

# **REGISTRATION REGULATIONS**

**ADOPTED BY THE**

**AUSTRALIAN ORTHOPTIC BOARD**

**on 19<sup>th</sup> November 2000**

**Amended by Resolution on 25<sup>th</sup> February 2004**

**Amended by Resolution on 29<sup>th</sup> July 2005**

# AUSTRALIAN ORTHOPTIC BOARD

## REGISTRATION REGULATIONS

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## AUSTRALIAN ORTHOPTIC BOARD

# REGISTRATION REGULATIONS

Adopted by the Board on 19<sup>th</sup> November 2000; Amended by Resolution on 25<sup>th</sup> February 2004

- 1. PRELIMINARY - The Board, its predecessors and its relations with orthoptists**
- 1.1 The Board has been established as to replace the standing committee of The Royal Australian College of Ophthalmologists known as the Orthoptic Board of Australia.
- 1.2 The Board is not within the jurisdiction of The Royal Australian College of Ophthalmologists and accepts no liability for their actions or omissions.
- 1.3 Any corresponding previous regulations made by the The Royal Australian College of Ophthalmologists in respect of orthoptists cease to have effect and are revoked subject to these Regulations and with effect on and from the date these Regulations come into force.
- 1.4 The Board has been established as a standing committee of Directors of Australian Orthoptists Registration Body Pty Ltd ACN 095 117 678 which has been incorporated with limited liability under the *Corporations Law* of the Commonwealth of Australia.
- 1.5 The Board has been established with powers including:
  - (a) the protection of the public by registering persons who comply with the requirements of the Board as to registration so that they may practise orthoptics as registered orthoptists in Australia; and
  - (b) related and incidental powers.
- 1.6 A member of the Board or a person responsible for keeping the Register of Orthoptists is not personally liable for anything done or omitted to be done in good faith and without negligence:
  - (a) in the exercise of a power or the discharge of a duty under these Regulations; or
  - (b) in the reasonable belief that the act or omission was in the exercise of a power or the discharge of a duty under these Regulations.
- 1.7 Any liability resulting from an act or omission that would, but for **clause 1.6**, attach to a member of the Board or the person responsible for keeping the Register of Orthoptists, attaches instead to Australian Orthoptists Registration Body Pty Ltd.
- 1.8 The Board is entitled to rely on all acts, matters, deeds and things done or existing under or by virtue of any corresponding previous regulations made by The Royal Australian College of Ophthalmologists in respect of orthoptists and to treat any corresponding previous regulations as good valid and subsisting as if the same had not been revoked and every question as to the application or degree of the application of **this clause** may and shall be decided by the Board.
- 1.9 These Regulations are to be binding in contract and in every other respect on registered orthoptists.
- 1.10 A reference in these Regulations to registration or a registered person does not represent or warrant that registration confers any right under the law except between the is recognition.

## 2. **PRELIMINARY - Scope of regulations**

The main purposes of these Regulations are:

- (a) to protect the public by providing for the registration of orthoptists and investigations into the professional conduct and fitness to practise of registered orthoptists; and
- (b) to provide for other related matters.

## 3. **PRELIMINARY - Commencement**

These Regulations come into operation on a date to be determined by the Board.

## 4. **PRELIMINARY - Definitions**

### 4.1 In these Regulations:

**alcoholic** has the same meaning as in the *Alcoholics and Drug-dependent Persons Act 1968* of Victoria;

**Board** means the Australian Orthoptic Board constituted as a committee of the directors of Australia Orthoptists Registration Body Pty Ltd ACN 095 117 678;

**Chairman** means the chairman of the Board;

**clause** means a clause of these Regulations;

**drug-dependent person** has the same meaning as in the *Alcoholics and Drug-dependent Persons Act 1968*;

**lawyer** means a person admitted to practise as a barrister and solicitor of the Supreme Court in the jurisdiction in which the relative hearing is held;

**orthoptist** or **practitioner** means an allied health professional practitioner specialising in the clinical application of ocular physiology and optics;

**Register** means the Register of Orthoptists kept under **clause 16.1**;

**registered medical practitioner** means a registered medical practitioner within the meaning of a Medical Practice Act or corresponding legislation in any jurisdiction in Australia;

**registered orthoptist** means a person registered under **clause 7.1 or 6.1**, whether or not the registration of that person is general or provisional;

**Regulations** means these regulations as amended from time to time;

**Secretary** means the Secretary of the Board;

**unprofessional conduct** means all or any of the following:

- (a) professional conduct which is of a lesser standard than that which the public might reasonably expect of a registered orthoptist; or
- (b) professional conduct which is of a lesser standard than that which might reasonably be expected of a registered orthoptist by her or his peers; or
- (c) professional misconduct; or

- (d) infamous conduct in a professional respect; or
- (e) providing a person with health services of a kind that is excessive, unnecessary or not reasonably required for that person's well-being; or
- (f) influencing or attempting to influence the conduct of an orthoptic practice in such a way that patient care may be compromised; or
- (g) the failure to act as a orthoptist when required under any Act or regulations providing for the registration of orthoptists or regulating the provision of orthoptic services to do so;
- (h) the contravention of or failure to comply with a condition, limitation or restriction on the registration of the orthoptist imposed by or under these Regulations; or
- (i) a finding of guilt of:
  - an indictable offence in the Commonwealth, a State or a Territory of Australia, or an equivalent offence in another jurisdiction; or
  - an offence where the practitioner's ability to continue to practise is likely to be affected because of the finding of guilt or where it is not in the public interest to allow the practitioner to continue to practise because of the finding of guilt; or
  - an offence as an orthoptist under any Act or regulations providing for the registration of orthoptists or regulating the provision of orthoptic services.

4.2 In these Regulations, unless the context otherwise requires, headings are for ease of reference only and do not affect the construction of these Regulations.

4.3 Division 10 of Part 1.2 of the *Corporations Law* applies in relation to these Regulations as if they were an instrument made under the *Corporations Law* as in force on the day when these Regulations become binding on the Board.

4.4 A reference in these Regulations to a clause is to a clause of these Regulations.

## **5. PROCEDURE FOR OBTAINING REGISTRATION - Application for registration**

5.1 An application for registration as an orthoptist may be made to the Board.

5.2 An application must be:

- (a) in writing in the prescribed form and accompanied by evidence of the qualifications which the applicant claims entitle her or him to the type of registration applied for; and
- (b) accompanied by the fee fixed by the Board.

5.3 The Board:

- (a) may require the applicant to provide further information or material in respect of the application; and
- (b) may require that the information in the application be verified by a declaration under the *Statutory Declarations Act 1959* of the Commonwealth; and
- (c) may require proof of identity of the person making the application.

## **6. PROCEDURE FOR OBTAINING REGISTRATION - Qualifications for general registration**

6.1 A person is qualified for general registration as an orthoptist:

- (a) if the person holds a degree in orthoptics awarded by a university accredited by the Board ; or

- (b) in any other event, if the person:
  - (i) in the opinion of the Board, has a qualification that is substantially equivalent or is based on similar competencies to a course of study for a degree in orthoptics awarded by a university accredited by the Board, or
  - (ii) has passed an examination set by or on behalf of the Board, or
  - (iii) has passes an examination set by or on behalf of the Board and successfully completed a programme of study approved by the Board.

6.2 A person who undertakes a programme of study approved by the Board does so at her or his own cost.

## 7. REGISTRATION - General registration

7.1 The Board must grant general registration under these Regulations to an applicant, if:

- (a) the applicant is qualified for registration under **clause 6**; and
- (b) there are no grounds under **clause 7.2** under which the Board may refuse to grant registration to the applicant; and
- (c) the circumstances are such that **clauses 8 and 9** do not apply; and
- (d) the applicant has paid the fee fixed by the Board under **clause 5(2)(b)**.

7.2 The Board may refuse to grant registration to an applicant on any one or more of the following grounds:

- (a) that the character of the applicant is such that it would not be in the public interest to allow the applicant to practise as a registered orthoptist;
- (b) that the applicant is unfit to practise as a registered orthoptist because she or he is an alcoholic or drug-dependent person;
- (c) that the applicant has been found guilty of an indictable offence in the Commonwealth, a State or a Territory of Australia or an equivalent offence in another jurisdiction; or
- (d) that the applicant has been found guilty of an offence where the ability of the applicant to practise as a registered orthoptist is likely to be affected because of the finding of guilt or where it is not in the public interest to allow the applicant to practise as a registered orthoptist because of the finding of guilt;
- (e) that the applicant has previously been registered under these Regulations or any corresponding previous regulations and during the course of that registration has had proceedings under these Regulations or similar proceedings under the previous regulations brought against her or him and those proceedings have never been finalised;
- (f) that the applicant's competency in speaking or communicating in English is not sufficient for that person to practise as a registered orthoptist;
- (g) that the applicant has previously been registered as an orthoptist in another country, being the equivalent of registration as an orthoptist under these Regulations, and that right has been cancelled or suspended and not restored because of conduct which, if committed within Australia would entitle the Board to suspend or cancel registration.

7.3 A grant of registration under this clause is subject to any conditions, limitations or restrictions that the Board thinks fit.

7.4 The Board may, upon application by the registered orthoptist, amend, vary or revoke any condition, limitation or restriction imposed under **clause 7.3**.



## 8. REGISTRATION - Provisional registration

8.1 A person is qualified for provisional registration by the Board as an orthoptist:

- (a) if the person has:
  - (i) satisfied the requirements for the conferring of a degree referred to in **clause 6(a)**,
  - (ii) not graduated as required under that **clause**, and
  - (iii) enrolled for an honours degree in orthoptics in a university accredited by the Board; or
- (b) if the person:
  - (i) has successfully completed an examination set by the Board for the purpose of qualifying persons for registration as orthoptists, and
  - (ii) is undertaking a programme of study under **clause 6(b)**.

8.2 The provisional registration of a person under **clause 8.1**:

- (a) continues in force for the period specified by the Board; and
- (b) is subject to any conditions, limitations or restrictions imposed by the Board.

8.3 The Board may, upon application by the registered orthoptist, amend, vary or revoke any condition, limitation or restriction on the provisional registration of a person.

## 9. REGISTRATION - Entitlement of applicant to make submissions

If the Board is proposing to refuse an application for registration or to impose conditions, limitations or restrictions on the registration of an applicant, the Board must not do so until

- (a) it has given the applicant notice of this proposal; and
- (b) it has given the applicant an opportunity to make submissions to the Board about the proposal.

## 10. REGISTRATION - Notification of outcome of application

10.1 Upon determining an application for registration under **clause 7 or 8**, the Board must notify the applicant as to whether or not registration has been granted to the applicant.

10.2 A notice under **clause 10.1** must include the following information:

- (a) if the registration has been granted:
  - (i) the type of registration granted; and
  - (ii) whether or not any conditions, limitations or restrictions have been imposed on the registration and, if so, the reasons for imposing the conditions, limitations or restrictions; or
- (b) if the registration has not been granted:
  - (i) the reasons why it has not been granted; and
  - (ii) a statement that the applicant has a right to obtain a review of the decision not to grant registration.

## **11. REGISTRATION - Duration and renewal of registration**

With the exception of provisional registration, registration is for a set biennial cycle. The first biennial cycle concludes on 30 June 2005 and subsequent registration cycles will be relative to this date. Registration remains active until 30th September in the second year of the cycle.

## **12. REGISTRATION - Application for renewal of and refusal to renew registration**

12.1 An application for renewal of registration which is not provisional:

- (a) must be made to the Board before the existing registration expires; and
- (b) must be accompanied by the fee fixed by the Board.

12.2 All registered orthoptists are eligible to apply for renewal of registration. In addition if the applicant has, to the satisfaction of the Board, completed approved activities of continuing professional education that meet the requirements of the Board she/he may also apply for a Certificate of Currency.

12.3 If a qualified person does not apply for renewal of registration before the end of the existing registration period, the Board may renew that person's registration if application is made within 3 months after the end of the registration period and if the applicant pays an additional renewal fee fixed by the Board which must not be more than 50% of the original fee.

12.4 For a period of 3 months after a qualified person's registration has expired without being renewed that person is to be treated as being registered, and if, at the end of that period, that person has not renewed her or his registration, the Board must remove that person's name from the Register.

12.5 The Board may refuse to renew the registration of a qualified applicant under these Regulations on any ground on which the Board might refuse to grant registration.

12.6 The Board may, on application by the registered orthoptist at the time of renewal of that person's registration, amend, vary or revoke any condition, limitation or restriction on the registration of that person.

## **13. REGISTRATION - Restoration of name to the Register**

If a qualified person whose name has been removed from the Register under **clause 12.4**:

- (a) applies to the Board within 2 years from the date of that removal to have her or his name restored to the Register; and
- (b) pays to the Board the fee fixed by the Board for that purpose within that period

the Board may restore that person's name to the Register.

## **14. REGISTRATION - Effect of suspension of registration**

For the purposes of these Regulations, an orthoptist whose registration is suspended must be treated as being not registered for the period of that suspension.

## **15. REGISTRATION - Registration obtained by fraud**

- 15.1 If the Board believes that the registration of an orthoptist has been obtained by fraud or misrepresentation or that the qualifications upon which the practitioner relied for registration have been withdrawn the Board must conduct a hearing into the matter.
- 15.2 The Board must give notice of the time and place of the hearing to the practitioner.
- 15.3 The provisions applying to the conduct of a formal hearing under these Regulations apply to a hearing under this clause as if a hearing under this clause were a formal hearing.
- 15.4 If, at the end of the hearing, the Board determines that the registration of the practitioner has been obtained by fraud or misrepresentation or that the qualifications upon which the practitioner has relied for registration have been withdrawn, the Board must cancel the registration of the practitioner.

## **16. REGISTRATION - The Register**

- 16.1 The Board must cause to be kept a register of all orthoptists to whom the Board has granted registration under these Regulations.
- 16.2 The Register is to be called the Register of Orthoptists.
- 16.3 The following particulars must be included on the Register against the name of the orthoptist to whom they apply:
- (a) any current suspension of the registration of the orthoptist;
  - (b) any current condition, limitation or restriction imposed on the registration of the orthoptist;
  - (c) the postal address of the orthoptist ;
  - (d) her or his professional qualifications;
  - (e) the date of her or his initial registration;
  - (f) her or his registration number; and
  - (g) details of any cancellation of registration.
- 16.4 The Board may advise government officials of any matter included on the Register.
- 16.5 The Register may be inspected at the office of the Board by any person during ordinary office hours without charge.
- 16.6 A person may obtain a copy of or an extract from the Register on payment of the fee fixed by the Board.
- 16.7 A registered orthoptist's private address must not appear on that part of the Register which is open to the public for inspection, unless the practitioner so authorises.

## **17. REGISTRATION - Certificates**

- 17.1 Upon:
- (a) granting registration to a person under these Regulations; or
  - (b) renewing the registration of a person under these Regulations

the Board must issue a certificate of registration to that person.

17.2 The following particulars must be included on a certificate of registration:

- (a) any condition, limitation or restriction imposed on the registration of the practitioner; and
- (b) the name of the person registered;
- (c) her or his qualifications; and
- (d) the date the certificate was issued..

17.3 If a practitioner's registration under these Regulations has been suspended or cancelled, the practitioner must return her or his certificate of registration to the Board.

#### **18. REGISTRATION - Use of certificate as evidence**

A certificate purporting to be signed by the Chairman or any two members of the Board to the effect that:

- (a) an orthoptist is or is not or was or was not, at any specified date, registered; or
- (b) that any disciplinary or other action is or is not or was or was not, at any specified date, being taken against that practitioner

confers on the person named in it power to take and use the name, title of, or describe herself or himself as an orthoptist registered or provisionally registered (as the case may be) by the Board and is evidence, and, in the absence of evidence to the contrary, is proof of the matters stated in it.

#### **19. REGISTRATION - Requirement re change of address**

A registered orthoptist must notify the Board of any change of the address of the practitioner which appears on the Register within 14 days of that change having been made.

#### **20. REGISTRATION - Notification of death**

Upon receiving notice of the death of any person appearing be a registered orthoptist, the Board must cause the name of the practitioner to be removed from the Register.

#### **21. REGISTRATION - Provision of information**

If a registered orthoptist has in respect of an indictable offence:

- (a) been committed for trial; or
- (b) been convicted or found guilty of the offence

the orthoptist must notify the Board within 30 days after that commitment, conviction or finding of guilt.

#### **22. PRELIMINARY INVESTIGATIONS - Complaints about the professional conduct of practitioners**

A person may make a complaint about a registered orthoptist to the Board.

**23. PRELIMINARY INVESTIGATIONS - When complaints about professional conduct are to be investigated by Board**

23.1 If the Board receives a complaint about a registered orthoptist, the Board must investigate the complaint if the complaint concerns the professional conduct of a registered orthoptist and if the Board has not determined the complaint to be frivolous or vexatious.

23.2 In order to determine whether or not it is necessary to conduct a formal or informal hearing into a complaint, the Board must conduct a preliminary investigation into the complaint.

23.3 The Board may, in writing, delegate to:

- (a) an officer of the Board; or
- (b) a legal practitioner or investigator retained by the Board; or
- (c) a sub-committee of the Board consisting of not more than 3 members of the Board

its power to conduct a preliminary investigation into a complaint, other than its power to make determinations upon a preliminary investigation.

**24. PRELIMINARY INVESTIGATIONS - Outcome of preliminary investigation**

24.1 Upon completing a preliminary investigation, the person or persons conducting the investigation may make one of the following recommendations:

- (a) that the investigation into the matter should not proceed further; or
- (b) that an informal or formal hearing should be held into the matter.

24.2 The Board must determine whether or not to act on the recommendations of the person conducting the preliminary investigation.

**25. PRELIMINARY INVESTIGATIONS - Board may institute a hearing into professional conduct**

The Board may, of its own motion, determine to conduct a formal or informal hearing into the professional conduct of a registered orthoptist without conducting a preliminary investigation.

**26. PRELIMINARY INVESTIGATIONS - Suspension of registration upon commencement of investigation**

26.1 The Board, upon making a determination:

- (a) to conduct a preliminary investigation into a complaint made to the Board about the professional conduct of a registered orthoptist; or
- (b) to conduct a formal or informal hearing into the professional conduct of a registered orthoptist without preliminary investigation

may suspend the registration of the orthoptist until any investigation and any hearing into the matter is completed if the Board is of the opinion that it is necessary to do so because there is a serious risk that the health and safety of the public will be endangered.

26.2 If the Board has suspended the registration of an orthoptist under **clause 26.1**, it must:

- (a) immediately notify the practitioner of that suspension; and
- (b) ensure that the matter is investigated as soon as possible after that suspension.

**27. PRELIMINARY INVESTIGATION INTO THE HEALTH OF REGISTERED ORTHOPTISTS - Commencement**

If the Board believes the ability of a registered orthoptist to practise orthoptics may be affected because

- (a) of the physical or mental health of the practitioner; or
- (b) the practitioner has an incapacity; or
- (c) the practitioner is an alcoholic or drug-dependent person

the Board may appoint one of its members to conduct a preliminary investigation into the matter.

**28. PRELIMINARY INVESTIGATIONS - Notification to practitioner**

28.1 The member of the Board appointed to investigate the matter must give notice of the preliminary investigation to the orthoptist.

28.2 A notice under **clause 28.1** must:

- (a) be in writing; and
- (b) be sent by registered post, as soon as possible after the Board's decision has been made; and
- (c) advise the practitioner of the nature of the matter to be investigated; and
- (d) ask the practitioner to advise the Board as to whether or not she or he will agree to undergo a medical examination within 28 days of receiving the notice; and
- (e) advise the practitioner of the procedures that can be taken under these Regulations.

**29. PRELIMINARY INVESTIGATIONS - Medical examination**

29.1 If the practitioner agrees to undergo a medical examination within 28 days, the practitioner must be examined by a registered medical practitioner and who is agreed upon by the Board and the practitioner.

29.2 If the Board and the practitioner are unable to agree upon a practitioner to conduct the examination, the Secretary must appoint a registered medical practitioner to perform the examination.

29.3 The Board must pay for the examination.

**30. PRELIMINARY INVESTIGATIONS - Report of examination**

30.1 The medical practitioner must give a report of her or his examination to the member of the Board appointed to investigate the matter, and, not more than 7 days later, to the practitioner being investigated.

30.2 The person appointed to investigate the matter must discuss the report with the practitioner, and, in the case of an adverse finding in the report, the possible ways of dealing with that finding.

30.3 After discussing the report with the practitioner, the person appointed to investigate the matter must report to the Board.

- 30.4 Despite **clause 30.1**, if the report contains information of a medical or psychiatric nature concerning the practitioner, and it appears to the medical practitioner that the disclosure of that information to the practitioner might be prejudicial to the physical or mental health or well being of the practitioner, the investigator may decide not to give that information to the practitioner but to give it instead to a medical practitioner nominated by that practitioner.
- 30.5 Before acting under **clause 30.4**, the investigator must report to the Board and, if the investigator is not an orthoptist and the Board is of the opinion that it is necessary for the investigation of the matter to be continued by an orthoptist, the Board may appoint an orthoptist to continue the investigation.

### **31. PRELIMINARY INVESTIGATIONS - Outcome**

- 31.1 If after considering the reports given under **clause 30.1**, the Board decides that further action should be taken, the Board must ask the practitioner whether or not she or he is prepared to agree to:
- (a) alter the way in which she or he practises orthoptics; or
  - (b) the imposition of conditions, limitations or restrictions on her or his registration; or
  - (c) the suspension of her or his registration for the period of time specified by the Board.
- 31.2 The Board may take any action that is necessary to implement an agreement under **clause 31.1**.

### **32. PRELIMINARY INVESTIGATIONS - Referral to formal hearing**

If a registered orthoptist who is the subject of a preliminary investigation under these Regulations:

- (a) does not agree to undergo a medical examination or does not abide by an agreement to undergo a medical examination; or
- (b) does not reach an agreement with the Board under **clause 31.1** or does not abide by an agreement reached with the Board under **clause 31.1**

the Board may refer the matter to a formal hearing.

### **33. PRELIMINARY INVESTIGATIONS - Request for conditions, limitations or restrictions**

- 33.1 A registered orthoptist who believes that her or his ability to practise orthoptics is affected because:
- (a) of her or his physical or mental health; or
  - (b) she or he has an incapacity; or
  - (c) she or he is an alcoholic or drug-dependent person
- may ask the Board to impose a condition, limitation or restriction on her or his practice.
- 33.2 If the Board and the practitioner agree upon the condition, limitation or restriction to be imposed, the Board may impose it.
- 33.3 If the practitioner and the Board do not agree upon the condition, limitation or restriction to be imposed, the Board must refer the matter to a preliminary investigation.

**34. PRELIMINARY INVESTIGATIONS - Revocation of suspension of registration or condition, limitation or restriction**

The Board may revoke a condition, limitation or restriction imposed on the registration of a registered orthoptist or the suspension of a registered orthoptist's registration, if the practitioner satisfies the Board that her or his ability to practise orthoptics is no longer affected.

**35. PRELIMINARY INVESTIGATIONS - Immediate suspension**

35.1 If the Board has referred a matter to a formal hearing under these Regulations, the Board may suspend the registration of the practitioner until the hearing is completed, if the Board is of the opinion that the ability of the practitioner to practise orthoptics is affected to such an extent that to allow the practitioner to continue to practise would pose a serious risk that the health and safety of the public will be endangered.

35.2 If the Board has suspended the registration of an orthoptist under **clause 35.1**, it must:

- (a) immediately notify the practitioner of that suspension; and
- (b) ensure that the matter is investigated as soon as possible after that suspension.

**36. HEARINGS - Establishment and notification of an informal hearing**

If the Board has determined that an informal hearing be held into the professional conduct of a registered orthoptist under **clause 25 or 26.1**, the Board must:

- (a) appoint a panel to hold the hearing; and
- (b) fix a time and place for the hearing to be held; and
- (c) by registered post, serve a notice on the practitioner which complies with **clause 38**; and
- (d) serve notice on any complainant by registered post under **clause 54.4(a) and (b)**.

**37. FORMAL AND INFORMAL HEARINGS - Constitution of a panel for an informal hearing**

37.1 A panel appointed under **clause 36** is to consist of not more than 3 persons:

- (a) who, subject to **clause 38.2**, are to be members of the Board; and
- (b) of whom, at least 1 is to be a registered orthoptist.

37.2 If:

- (a) the Board is unable to appoint a panel because there are not enough members available to sit on it; or
- (b) the Board is of the opinion that a person with special expertise is required for the hearing

the Board may appoint persons who are not members of the Board to fill the vacant positions on the panel.

37.3 A person who has undertaken a preliminary investigation of the matter is not entitled to be a member of the panel.



**38. HEARINGS - Notice of an informal hearing**

A notice of an informal hearing under **clause 36(c)** must:

- (a) state the nature of the hearing and the allegations made against the orthoptist; and
- (b) give the time and place of the hearing; and
- (c) state that the practitioner may choose to have the matter determined by a formal hearing and state the differences between a formal and informal hearing; and
- (d) state that there is no right to legal representation at the hearing, but that the practitioner is entitled to be present and to make submissions and to be accompanied by another person, that the hearing is not open to the public and list the possible findings the panel can make or orders the panel can give.

**39. HEARINGS - Conduct of an informal hearing**

At an informal hearing:

- (a) the panel must hear and determine the matter before it; and
- (b) the practitioner who is the subject of the hearing is entitled to be present, to make submissions and to be accompanied by another person but is not entitled to be represented; and
- (c) the proceedings of the hearing must not be open to the public.

**40. HEARINGS - Findings and determinations of an informal hearing**

40.1 After considering all the submissions made to the hearing the panel may find either:

- (a) that the practitioner has, whether by act or omission, engaged in unprofessional conduct which is not of a serious nature; or
- (b) that the practitioner has not engaged in unprofessional conduct.

40.2 If the panel finds that the practitioner has, whether by act or omission, engaged in unprofessional conduct which is not of a serious nature, the panel may make one or more of the following determinations:

- (a) that the practitioner undergo counselling;
- (b) that the practitioner undertake further education of the kind stated in the determination and to complete it within the period specified in the determination;
- (c) that the practitioner be cautioned;
- (d) that the practitioner be reprimanded.

**41. HEARINGS - Change of informal hearing to formal hearing during course of hearing**

If, before the end of the hearing:

- (a) the practitioner who is the subject of the hearing fails to attend the hearing without good cause; or
- (b) the practitioner requests that a formal hearing be held; or
- (c) the panel is of the opinion that a formal hearing should be held

the panel must abandon the informal hearing and refer the matter to a formal hearing.

**42. HEARINGS - Request for formal hearing upon completion of informal hearing**

Upon the completion of an informal hearing, the practitioner who was the subject of the hearing may request that a formal hearing be held to review any findings and determinations of the informal hearing.

**43. HEARINGS - Establishment and notification of formal hearing**

If:

- (a) the Board has determined that a formal hearing be held under **clause 25 or 26.1** or has referred a matter to a formal hearing under **clause 32**; or
- (b) a practitioner has requested a formal hearing under **clause 42**; or
- (c) a panel has referred a matter to a formal hearing under **clause 41**

the Board must:

- (d) appoint a panel to hold the hearing; and
- (e) fix a time and place for the hearing to be conducted; and
- (f) serve a notice on the practitioner by registered post which complies with **clause 46**; and
- (g) serve a notice on any complainant by registered post under **clause 54.4(a) and (b)**.

**44. HEARINGS - Constitution of a hearing panel for a formal hearing**

44.1 A panel appointed under **clause 43** must consist of not less than 3 persons:

- (a) who, subject to **clause 44.2**, are to be members of the Board; and
- (b) of whom 1 is to be a lawyer and at least 1 is to be a registered orthoptist.

44.2 If:

- (a) the Board is unable to appoint a panel because there are not enough members available to sit on it; or
- (b) the Board is of the opinion that a person with special expertise is required for the hearing

the Board may appoint persons who are not members of the Board to fill the vacant positions on the panel.

44.3 The following people are not entitled to be members of a panel for a formal hearing:

- (a) a person who has undertaken a preliminary investigation of the matter which is the subject of the hearing;
- (b) a person who has been a member of a panel which held an informal hearing into the matter.

**45. HEARINGS - Notice of a formal hearing**

A notice of a formal hearing under **clause 43** must:

- (a) state the nature of the hearing and the allegations made against the practitioner; and
- (b) give the time and place of the hearing; and

- (c) state that there is a right to make submissions and to be represented, that the hearing is open to the public, list the possible findings the panel can make and state that there is a right to apply for review of the panel's findings.

#### 46. HEARINGS - Conduct of a formal hearing

At a formal hearing:

- (a) the hearing panel must hear and determine the matter before it; and
- (b) the practitioner who is the subject of the hearing is entitled to be present, to make submissions and to be represented; and
- (c) if the hearing arises out of a complaint, the identity of the complainant is not to be published or broadcast and the complainant:
  - (i) in the case of a proceeding which has not been closed under **clause 46(d)**, is entitled to be present; and
  - (ii) if not called as a witness, may make submissions with the permission of the Board; and
- (d) the proceedings are to be open to the public unless the panel determines that the proceedings should be closed because the hearing is taking evidence of intimate, personal or financial matters and, if the panel has determined that the proceedings are closed, the panel may determine that the identity of any witness giving evidence in the proceedings is not to be published or broadcast.

#### 47. HEARINGS - Findings and determinations of a formal hearing into conduct

47.1 After considering all the submissions made to a formal hearing into the professional conduct of a registered orthoptist the panel may find that:

- (a) the practitioner has, whether by act or omission, engaged in unprofessional conduct of a serious nature; or
- (b) the practitioner has, whether by act or omission, engaged in unprofessional conduct which is not of a serious nature; or
- (c) the practitioner has not engaged in unprofessional conduct.

47.2 If the panel finds that the practitioner has, whether by act or omission, engaged in unprofessional conduct of a serious nature, the panel may make one or more of the following determinations:

- (a) require the practitioner to undergo counselling;
- (b) caution the practitioner;
- (c) reprimand the practitioner;
- (d) require the practitioner to undertake further education of the kind stated in the determination and to complete it within the period specified in the determination;
- (e) impose conditions, limitations or restrictions on the registration of the practitioner;
- (f) suspend the registration of the practitioner for the period specified in the determination; or
- (g) cancel the registration of the practitioner.

47.3 If the panel finds under **clause 47.1(b)** that the practitioner has, whether by act or omission, engaged in unprofessional conduct which is not of a serious nature, the panel may make any determination which a panel at an informal hearing is able to make upon making such a finding.

47.4 If the panel has made a determination under **clause 47.2(a) or (d)** and the practitioner has not complied with the determination within the time specified in the order, the Board may suspend the practitioner's registration until the determination is complied with.

**48. HEARINGS - Findings and determinations of a formal hearing into ability to practise**

48.1 After considering all the submissions made to a formal hearing into the ability to practise of a registered orthoptist, the panel may find that:

- (a) the ability of the practitioner to practise is affected because:
  - (i) of the physical or mental health of the practitioner; or
  - (ii) the practitioner has an incapacity; or
  - (iii) the practitioner is an alcoholic or drug- dependent person; or
- (b) the ability of the practitioner is not affected.

48.2 If the panel makes a finding under **clause 48.1(a)**, the panel may make one or more of the following determinations:

- (a) to impose conditions, limitations or restrictions on the registration of the practitioner;
- (b) to suspend the registration of the orthoptist for the period and subject to the conditions, limitations and restrictions, if any, specified in the determination.

**49. INVESTIGATIONS - Procedure at formal and informal hearings**

At a formal or informal hearing:

- (a) subject to these Regulations, the procedure of a panel is in its discretion; and
- (b) the proceedings must be conducted with as little formality and technicality as the requirements of these Regulations and the proper consideration of the matter permit; and
- (c) a panel is not bound by rules of evidence but may inform itself in any way it thinks fit; and
- (d) a panel is bound by the rules of natural justice.

**50. INVESTIGATIONS - Powers of panel conducting a formal hearing**

Sections 12 and 21 and Part 3.10 of the *Evidence Act 1995* of the Commonwealth apply to a panel in the conduct of a formal hearing as if it were a Board or the Chairman of a Board appointed by the Governor in Council.

**51. INVESTIGATIONS - Determinations**

51.1 A determination made by a panel on a hearing comes into operation on its making or at any later time stated in the determination.

51.2 A determination of a panel is to have effect as if it were a determination of the Board.

**52. INVESTIGATIONS - Removal of suspension, condition, limitation or restriction**

52.1 If the Board has suspended the registration of an orthoptist until the completion of a hearing, and at the completion of the hearing the panel determines that the suspension should be removed, the Board must remove the suspension.

- 52.2 If a condition, limitation or restriction has been imposed on the registration of an orthoptist, and, at the completion of a hearing, the panel determines that the condition, limitation or restriction should be removed, the Board must remove that condition, limitation or restriction.

**53. INVESTIGATIONS - Reasons for determinations of panel or Board**

- 53.1 A panel must give reasons for a determination made under these Regulations, to the orthoptist who was the subject of the determination within 28 days of the making of the determination.
- 53.2 A person affected by a determination of a panel may apply to the panel for the reasons for that determination.
- 53.3 An application under **clause 53.2** must be made within 45 days of the making of the determination and reasons must be given to the applicant within 45 days of receiving the application.

**54. INVESTIGATIONS - Notifications**

- 54.1 If a determination has been made by a panel:

- (a) imposing conditions, limitations or restrictions on the registration of an orthoptist; or
- (b) suspending the registration of a practitioner; or
- (c) cancelling the registration of a practitioner

the Board must give notice of the determination:

- (d) in a national newsletter published by each association of orthoptists; and
- (e) where the orthoptist is an employee, to her or his employer; and
- (f) to any Commonwealth body responsible for the funding of health or medical services; and
- (g) if the Board has received a request for information about the person in respect of whom the determination has been made from an orthoptist registration authority outside Australia, that authority.

- 54.2 Notice under **clause 54.1** must be given as soon as possible after the determination has been made.

- 54.3 No action for defamation lies against the Board or its members for giving a notice under **clause 54.1**.

- 54.4 If a complaint has been made to the Board, the Board must notify the complainant:

- (a) of whether or not a formal or informal hearing is to be conducted into the matter and, if so, of the time and place of the hearing and, in the case of a formal hearing, of the fact that the complainant's identity is not to be published or broadcast; and
- (b) in the case of a formal or informal hearing, of whether or not the complainant has any right to make submissions at the hearing; and
- (c) of the findings and determinations of any hearing arising from that complaint and the reasons for those findings and determinations, within 28 days of their having been made.

## 55. INVESTIGATIONS - Confidentiality of information identifying complainant

Subject to **clause 54.1**, a Member or employee of the Board or a registered orthoptist must not publish or broadcast or cause to be published or broadcast any report of a formal hearing under this Part which contains information which would enable:

- (a) the complainant to be identified; or
- (b) if the panel has made a determination prohibiting the publication or broadcast of the identity of a witness, that witness to be identified

unless the complainant or witness has, before publication or broadcast, consented to this.

## 56. INVESTIGATIONS - Terms and conditions of appointment of panel members

- 56.1 A member of a panel is appointed on the terms and conditions determined by the Board for that member.
- 56.2 A member of a panel, other than a member who is an employee of the public service within the meaning of the *Public Service Act 1922* of the Commonwealth or a corresponding enactment of another State of Australia, is entitled to receive the fees that are fixed from time to time by the Board for members of panels.
- 56.3 A member of a panel is entitled to receive the allowances that are fixed from time to time by the Board.
- 56.4 In fixing fees under **clause 56.2**, the Board may fix different fees for different classes of cases.

## 57. CLAIMS BY REGISTERED ORTHOPTISTS AS TO REGISTRATION

- 57.1 A registered orthoptist whose registration is provisional must not:
  - (a) take or use any title calculated to induce a belief that the practitioner's registration is not provisional; or
  - (b) claim to have or hold herself or himself out as having general registration.
- 57.2 A registered orthoptist whose registration is subject to a condition, limitation or restriction must not:
  - (a) take or use any title calculated to induce a belief that the practitioner's registration is not subject to a condition, limitation or restriction; or
  - (b) claim to have or hold herself or himself out as having a registration which is not subject to any condition, limitation or restriction.

## 58. EXISTING REGISTRATIONS

- 58.1 A person who was registered as a registered orthoptist under any corresponding previous regulations immediately before the commencement of these Regulations, and to whom **clause 58.2** does not apply, will be treated as having general registration under these Regulations.
- 58.2 A person who held provisional registration under any corresponding previous regulations immediately before the commencement of these Regulations, will be treated as having provisional registration under these Regulations and that registration is treated as being subject to the same conditions, limitations and restrictions as those which applied to that registration under the corresponding previous regulations.

- 58.3 The registration of a person who is treated as being registered under **clause 58.1** expires (unless sooner cancelled) on 30 September in the second calendar year next following the date of commencement of these Regulations.

## 59. ADVERTISING

A registered orthoptist may advertise in connection with the orthoptist's practice if the advertising:

- (a) is not false;
- (b) is not misleading or deceptive or likely to mislead or deceive;
- (c) does not use the word specialist, or a direct derivation of the word.

## 60. GENERAL PROVISIONS

- 60.1 The failure of any party at any time to require performance by the other party of any provision of these Regulations does not affect in any way the full right of the waiving party to require performance at any later time nor does the waiver by any party of a breach of any provision of it be treated as a waiver of the provision itself or any other provision of it.
- 60.2 Should any provision of these Regulations or the application of it be held invalid or unenforceable by a Court of competent jurisdiction the remainder of the Agreement and the application of it other than those provisions as to which it is held invalid or unenforceable are not affected by it and continue to be valid and enforceable to the fullest extent permitted by law or equity.
- 60.3 Notice may be given by the Board to any person who is entitled to notice under these Regulations by:
- (a) serving it on the person;
  - (b) sending it by post or facsimile transmission to the person at the person's address shown in the Register or the address supplied by the person to the Board for sending notices to the person.
- 60.4 Despite the provisions of **clause 60.3**:
- (a) a notice or demand to be served at an address in Australia and sent by pre-paid post from within Australia is properly served only if it is sent by prepaid ordinary, express or security post and is to be taken to have been served on the next business day following the date of posting; and
  - (b) a notice or demand to be served at an address outside Australia and sent by pre-paid post from within Australia is properly served only if it is sent by any form of pre-paid airmail post and is to be taken to have been served on the sixth business day following the date of posting.
- 60.5 Despite the provisions of **clause 60.3**:
- (a) Service of a notice or demand may be effected by facsimile transmission to a facsimile number known by the sender of the notice or demand to be a current facsimile number of the person or company ('receiver') to be served, and is to be taken to have been served when the facsimile machine of the sender produces a report showing the date and time of the transmission and the facsimile number of the receiver. Where the receiver within 24 hours of transmission notifies the sender that the transmission was not wholly

received in legible form, service by facsimile is effective where a retransmission is sent in conformity with this clause, and no such notice is given by the receiver.

- (b) A facsimile communication transmitted after 5 p.m., Melbourne time, or on a day other than a Saturday, Sunday or public holiday in Melbourne ('business day') is to be taken to have been transmitted and received on the next business day in Melbourne.

60.6 A certificate or other document may be delivered by the Board either personally or by sending it:

- (a) in the case of a registered orthoptist who does not have a registered address in Australia, by airmail post; and
- (b) in any other case, by ordinary post,

and is at the risk of the addressee as soon as it is given or posted.

60.7 A registered orthoptist whose registered address is not in Australia may specify in writing an address in Australia as the registered orthoptist's registered address within the meaning of **clause 60.6**.

60.8 A certificate in writing signed by a Member, Secretary or other officer of the Board that a document or its envelope or wrapper was addressed and stamped and was posted is conclusive evidence of posting.

60.9 Subject to the *Corporations Law* the signature to a written notice given by the Board may be written or printed.

60.10 All notices sent by post outside Australia must be sent by prepaid airmail post.

60.11 The Board may from time to time amend these Regulations as it thinks fit.