# Optometrists Registration Act 1996

**Act No. 56/1996**

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The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. Purposes

The main purposes of this Act are—

(a) to protect the public by providing for the registration of optometrists and investigations into the professional conduct and fitness to practise of registered optometrists; and
(b) to regulate the advertising of optometry services; and

(c) to establish the Optometrists Registration Board of Victoria and the Optometrists Registration Board Fund of Victoria; and

(d) to repeal the Optometrists Registration Act 1958; and

(e) to make consequential amendments to other Acts; and

(f) to provide for other related matters.

2. Commencement

(1) Section 1 and this section come into operation on the day on which this Act receives the Royal Assent.

(2) Subject to sub-sections (3) and (4), the remaining provisions of this Act come into operation on a day or days to be proclaimed.

(3) If a provision referred to in sub-section (2), except sections 11 and 100, does not come into operation before 1 July 1997, it comes into operation on that day.

(4) If sections 11 and 100 do not come into operation before 1 July 1998, those sections come into operation on that day.

3. Definitions

In this Act—

"Administrative Appeals Tribunal" means the Administrative Appeals Tribunal established under the Administrative Appeals Tribunal Act 1984;
"alcoholic" has the same meaning as in the
Alcoholics and Drug-dependent Persons
Act 1968;

"Board" means the Optometrists Registration
Board of Victoria established under Part 6;

"drug-dependent person" has the same meaning
as in the Alcoholics and Drug-dependent
Persons Act 1968;

"Fund" means the Optometrists Registration
Board Fund established under Part 7;

"Health Services Commissioner" means the
Health Services Commissioner within the
meaning of the Health Services
(Conciliation and Review) Act 1987;

"lawyer" means a person admitted to practise as a
barrister and solicitor of the Supreme Court;

"register" means the register of optometrists kept
under Part 2;

"registered medical practitioner" means a
medical practitioner registered under the
Medical Practice Act 1994;

"optometry" means—

(a) the employment of methods for the
measurement of the powers of vision; and

(b) the prescribing of optical appliances to
correct, remedy or relieve defects of
vision; and

(c) the adaptation of lenses and prisms for
the aid of the powers of vision—
and includes the prescribing and fitting of
contact lenses;
"registered optometrist" means a person registered under Part 2, whether or not the registration of that person is general or specific;

"unprofessional conduct" means all or any of the following—

(a) professional conduct which is of a lesser standard than that which the public might reasonably expect of a registered optometrist;

(b) professional conduct which is of a lesser standard than that which might reasonably be expected of an optometrist by his or her peers;

(c) professional misconduct;

(d) infamous conduct in a professional respect;

(e) providing a person with health services of a kind that is excessive, unnecessary or not reasonably required for that person's well-being;

(f) influencing or attempting to influence the conduct of an optometry practice in such a way that patient care may be compromised;

(g) the failure to act as an optometrist when required under an Act or regulations to do so;

(h) a finding of guilt of—

   (i) an indictable offence in Victoria, or an equivalent offence in another jurisdiction;
(ii) an offence where the optometrist's ability to continue to practise is likely to be affected because of the finding of guilt or where it is not in the public interest to allow the optometrist to continue to practise because of the finding of guilt;

(iii) an offence under this Act or the regulations;

(iv) an offence as an optometrist under any other Act or regulations.

4. Application of Act

(1) Nothing in this Act applies to the practise of the profession of a registered medical practitioner.

(2) Nothing in this Act applies to any person—

(a) by reason only of that person carrying out any lens grinding or spectacle making; or

(b) if that person is a bona fide dispensing spectacle-maker, by reason only of that person making and supplying spectacles on the prescription of a registered medical practitioner, a registered optometrist or an orthoptist referred to in, and acting in accordance with, section 60(2).
PART 2—REGISTRATION

Division 1—Procedure for Obtaining Registration

5. Application for registration

(1) A natural person may apply to the Board for registration as an optometrist.

(2) An application must be—

(a) in writing in the prescribed form and accompanied by evidence of the qualifications which the applicant claims entitle him or her to the type of registration applied for; and

(b) accompanied by the fee determined by the Board.

(3) The Board—

(a) may require the applicant to provide further information or material in respect of the application; and

(b) may require that the information in the application be verified by a declaration under section 107 of the Evidence Act 1958; and

(c) may require proof of identity of the person making the application.

6. Qualifications for general registration

A person is qualified for general registration as an optometrist if that person—

(a) has successfully completed a course of study at an institution accredited by The Optometry Council A.C.N. 074 875 111 and approved by the Board or any other course of study approved by the Board; or
(b) in the opinion of the Board, has a qualification that is substantially equivalent or is based on similar competencies to an accredited course; or

(c) has passed a qualifying examination conducted by or on behalf of The Optometry Council A.C.N. 074 875 111 and approved by the Board; or

(d) has a qualification that is recognised in another State or Territory of the Commonwealth for the purposes of undertaking work of a similar nature to that which a person holding a qualification to which paragraph (a), (b) or (c) applies is qualified to undertake.

7. General registration

(1) The Board must grant general registration as an optometrist to an applicant if—

(a) the applicant is qualified for registration under section 6; and

(b) there are no grounds under sub-section (2) under which the Board may refuse to grant registration to the applicant; and

(c) the circumstances are such that section 8 does not apply; and

(d) the applicant has paid the fee determined by the Board under section 5(2)(b).

(2) The Board may refuse to grant registration to an applicant on any one or more of the following grounds—

(a) that the character of the applicant is such that it would not be in the public interest to allow the applicant to practise as a registered optometrist;
(b) that the applicant is unfit to practise as a registered optometrist because he or she is an alcoholic or drug-dependent person;

(c) that the applicant has been found guilty of an indictable offence in Victoria or an equivalent offence in another jurisdiction;

(d) that the applicant has been found guilty of an offence where the ability of the applicant to practise is likely to be affected because of the finding of guilt or where it is not in the public interest to allow the applicant to practise because of the finding of guilt;

(e) that the applicant has previously been registered under this Act or the Optometrists Registration Act 1958 and during the course of that registration has had proceedings under Part 3 or similar proceedings under the Optometrists Registration Act 1958 brought against him or her and those proceedings have never been finalised;

(f) that, in the opinion of the Board, the applicant is unfit to be registered because he or she has a physical or mental impairment which significantly impairs his or her ability to practise as a registered optometrist;

(g) that the applicant's competency in speaking or communicating in English is not sufficient for that person to practise as a registered optometrist;

(h) that the applicant has previously held a right to practise as an optometrist in another country, being the equivalent of registration as an optometrist under this Act, and that right has been cancelled or suspended and
not restored because of conduct which, if committed within Victoria, would entitle the Board to suspend or cancel registration.

(3) A grant of registration under this section is subject to any conditions, limitations or restrictions that the Board thinks fit.

(4) The Board may, upon application by the registered optometrist, amend, vary or revoke any condition, limitation or restriction imposed under sub-section (3).

8. Specific registration

(1) The Board may grant or refuse to grant specific registration as an optometrist to an applicant if the applicant holds qualifications in optometry which do not qualify that applicant for general registration—

(a) to enable that applicant to undertake supervised study or training or a course approved by the Board at a tertiary institution; or

(b) to enable that applicant to fill an optometry teaching or research position at a tertiary institution approved by the Board; or

(c) to enable an applicant from another country to practise in Victoria if that applicant has exchanged practice with a registered optometrist for a limited period with the prior permission of the Board.

(2) A grant of specific registration under this section is subject to any conditions, limitations or restrictions imposed by the Board including the period of registration which must not exceed 12 months.
(3) The Board may of its own motion, or upon application by the optometrist granted specific registration, amend, vary or revoke any condition, limitation or restriction imposed under sub-section (2).

9. **Entitlement of applicant to make submissions**

If the Board is proposing to refuse an application for registration or to impose conditions, limitations or restrictions on the registration of an applicant, the Board must not do so until—

(a) it has given the applicant notice of this proposal; and

(b) it has given the applicant an opportunity to make submissions to the Board about the proposal.

10. **Notification of outcome of application**

(1) Upon determining an application for registration under this Part, the Board must notify the applicant as to whether or not registration has been granted to the applicant.

(2) A notice under sub-section (1) must include the following information—

(a) if the registration has been granted—

   (i) the type of registration granted; and

   (ii) whether or not any conditions, limitations or restrictions have been imposed on the registration and, if so, the reasons for imposing the conditions, limitations or restrictions; and

   (iii) whether or not the registration has been endorsed under section 11; or

(b) if the registration has not been granted—
11. **Endorsement of registration**

(1) If the Board is satisfied that an optometrist has satisfactorily completed a course of study which, in the opinion of the Board, qualifies the optometrist to obtain and to have in his or her possession and to use, sell or supply certain Schedule 4 poisons within the meaning of the **Drugs, Poisons and Controlled Substances Act 1981**, the Board may endorse the registration of the optometrist and specify in the endorsement the Schedule 4 poisons that the optometrist is qualified to obtain and to have in his or her possession and to use, sell or supply.

(2) An applicant for registration or a registered person may apply to the Board for an endorsement under this section.

(3) An application must be—

   (a) in writing in the prescribed form and accompanied by evidence of the qualifications which the applicant claims qualify him or her for the endorsement applied for; and

   (b) accompanied by the fee determined by the Board.

(4) The Board—

   (a) may require the applicant to provide further information or material in respect of the application; and
(b) may require that the information in the application be verified by a declaration under section 107 of the Evidence Act 1958.

(5) The Board must not specify any Schedule 4 poison in an endorsement unless the poison is approved by the Minister for the purposes of this section.

12. Duration and renewal of registration

The registration of an optometrist which is not specific or renewal of such registration continues in force for 12 months after the grant or renewal of registration.

13. Application for renewal of and refusal to renew registration

(1) An application for renewal of registration which is not specific—

(a) must be made to the Board before the existing registration expires; and

(b) must be accompanied by the fee determined by the Board.

(2) If a person does not apply for renewal of registration before the end of the existing registration period, the Board may renew that person's registration if application is made within 3 months after the end of the registration period and the applicant pays an additional renewal fee determined by the Board which must not be more than 50% of the original fee.

(3) If a person's registration has expired without being renewed that person is deemed to be registered for a period of 3 months after that expiry, and if, at the end of that period of 3 months, that person has not renewed his or her registration, the Board must remove that person's name from the register.
(4) The Board may refuse to renew the registration of an applicant under this Part on any ground on which the Board might refuse to grant registration.
14. **Restoration of name to the register**

If a person whose name has been removed from the register under section 13(3)—

(a) applies to the Board within 2 years from the date of that removal to have his or her name restored to the register; and

(b) pays to the Board the fee fixed by the Board for that purpose within that period—

the Board may restore that person's name to the register.

15. **Effect of suspension of registration**

For the purposes of this Act, an optometrist whose registration is suspended is deemed to be not registered for the period of that suspension.

16. **Registration obtained by fraud**

(1) If the Board believes that the registration of an optometrist has been obtained by fraud or misrepresentation or that the qualifications upon which the optometrist relied for registration have been withdrawn the Board must conduct a hearing into the matter.

(2) The Board must give notice of the time and place of the hearing to the optometrist.

(3) The provisions applying to the conduct of a formal hearing under Part 3 apply to a hearing under this section as if a hearing under this section were a formal hearing.

(4) If, at the end of the hearing, the Board determines that the registration of the optometrist has been obtained by fraud or misrepresentation or that the qualifications upon which the optometrist has
relied for registration have been withdrawn, the Board must cancel the registration of the optometrist.

Division 2—The Register

17. The Register

(1) The Board must cause to be kept a register of all optometrists to whom the Board has granted registration under this Act.

(2) The register is to be called the Register of Optometrists.

(3) The following particulars must be included on the register against the name of the optometrist to whom they apply—

   (a) any endorsement under section 11;

   (b) any current suspension of the registration of the optometrist;

   (c) any current condition, limitation or restriction imposed on the registration of the optometrist;

   (d) the prescribed information.

(4) The register may be inspected at the office of the Board by any person during ordinary office hours without charge.

(5) A person may obtain a copy of or an extract from the register on payment of the fee determined by the Board.

(6) A registered optometrist's private address must not appear on that part of the register which is open to the public for inspection, unless the optometrist so authorises.
18. **Certificates**

(1) Upon—

(a) granting registration to a person under this Part; or

(b) renewing the registration of a person under this Part—

the Board must issue a certificate of registration to that person.

(2) The following particulars must be included on a certificate of registration—

(a) any endorsement under section 11; and

(b) any condition, limitation or restriction imposed on the registration of the optometrist; and

(c) the prescribed information.

(3) If an optometrist's registration under this Part has been suspended or cancelled, that optometrist must return his or her certificate of registration to the Board.

Penalty: 20 penalty units.

19. **Use of certificate as evidence**

A certificate purporting to be signed by the President or any two members of the Board to the effect that—

(a) an optometrist is or is not or was or was not, at any specified date, registered; or

(b) the optometrist's registration is or is not or was or was not, at any specified date, endorsed under section 11; or
(c) that any disciplinary or other action is or is
not or was or was not, at any specified date,
being taken against that optometrist—
is evidence, and, in the absence of evidence to the
contrary, is proof of the matters stated in it.

20. Requirement to notify the Board of change of address

A registered optometrist must notify the Board of
any change of the address of the optometrist which
appears on the register within 14 days after that
change having been made.

Penalty: 10 penalty units.

21. Notification of death by Registrar of Births, Deaths,
Marriages and Names

(1) Upon registering the death of any person
appearing from the records of the Registrar of
Births, Deaths, Marriages and Names to be a
registered optometrist, the Registrar must
immediately give notice of the death by post to the
Board.

(2) Upon receiving a notice under sub-section (1), the
Board must cause the name of the optometrist to
be removed from the register.
PART 3—INVESTIGATIONS INTO REGISTERED OPTOMETRISTS

Division 1—Preliminary investigations into professional conduct

22. Complaints about the professional conduct of optometrists

A person may make a complaint about a registered optometrist to the Board.

23. When complaints about professional conduct are to be investigated by Health Services Commissioner

(1) If the Board receives a complaint about a registered optometrist, and the complaint is of a kind which may be made under the Health Services (Conciliation and Review) Act 1987, the Board must notify the Health Services Commissioner and give a copy of the complaint to the Health Services Commissioner as soon as possible after it has received the complaint.

(2) The Board, in consultation with the Health Services Commissioner, must determine whether or not the complaint is to be dealt with by the Commissioner or the Board.

(3) The Health Services (Conciliation and Review) Act 1987 applies to a complaint made under this Part which is to be dealt with by the Health Services Commissioner as if the complaint were made under section 16 of that Act.

(4) The Board must not deal further with a complaint made under this Part that is to be dealt with by the Health Services Commissioner unless the Health Services Commissioner refers the matter back to the Board under section 19(6) of the Health Services (Conciliation and Review) Act 1987.
(5) If a complaint has been referred to and is being dealt with by the Health Services Commissioner, the Commissioner must advise the Board, when the matter is completed, of the outcome of the matter.

24. **When complaints about professional conduct are to be investigated by the Board**

(1) The Board must investigate a complaint concerning the professional conduct of a registered optometrist unless—

(a) the complaint is to be dealt with by the Health Services Commissioner under section 23; or

(b) the Board has determined the complaint to be frivolous or vexatious.

(2) In order to determine whether or not it is necessary to conduct a formal or informal hearing into a complaint, the Board must conduct a preliminary investigation into the complaint.

(3) The Board may, in writing, delegate to—

(a) an officer of the Board; or

(b) a lawyer or investigator retained by the Board; or

(c) a sub-committee of the Board consisting of not more than 3 members of the Board—its power to conduct a preliminary investigation into a complaint, other than its power to make determinations upon a preliminary investigation.

25. **Outcome of preliminary investigation**

(1) Upon completing a preliminary investigation, the person or persons conducting the investigation may make one of the following recommendations—
(a) that the investigation into the matter should not proceed further; or
(b) that an informal or formal hearing should be held into the matter.

(2) The Board must determine whether or not to act on the recommendations of the person or persons conducting the preliminary investigation.

26. Board may institute a hearing into professional conduct

The Board may, of its own motion, determine to conduct a formal or informal hearing into the professional conduct of a registered optometrist without conducting a preliminary investigation.

27. Suspension of registration upon commencement of investigation

(1) The Board, upon making a determination—

(a) to conduct a preliminary investigation into a complaint made to the Board about the professional conduct of a registered optometrist; or
(b) to conduct a formal or informal hearing into the professional conduct of a registered optometrist without preliminary investigation—

may suspend the registration of the optometrist until any investigation and any hearing into the matter is completed if the Board is of the opinion that it is necessary to do so because there is a serious risk that the health and safety of the public will be endangered.

(2) If the Board has suspended the registration of an optometrist under sub-section (1), it must—
(a) immediately notify the optometrist of that suspension; and
(b) ensure that the matter is investigated as soon as possible after that suspension.

Division 2—Preliminary investigation into the health of registered optometrists

28. Commencement of preliminary investigation

If the Board believes the ability of an optometrist to practise optometry may be affected because—

(a) of the physical or mental health of the optometrist; or
(b) the optometrist has an incapacity; or
(c) the optometrist is an alcoholic or drug-dependent person—

the Board may appoint one of its members to conduct a preliminary investigation into the matter.

29. Notification to optometrist

(1) The member of the Board appointed to investigate the matter must give notice of the preliminary investigation to the optometrist.

(2) A notice under sub-section (1) must—

(a) be in writing; and
(b) be sent by registered post as soon as possible after the Board's decision has been made; and
(c) advise the optometrist of the nature of the matter to be investigated; and
(d) ask the optometrist to advise the Board as to whether or not he or she will agree to
undergo a medical examination within 28 days after receiving the notice; and

e) advise the optometrist of the procedures that can be taken under this Part.

30. Medical examination

(1) If the optometrist agrees to undergo a medical examination within 28 days, the optometrist must be examined by a registered medical practitioner who is agreed upon by the Board and the optometrist.

(2) If the Board and the optometrist are unable to agree upon a registered medical practitioner to conduct the examination, the Minister must appoint a registered medical practitioner to perform the examination.

(3) The Board must pay for the examination.

31. Report of examination

(1) The examining medical practitioner must give a report of his or her examination to the member of the Board appointed to investigate the matter, and, not more than 7 days later, to the optometrist being investigated.

(2) The person appointed to investigate the matter must discuss the report with the optometrist, and, in the case of an adverse finding in the report, the possible ways of dealing with that finding.

(3) After discussing the report with the optometrist, the person appointed to investigate the matter must report to the Board.

(4) Despite sub-section (1), if the report contains information of a medical or psychiatric nature concerning the optometrist, and it appears to the person appointed to conduct the investigation that the disclosure of that information to the
optometrist might be prejudicial to the physical or mental health or well being of the optometrist, the investigator may decide not to give that information to the optometrist but to give it instead to another optometrist nominated by that optometrist.

(5) Before acting under sub-section (4), the investigator must report to the Board and, if the investigator is not an optometrist and the Board is of the opinion that it is necessary for the investigation of the matter to be continued by an optometrist, the Board may appoint an optometrist to continue the investigation.

32. Outcome of preliminary investigation

(1) If, after considering the reports given under section 31, the Board decides that further action should be taken, the Board must ask the optometrist whether or not he or she is prepared to agree to—

(a) alter the way in which he or she practises optometry; or

(b) the imposition of conditions, limitations or restrictions on his or her registration; or

(c) the alteration or cancellation of any endorsement of registration under section 11; or

(d) the suspension of his or her registration for the period of time specified by the Board.

(2) The Board may take any action that is necessary to implement an agreement under sub-section (1).

33. Referral to formal hearing

If a registered optometrist who is the subject of a preliminary investigation under this Division—
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(a) does not agree to undergo a medical examination or does not abide by an agreement to undergo a medical examination; or

(b) does not reach an agreement with the Board under section 32 or does not abide by an agreement reached with the Board under section 32—

the Board may refer the matter to a formal hearing.

34. Request for conditions, limitations or restrictions

(1) A registered optometrist who believes that his or her ability to practise optometry is affected because—

(a) of his or her physical or mental health; or

(b) he or she has an incapacity; or

(c) he or she is an alcoholic or drug-dependent person—

may ask the Board to impose a condition, limitation or restriction on his or her practice.

(2) If the Board and the optometrist agree upon the condition, limitation or restriction to be imposed, the Board may impose it.

(3) If the optometrist and the Board do not agree upon the condition, limitation or restriction to be imposed, the Board must refer the matter to a preliminary investigation.

35. Revocation of suspension of registration or condition, limitation or restriction imposed on registration

The Board may revoke a condition, limitation or restriction imposed on the registration of a registered optometrist or the suspension of a registered optometrist's registration, if the
optometrist satisfies the Board that his or her ability to practise optometry is no longer affected.

36. **Immediate suspension of registration**

(1) If the Board has referred a matter to a formal hearing under this Division, the Board may suspend the registration of the optometrist until the hearing is completed, if the Board is of the opinion that the ability of the optometrist to practise optometry is affected to such an extent that to allow the optometrist to continue to practise would pose a serious risk that the health and safety of the public will be endangered.

(2) If the Board has suspended the registration of an optometrist under sub-section (1), it must—

   (a) immediately notify the optometrist of that suspension; and

   (b) ensure that the matter is investigated as soon as possible after that suspension.

**Division 3—Formal and Informal Hearings**

37. **Establishment and notification of an informal hearing**

If the Board has determined under section 25 or 26 that an informal hearing be held into the professional conduct of a registered optometrist, the Board must—

   (a) appoint a panel to hold the hearing; and

   (b) fix a time and place for the hearing to be held; and

   (c) by registered post, serve a notice on the optometrist which complies with section 39; and
(d) serve notice on any complainant by registered post under section 55(4)(a) and (b).
38. Constitution of a panel for an informal hearing

(1) A panel appointed under section 37 is to consist of not more than 3 persons—
   (a) who are to be members of the Board; and
   (b) of whom, at least 1 is to be a registered optometrist.

(2) If—
   (a) the Board is unable to appoint a panel because there are not enough members available to sit on it; or
   (b) the Board is of the opinion that a person with special expertise is required for the hearing—

      the Governor in Council may appoint persons who are not members of the Board to fill the vacant positions on the panel.

(3) A person who has undertaken a preliminary investigation of the matter is not entitled to be a member of the panel.

39. Notice of an informal hearing

A notice of an informal hearing under section 37 must—

(a) state the nature of the hearing and the allegations made against the optometrist; and

(b) give the time and place of the hearing; and

(c) state that the optometrist may choose to have the matter determined by a formal hearing and state the differences between a formal and informal hearing; and

(d) state that there is no right to legal representation at the hearing, but that the optometrist is entitled to be present and to
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make submissions and to be accompanied by another person, that the hearing is not open to the public and list the possible findings the panel can make or orders the panel can give.

40. **Conduct of an informal hearing**

At an informal hearing—

(a) the panel must hear and determine the matter before it; and

(b) the optometrist who is the subject of the hearing is entitled to be present, to make submissions and to be accompanied by another person but is not entitled to be represented; and

(c) the proceedings of the hearing must not be open to the public.

41. **Findings and determinations of an informal hearing**

(1) After considering all the submissions made to the hearing the panel may find either—

(a) that the optometrist has, whether by act or omission, engaged in unprofessional conduct which is not of a serious nature; or

(b) that the optometrist has not engaged in unprofessional conduct.

(2) If the panel finds that the optometrist has, whether by act or omission, engaged in unprofessional conduct which is not of a serious nature, the panel may make one or more of the following determinations—

(a) that the optometrist undergo counselling;

(b) that the optometrist be cautioned;

(c) that the optometrist be reprimanded.
42. Change of informal hearing to formal hearing during course of hearing

If, before the end of the hearing—
(a) the optometrist who is the subject of the hearing fails to attend the hearing without good cause; or
(b) the optometrist requests that a formal hearing be held; or
(c) the panel is of the opinion that a formal hearing should be held—
the panel must abandon the informal hearing and refer the matter to a formal hearing.

43. Request for formal hearing upon completion of informal hearing

Upon the completion of an informal hearing, the optometrist who was the subject of the hearing may request that a formal hearing be held to review any findings and determinations of the informal hearing.

44. Establishment and notification of formal hearing

If—
(a) the Board has determined that a formal hearing be held under section 25 or 26 or has referred a matter to a formal hearing under section 33; or
(b) an optometrist has requested a formal hearing under section 43; or
(c) a panel has referred a matter to a formal hearing under section 42—
the Board must—
(d) appoint a panel to hold the hearing; and
(e) fix a time and place for the hearing to be conducted; and

(f) serve a notice on the optometrist by registered post which complies with section 46; and

(g) serve a notice on any complainant by registered post under section 55(4)(a) and (b).

45. **Constitution of a hearing panel for a formal hearing**

(1) A panel appointed under section 44 must consist of not less than 3 persons—

(a) who are to be members of the Board; and

(b) of whom 1 is to be a lawyer and at least 1 is to be a registered optometrist.

(2) If—

(a) the Board is unable to appoint a panel because there are not enough members available to sit on it; or

(b) the Board is of the opinion that a person with special expertise is required for the hearing—

the Governor in Council may appoint persons who are not members of the Board to fill the vacant positions on the panel.

(3) The following people are not entitled to be members of a panel for a formal hearing—

(a) a person who has undertaken a preliminary investigation of the matter which is the subject of the hearing;

(b) a person who has been a member of a panel which held an informal hearing into the matter.
46. **Notice of a formal hearing**

A notice of a formal hearing under section 44 must—

(a) state the nature of the hearing and the allegations made against the optometrist; and

(b) give the time and place of the hearing; and

(c) state that there is a right to make submissions and to be represented, that the hearing is open to the public, list the possible findings the panel can make and state that there is a right to apply for review of the panel's findings.

47. **Conduct of a formal hearing**

At a formal hearing—

(a) the hearing panel must hear and determine the matter before it; and

(b) the optometrist who is the subject of the hearing is entitled to be present, to make submissions and to be represented; and

(c) if the hearing arises out of a complaint, the identity of the complainant is not to be published or broadcast and the complainant—

   (i) in the case of proceedings which have not been closed under paragraph (d), is entitled to be present; and

   (ii) if not called as a witness, may make submissions with the permission of the Board; and

(d) the proceedings are to be open to the public unless the panel determines that the proceedings should be closed because the
hearing is taking evidence of intimate, personal or financial matters and, if the panel has determined that the proceedings are closed, the panel may determine that the identity of any witness giving evidence in the proceedings is not to be published or broadcast.

48. **Findings and determinations of a formal hearing into conduct**

(1) After considering all the submissions made to a formal hearing into the professional conduct of a registered optometrist the panel may find that—

(a) the optometrist has, whether by act or omission, engaged in unprofessional conduct of a serious nature; or

(b) the optometrist has, whether by act or omission, engaged in unprofessional conduct which is not of a serious nature; or

(c) the optometrist has not engaged in unprofessional conduct.

(2) If the panel finds that the optometrist has, whether by act or omission, engaged in unprofessional conduct of a serious nature, the panel may make one or more of the following determinations—

(a) require the optometrist to undergo counselling;

(b) caution the optometrist;

(c) reprimand the optometrist;

(d) require the optometrist to undertake further education of the kind stated in the determination and to complete it within the period specified in the determination;
(e) impose conditions, limitations or restrictions on the registration of the optometrist;

(f) impose a fine on the optometrist of not more than $2000;

(g) alter or cancel any endorsement under section 11 of the registration of the optometrist;

(h) suspend the registration of the optometrist for the period specified in the determination;

(i) cancel the registration of the optometrist.

(3) If the panel finds under sub-section (1)(b) that the optometrist has, whether by act or omission, engaged in unprofessional conduct which is not of a serious nature, the panel may make any determination which a panel at an informal hearing is able to make upon making such a finding.

(4) The panel must not impose a fine where the conduct which is the subject of the finding has resulted in a fine being imposed by another tribunal or court of law.

(5) If the panel has made an order under sub-section (2)(a) or (d) and the optometrist has not complied with the order within the time specified in the order, the Board may suspend the optometrist's registration until the order is complied with.

49. Findings and determinations of a formal hearing into ability to practise

(1) After considering all the submissions made to a formal hearing into the ability to practise of a registered optometrist, the panel may find that—

(a) the ability of the optometrist to practise is affected because—
(i) of the physical or mental health of the optometrist; or
(ii) the optometrist has an incapacity; or
(iii) the optometrist is an alcoholic or drug-dependent person; or
(b) the ability of the optometrist is not affected.

(2) If the panel makes a finding under sub-section (1)(a), the panel may make one or more of the following determinations—
(a) to impose conditions, limitations or restrictions on the registration of the optometrist;
(b) to suspend the registration of the optometrist for the period and subject to the conditions, limitations and restrictions, if any, specified in the determination.

Division 4—General Provisions relating to Investigations

50. Procedure at formal and informal hearings

At a formal or informal hearing—
(a) subject to this Part, the procedure of a panel is in its discretion; and
(b) the proceedings must be conducted with as little formality and technicality as the requirements of this Act and the proper consideration of the matter permit; and
(c) a panel is not bound by rules of evidence but may inform itself in any way it thinks fit; and
(d) a panel is bound by the rules of natural justice.

51. Powers of panel conducting a formal hearing
Sections 14, 15, 16 and 21A of the **Evidence Act 1958** apply to a panel in the conduct of a formal hearing as if it were a Board or the Chairman of a Board appointed by the Governor in Council.

52. **Determinations**

(1) A determination made by a panel on a hearing comes into operation on its making or at any later time stated in the determination.

(2) A determination of a panel is to have effect as if it were a determination of the Board.

(3) If a fine is imposed by a panel it may be recovered by the Board as a debt due to the Board.

53. **Removal of suspension, condition, limitation or restriction**

(1) If the Board has suspended the registration of an optometrist until the completion of a hearing and, at the completion of the hearing, the panel determines that the suspension should be removed, the Board must remove the suspension.

(2) If a condition, limitation or restriction has been imposed on the registration of an optometrist and, at the completion of a hearing, the panel determines that the condition, limitation or restriction should be removed, the Board must remove that condition, limitation or restriction.

54. **Reasons for determinations of panel or Board**

(1) A panel must give reasons for a determination made under this Part to the optometrist who was the subject of the determination within 28 days after the making of the determination.

(2) A person affected by a determination of a panel may apply to the panel for the reasons for that determination.
(3) An application under sub-section (2) must be made within 45 days after the making of the determination and reasons must be given to the applicant within 45 days of receiving the application.

55. Notifications

(1) If a determination has been made by a panel—

(a) imposing conditions, limitations or restrictions on the registration of an optometrist; or

(b) suspending the registration of an optometrist; or

(c) cancelling the registration of an optometrist; or

(d) cancelling or altering the endorsement of the registration of the optometrist—

the Board must give notice of the determination—

(e) in the Government Gazette; and

(f) to the optometry registration authorities in all other States or Territories of the Commonwealth and in New Zealand; and

(g) to the Health Services Commissioner; and

(h) if the optometrist is an employee, to his or her employer; and

(i) if the Board has received a request for information about the person in respect of whom the determination has been made from an optometry registration authority outside Australia, that authority.

(2) Notice under sub-section (1) must be given as soon as possible after the determination has been made.
(3) No action for defamation lies against the Board or its members for giving a notice under this section.

(4) If a complaint has been made to the Board, the Board must notify the complainant—

(a) of whether or not a formal or informal hearing is to be conducted into the matter and, if so, of the time and place of the hearing and, in the case of a formal hearing, of the fact that the complainant's identity is not to be published or broadcast; and

(b) in the case of a formal or informal hearing, of whether or not the complainant has any right to make submissions at the hearing; and

(c) of the findings and determinations of any hearing arising from that complaint and the reasons for those findings and determinations, within 28 days of their having been made.

56. **Offence to disclose information identifying complainant**

A person must not publish or broadcast or cause to be published or broadcast any report of a formal hearing under this Part which contains information which would enable—

(a) the complainant to be identified; or

(b) if the panel has made a determination prohibiting the publication or broadcast of the identity of a witness, that witness to be identified—

unless the complainant or witness has, before publication or broadcast, consented to this.

Penalty: 50 penalty units for a natural person or 100 penalty units for a body corporate.
57. **Terms and conditions of appointment of panel members**

(1) A member of a panel, whether appointed by the Board or the Governor in Council, is appointed on the terms and conditions determined by the Board for that member.

(2) A member of a panel, other than a member who is an officer or employee of the public service within the meaning of the *Public Sector Management Act 1992*, is entitled to receive the fees that are fixed from time to time by the Governor in Council for members of panels.

(3) A member of a panel is entitled to receive the allowances that are fixed from time to time by the Governor in Council.

(4) In fixing fees under sub-section (2), the Governor in Council may fix different fees for different classes of cases.

(5) The Governor in Council may fix fees and allowances by reference to the regulations or guidelines made under the *Public Sector Management Act 1992*. 
PART 4—REVIEW BY ADMINISTRATIVE APPEALS TRIBUNAL

58. Review by AAT

(1) Without limiting section 27 of the Administrative Appeals Tribunal Act 1984 a person may apply to the Administrative Appeals Tribunal for review of—

(a) a decision to refuse a person's application for registration or renewal of registration; or

(b) a decision to impose conditions, limitations or restrictions on a person's registration; or

(c) a decision of the Board to suspend the registration of a person, if the Board has not instituted an investigation into the professional conduct or ability to practise of that person within a reasonable time of having suspended that registration; or

(d) a finding or determination made at a formal hearing under Part 3.

(2) The application must be made within 28 days of the date on which the Board gives notice of the decision or determination to the person concerned.

(3) If a provision of this section is inconsistent with a provision of the Administrative Appeals Tribunal Act 1984, the provision of this section prevails.

59. Notification

If a decision or determination has been reviewed by the Administrative Appeals Tribunal, the Board must notify any person who was notified of the
original decision or determination of any change to that decision or determination by the Administrative Appeals Tribunal.
PART 5—OFFENCES

60. Unregistered persons

(1) A person must not practise optometry unless the person is registered under this Act.

Penalty: 100 penalty units.

(2) Sub-section (1) does not apply to a person who is registered as an orthoptist with the Orthoptic Association of Australia Incorporated or the sub-committee of the Royal Australian College of Ophthalmologists known as the Orthoptic Board of Australia if that person is—

(a) measuring refraction and prescribing lenses or prisms for the aid of the power of vision that are not in the form of contact lenses; and

(b) doing so at the request of, or on the referral of, a registered optometrist or a registered medical practitioner who practises as an ophthalmologist where the request or referral has been made within 6 months before that measurement or prescription.

61. Claims by persons as to registration

(1) A person who is not a registered optometrist must not—

(a) take or use the title of registered optometrist or any other title calculated to induce a belief that the person is registered under this Act; or

(b) claim to be registered under this Act or hold himself or herself out as being registered under this Act; or
(c) carry out any act which is required to be carried out by a registered optometrist by or under an Act; or

(d) claim to be qualified to practise as an optometrist.

Penalty: 50 penalty units.

(2) A registered optometrist whose registration is specific must not—

(a) take or use any title calculated to induce a belief that the optometrist's registration is not specific; or

(b) claim to have or hold himself or herself out as having general registration.

Penalty: 50 penalty units.

(3) A registered optometrist whose registration is subject to a condition, limitation or restriction must not—

(a) take or use any title calculated to induce a belief that the optometrist's registration is not subject to a condition, limitation or restriction; or

(b) claim to have or hold himself or herself out as having a registration which is not subject to any condition, limitation or restriction.

Penalty: 50 penalty units.

(4) A person must not hold out another person as being registered under this Act, if the person knows or ought reasonably to know that the other person is not so registered.

Penalty: 50 penalty units.

(5) If a body corporate contravenes sub-section (1), any person who is concerned in or takes part in the
management of that body corporate who was, in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the commission of the offence also commits an offence under sub-section (1) and is liable for the penalty applicable to a natural person for that offence.

62. **Fraud, forgery etc.**

A person must not—

(a) fraudulently or by false representation or declaration (either orally or in writing) obtain registration under this Act; or

(b) fraudulently or by false representation (either orally or in writing) procure any person to be registered under this Act; or

(c) forge, counterfeit or alter any certificate of registration under this Act or any degree, diploma or other evidence of qualifications for registration under this Act; or

(d) aid in the commission of an offence under paragraph (a), (b) or (c).

Penalty: 100 penalty units or imprisonment for a period of 2 years or both.

63. **Advertising**

(1) A person must not advertise an optometry practice or optometry services in a manner which—

(a) is or is intended to be false, misleading or deceptive; or

(b) offers a discount, gift or other inducement to attract patients to an optometrist or optometry practice unless the advertisement also sets out the terms and conditions of that offer; or
(c) refers to uses or quotes from testimonials or purported testimonials; or

(d) unfavourably contrasts optometry services provided by an optometrist or optometry practice with services provided by another optometrist or optometry practice.

Penalty: 50 penalty units for a natural person or 100 penalty units for a body corporate.

(2) If a body corporate contravenes sub-section (1), any person who is concerned in or takes part in the management of that body corporate who was, in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the commission of the offence also commits an offence under sub-section (1) and is liable for the penalty applicable to a natural person for that offence.

(3) A person who, in good faith, publishes or prints an advertisement which contravenes sub-section (1) on behalf of another person, is not guilty of an offence under that sub-section.

64. Exemptions

Nothing in section 60 or 61 applies in relation to an optometry practice conducted by or at the premises of—

(a) The University of Melbourne;

(b) any university, school or other institution or organisation conducting instruction or research in optometry;

(c) any public or denominational hospital or multi purpose service within the meaning of the Health Services Act 1988.
PART 6—ADMINISTRATION

65. Establishment of Board

(1) There is established a Board to be called the Optometrists Registration Board of Victoria.

(2) The Board—
   (a) is a body corporate with perpetual succession; and
   (b) has a common seal; and
   (c) may sue and be sued in its corporate name; and
   (d) may acquire, hold and dispose of real and personal property; and
   (e) may do and suffer all acts and things that a body corporate may, by law, do and suffer.

(3) The common seal must be kept as directed by the Board and must not be used except as authorised by the Board.

(4) All courts must take judicial notice of the seal of the Board on a document and, until the contrary is proved, must presume that the document was properly sealed.

66. Powers, functions and consultation requirements

(1) The Board has the following functions—
   (a) to register persons who comply with the requirements of this Act as to registration so that they may practise optometry in Victoria;
   (b) to approve courses which provide qualifications for registration and practice as optometrists;
(c) to regulate the standards of practice of optometry;

(d) to investigate the professional conduct or fitness to practise of registered optometrists and impose sanctions where necessary;

(e) to issue guidelines about appropriate standards of optometry practice;

(f) to advise the Minister on any matters relating to its functions;

(g) when so requested by the Minister, give to the Minister any information reasonably required by the Minister;

(h) any other functions conferred on the Board by this Act.

(2) The Board has all the powers necessary to enable it to perform its functions.

(3) The Board must consult with the Minister and have regard to the Minister's advice in carrying out its functions and exercising its powers.

67. Membership of the Board

(1) The Board consists of 8 members nominated by the Minister and appointed by the Governor in Council.

(2) Of the persons appointed to the Board—
   (a) 5 must be registered optometrists; and
   (b) one must be a lawyer; and
   (c) 2 must be persons who are not optometrists.

68. Terms of office

(1) A member of the Board holds office for not more than 3 years from the date of his or her appointment.
(2) A member of the Board is eligible for reappointment.

(3) The Public Sector Management Act 1992 (except Part 9 or in accordance with Part 8) does not apply to a member in respect of the office of member.

69. Resignation and removal

(1) A member of the Board ceases to be a member if he or she is absent, without leave first being granted by the Board, from 3 consecutive meetings of which reasonable notice has been given to that member, either personally or by post.

(2) A member of the Board may resign the office of member by writing signed by the member and addressed to the Governor in Council.

(3) The Governor in Council may at any time remove a member of the Board from office.

(4) If a member of the Board dies, resigns or is removed from office, the Governor in Council may, in accordance with this Act, on the recommendation of the Minister, fill the vacant office.

(5) A member appointed under sub-section (4) holds office for the rest of the term of appointment of the member whose place he or she fills.

70. President and Deputy President

(1) The Governor in Council may appoint members of the Board who are registered optometrists to be President and Deputy President of the Board.

(2) A person appointed to an office under sub-section (1) holds office for the term specified in his or her instrument of appointment and is eligible for reappointment.
(3) A person appointed to an office under sub-section (1) may resign that office by writing signed by the person and addressed to the Governor in Council.

(4) The Governor in Council may at any time remove a person appointed under sub-section (1) from office.

(5) A person appointed to an office under sub-section (1) ceases to hold that office on ceasing to be a member of the Board.

71. Acting member

(1) If a member of the Board is unable to perform the duties or functions of the office, the Governor in Council may appoint a person qualified to be appointed as that member to act as the member during the period of inability.

(2) The Governor in Council—
   (a) subject to this Act, may determine the terms and conditions of appointment of an acting member; and
   (b) may at any time terminate the appointment.

(3) While the appointment of an acting member remains in force, the acting member has and may exercise all the powers and perform all the duties and functions of the member.

72. Payment of members

(1) A member or acting member of the Board, other than a member who is an officer or employee of the public service within the meaning of the Public Sector Management Act 1992, is entitled to receive the fees that are fixed from time to time by the Governor in Council for that member.
(2) Each member or acting member of the Board is entitled to receive the allowances that are fixed from time to time by the Governor in Council.

(3) The Governor in Council may fix these fees or allowances by reference to regulations or guidelines made under the Public Sector Management Act 1992.

73. Procedure of Board

(1) The President or, in the absence of the President, the Deputy President must preside at a meeting of the Board at which he or she is present.

(2) If neither the President nor Deputy President are present at a meeting the members present may elect a member to preside at the meeting.

(3) The person presiding at a meeting has a deliberative vote and a second or casting vote.

(4) A majority of the members of the Board currently holding office constitutes a quorum.

(5) Subject to this Act, the Board may regulate its own proceedings.

74. Member's interests

(1) A member who has a pecuniary or other interest in any matter in which the Board is concerned must—

(a) if the member is present at a meeting of the Board at which the matter is to be considered, disclose the nature of the interest immediately before the consideration of that matter; or

(b) if the member is aware that the matter is to be considered at a meeting of the Board at which the member does not intend to be present, disclose the nature of the interest to
the President or Deputy President of the Board before the meeting is held.

(2) The member—

(a) may take part in the discussion in the meeting; and

(b) must leave the meeting while any vote is taken on a question relating to the matter.

75. **Resolutions without meetings**

(1) If—

(a) the Board has taken reasonable steps to give notice to each member setting out the terms of a proposed resolution; and

(b) a majority of the members for the time being sign a document containing a statement that they are in favour of the resolution in the terms set out in the document—

a resolution in those terms is deemed to have been passed at a meeting of the Board held on the day on which the document is signed or, if the members referred to in paragraph (b) do not sign it on the same day, on the day on which the last of those members signs the document.

(2) If a resolution is, under subsection (1), deemed to have been passed at a meeting of the Board, each member must as soon as practicable be advised of the matter and given a copy of the resolution.

(3) For the purposes of subsection (1), 2 or more separate documents containing a statement in identical terms, each of which is signed by one or more members, are deemed to constitute one document.

(4) The majority of members referred to in subsection (1)(b) must not include a member who,
because of section 74, is not entitled to vote on the resolution.

(5) This section does not apply to any resolution of the Board relating to a matter being considered under Part 3.

76. Approved methods of communication for Board

(1) If not less than two thirds of the members of the Board for the time being holding office so agree, a meeting of the Board may be held by means of a method of communication, or by means of a combination of methods of communication, approved by the President of the Board for the purposes of that meeting.

(2) For the purposes of this Part, a member of the Board who participates in a meeting held as permitted by sub-section (1) is present at the meeting even if he or she is not physically present at the same place as another member participating in the meeting.

(3) This section—

(a) applies to a meeting or a part of a meeting; and

(b) does not apply to a meeting conducted for the purposes of Part 3.

77. Effect of vacancy or defect

An act or decision of the Board is not invalid only because—

(a) of a vacancy in its membership; or

(b) of a defect or irregularity in the appointment of any of its members; or

(c) in the case of an acting member, the occasion for that member so acting had not arisen or had ceased.
78. Immunity

(1) A member of the Board or person responsible for keeping the register is not personally liable for anything done or omitted to be done in good faith—

(a) in the exercise of a power or the discharge of a duty under this Act or the regulations; or

(b) in the reasonable belief that the act or omission was in the exercise of a power or the discharge of a duty under this Act or the regulations.

(2) Any liability resulting from an act or omission that would, but for sub-section (1), attach to a member of the Board or the person responsible for keeping the register attaches instead to the Board.

79. Staff

The Board may employ a person to be responsible for maintaining the register and any other persons that are necessary for the purposes of administering this Act.

80. Delegation

The Board may, in writing, delegate to—

(a) a member of the Board; or

(b) the person responsible for maintaining the register or any other member of the staff of the Board—

its powers and functions under this Act, other than—

(c) the power to refuse to grant or refuse to renew registration; or
(d) the power to impose or to amend, vary or revoke conditions, limitations or restrictions on registration; or

(e) the power to conduct any hearing or to make any determination under Part 2 or Part 3; or

(f) this power to delegate.
PART 7—REPORTING AND FINANCIAL PROVISIONS

81. Optometrists Registration Board Fund

(1) The Board must establish and keep an Optometrists Registration Board Fund.

(2) All fees, fines and penalties paid or recovered by the Board under this Act must be paid into the Fund.

(3) The Board must pay any other money received by it into the Fund, including income from the investments of the Fund.

(4) Out of the Fund, the Board must pay—

(a) the expenses incurred by it in carrying out its functions, powers and duties; and

(b) any other expenses incurred in the administration of this Act; and

(c) any payments to be made to members of the Board under this Act and any payments to be made to other persons under this Act; and

(d) any other payments recommended by the Board and approved by the Minister.

82. Investment powers

The Board may invest money credited to the Fund that it does not immediately require—

(a) in any manner in which money may be invested under the Trustee Act 1958; or

(b) in any other manner that the Minister approves.

83. Repayment of advances

(1) The Board must pay into the public account the amounts that the Minister administering section...
14 of the Financial Management Act 1994, in consultation with the Treasurer, determines are required to repay advances from the Public Account for the establishment and operation of the Board, including costs incurred before the establishment of the Board to ensure that, when established, it can operate in a fully effective way.

(2) Payments under sub-section (1) must be made in accordance with any other terms and conditions from time to time determined by the Minister administering section 14 of the Financial Management Act 1994 in consultation with the Treasurer.

(3) The Board must, as and when directed to do so by the Minister administering section 14 of the Financial Management Act 1994, provide a plan for the repayment of advances referred to in sub-section (1).

(4) The Board must, at least once in each period of 6 months after the commencement of this section, and at any other time that the Minister administering section 14 of the Financial Management Act 1994 directs it to do so, report to that Minister in writing on its progress in making payments under sub-section (1).
PART 8—ENFORCEMENT AND SUPPLEMENTARY POWERS

84. Proceedings for offences

(1) The person responsible for maintaining the register or any other officer authorised by the Board may take proceedings under this Act in the name of the Board.

(2) Any prosecution instituted in the name of the Board must, in the absence of evidence to the contrary, be taken to have been instituted by the Board.

85. Identification

(1) The Board must issue an identification card to each person appointed by the Board to apply for and execute search warrants for the purposes of this Act.

(2) A person appointed by the Board must, in the course of performing his or her functions under this Act, produce his or her identification card to any person who requests its production.

86. Powers of entry with warrant

(1) A person appointed for that purpose by the Board may apply to a magistrate for the issue of a search warrant in relation to particular premises if that person believes, on reasonable grounds—

(a) that there is or has been a contravention of this Act or the regulations on the premises; or

(b) that entry into or onto the premises is necessary for the purpose of investigating a complaint made under this Act which, if substantiated, may provide grounds for the
suspension or cancellation of registration of a registered optometrist.

(2) If a magistrate is satisfied by evidence on oath, whether oral or by affidavit, that there are reasonable grounds for suspecting that there is on the premises a particular thing that may be evidence of the commission of an offence against this Act or the regulations or of grounds for the suspension or cancellation of the registration of an optometrist, the magistrate may issue a search warrant authorising any person named in the warrant—

(a) to enter the premises, or the part of the premises, named or described in the warrant; and

(b) to search for and seize a thing named or described in the warrant; and

(c) to bring the thing before the Court so that the matter may be dealt with according to law.

(3) In addition to any other requirement, a search warrant issued for the purposes of this section must state—

(a) the offence or grounds of suspension or cancellation suspected; and

(b) the premises to be searched; and

(c) a description of the thing to be searched for; and

(d) any conditions to which the warrant is subject; and

(e) whether entry is authorised to be made at any time or during stated hours; and
(f) a day, not later than 7 days after the issue of the warrant, on which the warrant ceases to have effect.

(4) A search warrant must be issued in accordance with the Magistrates' Courts Act 1989 and in a form prescribed under that Act.

(5) The rules to be observed with respect to search warrants mentioned in the Magistrates' Courts Act 1989 extend and apply to warrants under this section.

87. Announcement before entry

(1) Immediately before executing a search warrant, a person named in the warrant must announce that he or she is authorised by the warrant to enter the premises.

(2) The person need not comply with sub-section (1) if he or she believes on reasonable grounds that immediate entry to the premises is required to ensure the safety of any person or that the effective execution of the search warrant is not frustrated.

88. Copy of warrant to be given to occupier

If the occupier or another person who apparently represents the occupier is present at premises when a search warrant is being executed, the person or persons named in the warrant must—

(a) identify themselves to that person by producing their identification card for inspection by that person; and

(b) give to that person a copy of the execution copy of the warrant.

89. Copies or receipts to be given

(1) If a person seizes—
(a) a document, disk or tape or other thing that can be readily copied; or

(b) a storage device the information in which can be readily copied—

under a warrant the person, on request by the occupier, must give a copy of the thing or information to the occupier as soon as practicable after the seizure.

(2) If a person seizes a thing under a warrant and has not provided a copy of the thing or information under sub-section (1) the person must provide a receipt for that thing as soon as practicable after the seizure.

90. Powers of Board in relation to fees

(1) In the case of any fee which the Board is empowered to fix under this Act—

(a) the Board must fix the fee for a period of 12 months and may amend or vary the fee at the end of that period; and

(b) the Board may fix a different fee for a different case and may allow for the reduction, waiver or refund, in whole or in part, of any fee; and

(c) the Board must publish any fee it has fixed in a newspaper circulating generally throughout Victoria and in the Government Gazette.

(2) In fixing fees under this Act the Board is entitled to ensure that the amount of money collected in fees under this Act is sufficient to cover the cost to the Board of administering this Act.
PART 9—REGULATIONS

91. Supreme Court—Limitation of jurisdiction

It is the intention of this section to alter or vary section 85 of the Constitution Act 1975 to the extent necessary to prevent the bringing before the Supreme Court of actions of the kind referred to in section 55.

92. Regulations

(1) The Governor in Council may make regulations for or with respect to—

(a) registration, renewal of registration, endorsement of registration and applications for registration, renewal of registration and endorsement of registration;

(b) the register, including particulars to be noted on the register and the manner of keeping the register;

(c) forms for the purposes of this Act;

(d) time limits for the purposes of this Act;

(e) penalties, not exceeding 10 penalty units, for breaches of the regulations;

(f) any matter or thing required or permitted to be prescribed or necessary to be prescribed to give effect to this Act.

(2) The regulations—

(a) may be of general or limited application; and

(b) may differ according to differences in time, place or circumstance; and

(c) may apply, adopt or incorporate any matter contained in any document, code, standard, rule, specification or method, formulated,
issued, prescribed or published by any person whether—

(i) wholly or partially or as amended by the regulations; or

(ii) as formulated, issued, prescribed or published at the time the regulations are made or at any time before then; or

(iii) as formulated, issued, prescribed or published from time to time; and

(d) may leave anything for the approval or satisfaction of a specified person.
PART 10—SAVINGS, TRANSITIONAL AND AMENDMENTS

Division 1—Savings and Transitional

93. Definitions

In this Part—

"new Board" means the Optometrists Registration Board of Victoria established under this Act;

"old Act" means the Optometrists Registration Act 1958 as in force immediately before its repeal;

"old Board" means the Optometrists Registration Board of Victoria established under the old Act.

94. Repeal

The Optometrists Registration Act 1958 is repealed.

95. Board succeeds old Board

(1) On the commencement of this section—

(a) the old Board is abolished and its members go out of office; and

(b) any rights, assets, liabilities and obligations of the old Board, immediately before its abolition, become rights, assets, liabilities and obligations of the new Board; and

(c) the new Board is substituted for the old Board as a party in any proceeding, contract, agreement or arrangement commenced or made by, against or in relation to the old Board; and
(d) the new Board may continue and complete any other continuing matter or thing commenced by, against or in relation to the old Board.

(2) On and from the commencement of this section, the assets that become assets of the new Board under sub-section (1)—

(a) if they are moneys or amounts standing to the credit of any fund or account of the old Board, must be taken to form part of the Optometrists Registration Board Fund; and

(b) if they are assets in which the funds of the old Board have been invested, must be taken to be investments of the Optometrists Registration Board Fund.

(3) A reference in any Act (other than this Act) or in any subordinate instrument within the meaning of the Interpretation of Legislation Act 1984 to the old Board must, on and after the commencement of this section, be construed as a reference to the new Board established under this Act unless the context otherwise requires.

96. Proceedings before the old Board

(1) If an investigation or inquiry into the activities or physical or mental health of a registered optometrist under the old Act has commenced but not been completed before the commencement of Part 3 of this Act—

(a) that investigation or inquiry may be completed on and after that date; and

(b) any appeal or other further proceedings which might have been taken in relation that investigation or inquiry under the old Act might be taken on and after that date—
by the old Board as if this Act had not been enacted.

(2) The new Board must give effect to a decision made on an inquiry, investigation or appeal completed by the old Board as if it were a decision under this Act.

97. Application of this Act to conduct occurring before commencement of this Act

(1) In the case of activities of a person who is deemed by section 98 to be a registered optometrist under this Act which occurred before the commencement of Part 3 and in respect of which no proceedings have been commenced under the old Act, this Act applies to the extent that there was power to conduct an inquiry under the old Act into those activities.

(2) Any determination or outcome of a hearing into those activities must be one which would have been available as a finding or decision in an inquiry by the Board under the old Act.

(3) This section does not apply to activities which are the subject of proceedings to which section 96 applies.

98. Existing registrations

(1) A person who was registered as an optometrist under the old Act immediately before the commencement of Part 2 of this Act is deemed to have general registration under this Act.

(2) If a person is deemed to be registered under this section and the registration of that person under the old Act, immediately before the commencement of this Act, was suspended, the registration of that person under this Act is deemed to be suspended for the remainder of the
period for which that person’s registration would have been suspended under the old Act.

(3) If a person is deemed to be registered under this section and the registration of that person under the old Act, immediately before the commencement of this Act, was subject to conditions, limitations or restrictions, the registration of that person under this Act is deemed to be subject to the same conditions, limitations or restrictions as those to which the registration under the old Act was subject.

(4) The registration of a person who is deemed to be registered under this section expires (unless sooner cancelled) at the end of the period for which the person was registered under the old Act.

(5) A reference in any Act (other than this Act) or a subordinate instrument within the meaning of the Interpretation of Legislation Act 1984 to an optometrist registered under the old Act who is deemed by sub-section (1) to be registered under this Act must, on and after the commencement of this section, be construed as a reference to an optometrist registered under this Act unless the context otherwise requires.

99. Preparation of annual report

The new Board shall prepare the annual reports that the old Board would have been required to prepare under the Financial Management Act 1994 in respect of any part of the financial year ending on 30 June 1997 during which the old Board operated.
Division 2—Consequential Amendments

100. Amendment of Drugs, Poisons and Controlled Substances Act 1981

(1) In section 4(1) of the Drugs, Poisons and Controlled Substances Act 1981 after the definition of "registered medical practitioner" insert—

"registered optometrist" means a registered optometrist within the meaning of the Optometrists Registration Act 1996;

(2) In section 13(1) of the Drugs, Poisons and Controlled Substances Act 1981, after paragraph (b) insert—

"; and

(c) any registered optometrist whose registration is endorsed under section 11 of the Optometrists Registration Act 1996 is hereby authorised to obtain and have in his or her possession and to use, sell or supply any Schedule 4 poison specified in the endorsement in the lawful practice of his or her profession as a registered optometrist.".

(3) In section 13(2) of the Drugs, Poisons and Controlled Substances Act 1981, after "(1)" insert "(a) or (b)".

(4) After section 13(2) of the Drugs, Poisons and Controlled Substances Act 1981 insert—

"(2A) Sub-section (1)(c) shall not be construed as authorising a registered optometrist referred to in that paragraph to sell or supply any Schedule 4 poison by retail in an open shop unless the optometrist is licensed under this Act to do so."
(2B) Sub-section (1)(c) applies, despite anything to the contrary in the Table to section 12A or the heading to Schedule number 4 contained in the Poisons List.

(5) In section 36B(1)(b) of the Drugs, Poisons and Controlled Substances Act 1981 after "medical practitioner," insert "registered optometrist,"

(6) In section 129 of the Drugs, Poisons and Controlled Substances Act 1981—
   (a) in sub-section (1)(a) after "practitioners" insert ", registered optometrists,"
   (b) in sub-section (1)(aa) after "practitioners," insert "registered optometrists,"
   (c) in sub-section (2) after "practitioner," insert "registered optometrist,"

(7) In section 132(q) of the Drugs, Poisons and Controlled Substances Act 1981 after "practitioner," insert "registered optometrist,"

101. Amendment of Health Services (Conciliation and Review) Act 1987

In the Schedule to the Health Services (Conciliation and Review) Act 1987, for "Optometrists Registration Board" substitute "Optometrists Registration Board of Victoria".
NOTES

† Minister's second reading speech—
Legislative Assembly: 31 October 1996
Legislative Council: 3 December 1996

The long title for the Bill for this Act was "to make further provision for the registration of optometrists, the investigation into the professional conduct or fitness to practise of registered optometrists, to regulate the advertising of optometry services, to establish the Optometrists Registration Board of Victoria and the Optometrists Registration Board Fund of Victoria, to repeal the Optometrists Registration Act 1958 and to make consequential amendments to other Acts and for other purposes."

Constitution Act 1975:
Section 85(5) statement:
Legislative Assembly: 31 October 1996
Legislative Council: 3 December 1996
Absolute majorities:
Legislative Assembly: 21 November 1996
Legislative Council: 3 December 1996