

TASMANIA

OPTOMETRY OFFENCES BILL 2010

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OPTOMETRY OFFENCES BILL 2010

*(Brought in by the Minister for Health, the Honourable
Michelle Anne O'Byrne)*

A BILL FOR

An Act to provide for offences in relation to the dispensing of optical appliances, the provision of prescriptions, the assessment of a person's suitability to wear contact lenses and for related matters

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Optometry Offences Act 2010*.

2. Commencement

This Act commences on the day on which section 23 of the *Health Practitioner Regulation National Law (Tasmania) Act 2010* commences.

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3. Interpretation

In this Act, unless the contrary intention appears –

“**contact lens**” means an optical appliance that is designed to be worn directly on the surface of the eye;

“**investigation**” means an investigation under section 4;

“**optical appliance**” means an appliance that is designed to correct, remedy or relieve any refractive abnormality or defect of sight and includes a contact lens;

“**optical dispenser**” means a person who dispenses optical appliances;

“**optometrist**” means a person who is registered under the Health Practitioner Regulation National Law (Tasmania) in the optometry profession;

“**optometry**” means the investigation and management of the functions of the eye and vision and the prescribing of optical appliances;

“**orthoptist**” has the same meaning as in section 122(2) of the Health Practitioner Regulation National Law (Tasmania);

“**prescribed person**” means a person or class of persons prescribed in the regulations as being authorised to issue prescriptions

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for a type of optical appliance specified in the regulations in relation to that person or class of persons;

“prescription” means a prescription for –

- (a) an optical appliance issued by an optometrist or medical practitioner; or
- (b) an optical appliance that is spectacles issued by an orthoptist in accordance with the conditions specified in section 122(1)(b) of the Health Practitioner Regulation National Law (Tasmania); or
- (c) an optical appliance issued by a prescribed person;

“repealed Act” means the *Optometrists Registration Act 1994*;

“Secretary” means the Secretary of the Department.

4. Investigations

(1) If the Secretary reasonably suspects –

- (a) that a person may be dispensing an optical appliance in contravention of section 5 or 6; or

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- (b) that a person may be carrying out practices in respect of contact lenses in contravention of section 8 –

the Secretary may, in writing, authorise a person to act as an inspector to investigate the matter.

- (2) For the purposes of conducting an investigation under subsection (1), on production of his or her authorisation an inspector may at any reasonable time enter the business premises of an optical dispenser or premises from which a person is apparently or purportedly dispensing optical appliances or carrying out practices in respect of contact lenses and do any or all of the following:
 - (a) inspect the premises generally;
 - (b) require the person apparently in charge of the premises to produce for inspection any prescription, or copy of a prescription, held at the premises and issued or purportedly issued by an optometrist, medical practitioner, orthoptist or prescribed person;
 - (c) require the person apparently in charge of the premises to produce for inspection any document held at the premises;
 - (d) inspect and take notes of or extracts from any such prescription or document;
 - (e) make a copy of any such prescription or document;

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- (f) ask questions of and require answers from persons on the premises;
 - (g) take photographs;
 - (h) require an optometrist or a person claiming to be an optometrist to produce a certificate of registration;
 - (i) if the inspector reasonably suspects that an offence has been committed against this Act, seize and, on furnishing a receipt, remove anything that in the reasonable opinion of the inspector is evidence of the offence;
 - (j) remove, on furnishing a receipt, any document found on the premises to the custody and control of the Secretary for as long as the Secretary considers necessary or expedient.
- (3) For the purposes of conducting an investigation under subsection (1) –
- (a) an inspector may be assisted by such police officers or other persons as the inspector considers necessary or expedient; and
 - (b) in providing that assistance, those police officers or persons have and may exercise the same powers as the inspector.
- (4) If the Secretary is satisfied that for legitimate reasons a person needs access to a document that

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has been removed from premises to the custody and control of the Secretary under subsection (2)(j), the Secretary in his or her discretion may –

- (a) grant the person reasonable access to the document or to a copy of the document; or
 - (b) provide the person with a copy or certified copy of the document; or
 - (c) retain a copy of the document and return the original to the person.
- (5) A person must not give, agree to give or offer to an inspector a gift, reward or other inducement to do or abstain from doing anything in relation to an investigation under this section.

Penalty: Fine not exceeding 50 penalty units.

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5. Unauthorised dispensing

- (1) A person must not dispense an optical appliance except –
- (a) on and in accordance with a prescription; or
 - (b) by way of copying or duplicating an optical appliance (other than a contact lens) that the person reasonably believes to have been made on prescription.

Penalty: Fine not exceeding 100 penalty units.

- (2) In this section –

“optical appliance” includes any part of an optical appliance.

6. Dispensing expired prescription

- (1) A person must not dispense an optical appliance pursuant to an expired prescription.

Penalty: Fine not exceeding 100 penalty units.

- (2) For the purposes of subsection (1) –

- (a) a prescription for a contact lens expires 18 months after the date on which it is written; and

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- (b) a prescription for an optical appliance (other than a contact lens) expires 3 years after the date on which it is written.

7. Failure to give free prescription on request

- (1) Subject to subsection (2), an optometrist, medical practitioner, orthoptist or prescribed person who prescribes an optical appliance for a person must give the person a free copy of the prescription on request.

Penalty: Fine not exceeding 25 penalty units.

- (2) In the case of a contact lens, an optometrist's, medical practitioner's or prescribed person's obligation under subsection (1) does not arise until after he or she has –
 - (a) finished prescribing the lens; or
 - (b) finished giving the person initial instruction on how to place, remove and care for the lens –

whichever is the later.

- (3) A person who dispenses an optical appliance for a person on and in accordance with a prescription must give the person a free copy of the prescription on request.

Penalty: Fine not exceeding 25 penalty units.

8. Unauthorised practices in respect of contact lenses

- (1) A person who is not an optometrist, a medical practitioner or a prescribed person authorised under the regulations to issue prescriptions for contact lenses must not –
- (a) assess a person’s suitability to wear a contact lens; or
 - (b) instruct a person on how to –
 - (i) place a contact lens on any person’s eye; or
 - (ii) remove a contact lens from any person’s eye; or
 - (iii) care for a contact lens.

Penalty: Fine not exceeding 100 penalty units.

- (2) However, subsection (1)(b) does not apply to a person acting under the direction of an optometrist, a medical practitioner or a prescribed person referred to in subsection (1).

9. Offences of dishonesty

A person must not make or produce, or cause to be made or produced, a false or misleading statement, either orally or in writing, in connection with an investigation by an inspector under section 4.

Penalty: Fine not exceeding 50 penalty units.

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10. Obstruction, &c.

A person must not obstruct, hinder, threaten or intimidate another person –

- (a) in the exercise by that other person of a power conferred by this Act; or
- (b) in the performance of a duty imposed on that other person by this Act.

Penalty: Fine not exceeding 50 penalty units.

11. No right of recovery

An optometrist or optical dispenser is not entitled to recover a fee or other remuneration for or in connection with an optical appliance if that optometrist or optical dispenser has been convicted of an offence under section 5 or 6 in respect of that optical appliance.

12. Transitional provisions

- (1) In this section –

“Board” means the Optometrists Registration Board established under the repealed Act.

- (2) Proceedings in respect of an offence committed under section 62, 63, 64 or 65 of the repealed Act that have been instituted by the Board but have not been finally dealt with before the commencement of this Act may be continued by the Secretary.

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- (3) Proceedings in respect of an offence committed under section 62, 63, 64 or 65 of the repealed Act that could have been instituted by the Board before the commencement of this Act may be instituted by the Secretary.

13. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) The regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.
- (3) The regulations may authorise any matter to be from time to time determined, applied, approved or regulated by any person or body specified in the regulations.

14. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Health; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Health and Human Services.