Legislative Council—No 99
As received from the House of Assembly and read a first time, 13 March 2007

South Australia

Optometry Practice Bill 2006

A BILL FOR

An Act to protect the health and safety of the public by providing for the registration of optometrists and optometry students; to regulate the provision of optometry treatment for the purpose of maintaining high standards of competence and conduct by those who provide it; to repeal the *Optometrists Act 1920*; and for other purposes.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Optometry Practice Act 2006*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Interpretation

(1) In this Act, unless the contrary intention appears—

appropriate register means—

(a) the register of optometrists; or

(b) the optometry student register,

as the case may require;

beneficiary includes an object of a discretionary trust;

Board means the Optometry Board of South Australia;

corporate or trustee optometry services provider—see subsection (5);

cosmetic contact lenses means contact lenses that are not designed to correct, remedy or relieve a defect of vision of the wearer;

director of a body corporate means a member of the board or committee of management of the body corporate, whether validly appointed or not;

District Court means the Administrative and Disciplinary Division of the District Court;

drug means a poison within the meaning of the *Controlled Substances Act 1984*;

equipment includes appliances, instruments, dressings or substances used for the purposes of optometry;

exempt provider means—

(a) a recognised hospital, incorporated health centre or private hospital within the meaning of the *South Australian Health Commission Act 1976*; or

(b) any other person declared by the regulations to be an exempt provider for the purposes of this Act;

inspector means a person authorised by the Board to exercise the powers of an inspector under this Act;

legal practitioner means a person admitted and enrolled as a practitioner of the Supreme Court of South Australia;

medical practitioner means a person who is registered as a medical practitioner under the law of this State;

nominated contact address of a registered person means an address nominated by the person for the purpose of service of notices and documents under this Act;

ophthalmologist means a person who is registered on the specialist register under the *Medical Practice Act 2004* as a specialist in ophthalmology;

optical appliance means—

(a) an appliance that is designed to correct, remedy or relieve a defect of vision; or

(b) cosmetic contact lenses;

optometrist means a person who is registered on the register of optometrists under this Act;

optometry services provider means a person (not being an optometrist) who provides optometry treatment through the instrumentality of an optometrist but does not include an exempt provider;

optometry student means a person who is registered on the optometry student register;

optometry student register—see Part 3 Division 1;

optometry treatment or ***optometry*** means—

(a) the prescription of optical appliances; and

(b) the prescription, supply or administration of drugs—

(i) for the purpose of diagnosing or treating abnormalities or disorders of the eye; or

(ii) in connection with the prescription of optical appliances; and

(c) all diagnostic, therapeutic, health or other services or advice not referred to in a preceding paragraph provided in the course of practice by an optometrist or a person who holds himself or herself out, or is held out by another, as an optometrist;

provide, in relation to optometry treatment, means provide treatment personally or through the instrumentality of another, and includes offer to provide;

psychologist means a person who is registered as a psychologist under the law of this State;

record means—

(a) a documentary record; or

(b) a record made by an electronic, electromagnetic, photographic or optical process; or

(c) any other kind of record;

register means a register kept under this Act;

register of optometrists—see Part 3 Division 1;

registered person means a person who is registered on a register kept under this Act;

Registrar means the person holding or acting in the office of Registrar of the Board;

repealed Act means the *Optometrists Act 1920*;

representative body means a body that is declared by the regulations to be a representative body for the purposes of this Act;

therapeutic drugs authorisation means an authorisation under section 33;

unprofessional conduct includes—

(a) improper or unethical conduct in relation to professional practice; and

(b) incompetence or negligence in relation to the provision of optometry treatment; and

(c) a contravention of or failure to comply with—

(i) a provision of this Act; or

(ii) a code of conduct or professional standard prepared or endorsed by the Board under this Act; and

(d) conduct that constitutes an offence punishable by imprisonment for 1 year or more under some other Act or law.

(2) A reference in this Act to ***unprofessional conduct*** extends to—

(a) unprofessional conduct committed before the commencement of this Act; and

(b) unprofessional conduct committed within or outside South Australia or the Commonwealth.

(3) A reference in this Act to ***engaging in conduct*** includes a reference to failing or refusing to engage in conduct.

(4) Without limiting the generality of the expression, a person who is not an optometrist will be taken to ***provide optometry treatment through the instrumentality of an optometrist*** if that person, in the course of carrying on a business, provides services to the optometrist for which the person is entitled to receive a share in the profits or income of the optometrist's practice of optometry.

(5) For the purposes of this Act—

(a) a ***corporate optometry services provider*** is an optometry services provider that is a body corporate and a person occupies a ***position of authority*** in such a provider if the person—

(i) is a director of the body corporate; or

(ii) exercises, or is in a position to exercise, control or substantial influence over the body corporate in the conduct of its affairs; or

(iii) manages, or is to manage, the business of the body corporate that consists of the provision of optometry treatment; or

(iv) where the body corporate is a proprietary company—is a shareholder in the body corporate; and

(b) a ***trustee optometry services provider*** is a person acting as an optometry services provider in the capacity of trustee of a trust and a person occupies a ***position of authority*** in such a provider if the person is a trustee or beneficiary of the trust.

(6) For the purposes of this Act, a person occupies a ***position of authority*** in a body corporate other than a corporate optometry services provider if the person—

(a) is a director of the body corporate; or

(b) exercises, or is in a position to exercise, control or substantial influence over the body corporate in the conduct of its affairs; or

(c) where the body corporate is a proprietary company—is a shareholder in the body corporate.

(7) However—

(a) a minor who is a shareholder in a proprietary company, or a beneficiary under a trust, is not, for that reason, to be regarded as a person occupying a ***position of authority***; and

(b) a charitable organisation that is a beneficiary of a trust is not, for that reason, to be regarded as occupying a ***position of authority***.

(8) For the purposes of this Act, a person who holds more than 10 per cent of the issued share capital of a public company will be regarded as a person occupying a ***position of authority*** in that company.

4—Medical fitness to provide optometry treatment

A person or body must, in making a determination under this Act as to a person's medical fitness to provide optometry treatment, have regard to the question of whether the person is able to provide optometry treatment personally to a patient without endangering the patient's health or safety.

Part 2—Optometry Board of South Australia

Division 1—Establishment of Board

5—Establishment of Board

(1) The Optometry Board of South Australia is established.

(2) The Board—

(a) is a body corporate; and

(b) has perpetual succession and a common seal; and

(c) is capable of suing and being sued in its corporate name; and

(d) has all the powers of a natural person that are capable of being exercised by a body corporate; and

(e) has the functions and powers assigned or conferred by or under this Act.

(3) If a document appears to bear the common seal of the Board, it will be presumed, in the absence of proof to the contrary, that the common seal of the Board was duly affixed to the document.

Division 2—Board's membership

6—Composition of Board

(1) The Board consists of 8 members appointed by the Governor of whom—

(a) 4 must be optometrists chosen at an election (see section 7); and

(b) 4 must be persons nominated by the Minister and of these—

(i) 1 must be an ophthalmologist; and

(ii) 1 must be a legal practitioner; and

(iii) 2 must be persons who are not eligible for appointment under a preceding provision of this subsection.

(2) At least 1 of the members of the Board must be a woman and 1 must be a man.

(3) The Governor may appoint a person to be a deputy of a member and a person so appointed may act as a member of the Board in the absence of the member.

(4) The requirements of qualification and nomination made by this section in relation to the appointment of a member extend to the appointment of a deputy of that member.

7—Elections and casual vacancies

(1) An election conducted to choose optometrists for appointment to the Board must be conducted under the regulations in accordance with principles of proportional representation.

(2) A person who is an optometrist at the time the voter's roll is prepared for an election in accordance with the regulations is entitled to vote at the election.

(3) If an election of a member fails for any reason, the Governor may appoint an optometrist and the person so appointed will be taken to have been appointed after due election under this section.

(4) If a casual vacancy occurs in the office of a member chosen at an election, the following rules govern the appointment of a person to fill the vacancy:

(a) if the vacancy occurs within 12 months after the member's election and at that election a candidate or candidates were excluded, the Governor must appoint the person who was the last excluded candidate at that election;

(b) if that person is no longer qualified for appointment or is unavailable or unwilling to be appointed or if the vacancy occurs later than 12 months after the member's election, the Governor may appoint an optometrist nominated by the Minister;

(c) before nominating an optometrist for appointment the Minister must consult associations that, in the opinion of the Minister, represent the interests of optometrists;

(d) the person appointed holds office for the balance of the term of that person's predecessor.

8—Terms and conditions of membership

(1) A member of the Board will be appointed on conditions determined by the Governor and for a term, not exceeding 3 years, specified in the instrument of appointment and, at the expiration of a term of appointment, is eligible for reappointment.

(2) However, a member of the Board may not hold office for consecutive terms that exceed 9 years in total.

(3) The Governor may remove a member of the Board from office—

(a) for breach of, or non-compliance with, a condition of appointment; or

(b) for misconduct; or

(c) for failure or incapacity to carry out official duties satisfactorily.

(4) The office of a member of the Board becomes vacant if the member—

(a) dies; or

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

(c) resigns by written notice to the Minister; or

(d) ceases to satisfy the qualification by virtue of which the member was eligible for appointment to the Board; or

(e) is disqualified from managing corporations under Chapter 2D Part 2D.6 of the *Corporations Act 2001* of the Commonwealth; or

(f) is removed from office under subsection (3).

(5) If a member of the Board is a member constituting the Board for the purposes of any proceedings under Part 4 and the member's term of office expires, or the member resigns, before those proceedings are completed, the member may, for the purpose of continuing and completing those proceedings, continue to act as a member of the Board.

9—Presiding member and deputy

The Minister must, after consultation with the Board, appoint a member who is an optometrist (the ***presiding member***) to preside at meetings of the Board and another member who is an optometrist (the ***deputy presiding member***) to preside at meetings of the Board in the absence of the presiding member.

10—Vacancies or defects in appointment of members

An act or proceeding of the Board is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

11—Remuneration

A member of the Board is entitled to remuneration, allowances and expenses determined by the Governor.

Division 3—Registrar and staff of Board

12—Registrar of Board

(1) There will be a Registrar of the Board.

(2) The Registrar will be appointed by the Board on terms and conditions determined by the Board.

13—Other staff of Board

(1) There will be such other staff of the Board as the Board thinks necessary for the proper performance of its functions.

(2) A member of the staff of the Board is not, as such, a member of the Public Service, but the Board may employ a person who is on leave from employment in the Public Service or with an instrumentality or agency of the Crown.

(3) The Board may, with the approval of the Minister administering an administrative unit of the Public Service, make use of the services, facilities or officers of that unit.

Division 4—General functions and powers

14—Functions of Board

(1) The functions of the Board are as follows:

(a) to oversee the practice of optometry in the public interest;

(b) to approve, after consultation with authorities considered appropriate by the Board, courses of education or training that provide qualifications for registration under this Act;

(c) to determine, after consultation with authorities considered appropriate by the Board, the requirements necessary for registration under this Act;

(d) to establish and maintain the registers contemplated by this Act;

(e) to prepare or endorse, subject to the approval of the Minister, codes of conduct or professional standards for registered persons or codes of conduct for optometry services providers;

(f) to prepare or endorse guidelines on continuing optometry education for optometrists;

(g) to establish administrative processes for handling complaints received against registered persons, optometry services providers or persons who occupy positions of authority in corporate or trustee optometry services providers (which may include processes under which the registered person, provider or person who occupies the position voluntarily enters into an undertaking);

(h) to provide advice to the Minister as may be appropriate;

(i) to carry out other functions assigned to the Board by or under this Act, or by the Minister.

(2) The Board must perform its functions under this Act with the object of protecting the health and safety of the public by achieving and maintaining high professional standards both of competence and conduct in the provision of optometry treatment in this State.

(3) If—

(a) a code of conduct or professional standard prepared or endorsed by the Board is approved by the Minister; or

(b) guidelines are prepared or endorsed by the Board,

the Board must—

(c) cause a copy of the code, standard or guidelines to be published in the Gazette; and

(d) take reasonable steps to send a copy of the code, standard or guidelines to each registered person or optometry services provider to whom it applies; and

(e) ensure that a copy of the code, standard or guidelines is published on the internet and kept available for public inspection without charge during normal office hours at the principal office of the Board,

(although proof of compliance with paragraphs (c), (d) and (e) is not necessary for the purposes of any proceedings that involve an alleged contravention of or failure to comply with a code of conduct or professional standard).

(4) The administrative processes established by the Board for handling complaints received against registered persons, optometry services providers or persons who occupy positions of authority in corporate or trustee optometry services providers must be designed—

(a) to be fair to both the aggrieved person and the respondent; and

(b) to keep both the aggrieved person and the respondent properly informed about the steps taken by the Board in response to the complaint; and

(c) to provide, where appropriate, opportunities for the clarification of any misapprehension or misunderstanding between the aggrieved person and the respondent; and

(d) to keep both the aggrieved person and the respondent properly informed about the outcome of the processes; and

(e) to take into account the needs of particular classes of persons who may otherwise suffer disadvantage in the conduct of those processes.

15—Committees

(1) The Board may establish committees—

(a) to advise the Board or the Registrar on any matter; or

(b) to carry out functions on behalf of the Board.

(2) The membership of a committee will be determined by the Board and may, but need not, consist of, or include, members of the Board.

(3) The Board will determine who will be the presiding member of a committee.

(4) The procedures to be observed in relation to the conduct of the business of a committee will be—

(a) as determined by the Board; and

(b) insofar as a procedure is not determined under paragraph (a)—as determined by the committee.

16—Delegations

(1) The Board may delegate any of its functions or powers under this Act other than—

(a) this power of delegation; and

(b) the power to hear and determine proceedings under Part 4.

(2) A delegation—

(a) may be made—

(i) to a member of the Board, the Registrar or an employee of the Board; or

(ii) to a committee established by the Board; and

(b) may be made subject to conditions and limitations specified in the instrument of delegation; and

(c) is revocable at will and does not derogate from the power of the Board to act in a matter.

Division 5—Board's procedures

17—Board's procedures

(1) Subject to this Act, 5 members constitute a quorum of the Board.

(2) A meeting of the Board (other than for the purposes of hearing and determining proceedings under Part 4) will be chaired by the presiding member or, in his or her absence, by the deputy presiding member and, in the absence of both the presiding member and the deputy presiding member, the members present at a meeting of the Board must choose 1 of their number to preside at the meeting.

(3) A decision carried by a majority of the votes cast by members of the Board at a meeting is a decision of the Board.

(4) Each member present at a meeting of the Board has 1 vote on any question arising for decision and, except in hearing and determining proceedings under Part 4, the member presiding at the meeting may exercise a casting vote if the votes are equal.

(5) A conference by telephone or other electronic means between the members of the Board will, for the purposes of this section, be taken to be a meeting of the Board at which the participating members are present if—

(a) notice of the conference is given to all members in the manner determined by the Board for the purpose; and

(b) each participating member is capable of communicating with every other participating member during the conference.

(6) A proposed resolution of the Board becomes a valid decision of the Board despite the fact that it is not voted on at a meeting of the Board if—

(a) notice of the proposed resolution is given to all members of the Board in accordance with procedures determined by the Board; and

(b) a majority of the members express concurrence in the proposed resolution by letter, telegram, telex, facsimile transmission, electronic mail or other written communication setting out the terms of the resolution.

(7) However, subsections (5) and (6) do not apply in relation to the hearing and determination of proceedings under Part 4 by the Board as constituted for the purposes of proceedings under that Part.

(8) The Board must have accurate minutes kept of its meetings.

(9) Subject to this Act, the Board may determine its own procedures.

18—Conflict of interest etc under Public Sector Management Act

A member of the Board will not be taken to have a direct or indirect interest in a matter for the purposes of the *Public Sector Management Act 1995* by reason only of the fact that the member has an interest in the matter that is shared in common with optometrists generally or a substantial section of optometrists in this State.

19—Powers of Board in relation to witnesses etc

(1) For the purposes of proceedings before the Board (including an application for registration or reinstatement of registration), the Board may—

(a) by summons signed on behalf of the Board by a member of the Board or the Registrar, require the attendance before the Board of a person whom the Board thinks fit to call before it; or

(b) by summons signed on behalf of the Board by a member of the Board or the Registrar, require the production of relevant documents, records or equipment and, in the case of a document or record that is not in the English language, require the production of—

(i) a written translation of the document or record into English; and

(ii) a certificate signed by a translator approved by the Board certifying that the translation accurately reproduces in English the contents of the document or record; or

(c) inspect documents, records or equipment produced before it, and retain them for such reasonable period as it thinks fit, and make copies of the documents or records or their contents; or

(d) require a person to make an oath or affirmation (which may be administered by a member of the Board) to answer truthfully questions put by a member of the Board or a person appearing before the Board; or

(e) require a person appearing before the Board (whether summoned to appear or not) to answer questions put by a member of the Board or by a person appearing before the Board.

(2) On the receipt of an application for the issue of a summons under this section, a member or the Registrar may, without referring the matter to the Board, issue a summons on behalf of the Board.

(3) A person who—

(a) fails without reasonable excuse to comply with a summons issued to attend, or to produce documents, records or equipment, before the Board; or

(b) having been served with a summons to produce—

(i) a written translation of the document or record into English; and

(ii) a certificate signed by a translator approved by the Board certifying that the translation accurately reproduces in English the contents of the document or record,

fails, without reasonable excuse, to comply with the summons; or

(c) misbehaves before the Board, wilfully insults the Board or 1 or more of the members in the exercise of the member's official duties, or wilfully interrupts the proceedings of the Board; or

(d) refuses to be sworn or to affirm, or refuses or fails to answer truthfully a relevant question when required to do so by the Board,

is guilty of an offence.

Maximum penalty: $10 000 or imprisonment for 6 months.

(4) A person who appears as a witness before the Board has the same protection as a witness in proceedings before the Supreme Court.

20—Principles governing proceedings

(1) In proceedings before the Board under this Act, the Board—

(a) is not bound by the rules of evidence and may inform itself on any matter as it thinks fit; and

(b) must act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms.

(2) In proceedings before the Board under this Act, the Board must keep the parties to the proceedings properly informed as to the progress and outcome of the proceedings.

21—Representation at proceedings before Board

A party to proceedings before the Board (including an applicant for registration or reinstatement of registration) is entitled to be represented at the hearing of those proceedings.

22—Costs

(1) The Board may award such costs against a party to proceedings before it as the Board considers just and reasonable.

(2) A party who is dissatisfied with the amount of the costs awarded by the Board may request a Master of the District Court to tax the costs and, after taxing the costs, the Master may confirm or vary the amount of the costs awarded by the Board.

(3) Costs awarded by the Board under this section may be recovered as a debt.

Division 6—Accounts, audit and annual report

23—Accounts and audit

(1) The Board must keep proper accounting records in relation to its financial affairs, and must have annual statements of account prepared in respect of each financial year.

(2) The accounts must be audited at least once in every year by an auditor approved by the Auditor-General and appointed by the Board.

(3) The Auditor-General may at any time audit the accounts of the Board.

24—Annual report

(1) The Board must, on or before 30 September in each year, deliver to the Minister a report on the administration of this Act and the work of the Board during the financial year ending on the preceding 30 June.

(2) The report must—

(a) include the following information in relation to the relevant financial year:

(i) the number and nature of complaints received by the Board against registered persons, optometry services providers and persons who occupy positions of authority in corporate or trustee optometry services providers;

(ii) the number and nature of voluntary undertakings given to the Board by registered persons, optometry services providers and persons who occupy positions of authority in corporate or trustee optometry services providers;

(iii) the outcomes of proceedings before the Board under Part 4;

(iv) information prescribed by the regulations; and

(b) incorporate the audited accounts of the Board for the relevant financial year.

(3) The Minister must, within 12 sitting days after receiving a report under this section, have copies of the report laid before both Houses of Parliament.

Part 3—Registration and practice

Division 1—Registers

25—Registers

(1) The Registrar must keep the following registers:

(a) an optometry student register;

(b) a register of optometrists;

(c) a register of persons who have been removed from the register of optometrists under this Act or any other Act or law or former Act or law and who have not been reinstated to that register.

(2) The optometry student register or the register of optometrists must include, in relation to each person on the register—

(a) the person's full name and nominated contact address; and

(b) the qualifications for registration held by the person; and

(c) a record of any therapeutic drugs authorisation held by the person; and

(d) particulars of any condition of registration or limitation that affects or restricts the person's right to provide optometry treatment; and

(e) information prescribed by the regulations,

and may include other information as the Board thinks fit.

(3) A registered person must, within 1 month after changing his or her name or nominated contact address, inform the Registrar in writing of the change.

Maximum penalty: $250.

(4) The register referred to in subsection (1)(c)—

(a) must not include any person who is dead; and

(b) must include, in relation to each person on the register, a statement of—

(i) the register from which the person was removed; and

(ii) the reason for removal of the person; and

(iii) the date of removal; and

(iv) if the removal was consequent on suspension—the duration of the suspension; and

(v) if the person has been disqualified from being registered on a register—the duration of the disqualification; and

(c) must have deleted from it all information relating to any person who has been reinstated on the register from which the person was removed.

(5) The Registrar is responsible to the Board for the form and maintenance of the registers.

(6) The Registrar must correct an entry in a register that is not, or has ceased to be, correct.

(7) The registers must be kept available for inspection by any person during ordinary office hours at the office of the Registrar and the registers or extracts of the registers may be made available to the public by electronic means.

(8) A person may, on payment of the prescribed fee, obtain a copy of any part of a register kept under this Act.

(9) A certificate stating that a person was, or was not, registered on a particular register under this Act at a particular date or during a particular period and purporting to be signed by the Registrar will, in the absence of proof to the contrary, be accepted in legal proceedings as proof of the registration, or of the fact that the person was not so registered, on the date or during the period stated in the certificate.

26—Authority conferred by registration

(1) Subject to any restrictions, limitations or conditions imposed under this Act—

(a) registration on the optometry student register authorises the person to provide optometry treatment in prescribed circumstances;

(b) registration on the register of optometrists authorises the person to provide optometry treatment.

(2) Registration on the register of optometrists does not authorise the person to prescribe, supply or administer drugs for the purpose of treating abnormalities or disorders of the eye unless the registration is endorsed with a therapeutic drugs authorisation.

Division 2—Registration

27—Registration of natural persons as optometrists

(1) Subject to this Act, a natural person is eligible for registration on the register of optometrists if the person, on application to the Board, satisfies the Board that he or she—

(a) has qualifications approved or recognised by the Board for the purposes of registration on that register; and

(b) has met the requirements determined by the Board to be necessary for the purposes of registration on that register; and

(c) is medically fit to provide optometry treatment of the kind authorised by registration on that register; and

(d) is, unless exempted by the Board, insured or indemnified in a manner and to an extent approved by the Board against civil liabilities that might be incurred by the person in connection with the provision of optometry treatment as an optometrist; and

(e) is a fit and proper person to be registered on that register.

(2) If a person who applies for registration, or reinstatement of registration, on the register of optometrists—

(a) does not, in the opinion of the Board, have the necessary qualifications or experience required for registration on that register; or

(b) is not, in the opinion of the Board, medically fit to provide optometry treatment of the kind authorised by registration on that register; or

(c) is not, in the opinion of the Board, a fit and proper person to be registered on that register,

the Board may register the person on that register in pursuance of this subsection (***limited registration***)—

(d) in order to enable the person—

(i) to do whatever is necessary to become eligible for full registration under this Act; or

(ii) to teach or to undertake research or study in this State; or

(iii) in the case of an applicant who has obtained qualifications for the practice of optometry under the law of a place outside of Australia—to practise in a part of the State or at a place that the Minister and the Board consider is in urgent need of the services of an optometrist; or

(e) if, in its opinion, it would otherwise be in the public interest to do so.

(3) In registering a person under subsection (2) the Board may impose 1 or more of the following conditions on the registration:

(a) a condition restricting the places or times at which the person may provide optometry treatment;

(b) a condition limiting the kind of optometry treatment that the person may provide;

(c) a condition limiting the period during which the registration will have effect;

(d) a condition requiring that the person be supervised in the provision of optometry treatment by a particular person or by a person of a particular class;

(e) such other conditions as the Board thinks fit.

28—Registration of optometry students

(1) A person is not entitled to—

(a) undertake a course of study that provides qualifications for registration on the register of optometrists; or

(b) provide optometry treatment as part of a course of study related to optometry being undertaken by the person in a place outside the State,

unless the person is registered under this section as an optometry student.

(2) A person is eligible for registration as an optometry student on the optometry student register if the person, on application to the Board, satisfies the Board that he or she—

(a) genuinely requires registration on that register—

(i) to enable the person to undertake a course of study that provides qualifications for registration on the register of optometrists; or

(ii) to enable the person to provide optometry treatment as part of a course of study related to optometry being undertaken by the person in a place outside the State; and

(b) is medically fit to provide optometry treatment of the kind authorised by registration on the optometry student register; and

(c) is a fit and proper person to be registered on the optometry student register.

(3) If a person who applies for registration, or reinstatement of registration, on the optometry student register is not, in the opinion of the Board, medically fit to provide optometry treatment of the kind authorised by registration on that register, the Board may register the person on that register in pursuance of this subsection (***limited student registration***) and impose 1 or more of the following conditions on the registration:

(a) a condition limiting the kind of optometry treatment that the person may provide;

(b) a condition limiting the period during which the registration will have effect;

(c) a condition requiring that the person be supervised in the provision of optometry treatment by a particular person or by a person of a particular class;

(d) such other conditions as the Board thinks fit.

29—Application for registration and provisional registration

(1) An application for registration must—

(a) be made to the Board in the manner and form approved by the Board; and

(b) be accompanied by the registration fee fixed under this Act.

(2) An applicant for registration must, if the Board so requires, provide the Board with specified information to enable the Board to determine the application.

(3) The Board may require an applicant for registration—

(a) to submit a medical report or other evidence acceptable to the Board as to the applicant's medical fitness to provide optometry treatment of the kind authorised by registration on the register to which the application relates; or

(b) to obtain additional qualifications or experience specified by the Board before the Board determines the application.

(4) If it appears likely to the Registrar that the Board will grant an application for registration, the Registrar may provisionally register the applicant (***provisional registration***).

(5) Provisional registration remains in force until the Board determines the application.

(6) The registration by the Board under this Act of a person who was provisionally registered has effect from the commencement of the provisional registration.

30—Removal from register

(1) The Registrar must, on application by a registered person, remove the person from the register to which the application relates.

(2) The Registrar must remove from the appropriate register a person—

(a) who dies; or

(b) who ceases to hold a qualification required for registration on that register; or

(c) who ceases for any other reason to be entitled to be registered on that register; or

(d) who completes, or ceases to be enrolled in, the course of study that formed the basis for the person's registration on the optometry student register; or

(e) whose registration on that register has been suspended or cancelled under this Act.

(3) The Registrar may act under subsection (2) without giving prior notice to the relevant person.

31—Reinstatement on register

(1) A person whose name has been removed from the register of optometrists—

(a) on his or her application; or

(b) on account of failure to pay the annual practice fee or to furnish the return required under section 32; or

(c) on account of failure to pay a fine imposed on the person by the Board under this Act; or

(d) on account of the person—

(i) ceasing to hold a qualification required for registration on that register or otherwise ceasing to be entitled to be registered on that register; or

(ii) ceasing to be enrolled in the course of study that formed the basis for the person's registration on the optometry student register,

may apply to the Board at any time for reinstatement on that register.

(2) A person whose registration on a register has been suspended may apply to the Board for reinstatement on that register (but not, in the case of an order for suspension for a specified period, until after the expiry of that period).

(3) A person who has been disqualified from being registered on a register under this Act may, subject to the terms of the order for disqualification, apply to the Board for reinstatement on that register.

(4) An application for reinstatement must—

(a) be made to the Board in the manner and form approved by the Board; and

(b) be accompanied by the reinstatement fee fixed under this Act.

(5) An applicant for reinstatement must, if the Board so requires provide the Board with specified information to enable the Board to determine the application.

(6) The Board may require an applicant for reinstatement of registration—

(a) to submit a medical report or other evidence acceptable to the Board as to the applicant's medical fitness to provide optometry treatment of the kind authorised by registration on the register to which the application relates; or

(b) to obtain additional qualifications or experience specified by the Board before the Board determines the application.

(7) Subject to this section, the Board must reinstate on the appropriate register an applicant under this section if satisfied that the applicant is eligible for registration on that register.

(8) The Board may refuse to reinstate the applicant on the appropriate register until all complaints (if any) laid against the applicant under this Act have been finally disposed of.

32—Fees and returns

(1) Subject to this Act, a person will not be registered, nor will a registration be reinstated, until the registration or reinstatement fee, and the annual practice fee, fixed under this Act have been paid.

(2) A registered person must, in each calendar year before the date fixed for that purpose by the Board—

(a) pay to the Board the annual practice fee fixed under this Act; and

(b) furnish the Board with a return, in a form approved by the Board, containing all information specified in the return relating to the provision of optometry treatment, or the undertaking of any course of continuing optometry education, by the person during the preceding year or to any other matter relevant to the person's registration under this Act.

(3) The Board may, without further notice, remove from the appropriate register a person who fails to pay the annual practice fee or furnish the required return by the due date.

33—Authorisation to prescribe, supply and administer therapeutic drugs

(1) The Board may, on application made in a manner and form approved by the Board, authorise an optometrist to prescribe, supply and administer drugs for the purpose of treating abnormalities or disorders of the eye.

(2) An authorisation under subsection (1) will be effected by endorsement of the applicant's registration.

(3) An applicant must, if the Board so requires, provide the Board with specified information to enable the Board to determine the application.

(4) The Board may, before granting an authorisation under subsection (1), require the applicant to obtain qualifications or experience specified by the Board and for that purpose may require the applicant to undertake a specified course of instruction or training.

Division 3—Special provisions relating to optometry services providers

34—Information to be given to Board by optometry services providers

(1) An optometry services provider must—

(a) in the case of a person who was an optometry services provider immediately before the commencement of this section—within 60 days of that commencement; and

(b) in any other case—within 60 days of becoming an optometry services provider,

give written notice to the Board of—

(c) the provider's full name and business or (in the case of a corporation) registered address; and

(d) the address of the premises at which the provider provides optometry treatment; and

(e) the full names and nominated contact addresses of the optometrists through the instrumentality of whom the provider is providing optometry treatment; and

(f) in the case of a corporate or trustee optometry services provider—the full names and addresses of all persons who occupy a position of authority in the provider.

(2) The provider must, within 30 days of any change occurring in the particulars required to be given under subsection (1), inform the Board in writing of the change.

(3) A person who contravenes or fails to comply with this section is guilty of an offence.

Maximum penalty: $10 000.

(4) The Board must keep a record of information provided to the Board under this section available for inspection, on payment of the prescribed fee, by any person during ordinary office hours at the office of the Board and may make the record available to the public by electronic means.

Division 4—Restrictions relating to provision of optometry treatment

35—Illegal holding out as registered person

(1) A person must not hold himself or herself out as a registered optometry student or an optometrist, or permit another person to do so, unless registered on the appropriate register.

Maximum penalty: $50 000 or imprisonment for 6 months.

(2) A person must not hold out another as a registered optometry student or an optometrist unless the other person is registered on the appropriate register.

Maximum penalty: $50 000 or imprisonment for 6 months.

36—Illegal holding out concerning limitations or conditions

(1) A person whose registration is limited or subject to a condition under this Act must not hold himself or herself out as having a registration that is not limited or not subject to a condition or permit another person to do so.

Maximum penalty: $50 000 or imprisonment for 6 months.

(2) A person must not hold out another whose registration is limited or subject to a condition under this Act as having a registration that is not limited or not subject to a condition.

Maximum penalty: $50 000 or imprisonment for 6 months.

37—Use of certain titles or descriptions prohibited

(1) A person who is not registered on the appropriate register must not use a prescribed word, or its derivatives, to describe himself or herself or a service that he or she provides.

Maximum penalty: $50 000.

(2) A person must not, in the course of advertising or promoting a service that he or she provides, use a prescribed word, or its derivatives, to describe a person who is engaged in the provision of the service but is not registered on the appropriate register.

Maximum penalty: $50 000.

(3) In this section—

prescribed word means—

(a) in relation to registration on the optometry student register—registered optometry student; or

(b) in relation to registration on the register of optometrists—

(i) optometrist; or

(ii) optician; or

(c) any other word or expression prescribed by the regulations.

38—Prohibition on provision of optometry treatment by unqualified persons

(1) A person must not provide optometry treatment consisting of the prescription of optical appliances unless—

(a) the person is a qualified person; or

(b) the person provides the treatment through the instrumentality of a qualified person.

Maximum penalty: $50 000 or imprisonment for 6 months.

(2) Subsection (1) does not apply in relation to the prescription of optical appliances (other than contact lenses) by a person registered as an orthoptist with the Australian Orthoptic Board established by Australian Orthoptists Registration Body Pty Ltd if—

(a) the prescription is given at the request of, or on the referral of, an optometrist or ophthalmologist made within 12 months before the prescription; or

(b) the prescription is given in the course of the person's employment as an orthoptist by an ophthalmologist or a recognised hospital, incorporated health centre or private hospital within the meaning of the *South Australian Health Commission Act 1976*.

(3) Subsection (1) does not apply in relation to optometry treatment provided by an unqualified person in prescribed circumstances or pursuant to an exemption under subsection (4).

(4) The Governor may, by proclamation, exempt a person from subsection (1) if of the opinion that good reason exists for doing so in the particular circumstances of the case.

(5) An exemption under subsection (4) may be subject to such conditions as the Governor thinks fit.

(6) A person who contravenes, or fails to comply with, a condition of an exemption under this section is guilty of an offence.

Maximum penalty: $50 000.

(7) The Governor may, by proclamation, vary or revoke a proclamation under this section.

(8) In this section—

qualified person, in relation to optometry treatment of a kind referred to in subsection (1), means a person authorised by or under this Act or any other Act to provide that treatment.

39—Prohibition on optometry treatment with laser or by surgery

An optometrist must not treat any abnormality or disorder of the eye with a laser or by surgery.

Maximum penalty: $20 000.

40—Restriction on sale of optical appliances

(1) Subject to subsection (2), a person must not sell an optical appliance by retail unless the appliance has been prescribed for the purchaser by an optometrist or orthoptist or a medical practitioner.

Maximum penalty: $10 000.

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

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

(b) the glasses comprise 2 lenses of the same power, being a power of +1 dioptre or more but not exceeding +3 dioptres; and

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

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

(3) In this section—

orthoptist means a person registered as an orthoptist with the Australian Orthoptic Board established by Australian Orthoptists Registration Body Pty Ltd.

41—Board's approval required where optometrist has not practised for 5 years

(1) A registered person who has not provided optometry treatment of a kind authorised by his or her registration for a period of 5 years or more must not provide such treatment without first obtaining the approval of the Board.

Maximum penalty: $20 000.

(2) The Board—

(a) may, before granting its approval under subsection (1), require the applicant to obtain qualifications or experience specified by the Board and for that purpose may require the applicant to undertake a specified course of instruction or training in optometry; and

(b) may impose 1 or more of the following conditions on the applicant's registration:

(i) a condition restricting the places and times at which the applicant may provide optometry treatment;

(ii) a condition limiting the kind of optometry treatment that the applicant may provide;

(iii) a condition requiring that the applicant be supervised in the provision of optometry treatment by a particular person or by a person of a particular class;

(iv) such other conditions as the Board thinks fit.

Part 4—Investigations and proceedings

Division 1—Preliminary

42—Interpretation

In this Part—

(a) a reference to ***occupier of a position of authority*** includes a reference to a person who is not but who was, at the relevant time, the occupier of a position of authority;

(b) a reference to ***optometry services provider*** includes a reference to a person who is not but who was, at the relevant time, a optometry services provider;

(c) a reference to ***registered person*** includes a reference to a person who is not but who was, at the relevant time, a registered person under this Act or the repealed Act.

43—Cause for disciplinary action

(1) There is proper cause for disciplinary action against a registered person if—

(a) the person's registration was improperly obtained; or

(b) the person is guilty of unprofessional conduct; or

(c) the person is for any reason no longer a fit and proper person to be registered on the appropriate register.

(2) There is proper cause for disciplinary action against an optometry services provider if—

(a) the provider has contravened or failed to comply with a provision of this Act; or

(b) there has been, in connection with the provision of optometry treatment by the provider, a contravention or failure to comply with a code of conduct under this Act applying to the provider; or

(c) the provider or any person employed or engaged by the provider has, in connection with the provision of optometry treatment by the provider, engaged in conduct that would, if the person were a registered person, constitute unprofessional conduct; or

(d) the provider is for any reason not a fit and proper person to be an optometry services provider; or

(e) in the case of a corporate or trustee optometry services provider, an occupier of a position of authority in the provider—

(i) has contravened or failed to comply with a provision of this Act; or

(ii) has, in connection with the provision of optometry treatment by the provider, engaged in conduct that would, if the person were a registered person, constitute unprofessional conduct; or

(iii) is for any reason not a fit and proper person to occupy a position of authority in a corporate or trustee optometry services provider.

(3) There is proper cause for disciplinary action against the occupier of a position of authority in a corporate or trustee optometry services provider if—

(a) the person has contravened or failed to comply with a provision of this Act; or

(b) the person has, in connection with the provision of optometry treatment by the provider, engaged in conduct that would, if the person were a registered person, constitute unprofessional conduct; or

(c) the person is for any reason not a fit and proper person to occupy a position of authority in a corporate or trustee optometry services provider; or

(d) —

(i) the provider has contravened or failed to comply with a provision of this Act; or

(ii) there has been, in connection with the provision of optometry treatment by the provider, a contravention or failure to comply with a code of conduct under this Act applying to the provider; or

(iii) the provider, or any person employed or engaged by the provider, has, in connection with the provision of optometry treatment by the provider, engaged in conduct that would, if the provider or the person were a registered person, constitute unprofessional conduct,

unless it is proved that the person could not, by the exercise of reasonable care, have prevented the contravention, failure to comply or conduct.

Division 2—Investigations

44—Powers of inspectors

(1) If there are reasonable grounds for suspecting—

(a) that there is proper cause for disciplinary action against a person; or

(b) that an optometrist or optometry student is medically unfit to provide optometry treatment; or

(c) that a person is guilty of an offence against this Act,

an inspector may investigate the matter.

(2) For the purposes of an investigation, an inspector may—

(a) at any reasonable time, enter and inspect premises of a registered person or premises on which the inspector reasonably suspects an offence against this Act has been or is being committed; or

(b) with the authority of a warrant issued by a magistrate or in circumstances in which the inspector reasonably believes that immediate action is required, use reasonable force to break into or open any part of, or anything in or on any premises referred to in paragraph (a); or

(c) while on premises entered under paragraph (a) or (b), seize and retain anything found on the premises that the inspector reasonably believes may afford evidence relevant to the matters under investigation; or

(d) require any person who has possession of documents or records relevant to the matters under investigation to produce those documents or records for inspection, including written records that reproduce in a readily understandable form information kept by computer, microfilm or other process; or

(e) inspect any documents or records produced to the inspector and retain them for such reasonable period as the inspector thinks fit, and make copies of the documents or records; or

(f) require any person who is in a position to provide information relevant to the matters under investigation to answer any question put by the inspector in relation to those matters; or

(g) take photographs, films or video or audio recordings; or

(h) if the inspector reasonably suspects that an offence against this Act has been or is being committed, require the suspected offender to state his or her full name and address.

(3) An inspector must not exercise the power conferred by subsection (2)(a) in relation to residential premises except with the permission of the occupier of the premises or on the authority of a warrant issued by a magistrate.

(4) A magistrate must not issue a warrant under this section unless satisfied, by information given on oath, that the warrant is reasonably required in the circumstances.

(5) The person in charge of premises at the relevant time must give an inspector such assistance and provide such facilities as are necessary to enable the powers conferred by this section to be exercised.

Maximum penalty: $5 000.

45—Offence to hinder etc inspector

A person who—

(a) hinders or obstructs an inspector in the exercise of powers conferred by this Act; or

(b) uses abusive, threatening or insulting language to an inspector; or

(c) refuses or fails to comply with a requirement of an inspector under this Act; or

(d) when required by an inspector to answer a question, refuses or fails to answer the question to the best of the person's knowledge, information and belief; or

(e) falsely represents, by words or conduct, that he or she is an inspector,

is guilty of an offence.

Maximum penalty: $10 000.

Division 3—Proceedings before Board

46—Obligation to report medical unfitness or unprofessional conduct of optometrist or optometry student

(1) If—

(a) a health professional who has treated, or is treating, a patient who is an optometrist or optometry student; or

(b) a person who provides optometry treatment through the instrumentality of an optometrist or optometry student; or

(c) the person in charge of an educational institution at which an optometry student is enrolled in a course of study providing qualifications for registration on the register of optometrists,

is of the opinion that the optometrist or optometry student is or may be medically unfit to provide optometry treatment, the person must submit a written report to the Board setting out his or her reasons for that opinion and any other information required by the regulations.

Maximum penalty: $5 000.

(2) If an optometry services provider or exempt provider is of the opinion that an optometrist or optometry student through whom the provider provides optometry treatment has engaged in unprofessional conduct, the provider must submit a written report to the Board setting out the provider's reasons for that opinion and any other information required by the regulations.

Maximum penalty: $10 000.

(3) The Board must cause a report made under this section to be investigated.

(4) In this section—

health professional means—

(a) a medical practitioner; or

(b) a psychologist; or

(c) any other person who belongs to a profession, or who has an occupation, declared by the Board, by notice in the Gazette, to be a profession or occupation within the ambit of this definition.

47—Medical fitness of optometrist or optometry student

If—

(a) on the application of—

(i) the Registrar; or

(ii) the Minister; or

(iii) a representative body; or

(b) after an investigation under section 46 has been conducted,

the Board is satisfied, after due inquiry, that an optometrist or optometry student is medically unfit to provide optometry treatment and that it is desirable in the public interest that an order be made under this section, the Board may, by order—

(c) suspend the person's registration until further order of the Board or for a specified period determined by the Board; or

(d) impose 1 or both of the following conditions on the person's registration:

(i) a condition restricting the person's right to provide optometry treatment;

(ii) a condition requiring the person to undergo counselling or treatment or to enter into any other undertaking.

48—Inquiries by Board as to matters constituting grounds for disciplinary action

(1) A complaint setting out matters that are alleged to constitute grounds for disciplinary action against a person may be laid before the Board (in a manner and form approved by the Board) by—

(a) the Registrar; or

(b) the Minister; or

(c) a representative body; or

(d) a person who is aggrieved by the conduct of the person or, if the person aggrieved is a child or is suffering from a mental or physical incapacity, by a person acting on his or her behalf.

(2) If a complaint is laid under this section, the Board must inquire into the subject matter of the complaint unless the Board considers that the complaint is frivolous or vexatious.

(3) If a complaint has been laid under this section by or on behalf of an aggrieved person and the Board is satisfied that the complaint arose from a misapprehension on the part of the complainant or from a misunderstanding between the parties, it may, before proceeding further with the hearing of the complaint, require the parties to attend before the Registrar in order to clarify the misapprehension or misunderstanding.

(4) If, after conducting an inquiry under this section, the Board is satisfied on the balance of probabilities that there is proper cause for disciplinary action against the respondent, the Board may, by order, do 1 or more of the following:

(a) censure the respondent;

(b) require the respondent to pay to the Board a fine not exceeding $10 000;

(c) if the respondent is a registered person—

(i) impose conditions on the respondent's registration restricting the respondent's right to provide optometry treatment;

(ii) suspend the respondent's registration for a period not exceeding 1 year;

(iii) cancel the respondent's registration;

(iv) disqualify the respondent from being registered;

(v) suspend or cancel any therapeutic drugs authorisation endorsed on the person's registration;

(d) prohibit the respondent from carrying on business as an optometry services provider;

(e) prohibit the respondent from occupying a position of authority in a corporate or trustee optometry services provider.

(5) The Board may—

(a) stipulate that a disqualification or prohibition under subsection (4) is to apply—

(i) permanently; or

(ii) for a specified period; or

(iii) until the fulfilment of specified conditions; or

(iv) until further order;

(b) stipulate that an order relating to a person is to have effect at a specified future time and impose conditions as to the conduct of the person or the person's business until that time.

(6) If—

(a) a person has been found guilty of an offence; and

(b) the circumstances of the offence form, in whole or in part, the subject matter of the complaint,

the person is not liable to a fine under this section in respect of conduct giving rise to the offence.

(7) The Board may—

(a) fix a period within which a fine imposed under this section must be paid;

(b) on application by a person liable to pay a fine imposed under this section, extend the period within which the fine must be paid.

(8) A fine imposed under this section is recoverable by the Board as a debt.

(9) The Board may, without further notice, remove from the appropriate register a person who fails to pay a fine imposed under this section.

49—Contravention of prohibition order

(1) If a person carries on business as an optometry services provider in contravention of an order of the Board, the person is guilty of an offence.

Maximum penalty: $75 000 or imprisonment for 6 months.

(2) If a person occupies a position of authority in a corporate or trustee optometry services provider in contravention of an order of the Board, the person and the provider are each guilty of an offence.

Maximum penalty: $75 000 or imprisonment for 6 months.

(3) If a person contravenes or fails to comply with a condition imposed by the Board as to the conduct of the person or the person's business, the person is guilty of an offence.

Maximum penalty: $75 000 or imprisonment for 6 months.

50—Register of prohibition orders

(1) The Registrar must keep a register of persons who have been prohibited by order of the Board from carrying on business as an optometry services provider or occupying a position of authority in a corporate or trustee optometry services provider.

(2) The register—

(a) must not include any person who is dead;

(b) must include, in relation to each person on the register—

(i) the person's full name and business address; and

(ii) particulars of the order.

(3) The Registrar is responsible to the Board for the form and maintenance of the register.

(4) The Registrar must correct an entry in the register that is not, or has ceased to be, correct.

(5) The register must be kept available for inspection by any person during ordinary office hours at the office of the Registrar and the register may be made available to the public by electronic means.

(6) A person may, on payment of the prescribed fee, obtain a copy of any part of the register.

51—Variation or revocation of conditions imposed by Board

(1) The Board may, at any time, on application by a registered person, vary or revoke a condition imposed by the Board in relation to the person's registration under this Act.

(2) The Registrar, the Minister and representative bodies are entitled to appear and be heard on an application under this section.

52—Constitution of Board for purpose of proceedings

(1) The Board will, for the purpose of hearing and determining proceedings under this Part, be constituted of 3 members, of whom—

(a) 1 will be the member (or his or her deputy) who is a legal practitioner; and

(b) 1 will be a member who is an optometrist.

(2) The member referred to in subsection (1)(a) will preside over the proceedings.

(3) The members of the Board, other than the legal practitioner, will, for the purposes of any particular proceedings, be selected by the presiding member of the Board or, in the absence of the presiding member, the deputy presiding member.

(4) If a member of the Board as constituted under this section (other than the member presiding over the proceedings) dies or is for any other reason unable to continue with the proceedings, the Board constituted of the remaining members may, if the member presiding over the proceedings so determines, continue and complete the proceedings.

(5) Any questions of law or procedure arising before the Board will be determined by the member presiding over the proceedings and any other questions by unanimous or majority decision of the members.

(6) The Board constituted of the member presiding over the proceedings may, sitting alone—

(a) deal with—

(i) preliminary, interlocutory or procedural matters; or

(ii) questions of costs; or

(iii) questions of law; or

(b) enter consent orders,

and may, for that purpose or as a consequence, while sitting alone, make any determination or order (including a final order) that the member considers appropriate.

53—Provisions as to proceedings before Board

(1) Subject to this Act, the Board must give to all of the parties to proceedings before the Board under this Part at least 14 days written notice of the time and place at which it intends to conduct the proceedings, and must afford to the parties a reasonable opportunity to call and give evidence, to examine or cross-examine witnesses, and to make submissions to the Board.

(2) However—

(a) the Board may, if it thinks special reasons exist for doing so, give a lesser period of written notice under subsection (1); and

(b) the Board may, if of the opinion that it is desirable to do so in the public interest—

(i) suspend the registration of the person the subject of the proceedings; or

(ii) impose conditions on the person's registration restricting the person's right to provide optometry treatment,

pending hearing and determination of the proceedings.

(3) The requirement to give written notice under subsection (1) does not extend to adjournments.

(4) If a party to whom notice has been given pursuant to this section does not attend at the time and place fixed by the notice, the Board may proceed to hear and determine the matter in the absence of that party.

(5) A person who is aggrieved by conduct that is the subject-matter of proceedings before the Board under this Part is, subject to any direction of the Board to the contrary, entitled to be present at the hearing of the proceedings.

(6) In the course of proceedings before the Board under this Part, the Board may—

(a) receive in evidence a transcript of evidence taken in proceedings before a court, tribunal or other body constituted under the law of South Australia or of any other State or a Territory of Australia or of another country, and draw any conclusions of fact from the evidence that it considers proper;

(b) adopt, as in its discretion it considers proper, any findings, decision, judgment, or reasons for judgment, of any such court, tribunal or body that may be relevant to the proceedings.

(7) The Board should conduct proceedings under this Part as expeditiously as possible.

Part 5—Appeals

54—Right of appeal to District Court

(1) An appeal lies to the District Court against—

(a) a refusal by the Board to register, or reinstate the registration of, a person under this Act; or

(b) the imposition by the Board of conditions on a person's registration under this Act; or

(c) a decision made by the Board in proceedings under Part 4.

(2) An appeal under subsection (1)(c) against a decision may be instituted by the complainant or the respondent in the proceedings in which the decision was made.

(3) An appeal must be instituted within 1 month of the date of the decision appealed against.

55—Operation of order may be suspended

(1) Where an order has been made by the Board, and the Board or the District Court is satisfied that an appeal against the order has been instituted, or is intended, it may suspend the operation of the order until the determination of the appeal.

(2) Where the Board has suspended the operation of an order under subsection (1), the Board may terminate the suspension, and where the District Court has done so, the Court may terminate the suspension.

56—Variation or revocation of conditions imposed by Court

(1) The District Court may, at any time, on application by a registered person, vary or revoke a condition imposed by the Court in relation to the person's registration under this Act.

(2) The Board, the Minister and representative bodies are entitled to appear and be heard on an application under this section.

Part 6—Miscellaneous

57—Interpretation

In this Part—

domestic partner means a person who is a domestic partner within the meaning of the *Family Relationships Act 1975*, whether declared as such under that Act or not;

health product means—

(a) a pharmaceutical product; or

(b) any other product declared by the regulations to be a health product for the purposes of this Part;

health service means—

(a) hospital, nursing home or aged care facility services; or

(b) medical, dental or pharmaceutical services; or

(c) chiropractic, occupational therapy, optometry, osteopathy, physiotherapy, podiatric or psychology services; or

(d) any other service declared by the regulations to be a health service for the purposes of this Part;

prescribed business means a business consisting of or involving—

(a) the provision of a health service; or

(b) the manufacture, sale or supply of a health product;

prescribed relative, in relation to a registered person, means a parent, spouse, domestic partner, child, grandchild, brother or sister of the registered person;

spouse—a person is the spouse of another if they are legally married.

58—Offence to contravene conditions of registration

A person who contravenes, or fails to comply with, a condition imposed under this Act on the person's registration is guilty of an offence.

Maximum penalty: $75 000 or imprisonment for 6 months.

59—Registered person etc must declare interest in prescribed business

(1) A registered person or prescribed relative of a registered person who has an interest in a prescribed business must—

(a) in the case of an interest that came into existence before the commencement of this section—within 1 month after the commencement of this section; or

(b) in any other case—within 1 month after the interest comes into existence,

give to the Board prescribed information relating to the interest and the manner in which it arose.

Maximum penalty: $20 000.

(2) A registered person or prescribed relative of a registered person who has an interest in a prescribed business must, within 1 month after a change in the nature or extent of the interest, give to the Board prescribed information relating to the change.

Maximum penalty: $20 000.

(3) If a registered person or prescribed relative of a registered person has an interest in a prescribed business, the registered person must not—

(a) refer a patient to, or recommend that a patient use, a health service provided by that business; or

(b) prescribe, or recommend that a patient use, a health product manufactured, sold or supplied by that business,

unless the registered person has informed the patient, in writing, of the interest of the registered person or prescribed relative of the registered person in that business.

Maximum penalty: $20 000.

(4) Subject to subsection (5), a person has an interest in a prescribed business for the purposes of this section if the person is likely to derive a financial benefit, whether directly or indirectly, from the profitable conduct of the business.

(5) For the purposes of subsection (4)—

(a) a financial benefit is not derived by a registered person if the benefit consists solely of reasonable fees payable to the registered person for treatment provided to patients by the registered person; and

(b) a person does not have an interest in a prescribed business that is carried on by a public company if the interest consists only of a shareholding in the company of less than 5 per cent of the issued share capital of the company.

(6) It is a defence to proceedings for an offence against subsection (3) and to a charge of unprofessional conduct for failure to comply with that subsection for the defendant to prove that he or she did not know and could not reasonably have been expected to know that a prescribed relative had an interest in the prescribed business to which the referral, recommendation or prescription that is the subject of the proceedings relates.

60—Offence to give, offer or accept benefit for referral or recommendation

(1) A person must not give, or offer to give, a registered person or a prescribed relative of a registered person a benefit as an inducement, consideration or reward for the registered person—

(a) referring a patient to, or recommending that a patient use, a health service provided by the person; or

(b) prescribing, or recommending that a patient use, a health product manufactured, sold or supplied by the person.

Maximum penalty: $75 000.

(2) A registered person or a prescribed relative of a registered person must not accept from any person a benefit offered or given as an inducement, consideration or reward for the registered person—

(a) referring a patient to, or recommending that a patient use, a health service provided by that person; or

(b) prescribing, or recommending that a patient use, a health product manufactured, sold or supplied by that person.

Maximum penalty: $75 000.

(3) In this section—

benefit means money, property or anything else of value.

61—Improper directions to optometrists or optometry students

(1) If a person who provides optometry treatment through the instrumentality of an optometrist or optometry student directs or pressures the optometrist or optometry student to engage in unprofessional conduct, the person is guilty of an offence.

Maximum penalty: $75 000.

(2) If a person who occupies a position of authority in a corporate or trustee optometry services provider directs or pressures an optometrist or optometry student through whom the provider provides optometry treatment to engage in unprofessional conduct, the person and the provider are each guilty of an offence.

Maximum penalty: $75 000.

62—Procurement of registration by fraud

A person who, by fraud or any other dishonest means, procures registration or reinstatement of registration under this Act (whether for himself or herself or for another person) is guilty of an offence.

Maximum penalty: $20 000 or imprisonment for 6 months.

63—Statutory declarations

If a person is required under this Act to furnish information to the Board, the Board may require that the information be verified by statutory declaration and, in that event, the person will not be taken to have furnished the information as required unless it has been verified in accordance with the requirements of the Board.

64—False or misleading statement

A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information provided under this Act.

Maximum penalty: $20 000.

65—Registered person must report medical unfitness to Board

If a registered person becomes aware that he or she is or may be medically unfit to provide optometry treatment, the registered person must immediately give written notice of that fact to the Board.

Maximum penalty: $10 000.

66—Report to Board of cessation of status as student

(1) The person in charge of an educational institution must, if an optometry student ceases to be enrolled in, a course of study at that institution providing qualifications for registration on the register of optometrists, cause written notice of that fact to be given to the Board.

Maximum penalty: $5 000.

(2) A person registered on the optometry student register who completes, or ceases to be enrolled in, the course of study that formed the basis for that registration must cause written notice of that fact to be given to the Board.

Maximum penalty: $1 250.

67—Registered persons and optometry services providers to be indemnified against loss

(1) A registered person or optometry services provider must not, unless exempted by the Board, provide optometry treatment unless insured or indemnified in a manner and to an extent approved by the Board against civil liabilities that might be incurred by the person or provider, as the case may be, in connection with the provision of optometry treatment.

Maximum penalty: $10 000.

(2) The Board may, subject to such conditions as it thinks fit, exempt a person, or a class of persons, from the requirements of this section and may, whenever it thinks fit, revoke an exemption or revoke or vary the conditions under which an exemption operates.

68—Information relating to claim against registered person or optometry services provider to be provided

(1) If a person has claimed damages or other compensation from a registered person or other person for alleged negligence committed by the registered person in the course of providing optometry treatment, the person against whom the claim is made must—

(a) within 30 days after the claim is made; and

(b) within 30 days after any order is made by a court to pay damages or other compensation in respect of that claim or any agreement has been entered into for payment of a sum of money in settlement of that claim (whether with or without a denial of liability),

provide the Board with prescribed information relating to the claim.

Maximum penalty: $10 000.

(2) If a person has claimed damages or other compensation from an optometry services provider for alleged negligence committed by the provider in connection with the provision of optometry treatment, the provider must—

(a) within 30 days after the claim is made; and

(b) within 30 days after any order is made by a court to pay damages or other compensation in respect of that claim or any agreement has been entered into for payment of a sum of money in settlement of that claim (whether with or without a denial of liability),

provide the Board with prescribed information relating to the claim.

Maximum penalty: $10 000.

69—Victimisation

(1) A person commits an act of victimisation against another person (the ***victim***) if he or she causes detriment to the victim on the ground, or substantially on the ground, that the victim—

(a) has disclosed or intends to disclose information; or

(b) has made or intends to make an allegation,

that has given rise, or could give rise, to proceedings against the person under this Act.

(2) An act of victimisation under this Act may be dealt with—

(a) as a tort; or

(b) as if it were an act of victimisation under the *Equal Opportunity Act 1984*,

but, if the victim commences proceedings in a court seeking a remedy in tort, he or she cannot subsequently lodge a complaint under the *Equal Opportunity Act 1984* and, conversely, if the victim lodges a complaint under that Act, he or she cannot subsequently commence proceedings in a court seeking a remedy in tort.

(3) Where a complaint alleging an act of victimisation under this Act has been lodged with the Commissioner for Equal Opportunity and the Commissioner is of the opinion that the subject matter of the complaint has already been adequately dealt with by a competent authority, the Commissioner may decline to act on the complaint or to proceed further with action on the complaint.

(4) In this section—

detriment includes—

(a) injury, damage or loss; or

(b) intimidation or harassment; or

(c) discrimination, disadvantage or adverse treatment in relation to the victim's employment or business; or

(d) threats of reprisal.

70—Self-incrimination

If a person is required to provide information or to produce a document, record or equipment under this Act and the information, document, record or equipment would tend to incriminate the person or make the person liable to a penalty, the person must nevertheless provide the information or produce the document, record or equipment, but the information, document, record or equipment so provided or produced will not be admissible in evidence against the person in proceedings for an offence, other than an offence against this or any other Act relating to the provision of false or misleading information.

71—Punishment of conduct that constitutes an offence

If conduct constitutes an offence and is also a ground for disciplinary action under this Act, the taking of disciplinary action under this Act is not a bar to conviction and punishment for the offence, nor is conviction and punishment for the offence a bar to disciplinary action under this Act.

72—Vicarious liability for offences

If a corporate or trustee optometry services provider or other body corporate is guilty of an offence against this Act, each person occupying a position of authority in the provider or body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless it is proved that the person could not, by the exercise of reasonable care, have prevented the commission of the principal offence.

73—Application of fines

A fine imposed for an offence against this Act must be paid to the Board.

74—Board may require medical examination or report

(1) The Board may, for any purpose associated with the administration or operation of this Act, require a registered person or a person who is applying for registration or reinstatement of registration to—

(a) submit to an examination by a health professional, or by a health professional of a class, specified by the Board; or

(b) provide a medical report from a health professional, or from a health professional of a class, specified by the Board,

(including an examination or report that will require the person to undergo some form of medically invasive procedure).

(2) If a person fails to comply with a requirement made under subsection (1), the Board may suspend the person's registration until further order of the Board.

(3) In this section—

health professional means—

(a) a medical practitioner; or

(b) a psychologist; or

(c) any other person who belongs to a profession, or who has an occupation, declared by the Board, by notice in the Gazette, to be a profession or occupation within the ambit of this definition.

75—Ministerial review of decisions relating to courses

(1) If the Board—

(a) refuses to approve a course of education or training for the purposes of this Act; or

(b) revokes an approval of a course of education or training under this Act,

the provider of the course may apply to the Minister for a review of that decision.

(2) The Minister may determine the application as the Minister thinks fit and, if the Minister finds in favour of the applicant, grant or preserve the approval (as appropriate).

76—Confidentiality

(1) A person engaged or formerly engaged in the administration of this Act or the repealed Act must not divulge or communicate personal information obtained (whether by that person or otherwise) in the course of official duties except—

(a) as required or authorised by or under this Act or any other Act or law; or

(b) with the consent of the person to whom the information relates; or

(c) in connection with the administration of this Act or the repealed Act; or

(d) to an authority responsible under the law of a place outside this State for the registration or licensing of persons who provide optometry treatment, where the information is required for the proper administration of that law; or

(e) to an agency or instrumentality of this State, the Commonwealth or another State or a Territory of the Commonwealth for the purposes of the proper performance of its functions.

Maximum penalty: $10 000.

(2) Subsection (1) does not prevent disclosure of statistical or other data that could not reasonably be expected to lead to the identification of any person to whom it relates.

(3) Information that has been disclosed under subsection (1) for a particular purpose must not be used for any other purpose by—

(a) the person to whom the information was disclosed; or

(b) any other person who gains access to the information (whether properly or improperly and whether directly or indirectly) as a result of that disclosure.

Maximum penalty: $10 000.

77—Service

(1) A notice or document required or authorised to be given or sent to, or served on, a person for the purposes of this Act may—

(a) be given to the person personally; or

(b) be posted in an envelope addressed to the person at the person's last known nominated contact, residential, business or (in the case of a corporation) registered address; or

(c) be left for the person at the person's last known nominated contact, residential, business or (in the case of a corporation) registered address with someone apparently over the age of 16 years; or

(d) be transmitted by facsimile transmission or electronic mail to a facsimile number or electronic mail address provided by the person (in which case the notice or document will be taken to have been given or served at the time of transmission).

(2) Without limiting the effect of subsection (1), a notice or other document required or authorised to be given or sent to, or served on, a person for the purposes of this Act may, if the person is a company or registered body within the meaning of the *Corporations Act 2001* of the Commonwealth, be served on the person in accordance with that Act.

78—Evidentiary provision

(1) In proceedings for an offence against this Act or in disciplinary proceedings under Part 4, an allegation in the complaint—

(a) that a person named in the complaint is or is not, or was or was not, on a specified date, a qualified person;

(b) that a person named in the complaint is or is not, or was or was not on a specified date, registered on the register of optometrists or the optometry student register;

(c) that the registration of a person named in the complaint is, or was on a specified date, subject to specified conditions;

(d) that a person named in the complaint is, or was on a specified date, an optometry services provider or an exempt provider;

(e) that a person named in the complaint is, or was on a specified date, occupying a position of authority in a corporate or trustee optometry services provider;

(f) that a person named in the complaint is, or was on a specified date, an inspector,

must be accepted as proved in the absence of proof to the contrary.

(2) In legal proceedings, a document apparently certified by the Registrar to be a copy of a register under this Act, or a copy of a code of conduct or professional standard prepared or endorsed by the Board under this Act, must be accepted as such in the absence of proof to the contrary.

79—Regulations

(1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.

(2) Without limiting the generality of subsection (1), the regulations may—

(a) prescribe, or empower the Board to fix—

(i) fees or charges for the purposes of this Act;

(ii) fees or charges for services provided by the Board in the exercise of its functions under this Act,

and may provide for the recovery of a fee or charge so prescribed;

(b) exempt any person or class of persons from the obligation to pay a fee or charge so prescribed;

(c) regulate, or otherwise make provision with respect to, the education of optometrists for the purposes of this Act, including by making provision with respect to the approval of courses that may lead to registration;

(d) make any provision with respect to the keeping of a register;

(e) prescribe penalties, not exceeding $5 000, for breach of, or non-compliance, with a regulation.

(3) The regulations may—

(a) refer to or incorporate, wholly or partially and with or without modification, a code, standard or other document prepared or published by a prescribed body, either as in force at the time the regulations are made or as in force from time to time; and

(b) be of general or limited application; and

(c) make different provision according to the persons, things or circumstances to which they are expressed to apply; and

(d) provide that a specified provision of this Act does not apply, or applies with prescribed variations, to any person, circumstance or situation (or person, circumstance or situation of a prescribed class) specified by the regulations, subject to any condition to which the regulations are expressed to be subject; and

(e) provide that any matter or thing is to be determined, dispensed with, regulated or prohibited according to the discretion of the Minister, the Board or another prescribed authority.

(4) If a code, standard or other document is referred to or incorporated in the regulations—

(a) a copy of the code, standard or other document must be kept available for public inspection, without charge and during ordinary office hours, at an office or offices specified in the regulations; and

(b) evidence of the contents of the code, standard or other document may be given in any legal proceedings by production of a document apparently certified by the Minister to be a true copy of the code, standard or other document.

Schedule 1—Repeal and transitional provisions

Part 1—Repeal

1—Repeal of *Optometrists Act 1920*

The *Optometrists Act 1920* is repealed.

Part 2—Transitional provisions

2—Transitional provisions relating to Board

(1) The Optometry Board of South Australia is the same body corporate as the Optometrists Board established under the repealed Act.

(2) On the commencement of this subclause all members of the Board then in office vacate their respective offices so that fresh appointments may be made to the Board under this Act.

(3) If appointments are to be made to the Board pursuant to the *Acts Interpretation Act 1915* prior to the commencement and for the purposes of section 6—

(a) a reference in that section to ***optometrist*** will, for those purposes, be taken to be a reference to a person who is a registered optometrist under the repealed Act at the relevant time; and

(b) despite section 14C(3) of the *Acts Interpretation Act 1915*, such an appointment takes effect on the commencement of section 6 and not before.

3—Transitional provisions relating to registration

(1) The register of optometrists maintained under the repealed Act continues in existence as the register of optometrists under this Act.

(2) A person who is on the register of optometrists under this Act immediately following the commencement of this clause will be taken to be registered under this Act on that register and any restrictions, limitations or conditions that applied to the registration of the person under the repealed Act immediately before that commencement will be taken to continue to apply to the registration of the person under this Act as if they had been imposed by the Board under this Act.

(3) If a person who was removed from the register of optometrists under the repealed Act for any reason and who had not, before the commencement of this Act, been reinstated on that register, applies for registration under this Act, the Board may deal with the application as though it were an application for reinstatement on the register of optometrists under this Act.

4—Transitional provision relating to optometry students

A person who was, immediately before the commencement of this clause, enrolled in a course of study that provides qualifications for registration on the register of optometrists is, on due application to the Board, entitled to full registration on the optometry student register.

5—Regulations

The regulations may make other provisions of a savings or transitional nature consequent on the enactment of this Act.