



ANNO TRICESIMO SEPTIMO

ELIZABETHAE II REGINAE

A.D. 1988

No. 48 of 1988

An Act to amend the Opticians Act, 1920.

[Assented to 5 May 1988]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Opticians Act Amendment Act, 1988*.
- (2) The *Opticians Act, 1920*, is in this Act referred to as "the principal Act".

Commencement

2. (1) This Act will come into operation on a day to be fixed by proclamation.
- (2) The Governor may, in a proclamation fixing a day for this Act to come into operation, suspend the operation of specified provisions of this Act until a subsequent day fixed in the proclamation, or a day to be fixed by subsequent proclamation.

Substitution of new long title

3. The long title to the principal Act is repealed and the following title is substituted:
An Act to provide for the registration of optometrists and optical dispensers; to regulate the practice of optometry; and for other purposes.

Substitution of new section

4. Section 1 of the principal Act is repealed and the following section is substituted:

Short title

1. This Act may be cited as the *Optometrists Act, 1920*.

Repeal of s. 2

5. Section 2 of the principal Act is repealed.

Interpretation

6. Section 3 of the principal Act is amended—
 - (a) by striking out the definition of "Board" and substituting the following definition:
"the board" means the Optometrists Board established under this Act;
 - (b) by striking out the definition of "certified optician" and substituting the following definition:

“the Committee” means the Optical Dispensers Registration Committee established under this Act;

(c) by striking out the definitions of “Minister”, “optometry” and “register” and substituting the following definitions:

“corporate practitioner of optometry” means a company that practices optometry solely through the instrumentality of an optometrist or, in the case of dispensing prescriptions for optical appliances, solely through the instrumentality of an optometrist or optical dispenser:

“medical practitioner” means a person who is registered under the *Medical Practitioners Act, 1983*:

“ophthalmologist” means a person who is, by virtue of registration on the specialist register under the *Medical Practitioners Act, 1983*, entitled to practise as a specialist in ophthalmology:

“optical appliance” means an appliance designed to correct a refractive abnormality of the eye or to correct *presbyopia*:

“optical dispenser” means a person who is registered on the register of optical dispensers under this Act and who holds a current certificate to dispense prescriptions for optical appliances:

“optometrist” means a person who is registered on the register of optometrists under this Act and who holds a current certificate to practise as an optometrist:

“optometry” or “the practice of optometry” means—

- (a) the measurement of powers of vision;
- (b) the prescription of optical appliances;
- (c) the dispensing of prescriptions for optical appliances;
- (d) the use of drugs for the purpose of detecting abnormalities of the eye or in connection with the fitting of optical appliances;
- (e) any related service of a prescribed kind:

“registered person” means a person who is registered on a register under this Act.

Substitution of new heading

7. The heading to Part II of the principal Act is repealed and the following heading is substituted:

ADMINISTRATION

Substitution of new Divisions

8. Division I of Part II of the principal Act is repealed and the following Divisions are substituted:

DIVISION I—THE OPTOMETRISTS BOARD

Optometrists Board

4. (1) The *Optometrists Board* is established.
- (2) The board is a body corporate.
- (3) The board has full juristic capacity to exercise any powers that are by their nature capable of being exercised by a body corporate.
- (4) Where a document appears to bear the common seal of the board, it will be presumed, in the absence of proof to the contrary, that the document was duly executed by the board.

Members of the board

5. (1) The board consists of seven members appointed by the Governor and of these—

- (a) two will be optometrists nominated by the Minister;
- (b) one will be an ophthalmologist nominated by the Minister;
- (c) two will be optometrists nominated in the prescribed manner by optometrists;
- (d) one will be a legal practitioner of at least seven years standing nominated by the Minister;

and

- (e) one will be a person who is neither a registered person, a medical practitioner nor a legal practitioner nominated by the Minister to represent the interests of persons receiving optometrical services.

(2) Each member will be appointed for a term not exceeding three years on such conditions as the Governor determines.

(3) The Governor may appoint a deputy to a member of the board and the deputy may, in the absence or during a temporary vacancy in the office of that member, act as a member of the board.

(4) The requirement as to qualification for membership of the board made by this section in relation to the appointment of a member extends to the appointment of the member's deputy.

(5) The office of a member of the board becomes vacant if the member—

- (a) dies;
- (b) completes a term of office and is not reappointed;
- (c) attains the age of 65;
- (d) resigns by written notice to the Minister;
- (e) ceases to satisfy the requirement as to qualification for membership of the board referred to in this section by virtue of which the member was eligible for appointment;

or

(f) is removed from office by the Governor on the ground of—

- (i) a breach of, or non-compliance with, the conditions of the member's appointment;
- (ii) mental or physical incapacity to carry out official duties satisfactorily;
- (iii) neglect of duty;

or

- (iv) misconduct.

(6) A member who is one of the members constituting the board for the purposes of proceedings under section 16 or 16a and whose term of office expires or who attains the age of 65 before those proceedings have been completed may, for the purposes of continuing and completing those proceedings, continue to act as a member of the board.

Presiding member

6. The members of the board will choose a member to be the presiding member of the board.

Procedures at meetings of the board

7. (1) A meeting will be chaired by the presiding member or, in his or her absence, by a member chosen by the members present.

(2) Subject to subsection (3) the board may act notwithstanding vacancies in its membership.

(3) Five members constitute a quorum at a meeting of the board.

(4) A decision in which a majority of the members present at a meeting concur is a decision of the board but if the members are equally divided in opinion the decision will be made by the presiding member.

(5) Subject to this Act the board may decide its own procedures.

(6) The board must keep minutes of its proceedings.

Immunity of members, etc

8. No liability attaches to a member, the registrar or an employee of the board for an act or omission by that person or by the board, in good faith in the exercise, or purported exercise, of powers or functions or in the discharge, or purported discharge of duties under this Act.

Personal interest of member

9. A member who has a personal interest or a direct or indirect pecuniary interest in a matter under consideration by the board may with the leave of the board, participate in its consideration of that matter, but may not vote on any question relating to that matter.

DIVISION 1A—THE OPTICAL DISPENSERS REGISTRATION COMMITTEE**The Optical Dispensers Registration Committee**

10. (1) There will be a committee entitled the "Optical Dispensers Registration Committee".

(2) The Committee will consist of six members of whom—

(a) one (who will be the presiding member of the Committee) will be the member of the board who is a legal practitioner;

(b) one will be the member of the board who is neither a registered person, a medical practitioner nor a legal practitioner;

and

(c) four will be appointed by the Governor.

(3) Of the members appointed by the Governor—

(a) one will be an ophthalmologist nominated by the Minister;

(b) one will be nominated by the Minister to represent the interests of optical dispensers;

(c) one will be nominated by the Minister to represent the interests of optometrists;

and

(d) one will be nominated by the Minister to represent the interests of institutions engaged in the education of optical dispensers.

(4) Each member appointed by the Governor will be appointed for a term not exceeding three years on such conditions as the Governor determines.

(5) The office of a member appointed by the Governor becomes vacant if the member—

(a) dies;

(b) completes a term of office and is not reappointed;

(c) attains the age of 65;

(d) resigns by written notice to the Minister;

(e) is removed from office by the Governor on the ground of—

(i) a breach of, or non-compliance with, the conditions of the member's appointment;

(ii) mental or physical incapacity to carry out official duties satisfactorily;

(iii) neglect of duty;

or

(iv) misconduct.

Procedures at meetings of the Committee

11. (1) A meeting will be chaired by the presiding member or, in his or her absence, by a member chosen by the members present.

(2) Subject to subsection (3) the Committee may act notwithstanding vacancies in its membership.

(3) Four members constitute a quorum at a meeting of the Committee.

(4) A decision in which a majority of the members present at a meeting concur is a decision of the Committee but if the members are equally divided in opinion the decision will be made by the presiding member.

(5) Subject to this Act the Committee may decide its own procedures.

(6) The Committee must keep minutes of its proceedings.

Immunity of members, etc

12. No liability attaches to a member of the Committee for an act or omission by the member or by the Committee, in good faith in the exercise, or purported exercise, of powers or functions or in the discharge, or purported discharge of duties under this Act.

Personal interest of member

13. A member of the Committee who has a personal interest or a direct or indirect pecuniary interest in a matter under consideration by the Committee may with the leave of the Committee, participate in its consideration of that matter, but may not vote on any question relating to that matter.

Powers of board

9. Section 16 of the principal Act is amended—

(a) by striking out from paragraph (a) "certified optician" and substituting "optometrist or optical dispenser";

(b) by striking out from paragraph (b) "the register" (first occurring) and substituting "a register";

- (c) by striking out from paragraph (b) "the register" (second occurring) and substituting "the appropriate register";
- (d) by striking out from paragraph (c) "the register" and substituting "a register";
- and
- (e) by striking out from paragraph (d) "as certified opticians".

Board may impose penalties

10. Section 16a of the principal Act is amended—

- (a) by striking out "a certified optician" from subsection (1) and substituting "an optometrist or optical dispenser";
- and
- (b) by striking out from paragraph (d) of subsection (1) "one hundred dollars" and substituting "\$5 000".

Attendance of witnesses, etc

11. Section 17 of the principal Act is amended by striking out from subsection (1) "chairman" and substituting "presiding member".

Insertion of new section 17a

12. The following section is inserted after section 17 of the principal Act:

Delegation to the Committee

17a. Action taken against an optical dispenser pursuant to section 16 or 16a must be taken by the Optical Dispensers Registration Committee on behalf of the board and for that purpose the Committee has the same powers as the board.

Substitution of new heading

13. The heading to Part III of the principal Act is repealed and the following heading is substituted:

REGISTRATION OF OPTOMETRISTS AND OPTICAL DISPENSERS

Qualifications for registration of optometrists

14. Section 20 of the principal Act is amended—

- (a) by striking out "Subject to this Act any person shall be entitled to be registered and receive a certificate as a certified optician under this Act" and substituting "Subject to this Act, a person";
- (b) by striking out paragraph (a);
- (c) by striking out from paragraph (b) "and produces evidence satisfactory to the board that he is of good character";
- (d) by striking out from paragraph (c) "is of good character";
- (e) by striking out from paragraph (d) "and that he is of good character";
- and
- (f) by inserting after paragraph (d) "and who satisfies the board that he or she is a fit and proper person to practise optometry is entitled on payment of the prescribed fee, to be registered on the register of optometrists".

Substitution of new sections

15. Sections 22 to 25 (inclusive) of the principal Act are repealed and the following sections are substituted:

Registration of optical dispensers

21. (1) A person who, in the opinion of the board—

- (a) has prescribed qualifications or has other qualifications that are, in the opinion of the board, of equivalent standards;
 - (b) has prescribed experience or has experience that is, in the opinion of the board, of equivalent standard;
 - (c) fulfils all other prescribed requirements;
- and
- (d) is a fit and proper person to dispense prescriptions for optical appliances, is entitled, on payment of the prescribed fee, to be registered on the register of optical dispensers.

(2) An application for registration under this section will be considered and determined by the Optical Dispensers Registration Committee on behalf of the board and for that purpose the Committee will have the same powers as the board.

(3) An optical dispenser is entitled to dispense prescriptions for all kinds of optical appliances but is not entitled to fit contact lenses.

Limited registration

22. (1) Where the board is not satisfied that an applicant for registration under this Act has the necessary qualifications and experience or fulfils the other prescribed requirements for registration or the board is not satisfied that the applicant is a fit and proper person to be registered unconditionally, the board may register the applicant in pursuance of this section.

(2) When granting an application referred to in subsection (1), the board may—

- (a) restrict the places and times at which the applicant may practise;
 - (b) limit the branches of optometry in which the applicant may practise;
 - (c) limit the period during which the registration will have effect;
- or
- (d) impose such other conditions as the board thinks fit.

Practising certificate

23. (1) Upon registration the board will issue the registered person with a practising certificate that will remain in force until the following 1 January.

(2) A practising certificate may be renewed annually by payment before 1 January in each year of the prescribed annual practise fee.

(3) A practising certificate that lapses cannot be renewed unless the board is satisfied that the applicant is a fit and proper person to practise optometry or to dispense prescriptions for optical appliances.

Substitution of new sections

16. Sections 26 to 31 (inclusive) of the principal Act are repealed and the following sections are substituted:

Unlawful practice of optometry

26. (1) Subject to this Act, a person must not—

- (a) practise optometry;
- or

(b) hold himself or herself out as qualified or entitled to practise optometry,

unless that person is a medical practitioner, an optometrist or a corporate practitioner of optometry.

Penalty: \$5 000 or imprisonment for six months.

(2) An optometrist must not in the course of practicing optometry use a drug the primary effect of which is to cause cycloplegia.

Penalty: \$5 000 or imprisonment for 6 months.

(3) Subsection (1) does not prevent an optical dispenser from dispensing prescriptions for optical appliances (excluding the fitting of contact lenses) nor from holding himself or herself out as qualified or entitled to dispense such prescriptions.

(4) Subsection (1) does not apply to a person in relation to the provision of a service of a kind that that person is authorized to provide by this or any other Act.

(5) Where an optometrist or optical dispenser dies, the personal representative of the deceased may continue to carry on the practice of the deceased through the instrumentality of an optometrist or optical dispenser for six months from the date of death or such longer period as may be authorized by the board.

(6) A person who practises optometry in contravention of subsection (1) is not entitled to any fee for services rendered in the course of that practice.

Management of premises from which optometry is practised

27. (1) A person who carries on a business consisting of, or involving the practice of optometry must ensure—

(a) that every place at which optometry is practised by or on behalf of that person is managed by, and under the personal supervision of, a qualified person;

and

(b) that the manager's name is exhibited in a prominent position at that place.

Penalty: \$5 000.

(2) Subsection (1) does not apply to a place at which a medical practitioner carries on a medical practice.

(3) In subsection (1)—

“a qualified person” means—

(a) where the only branch of optometry that is practised is the dispensing of prescriptions for optical appliances—an optometrist or an optical dispenser;

(b) where other branches of optometry are practised—an optometrist.

Administration, etc., of drugs

28. (1) An optometrist must not administer, prescribe or supply any drug except as authorized under the *Controlled Substances Act, 1984*.

Penalty: \$5 000.

(2) An optometrist must not treat a disorder of the eye with a drug or laser or by surgery.

Penalty: \$5 000.

Substitution of new Part

17. Part IV of the principal Act is repealed and the following Part is substituted:

PART IV

REGISTERS OF OPTOMETRISTS AND OPTICAL DISPENSERS

The registers

32. (1) The registrar must maintain registers of the names of persons registered under this Act.

(2) The registers must include information that is prescribed by regulation.

List of holders of practising certificates

33. The board must, at least once in each year, publish in the *Gazette* the names of persons who hold certificates to practice optometry or to dispense prescriptions for optical appliances during that year.

Offences

18. Section 35 of the principal Act is amended—

(a) by striking out from paragraph (f) “certified optician” and substituting “optometrist”;

and

(b) by striking out “shall be liable to a penalty not exceeding four hundred dollars, or to be imprisoned for any period not exceeding twelve months” and substituting “is guilty of an offence.

Penalty: \$5 000 or imprisonment for six months”.

Substitution of new section

19. Section 36 of the principal Act is repealed and the following section is substituted:

Sale of glasses

36. (1) Subject to subsection (2) a person must not sell glasses designed to alter or assist the wearer’s vision unless they have been prescribed by a medical practitioner or an optometrist.

Penalty: \$5 000.

(2) Subsection (1) does not prevent the sale of glasses if—

(a) the glasses are designed only to alleviate the effects of presbyopia;

(b) the glasses comprise two lenses of the same power being a power of plus one dioptre or more but not exceeding plus three dioptries;

(c) the glasses are manufactured to the prescribed standard;

and

(d) a prescribed warning is attached to the glasses in the prescribed manner at the time of sale.

Repeal of s. 37

20. Section 37 of the principal Act is repealed.

Appeals

21. Section 39 of the principal Act is amended by striking out from subsection (1) “the board or registrar” and substituting “the board, registrar or Committee”.

Evidence

22. Section 45 of the principal Act is amended by striking out subsection (5) and substituting the following subsection:

(5) A person whose name appears on a list of optometrists or optical dispensers published by the board in the *Gazette* will be presumed in the absence of proof to the contrary to be an optometrist or optical dispenser during the year to which the list relates and a person whose name does not appear on such a list will be presumed in the absence of proof to the contrary not to be an optometrist or optical dispenser during that year.

Regulations

23. Section 46 of the principal Act is amended by striking out from subsection (2) "one hundred dollars" and substituting "\$500".

Repeal of first schedule to principal Act

24. The first schedule to the principal Act is repealed.

Repeal of second schedule to principal Act

25. The second schedule to the principal Act is repealed.

Amendment of fourth schedule to principal Act

26. The fourth schedule to the principal Act is amended—

(a) by striking out from clause 9a "all certified opticians" and substituting "registered persons";

(b) by striking out from clause 10 "the register" and substituting "the registers";

and

(c) by inserting after clause 14 the following clause:

14a. Authorizing the practice of optometry by persons who are not registered under this Act.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. B. DUNSTAN, Governor