions relating to the procedure of the Board	1
		2
	(Section 95)	3
1	First meeting of Board	4
	The Minister may call the first meeting of the Board in such manner as the Minister thinks fit.	5 6
2	General procedure	7
	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.	8 9 10
3	Quorum	11
	The quorum for a meeting of the Board is 5 members.	12
4	Presiding member	13
	(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.	14 15 16 17
	(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.	18 19 20
5	Voting	21
	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.	22 23
6	Minutes	24
	The Board must cause full and accurate minutes to be kept of the proceedings of each meeting of the Board.	25 26

7 Proof of certain matters not required	1
In any legal proceedings, proof is not required (until evidence is given to the contrary) of:	2
	3
(a) the constitution of the Board, or	4
(b) any resolution of the Board, or	5
(c) the appointment of, or the holding of office by, any member of the Board, or	6
	7
(d) the presence of a quorum at any meeting of the Board.	8

Schedule 4	Provisions relating to the Committee	1
	(Section 99)	2
Part 1	The Members	3
1	Chairperson of the Committee	4
	The member referred to in section 98 (2) (a) is to be the Chairperson of the Committee.	5 6
2	Term of office	7
	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.	8 9 10 11
3	Remuneration	12
	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.	13 14 15
4	Filling of vacancy in office of member	16
	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.	17 18
5	Casual vacancies	19
(1)	A member of the Committee is to be taken to have vacated office if the member:	20 21
	(a) dies, or	22
	(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	23 24 25 26 27 28 29

- | | | |
|-----|---|------------------------|
| (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 | 1
2
3
4 |
| (d) | becomes a mentally incapacitated person, or | 5 |
| (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 | 6
7
8
9
10 |
| (f) | resigns the office by instrument in writing addressed to the Minister, or | 11
12 |
| (g) | is removed from office by the Minister under subclause (3). | 13 |
| (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. | 14
15
16 |
| (3) | The Minister may remove a member from office. | 17 |

Part 2 Procedure of the Committee 18

6 General procedure 19

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. 20
21
22

7 Quorum 23

The quorum for a meeting of the Committee is 3 members. 24

8 Voting 25

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. 26
27
28

9 Presiding member	1
(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 3 4 5
(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.	6 7 8

Schedule 5	Proceedings before the Tribunal	1
	(Section 115)	2
1	Proceedings generally	3
	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.	4 5 6
2	Power to summon witnesses and take evidence	7
(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.	8 9 10
(2)	The person presiding at the proceedings may require a person appearing in the proceedings to produce a document.	11 12
(3)	The Tribunal may, in proceedings before it, take evidence on oath or affirmation and, for that purpose a member of the Tribunal:	13 14
(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	15 16 17
(b)	may administer an oath to or take an affirmation from a person so appearing in the proceedings.	18 19
(4)	A person served with a summons to appear in any such proceedings and to give evidence must not, without reasonable excuse:	20 21
(a)	fail to attend as required by the summons, or	22
(b)	fail to attend from day to day unless excused, or released from further attendance, by a member of the Tribunal.	23 24
(5)	A person appearing in proceedings to give evidence must not, without reasonable excuse:	25 26
(a)	when required to be sworn or to affirm—fail to comply with the requirement, or	27 28
(b)	fail to answer a question that the person is required to answer by the person presiding, or	29 30

(c)	fail to produce a document that the person is required to produce by this clause.	1 2
	Maximum penalty: 20 penalty units.	3
3	Power to obtain documents	4
(1)	A member of the Tribunal may, by notice in writing served on a person, require the person:	5 6
(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	7 8 9
(b)	to produce, at that time and place, to the person so specified a document specified in the notice.	10 11
(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.	12 13
	Maximum penalty: 20 penalty units.	14
4	Evidence of other proceedings	15
	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:	16 17 18
(a)	the judgment and findings of any court (whether civil or criminal and whether or not of New South Wales) or tribunal,	19 20
(b)	the verdict or findings of a jury of any such court,	21
(c)	a certificate of the conviction of or the making of a criminal finding in respect of any person,	22 23
(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.	24 25 26 27
5	Additional complaints	28
(1)	The Tribunal may in proceedings before it deal with one or more complaints about a registered optometrist.	29 30
(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:	31 32 33

(a)	whether instead of or in addition to the complaint that was made, and	1 2
(b)	whether or not by the same complainant,	3
	the Tribunal may take that other complaint to have been referred to it and may deal with it in the same proceedings.	4 5
(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 7 8 9
6	Release of information	10
(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):	11 12 13 14
(a)	direct that the name of any witness is not to be disclosed in the proceedings, or	15 16
(b)	direct that all or any of the following matters are not to be published:	17 18
(i)	the name and address of any witness,	19
(ii)	the name and address of a complainant,	20
(iii)	the name and address of an optometrist,	21
(iv)	any specified evidence,	22
(v)	the subject-matter of a complaint.	23
(2)	A direction may be amended or revoked at any time by the person presiding.	24 25
(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:	26 27 28 29
(a)	a person who requested the direction, and	30
(b)	the complainant or the optometrist concerned, as appropriate, and	31 32
(c)	such other persons as the person presiding thinks fit.	33

(4) A person who contravenes a direction given under this clause is guilty of an offence.	1 2
Maximum penalty: 150 penalty units in the case of a body corporate and 20 penalty units in any other case.	3 4
7 Authentication of documents by the Tribunal	5
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.	6 7 8 9
8 Nominal complainant	10
(1) In any proceedings before the Tribunal, a person appointed by the Commission:	11 12
(a) may act as nominal complainant in place of the actual complainant, and	13 14
(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.	15 16 17
(2) A reference in this Act to a complainant includes a reference to a nominal complainant.	18 19
9 Intervention by Director-General and Commission	20
(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.	21 22 23 24 25
(2) The Director-General and the Commission may be represented by a legal practitioner.	26 27
10 Expedition of inquiries and appeals	28
(1) It is the duty of the Tribunal to hear inquiries and appeals under this Act and to determine those inquiries and appeals expeditiously.	29 30
(2) Without affecting the generality of subclause (1), the Tribunal may postpone or adjourn proceedings before it as it thinks fit.	31 32

11 Evidentiary certificate	1
A certificate, purporting to have been signed by the Registrar, to the effect that:	2
(a) a person specified in the certificate was or was not a registered optometrist at a time or during a period so specified, or	3
(b) the name of a person specified in the certificate was removed from the Register at a time so specified, or	4
(c) the registration of a person specified in the certificate was suspended from a time so specified and for a period so specified, or	5
(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,	6
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.	7
	8
	9
	10
	11
	12
	13
	14
	15
	16
12 Certain complaints may not be heard	17
(1) The Tribunal may decide not to conduct an inquiry, or at any time to terminate an inquiry or appeal, if:	18
(a) a complainant fails to comply with a requirement made of the complainant by the Tribunal, or	19
(b) the person about whom the complaint is made ceases to be a registered optometrist.	20
(2) The Tribunal must not conduct or continue any inquiry or any appeal if the optometrist concerned dies.	21
	22
	23
	24
	25
13 Tribunal can award costs	26
(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.	27
(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.	28
	29
	30
	31
	32
	33
	34
	35

-
- (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. 1
2
3
4
5

Schedule 6 Amendment of other Acts	1
(Section 137)	2
6.1 Health Administration Act 1982 No 135	3
Schedule 2A Health professional boards	4
Omit “Board of Optometrical Registration established under the <i>Optometrists Act 1930</i> ”.	5
	6
Insert instead “Optometrists Registration Board established under the <i>Optometrists Act 2002</i> ”.	7
	8
6.2 Health Care Complaints Act 1993 No 105	9
Section 4 Definitions	10
Omit “ <i>Optometrists Act 1930</i> ” from the definition of <i>health registration Act</i> .	11
	12
Insert instead:	13
<i>Optometrists Act 2002</i>	14
6.3 Interpretation Act 1987 No 15	15
Section 21 Meaning of commonly used words and expressions	16
Insert after the definition of <i>registered medical practitioner</i> in section 21 (1):	17
	18
<i>registered optometrist</i> and each of the following expressions means an optometrist registered under the <i>Optometrists Act 2002</i> :	19
	20
	21
(a) optometrist,	22
(b) legally (or duly) qualified optometrist,	23

(c) qualified optometrist.	1
6.4 Pharmacy Act 1964 No 48	2
[1] Section 27 Pharmacist to be in charge of every pharmacy and dispensary	3 4
Omit “medical practitioner or nurse practitioner” from section 27 (1).	5
Insert instead “medical practitioner, nurse practitioner or registered optometrist”.	6 7
[2] Section 28 Medicines to be dispensed by pharmacists	8
Omit “medical practitioner or nurse practitioner” from section 28 (1).	9
Insert instead “medical practitioner, nurse practitioner or registered optometrist”.	10 11
[3] Section 28 (3)	12
Omit the subsection. Insert instead:	13
(3) In this section:	14
<i>authorised person</i> means:	15
(a) a medical practitioner, or	16
(b) a nurse practitioner who is authorised to dispense the medicine concerned under section 17A of the <i>Poisons and Therapeutic Goods Act 1966</i> , or	17 18 19
(c) a registered optometrist who is authorised to dispense the medicine concerned under section 17B of the <i>Poisons and Therapeutic Goods Act 1966</i> .	20 21 22
Note. Under the <i>Poisons and Therapeutic Goods Act 1966</i> a nurse practitioner or registered optometrist may be authorised to possess, use, supply or prescribe certain substances specified in the Poisons List.	23 24 25

[4] Section 38 Regulations	1
Omit “medical practitioner or nurse practitioner” from section 38 (1) (g) and (h) wherever occurring.	2 3
Insert instead “medical practitioner, nurse practitioner or registered optometrist”.	4 5
6.5 Poisons and Therapeutic Goods Act 1966 No 31	6
[1] Section 4 Definitions	7
Insert after the definition of <i>nurse practitioner</i> in section 4 (1):	8
<i>optometrist</i> means an optometrist registered under the <i>Optometrists Act 2002</i> .	9 10
[2] Section 8 Poisons List	11
Insert “, optometrist authorised to prescribe the substance under section 17B” after “dentist” in the matter relating to Schedule Four in section 8 (2).	12 13 14
[3] Section 10 Prohibition on supply of certain substances otherwise than by wholesale	15 16
Insert after section 10 (2) (a1):	17
(a2) by an optometrist, who is authorised under section 17B to supply the substance, in the lawful practice of his or her profession as such, or	18 19 20
[4] Section 10 (4) (a2)	21
Insert after section 10 (4) (a1):	22
(a2) by an optometrist, who is authorised under section 17B to supply the substance, in the lawful practice of his or her profession as such, or	23 24 25
[5] Section 10 (4) (b)	26
Insert “, optometrist” after “dentist”.	27

[6] Section 11 Restriction on wholesale supply of certain substances	1
Insert after section 11 (2) (a1):	2
(a2) an optometrist authorised under section 17B to supply	3
or use, or have possession of, the substance concerned,	4
or	5
[7] Section 12 Obtaining substances by false representation	6
Insert after section 12 (2) (a1):	7
(a2) an optometrist authorised under section 17B to supply	8
or use, or have possession of, the substance concerned,	9
or	10
[8] Section 16 Offences relating to prescribed restricted substances	11
Insert after section 16 (1) (a1):	12
(a2) the person is an optometrist who is authorised under	13
section 17B to possess the substance and the person	14
obtains possession or attempts to obtain possession of it	15
in the lawful practice of his or her profession, or	16
[9] Section 16 (1) (b)	17
Insert “, optometrist” after “dentist”.	18
[10] Section 16 (1) (d1)	19
Insert “, optometrist” after “nurse practitioner”.	20
[11] Section 16 (2), (3) (a) (i) and (5)	21
Insert “, optometrist” after “dentist” wherever occurring.	22
[12] Section 17 Regulations under Part 3	23
Insert “, optometrist” after “nurse practitioner” in section 17 (1) (j1).	24

[13] Section 17B	1
Insert after section 17A:	2
17B Authorisation of possession, use, prescription or supply by optometrists	3
	4
(1) There is constituted by this section a committee to be called the Optometrists Drug Authority Committee. Schedule 2A has effect with respect to the Committee.	5
	6
	7
(2) The Committee may from time to time approve of the use in the practice of optometry of specified poisons and restricted substances, and for that purpose the Committee may also approve of the following:	8
	9
	10
	11
(a) different classes of optometrist drug authority for issue under section 21 of the <i>Optometrists Act 2002</i> ,	12
	13
(b) the poisons and restricted substances that are to be covered by the different classes of optometrists drug authority,	14
	15
	16
(c) the competency standards an optometrist must meet in order to be granted an optometrist drug authority of a particular class,	17
	18
	19
(d) the criteria to be used to ascertain whether an optometrist meets those competency standards (including criteria as to necessary education, training and experience),	20
	21
	22
	23
(e) the maximum period for which an optometrists drug authority may be granted,	24
	25
(f) the ocular conditions that an optometrist who holds a particular class of optometrists drug authority is authorised to treat.	26
	27
	28
(3) An optometrist who holds an optometrists drug authority under section 21 of the <i>Optometrists Act 2002</i> is authorised to possess, use, supply or prescribe, in the practice of optometry, such poisons and restricted substances as may be approved for the time being under this section in respect of the class of authority concerned.	29
	30
	31
	32
	33
	34
(4) Subsection (3) does not authorise an optometrist to use, supply or prescribe a poison or restricted substance to treat an ocular	35
	36

	condition unless the ocular condition is one that an approval under this section authorises the holder of the relevant optometrists drug authority to treat.	1 2 3
	(5) The Committee is to consult with the Optometrists Registration Board on the use of poisons and restricted substances in the practice of optometry, including consultation on the provisions of a code of professional conduct concerning their use.	4 5 6 7
	(6) The Committee may obtain such advice and assistance in connection with the exercise of its functions as it considers appropriate.	8 9 10
	(7) An approval under this section is to be by order published in the Gazette.	11 12
[14]	Section 18A Evidentiary provisions	13
	Insert “, optometrist” after “nurse practitioner” in section 18A (1) (b).	14
[15]	Section 34 Hawking of poisons and therapeutic goods	15
	Insert “optometrist,” after “dentist,” in paragraph (b) of the definition of <i>public place</i> in section 34 (4).	16 17
[16]	Schedule 2A	18
	Insert after Schedule 2:	19
	Schedule 2A Provisions relating to Optometrists Drug Authority Committee	20 21
	(Section 17B)	22
	Part 1 General	23
	1 Definitions	24
	In this Schedule:	25
	<i>appointed member</i> mean a member other than the Chief Health Officer of the Department of Health.	26 27

<i>Chairperson</i> means the Chairperson of the Committee.	1
<i>Committee</i> means the Optometrists Drug Authority Committee constituted by section 17B.	2 3
<i>member</i> means any member of the Committee.	4

Part 2 Constitution 5

2 Membership of Committee 6

- (1) The Committee is to comprise the following members: 7
- (a) the Chief Health Officer of the Department of Health, 8
who is to be the Chairperson of the Committee, 9
 - (b) a registered optometrist appointed by the Director-General on the nomination of the Optometrists Registration Board, 10
11
12
 - (c) an ophthalmologist appointed by the Director-General on the nomination of the Royal Australian and New Zealand College of Ophthalmologists, 13
14
15
 - (d) a physician appointed by the Director-General on the nomination of the Royal Australasian College of Physicians, 16
17
18
 - (e) a clinical pharmacologist appointed by the Director-General of the Director-General's own choosing. 19
20
21
- (2) If a nominee required to be nominated for the purposes of membership of the Committee under this section is not nominated within such time or in such manner as may be specified by the Director-General by notice to the body concerned, the Director-General may instead select any person as a member of the Committee. 22
23
24
25
26
27

3 Terms of office of members 28

Subject to this Schedule, an appointed member holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment. 29
30
31
32

4	Remuneration	1
	A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Director-General may from time to time determine in respect of the member.	2 3 4
5	Deputies	5
	(1) The Director-General may, from time to time, appoint a person to be the deputy of a member, and the Director-General may revoke any such appointment.	6 7 8
	(2) In the absence of a member, the member's deputy may, if available, act in the place of the member.	9 10
	(3) While acting in the place of a member, a person:	11
	(a) has all the functions of the member and is taken to be a member, and	12 13
	(b) is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Director-General may from time to time determine in respect of the person.	14 15 16 17
	(4) For the purposes of this clause, a vacancy in the office of a member is taken to be an absence of the member.	18 19
6	Vacancy in office of member	20
	(1) The office of a member becomes vacant if the member:	21
	(a) dies, or	22
	(b) completes a term of office and is not re-appointed, or	23
	(c) resigns the office by instrument in writing addressed to the Director-General, or	24 25
	(d) is removed from office by the Director-General under this clause, or	26 27
	(e) is absent from 4 consecutive meetings of the Committee of which reasonable notice has been given to the member personally or by post, except on leave granted by the Director-General or unless the member is excused by the Director-General for having been absent from those meetings, or	28 29 30 31 32 33

(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	1 2 3 4 5
(g)	becomes a mentally incapacitated person, or	6
(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.	7 8 9 10 11
(2)	The Director-General may at any time remove a member from office.	12 13
7	Filling of vacancy in office of member	14
	If the office of any member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.	15 16
8	Disclosure of pecuniary interests	17
(1)	If:	18
(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 Committee, and	19 20 21
(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,	22 23 24
	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 Committee.	25 26 27
(2)	A disclosure by a member at a meeting of the Committee that the member:	28 29
(a)	is a member, or is in the employment, of a specified company or other body, or	30 31
(b)	is a partner, or is in the employment, of a specified person, or	32 33
(c)	has some other specified interest relating to a specified company or other body or to a specified person,	34 35

-
- 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 subclause (1). 1
2
3
4
- (3) Particulars of any disclosure made under this clause must be recorded by the Committee in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Committee. 5
6
7
8
9
- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Director-General or the Committee otherwise determines: 10
11
12
- (a) be present during any deliberation of the Committee with respect to the matter, or 13
14
- (b) take part in any decision of the Committee with respect to the matter. 15
16
- (5) For the purposes of the making of a determination by the Committee under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not: 17
18
19
20
- (a) be present during any deliberation of the Committee for the purpose of making the determination, or 21
22
- (b) take part in the making by the Committee of the determination. 23
24
- (6) A contravention of this clause does not invalidate any decision of the Committee. 25
26
- 9 Effect of certain other Acts** 27
- (1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a member. 28
29
- (2) If by or under any Act provision is made: 30
- (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 31
32
33
- (b) prohibiting the person from engaging in employment outside the duties of that office, 34
35

the 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. 1
2
3
4

Part 3 Procedure 5

10 General procedure 6

The procedure for the calling of meetings of the Committee and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Committee. 7
8
9

11 Quorum 10

The quorum for a meeting of the Committee is a majority of its members, of whom one must be the Chairperson. 11
12

12 Presiding member 13

(1) The Chairperson is to preside at a meeting of the Committee. 14

(2) The Chairperson has a deliberative vote and, in the event of an equality of votes, has a second or casting vote. 15
16

13 Voting 17

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. 18
19
20

14 Transaction of business outside meetings or by telephone 21

(1) The Committee may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Committee for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Committee. 22
23
24
25
26

(2) The Committee may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members. 27
28
29
30
31

(3) For the purposes of:	1
(a) the approval of a resolution under subclause (1), or	2
(b) a meeting held in accordance with subclause (2),	3
the Chairperson and each member have the same voting rights	4
as they have at an ordinary meeting of the Committee.	5
(4) A resolution approved under subclause (1) is, subject to the	6
regulations, to be recorded in the minutes of the meetings of the	7
Committee.	8
(5) Papers may be circulated among the members for the purposes	9
of subclause (1) by facsimile or other transmission of the	10
information in the papers concerned.	11
15 First meeting	12
The Director-General may call the first meeting of the	13
Committee in such manner as the Director-General thinks fit.	14
6.6 Public Finance and Audit Act 1983 No 152	15
Schedule 2 Statutory bodies	16
Omit “Board of Optometrical Registration”.	17
Insert in alphabetical order “Optometrists Registration Board”.	18
6.7 Public Health Act 1991 No 10	19
Section 10AE	20
Insert as section 10AE:	21
10AE Prescribing of contact lenses, spectacle lenses and other	22
 appliances	23
(1) A person must not prescribe an optical appliance unless the	24
person:	25
(a) is a registered optometrist, or	26

- (b) is a registered medical practitioner, or 1
- (c) is a member of a class of persons declared by the 2
regulations to be authorised persons for the purposes of 3
this section and the person acts in compliance with any 4
conditions or limitations prescribed by the regulations. 5

Maximum penalty: 50 penalty units or imprisonment for 12 6
months, or both. 7

- (2) A person who prescribes an optical appliance for a person must 8
on request provide the person, at no extra charge, with a copy 9
of the prescription. 10

Maximum penalty: 5 penalty units. 11

- (3) A person who does not prescribe, but dispenses, an optical 12
appliance for a person must provide the person, at no extra 13
charge, with a copy of the prescription relating to the appliance. 14

Maximum penalty: 5 penalty units. 15

- (4) A person who prescribes contact lenses for a person is not 16
required to comply with subsection (2) until after the 17
optometrist has completed the prescription and fitting process 18
in relation to the contact lenses. 19
- (5) Proceedings for an offence against this section may be 20
instituted within 12 months after the act or omission alleged to 21
constitute the offence. 22
- (6) For the purpose of ascertaining whether the provisions of this 23
section are being complied with, an authorised officer has and 24
may exercise all the functions that the authorised officer has 25
under the officer's Act for the purpose of ascertaining whether 26
a provision of that Act is being complied with, and for that 27
purpose: 28
 - (a) those functions of the authorised officer under the 29
officer's Act apply in respect of premises on which a 30
person engages in the prescribing of an optical 31
appliance in the course of providing a health service in 32
the same way as those functions apply in respect of 33
premises on which a person engages in professional 34
practice under the officer's Act, and 35

(b)	those functions of the authorised officer under the officer's Act apply in respect of the engaging in the prescribing of an optical appliance in the course of providing a health service in the same way as they apply in respect of professional practice engaged in under the officer's Act, and	1 2 3 4 5 6
(c)	the provisions of the officer's Act with respect to the functions of an inspector (including any provision that creates an offence in connection with the functions of an inspector) extend to apply in respect of the exercise of functions of an authorised officer under this section.	7 8 9 10 11
(7)	In this section:	12
	<i>authorised officer</i> means an inspector or authorised officer under the <i>Optometrists Act 2002</i> or the <i>Medical Practice Act 1992</i> .	13 14 15
	<i>officer's Act</i> , in relation to an authorised officer, means the Act under which the authorised officer is appointed as an inspector or authorised officer.	16 17 18
	<i>optical appliance</i> means contact lenses, spectacle lenses or any other appliance designed to correct, remedy or relieve any refractive abnormality or defect of sight.	19 20 21
6.8	Search Warrants Act 1985 No 37	22
	Section 10 Definitions	23
	Insert in the definition of <i>search warrant</i> in alphabetical order of Acts:	24
	section 132 of the <i>Optometrists Act 2002</i> ,	25

Schedule 7	Savings and transitional provisions	1
	(Section 139)	2
Part 1	Preliminary	3
1	Definitions	4
	In this Schedule:	5
	<i>new Board</i> means the Optometrists Registration Board constituted by this Act,	6 7
	<i>old Board</i> means the Board of Optometrical Registration constituted by the 1930 Act,	8 9
	<i>the 1930 Act</i> means the <i>Optometrists Act 1930</i> .	10
2	Regulations	11
(1)	The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts: this Act	12 13 14
(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.	15 16
(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:	17 18 19
(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	20 21 22
(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.	23 24 25

Part 2 Provisions consequent on enactment of this Act	1
3 Members of old Board	2
(1) A person who, immediately before the repeal of the 1930 Act, held office as a member of the old Board:	3
(a) ceases to hold office as such on that repeal, and	4
(b) is eligible (if otherwise qualified) to be appointed as a member of the new Board.	5
(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.	6
	7
4 Continuity of Board	8
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.	9
	10
5 Appointments and other action before commencement	11
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.	12
	13
	14
	15
	16
	17
	18
	19
	20
	21
	22
	23
6 The Register	24
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.	25
	26
7 Registration as optometrist	27
(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	28
	29
	30

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.	1 2 3
(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.	4 5 6
8 Fees	7
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.	8 9 10 11 12 13
9 Applications for registration	14
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.	15 16 17
10 Appeals to the District Court	18
(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.	19 20 21 22
(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.	23 24 25
11 Continuation of complaints	26
(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.	27 28 29 30 31
(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.	32 33 34 35

(3) This clause applies for the purposes of this Act and for the purposes of the <i>Health Care Complaints Act 1993</i> (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.	1 2 3 4 5
12 Complaints relating to previous conduct	6
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.	7 8 9 10
13 Construction of certain references	11
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:	12 13 14
(a) to the old Board is to be read as a reference to the new Board, and	15 16
(b) to the registrar under the 1930 Act is to be read as a reference to the Registrar under this Act, and	17 18
(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	19 20
(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.	21 22 23