

2004

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Health)

Optometrists Legislation Amendment Bill 2004

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Legislation amended	2
4 New part 4A	3
5 Review of decisions	
New section 46 (ra) to (re)	6
6 Section 46	6
7 Notification of decisions	
New section 47 (1) (ja) to (jc)	7
8 Section 47 (1)	7

Contents

Schedule 1	Consequential amendments	Page 8
Part 1.1	Legislation Act 2001	8
Part 1.2	Medical Practitioners Act 1930	9
Part 1.3	Poisons Act 1933	9
Part 1.4	Poisons and Drugs Act 1978	14

2004

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Health)

Optometrists Legislation Amendment Bill 2004

A Bill for

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

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

1 **1 Name of Act**

2 This Act is the *Optometrists Legislation Amendment Act 2004*.

3 **2 Commencement**

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

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

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

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

14 **3 Legislation amended**

15 This Act amends the *Optometrists Act 1956*.

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

- 17 • *Legislation Act 2001*
- 18 • *Medical Practitioners Act 1930*
- 19 • *Poisons Act 1933*
- 20 • *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.

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

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

4 **45B ACT requirements for drug authorities**

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

7 (2) A determination is a disallowable instrument.

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

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

11 (a) the competency standards approved from time to time by the
12 optometrists drug authority committee; and

13 (b) the criteria approved from time to time by the optometrists
14 drug authority committee for meeting the competency
15 standards; and

16 (c) the maximum periods for optometrists drug authorities set from
17 time to time by the optometrists drug authority committee; and

18 (d) the poisons or restricted substances approved from time to time
19 for optometrists drug authorities by the optometrists drug
20 authority committee; and

21 (e) the treatment of ocular conditions authorised from time to time
22 for optometrists drug authorities by the optometrists drug
23 authority committee.

24 **45C Optometrist drug authorities**

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

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

12 **45D Term of drug authorities**

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

18 **45E Possession, use, supply and prescription of certain**
19 **substances**

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

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

8 **5 Review of decisions**

9 **New section 46 (ra) to (re)**

10 *insert*

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

22 **6 Section 46**

23 *renumber paragraphs when Act next republished under Legislation*

24 *Act*

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

3 *insert*

4 (ja) for a decision mentioned in section 46 (ra), (rb) or (rd)—to the
5 person who applied for the optometrist drug authority; or

6 (jb) for a decision mentioned in section 46 (rc)—to the person
7 whose optometrist drug authority's condition has been
8 amended; or

9 (jc) for a decision mentioned in section 46 (re)—to the person
10 whose optometrist drug authority has been withdrawn; or

11 **8 Section 47 (1)**

12 *renumber paragraphs when Act next republished under Legislation*
13 *Act*

1 **Schedule 1 Consequential amendments**

2 (see s 3)

3 **Part 1.1 Legislation Act 2001**

4 **[1.1] New section 303**

5 *insert*

6 **303 Transitional—meaning of *optometrist***

7 (1) In this Act:

8 *optometrist*—

9 (a) means a person registered as an optometrist under the *Health*
10 *Professionals Act 2004*; and

11 (b) includes a person registered under the *Optometrists Act 1956*
12 (unless repealed).

13 (2) The following provisions expire on the day the *Health Professionals*
14 *Act 2004*, section 136 (h) commences:

- 15 • this section;
16 • dictionary, part 1, definition of *optometrist*, note.

17 **[1.2] Dictionary, part 1, definition of *optometrist***

18 *insert*

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

21 *Note* See also s 303.

1 Part 1.2 Medical Practitioners Act 1930

2 [1.3] Section 50 (b)

3 *substitute*

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

6 Part 1.3 Poisons Act 1933

7 [1.4] Section 3A, note 1

8 *substitute*

9 *Note 1 Criminal Code*

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

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

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

21 [1.5] Section 11

22 *substitute*

23 11 Sale of poisons and poisonous substances

24 (1) A person commits an offence if—

25 (a) the person sells a poison or poisonous substance; and

26 (b) the person is not—

27 (i) a doctor; or

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

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

8 (2) Absolute liability applies to subsection (1) (b) (i) to (iv).

9 (3) Strict liability applies to subsection (1) (b) (v).

10 **[1.6] Section 13 (c)**

11 *substitute*

12 (c) supply a poison or poisonous substance to—

- 13 (i) a doctor; or
14 (ii) a dentist; or
15 (iii) a veterinary surgeon; or
16 (iv) an authorised optometrist.

17 **[1.7] Section 16**

18 *substitute*

19 **16 Sale or supply of biological preparations or restricted**
20 **substances by ineligible people**

21 (1) A person commits an offence if—

22 (a) the person sells or supplies a biological preparation or
23 restricted substance; and

24 (b) the person is not—

- 25 (i) a pharmacist; or

- 1 (ii) a doctor; or
2 (iii) a dentist; or
3 (iv) a veterinary surgeon; or
4 (v) an authorised nurse practitioner; or
5 (vi) an authorised optometrist; or
6 (vii) the holder of a licence to sell or supply the preparation or
7 substance; or
8 (viii) a public employee authorised in writing by the Minister
9 for this section.

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

12 (2) Absolute liability applies to subsection (1) (b) (i) to (vi).

13 (3) Strict liability applies to subsection (1) (b) (vii) and (viii).

14 **16AA Sale or supply of biological preparations or restricted**
15 **substances to ineligible people**

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

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

25 (2) Subsection (1) does not apply if the sale, supply or dispensing is in
26 accordance with section 16A (Supply of certain restricted
27 substances by pharmacists in emergencies).

- 1 (3) In this section:
2 *eligible receiver*, for a biological preparation or restricted substance,
3 means—
4 (a) a pharmacist; or
5 (b) a doctor; or
6 (c) a dentist; or
7 (d) a veterinary surgeon; or
8 (e) an authorised nurse practitioner; or
9 (f) an authorised optometrist; or
10 (g) the holder of a licence to sell the preparation or substance; or
11 (h) a public employee authorised in writing by the Minister for this
12 section; or
13 (i) a person who presents a prescription authorising the supply of
14 the preparation or substance to the person, or someone else for
15 whom the person is acting.
- 16 *prescription* means a prescription that complies with the regulations
17 and is given by—
18 (a) a doctor; or
19 (b) a dentist; or
20 (c) a veterinary surgeon; or
21 (d) an authorised nurse practitioner; or
22 (e) an authorised optometrist.

-
- 1 **[1.8] Section 22 (2) (h)**
2 *omit*
3 section 16
4 *substitute*
5 section 16 (1) (b) (viii) or section 16AA (3) (h)

- 6 **[1.9] Dictionary, new definitions**
7 *insert*
8 *authorised nurse practitioner*, for a substance that is a poison,
9 poisonous substance, biological preparation or restricted substance,
10 means a nurse practitioner who is the occupant of a nurse
11 practitioner position acting within the scope of practice for the
12 position, if the scope of practice for the position includes prescribing
13 the substance.
14 *authorised optometrist*, for a substance that is a poison, poisonous
15 substance, biological preparation or restricted substance, means an
16 optometrist who holds an optometrist drug authority authorising the
17 optometrist to possess, use, supply or prescribe the substance and
18 who acts under the authority.
19 *nurse practitioner position*—see the *Health Act 1993*,
20 section 37B (2).
21 *optometrist drug authority*—see the *Optometrists Act 1956*,
22 section 45A.
23 *scope of practice*—see the *Health Act 1993*, section 37B (2).

1 Part 1.4 Poisons and Drugs Act 1978

2 [1.10] New section 2AB

3 *insert*

4 2AB Offences against Act—application of Criminal Code etc

5 Other legislation applies in relation to offences against this Act.

6 *Note 1 Criminal Code*

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

- 9 • s 40 (Advertising scheduled substances).

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

14 *Note 2 Penalty units*

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

17 [1.11] Section 40

18 *substitute*

19 40 Advertising scheduled substances

20 (1) A person commits an offence if—

- 21 (a) the person publishes or displays an advertisement; and
- 22 (b) the advertisement promotes or encourages the use of a
23 substance; and
- 24 (c) the substance is mentioned in the drugs and poisons standard,
25 schedule 1, schedule 3 or schedule 4.

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

- 1 (2) A person commits an offence if—
2 (a) the person publishes or displays an advertisement; and
3 (b) the advertisement indicates that someone is willing or
4 authorised to supply a substance; and
5 (c) the substance is mentioned in the drugs and poisons standard,
6 schedule 1, schedule 3 or schedule 4.
7 Maximum penalty: 100 penalty units, imprisonment for 1 year or
8 both.
- 9 (3) In this section:
10 ***advertisement***—
11 (a) includes an advertisement—
12 (i) in a newspaper or other publication; and
13 (ii) on television or radio; and
14 (iii) displayed on a notice, sign, label, showcard or good; and
15 (iv) distributed as a sample, circular, catalogue, price list or
16 other material; and
17 (v) by exhibition of a picture, model or film; and
18 (vi) in any other way; but
19 (b) does not include an advertisement in a publication circulating
20 mainly to dentists, doctors, optometrists, pharmacists or
21 veterinary surgeons.
- 22 (4) This section does not apply to an advertisement in a publication
23 declared by the Minister, in writing, to be an exempt publication.
- 24 (5) In subsections (1) and (2), a reference to a substance mentioned in
25 the drugs and poisons standard, schedule 3 does not include a
26 reference to such a substance that is listed in the drugs and poisons
27 standard, appendix H.
-

Schedule 1 Consequential amendments
Part 1.4 Poisons and Drugs Act 1978

Amendment [1.11]

1 (6) A declaration under subsection (4) is a notifiable instrument.

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

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2004.

2 Notification

Notified under the Legislation Act on 2004.

3 Republications of amended laws

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

© Australian Capital Territory 2004