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## SPECIAL SUPPLEMENT



New South Wales

### Proclamation

under the

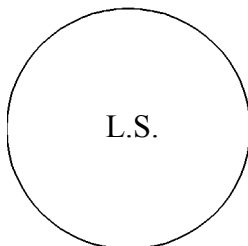
Optometrists Act 2002 No 30

MARIE BASHIR, Governor

I, Professor Marie Bashir AC, Governor of the State of New South Wales, with the advice of the Executive Council, and in pursuance of section 2 of the *Optometrists Act 2002*, do, by this my Proclamation, appoint 16 June 2004 as the day on which the uncommenced provisions of that Act (other than section 23) commence.

Signed and sealed at Sydney, this 16th day of June 2004.

By Her Excellency's Command,



MORRIS IEMMA, M.P.,  
Minister for Health

GOD SAVE THE QUEEN!

#### Explanatory note

The object of this Proclamation is to commence the remaining provisions of the *Optometrists Act 2002* with the exception of section 23 (Restrictions on carrying on business of optometry).



## Optometrists Regulation 2004

under the

Optometrists Act 2002

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Optometrists Act 2002*.

MORRIS IEMMA, M.P.,  
Minister for Health

### Explanatory note

The object of this Regulation is to prescribe the following matters under the *Optometrists Act 2002*:

- (a) that the use of the title of “contact lens practitioner” is a way in which a person is taken to have indicated that the person is qualified to practise optometry or that the person practises optometry,
- (b) the drugs that a registered optometrist may use and the purposes for which they may be used,
- (c) the offences excluded from the requirements to notify the Optometrists Registration Board of any convictions, criminal findings and charges in relation to a registered optometrist,
- (d) the notification procedure if a registered optometrist becomes mentally incapacitated,
- (e) a prohibition on certain types of advertising, including advertising that is false, misleading or deceptive,
- (f) the procedure of the Board,
- (g) that the Registrar of the Board is not required to verify a complaint by statutory declaration,
- (h) the procedure for an appeal on a point of law from certain actions of the Board,
- (i) the fee for the inspection of the Register and for recording additional information in the Register,

Optometrists Regulation 2004

Explanatory note

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- (j) the qualifications of registered optometrists who can be appointed to the Optometrists Tribunal by the Board.

This Regulation is made under the *Optometrists Act 2002*, including section 136 (the general regulation-making power) and the sections referred to in this Regulation.

This Regulation comprises matters of a machinery nature and matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

Optometrists Regulation 2004

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## Contents

	Page
<b>Part 1 Preliminary</b>	
1 Name of Regulation	4
2 Commencement	4
3 Definition	4
<b>Part 2 Practice of optometry</b>	
4 Use of certain titles	5
5 Authority for use of prescribed drugs by optometrists	5
6 Excluded offences	5
7 Notice of mental incapacity of registered optometrist	6
8 Advertising of optometry services	7
<b>Part 3 Procedure of Board</b>	
9 Proceedings of Board at ordinary meetings	8
10 Special and urgent meetings	8
11 Lack of quorum	8
12 Transaction of business by telephone	8
<b>Part 4 Miscellaneous</b>	
13 Complaint by Registrar not to require verification	9
14 Appeal on point of law	9
15 Prescribed fees	9
16 Qualification of optometrist sitting on Tribunal	9
17 Repeal	9
18 Continuation of former provisions relating to restrictions on carrying on business of optometry	10

Clause 1            Optometrists Regulation 2004

Part 1             Preliminary

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## **Optometrists Regulation 2004**

under the

Optometrists Act 2002

### **Part 1        Preliminary**

#### **1    Name of Regulation**

This Regulation is the *Optometrists Regulation 2004*.

#### **2    Commencement**

This Regulation commences on 16 June 2004.

#### **3    Definition**

(1) In this Regulation:

*the Act* means the *Optometrists Act 2002*.

(2) Notes in the text of this Regulation do not form part of this Regulation.

Optometrists Regulation 2004

Clause 4

Practice of optometry

Part 2

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## Part 2 Practice of optometry

### 4 Use of certain titles

For the purposes of section 7 (2) (c) of the Act, the use of the title of “contact lens practitioner” is prescribed as a way in which a person is taken to have indicated that the person is qualified to practise optometry or that the person practises optometry.

### 5 Authority for use of prescribed drugs by optometrists

For the purposes of section 21 (5) of the Act:

- (a) cycloplegics are prescribed for the purpose of paralysing the accommodation of the eye, and
- (b) local anaesthetics are prescribed for the purpose of tonometry or for fitting contact lenses, and
- (c) mydriatics are prescribed for the purpose of enlarging the pupil of the eye, and
- (d) miotics are prescribed for the purpose of instilling into the eye after a mydriatic has been used.

### 6 Excluded offences

- (1) Sections 24 (1) (a), 25 (1) (a) and 26 of the Act do not apply in respect of an excluded offence.
- (2) An excluded offence is not relevant for the purposes of clause 4 of Schedule 1 to the Act.
- (3) In this clause, *excluded offence* means any offence relating to the parking of motor vehicles or any offence under the road transport legislation (within the meaning of the *Road Transport (General) Act 1999*) except for the following offences:
  - (a) an offence under section 42 of the *Road Transport (Safety and Traffic Management) Act 1999* relating to driving a motor vehicle upon a public street negligently if the registered optometrist is, by way of penalty, sentenced to imprisonment or fined a sum of not less than \$200,
  - (b) an offence under section 42 of the *Road Transport (Safety and Traffic Management) Act 1999* relating to driving a motor vehicle on a road or road related area, furiously or recklessly or at a speed or in a manner which is dangerous to the public,

Clause 7            Optometrists Regulation 2004

Part 2             Practice of optometry

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- (c) any offence under section 19 (2) of the *Road Transport (General) Act 1999* (which relates to refusing to produce a driver licence, or to state name and home address, when required or stating a false name and home address),
- (d) any offence under section 12 (1) of the *Road Transport (Safety and Traffic Management) Act 1999* (which relates to driving etc while under the influence of alcohol or any other drug),
- (e) any offence under section 25A (1), (2) or (3) of the *Road Transport (Driver Licensing) Act 1998* (which relates to driving while unlicensed),
- (f) any offence under section 70 of the *Road Transport (Safety and Traffic Management) Act 1999* (which relates to failing to stop after an accident),
- (g) any offence under section 9 of the *Road Transport (Safety and Traffic Management) Act 1999* (which relates to the presence of the prescribed concentration of alcohol in a person's blood),
- (h) any offence under section 43 of the *Road Transport (Safety and Traffic Management) Act 1999* (which relates to menacing driving),
- (i) any other offence under the road transport legislation if the court orders the disqualification of the registered optometrist from holding a driver licence.

#### **7 Notice of mental incapacity of registered optometrist**

- (1) For the purposes of section 27 of the Act, the person required to cause notice of mental incapacity to be given to the Registrar is:
  - (a) in the case of a registered optometrist who is a mentally incapacitated person and becomes a patient at an institution because of that incapacity—the medical superintendent of the institution, or
  - (b) in the case of a registered optometrist who is a mentally incapacitated person because of being a protected person under the *Protected Estates Act 1983*—the Protective Commissioner.
- (2) Notice for the purposes of section 27 of the Act is to be given by telephone within 1 day, and by post within 7 days, after the registered optometrist is admitted to the institution or becomes a protected person, and is to specify the following:

Optometrists Regulation 2004

Clause 8

Practice of optometry

Part 2

- 
- (a) the name and residential address of the optometrist,
  - (b) the date on which the optometrist was admitted to the institution at which the optometrist is a patient or became a protected person.
- (3) In this clause:

*patient* means a person to whom medical treatment or other medical services are provided.

### 8 Advertising of optometry services

A registered optometrist or any other person must not advertise optometry services in a manner:

- (a) that is false, misleading or deceptive, or
- (b) that creates an unjustified expectation of beneficial treatment, or
- (c) that promotes the unnecessary or inappropriate use of the services of a registered optometrist.

Maximum penalty: 10 penalty units.

**Note.** The word *person* is defined in section 21 of the *Interpretation Act 1987* to include an individual, a corporation or a body corporate or politic.



Clause 9            Optometrists Regulation 2004

Part 3             Procedure of Board

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## **Part 3            Procedure of Board**

### **9    Proceedings of Board at ordinary meetings**

- (1) Unless otherwise determined by the Board, a meeting of the Board is to be held each month.
- (2) However, at least 8 meetings of the Board must be held during any period of 12 months.
- (3) The Registrar must give each member of the Board at least 3 days' notice in writing of the time and place of a meeting, together with a copy of the agenda for the meeting.

### **10   Special and urgent meetings**

- (1) The President or any 3 members of the Board may, by notice in writing to the Registrar, call a special meeting of the Board, and any such special meeting is to be held within 7 days after the Registrar receives the notice.
- (2) The President may, by notice in writing to the Registrar, call an urgent meeting of the Board for any purpose, and any such urgent meeting is to be held within 3 days after the Registrar receives the notice.
- (3) The Registrar must give each member of the Board at least 24 hours' notice in writing of the time and place of any special or urgent meeting.

### **11   Lack of quorum**

If at the expiration of 30 minutes after the time appointed for any meeting of the Board a quorum is not present, the meeting and all business stand adjourned to the next meeting or to such other date as may be fixed by the members of the Board present.

### **12   Transaction of business by telephone**

- (1) The Board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (2) For the purposes of a meeting held in accordance with this clause, the President and each member of the Board have the same voting rights as they have at an ordinary meeting of the Board.

Optometrists Regulation 2004

Clause 13

Miscellaneous

Part 4

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## **Part 4      Miscellaneous**

### **13    Complaint by Registrar not to require verification**

For the purposes of section 34 (2) (g) of the Act, the Registrar is prescribed.

### **14    Appeal on point of law**

An appeal referred to in section 81 of the Act is to be made:

- (a) by causing a notice of appeal, specifying the grounds on which the appeal is made, to be given to the Chairperson (or, if a Deputy Chairperson is nominated under section 81 (1) of the Act, to the Deputy Chairperson so nominated), and
- (b) by causing a copy of the notice of appeal to be given to each other party to the proceedings from which the appeal has arisen.

### **15    Prescribed fees**

- (1) The fee prescribed for the inspection of the Register under clause 21 (4) of Schedule 1 to the Act is \$20.
- (2) The fee prescribed for recording additional information in the Register under clause 22 (3) of Schedule 1 to the Act is:
  - (a) \$50—if the information is or includes a specialist title, or
  - (b) \$20—for any other information.

### **16    Qualification of optometrist sitting on Tribunal**

For the purposes of section 105 (3) (b) of the Act, the prescribed qualification for a registered optometrist appointed by the Board to sit on the Tribunal is 7 years standing as a registered optometrist (which may include time as an optometrist registered under the *Optometrists Act 1930*).

### **17    Repeal**

The *Optometrists Transitional Regulation 2003* is repealed.

Clause 18      Optometrists Regulation 2004

Part 4          Miscellaneous

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**18 Continuation of former provisions relating to restrictions on carrying on business of optometry**

- (1) In this clause:  
*the former Act* means the *Optometrists Act 1930*.  
*the new Act* means the *Optometrists Act 2002*.
- (2) Despite the repeal of the former Act by section 138 of the new Act:  
(a) section 35 of the former Act continues to have effect as if it formed part of the new Act, and  
(b) any approval or permission given by the Minister under that section (and in force as at the commencement of this Regulation) continues to have effect.
- (3) This clause ceases to have effect on the commencement of section 23 of the new Act.

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