

1993

AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY

OPTOMETRISTS (AMENDMENT) BILL 1993

EXPLANATORY MEMORANDUM

Circulated by authority of the Minister for Health

Wayne Berry MLA

• OPTOMETRISTS (AMENDMENT) BILL 1993

EXPLANATORY MEMORANDUM

Outline

The Optometrists (Amendment) Bill 1993 ("the Bill") amends the *Optometrists Act 1956* ("the Act") for the purpose of ensuring that the registration and certain other provisions of the Act are consistent with the requirements for registration of optometrists as recommended by the Australian Health Ministers' Advisory Council (AHMAC) and agreed to by the Australian Health Ministers' Conference and is one of a series of Bills to amend the ACT's legislation regulating health professions for a similar purpose.

The Optometrists Act 1956

The Act regulates the registration of persons as optometrists and, in particular, Parts III and IV, respectively, set out the qualifications and requirements for registration as an optometrist and provide that disciplinary action may be taken by the Optometrists Board, established under Part II of the Act, in respect of the conduct of a registered optometrist.

The Optometrists (Amendment) Bill 1993

The Bill amends the Act to enable a person to be registered as an optometrist, according to the qualifications held by the person, and to otherwise ensure that the provisions relating to registration of optometrists and disciplinary action which may be taken under the Act comply with the approach to these matters which has been agreed between the States and Territories.

In particular the Bill recognises the entitlement of a person who is registered as an optometrist in a State or another Territory to registration in the ACT and provides for conditions which may be imposed upon an optometrist's registration in another jurisdiction or disciplinary action taken against an optometrist in another jurisdiction to be applied in respect of the person's registration in the Territory.

These provisions are intended to be consistent with the mutual recognition principle relating to occupations as set out in section 17 of the Commonwealth *Mutual Recognition Act 1992* ("the Mutual Recognition Act").

The application of that principle to the Territory and to other jurisdictions has given rise to the desirability of adopting agreed minimum requirements for registration as an optometrist. Unless all jurisdictions where mutual recognition applies have the same standard for registration of a person as an optometrist, a jurisdiction with a lower standard will provide a means for a person who satisfies that standard, but not the higher standards required in other jurisdictions, to gain registration in those other jurisdictions, under the mutual recognition principle.

Financial implications

There are no financial implications arising from the Bill.

Details of the Bill are included in the Attachment.

OPTOMETRISTS (AMENDMENT) BILL 1993

Explanatory Memorandum

Table of Contents

MAIN AMENDMENTS

Clause		Page
7	Insertion of new registration provisions	1
8	Register	6
9	Repeal and substitution of new registration provisions	7
11	Repeal of sections 20, 21, 22 and 22A	11
13	Repeal of sections 23, 23A, 23B, 24, 26, 26A, 27, 27A and 27B	11
14	Insertion of new provisions	12
15	Sale of spectacles	15
16	Insertion of new appeal and notification provisions	16
17	Publication of notice of decision	17

TRANSITIONAL PROVISIONS

19	Continuation of registration	18
20	Provisional registration	18
21	Temporary registration	18
22	Failure to pay annual fee under repealed provisions	18
23	Applications for registration	19
24	Continuation of inquiries and reviews	19
25	Complaints relating to previous conduct	19
26	Existing orders	19

FORMAL, TECHNICAL AND CONSEQUENTIAL PROVISIONS

1	Short title	20
2	Commencement	20
3	Principal Act	20
4	Interpretation	20
5	Insertion	20
6	Heading to Part III	21
10	Change of address to be notified	21
12	Alteration of Register	21
18	Further amendments	21
27	Renumbering of provisions	21

MAIN AMENDMENTS

Clause 7- Insertion of new registration provisions

Clause 7 inserts in Part III of the Act proposed **new sections 7, 8, 9, 10, 11, 12, 13, 13A, 13B, 13C, 13D, 13E, 13F and 13G** dealing with requirements for registration as an optometrist, including registration procedure.

Registration based on qualifications and training

New section 7 deals with the requirements for registration as an optometrist where the applicant relies on his or her qualifications and training.

New subsection 7(1) entitles a person to registration as an optometrist if he or she -

- is a graduate of a course of education or training in optometry offered by an Australian institution, being a course that is accredited by the Board or approved by a registration authority of a State or another Territory; or
- has completed a course of education or training at an overseas institution, being a course substantially equivalent to an accredited or approved course offered by an Australian institution, which course qualifies the person to practise optometry in that place; and
- has undertaken such further education or training, gained such experience in the practise of optometry, and passed such examinations as the Board requires.

New subsection 7(2) limits the amount of *experience in the practise of optometry in Australia* which the Board may require an overseas trained applicant for registration to gain, for the purpose of **new subsection 7(1)**, to a maximum of 1 year's experience.

New subsection 7(3) specifies that registration granted under **new section 7** is unconditional registration.

Registration under mutual recognition principle

New section 8 entitles a person who is registered as an optometrist in a State or another Territory that is a participating jurisdiction within the meaning of the Mutual Recognition Act to registration as an optometrist under the Act.

New subsection 8(2) entitles such a person to unconditional registration under the Act where that person's registration in the other State or Territory is unconditional.

New subsection 8(3) qualifies the right of such a person to be registered under the Act by restricting registration under the Act to registration subject to the same conditions (if any) as apply to the person's registration in the other jurisdiction where the person is registered.

Registration at the discretion of the Board

New section 9 provides the Board with a discretion to register a person, in a range of circumstances, notwithstanding that the person is not entitled to registration pursuant to new sections 7 or 8.

New subsection 9(1) enables the Board to register a person as an optometrist, on a temporary basis, for the purpose of enabling the person to gain experience in the practise of optometry or undertake education or training approved by the Board.

New subsection 9(2) enables the Board to register a person as an optometrist for the purpose of enabling the person to fill a teaching or research position provided that the person has qualifications that the Board considers appropriate for the purpose and the person's application is supported, in writing, by the institution by which it is proposed that the person be engaged in the teaching or research position.

New subsection 9(3) enables the Board to register a person on a temporary basis if it is satisfied that it is in the public interest to do so.

New subsection 9(4) provides that the Board may impose such conditions upon registration under this section as the Board considers appropriate.

Interim registration

New section 10 provides for the interim registration of an applicant for registration.

New subsection 10(1) enables the interim registration of an applicant -

- . in the case of a person entitled to registration under **new section 7**, where it is not practicable to wait for the Board to consider the application; or
- . where a person would be entitled to registration under **new section 7** but for the fact that a degree or award to which the person is entitled has not yet been conferred or granted by the institution concerned.

New subsection 10(2) enables a person authorised by the Board to grant interim registration to an applicant for registration, in accordance with the section. This will enable a person nominated by the Board, such as a member of the Board, to grant interim registration to an applicant for registration in circumstances where it may be some time before the Board will find it possible to meet to consider a person's application.

New subsection 10(3) provides that interim registration remains in force until the person to whom it is granted is given written notice that -

- . registration has been granted;
- . registration has been refused; or
- . the interim registration has been cancelled.

New subsection 10(4) gives the Board the discretion to cancel a person's interim registration for any reason it considers proper and requires the Board to immediately notify a person, in writing, of the cancellation of his or her interim registration.

The effect of **new subsection 10(5)** is that a person who holds interim registration is taken to be a registered optometrist.

Conditions of registration in cases of impairment

New section 11 deals with conditions which may be imposed on the registration of a person as an optometrist where the person suffers from an impairment. The term impairment is defined in **new section 4B** to encompass physical or mental impairment, a disability or condition or disorder which detrimentally affects, or is

likely to detrimentally affect, a person's physical or mental capacity to practise optometry, and it includes habitual drunkenness or addiction to a deleterious drug.

New subsection 11(1) enables the Board to impose conditions upon a person's registration where the Board is satisfied that the person suffers from an impairment and the conditions are reasonably required having regard to the impairment.

New subsection 11(2) enables the Board to review conditions imposed upon a person's registration under **new section 11**, and to alter or remove such conditions or impose new conditions where the Board is satisfied that the person no longer suffers from the impairment or the degree of the impairment has reduced.

Refusal of registration where applicant convicted of offence

New section 12 gives the Board a discretion to refuse to register an applicant for registration if the applicant has been convicted of an offence in the Territory or convicted in a court elsewhere of an act or omission which, had it taken place in the Territory, would have constituted an offence, where the Board is of the opinion that the conviction renders the person unfit, in the public interest, to practise optometry.

New subsection 12(2) requires the Board to have regard to the nature of the offence and the circumstances in which it was committed in making its decision.

In order to be consistent with the provisions of subsection 23(1) of the Mutual Recognition Act, relating to refusal of registration, **new subsection 12(3)** specifies that **new subsection 12(1)** does not apply in relation to a person who is entitled to registration pursuant to that Act and who has lodged a notice with the Board pursuant to section 19 of that Act.

Refusal of registration where applicant deregistered outside Territory

New section 13 gives the Board a discretion to refuse to register an applicant for registration if the applicant's name has been removed from a register of optometrists kept under the law of another country, State or another Territory for any reason relating to the conduct of the person as an optometrist or the person's physical or mental capacity to practise optometry.

In order to be consistent with the provisions of subsection 23(1) of the Mutual Recognition Act, relating to refusal of registration, **new subsection 13(3)** specifies

that **new subsection 13(1)** does not apply in relation to a person who is entitled to registration pursuant to that Act and who has lodged a notice with the Board pursuant to section 19 of that Act.

Applicants to be competent and of good character

New section 13A prohibits the Board from registering a person as an optometrist unless the person is competent to practise optometry and is of good character.

What is meant by "competent to practise" is set out in **new section 4A**.

However, in order to be consistent with the provisions of subsection 23(1) of the Mutual Recognition Act, relating to refusal of registration, **new subsection 13A(2)** specifies that **new subsection 13A(1)** does not apply in relation to a person who is entitled to registration pursuant to that Act and who has lodged a notice with the Board pursuant to section 19 of that Act.

Restriction on registration of deregistered or suspended persons

New section 13B restricts the registration of persons whose registration has been cancelled or suspended. Other than a person whose registration has been cancelled pursuant to **new section 17**, that is, as a consequence of cancellation of the person's registration in another jurisdiction, or pursuant to **new subsection 18C(2)** for non-payment of a fee or whose registration has been suspended pursuant to **new section 28A(2)** pending the outcome of an inquiry, a person may not apply for re-registration or termination of the suspension, other than by applying to the Board pursuant to **new section 28**.

However, in order to be consistent with the provisions of subsection 23(1) of the Mutual Recognition Act, relating to refusal of registration, **new subsection 13B(2)** specifies that **new subsection 13B(1)** does not apply in relation to a person who is entitled to registration pursuant to that Act and who has lodged a notice with the Board pursuant to section 19 of that Act.

Applications for registration

New section 13C applies to applications for registration other than applications from persons who are entitled to registration pursuant to the Mutual Recognition Act and who lodge with the Board a notice under section 19 of that Act.

New subsection 13C(2) requires that an application for registration be in a form approved by the Board and be accompanied by the determined fee.

Applications to be considered and determined

New section 13D requires the Board to consider and determine all applications for registration under **new section 13C** and that the determination of applications is to be by either registering the applicant, unconditionally or otherwise, or by refusing the application.

Registration of applicants

New section 13E requires that where a person who is applying for registration other than under the Mutual Recognition Act applies for registration in accordance with **new section 13C** and appears personally before the Board or a nominee of the Board, if required to do so, and is entitled to registration in accordance with the Act, the Board shall register the applicant as an optometrist.

Fee for registration pursuant to Mutual Recognition Act

New section 13F requires an applicant for registration pursuant to the Mutual Recognition Act to pay the determined fee.

Conditions of registration

New section 13G provides that the conditions which the Board may impose on registration at the time of registration relate to the duration of registration, the aspects of practice in which the person who is registered may be engaged and such other matters as the Board considers appropriate.

Clause 8 - Register

Clause 8 amends section 14 of the Act, which requires the Board to keep a register of optometrists, by adding **new subsection 14(2)** which specifies that the register may be kept by electronic means.

Clause 9 - Repeal and substitution of new registration provisions

Clause 9 repeals sections 15, 16, 17 and 18 of the Act dealing with, respectively, the method of effecting registration, the qualifications for registration, the authorisation of registration and payment of an annual fee. These provisions are redundant having been replaced with new provisions in the Bill.

Clause 9 substitutes new sections 15, 16, 17, 18, 18A, 18B, 18C and 18D dealing with, respectively, the method of effecting registration, certificates of registration, deregistration based on deregistration in another jurisdiction, the imposition of conditions on registration similar to conditions imposed on registration in another jurisdiction, cessation of registration and the annual fee.

Particulars to be entered in the Register

New section 15 provides that registration is effected by the entering of certain particulars in the Register including particulars relating to the identity and address of the applicant, the qualifications of the applicant, the date of registration and registration number of the applicant and any conditions imposed upon the applicant's registration.

Certificate of registration

New section 16 requires the Board to issue a certificate of registration to a person who is registered as an optometrist.

New subsection 16(2) requires that a certificate of registration indicate the provision of the Act by virtue of which the certificate holder is entitled to be registered and any conditions to which that person's registration is subject.

New subsection 16(3) is an evidentiary provision to the effect that a certificate of registration is evidence that the person specified in the certificate was registered on the date specified in the certificate.

New subsection 16(4) requires the Board to issue a duplicate certificate to an optometrist, on payment of the determined fee, where a certificate has been lost or destroyed.

New subsection 16(5) requires the Chairperson of the Board, where the Board has cancelled or suspended the registration of a person, to request the person to deliver his or her certificate of registration to the Board.

New subsection 16(6) requires that where a person whose registration has been suspended delivers his or her certificate of registration to the Board the Board retain the certificate for the duration of the suspension and return it to the person at the expiration of the period of suspension unless the person's registration is sooner cancelled.

New subsection 16(7) enables the Chairperson of the Board to request in writing that a certificate be delivered to the Board for the purpose of endorsing the certificate to indicate that conditions have been imposed upon the registration of the person to whom the certificate was issued or that conditions imposed upon the registration of that person have been varied.

New subsection 16(8) makes it an offence for a person, without reasonable excuse, to fail to comply with a request under **new subsections 16 (5) or (7)** and provides a penalty of \$500.

New subsection 16(9) specifies that a notice under **new subsection 16(5) or 16(7)** may be given by post.

Deregistration on basis of disciplinary action under foreign law

New section 17 provides for the deregistration of a person where that person's name has been removed from a register of optometrists kept under a law of a State or another Territory or a law of another country.

New subsection 17(1) requires that the Board cancel the registration of a person where the Board is satisfied that the name of the person has been removed from a register kept under a law of a State or another Territory for any reason relating to the conduct of the person as an optometrist or the physical or mental capacity of the person to practise optometry.

Where a person whose registration has been cancelled under **new subsection 17(1)** has his or her name restored to the register for the removal from which the person's registration was cancelled and the person applies for re-registration, **new subsection 17(2)** requires the Board to re-register the person.

New subsection 17(3) gives the Board a discretion to cancel the registration of a person where the Board is satisfied that the name of the person has been removed from a register kept under a law of a place outside Australia for any reason relating to the conduct of the person as an optometrist or the physical or mental capacity of the person to practise optometry.

New subsection 17(4) gives the Board a discretion to re-register a person whose registration has been cancelled under **new subsection 17(3)** where the Board is satisfied that it is appropriate in the circumstances to re-register the person.

Imposition of conditions imposed under foreign law

New section 18 provides for the imposition of conditions upon the registration of a person where conditions are imposed upon the registration of that person in another jurisdiction.

New subsection 18(1) requires that where conditions are imposed upon the registration of a person as an optometrist under the law of a State or another Territory the Board must impose similar conditions upon the registration of the person.

New subsection 18(2) gives the Board a discretion to impose conditions similar to those it is satisfied have been imposed upon the registration of a person as an optometrist under the law of a place outside Australia.

Cessation of registration

New section 18A provides that a person ceases to be registered as an optometrist -

- when the Board gives the person notice that his or her registration has been cancelled in accordance with the Act; or
- if registration is conditional and the period of registration is specified in the condition - when that period expires.

Annual fee payable

New section 18B provides for the payment of an annual fee by a registered optometrist.

New subsection 18B(1) requires that on or before 1 July each year a registered optometrist pay to the Board the determined fee.

New subsection 18B(2) requires that the Board send to each registered optometrist at least one month before the due date for payment, a notice requiring the person to pay the fee by the due date.

New subsection 18B(3) precludes an optometrist from relying on a failure of the Board to send such a notice as a basis for avoiding liability to pay the fee by the due date.

Registration to be cancelled for non-payment

New section 18C provides for the cancellation of the registration of an optometrist where the optometrist fails to pay the annual fee.

New subsection 18C(1) requires that where an optometrist fails to pay the determined fee by the due date the Board must send the optometrist a notice requiring him or her to pay the fee by a day specified in the notice and advising him or her that if the fee is not paid by that later date his or her registration will be cancelled.

New subsection 18C(2) requires the Board to cancel the registration of an optometrist who fails to pay the fee by the day specified in the notice under **new subsection 18C(1)**.

Entitlement to re-registration on payment of fees

New section 18D provides for the re-registration of a person where the person pays the determined fee.

New subsection 18D(1) entitles a person whose name has been removed from the Register for failure to pay the annual fee to re-registration if he or she applies in accordance with the requirements of the section and pays the determined fee.

New subsection 18D(2) requires that an application for re-registration be in a form approved by the Board and be accompanied by the determined fee.

New subsection 18D(3) qualifies the entitlement of a person to re-registration by limiting it to a right to re-registration on the same terms and conditions (if any) as applied to the person's registration immediately prior to the removal of the person's name from the Register.

New subsection 18D(4) gives the Board a discretion to refuse re-registration to a person where the Board is satisfied that the person is not competent to practise optometry or is not of good character.

New subsection 18D(5) provides that a person's right to re-registration under new section 18D is subject to the other provisions of the Act.

Clause 11 - Repeal of sections 20, 21, 22 and 22A

Clause 11 repeals sections 20, 21, 22 and 22A of the Act providing for, respectively, provisional registration, temporary registration, special registration and the effect of such types of registration.

Sections 20, 21 and 22 have been replaced, respectively, by **new section 10** and **new subsections 9(3) and 9(2)** and section 22A is made redundant by the repeal of sections 20, 21 and 22.

Clause 13 - Repeal of sections 23, 23A, 23B, 24, 26, 26A, 27, 27A and 27B

Clause 13 repeals sections 23, 23A, 23B, 24, 26, 26A, 27, 27A and 27B of the Act providing for, respectively, the cancellation and suspension of registration, the suspension of registration on health grounds, the effect of suspension, requirements concerning the conduct of an inquiry by the Board, appeals, notification of decisions of the Board, applications for re-registration, the return of registration certificates and the issue of duplicate certificates.

Sections 23, 23A and 23B are obsolete as a result of the insertion of **new sections 23, 24 and 25** by **clause 14**. Section 24 is replaced by **new section 28A** and sections 26 and 26A are replaced by **new sections 34 and 35** inserted by **clause 16**. Section 27 is replaced by **new section 28** and sections 27A and 27B are obsolete as a result of the insertion by **clause 9** of **new subsections 16(5) and (4)**, respectively.

Clause 14 - Insertion

Clause 14 inserts new sections 23, 24, 25, 26, 27, 28 and 28A in Part IV of the Act, dealing with, respectively, cancellation or suspension of registration, cancellation or suspension of registration or restriction of practising rights on health grounds, other disciplinary powers of the Board, re-registration and the requirement for the Board to hold an inquiry prior to taking specified types of action in relation to a registered optometrist.

Cancellation or suspension of registration

New subsection 23(1) deals with the cancellation and suspension of registration and gives the Board a discretion to cancel the registration of a person or order the suspension of the person's registration where the Board is satisfied that -

- . the registration of the person was obtained by fraud or misrepresentation;
- . the optometrical qualification of the person has been withdrawn or cancelled by the body which granted it;
- . the person has contravened the Act or regulations;
- . the person has contravened a condition of his or her registration;
- . the person has been convicted of an offence punishable by imprisonment for more than one year or any offence which in the opinion of the Board renders the person unfit to practise;
- . the person has failed to exercise adequate judgement or care in the practise of optometry;
- . the person has engaged in conduct, whether occurring in the practise of optometry or not, that adversely affects the practise of optometry by the person;
- . the person has permitted an assistant who is employed by the person in connection with his or her optometrical practice, but who is not a registered optometrist, to attend or treat patients in respect of matters requiring professional discretion or skill;
- . the person has advertised, otherwise than as permitted, for the purpose of procuring patients or practice, or has sanctioned, or been associated with or employed by a person who has sanctioned such an advertisement;
- . the person has canvassed, or employed an agent or canvasser, for the purpose of procuring patients or practice, or has sanctioned or been associated with or employed by a person who has sanctioned, the employment of an agent or canvasser for that purpose;

- . the person is guilty of habitual drunkenness, or addiction to a deleterious drug, that renders the person unfit to practise as an optometrist;
- . the person has engaged in any other improper or unethical conduct relating to the practice of optometry; or
- . the person is not competent to practise optometry.

New subsection 23(2) provides that, in the context of providing training and instruction to optometry students or other students or in collaborating in experimental or research work, permitting an assistant who is employed by a person in connection with his or her optometrical practice, but who is not a registered optometrist, to attend or treat patients is not a ground for the Board cancelling or suspending the registration of the person under **new subsection 23(1)**.

New subsection 23(3) permits a registered optometrist to advertise, in a manner approved by the Board -

- . the fact that he or she practises as an optometrist;
- . the fact that he or she has commenced or resumed practice as an optometrist or of a change of the address at which he or she practises; or
- . at the place or places at which he or she practises, details of his or her qualifications in optometry.

New subsection 23(4) requires the Board, in approving a manner of advertising for the purposes of **new subsection 23(3)**, to have regard to the accepted customs and usages of the optometry profession.

Cancellation, suspension or restriction of right of practise on health grounds

New section 24 deals with the cancellation, suspension or restriction of a person's right to practise on health grounds.

New subsection 24(1) requires that subject to the provisions of **new subsection 24(2)** the Board must cancel the registration, or order the suspension of the registration, of a person where it is satisfied that the mental or physical condition of the person renders him or her unfit to practise.

New subsection 24(2) gives the Board the option of, instead of cancelling or suspending the registration of a person, directing by order, that the person not give

or perform specified optometrical services where the Board is satisfied that the person remains fit to give or perform some services.

New subsection 24(3) enables the Board, where it is requested to do so, to review the order and, where it is satisfied that the mental or physical condition of the person in respect of whom the order was made has changed, the Board may amend or revoke the order.

New subsection 24(4) deems a person upon whom the Board has served an order suspending or restricting practising rights and who provides an optometrical service in contravention of such an order to be other than a registered optometrist.

Practising when registration suspended

New subsection 25 gives the Board a discretion to cancel or order the further suspension of a person whose registration has been suspended and who is convicted of an offence of practising optometry or holding himself or herself out as an optometrist whilst the person is deemed to be other than a registered optometrist.

Power of Board to caution, reprimand, etc.

New section 26 provides the Board with a range of disciplinary or counselling options in addition to cancellation or suspension of registration or restriction of practising rights.

It permits the Board to do one or more of the following in relation to the conduct of a registered optometrist -

- . caution or reprimand the optometrist;
- . order the optometrist to seek and undergo medical or psychiatric treatment or counselling; and
- . impose appropriate conditions on the optometrist's registration.

Power of Board to impose fines

New section 27 provides the Board with a power to impose a fine upon a registered optometrist.

New subsection 27(1) enables the Board to impose a fine where the Board finds that an optometrist has failed to comply with an order of the Board under **new section 26**.

New subsection 27(2) requires that a fine be paid to the Territory within the time specified in the order imposing the fine and **new subsection 27(3)** empowers the Board to cancel or order the suspension of the registration of an optometrist where the registered optometrist fails to comply with the order imposing the fine.

Application for re-registration

New section 28 enables a person whose registration has been cancelled other than because of his or her de-registration in another jurisdiction or for non-payment of an annual fee or suspended otherwise than pending an inquiry by the Board, to 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 the person should be re-registered or his or her suspension should be terminated.

New subsection 28(2) gives the Board a discretion to order the re-registration of such a person or the termination of the suspension of registration of such a person where the Board is satisfied that by reason of the change of circumstances the person should be re-registered or his or her suspension be terminated, as the case may be.

Inquiry by Board

New section 28A requires that the Board conduct an inquiry before cancelling or suspending the registration of a person or taking certain other types of disciplinary action in relation to a registered optometrist and requires that an order for the suspension of a person's registration, pending the holding of an inquiry, be served on the person to whom the inquiry relates.

Clause 15 - Sale of spectacles

Clause 15 amends section 33A of the Act which prohibits the sale of spectacles by a person other than a registered optometrist, except where such spectacles are dispensed in accordance with an appropriate prescription. **Clause 15** expands the application of this provision to contact lenses, thus prohibiting the sale of contact

lenses by a person other than a registered optometrist, except where such contact lenses are dispensed in accordance with an appropriate prescription.

Clause 16 - Insertion of new appeal and notification provisions

Clause 16 inserts a new part into the Act - **PART IVA - APPEALS** - comprising new sections 34 and 35.

Review of decisions

New section 34 enables a person to apply to the ACT Administrative Appeals Tribunal in respect of a decision of the Board to -

- . impose conditions upon registration;
- . cancel interim registration;
- . refuse to review conditions imposed on the registration of a person;
- . refuse to alter or remove conditions imposed on the registration of a person;
- . impose new conditions on the registration of a person;
- . refuse to register a person;
- . cancel the registration of a person;
- . refuse to re-register a person;
- . suspend the registration of a person;
- . direct a person not to give or perform a specified optometrical service;
- . refuse to review amend or revoke an order, directing a person not to give or perform a specified optometrical service;
- . amend an order directing a person not to give or provide a specified optometrical service;
- . take one of the forms of disciplinary or counselling action under **new section 26** in relation to a registered optometrist;
- . impose a fine on a person;
- . refuse to terminate the suspension of registration of a person; or
- . refuse to extend beyond 2 months the period during which the executor or executrix of a deceased registered optometrist's estate or the administrator or administratrix or trustee of such an estate may continue the business of the deceased;
- . fix a period longer than 2 months during which the executor or executrix of a deceased registered optometrist's estate or the administrator or administratrix or trustee of such an estate may continue the business of the deceased;

certify the amount of fees or remuneration which, in the opinion of the Board, is reasonable for an optometry service.

Notification of decisions

New section 35 deals with the notification of persons affected by decisions of the Board.

New subsection 35(1) requires the Board to give written notice of particular decisions of the Board, in respect of which an appeal may be made to the ACT Administrative Appeals Tribunal, to the person affected by the relevant decision.

New subsection 35(2) requires that a notice to a person of a decision referred to in **new subsection 35(1)** or under **new subsection 10(4)**, advising of the cancellation of interim registration, or a notice under section 31 of the *Health Professions Boards (Procedures) Act 1981* include a statement advising the person of his or her right to appeal to the Administrative Appeals Tribunal and of his or her rights in respect of the provision of a statement of reasons for the decision.

New subsection 35(3) imposes a similar requirement in respect of a notice to a person in relation to an order suspending the person's registration, restricting the person's right to practise optometry or fining the person.

New subsection 35(4) prevents the validity of a decision of the Board dealt with in **new subsections 35(2) and (3)** from being affected by a failure to comply with the notification requirements of **new section 35**.

Clause 17 - Publication of notice of decision

Clause 17 amends section 47AA of the Act which enables the publication in the *Gazette* of a notice in respect of decisions of the Board or of the Administrative Appeals Tribunal, where the Tribunal reviews a decision of the Board.

The amendment extends the application of the provision to decisions -

- imposing a condition on the registration of a person;
- to direct a person to refrain from giving or performing a specified optometrical service;
- ordering disciplinary or counselling action pursuant to **new section 26**; and

- imposing a fine under **new section 27**.

TRANSITIONAL PROVISIONS

Clause 19 - Continuation of registration

Clause 19 preserves the registration of persons who were registered, immediately before the commencement of the provisions of the Bill, under those provisions of the Act which are repealed by the Bill and replaced with new registration provisions.

Clause 20 - Provisional registration

Clause 20 has the effect of converting the provisional registration held by a person immediately prior to the repeal of section 20 and the commencement of **new section 10** to interim registration under **new section 10**.

Clause 21 - Temporary registration

Clause 21 has the effect of converting the temporary registration held by a person immediately prior to the repeal of section 21 and the commencement of **new subsection 9(3)** to temporary registration under **new subsection 9(3)**.

Clause 22 - Failure to pay annual fee under repealed provisions

Clause 22 has the effect of converting a failure to pay an annual fee under provisions which are repealed by the Bill to a failure to pay under the equivalent new provisions inserted in the Act.

Subclause 22(1) treats a failure to pay the annual fee under section 18, which is repealed by the Bill, as a failure to pay the annual fee under **new section 18B**.

Subclause 22(2) treats the cancellation of an optometrist's registration for a failure to pay an annual fee under section 18, which is repealed by the Bill, as a cancellation of registration for failure to pay an annual fee under the provisions of **new section 18C** thus entitling the person to apply for re-registration under the provisions of **new section 18D**.

Clause 23 - Applications for registration

Clause 23 treats an application for registration, under the provisions of the Act repealed by the Bill, which application had not been determined prior to the commencement of the new registration provisions, as an application for registration under the new provisions and authorises any inquiry or investigation for the purposes of the application to be continued or completed.

Clause 24 - Continuation of inquiries and reviews

Subclause 24(1) preserves the application of the provisions of the Act in force immediately prior to the commencement of the amendments effected by the Bill in relation to any inquiry or review commenced under the Act and pending immediately before the commencement of the amendments.

Subclause 24(2) treats an order, decision or determination resulting from an inquiry or review under the Act immediately prior to its amendment by the Bill as an order, decision or determination made under the Act as amended by the Bill and as having effect accordingly.

Clause 25 - Complaints relating to previous conduct

Subclause 25(1) enables the holding of an inquiry under the Act, as amended by the Bill, with respect to conduct or any other matter or thing that occurred before, or partly before or partly after, the commencement of the amendments.

However **subclause 25(2)** qualifies this provision to the effect that such an inquiry may only be held if it is an inquiry which could have been held under the Act prior to the commencement of the amendments.

Clause 26 - Existing orders

Clause 26 converts an order which has effect under a provision of the Act repealed by the Bill to an equivalent order under the Act as amended.

FORMAL, TECHNICAL AND CONSEQUENTIAL PROVISIONS

Clauses 1 and 2 - Short title and commencement

Clauses 1 and 2 are formal provisions dealing with the short title and commencement of the Bill, respectively.

Clause 3 - Principal Act

Clause 3 is an interpretation provision which defines the term "Principal Act" to mean the *Optometrists Act 1956*.

Clause 4 - Interpretation

Clause 4 effects consequential and technical amendments to section 4, an interpretation provision of the Act.

Paragraph 4(a) amends definitions in section 4 for a number of terms, consequentially upon the insertion of new provisions in the Act.

The effect of *paragraph 4(b)* is that the term "drug" now takes its ordinary English meaning. This is consistent with the way in which this term is treated in other ACT legislation dealing with the registration of health professionals.

Paragraph 4(c) inserts definitions for a number of terms used in new provisions in the Act.

Paragraph 4(d) omits subsection 4(3).

Subsection 4(3) is omitted as references to a "prescribed fee" have been removed from the Act and replaced by references to a "determined fee" which term is defined in subsection 4(1)

Clause 5 - Insertion

Clause 5 is an interpretation provision which inserts **new sections 4A and 4B** in the Act which establish what is meant by the expressions "competence to practise" and "to suffer from an impairment", respectively.

Clause 6 - Heading to Part III

Clause 6 effects a formal amendment to the heading to Part III of the Act to better reflect the ambit of that Part.

Clause 10 - Change of address to be notified

Clause 10 is, substantially, a consequential amendment to section 19 of the Act which -

- . omits redundant references to sections 15 and 18 which are repealed by the Bill; and
- . increases the maximum penalty for failure to comply with section 19 from \$100 to \$500.

Clause 12 - Alteration of the Register

Clause 12 effects a consequential amendment to section 22B of the Act, providing for the amendment of the Register, requiring that the name of a registered optometrist must be removed from the Register where the optometrist's registration has been cancelled.

Clause 18 - Further amendments

Clause 18 is a technical provision which amends the Act in accordance with the Schedule. The Schedule amends various provisions of the Act -

- . to remove sexist language;
- . otherwise amend the language used in the Act to reflect modern drafting practice; and
- . to substitute references to "determined fees" for references to "prescribed fees".

Clause 27 - Renumbering of provisions

Clause 27 is a technical provision which effects the renumbering of the Act as amended by the Bill. As a consequence of previous amendments made to the Act and the considerable number of amendments effected by the Bill the numbering of the provisions of the Act has become significantly disrupted. *Clause 27* renumbers

the sections of the Act in a single series so that they bear consecutive numbers making the legislation more understandable.