

2004

**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

OPTOMETRISTS LEGISLATION AMENDMENT BILL 2004

EXPLANATORY STATEMENT

Circulated by authority of the
Minister for Health
Mr Simon Corbell MLA

This Explanatory Statement relates to the *Optometrists Legislation Amendment Bill 2004* (the Bill) as introduced into the Legislative Assembly.

Overview of Bill

The purpose of this Bill is to amend the *Optometrists Act 1956* and various related legislation to allow optometrists in the ACT to prescribe a limited range of medicines for treatment, and to update the legislation to reflect that optometrists routinely use medicines for diagnosis during their consultations.

Summary

The Bill makes amendments to the *Legislation Act 2001*, *Medical Practitioners Act 1930*, *Poisons Act 1933* and *Poisons and Drugs Act 1978*.

The substantive changes in the Bill are.

Inserting provision allowing optometrists to prescribe and use medicines to diagnose

Under the current *Optometrists Act 1956*, optometrists are prohibited from prescribing medicines for the eye(s) for their clients and from using certain medicines for diagnosis in their practice. A person who has an eye condition requiring treatment must seek the advice of a doctor or pharmacist. Optometrists throughout Australia have been using medicines to diagnose a range of conditions for a number of years. By including the word 'optometrist' in the *Optometrists Act 1956*, *Legislation Act 2001*, *Medical Practitioners Act 1930* and *Poisons Act 1933* optometrists will be allowed to prescribe medicines and use medicines to diagnose in their practice.

This will allow optometrists in the ACT to provide the best possible care to their patients and that there is improvement in access and consistency by providing greater opportunity for suitably trained optometrists to prescribe certain eye medicines for the treatment of patients.

Revenue/Cost Implications

There are no cost implications.

Summary on Clauses

SECTION 1 Preliminary

Clause 1 Name of Act

This clause sets out the name of the Act '*Optometrists Legislation Amendment Act 2004*'.

Clause 2 Commencement

This clause provides for the Act to commence on a day fixed by the Minister by written notice.

Clause 3 Legislation Amendments

This clause states that the Act amends the *Optometrists Act 1956*, *Legislation Act 2001*, *Medical Practitioners Act 1930*, *Poisons Act 1933* and *Poisons and Drugs Act 1978*.

Optometrists Act 1956

Clause 4 New Part 4A

This section inserts a new part 4A for authorisation for possession and use of poisons and restricted substances.

Section 45A Definitions for Part 4A

This section provides the definitions for Part 4A. The definition of ACT requirements, optometrist drug authority, optometrists drug authority committee, poison and restricted substance is included to define what they mean for the purposes of the *Optometrists Legislation Amendment Act 2004*'.

Section 45B ACT requirements for drug authorities

This section provides that the ACT requirements for drug authorities are the NSW requirements with the changes (if any) determined by the Minister. It lists the NSW requirements, which include:

- The competency standards approved from time to time by the optometrists drug authority committee; and
- The criteria approved from time to time by the optometrists drug authority committee for meeting the competency standards; and
- The maximum periods for optometrists drug authorities set from time to time by the optometrists drug authority committee; and
- The poisons or restricted substances approved from time to time for optometrists drug authorities by the optometrists drug authority committee; and

- The treatment of ocular conditions authorised from time to time for optometrists drug authorities by the optometrists drug authority committee.

Section 45C- Optometrist drug authorities

This section provides that the Optometrists Board (this is a statutory body under the Act) 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. This section also provides that 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. The board may issue an optometrist drug authority subject to conditions. The board may amend a condition of a registered optometrist's optometrist drug authority. An optometrist drug authority is also subject to any condition prescribed by regulation.

Section 45D Term of drug authorities

This section provides that an optometrist drug authority is issued for the period (not longer than the maximum period allowed under the ACT requirements) stated in the authority. In addition, the board may withdraw a registered optometrist's optometrist drug authority.

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

This section makes it clear that an optometrist is authorised to possess and use in the practice of optometry a cycloplegic substance, a local anaesthetic, a mydriatic substance, a miotic substance or a substance prescribed by regulation for diagnostic purposes. This section also provides that 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.

Clause 5 New sections 46(ra), (rb), (rc), (rd)

Clause 5, section 46 inserts new sub-sections 46(ra), (rb), (rc), (rd) for the purposes of review of decisions under the *Optometrists Act 1956*. The new sub-sections provide that an application may be made to the administrative appeals tribunal for review of a decision of the board to the person whose application for an optometrist drug authority has been refused, condition has been amended or whose optometrist drug authority has been withdrawn.

Clause 6 Section 46 Review of decisions

This section makes technical amendments in relation to standard drafting language and numbering.

Clause 7 New Sections 47(1)(ja), (jb) and (jc)

Clause 7, section 47 inserts new sections 47(1)(ja), (jb), and (jc) for the purposes of notification of decisions under the *Optometrists Act 1956*. The new sections provide that the board shall give written notice for a decision mentioned in section 46(ra) or 46(rb) to the person who applied for the optometrist drug authority or for a decision mentioned in section 46(rc) and 46(rd) to the person whose optometrist drug authority's condition has been amended or withdrawn.

Clause 8 Section 47(1) Notification of decisions

This section makes technical amendments in relation to standard drafting language and numbering.

Schedule 1 – Consequential Amendments

Legislation Act 2001

Part 1.1 Legislation Act 2001

Clause [1.1] New Section 303

This clause brings section 303 into line with modern drafting practice.

Section 303 Meaning of optometrist

This section provides the transitional meaning of what an optometrist means under the *Legislation Act 2001*. It includes a person registered as an optometrist under the *Health Professionals Act 2004* and the *Optometrists Act 1956*.

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

This clause adds the definition of optometrist under the *Health Professionals Act 2004*.

Medical Practitioners Act 1930 – Part 1.2

Clause [1.3] Section 50(b) The Conduct of Medical Practice

This clause provides that Part 4 of the *Medical Practitioners Act 1930* does not prejudice the lawful business of a registered optometrist.

Poisons Act 1933 – Part 1.3

Clause [1.4] Section 3A – Offences against Poisons Act - application of Criminal Code

This section inserts a note regarding the application of the *Criminal Code* to the offences substituted in this Bill.

Clause [1.5] Section 11 – Sale of poisons and poisonous substances

This section makes it clear that a person commits a criminal offence if the person sells a poison or poisonous substance and the person is not a doctor, an authorised optometrist, pharmacist, veterinary surgeon or person who holds a licence authorising the person to sell the poison or poisonous substance. The maximum penalty is 100 penalty units, imprisonment for 1 year or both.

This section allows an authorised optometrist to sell a poison or poisonous substance in the practice of optometry. It is not intended to permit an optometrist to a poison or poisonous substance by retail in an open shop, this reflects the intention of section 13(2A) of the Victorian *Drugs, Poisons and Controlled Substances Act 1981* to ensure that registered optometrists are not authorised to sell or supply biological preparations or restricted substances by retail in an open shop unless the optometrists is licensed under the Act to do so.

Clause [1.6] Section 13(c) - Pharmacists may manufacture poisons and poisonous substances

This section inserts the word ‘an authorised optometrist’ to provide that a pharmacist may supply a poison or poisonous substance to an authorised optometrist.

Clause 1.7 - Section 16 – Sale or supply of biological preparations or restricted substances by ineligible people.

This section substitutes previous section 16 and provides that it is a criminal offence if a person who is not a pharmacist, doctor, dentist, veterinary surgeon, authorised nurse practitioner, authorised optometrist, holder of a licence to sell or supply the preparation or substance or a public employee authorised in writing by the Minister, sells or supplies a biological preparation or restricted substance. The maximum penalty is 100 penalty units, imprisonment for 1 year or both.

This section allows an authorised optometrist to sell or supply a biological preparation or restricted substance in the practice of optometry. It is not intended to permit an optometrist to sell or supply a biological preparation or restricted substance by retail in an open shop (this reflects the intention of section 13(2A) of the Victorian *Drugs, Poisons and Controlled Substances Act 1981* to ensure that registered optometrists are not authorised to sell or supply biological preparations or restricted substances by retail in an open shop unless the optometrists is licensed under the Act to do so).

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

This section provides that a person commits an offence if that person sells or supplies to, or dispenses for, someone else who is not an eligible receiver a biological preparation or restricted substance. The maximum penalty is 100 penalty units, imprisonment for 1 year or both.

An eligible receiver includes an authorised optometrist or a person, or their agent, who presents a prescription that complies with the regulations given by an authorised optometrist.

Clause [1.8] Section 22(2)(h) Regulation Making Power

A technical amendment was made to omit section 16 and substitute section 16(1)(b) (viii) or section 16AA(2)(h).

Clause [1.9] Dictionary new definitions

This clause adds the definition of authorised nurse practitioner, authorised optometrist and optometrist drug authority.

Poisons and Drugs Act 1978 – Part 1.4

Clause [1.10] Section 2AB Offences against Act – Application of Criminal Code

Section 2AB is a new section under the *Poisons and Drugs Act 1978* where the Criminal Code applies. This section makes it a criminal offence for a person to advertise scheduled substances under section 40 of the *Poisons and Drugs Act 1978*. The purpose of this is to prevent people advertising, promoting or encouraging the use of scheduled substances.

Clause [1.11] Section 40 Advertising Scheduled Substances

This makes it clear that a person commits an offence if the person publishes or displays an advertisement or promotes and encourages the use of a substance mentioned in the drugs and poisons standard Schedule 1, 3 or 4. This does not include an advertisement in a publication circulating mainly to dentists, doctors, optometrists, pharmacists or veterinary surgeons. The maximum penalty is 100 penalty units, imprisonment for 1 year or both.