

Queensland



OPTOMETRISTS ACT 1974

**Reprinted as in force on 14 December 1995
(includes amendments up to Act No. 57 of 1995)**

Reprint No. 1

**This reprint is prepared by
the Office of the Queensland Parliamentary Counsel
Warning—This reprint is not an authorised copy**

Information about this reprint

This Act is reprinted as at 14 December 1995. The reprint—

- shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c))
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind (Reprints Act 1992 s 5(d)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 mentioned in the following list have also been made to—

- update citations and references (pt 4, div 2)
- update references (pt 4, div 3)
- express gender specific provisions in a way consistent with current drafting practice (s 24)
- use gender neutral office names (s 25)
- use different spelling consistent with current drafting practice (s 26(2))
- use standard punctuation consistent with current drafting practice (s 27)
- use conjunctives and disjunctives consistent with current drafting practice (s 28)
- use expressions consistent with current drafting practice (s 29)
- reorder definitions consistent with current drafting practice (s 30)
- relocate marginal or cite notes (s 34)
- use aspects of format and printing style consistent with current drafting practice (s 35)
- omit provisions that are no longer required (ss 36, 37, 39 and 40)
- omit the enacting words (s 42A)
- number and renumber certain provisions and references (s 43)
- correct minor errors (s 44)
- make all necessary consequential amendments (s 7(1)(k)).

Also see endnotes for information about—

- **when provisions commenced**
- **editorial changes made in the reprint, including—**
 - **table of changed citations and remade laws**
 - **table of obsolete and redundant provisions**
 - **table of corrected minor errors**
 - **table of renumbered provisions.**

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OPTOMETRISTS ACT 1974

TABLE OF PROVISIONS

Section		Page
PART 1—PRELIMINARY		
1	Short title	3
5	Definitions	3
PART 2—ADMINISTRATION		
6	Administration of Act	4
7	Constitution of board	4
8	Members of board	5
9	Chairperson and deputy chairperson of board	5
10	Tenure of office	6
11	Casual vacancies	7
12	Meetings of board	7
13	Committees	8
14	Entitlements of members of board or committees	8
15	Holders of office not affected by restrictive employment provisions	8
16	Registrar and officers of the board	8
17	Accounts	9
PART 3—REGISTRATION OF OPTOMETRISTS		
18	The register	9
19	Qualification for registration	10
20	Registration of additional qualifications	11
21	Certificate of registration	12
22	Annual licence fee	12
23	Removal of name from register by request	12
24	Disciplinary action	13

25	Correction of register	14
26	Notification of board's determination	15
27	Appeals	15

PART 4—MISCELLANEOUS

29	Restriction on practice of optometry	16
30	Persons not to assume title implying registration	16
31	Limitation on use by optometrist of unregistered person	17
32	Provisions relating to practice of optometry by bodies of persons	17
33	Restriction on ownership of optometrical practice or business	19
34	Penalty for fraudulent practices	19
35	Continuation of practice of decreased optometrist	20
36	General penalty	21
37	Proceedings generally	21
38	Evidentiary provisions	21
39	Statutory declarations	22
40	By-laws	22
41	Approval of forms	24
41A	Approved forms	24
43	References to the Optometrists Act 1917	24

ENDNOTES

1	Index to endnotes	25
2	Date to which amendments incorporated	25
3	Key	26
4	List of legislation	26
5	List of annotations	27
6	Table of changed citations and remade laws	29
7	Table of obsolete and redundant provisions	29
8	Table of corrected minor errors	30
9	Table of renumbered provisions	30

OPTOMETRISTS ACT 1974

[as amended by all amendments that commenced on or before 14 December 1995]

An Act relating to the qualifications and registration of optometrists and the regulation of the practice of optometry, and for purposes connected therewith

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Optometrists Act 1974*.

Definitions

5. In this Act—

“**approved form**” see section 41.¹

“**fee**” includes tax.

“**optical appliance**” means an appliance designed to correct, remedy or relieve a defect of sight, but does not include an eye cover or bandage.

“**optometrist**” means a person registered as an optometrist under this Act and whose name, at the material time, remains upon the register.

“**optometry**” means that branch of science concerned with the investigation of the functions of vision and with the prescribing, fitting or servicing of optical appliances for the correction or relief of visual defects due to anatomical or physiological variations without recourse to medicine or surgery.

¹ Section 41 (Approval of forms)

“**register**” means the register of optometrists kept under this Act.

“**registrar**” means the registrar of the board.

“**the board**” means the Optometrists Board constituted under this Act.

PART 2—ADMINISTRATION

Administration of Act

6. This Act shall be administered by the Minister and, subject to the Minister, by the board.

Constitution of board

7.(1) The Board of Optometrical Registration constituted under the *Optometrists Act 1917* and continued as a body corporate under the *Medical Act and Other Acts (Administration) Act 1966* is preserved, continued in existence and constituted under this Act under the name the Optometrists Board of Queensland.

(2) The board shall have and may exercise and discharge the powers, authorities, duties and functions conferred and imposed upon it by or under this Act.

(3) The board shall continue to be a body corporate with perpetual succession and a common seal and, subject to this Act, shall be capable in law of suing and being sued, of compounding or proving in any court of competent jurisdiction all debts or sums of money due to it, and of acquiring, holding, alienating and otherwise dealing with property and of doing and suffering all such acts and things as bodies corporate may in law do and suffer.

(4) All courts and persons acting judicially shall take judicial notice of the common seal of the board and, until the contrary is proved, shall presume that it was duly affixed to any document on which it appears.

Members of board

8.(1) The board shall consist of 9 members appointed by the Governor in Council, namely—

- (a) 4 persons nominated by the Minister of whom at least 2 are to be optometrists; and
- (b) 3 optometrists or other persons nominated by an association or associations accepted by the Minister as representative of optometrists; and
- (c) 1 person representing users of the services of optometrists; and
- (d) a barrister or solicitor of the Supreme Court.

(2) Nomination pursuant to subsection (1)(b) shall be made within the time and in the manner prescribed or, where not prescribed, as determined by the Minister, and in default of the association or associations entitled to make such nomination doing so as prescribed or as determined by the Minister, as the case may be, the Governor in Council may appoint any optometrist or other person to the board as if the Governor in Council had been duly nominated by the association or associations entitled to make the nomination.

(3) A person may hold office as a member of the board in addition to any position the person holds in the public service.

Chairperson and deputy chairperson of board

9.(1) In every appointment of the whole number of members of the board the Governor in Council shall appoint members to be respectively the chairperson and deputy chairperson of the board.

(2) When a vacancy occurs in the office of chairperson or deputy chairperson of the board, the Governor in Council may appoint another member of the board to the vacant office.

(3) The chairperson shall preside at every meeting of the board at which the chairperson attends and in the chairperson's absence the deputy chairperson shall so preside.

(4) Where both the chairperson and deputy chairperson are absent from a meeting, another member of the board chosen for the purpose by the

majority of the members present and voting shall preside.

(5) The deputy chairperson or other member who presides at a meeting of the board in place of the chairperson has and may exercise all the powers and authorities of the chairperson while he or she so presides.

(6) Save where the by-laws disentitle him or her to vote on the matter in issue, the chairperson or other member presiding at a meeting of the board is entitled to a deliberative vote on any matter before the meeting and, in the event of an equal division of votes thereon, is entitled to a second or casting vote.

Tenure of office

10.(1) The appointment of a member of the board shall commence on the date specified therefor in the notification of appointment published in the gazette and, save in the case of an appointment made to fill a casual vacancy, shall be for a term of 3 years.

(2) Subject to this Act, a member of the board shall be eligible for reappointment.

(3) The office of a member of the board shall become vacant if the member—

- (a) dies or becomes mentally ill; or
- (b) becomes bankrupt or compounds with his or her creditors, or otherwise takes advantage of the laws in force for the time being relating to bankruptcy; or
- (c) is absent without prior leave granted by the board from 3 consecutive ordinary meetings of the board of which due notice has been given to the member; or
- (d) resigns by signed notice delivered to the Minister; or
- (e) is convicted of an indictable offence or an offence against this Act; or
- (f) is removed from office by the Governor in Council by notification published in the gazette on the grounds of mental or physical incapacity to perform duties as a member or because of any conduct which, in the opinion of the Governor in Council,

shows the member to be unfit to be a member of the board.

(4) Attendance of a member of the board at the time and place appointed for an ordinary meeting of the board shall be deemed to constitute presence at a meeting notwithstanding that by reason that a quorum is not present no meeting is then and there actually held, and the registrar shall enter in the minute book the names of all members who so attend.

(5) A resignation as member of the board shall be of no effect until notice in writing thereof is received by the Minister or until the operative date specified in the notice, whichever is the later.

Casual vacancies

11. Where a vacancy occurs in the office of a member of the board during the term of office of the members then constituting the board, the Governor in Council may, in accordance with section 8, appoint another person as a member to hold office for the balance of his or her predecessor's term of office as a member.

Meetings of board

12.(1) The board shall meet as often as is necessary for the due administration of this Act, at such times and places as it thinks fit, and shall conduct its business in such manner as may be prescribed or, where or to the extent not prescribed, as it determines from time to time.

(2) A quorum at any meeting of the board shall be 5 members entitled to vote on the business before the meeting who, at a duly convened meeting, shall be competent to transact any business of the board and may exercise and perform all the powers, authorities, duties and functions of the board.

(3) The decision of a majority of the members at a meeting of the board at which a quorum is present shall be the decision of the board.

(4) If a member present at a meeting and entitled to vote abstains from voting the member shall be taken to have cast a vote for the negative.

(5) A proceeding or decision of the board shall not be invalidated or made ineffectual by reason only that—

- (a) the whole number of members had not been appointed at the time; or

- (b) any member was not entitled to take part in the proceeding or decision; or
- (c) there is a defect in the appointment of any member.

Committees

13.(1) The board may select persons to form an advisory committee or advisory committees to advise the board on any matter within the scope of the board's functions referred to the committee or to a particular committee by the board.

(2) A person may be a member of such a committee whether or not the person is a member of the board.

Entitlements of members of board or committees

14. Members of the board and members of a committee formed pursuant to section 13 shall be entitled to such fees and allowances as are approved by the Governor in Council.

Holders of office not affected by restrictive employment provisions

15. A provision of any enactment requiring the holder of an office to devote the whole of his or her time to the duties of the office or prohibiting the holder from engaging in employment outside the duties of the office shall not operate to hinder holding that office and also an appointment as member, chairperson or deputy chairperson of the board or of any committee formed pursuant to section 13, or, subject to section 14(1), the acceptance and retention of any allowance or remuneration payable under this Act.

Registrar and officers of the board

16.(1) A registrar of the board may be appointed according to law.

(2) For the effectual administration of this Act the Governor in Council may appoint under and in accordance with the *Public Service Management and Employment Act 1988* officers who shall hold their appointments subject to and in accordance with that Act.

(3) An officer of the public service may, in addition to the position the officer holds therein, be appointed to and hold an office for the effectual administration of this Act.

Accounts

17.(1) All moneys received by or on behalf of the board shall be paid into and form part of the funds of the board.

(2) The board shall enter or cause to be entered in such books, accounts and records required by the Auditor-General to be kept for the purpose a true account of all sums of money received and paid under this Act.

(4) Expenses of and incidental to the administration of this Act shall be paid by the board from its funds.

(5) Subsection (4) does not affect the liability, prescribed by any other Act, of the board to pay from its funds moneys for or towards the salaries of the registrar and the officers appointed for the effectual administration of this Act.

PART 3—REGISTRATION OF OPTOMETRISTS

The register

18.(1) The board shall cause the registrar to keep, in such form as it thinks fit, a register (the “**register of optometrists**”) of the names and other prescribed particulars of persons who are entitled to be and who remain registered under this Act as optometrists.

(3) The register shall at all reasonable times be open to inspection at the office of the registrar by any person on payment of the prescribed fee.

(4) The board shall cause to be published in the gazette—

- (a) in every year a copy of the register as at 1 May in the year in question or, where another date is prescribed in respect thereof (the board being hereby thereunto authorised), as at that date in the year in question, certified by the registrar; and

- (b) a supplementary list once in every 3 months of every year indicating all alterations, additions, revisions and removals made in, to and from the register during the preceding 3 months, certified by the registrar.

Qualification for registration

19.(1) Subject to this Act, a person is entitled to be registered as an optometrist if the person applies to the board in the approved form, pays the prescribed fee for registration and satisfies the board that the person is of good fame and character and that—

- (a) the person is the holder of 1 of the prescribed qualifications; or
- (d) the person is registered as an optometrist (or optician or certified optometrist or certified optician) with any Australian board of optometrical registration or equivalent board or body in Australia and was so registered prior to 1 January 1974; or
- (e) the person is registered with the New Zealand Opticians Board and holds the Diploma in Optometry of the University of Auckland in respect of any of the years 1965 to 1970 both inclusive; or
- (f) the person holds the Diploma in Optometry of the University of Auckland in respect of any year since 1970; or
- (g) the person is registered with the General Optical Council of the United Kingdom as an ophthalmic optician following training and qualification in Great Britain at an institution approved by the General Optical Council and was first so registered on or after 1 January 1965; or
- (h) the person is registered as a licensed optometrist in any province of Canada or state of the United States of America following training and qualification in either country at an institution accredited by the Council on Optometric Education of the American Optometric Association and graduated from such institution on or after 1 January 1966.

(2) Subject to this Act, a person who is not entitled to be registered under subsection (1) but who applies to the board in the approved form, pays the prescribed fee for registration and satisfies the board that the person is of

good fame and character shall be entitled to be registered as an optometrist if the standard of the person's general and optometrical education is, in the opinion of the board, not less than the standard of the general and optometrical education required of persons under subsection (1)(a).

(3) Notwithstanding the provisions of subsections (1) and (2), the board may require—

(a) a person who is an applicant for registration under subsection (1) and to whom subsection (1)(e), (f), (g) or (h) is applicable; or

(b) a person who is an applicant for registration under subsection (2);

as a condition precedent to registration and in addition to compliance otherwise with the provisions of this section applicable to the person, to—

(c) complete further training as determined by the board; or

(d) pass an oral examination or a written examination or both oral and written examinations as determined by the board to the satisfaction of the board and to pay to the board such fee in respect of any such examination or examinations as may be prescribed; or

(e) pass a test of the person's command of the English language to the satisfaction of the board and to pay to the board such fee in respect of such test as may be prescribed;

or to do more than 1 or to do all of those things.

(4) The board may from time to time appoint such examiners as it thinks fit either generally or in a particular case for the purpose of giving effect to the provisions of subsection (3)(d) or (e) and, out of funds at its disposal, may pay to such examiners such fees as may be prescribed, and examiners appointed hereunder shall hold office during the pleasure of the board.

Registration of additional qualifications

20. An optometrist who applies to the board for the purpose of this section and who satisfies the board that the optometrist is the holder of a degree, diploma, status or qualification recognised by the board other than the qualifications in respect of which the optometrist is registered is entitled upon payment of the prescribed fee to have such degree, diploma, status or qualification recorded in the register.

Certificate of registration

21.(1) Every optometrist is entitled to obtain from the registrar a certificate of the optometrist's registration in the approved form.

(2) On application made to the board at any time and on payment of the prescribed fee, the board may issue to any optometrist a duplicate or certified copy of the optometrist's certificate of registration.

Annual licence fee

22.(1) Every optometrist shall pay to the board a prescribed annual licence fee.

(2) The annual licence fee shall be paid to the board within the period in each year commencing on 1 January and concluding on 30 April or, where another period is prescribed in respect thereof (the board being hereby thereunto authorised), within that other period in each year as so prescribed.

(3) If an optometrist fails to pay the annual licence fee within the period as provided in subsection (2), the registrar shall thereupon remove the optometrist's name from the register.

(4) If the name of any person has been removed from the register pursuant to subsection (3), the board shall, subject to this Act, upon application by that person restore the person's name to the register upon payment of the annual licence fee and such restoration fee as may be prescribed.

Removal of name from register by request

23.(1) The board may remove from the register the name of an optometrist who applies in writing to have his or her name removed therefrom.

(2) If the name of any person has been removed from the register pursuant to subsection (1), the board shall, subject to this Act, upon application in writing at any time thereafter by that person for the restoration of his or her name to the register, restore the person's name to the register upon payment of the annual licence fee and such restoration fee as may be prescribed.

Disciplinary action

24.(1) Where the board considers it has reasonable grounds to suspect that an optometrist—

- (a) has been convicted of an indictable offence; or
- (b) has been convicted of an offence against this Act; or
- (c) has been guilty of conduct discreditable to an optometrist; or
- (d) is not or is no longer entitled under section 19 to be registered as an optometrist;

it may hold a full and proper inquiry into the matter in question and for that purpose shall notify the optometrist of the matter suspected against the optometrist and of the time and place when and where the inquiry will be held.

(2) An inquiry shall not be open to the public unless the board otherwise determines or the optometrist in question otherwise requires.

(3) A notification required by subsection (1) to be given shall be in writing and shall be given to the optometrist personally or by post by registered letter or certified mail service.

(4) In the conduct of an inquiry the board—

- (a) may appoint a person, either with or without legal qualifications, to assist it, and such person shall render to the board such assistance as is in the person's power;
- (b) shall afford the optometrist in question the opportunity of making defence to all allegations made against the optometrist, in person or by counsel or solicitor.

(5) Subject to subsections (1), (2) and (4), the board in the holding of an inquiry shall have and may exercise all the powers, authorities, rights, privileges, protection and jurisdiction of a commission of inquiry under the *Commissions of Inquiry Act 1950* save such as are by that Act reserved to a chairperson of a commission when that chairperson is a judge of the Supreme Court.

(6) If upon its inquiry the board is satisfied of the truth of the matter referred to in subsection (1) and alleged against the optometrist in question it may, as it considers just in the circumstances, do any 1 or more of the

following things—

- (a) cancel the optometrist's registration and order the removal of his or her name from the register;
- (b) order that his or her registration be suspended for such period as it thinks fit;
- (c) order that the optometrist pay to the board by way of penalty a sum fixed by the board but not exceeding 40 penalty units;
- (d) reprimand the optometrist.

(7) Where the board has dealt with an optometrist under the provisions of subsection (6) the board may order that the optometrist pay to the board by way of costs such reasonable sum of money as it thinks fit.

(8) Any pecuniary penalty or costs ordered by the board to be paid pursuant to subsections (6) or (7) shall become due and payable forthwith, or, if the board allows time for payment thereof, immediately upon expiration of the time so allowed.

(9) The registrar shall secure compliance with an order of the board made under subsection (6)(a), (b) or (c) or under subsection (7).

(10) The suspension of registration of any person shall whilst the suspension continues in force have the same effect as a cancellation of registration and removal of the name of the suspended person from the register pursuant to this section.

(11) The board may order the publication in such manner as it thinks fit of its findings upon an inquiry under this section.

Correction of register

25.(1) The registrar shall from time to time strike from the register the names of all optometrists who have died and make such alterations and amendments to the register as the board directs so that the register shall be an accurate record of the names, addresses and qualifications of optometrists.

(2) An optometrist shall notify the board of any change of name, address or other prescribed particulars and furnish particulars of such change within 21 days after the occurrence of the change.

(3) Where the board is satisfied that an optometrist has become mentally ill, it may remove the optometrist's name from the register.

Notification of board's determination

26. When the board refuses an application of any person to be registered as an optometrist or makes an order or determination under section 24(6) or refuses an application of any person for the recording in the register under section 20 of a degree, diploma, status or qualification, the registrar shall notify the person whose application is refused or against or in respect of whom the order or determination is made of the refusal or, as the case may be, the order or determination, in writing addressed to the address of that person last known to the registrar.

Appeals

27.(1) A person aggrieved by—

- (a) a refusal by the board of the person's application to be registered as an optometrist; or
- (b) an order or determination made against or in respect of the person under section 24(6); or
- (c) a refusal by the board of the person's application for the recording in the register under section 20 of a degree, diploma, status or qualification;

may appeal therefrom to a judge of the District Court at Brisbane who shall have jurisdiction to hear and determine the same and whose decision thereon shall be final and be given effect to by the board.

(2) An appeal shall be by way of re-hearing, and shall be instituted within 30 days after notification of the refusal or order or determination to the person aggrieved, and no later, by filing a notice of appeal in the registry of the District Court at Brisbane setting out the grounds of appeal and by complying with any rules of court made with respect thereto.

(3) The appellant shall serve a copy of the notice of appeal on the registrar of the board not later than 7 days after the notice is filed in the registry of the District Court.

(5) Where upon an appeal a District Court orders a penalty to be paid by

an appellant, it shall order the penalty to be paid to the board and, for the purposes of its enforcement, the order shall be deemed to be an order made by the board.

PART 4—MISCELLANEOUS

Restriction on practice of optometry

29.(1) A person who is not an optometrist or a medical practitioner shall not practise optometry and a person who is not an optometrist shall not supply by sale or otherwise any optical appliance.

(2) An optometrist shall not use surgery for any purpose of or connected with the practice of optometry.

(3) Subsection (1) shall not operate to prevent the practice of the actual craft of lens grinding and spectacle making.

(4) Nothing contained in this section derogates from the provisions of section 32 in relation to bodies or associations of persons, corporate or unincorporate.

Persons not to assume title implying registration

30.(1) A person who is not an optometrist shall not—

- (a)** take or use the name or title of ‘optometrist’ or ‘optician’ or any other title prescribed by the board to designate optometrists or the practice of optometry; or
- (b)** take or use any name, title, designation, addition or description, whether by means of initials or letters placed after the person’s name or otherwise, implying that the person is registered under this Act.

(2) A person who is not an optometrist or a medical practitioner shall not take or use any name, title, designation, addition or description, whether by means of initials or letters placed after the person’s name or otherwise, implying that he or she is a person qualified to practise optometry.

Limitation on use by optometrist of unregistered person

31.(1) An optometrist shall not cause, suffer or permit a person who is not an optometrist to do or perform any optometry work or business that has been entrusted to such optometrist except under the direct personal supervision and in the presence of an optometrist.

Maximum penalty—5 penalty units.

(2) Where an optometrist is convicted of a second or subsequent offence under this section, the board, in addition to any penalty that is imposed on the optometrist pursuant to such conviction, may order that the registration of the optometrist be suspended for such period as it thinks fit, and any such order shall, for the purposes of this Act, be deemed to be an order made by the board under section 24(6)(b).

(3) In any prosecution for an offence against this section, proof that any person who was not at the material time an optometrist did in fact do or perform any optometry work or business shall be sufficient evidence of causing, suffering or permitting, as the case may be, by the defendant so to do, unless the defendant shows that the defendant did not authorise the act complained of, and that it was done, performed or committed without the defendant's knowledge or approval.

(4) This section shall not be so construed as to prevent any person from engaging in the actual craft of lens grinding and spectacle making.

Provisions relating to practice of optometry by bodies of persons

32.(1) A body or an association of persons, corporate or unincorporate, shall not—

- (a) engage in the practice of optometry or supply by sale or otherwise any optical appliance; or
- (b) advertise or hold out howsoever that it is an optometrist or engaged in the practice of optometry; or
- (c) use, publish or exhibit any title, letters or words indicating, or reasonably capable of being construed to indicate, that it is an optometrist or engaged in the practice of optometry.

(2) Where this section is contravened—

Optometrists Act 1974

- (a) by an unincorporated body or association of persons, every person who is a member thereof is guilty of an offence against this Act.

Maximum penalty—15 penalty units;

- (b) by an incorporated body or association of persons, it and every member of its governing body, by whatever name called, is guilty of an offence against this Act.

Maximum penalty—30 penalty units.

(3) This section does not apply to—

- (a) the practice of optometry by an incorporated body or association of persons comprised exclusively of optometrists or by an unincorporated body or association of persons comprised exclusively of optometrists and complying in all respects with the provisions of the *Business Names Act 1962* if every person engaged for the time being in carrying on the practice of optometry for such body or association of persons is an optometrist; or
- (b) the fitting and supply by or on behalf of any body or association of persons, corporate or unincorporate, of any optical appliance if—
- (i) such optical appliance is fitted and supplied on a prescription of a medical practitioner or optometrist who is not an employee, agent or, in the case of an unincorporated body or association of persons, member of the body or association of persons concerned; and
- (ii) the work of fitting and supplying such optical appliance is done by a member, employee or agent of the body or association of persons concerned who is an optometrist; or
- (c) prevent the engagement of a body or association of persons, corporate or unincorporate, in the actual craft of lens grinding and spectacle making.

Restriction on ownership of optometrical practice or business

33.(1) A person who is not an optometrist shall not be the owner of an optometrical practice or business.

(2) Subject to subsection (3), any person who contravenes this section is guilty of an offence against this Act and liable to a penalty as follows—

Maximum penalty—30 penalty units and, if the offence is continued after the person is convicted therefor, a further penalty of 4 penalty units for each day during which the offence continues thereafter.

(3) Where this section is contravened by a body or association of persons, corporate or unincorporate, the provisions set out in section 32(2) applicable to a contravention of that section are applicable in the respective cases to a contravention of this section.

(4) This section does not apply to the ownership of an optometrical practice or business by a body or an association of persons, corporate or unincorporate, comprised exclusively of optometrists.

Penalty for fraudulent practices

34.(1) A person shall not—

- (a) procure or attempt to procure himself, herself or any other person to be registered by making or producing, or causing to be made or produced, any false or fraudulent statement, declaration or representation, either verbal or in writing;
- (b) make or cause to be made any falsification in the register or in any writing relating to the register or any false statement relating to the register;
- (c) forge, alter or counterfeit any certificate of registration under this Act;
- (d) utter any forged or altered or counterfeit certificate of registration under this Act knowing the same to have been forged or altered or to be counterfeit;
- (e) make any false statement upon any examination or in any declaration before the board, or utter or attempt to utter or put off as true before the board any false, forged, altered or counterfeit

certificate, diploma, letter, testimonial or other title, document or writing;

- (f) falsely advertise or hold himself or herself out as having obtained a certificate of registration under or as being registered under this Act, or permit any such advertisement or holding out;
- (g) falsely personate or represent himself or herself as being the person referred to in any certificate or writing presented to the board or in any certificate granted under this Act.

Maximum penalty—30 penalty units or 6 months imprisonment.

(2) The name of any person who procures himself or herself to be registered by any means which contravene this section shall, upon the person being convicted in respect of that contravention, be removed from the register.

(3) The provisions of this section are in addition to and not in substitution for or in derogation of the provisions of the Criminal Code or any other Act.

(4) However, a person is not liable to be convicted both under this Act and under the Criminal Code or any other Act in respect of the same act.

Continuation of practice of deceased optometrist

35.(1) Notwithstanding any other provision of this Act, the executor, administrator or trustee of a deceased optometrist may carry on in the name of the deceased optometrist the practice formerly carried on by the deceased optometrist for a period not exceeding 12 months from the date of such death or for such further time as may be permitted by the board (it being hereby thereunto authorised), provided that the practice shall be carried on under the actual personal supervision and management of an optometrist whose name shall be notified to the board by such executor, administrator or trustee.

(2) The executor, administrator or trustee of the deceased optometrist is not guilty of an offence under section 33 in respect of the deceased optometrist's optometrical practice or business whilst he or she carries on the practice pursuant to subsection (1).

General penalty

36.(1) A person who contravenes or fails to comply with any provision of this Act commits an offence against this Act and, save where a specific penalty is otherwise provided, is liable to a penalty of 30 penalty units.

(2) All penalties recovered in respect of offences against this Act shall be paid to the board.

Proceedings generally

37.(1) An offence against this Act may be prosecuted in a summary way under the *Justices Act 1886* upon the complaint of the registrar, or a person authorised by the board in that behalf.

(2) A prosecution for an offence against this Act may be commenced within 1 year from the time when the matter of complaint arose or within 6 months after the matter of complaint comes to the knowledge of the complainant, whichever is the period later to expire.

(3) Without prejudice to any other right or remedy available to the board with respect thereto, all fees payable to the board under this Act and all penalties or costs ordered by the board to be paid to it under this Act may be recovered in a summary way under the *Justices Act 1886* or as a debt due and owing to the board by action in any court of competent jurisdiction.

Evidentiary provisions

38. In any proceeding for the purposes of this Act—

- (a)** a certificate purporting to be signed by the registrar certifying the state of any part of the register at a date or during a period specified in the certificate or certifying that a person named therein was not, at a date or during a period specified therein, an optometrist shall, upon its production, be admissible as evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained in the certificate;
- (b)** every part of the register, and an extract of any part of the register purporting to be certified as correct by the registrar shall, upon its production, be admissible as evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters

contained therein;

- (c) a statement in a complaint commencing that proceeding of the date on which the matter of complaint came to the knowledge of the complainant shall be evidence and, in the absence of evidence to the contrary, conclusive evidence of its content;
- (d) proof shall not be required of the authority of any person to prosecute an offence against this Act or to take any proceeding on behalf of the board unless evidence is given to the contrary;
- (e) proof shall not be required of the appointment of the registrar or of any other officer appointed for the effectual administration of this Act or of the signature of the registrar.

Statutory declarations

39. For the purposes of this Act, the board may—

- (a) take a statutory declaration from any person;
- (b) require that an applicant make a statutory declaration in respect of the application.

By-laws

40.(1) The board may make by-laws under this Act.

(2) A by-law may be made for or about the following—

- (a) the powers, duties and functions of the registrar and officers appointed for the effectual administration of this Act;
- (b) the register and the manner of its keeping;
- (c) the making of applications to the board and the effect of furnishing false particulars therein;
- (d) the conduct of meetings of the board, the entitlement of members of the board to vote upon business before a meeting, and the conduct of proceedings before the board and of the affairs of the board;
- (e) the common seal of the board, the authentication of documents of

Optometrists Act 1974

the board, and the attesting of documents by or on behalf of the board;

- (f) the qualifications referred to in section 19(1)(a);
- (g) regulating the manner in which—
 - (i) optometrists; or
 - (ii) bodies or associations of persons corporate or unincorporate engaged in the practice or business of optometry or the fitting and supply of any optical appliance;

are authorised to advertise for work or business or to permit or suffer other persons to advertise for work or business for them;

- (h) the matters in respect of which fees are payable for the purposes of this Act, the amounts of fees, the persons who are liable to pay fees, when fees are payable, the waiver of fees and the recovery of unpaid amounts of fees;
- (i) the allowances payable under this Act and the purposes for which they are payable;
- (j) regulating and controlling the use by optometrists of titles, letters or words indicating or describing their qualifications, prescribing titles, letters or words that shall or may be used to indicate or describe that any person is an optometrist or to indicate or describe any particular optometrical qualification, prohibiting the use by optometrists, in relation to their qualifications as optometrists or the practice by them of optometry, of any titles, letters or words other than those prescribed for such use or prohibiting any prescribed titles, letters or words from being so used and, in relation to optometrical qualifications, either generally or except to indicate or describe a particular qualification;
- (k) penalties to be imposed for breaches of the by-laws but so that no such penalty shall exceed 30 penalty units.

(3) In subsection (2)(g)—

“**advertise**” includes approach in any way, whether to the public generally or a particular person, for attracting work or business.

Example

A direct approach by spoken words.

(4) The power to regulate given by subsection (2)(g) includes power to regulate the use of notices, signs, name plates, and anything else used to show the location of a business or practice.

(5) A by-law must be approved by the Governor in Council.²

Approval of forms

41. The board may approve forms for use under this Act.

Approved forms

41A.(1) This section applies if—

- (a) immediately before its commencement, there was a prescribed form for a matter; and
- (b) on the commencement, there is to be an approved form for the matter or a form may be approved for the matter.

(2) Until there is an approved form for the matter, the form that was the prescribed form for the matter immediately before the commencement is taken to be the approved form for the matter.

(3) This section expires 6 months after it commences.

References to the Optometrists Act 1917

43. In an Act or document, a reference to the *Optometrists Act 1917* may, if the context permits, be taken to be a reference to this Act.

² A by-law is subordinate legislation (see *Statutory Instruments Act 1992*, sections 7, 8(b)(i) and 9(1)(a)).

ENDNOTES

1 Index to endnotes

	Page
2 Date to which amendments incorporated	25
3 Key	26
4 List of legislation	26
5 List of annotations	27
6 Table of changed citations and remade laws	29
7 Table of obsolete and redundant provisions	29
8 Table of corrected minor errors	30
9 Table of renumbered provisions	30

2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 14 December 1995. Future amendments of the Optometrists Act 1974 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
om	=	omitted	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered
prev	=	previous			

4 List of legislation

Optometrists Act 1974 No. 77

date of assent 1 November 1974

commenced 1 January 1975 (proc pubd gaz 14 December 1974 p 1475)

as amended by—

Nursing Studies Act and Other Acts Amendment Act 1984 No. 74 pt 10

date of assent 18 October 1984

commenced on date of assent

Medical and Paramedical (Amendment of Inspectorial and Audit Provisions) Act 1987 No. 10 pt 9

date of assent 15 April 1987

commenced on date of assent

Optometrists Act Amendment Act 1987 No. 56

date of assent 1 October 1987

ss 1–2 commenced on date of assent (see s 2(1))

remaining provisions commenced 14 May 1988 (proc pubd gaz 14 May 1988 p 417)

Statute Law (Miscellaneous Provisions) Act 1989 No. 103 s 3 sch

date of assent 25 October 1989

commenced on date of assent

Health Legislation Amendment Act 1992 No. 66 pts 1, 11

date of assent 7 December 1992

ss 1–2 commenced on date of assent

ss 60–61, 65 and 66 in a certain respect commenced 18 December 1992
(1992 SL No. 450)

remaining provisions commenced 1 February 1993 (1992 SL No. 450)

Statute Law Revision Act 1995 No. 57 ss 1–2, 4 sch 1 (as amd by Act 1995 No. 58 s 4 sch 1)

date of assent 28 November 1995

commenced on date of assent

5 List of annotations**Commencement**

s 2 om R1 (see RA s 37)

Arrangement of Act

s 3 om R1 (see RA s 36)

Repeals and savings

s 4 om 1995 No. 57 s 4 sch 1

Definitions

prov hdg sub 1992 No. 66 s 61(1)

s 5 def “**approved forms**” ins 1995 No. 57 s 4 sch 1def “**fee**” ins 1992 No. 66 s 61(2)def “**medical practitioner**” om 1995 No. 57 s 4 sch 1def “**Minister**” om 1992 No. 66 s 61(3)def “**optometry**” amd 1987 No. 56 s 3def “**registrar**” sub 1995 No. 57 s 4 sch 1def “**the repealed Acts**” om 1995 No. 57 s 4 sch 1**Members of board**

s 8 amd 1992 No. 66 s 62; 1995 No. 57 s 4 sch 1

Increase in number of members

s 8A ins 1992 No. 66 s 63

om 1995 No. 57 s 4 sch 1

Chairperson and deputy chairperson of board

s 9 amd 1995 No. 57 s 4 sch 1

Tenure of office

s 10 amd 1989 No. 103 s 3 sch; 1995 No. 57 s 4 sch 1

Meetings of board

s 12 amd 1992 No. 66 s 64

Entitlements of members of board or committees

s 14 sub 1984 No. 74 s 22

amd 1995 No. 57 s 4 sch 1

Holders of office not affected by restrictive employment provisions

s 15 amd 1989 No. 103 s 3 sch

Accounts

s 17 amd 1987 No. 10 s 25

The register

s 18 amd 1995 No. 57 s 4 sch 1

Qualification for registration

s 19 amd 1987 No. 56 s 4; 1995 No. 57 s 4 sch 1

Certificate of registration

s 21 amd 1995 No. 57 s 4 sch 1

Disciplinary action

s 24 amd 1987 No. 56 ss 5, 11; 1995 No. 57 s 4 sch 1

Appeals

s 27 amd 1995 No. 57 s 4 sch 1

Restriction in relation to drugs

s 28 om 1987 No. 56 s 6

Restriction on practice of optometry

s 29 amd 1987 No. 56 s 7

Limitation on use by optometrist of unregistered person

s 31 amd 1987 No. 56 s 11

Provisions relating to practice of optometry by bodies of persons

s 32 amd 1987 No. 56 s 11

Restriction on ownership of optometrical practice or business

s 33 amd 1987 No. 56 s 11

Penalty for fraudulent practices

s 34 amd 1987 No. 56 s 11

General penalty

s 36 amd 1987 No. 56 s 11

Proceedings generally

s 37 amd 1987 No. 56 s 8

Statutory declarations

s 39 amd 1995 No. 57 s 4 sch 1

By-laws

s 40 amd 1987 No. 56 ss 9, 11; 1992 No. 66 s 65; 1995 No. 57 s 4 sch 1

Approval of forms

s 41 sub 1987 No. 56 s 10; 1992 No. 66 s 66; 1995 No. 57 s 4 sch 1

Approved forms

s 41A ins 1995 No. 57 s 4 sch 1 (as amd by 1995 No. 58 s 4 sch 1)
exp 28 May 1996 (see s 41A(3))

Power of board to make by-laws about fees

s 42 ins 1992 No. 66 s 66
om 1995 No. 57 s 4 sch 1

References to the Optometrists Act 1917

s 43 ins 1995 No. 57 s 4 sch 1

SCHEDULE

om R1 (see RA s 40)

6 Table of changed citations and remade laws

TABLE OF CHANGED CITATIONS AND REMADE LAWS
under the Reprints Act 1992 ss 21A and 22

Old	New	Reference provision
Public Service Act 1992	Public Service Management and Employment Act 1988	Public Service Management and Employment Act 1988 s 38(1)

7 Table of obsolete and redundant provisions

TABLE OF OBSOLETE AND REDUNDANT PROVISIONS
under the Reprints Act 1992 s 39

Omitted provision	Provision making omitted provision obsolete/redundant
definitions to be read in context	Acts Interpretation Act 1954 s 32A
penalty provision permitting fine or imprisonment permits both	Penalties and Sentences Act 1992 s 180A
references to Queensland implied	Acts Interpretation Act 1954 s 35

8 Table of corrected minor errorsTABLE OF CORRECTED MINOR ERRORS
under the Reprints Act 1992 s 44

Provision	Description
24(6)(a)	om 'rom' ins 'from'

9 Table of renumbered provisionsTABLE OF RENUMBERED PROVISIONS
under the Reprints Act 1992 s 43

Previous	Renumbered as
19(3)(b)(i)	19(3)(c)
19(3)(b)(ii)	19(3)(d)
19(3)(b)(iii)	19(3)(e)
34(3), proviso	34(4)
40(1)(g), 1st unnum para	40(1)(g)(i)
40(1)(g), 2nd unnum para	40(1)(g)(ii)