

# AUSTRALIAN CAPITAL TERRITORY

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## Optometrists (Amendment) Ordinance 1986

No. 51 of 1986

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910*.

Dated 27 August 1986.

N. M. STEPHEN  
Governor-General

By His Excellency's Command,

G. SCHOLES  
Minister of State for Territories

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An Ordinance to amend the *Optometrists Ordinance 1956*

### Short title

1. This Ordinance may be cited as the *Optometrists (Amendment) Ordinance 1986*.<sup>1</sup>

### Commencement

2. This Ordinance shall come into operation on such date as is fixed by the Minister of State for Territories by notice in the *Gazette*.

### Principal Ordinance

3. In this Ordinance, "Principal Ordinance" means the *Optometrists Ordinance 1956*.<sup>2</sup>

### Interpretation

4. Section 4 of the Principal Ordinance is amended—

- (a) by omitting sub-section (1) the definition of “medical practitioner” and substituting the following definitions:

“ ‘drug’ means a Schedule 4 substance within the meaning of the *Poisons and Narcotic Drugs Ordinance 1978*;

‘medical practitioner’ means a person who is entitled, under a law of a State or Territory, to practise as a medical practitioner in that State or Territory;”;

- (b) by omitting from sub-section (1) the definition of “optometry” and substituting the following definition:

“ ‘optometry’ means—

- (a) the employment of methods, other than methods that involve surgery, in—

(i) the examination of the eyes for evidence of abnormal or defective vision;

(ii) the measurement of the powers of vision; or

(iii) the measurement of ocular motility or co-ordination;  
or

- (b) the adaptation of lenses for the aid of the powers of vision,

but does not include—

(c) the dispensing of prescriptions for lenses written by medical practitioners; or

(d) the craft of lens-grinding or spectacles-making;”;

- (c) by adding at the end of sub-section (1) the following definition:

“ ‘Tribunal’ means the Administrative Appeals Tribunal established by the *Administrative Appeals Tribunal Act 1975*.”;

- (d) by omitting from paragraph (2) (a) “person (not being a company or firm)” and substituting “natural person”;

- (e) by inserting in sub-paragraph (2) (a) (i) “or as a member of a firm” after “account”;

- (f) by omitting from sub-paragraph (2) (a) (iii) “company or firm)” and substituting “company) or by a firm”; and

(g) by adding at the end the following sub-section:

“(3) A reference in a provision of this Ordinance to a prescribed fee shall be read as a reference to the fee determined under section 47AE for the purposes of that provision.”.

### **Persons entitled to registration**

5. Section 16 of the Principal Ordinance is amended by omitting sub-section (1) and substituting the following sub-sections:

“(1) In this section, ‘qualification’ includes a degree, certificate or diploma.

“(1A) A person is entitled to apply to the Board for registration if he or she is a fit and proper person to be registered as an optometrist, he or she has an adequate knowledge of the English language and—

- (a) he or she is entitled to practise as an optometrist in a State or another Territory under a law of that State or Territory relating to the practice of optometry; or
- (b) he or she holds a qualification in optometry—
  - (i) that is granted in a place outside Australia;
  - (ii) that would entitle him or her to practise optometry in that place; and
  - (iii) that is a qualification declared by the Minister, on the recommendation of the Board, by notice published in the *Gazette*, to be an acceptable qualification,

and he or she has completed any necessary practical training or experience that entitles him or her to practise optometry in that place and has, if required by the Board, and to the satisfaction of the Board, undertaken such additional training or gained such experience in the practice of optometry in Australia for such period, being a period of not more than 12 months, as the Board specifies in his or her case.

“(1B) An application for registration shall be in writing and shall be lodged with the Board.”.

6. After section 16 of the Principal Ordinance the following section is inserted:

**Board to authorise registration**

“17. Subject to sub-section 16 (2), where a person has lodged an application with the Board under sub-section 16 (1B) and the Board is satisfied that the person—

- (a) is entitled to apply for registration; and
- (b) has paid the prescribed fee;

the Board shall authorize the registration of the person.”.

7. After section 19 of the Principal Ordinance the following section is inserted:

**Publication of names of registered optometrists**

“19A. The Board shall, as soon as practicable after 1 July in each year, cause to be published in the *Gazette* a notice containing the names of all optometrists registered under this Ordinance on that day and the professional address or professional addresses, if any, of each of those optometrists.”.

**Effect of provisional, &c., registration**

8. Section 22A of the Principal Ordinance is amended by omitting “29, 33A, 35 and 45” and substituting “23A, 29, 31, 32, 33A and 47AD”.

9. Section 23 of the Principal Ordinance is repealed and the following sections are substituted:

**Cancellation or suspension of registration**

“23. (1) The Board may cancel the registration of a person—

- (a) whose registration has been obtained by fraud or misrepresentation;
- (b) whose qualification is withdrawn or cancelled by the body which granted it;
- (c) whose registration in a State or another Territory is cancelled, suspended or otherwise withdrawn on a ground other than the non-payment of a fee;
- (d) who, being a person whose registration is suspended, is convicted of an offence against section 29 or 32;
- (e) who is convicted in the Territory or elsewhere of an offence punishable by imprisonment for a period of 1 year or longer or any

other offence that renders the person unfit to practise as an optometrist; or

(f) who is guilty of unprofessional conduct.

“(2) In the case of a person to whom paragraph (1) (c), (e) or (f) applies, the Board may, instead of cancelling the registration of the person—

(a) suspend the registration of the person for such period as it thinks fit; or

(b) reprimand the person.

“(3) Where a person who is registered is found by the Board to have been guilty of habitual drunkenness or addiction to a drug, the Board may—

(a) order the suspension of the registration of the person for such period as it thinks fit; or

(b) reprimand the person.

“(4) In this section, ‘unprofessional conduct’ includes—

(a) advertising with a view to procuring practice as an optometrist, or sanctioning or being associated with or employed by a person who so advertises or sanctions such an advertisement; and

(b) canvassing or employing an agent or canvasser for the purpose of procuring practice as an optometrist, or sanctioning or being associated with or employed by a person who so canvasses or employs or who sanctions such canvassing or employment.

“(5) Notwithstanding the other provisions of this section, a registered optometrist who—

(a) publishes, from time to time, a notice of the fact that he or she practises as an optometrist and of the place or places at which he or she practises;

(b) publishes a notice or notices of the fact that he or she has commenced or resumed practice as an optometrist or a notice or notices of a change of address at which he or she practises as an optometrist; or

(c) exhibits at the place or places at which he or she practises as an optometrist a notice or notices containing his or her name and qualifications,

being, in each case, a notice or notices of a kind which conforms to the accepted customs and usages of the optometry profession shall not be deemed to be guilty of unprofessional conduct by reason only of such publication or exhibition.

### **Suspension of registration on health grounds**

“23A. (1) The Board shall, where it is satisfied that the mental or physical condition of a registered optometrist is such as to render him or her unfit to practise optometry, suspend the registration of that person.

“(2) The Board shall, within 12 months of suspending a registration under this section and thereafter at intervals not exceeding 12 months, or, subject to sub-section (3), at any other time if so requested by the person whose registration was suspended, review that suspension and, where the Board is satisfied that the mental or physical condition of that person is no longer such as to render him or her unfit to practise optometry, it may set aside that suspension.

“(3) Where the Board—

- (a) suspends a registration under this section; or
- (b) reviews a suspension made under this section,

the person whose registration was suspended shall not be entitled to—

- (c) a review of the suspension; or
- (d) a further review of the suspension,

as the case requires, within a period of 3 months from the date of the suspension or review.

### **Effect of suspension**

“23B. A person whose registration has been suspended under section 23 or sub-section 23A (1) or 24 (2) shall, during the period of the suspension, be deemed not to be registered.”.

**10.** Section 24 of the Principal Ordinance is repealed and the following section substituted:

### **Inquiry by Board**

“24. (1) The Board shall hold an inquiry before—

- (a) cancelling the registration of a person;

- (b) suspending the registration of a person; or
- (c) reprimanding a person.

“(2) Pending the holding of an inquiry under sub-section (1), the Board may suspend temporarily the registration of the person to whom the inquiry relates.”.

### **Appeal**

**11.** Section 26 of the Principal Ordinance is amended—

- (a) by omitting sub-section (1) and substituting the following sub-section:

“(1) Application may be made to the Tribunal for a review of a decision of the Board—

- (a) refusing to authorise the registration of, or to re-register, a person;
  - (b) cancelling or suspending, otherwise than under sub-section 24 (2), the registration of a person;
  - (c) refusing to grant special registration to a person under section 22 or refusing to renew special registration granted to a person under that section;
  - (d) refusing to terminate the suspension of the registration of a person or to set aside a suspension made under sub-section 23A (1); or
  - (e) refusing to permit an extension of the period under section 31.”; and
- (b) by omitting sub-section (2).

**12.** After section 26 of the Principal Ordinance the following section is inserted:

### **Notification of decisions**

“26A. (1) Where the Board makes a decision—

- (a) refusing to authorise the registration of, or to re-register, a person;
- (b) refusing to terminate the suspension of a person or to set aside a suspension made under sub-section 23A (1); or
- (c) refusing to permit an extension of the period under section 31,

or the Chairman makes a decision refusing to grant, or to renew, temporary registration, the Board or the Chairman, as the case may be, shall cause a statement in writing to be given to the person whose interests are affected by the decision, setting out the decision and giving the reasons for the decision.

“(2) A statement under sub-section (1) or under section 31 of the *Health Professions Boards (Procedures) Ordinance 1981* shall include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, a person whose interests are affected by the decision to which the statement relates is entitled to apply to the Tribunal for a review of the decision.

“(3) The validity of a decision to which a statement under sub-section (1) or under section 31 of the *Health Professions Boards (Procedures) Ordinance 1981* relates shall not be taken to be affected by a failure to comply with sub-section (2).”.

**13.** Section 27 of the Principal Ordinance is repealed and the following section substituted:

#### **Application re-registration**

“27. (1) Where the registration of a person has been cancelled, otherwise than under sub-section 18 (4), or suspended, otherwise than under sub-section 23A (1) or 24 (2), the person may apply for re-registration or termination of the suspension, as the case may be, on the ground that, by reason of a specified change in circumstances that has occurred since the date of the cancellation or suspension, it is just that he or she should be re-registered or his or her suspension should be terminated.

“(2) Upon an application under this section the Board may, if it is satisfied that, by reason of the change in circumstances, the person should be re-registered or his or her suspension should be terminated, order that the person be re-registered or that his or her suspension be terminated, as the case requires.”.

#### **Unregistered persons not to practise optometry**

**14.** Section 29 of the Principal Ordinance is amended by omitting from sub-section (3) “body corporate” and substituting “company”.

#### **Provisions relating to practice of optometry by firms and companies**

**15.** Section 30 of the Principal Ordinance is amended—

- (a) by omitting from sub-section (1) “Subject to the next succeeding sub-section, a firm” and substituting “A firm”; and

- (b) by omitting sub-section (2) and substituting the following sub-section:

“(2) A firm or company shall not advertise that it will provide an optometry service whether through a registered optometrist or otherwise.

Penalty: \$500.”.

**Use of title “optometrist”, &c.**

**16.** Section 32 of the Principal Ordinance is amended by omitting sub-section (2).

**Repeal of section 33**

**17.** Section 33 of the Principal Ordinance is repealed.

**Sale of spectacles**

**18.** Section 33A of the Principal Ordinance is amended—

- (a) by omitting from sub-section (1) “except” and substituting “other than spectacles dispensed”;
- (b) by omitting the penalty set out at the foot of sub-section (1);
- (c) by omitting from sub-section (2) “sunglasses” and substituting “sunglasses, other than sunglasses prescribed by a medical practitioner or by a registered optometrist”; and
- (d) by adding at the end the following sub-section:

“(3) A person who contravenes sub-section (1) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) in the case of a company—\$1,000; and
- (b) in any other case—\$500.”.

**Repeal of sections 34 and 35**

**19.** Sections 34 and 35 of the Principal Ordinance are repealed.

**20.** After section 47 of the Principal Ordinance the following sections are inserted:

**Publication of notice of decision**

“47AA. (1) The Chairman may, if the Chairman thinks fit, cause a notice of a decision of the Board or of the Tribunal on application for review of a decision of the Board—

- (a) cancelling the registration of a person;
- (b) reprimanding a person; or
- (c) ordering the suspension, otherwise than under sub-section 24 (2), of the registration of a person,

and the reasons for the decision, including the findings on material questions of fact, to be published in the *Gazette*.

“(2) A notice of a decision shall not be published under sub-section (1) until—

- (a) the period within which an application may be made to the Tribunal for review of the decision has expired; and
- (b) if an application for review of the decision is made, the Tribunal has given its decision on the application.

**Actions for recovery of fees or remuneration**

“47AB. (1) A person who has given an optometry service to another person or a dependant of that other person is not entitled to commence an action for the recovery from that other person of fees or remuneration for that optometry service unless—

- (a) he or she has served or caused to be served on that other person by delivery to that person personally or by post addressed to that person at his or her last-known place of residence, an account for the fees or remuneration setting out the amount claimed, a brief statement of the nature of the optometry service given, the dates on which it was given and the person for whom it was given; and
- (b) a period of 3 months has elapsed since that service of the account and the account is unpaid at the end of that period.

“(2) Notwithstanding sub-section (1), an action for the recovery of fees or remuneration for an optometry service may be commenced without the service of an account for those fees or that remuneration in accordance with that sub-section or, if such an account has been so served, before the expiration of the period of 3 months from the service of the account, if the action is one in which an application could, but for that sub-section, be made for an order under Part II

of the Arrest on Mesne Process Act, 1902, of the State of New South Wales in its application to the Territory.

**Review of accounts for fees for optometry services**

“47AC. (1) A person liable to pay fees or remuneration for an optometry service to the person who gave the service may, within 6 months after service upon him or her of an account for the fees or remuneration in accordance with section 47AB, apply in writing to the Board to review the account.

“(2) The Board shall, on receipt of an application under sub-section (1), review the account and certify, under the hand of the Chairman or the Deputy Chairman, the amount which, in the Board’s opinion is a reasonable amount of fees or remuneration for the optometry service.

“(3) The Board shall, in a certificate referred to in sub-section (2), set out the facts on which the certificate is based.

“(4) The Board may, by notice to a person, request the person to furnish on or before the day specified in the notice such information as it thinks necessary or desirable for the purpose of a review under this section.

“(5) If a person does not furnish information requested by the Board under sub-section (4) on or before the day specified in the notice, the Board may proceed to review the account for fees or remuneration without that information.

“(6) In reviewing an account for fees or remuneration under this section, the Board is not required to conduct a formal hearing, but the Board shall provide the parties to the application with any information furnished to the Board under sub-section (4).

“(7) In reviewing an account for fees or remuneration under this section, the Board shall have regard to the time occupied in giving, and the nature of, the optometry service and any other circumstances submitted by the person who gave the service with respect to the provision of the service.

“(8) In proceedings for the recovery of fees or remuneration in respect of an optometry service, a certificate of the Board under sub-section (2) in relation to that service is evidence that the amount certified in the certificate is a reasonable amount of fees or remuneration for the optometry service.

“(9) The Board shall cause a copy of a certificate of the Board under sub-section (2) to be sent by post to the person who gave the optometry service at his or her address as last known to the Board.

**Name of optometrist to be exhibited**

“47AD. (1) A person who carries on business as an optometrist shall cause to be prominently displayed at all times at the premises where that business is carried on a notice that—

- (a) can be clearly viewed from outside the premises; and
- (b) specifies, in letters not less than 5 centimetres and not more than 8 centimetres in height, the names as recorded in the Register of the optometrists practising optometry at those premises followed, in each case, by the word ‘Optometrist’.

“(2) A person who contravenes sub-section (1) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) in the case of a company—\$1,000; and
- (b) in the case of a natural person—\$500.

**Power of Minister to determine fees**

“47AE. The Minister may, by notice in writing published in the *Gazette*, determine fees for the purposes of this Ordinance.”.

**Regulations**

**21.** Section 48 of the Principal Ordinance is amended by omitting all the words after “to this Ordinance”.

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**NOTES**

1. Notified in the *Commonwealth of Australia Gazette* on 29 August 1986.
2. No. 4, 1956 as amended by No. 4, 1957; No. 14, 1958; No. 19, 1966; No. 19, 1967; No. 36, 1970; No. 19, 1971; No. 47, 1974; No. 17, 1975; No. 65, 1977; No. 46, 1978; No. 26, 1979; No. 49, 1980; No. 50, 1981; Nos. 31 and 43, 1982.