



Australian Capital Territory

Optometrists Legislation Amendment Act 2005

A2005-9

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Australian Capital Territory

Optometrists Legislation Amendment Act 2005

A2005-9

An Act to amend the *Optometrists Act 1956*, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 Name of Act

This Act is the *Optometrists Legislation Amendment Act 2005*.

2 Commencement

This Act commences on a day fixed by the Minister by written notice.

Note 1 The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

Note 3 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

3 Legislation amended

This Act amends the *Optometrists Act 1956*.

Note This Act also amends the following legislation (see sch 1):

- *Legislation Act 2001*
- *Medical Practitioners Act 1930*
- *Poisons Act 1933*
- *Poisons and Drugs Act 1978*.

4 New part 4A

insert

Part 4A Authorisation for possession and use of poisons and restricted substances**45A Definitions for pt 4A**

In this part:

ACT requirements—see section 45B.*optometrist drug authority* means an optometrists drug authority approved by the optometrists drug authority committee.

Note Under the *Poisons and Therapeutic Goods Act 1966* (NSW), s 17B, the optometrists drug authority committee may approve:

- different classes of optometrists drug authority
- the poisons and restricted substances covered by different classes of optometrists drug authority
- competency standards for an optometrists drug authority
- the criteria for meeting the competency standards
- the maximum period for an optometrists drug authority
- the treatment of ocular conditions authorised by a class of optometrists drug authority.

optometrists drug authority committee means the Optometrists Drug Authority Committee established under the *Poisons and Therapeutic Goods Act 1966* (NSW), section 17B.

poison—see the *Poisons Act 1933*, dictionary.

Note The *Poisons Act 1933* defines *poison* as a substance (other than a substance that is a poison under the *Poisons and Drugs Act 1978*) the introduction of which into the body of a person by any route involves the risk of death to the person, and includes a substance declared to be a poison under that Act, s 10.

restricted substance—see the *Poisons Act 1933*, dictionary.

Note The *Poisons Act 1933* defines *restricted substance* as a substance declared to be a restricted substance under that Act, s 10.

45B ACT requirements for drug authorities

(1) For this part, the *ACT requirements* are the NSW requirements with the changes (if any) determined, in writing, by the Minister.

(2) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

(3) For subsection (1), the *NSW requirements* are—

- (a) the competency standards approved from time to time by the optometrists drug authority committee; and
- (b) the criteria approved from time to time by the optometrists drug authority committee for meeting the competency standards; and
- (c) the maximum periods for optometrists drug authorities set from time to time by the optometrists drug authority committee; and
- (d) the poisons or restricted substances approved from time to time for optometrists drug authorities by the optometrists drug authority committee; and
- (e) the treatment of ocular conditions authorised from time to time for optometrists drug authorities by the optometrists drug authority committee.

45C Optometrist drug authorities

(1) The board may issue an optometrist drug authority to a registered optometrist if satisfied that the optometrist meets the competency standards under the ACT requirements for the authority.

- (2) In deciding whether a registered optometrist satisfies the competency standards under the ACT requirements, the board must apply the criteria under the ACT requirements for meeting the competency standards.
- (3) The board may issue an optometrist drug authority subject to conditions.
- (4) The board may amend a condition of a registered optometrist's optometrist drug authority (other than a condition prescribed by regulation).
- (5) An optometrist drug authority is also subject to any condition prescribed by regulation.

45D Term of drug authorities

- (1) An optometrist drug authority is issued for the period (not longer than the maximum period allowed under the ACT requirements) stated in the authority.
- (2) The board may withdraw a registered optometrist's optometrist drug authority.

45E Possession, use, supply and prescription of certain substances

- (1) An optometrist is authorised to possess and use, in the practice of optometry—
 - (a) for paralysing the accommodation of the eye—a cycloplegic substance; or
 - (b) for tonometry or for fitting contact lenses—a local anaesthetic; or
 - (c) for enlarging the pupil of the eye—a mydriatic substance; or
 - (d) for instilling into the eye after a mydriatic substance has been used—a miotic substance; or

- (e) a substance prescribed by regulation.
- (2) An optometrist who holds an optometrist drug authority is also authorised to possess, use, supply and prescribe, in the practice of optometry to treat an eye condition for which the optometrist holds an optometrist drug authority, a poison or restricted substance approved for the optometrist drug authority under the ACT requirements.

**5 Review of decisions
New section 46 (ra) to (re)**

insert

- (ra) under section 45C (1) to refuse to issue an optometrist drug authority; or
- (rb) under section 45C (3) to issue an optometrist drug authority subject to conditions; or
- (rc) under section 45C (4) to amend a condition of a registered optometrist's optometrist drug authority; or
- (rd) under section 45D (1) to issue an optometrist drug authority for a period less than the maximum period allowed under the ACT requirements; or
- (re) under section 45D (2) to withdraw a registered optometrist's optometrist drug authority; or

6 Section 46

renumber paragraphs when Act next republished under Legislation Act.

7 Notification of decisions
New section 47 (1) (ja) to (jc)

insert

- (ja) for a decision mentioned in section 46 (ra), (rb) or (rd)—to the person who applied for the optometrist drug authority; or
- (jb) for a decision mentioned in section 46 (rc)—to the person whose optometrist drug authority's condition has been amended; or
- (jc) for a decision mentioned in section 46 (re)—to the person whose optometrist drug authority has been withdrawn; or

8 Section 47 (1)

renumber paragraphs when Act next republished under Legislation Act.

Schedule 1 Consequential amendments

(see s 3)

Part 1.1 Legislation Act 2001

[1.1] New section 303

insert

303 Transitional—meaning of *optometrist*

- (1) In this Act:
- optometrist*—
- (a) means a person registered as an optometrist under the *Health Professionals Act 2004*; and
 - (b) includes a person registered under the *Optometrists Act 1956* (unless repealed).
- (2) The following provisions expire on the day the *Health Professionals Act 2004*, section 136 (h) commences:
- this section;
 - dictionary, part 1, definition of *optometrist*, note.

[1.2] Dictionary, part 1, definition of *optometrist*

insert

optometrist means a person registered as an optometrist under the *Health Professionals Act 2004*.

Note See also s 303.

Part 1.2 Medical Practitioners Act 1930

[1.3] Section 50 (b)

substitute

- (b) the lawful business or occupation of a dentist, nurse, optometrist or pharmacist.

Part 1.3 Poisons Act 1933

[1.4] Section 3A, note 1

substitute

Note 1 Criminal Code

The Criminal Code, ch 2 applies to the following offences against this Act (see Code, pt 2.1):

- s 11 (Sale of poisons and poisonous substances)
- s 16 (Sale or supply of biological preparations or restricted substances by ineligible people)
- s 16AA (Sale or supply of biological preparations or restricted substances to ineligible people).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

[1.5] Section 11

substitute

11 Sale of poisons and poisonous substances

- (1) A person commits an offence if—
- (a) the person sells a poison or poisonous substance; and
 - (b) the person is not—
 - (i) a doctor; or

- (ii) an authorised optometrist; or
- (iii) a pharmacist; or
- (iv) a veterinary surgeon; or
- (v) a person who holds a licence authorising the person to sell the poison or poisonous substance.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

Note The definition of *authorised optometrist* restricts the sale by optometrists of poisons or poisonous substances to optometrists who are acting—

- in the practice of optometry, and
- under an optometrist drug authority.

- (2) Absolute liability applies to subsection (1) (b) (i) to (iv).
- (3) Strict liability applies to subsection (1) (b) (v).

[1.6] Section 13 (c)

substitute

- (c) supply a poison or poisonous substance to—
 - (i) a doctor; or
 - (ii) a dentist; or
 - (iii) a veterinary surgeon; or
 - (iv) an authorised optometrist.

[1.7] Section 16

substitute

16 Sale or supply of biological preparations or restricted substances by ineligible people

- (1) A person commits an offence if—

- (a) the person sells or supplies a biological preparation or restricted substance; and
- (b) the person is not—
 - (i) a pharmacist; or
 - (ii) a doctor; or
 - (iii) a dentist; or
 - (iv) a veterinary surgeon; or
 - (v) an authorised nurse practitioner; or
 - (vi) an authorised optometrist; or
 - (vii) the holder of a licence to sell or supply the preparation or substance; or
 - (viii) a public employee authorised in writing by the Minister for this section.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

Note 1 The definition of **authorised optometrist** restricts the sale or supply by optometrists of biological preparations or restricted substances to optometrists who are acting—

- in the practice of optometry, and
- under an optometrist drug authority.

Note 2 The definition of **authorised nurse practitioner** restricts the sale or supply by nurse practitioners of biological preparations or restricted substances to nurse practitioners acting within their scope of practice, if the scope of practice includes prescribing those substances.

- (2) Absolute liability applies to subsection (1) (b) (i) to (vi).
- (3) Strict liability applies to subsection (1) (b) (vii) and (viii).

16AA Sale or supply of biological preparations or restricted substances to ineligible people

- (1) A person commits an offence if—
- (a) the person sells or supplies to, or dispenses for, someone else (the *receiver*) a biological preparation or restricted substance; and
 - (b) the receiver is not an eligible receiver; and
 - (c) the person is reckless about whether the receiver is an eligible receiver.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (2) Subsection (1) does not apply if the sale, supply or dispensing is in accordance with section 16A (Supply of certain restricted substances by pharmacists in emergencies).
- (3) In this section:

eligible receiver, for a biological preparation or restricted substance, means—

- (a) a pharmacist; or
- (b) a doctor; or
- (c) a dentist; or
- (d) a veterinary surgeon; or
- (e) an authorised nurse practitioner; or
- (f) an authorised optometrist; or
- (g) the holder of a licence to sell the preparation or substance; or
- (h) a public employee authorised in writing by the Minister for this section; or

- (i) a person who presents a prescription authorising the supply of the preparation or substance to the person, or someone else for whom the person is acting.

prescription means a prescription that complies with the regulations and is given by—

- (a) a doctor; or
(b) a dentist; or
(c) a veterinary surgeon; or
(d) an authorised nurse practitioner; or
(e) an authorised optometrist.

[1.8] Section 22 (2) (h)

omit

section 16

substitute

section 16 (1) (b) (viii) or section 16AA (3) (h)

[1.9] Dictionary, new definitions

insert

authorised nurse practitioner, for a substance that is a poison, poisonous substance, biological preparation or restricted substance, means a nurse practitioner who is the occupant of a nurse practitioner position acting within the scope of practice for the position, if the scope of practice for the position includes prescribing the substance.

authorised optometrist, for a substance that is a poison, poisonous substance, biological preparation or restricted substance, means an optometrist who holds an optometrist drug authority authorising the optometrist to possess, use, supply or prescribe the substance and who acts under the authority.

nurse practitioner position—see the *Health Act 1993*, section 37B (2).

optometrist drug authority—see the *Optometrists Act 1956*, section 45A.

scope of practice—see the *Health Act 1993*, section 37B (2).

Part 1.4 Poisons and Drugs Act 1978

[1.10] New section 2AB

insert

2AB Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 Criminal Code

The Criminal Code, ch 2 applies to the following offence against this Act (see Code, pt 2.1):

- s 40 (Advertising scheduled substances).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 Penalty units

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

[1.11] Section 40

substitute

40 Advertising scheduled substances

- (1) A person commits an offence if—
 - (a) the person publishes or displays an advertisement; and

- (b) the advertisement promotes or encourages the use of a substance; and
- (c) the substance is mentioned in the drugs and poisons standard, schedule 1, schedule 3 or schedule 4.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

(2) A person commits an offence if—

- (a) the person publishes or displays an advertisement; and
- (b) the advertisement indicates that someone is willing or authorised to supply a substance; and
- (c) the substance is mentioned in the drugs and poisons standard, schedule 1, schedule 3 or schedule 4.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

(3) In this section:

advertisement—

- (a) includes an advertisement—
 - (i) in a newspaper or other publication; and
 - (ii) on television or radio; and
 - (iii) displayed on a notice, sign, label, showcard or good; and
 - (iv) distributed as a sample, circular, catalogue, price list or other material; and
 - (v) by exhibition of a picture, model or film; and
 - (vi) in any other way; but
- (b) does not include an advertisement in a publication circulating mainly to dentists, doctors, optometrists, pharmacists or veterinary surgeons.

- (4) This section does not apply to an advertisement in a publication declared by the Minister, in writing, to be an exempt publication.
- (5) In subsections (1) and (2), a reference to a substance mentioned in the drugs and poisons standard, schedule 3 does not include a reference to such a substance that is listed in the drugs and poisons standard, appendix H.
- (6) A declaration under subsection (4) is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 9 December 2004.

2 Notification

Notified under the Legislation Act on 14 March 2005.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Optometrists Legislation Amendment Bill 2005, which originated in the Legislative Assembly as the Optometrists Legislation Amendment Bill 2004 and was passed by the Assembly on 8 March 2005.

Clerk of the Legislative Assembly