

# **Optometrists and Optical Dispensers Bill**

## **EXPLANATORY MEMORANDUM**

### **Outline**

This Bill is the outcome of an extensive inquiry into issues affecting the optometrical profession undertaken by Mr Spencer Zifcak.

Among other things, it constitutes a new Optometrical Board of Victoria, which will be the successor to the Optometrists Registration Board established by the *Optometrists Registration Act* 1958, and provides for the licensing of optical dispensers.

The Bill also regulates certain relationships between members of the two professions and with optical suppliers.

### **Clause Notes**

#### **PART 1—PRELIMINARY**

*Clause 1* identifies the purposes of the Act.

*Clause 2* is the commencement provision.

*Clause 3* defines various terms used in the Act.

#### **PART 2—OPTOMETRISTS**

*Clause 4* specifies the method of applying to the Optometrical Board of Victoria (the Board) for registration as an optometrist.

*Clause 5* lists the qualifications necessary for registration as an optometrist. It also permits the Board to refuse to register a person otherwise qualified if the registration of that person has been suspended or cancelled in another State, Territory or country.

*Clause 6* provides that a registration, or renewal of registration, of a person as an optometrist is valid until 31 December next.

*Clause 7* sets out the procedures for the renewal of registration.

*Clause 8* requires the Board to keep a Register of Optometrists.

*Clause 9* authorizes persons registered as optometrists to use an optometrical title.

*Clause 10* enables an optometrical practice to be continued after the death of the optometrist.

#### **PART 3—OPTICAL DISPENSERS**

*Clause 11* specifies the method of applying to the Optical Dispensers Licensing Committee (the Committee) for an optical dispenser's licence.

*Clause 12* lists the qualifications necessary for a licence. It also permits the Committee to refuse an application if the person is licensed in another State, Territory or country and that licence is suspended or cancelled.

*Clause 13* provides that a licence is valid until 31 December next.

*Clause 14* sets out the procedures for the renewal of a licence.

*Clause 15* requires the Committee to keep a Roll of Optical Dispensers.

*Clause 16* authorizes persons licensed as dispensers to use an optical dispensing title.

*Clause 17* enables a dispenser's practice to be continued after the death of the dispenser.

## **PART 4—DISCIPLINE**

### **Division 1—Complaints**

*Clause 18* requires the Board, or the Committee, if it receives a complaint which comes within the ambit of section 16 of the *Health Services (Conciliation and Review) Act 1987*, to refer that complaint to the Health Services Commissioner.

*Clause 19* is the corollary to the preceding clause. It requires the Board or Committee to deal with any complaint referred to it by the Health Services Commissioner as well as any other complaint which does not need to be referred to the Commissioner.

### **Division 2—Fitness to Practise**

*Clause 20* requires the Board or Committee to appoint one of its members as a preliminary assessor to undertake a preliminary assessment if information is received that a person's fitness to practise as an optometrist or dispenser is seriously impaired.

*Clause 21* provides for the medical examination of an optometrist or dispenser where a question of fitness to practise has been raised.

*Clause 22* permits a medical practitioner to disclose the results of a medical examination to the preliminary assessor without the need for the consent of the optometrist or dispenser.

*Clause 23* makes provision for an undertaking by an optometrist or dispenser to limit his or her practice, or stop practising for an agreed period.

*Clause 24* precludes the Board or Committee dealing further with a matter where such an undertaking has been given.

*Clause 25* makes provision for the monitoring of any undertaking given by an optometrist or dispenser.

*Clause 26* authorises the Board or Committee to proceed with an inquiry where an optometrist or dispenser refuses to be medically examined, or to give, or comply with, an undertaking.

### **Division 3—Holding an Inquiry**

*Clause 27* empowers the Board or Committee to inquiry into the fitness to practise or professional conduct of an optometrist or dispenser.

*Clause 28* prohibits the conduct of an inquiry into a matter which is the subject of certain other proceedings or the subject of an industrial dispute.

*Clause 29* requires the Board and the Committee to constitute a Tribunal to conduct any inquiry.

*Clause 30* enables an inquiry by a Tribunal to be either formal or informal.

#### **Division 4—Informal Inquiries**

*Clause 31* sets out the circumstances under which a Tribunal must discontinue an informal inquiry and proceed to a formal inquiry.

*Clause 32* deals with representation at an informal inquiry.

*Clause 33* lists the findings available to a Tribunal as a result of an informal inquiry, and the action it can take.

#### **Division 5—Formal Inquiries**

*Clause 34* sets out the procedures for the conduct of a formal inquiry into the conduct or capacity to practise of an optometrist or dispenser.

*Clause 35* enables a Tribunal to impose conditions or limitations, or suspend a person's authority to practise, if that person's ability to practise is seriously impaired, or he or she is unfit to practise.

*Clause 36* specifies the disciplinary findings available to a Tribunal and the penalties which it can impose.

#### **Division 6—Provisions applying to Informal and Formal Inquiries**

*Clause 37* requires the optometrist or dispenser concerned to be given notice of an inquiry.

*Clause 38* provides for the appointment of a lawyer to assist a Tribunal in the conduct of an inquiry.

*Clause 39* precludes any person involved in investigating the matter sitting as a member of a Tribunal.

*Clause 40* deals with procedures for the conduct of an inquiry.

*Clause 41* applies sections 14, 15, 16 and 21A of the *Evidence Act 1958* to the conduct of an inquiry.

*Clause 42* is a machinery provision relating to the commencement of a determination, and notices of a decision.

*Clause 43* requires the Board or Committee to take all action necessary to give effect to a determination made on an inquiry, and provides for the recovery of any compensation awarded by a Tribunal.

#### **Division 7—Action without Inquiry**

*Clause 44* empowers the Board or Committee to cancel a person's authority to practise if his or her qualification has been withdrawn.

#### **Division 8—General**

*Clause 45* requires a person whose authority to practise has been cancelled or suspended, or made subject to a condition or limitation, to return his or her certificate of registration or licence to the Board or Committee.

*Clause 46* sets out the effects of a suspension of a registration or licence, or the imposition of a condition.

*Clause 47* makes provision for the revocation of a suspension, or condition or limitation.

## **PART 5—APPEALS**

*Clause 48* lists the grounds on which an appeal can be made to the Administrative Appeals Tribunal.

## **PART 6—OFFENCES AND UNPROFESSIONAL CONDUCT**

*Clause 49* prohibits a person who is not registered or licensed under the Act using an optometrical or dispensing title, or holding himself or herself to be registered or licensed.

*Clause 50* prohibits any person, other than a medical practitioner, optometrist or dispenser, dispensing a prescription for corrective lenses.

*Clause 51* prohibits an advertisement for contact lenses which relates to brand, special features or price except in professional journals.

*Clause 52* makes it an offence for any person, except a medical practitioner or optometrist, to prescribe or fit a contact lens.

*Clause 53* prohibits an optometrist or dispenser advertising in a way that is fraudulent, deceptive, misleading or prohibited by the regulations.

*Clause 54* requires an optometrist to give any written prescription to his or her patient, unless otherwise requested.

## **PART 7—PROHIBITED INTERESTS AND AGREEMENTS**

### **Division 1—Prohibited Interests**

*Clause 55* defines a prohibited interest.

*Clause 56* provides that an optometrist must not have a prohibited interest in the practice of an optical dispenser other than in a dispenser adjacent to the principal place of practice of the optometrist.

*Clause 57* prohibits an optometrist practising on premises occupied by a dispenser, or owned by a dispenser or supplier, except under a normal landlord/tenant arrangement.

*Clause 58* prohibits an optometrist using equipment or services provided by a dispenser or supplier unless under a *bona fide* commercial arrangement.

*Clause 59* prohibits an optical dispenser or optical supplier having a prohibited interest in the practice of an optometrist.

*Clause 60* requires a person who acquires a prohibited interest to notify the Board or Committee, and to dispose of that interest unless otherwise permitted by the Board or Committee.

### **Division 2—Prohibited Agreements**

*Clause 61* prohibits an optometrist entering into an agreement with an optical dispenser or optical supplier under which the optometrist receives a financial benefit for referring patients, or prescribing a particular product.

*Clause 62* prohibits an optometrist entering into an agreement with an optical supplier under which the supplier is guaranteed minimum orders, or the optometrist obtains a financial benefit.

*Clause 63* voids any agreement to the extent it contravenes the Division, and provides that any optometrist or dispenser who enters into such an agreement is guilty of unprofessional conduct.

## **PART 8—ADMINISTRATION**

### **Division 1—The Board**

*Clause 64* establishes the Optometrical Board of Victoria.

*Clause 65* defines the objectives of, and vests appropriate powers in, the Board.

*Clause 66* sets out the membership of the Board.

### **Division 2—The Committee**

*Clause 67* establishes the Optical Dispensers Licensing Committee.

*Clause 68* defines the objectives of, and vests appropriate powers in, the Committee.

*Clause 69* sets out the membership of the Committee.

### **Division 3—Provisions applying to the Board and the Committee**

*Clause 70* provides that Schedule 1 has effect with respect to the membership and procedure of the Board and the Committee.

*Clause 71* requires the Board and Committee to consult from time to time with the Chief General Manager of the Department of Health.

*Clause 72* provides for the appointment of a Registrar and other staff to the Board and the Committee.

*Clause 73* authorizes the Board and the Committee to delegate to a member, or the Registrar, its power to renew a registration or licence.

## **PART 9—ENFORCEMENT AND SUPPLEMENTARY**

### **Division 1—Evidence**

*Clause 74* is a machinery provision relating to the admission of evidence that a person is, or is not, registered or licensed under the Act.

### **Division 2—Reports and Finance**

*Clause 75* requires a Registration Authority to establish a general fund and provides for payments into, and out of, the fund.

*Clause 76* provides for the investment of money in a fund.

*Clause 77* requires a Registration Authority to keep proper accounts and records of its transactions and affairs.

*Clause 78* requires a Registration Authority to prepare an annual report and provides for the tabling of its report in Parliament.

*Clause 79* provides for the audit of the financial statements of a Registration Authority by the Auditor-General.

### **Division 3—Regulations**

*Clause 80* contains the heads of power to make regulations under the Act.

## **PART 10—REPEALS, AMENDMENTS AND SAVINGS**

*Clause 81* makes consequential amendments to the *Health Services (Conciliation and Review) Act 1987*.

*Clause 82* makes consequential amendments to the *Transport Accident Act 1986*.

*Clause 83* repeals the *Optometrists Registration Act 1958* and the *Optometrists Registration (Amendment) Act 1982*.

*Clause 84* gives effect to the transitional provisions in Schedule 2.

### **SCHEDULE 1**

Schedule 1 contains various machinery provisions relating to the membership and procedures of the Board or Committee.

### **SCHEDULE 2**

Schedule 2 incorporates the transitional provisions which are necessary as a consequence of the proposed establishment of the new Optometrical Board of Victoria and the repeal of the *Optometrists Registration Act 1958*.