

South Australia

# Veterinary Practice Act 2003

An Act to protect animal health, safety and welfare and the public interest by providing for the registration of veterinary surgeons; to regulate the provision of veterinary treatment for the purposes of maintaining high standards of competence and conduct by veterinary surgeons; and for other purposes.

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## Legislative history

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The Parliament of South Australia enacts as follows:

## Part 1—Preliminary

### 1—Short title

This Act may be cited as the *Veterinary Practice Act 2003*.

### 3—Interpretation

- (1) In this Act, unless the contrary intention appears—

**appropriate register** means—

- (a) the general register; or
- (b) the specialist register,

as the case may require;

**artificial breeding procedure** includes artificial insemination, collection of ova, embryos or semen, implantation of embryos and in vitro fertilisation;

**beneficiary** includes an object of a discretionary trust;

**Board** means the Veterinary Surgeons Board of South Australia (see Part 2);

**director** of a body corporate means a member of the board or committee of management of the body corporate, whether validly appointed or not;

**District Court** means the Administrative and Disciplinary Division of the District Court;

**equipment** includes appliances, instruments, dressings and substances used for the purposes of veterinary treatment;

**general register**—see Part 3 Division 1;

**health professional** means—

- (a) a person who is registered in this State as a medical practitioner; or
- (b) a person who is registered in this State as a psychologist; or
- (c) any other person who belongs to a profession, or who has an occupation, declared by the Board, by notice in the Gazette, to be a profession or occupation within the ambit of this definition;

**inspector** means a person authorised by the Board to exercise the powers of an inspector under this Act;

**legal practitioner** means a person admitted and enrolled as a practitioner of the Supreme Court of South Australia;

**proceedings** before the Board includes—

- (a) an application for registration or reinstatement of registration on the general register or specialist register; and
- (b) an application for accreditation of a facility as a veterinary hospital;

***provide***, in relation to veterinary treatment, means provide treatment personally or through the instrumentality of another, and includes offer to provide;

***qualified person***—see section 39;

***record*** means—

- (a) a documentary record; or
- (b) a record made by an electronic, electromagnetic, photographic or optical process; or
- (c) any other kind of record;

***Registrar*** means the person holding or acting in the office of Registrar of the Board;

***repealed Act*** means the *Veterinary Surgeons Act 1985*;

***specialist*** means a person registered on the specialist register;

***specialist register***—see Part 3 Division 1;

***specialty*** means a branch of veterinary practice declared by the Board, by notice in the Gazette, to be a specialty;

***trust***—a trust is considered for the purposes of this Act as a single entity consisting of the trustees and the beneficiaries;

***trust or corporate entity*** means a trust or a body corporate;

***unprofessional conduct*** includes—

- (a) improper or unethical conduct in relation to professional practice; and
- (b) incompetence or negligence in relation to the provision of veterinary treatment; and
- (c) a contravention of or failure to comply with—
  - (i) a provision of this Act; or
  - (ii) a code of conduct or professional standards prepared or endorsed by the Board under this Act; and
- (d) conduct that constitutes an offence punishable by imprisonment for 1 year or more under some other Act or law;

***veterinary services provider*** means a person (not being a veterinary surgeon) who provides veterinary treatment through the instrumentality of a veterinary surgeon;

***veterinary surgeon*** means a person registered on the general register or on both the general register and the specialist register;

***veterinary treatment*** means—

- (a) the diagnosis, treatment or prevention of a disease, injury or condition in an animal; or
- (b) the administration of an anaesthetic to an animal; or
- (c) the castration or spaying of an animal; or
- (d) the carrying out of a prescribed artificial breeding procedure on an animal; or

- (e) any other act or activity of a kind declared by the regulations to be veterinary treatment,

but does not include anything excluded from the ambit of this definition by the regulations.
- (2) A reference in this Act to ***unprofessional conduct*** extends to—
  - (a) unprofessional conduct committed before the commencement of this Act; and
  - (b) unprofessional conduct committed within or outside South Australia or the Commonwealth.
- (3) A reference in this Act to ***veterinary treatment*** (except in section 27) extends, when used in connection with a veterinary surgeon, to all advice, attendances, services, procedures and operations given in the course of the practice of veterinary surgery or veterinary medicine.
- (4) Without limiting the generality of the expression, a person who is not a veterinary surgeon will be taken to provide veterinary treatment through the instrumentality of a veterinary surgeon if that person, in the course of carrying on a business, provides services to the veterinary surgeon for which the person is entitled to receive a share in the profits of the veterinary surgeon's veterinary practice.
- (5) For the purposes of this Act, a person ***occupies a position of authority in a trust or corporate entity*** if the person—
  - (a) in the case of a body corporate—
    - (i) is a director of the body corporate; or
    - (ii) exercises, or is in a position to exercise, control or substantial influence over the body corporate in the conduct of its affairs; or
    - (iii) manages, or is to manage, the business of the body corporate that consists of the provision of veterinary treatment; or
    - (iv) where the body corporate is a proprietary company—is a shareholder in the body corporate; or
  - (b) in the case of a trust—is a trustee or beneficiary of the trust.
- (6) However—
  - (a) a minor who is a shareholder in a proprietary company, or a beneficiary under a trust, is not, for that reason, to be regarded as a person occupying a position of authority; and
  - (b) a charitable organisation that is a beneficiary of a trust is not, for that reason, to be regarded as occupying a position of authority in the trust.
- (7) For the purposes of this Act, a person who holds more than 10 per cent of the issued share capital of a public company will be regarded as a person ***occupying a position of authority*** in that company.

#### **4—Medical fitness to provide veterinary treatment**

A person or body must, in making a determination under this Act as to a person's medical fitness to provide veterinary treatment, have regard to the question of whether the person is able to provide veterinary treatment personally to an animal without endangering the animal's health, safety or welfare.

### **Part 2—Veterinary Surgeons Board of South Australia**

#### **Division 1—Continuation of Board**

##### **5—Continuation of Board**

- (1) The Veterinary Surgeons Board continues in existence as the *Veterinary Surgeons Board of South Australia*.
- (2) The Board—
  - (a) is a body corporate; and
  - (b) has perpetual succession and a common seal; and
  - (c) is capable of suing and being sued in its corporate name; and
  - (d) has all the powers of a natural person that are capable of being exercised by a body corporate; and
  - (e) has the functions and powers assigned or conferred by or under this Act.
- (3) If a document appears to bear the common seal of the Board, it will be presumed, in the absence of proof to the contrary, that the common seal of the Board was duly affixed to the document.

#### **Division 2—Membership**

##### **6—Composition of Board**

- (1) The Board consists of 7 members appointed by the Governor of whom—
  - (a) 1 must be a veterinary surgeon nominated by the South Australian Division of The Australian Veterinary Association; and
  - (b) 6 must be persons nominated by the Minister and of these—
    - (i) 1 (the presiding member) must be a legal practitioner; and
    - (ii) 3 must be veterinary surgeons of whom at least—
      - (A) 1 must have experience or knowledge relating to animals used for primary production or horses; and
      - (B) 1 must have experience or knowledge relating to other animals; and
    - (iii) 2 must be persons (not being veterinary surgeons) of whom at least 1 must have experience or knowledge relating to animal health, safety and welfare.
- (2) At least 1 of the members of the Board nominated by the Minister must be a woman and at least 1 must be a man.

- (3) The Governor may appoint a person to be a deputy of a member and a person so appointed may act as a member of the Board in the absence of the member.
- (4) The requirements of qualification and nomination made by this section in relation to the appointment of a member extend to the appointment of a deputy of that member.

## **7—Terms and conditions of membership**

- (1) A member of the Board will be appointed on conditions determined by the Governor and for a term, not exceeding 3 years, specified in the instrument of appointment and, at the expiration of a term of appointment, is eligible for reappointment.
- (2) The Governor may remove a member of the Board from office—
  - (a) for breach of, or non-compliance with, a condition of appointment; or
  - (b) for misconduct; or
  - (c) for failure or incapacity to carry out official duties satisfactorily.
- (3) The office of a member of the Board becomes vacant if the member—
  - (a) dies; or
  - (b) completes a term of office and is not reappointed; or
  - (c) resigns by written notice to the Minister; or
  - (d) ceases to satisfy the qualification by virtue of which the member was eligible for appointment to the Board; or
  - (e) is removed from office under subsection (2).
- (4) If a member of the Board is a member constituting the Board for the purposes of any proceedings under Part 5 and the member's term of office expires before those proceedings are completed, the member may, for the purpose of continuing and completing those proceedings, continue to act as a member of the Board.

## **8—Vacancies or defects in appointment of members**

An act or proceeding of the Board is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

## **9—Remuneration**

A member of the Board is entitled to remuneration, allowances and expenses determined by the Governor.

## **Division 3—Registrar and staff**

### **10—Registrar**

- (1) There will be a Registrar of the Board.
- (2) The Registrar will be appointed by the Board on terms and conditions determined by the Board.

### **11—Staff**

- (1) There will be such staff of the Board as the Board thinks necessary for the proper performance of its functions.



- (2) A member of the staff of the Board is not, as such, a member of the Public Service, but the Board may employ a person who is on leave from employment in the Public Service or with an instrumentality or agency of the Crown.
- (3) The Board may, with the approval of the Minister administering an administrative unit of the Public Service, make use of the services, facilities or officers of that unit.

## **Division 4—General functions and powers**

### **12—Objects**

The Board must exercise its functions under this Act with the object of protecting animal health, safety and welfare and the public interest by achieving and maintaining high professional standards both of competence and conduct in the provision of veterinary treatment in this State.

### **13—Functions**

- (1) The functions of the Board are as follows:
  - (a) to approve courses of education or training that provide qualifications for registration on the general register or the specialist register;
  - (b) to determine the requirements necessary for registration on the general register or the specialist register;
  - (c) to determine the specialties in which a person may be registered on the specialist register;
  - (d) to establish and maintain the registers contemplated by this Act;
  - (e) to prepare or endorse codes of conduct and professional standards for veterinary surgeons;
  - (f) to prepare or endorse guidelines on continuing education for veterinary surgeons;
  - (g) to establish administrative processes for handling complaints received against veterinary surgeons or veterinary services providers (which may include processes under which the veterinary surgeon or veterinary services provider voluntarily enters into an undertaking);
  - (h) to provide advice to the Minister as may be appropriate;
  - (i) to carry out other functions assigned to the Board by or under this Act, or by the Minister.
- (2) If the Board prepares or endorses a code of conduct, professional standard or guidelines under subsection (1), the Board must—
  - (a) cause a copy of the code, standard or guidelines to be published in the Gazette; and
  - (b) take reasonable steps to send a copy of the code, standard or guidelines to each veterinary surgeon; and
  - (c) ensure that a copy of the code, standard or guidelines is kept available for public inspection, without charge and during ordinary office hours, at the office of the Board,

(although proof of compliance with paragraphs (a), (b) and (c) is not necessary for the purposes of any proceedings that involve an alleged contravention of or failure to comply with a code of conduct or professional standard).

#### **14—Ministerial review of decisions relating to courses**

- (1) If the Board—
  - (a) refuses to approve a course of education or training for the purposes of this Act; or
  - (b) revokes an approval of a course of education or training under this Act, the provider of the course may apply to the Minister for a review of that decision.
- (2) The Minister may determine the application as the Minister thinks fit and, if the Minister finds in favour of the applicant, grant or preserve the approval (as appropriate).

#### **15—Committees**

- (1) The Board may establish committees—
  - (a) to advise the Board on any matter; or
  - (b) to carry out functions on behalf of the Board.
- (2) The membership of a committee will be determined by the Board and may, but need not, consist of, or include, members of the Board.
- (3) The Board will determine who will be the presiding member of a committee.
- (4) The procedures to be observed in relation to the conduct of the business of a committee will be—
  - (a) as determined by the Board;
  - (b) insofar as a procedure is not determined under paragraph (a)—as determined by the committee.

#### **16—Delegations**

- (1) The Board may delegate any of its functions or powers under this Act other than—
  - (a) this power of delegation; and
  - (b) the power to hear and determine proceedings under Part 5.
- (2) A delegation—
  - (a) may be made—
    - (i) to a member of the Board, the Registrar or an employee of the Board; or
    - (ii) to a committee established by the Board; and
  - (b) may be made subject to conditions and limitations specified in the instrument of delegation; and
  - (c) is revocable at will and does not derogate from the power of the Board to act in a matter.

## Division 5—Procedures

### 17—Procedures

- (1) Subject to this Act, 4 members constitute a quorum of the Board.
- (2) One of the members constituting a quorum must be a person who is not a veterinary surgeon.
- (3) A meeting of the Board (other than for the purposes of hearing and determining proceedings under Part 5) will be chaired by the presiding member or, in his or her absence, by the deputy presiding member, and, in the absence of both the presiding member and the deputy presiding member, the members present at a meeting of the Board must choose one of their number to preside at the meeting.
- (4) A decision carried by a majority of the votes cast by members of the Board at a meeting is a decision of the Board.
- (5) Each member present at a meeting of the Board has one vote on any question arising for decision and, except in hearing and determining proceedings under Part 5, the member presiding at the meeting may exercise a casting vote if the votes are equal.
- (6) A conference by telephone or other electronic means between the members of the Board will, for the purposes of this section, be taken to be a meeting of the Board at which the participating members are present if—
  - (a) notice of the conference is given to all members in the manner determined by the Board for the purpose; and
  - (b) each participating member is capable of communicating with every other participating member during the conference.
- (7) A proposed resolution of the Board becomes a valid decision of the Board despite the fact that it is not voted on at a meeting of the Board if—
  - (a) notice of the proposed resolution is given to all members of the Board in accordance with procedures determined by the Board; and
  - (b) a majority of the members express concurrence in the proposed resolution by letter, telegram, telex, facsimile transmission, electronic mail or other written communication setting out the terms of the resolution.
- (8) However, subsections (6) and (7) do not apply in relation to the hearing and determination of proceedings under Part 5 by the Board as constituted for the purposes of proceedings under that Part.
- (9) The Board must have accurate minutes kept of its meetings.
- (10) Subject to this Act, the Board may determine its own procedures.

### 18—Application of Public Sector (Honesty and Accountability) Act

- (1) The *Public Sector (Honesty and Accountability) Act 1995* applies to a member of a committee of the Board as if the committee were an advisory body and the Minister responsible for the administration of this Act were the relevant Minister.

- (2) A member of the Board or a committee of the Board will not be taken to have a direct or indirect interest in a matter for the purposes of the *Public Sector (Honesty and Accountability) Act 1995* by reason only of the fact that the member has an interest in a matter that is shared in common with veterinary surgeons generally, or a substantial section of veterinary surgeons.

## **19—Powers in relation to witnesses etc**

- (1) For the purposes of proceedings before the Board, the Board may—
- (a) by summons signed on behalf of the Board by a member of the Board or the Registrar, require the attendance before the Board of any person whom the Board thinks fit to call before it; or
  - (b) by summons signed on behalf of the Board by a member of the Board or the Registrar—
    - (i) require the production of any relevant records, documents or equipment (including written records that reproduce in a readily understandable form information kept by computer, microfilm or other process); and
    - (ii) in the case of a document or record that is not in the English language—require the production of a written statement in the English language of the contents of the document or record; or
  - (c) inspect any documents, records or equipment produced before it, and retain them for such reasonable period as it thinks fit, and make copies of the documents or records or their contents; or
  - (d) require any person to make an oath or affirmation (which may be administered by the Registrar or any member of the Board) to answer truthfully questions put by any member of the Board or any person appearing before the Board; or
  - (e) require any person appearing before the Board (whether summoned to appear or not) to answer any questions put by any member of the Board or by any person appearing before the Board.
- (2) On receipt of an application for the issue of a summons under this section, a member or the Registrar may, without referring the matter to the Board, issue a summons on behalf of the Board.
- (3) A person who—
- (a) fails without reasonable excuse to comply with a summons issued to attend, or to produce documents, records or equipment, before the Board; or
  - (b) having been served with a summons to produce a written statement of the contents of a document or record in the English language fails, without reasonable excuse, to comply with the summons or produces a statement that he or she knows, or ought to know, is false or misleading in a material particular; or
  - (c) misbehaves before the Board, wilfully insults the Board or one or more of the members in the exercise of the member's official duties, or interrupts the proceedings of the Board; or

- (d) refuses to be sworn or to affirm, or refuses or fails to answer truthfully a relevant question when required to do so by the Board,

is guilty of an offence.

Maximum penalty: \$10 000 or imprisonment for 6 months.

- (4) A person who appears as a witness before the Board has the same protection as a witness in proceedings before the Supreme Court.

## **20—Power to require medical examination or report**

- (1) The Board may, for any purpose associated with the administration or operation of this Act, require a veterinary surgeon or a person who is applying for registration or reinstatement of registration as a veterinary surgeon to—
  - (a) submit to an examination by a health professional, or by a health professional of a class, specified by the Board; or
  - (b) provide a medical report from a health professional, or from a health professional of a class, specified by the Board,(including an examination or report that will require the person to undergo some form of medically invasive procedure).
- (2) If a veterinary surgeon fails to comply with a requirement made under subsection (1), the Board may suspend the person's registration until further order of the Board.

## **21—Principles governing proceedings**

In any proceedings before the Board under this Act, the Board—

- (a) is not bound by the rules of evidence and may inform itself on any matter as it thinks fit; and
- (b) must act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms.

## **22—Representation at proceedings**

A party to proceedings before the Board is entitled to be represented at the hearing of those proceedings.

## **23—Costs**

- (1) The Board may award such costs against a party to proceedings as the Board considers just and reasonable.
- (2) A party who is dissatisfied with the amount of the costs fixed by the Board may request a Master of the Supreme Court to tax the costs and, after taxing the costs, the Master may confirm or vary the amount of the costs fixed by the Board.
- (3) Subject to this section, costs awarded by the Board under this section may be recovered as a debt.

## **Division 6—Accounts, audit and annual report**

### **24—Accounts and audit**

- (1) The Board must keep proper accounting records in relation to its financial affairs, and must have annual statements of account prepared in respect of each financial year.
- (2) The accounts must be audited at least once in every year by an auditor approved by the Auditor-General and appointed by the Board.
- (3) The Auditor-General may at any time audit the accounts of the Board.

### **25—Annual report**

- (1) The Board must, on or before 30 September in each year, deliver to the Minister a report on the administration of this Act and the work of the Board during the financial year ending on the preceding 30 June.
- (2) The report must incorporate the audited accounts of the Board for the relevant financial year.
- (3) The Minister must, within 12 sitting days after receiving a report under this section, have copies of the report laid before both Houses of Parliament.

## **Part 3—Registration of veterinary surgeons**

### **Division 1—Registers**

#### **26—Registers**

The Registrar must keep the following registers:

- (a) a general register;
- (b) a specialist register;
- (c) a register of persons who have been removed from the general register or specialist register or a particular specialty under this Act or any other Act or law or former Act or law and who have not been reinstated to that register or specialty.

#### **27—Authority conferred by registration on general or specialist register**

Subject to any restrictions, limitations or conditions imposed under this Act—

- (a) registration on the general register authorises the person to provide veterinary treatment;
- (b) registration on the specialist register authorises the person to provide veterinary treatment in the specialty in which he or she is registered.

#### **28—General and specialist registers**

- (1) A person cannot be on the specialist register unless the person is also on the general register.

- (2) The general and specialist registers must include, in relation to each veterinary surgeon—
- (a) the person's full name and business address; and
  - (b) the qualifications for registration held by the person; and
  - (c) in the case of a specialist, the speciality in which the person is registered; and
  - (d) particulars of any limitation or condition that affects or restricts the person's right to provide veterinary treatment; and
  - (e) information prescribed by the regulations,
- and may include other information as the Board thinks fit.

### **29—Register of persons removed from general or specialist register**

The register of persons who have been removed under this Act or any other Act or law or former Act or law from the general register or specialist register or a particular specialty and who have not been reinstated to that register or specialty—

- (a) must not include any person who is dead;
- (b) must include, in relation to each person on the register, a statement of—
  - (i) the register or specialty from which the person was removed; and
  - (ii) the reason for removal of the person; and
  - (iii) the date of removal; and
  - (iv) in the case of removal consequent on suspension or disqualification—the duration of the suspension or disqualification;
- (c) must have deleted from it all information relating to any person who has been reinstated on each register or specialty from which the person was removed.

### **30—Provisions of general application to registers**

- (1) The Registrar is responsible to the Board for the form and maintenance of the registers.
- (2) The Registrar must correct an entry in a register that is not, or has ceased to be, correct.
- (3) The registers must be kept available for inspection, on payment of the prescribed fee, by any person during ordinary office hours at the office of the Board and may be made available to the public by electronic means.
- (4) A person may, on payment of the prescribed fee, obtain a copy of any part of a register kept under this Act.
- (5) A certificate stating that a person was, or was not, registered on the general register or specialist register or in a particular specialty under this Act at a particular date or during a particular period and purporting to be signed by the Registrar will, in the absence of proof to the contrary, be accepted in legal proceedings as proof of the registration, or of the fact that the person was not so registered, on the date or during the period stated in the certificate.

### 31—Requirement to inform Board of changes

A veterinary surgeon must, within 3 months after changing his or her name or personal or business address, inform the Board in writing of the change.

Maximum penalty: \$250.

## Division 2—Registration

### 32—Registration of natural persons on general or specialist register

- (1) Subject to this Act, a natural person is eligible for registration on the general register, and a person registered on the general register is eligible for registration on the specialist register in a particular specialty, if the person, on application to the Board, satisfies the Board that he or she—
  - (a) has qualifications approved or recognised by the Board for the purposes of registration on the register or in the specialty to which the application relates; and
  - (b) has met the requirements determined by the Board to be necessary for the purposes of registration on that register or in that specialty; and
  - (c) is medically fit to provide veterinary treatment as a veterinary surgeon; and
  - (d) is, unless exempted by the Board, insured in a manner and to an extent approved by the Board against civil liabilities that might be incurred by the person in the course of providing veterinary treatment as a veterinary surgeon; and
  - (e) is a fit and proper person to be registered on that register or in that specialty.
- (2) If a person who applies for registration, or reinstatement of registration, on a particular register or in a particular specialty—
  - (a) does not, in the opinion of the Board, have the necessary qualifications or experience required for registration on that register or in that specialty; or
  - (b) is not, in the opinion of the Board, medically fit to provide veterinary treatment as a veterinary surgeon; or
  - (c) is not, in the opinion of the Board, a fit and proper person to be registered on that register or in that specialty,the Board may register the person on that register or in that specialty in pursuance of this subsection (*limited registration*)—
  - (d) in order to enable the person—
    - (i) to do whatever is necessary to become eligible for full registration under this Act; or
    - (ii) to teach or to undertake research or study in this State; or
  - (e) if, in its opinion, it would otherwise be in the public interest to do so.
- (3) In registering a person under subsection (2), the Board may impose one or more of the following conditions on the registration:
  - (a) a condition restricting the places or times at which the person may provide veterinary treatment as a veterinary surgeon;



- (b) a condition limiting the kind of veterinary treatment that the person may provide as a veterinary surgeon;
  - (c) a condition limiting the period during which the registration will have effect;
  - (d) a condition requiring that the person be supervised in the provision of veterinary treatment as a veterinary surgeon by a particular person or by a person of a particular class;
  - (e) such other conditions as the Board thinks fit.
- (4) If it appears likely to the Registrar that the Board will grant an application for registration, the Registrar may provisionally register the applicant (*provisional registration*).
- (5) Provisional registration remains in force until the Board determines the application.
- (6) The registration by the Board under this Act of a person who was provisionally registered has effect from the commencement of the provisional registration.

### **33—Application for registration**

- (1) An application for registration must—
- (a) be made to the Board in the manner and form approved by the Board; and
  - (b) be accompanied by the registration fee fixed under this Act.
- (2) An applicant for registration must, if the Board so requires—
- (a) provide the Board with specified information to enable the Board to determine the application; and
  - (b) verify, by statutory declaration, information furnished for the purposes of the application.
- (3) The Board may require an applicant for registration—
- (a) to submit a medical report or other evidence acceptable to the Board as to the applicant's medical fitness to provide veterinary treatment as a veterinary surgeon; or
  - (b) to obtain additional qualifications or experience specified by the Board before the Board determines the application.

### **34—Removal from register or specialty**

- (1) The Registrar must, on application by a veterinary surgeon, remove the person from the appropriate register or specialty to which the application relates.
- (2) The Registrar must remove from the appropriate register or specialty a person—
- (a) who dies; or
  - (b) who ceases to hold a qualification required for registration on that register or in that specialty; or
  - (c) who ceases for any other reason to be entitled to be registered on that register or in that specialty; or
  - (d) whose registration on that register or in that specialty has been suspended or cancelled under this Act.

- (3) If a person who is on the specialist register is removed from the general register, the person must also be removed from the specialist register.
- (4) The Registrar may act under subsection (2) or (3) without giving prior notice to the relevant person.

### **35—Reinstatement on register or in specialty**

- (1) A person who has been removed from a register or specialty under this Act—
  - (a) on his or her application; or
  - (b) on account of failure to pay the annual practice fee or to furnish the return required under section 36; or
  - (c) on account of the person ceasing to hold a qualification required for registration on that register or in that specialty or otherwise ceasing to be entitled to be registered on that register or in that specialty; or
  - (d) on account of failure to pay a fine imposed on the person by the Board under this Act,may apply to the Board at any time for reinstatement on that register or in that specialty.
- (2) A person whose registration on a register or in a specialty has been suspended may apply to the Board for reinstatement on the register or in the specialty (but not, in the case of an order for suspension for a specified period made in disciplinary proceedings under Part 5, until after the expiry of that period).
- (3) A person who has been disqualified from being registered on a register or in a specialty under this Act may, subject to the terms of the order for disqualification, apply to the Board for reinstatement on the register or in the specialty.
- (4) An application for reinstatement must—
  - (a) be made to the Board in the manner and form approved by the Board; and
  - (b) be accompanied by the reinstatement fee fixed under this Act.
- (5) An applicant for reinstatement must, if the Board so requires—
  - (a) provide the Board with specified information to enable the Board to determine the application; and
  - (b) verify, by statutory declaration, information furnished for the purposes of the application.
- (6) The Board may require an applicant for reinstatement—
  - (a) to submit a medical report or other evidence acceptable to the Board as to the applicant's medical fitness to provide veterinary treatment as a veterinary surgeon; or
  - (b) to obtain additional qualifications or experience specified by the Board before the Board determines the application.
- (7) Subject to this section, the Board must reinstate on the appropriate register or in a specialty an applicant under this section if satisfied that the applicant is eligible for registration on that register or in that specialty.

- (8) The Board may refuse to reinstate the applicant on the appropriate register or in a specialty until all complaints (if any) laid against the applicant under this Act have been finally disposed of.

### **36—Fees and returns**

- (1) Subject to this Act, a person will not be registered, nor will a registration be reinstated, until the registration or reinstatement fee, and the annual practice fee, fixed under this Act have been paid.
- (2) A veterinary surgeon must, in each calendar year before the date fixed for that purpose by the Board—
  - (a) pay to the Board the annual practice fee fixed under this Act; and
  - (b) furnish the Board with a return, in a form approved by the Board, containing all information specified in the return relating to the provision of veterinary treatment, or the undertaking of any course of continuing veterinary practice education, by the person during the preceding year or to any other matter relevant to the person's registration under this Act.
- (3) The Board may, without further notice, remove a person who fails to pay the annual practice fee or furnish the required return by the due date from the appropriate registers on which the person is registered.

### **37—Variation or revocation of conditions of registration**

- (1) The Board may, at any time, on application by a veterinary surgeon, vary or revoke a condition imposed by the Board on the person's registration under this Act.
- (2) The Registrar and the Minister are entitled to appear and be heard on an application under this section.

### **38—Contravention of conditions of registration**

A person who contravenes, or fails to comply with, a condition imposed under this Act on the person's registration is guilty of an offence.

Maximum penalty: \$20 000 or imprisonment for 6 months.

## **Part 4—Veterinary practice**

### **Division 1—General offences**

#### **39—Prohibition on provision of veterinary treatment for fee or reward by unqualified persons**

- (1) A person must not provide veterinary treatment for fee or reward unless, at the time the treatment was provided—
  - (a) the person was a qualified person; or
  - (b) the person provided the treatment through the instrumentality of a qualified person.

Maximum penalty: \$20 000 or imprisonment for 6 months.

- (2) Subsection (1) does not apply in relation to—
- (a) veterinary treatment provided by an employee of the owner of the animal in the course of that employment; or
  - (b) veterinary treatment provided by an unqualified person in prescribed circumstances; or
  - (c) veterinary treatment provided pursuant to an exemption under subsection (3).
- (3) The Governor may, by proclamation, exempt a person from subsection (1) if of the opinion that good reason exists for doing so in the particular circumstances of the case.
- (4) An exemption under subsection (3) may be subject to such conditions as the Governor thinks fit.
- (5) A person who contravenes, or fails to comply with, a condition of an exemption under this section is guilty of an offence.  
Maximum penalty: \$20 000.
- (6) The Governor may, by proclamation, vary or revoke a proclamation under this section.
- (7) In this section—  
***qualified person***, in relation to veterinary treatment, means a person authorised by or under this Act or any other Act to provide that treatment.

#### **40—Illegal holding out as veterinary surgeon or specialist**

- (1) A person must not hold himself or herself out as a veterinary surgeon, specialist or particular class of specialist, or permit another person to do so, unless registered on the appropriate register and, in the case of a particular class of specialist, in the specialty relevant to that class.  
Maximum penalty: \$20 000 or imprisonment for 6 months.
- (2) A person must not hold out another as a veterinary surgeon, specialist or particular class of specialist unless the other person is registered on the appropriate register and, in the case of a particular class of specialist, in the specialty relevant to that class.  
Maximum penalty: \$20 000 or imprisonment for 6 months.

#### **41—Illegal holding out concerning limitations or conditions**

- (1) A person whose registration is limited or subject to a condition under this Act must not hold himself or herself out as having a registration that is not limited or not subject to a condition or permit another person to do so.  
Maximum penalty: \$20 000 or imprisonment for 6 months.
- (2) A person must not hold out another whose registration is limited or subject to a condition under this Act as having a registration that is not limited or not subject to a condition.  
Maximum penalty: \$20 000 or imprisonment for 6 months.

**42—Use of certain titles or descriptions prohibited**

- (1) A person who is not registered on the appropriate register or in the relevant specialty must not use a prescribed word, or its derivatives, to describe himself or herself or a service that he or she provides.  
Maximum penalty: \$20 000.
- (2) A person must not, in the course of advertising or promoting a service that he or she provides, use a prescribed word, or its derivatives, to describe a person who is engaged in the provision of the service but is not registered on the appropriate register or in the relevant specialty.  
Maximum penalty: \$20 000.
- (3) In this section—  
*prescribed word* means—
  - (a) in relation to registration on the general register or specialist register—
    - (i) veterinary surgeon; or
    - (ii) veterinary practitioner; or
  - (b) in relation to registration in a specialty—the words comprising the name of the specialty; or
  - (c) any other word or expression prescribed by the regulations.

**43—Board's approval required where veterinary surgeon has not practised for 3 years**

- (1) A veterinary surgeon who has not provided veterinary treatment for a period of 3 years or more must not provide veterinary treatment for fee or reward without first obtaining the approval of the Board.  
Maximum penalty: \$20 000.
- (2) The Board—
  - (a) may, before granting its approval under subsection (1), require the applicant to obtain qualifications or experience specified by the Board and for that purpose may require the applicant to undertake a specified course of instruction or training in veterinary treatment; and
  - (b) may impose one or more of the following conditions on the applicant's registration:
    - (i) a condition restricting the places and times at which the applicant may provide veterinary treatment;
    - (ii) a condition limiting the kind of veterinary treatment that the applicant may provide;
    - (iii) a condition requiring that the applicant be supervised in the provision of veterinary treatment by a particular person or by a person of a particular class;
    - (iv) such other conditions as the Board thinks fit.

#### 44—Veterinary surgeon to be indemnified against loss

- (1) A veterinary surgeon must not, unless exempted by the Board, provide veterinary treatment for fee or reward unless insured in a manner and to an extent approved by the Board against civil liabilities that might be incurred by him or her in the course of providing veterinary treatment.

Maximum penalty: \$10 000.

- (2) The Board may, subject to such conditions as it thinks fit, exempt a person, or a class of persons, from the requirements of this section and may, whenever it thinks fit, revoke an exemption or revoke or vary the conditions under which an exemption operates.

#### 45—Information relating to claim against veterinary surgeon to be provided

If a person has claimed damages or other compensation from a veterinary surgeon or other person for alleged negligence committed by the veterinary surgeon in the course of providing veterinary treatment, the veterinary surgeon must—

- (a) within 30 days after the claim is made; and
- (b) within 30 days after any order is made by a court to pay damages or other compensation in respect of that claim or any agreement has been entered into for payment of a sum of money in settlement of that claim (whether with or without a denial of liability),

provide the Board with prescribed information relating to the claim.

Maximum penalty: \$10 000.

### Division 2—Provisions for avoidance of conflicts of interest

#### 46—Interpretation

- (1) In this Division—

***benefit*** means money or any property that has a monetary value;

***domestic partner*** means a person who is a domestic partner within the meaning of the *Family Relationships Act 1975*, whether declared as such under that Act or not;

***prescribed business*** means a business consisting of or involving—

- (a) the provision of a veterinary service; or
- (b) the manufacture, sale or supply of a veterinary product;

***prescribed relative***, in relation to a veterinary surgeon, means a parent, spouse, domestic partner, child, grandchild, brother or sister of the veterinary surgeon;

***spouse***—a person is the spouse of another if they are legally married;

***veterinary product*** means—

- (a) a veterinary pharmaceutical product; or
- (b) any other product declared by the regulations to be a veterinary product for the purposes of this Division;

*veterinary service* means—

- (a) veterinary treatment, veterinary pathology or veterinary pharmaceutical services; or
  - (b) veterinary hospital services; or
  - (c) any other service declared by the regulations to be a veterinary service for the purposes of this Division.
- (2) Subject to subsection (3), a person has an interest in a prescribed business for the purposes of this Division if the person is likely to derive a financial benefit, whether directly or indirectly, from the profitable conduct of the business.
- (3) For the purposes of subsection (2)—
- (a) a financial benefit is not derived by a veterinary surgeon if the benefit consists solely of reasonable fees payable to the veterinary surgeon for treatment provided to animals by the veterinary surgeon; and
  - (b) a person does not have an interest in a prescribed business that is carried on by a public company if the interest consists only of a shareholding in the company of less than 5 per cent of the issued share capital of the company.

#### **47—Veterinary surgeon or prescribed relative to inform Board of interests in prescribed businesses**

- (1) A veterinary surgeon or prescribed relative of a veterinary surgeon who has an interest in a prescribed business must—
- (a) in the case of an interest that came into existence before the commencement of this section—within 1 month after the commencement of this section; or
  - (b) in any other case—within 1 month after the interest comes into existence,
- give to the Board prescribed information relating to the interest and the manner in which it arose.

Maximum penalty: \$20 000.

- (2) A veterinary surgeon or prescribed relative of a veterinary surgeon who has an interest in a prescribed business must, within 1 month after a change in the nature or extent of the interest, give to the Board prescribed information relating to the change.

Maximum penalty: \$20 000.

- (3) The Board must keep a record of information provided to the Board under this section available for inspection, on payment of the prescribed fee, by any person during ordinary office hours at the office of the Board and may make the record available to the public by electronic means.

#### **48—Veterinary surgeon to inform client of interests in prescribed businesses**

- (1) If a veterinary surgeon or prescribed relative of a veterinary surgeon has an interest in a prescribed business, the veterinary surgeon must not—
- (a) recommend that a veterinary service provided by that business be used in relation to an animal being treated by the veterinary surgeon; or

- (b) prescribe, or recommend that a veterinary product manufactured, sold or supplied by that business be used in relation to an animal being treated by the veterinary surgeon,

unless the veterinary surgeon has informed the person apparently responsible for the animal, in writing, of the interest of the veterinary surgeon or prescribed relative of the veterinary surgeon in that business.

Maximum penalty: \$20 000.

- (2) It is a defence to proceedings for an offence against subsection (1) and to a charge of unprofessional conduct for failure to comply with that subsection for the defendant to prove that he or she did not know and could not reasonably have been expected to know that a prescribed relative had an interest in the prescribed business to which the recommendation or prescription that is the subject of the proceedings relates.

#### **49—Offence to give, offer or accept benefit for recommendation or prescription**

- (1) A person must not give, or offer to give, a veterinary surgeon or a prescribed relative of a veterinary surgeon a benefit as an inducement, consideration or reward for the veterinary surgeon—
  - (a) recommending that a veterinary service provided by the person be used in relation to an animal being treated by the veterinary surgeon; or
  - (b) prescribing, or recommending that a veterinary product manufactured, sold or supplied by the person be used in relation to an animal being treated by the veterinary surgeon.

Maximum penalty: \$20 000.

- (2) A veterinary surgeon or a prescribed relative of a veterinary surgeon must not accept from any person a benefit offered or given as an inducement, consideration or reward for the veterinary surgeon—
  - (a) recommending that a veterinary service provided by the person be used in relation to an animal being treated by the veterinary surgeon; or
  - (b) prescribing, or recommending that a veterinary product manufactured, sold or supplied by the person be used in relation to an animal being treated by the veterinary surgeon.

Maximum penalty: \$20 000.

### **Division 3—Veterinary services providers**

#### **50—Information to be given to Board by veterinary services provider**

- (1) A veterinary services provider must—
  - (a) in the case of a person who was a veterinary services provider immediately before the commencement of this section—within 60 days of that commencement; and
  - (b) in any other case—within 60 days of becoming a veterinary services provider, give to the Board, in writing—



- (c) the provider's full name and business or (in the case of a corporation) registered address;
- (d) the address of the premises at which the provider provides veterinary treatment;
- (e) the full names and business addresses of the veterinary surgeons through the instrumentality of whom the provider is providing veterinary treatment;
- (f) if the provider is a trust or corporate entity that has not been exempted by the regulations from the requirements of this paragraph—the full names and addresses of all persons who occupy a position of authority in the trust or corporate entity.

Maximum penalty: \$10 000.

- (2) A veterinary services provider must, within 30 days of any change occurring in the particulars required to be given under subsection (1), inform the Board in writing of the change.

Maximum penalty: \$10 000.

- (3) The Board must keep a record of information provided to the Board under this section available for inspection, on payment of the prescribed fee, by any person during ordinary office hours at the office of the Board and may make the record available to the public by electronic means.

## **51—Improper directions etc to veterinary surgeon by veterinary services provider**

- (1) If a person who provides veterinary treatment through the instrumentality of a veterinary surgeon directs or pressures the veterinary surgeon to act unlawfully, improperly, negligently or unfairly in relation to the provision of veterinary treatment, the person is guilty of an offence.

Maximum penalty: \$20 000.

- (2) If a person who occupies a position of authority in a trust or corporate entity that provides veterinary treatment through the instrumentality of a veterinary surgeon directs or pressures the veterinary surgeon to act unlawfully, improperly, negligently or unfairly in relation to the provision of veterinary treatment, the person and the entity are each guilty of an offence.

Maximum penalty: \$20 000.

## **Division 4—Veterinary hospitals**

### **52—Illegal holding out of facility as veterinary hospital**

A person must not hold out a facility as a veterinary hospital or animal hospital or permit another person to do so unless the facility is accredited as a veterinary hospital by the Board.

Maximum penalty: \$20 000.

### **53—Accreditation by Board of facility as veterinary hospital**

- (1) Subject to this Act, a facility is eligible for accreditation by the Board as a veterinary hospital if the person applying for accreditation satisfies the Board that the requirements determined by the Board to be necessary for accreditation are met in relation to the facility.
- (2) Subject to this Act, accreditation by the Board of a facility as a veterinary hospital remains in force for a period of 3 years and may be renewed for successive 3 year periods.
- (3) An application for accreditation or renewal of accreditation must—
  - (a) be made to the Board in the manner and form approved by the Board; and
  - (b) be accompanied by the fee fixed under this Act.
- (4) An applicant for accreditation or renewal of accreditation must, if the Board so requires—
  - (a) provide the Board with specified information to enable the Board to determine the application; and
  - (b) verify, by statutory declaration, information furnished for the purposes of the application; and
  - (c) facilitate inspection of the facility by a person authorised by the Board.
- (5) If the Board is satisfied that the requirements determined by the Board to be necessary for accreditation of a facility as a veterinary hospital are not met in relation to a facility so accredited, the Board may, by order—
  - (a) suspend the accreditation of the facility until stipulated conditions are complied with or until further order of the Board; or
  - (b) cancel the accreditation of the facility.
- (6) The Board must keep a record of facilities accredited by the Board as veterinary hospitals available for inspection, on payment of the prescribed fee, by any person during ordinary office hours at the office of the Board and may make the record available to the public by electronic means.

### **54—Requirement to inform Board on becoming owner or occupier of facility accredited as veterinary hospital**

A person must, within 3 months after becoming the owner or occupier of a facility that is accredited by the Board as a veterinary hospital, inform the Board in writing of that fact and the person's full name and business or (in the case of a corporation) registered address.

Maximum penalty: \$250.

## Part 5—Investigations and proceedings

### Division 1—Preliminary

#### 55—Interpretation

In this Part—

- (a) a reference to *occupier of a position of authority* includes a reference to a person who is not but who was, at the relevant time, the occupier of a position of authority;
- (b) a reference to *veterinary services provider* includes a reference to a person who is not but who was, at the relevant time, a veterinary services provider;
- (c) a reference to *veterinary surgeon* includes a reference to a person who is not but who was, at the relevant time, a veterinary surgeon under this Act or a veterinary surgeon or veterinary practitioner under the repealed Act.

### Division 2—Investigations

#### 56—Powers of inspectors

- (1) If there are reasonable grounds for suspecting—
  - (a) that there is proper cause for disciplinary action against a person (see Division 4); or
  - (b) that a veterinary surgeon is medically unfit to provide veterinary treatment; or
  - (c) that any other person is guilty of an offence against this Act,an inspector may investigate the matter.
- (2) An inspector may investigate whether the requirements determined by the Board to be necessary for accreditation of a facility as a veterinary hospital are met in relation to a facility so accredited by the Board.
- (3) For the purposes of an investigation, an inspector may—
  - (a) at any reasonable time, enter and inspect premises of a veterinary surgeon, premises of a facility accredited as a veterinary hospital by the Board or premises on which the inspector reasonably suspects an offence against this Act has been or is being committed; or
  - (b) with the authority of a warrant issued by a magistrate or in circumstances in which the inspector reasonably believes that immediate action is required, use reasonable force to break into or open any part of, or anything in or on any premises referred to in paragraph (a); or
  - (c) while on premises entered under paragraph (a) or (b), seize and retain anything found on the premises that the inspector reasonably believes may afford evidence relevant to the matters under investigation; or

- (d) require any person who has possession of records or documents relevant to the matters under investigation to produce those records or documents for inspection, including written records that reproduce in a readily understandable form information kept by computer, microfilm or other process; or
  - (e) inspect any records or documents produced to the inspector and retain them for such reasonable period as the inspector thinks fit, and make copies of the records or documents; or
  - (f) require any person who is in a position to provide information relevant to the matters under investigation to answer any question put by the inspector in relation to those matters; or
  - (g) take photographs, films or video or audio recordings; or
  - (h) if the inspector reasonably suspects that an offence against this Act has been or is being committed, require the suspected offender to state his or her full name and address.
- (4) An inspector must not exercise the power conferred by subsection (3)(a) in relation to any residential premises except with the permission of the occupier of the premises or on the authority of a warrant issued by a magistrate.
- (5) A magistrate must not issue a warrant under this section unless satisfied, by information given on oath, that the warrant is reasonably required in the circumstances.
- (6) The person in charge of premises at the relevant time must give an inspector such assistance and provide such facilities as are necessary to enable the powers conferred by this section to be exercised.

Maximum penalty: \$5 000.

### **57—Offence to hinder etc inspector**

A person who—

- (a) hinders or obstructs an inspector in the exercise of powers conferred by this Act; or
- (b) uses abusive, threatening or insulting language to an inspector; or
- (c) refuses or fails to comply with a requirement of an inspector under this Act; or
- (d) when required under this Act by an inspector to answer a question, refuses or fails to answer the question to the best of the person's knowledge, information and belief; or
- (e) falsely represents, by words or conduct, that he or she is an inspector,

is guilty of an offence.

Maximum penalty: \$10 000.

### **58—Offences by inspectors**

An inspector who, in the course of exercising powers under this Act—

- (a) addresses offensive language to another person; or

- (b) without lawful authority, hinders or obstructs or uses or threatens to use force in relation to another person,
- is guilty of an offence.
- Maximum penalty: \$10 000.

### **Division 3—Medical fitness**

#### **59—Obligation to report medical unfitness of veterinary surgeon**

- (1) If—
    - (a) a health professional who has treated, or is treating, a patient who is a veterinary surgeon; or
    - (b) a person who provides veterinary treatment through the instrumentality of a veterinary surgeon,is of the opinion that the veterinary surgeon is or may be medically unfit to provide veterinary treatment, the person must submit a written report to the Board setting out his or her reasons for that opinion and any other information required by the regulations.
- Maximum penalty: \$10 000.
- (2) The Board must cause a report made under this section to be investigated.

#### **60—Medical fitness of veterinary surgeon**

- If—
- (a) on the application of—
    - (i) the Registrar; or
    - (ii) the Minister; or
  - (b) after an investigation under section 59 has been conducted,
- the Board is satisfied, after due inquiry, that a veterinary surgeon is medically unfit to provide veterinary treatment and that it is desirable in the public interest that an order be made under this section, the Board may, by order—
- (c) suspend the person's registration until further order of the Board or for a specified period determined by the Board; or
  - (d) impose conditions on the person's registration restricting the person's right to provide veterinary treatment; or
  - (e) impose conditions on the person's registration requiring the person to undergo counselling or treatment or to enter into any other undertaking.

### **Division 4—Disciplinary action**

#### **61—Cause for disciplinary action**

- (1) There is proper cause for disciplinary action against a veterinary surgeon if—
  - (a) the person's registration was improperly obtained; or

- (b) the person is for any reason no longer a fit and proper person to be registered on the general register or the specialist register or in a particular specialty; or
  - (c) the person is guilty of unprofessional conduct.
- (2) There is proper cause for disciplinary action against a veterinary services provider if—
  - (a) the provider has contravened or failed to comply with a provision of this Act; or
  - (b) in the case of a veterinary services provider that is a trust or corporate entity—the occupier of a position of authority in the trust or corporate entity has contravened or failed to comply with a provision of this Act.
- (3) There is proper cause for disciplinary action against the occupier of a position of authority in a trust or corporate entity that is a veterinary services provider if—
  - (a) the person has contravened or failed to comply with a provision of this Act; or
  - (b) the trust or corporate entity has contravened or failed to comply with a provision of this Act (unless it is proved that the person could not, by the exercise of reasonable care, have prevented the commission of the offence by the entity).

## **62—Inquiries by Board as to matters constituting grounds for disciplinary action**

- (1) A complaint setting out matters that are alleged to constitute grounds for disciplinary action against a person may be laid before the Board (in a manner and form approved by the Board) by—
  - (a) the Registrar; or
  - (b) the Minister; or
  - (c) a person who is aggrieved by conduct of the person or, if the person aggrieved is a child or is suffering from a mental or physical incapacity, by a person acting on his or her behalf.
- (2) If a complaint is laid under this section, the Board must inquire into the subject matter of the complaint unless the Board considers that the complaint is frivolous or vexatious.
- (3) If a complaint has been laid under this section by or on behalf of an aggrieved person and the Board is satisfied that the complaint arose from a misapprehension on the part of the complainant or from a misunderstanding between the parties, it may, before proceeding further with the hearing of the complaint, require the parties to attend before the Registrar in order to clarify the misapprehension or misunderstanding.
- (4) If, after conducting an inquiry under this section, the Board is satisfied that there is proper cause for taking disciplinary action against the respondent, the Board may, by order, do one or more of the following:
  - (a) censure the respondent;
  - (b) require the respondent to pay to the Board a fine not exceeding \$10 000;

- (c) if the respondent is a veterinary surgeon—impose conditions on the respondent's registration restricting the respondent's right to provide veterinary treatment;
  - (d) if the respondent is registered on the general register but not on the specialist register—
    - (i) suspend the respondent's registration on the general register for a period not exceeding 1 year;
    - (ii) cancel the respondent's registration on the general register;
  - (e) if the respondent is registered on the specialist register—
    - (i) suspend the respondent's registration on the specialist register or in a particular specialty, or on both the general register and the specialist register, for a period not exceeding 1 year;
    - (ii) cancel the respondent's registration on the specialist register or in a particular specialty, or on both the general register and the specialist register;
  - (f) disqualify the respondent from being registered on the general register or specialist register or in a particular specialty or on both the general register and the specialist register;
  - (g) prohibit the respondent from carrying on business as a veterinary services provider;
  - (h) prohibit the respondent from occupying a position of authority in a trust or corporate entity that is a veterinary services provider.
- (5) The Board may—
- (a) stipulate that a disqualification or prohibition under subsection (4) is to apply—
    - (i) permanently; or
    - (ii) for a specified period; or
    - (iii) until the fulfilment of specified conditions; or
    - (iv) until further order;
  - (b) stipulate that an order relating to a person is to have effect at a specified future time and impose conditions as to the conduct of the person or the person's business until that time.
- (6) If—
- (a) a person has been found guilty of an offence; and
  - (b) the circumstances of the offence form, in whole or in part, the subject matter of the complaint,
- the person is not liable to a fine under this section in respect of conduct giving rise to the offence.
- (7) The Board may—
- (a) fix a period within which a fine imposed under this section must be paid;

- (b) on application by a person liable to pay a fine imposed under this section, extend the period within which the fine must be paid.
- (8) A fine imposed under this section is recoverable by the Board as a debt.
- (9) The Board may, without further notice, remove a person who fails to pay a fine imposed under this section from the registers on which the person is registered.
- (10) The Board must keep a record of prohibition orders made under subsection (4) available for inspection, on payment of the prescribed fee, by any person during ordinary office hours at the office of the Registrar and may make the record available to the public by electronic means.

### **63—Contravention of prohibition order or order imposing conditions**

- (1) If a person carries on business as a veterinary services provider in contravention of an order of the Board, the person is guilty of an offence.  
Maximum penalty: \$20 000 or imprisonment for 6 months.
- (2) If a person occupies a position of authority in a trust or corporate entity in contravention of an order of the Board, the person and the entity are each guilty of an offence.  
Maximum penalty: \$20 000 or imprisonment for 6 months.
- (3) If a person contravenes or fails to comply with a condition imposed by the Board as to the conduct of the person or the person's business, the person is guilty of an offence.  
Maximum penalty: \$20 000 or imprisonment for 6 months.

## **Division 5—General**

### **64—Constitution of Board for purpose of proceedings under this Part**

- (1) The Board will, for the purpose of hearing and determining proceedings under this Part, be constituted of the presiding member of the Board (or, in the absence of the presiding member, his or her deputy) and 2 other members of the Board, at least one of whom must be a veterinary surgeon.
- (2) The presiding member of the Board (or his or her deputy) will preside over the proceedings and will, for the purposes of any particular proceedings, select the other 2 members of the Board.
- (3) If a member of the Board as constituted under this section (other than the member presiding over the proceedings) dies or is for any other reason unable to continue with the proceedings, the Board constituted of the remaining members may, if the member presiding over the proceedings so determines, continue and complete the proceedings.
- (4) Any questions of law or procedure arising before the Board will be determined by the member presiding over the proceedings and any other questions by unanimous or majority decision of the members.
- (5) The Board constituted of the member presiding over any particular proceedings sitting alone may—
  - (a) deal with—
    - (i) preliminary, interlocutory or procedural matters; or



- (ii) questions of costs; or
  - (iii) questions of law; or
  - (b) enter consent orders,
- and may, for that purpose or as a consequence, make any determination or order (including a final order) that it considers appropriate.

## **65—Provisions as to proceedings before Board under this Part**

- (1) Subject to this Act, the Board must give to all of the parties to proceedings before the Board under this Part at least 14 days' written notice of the time and place at which it intends to conduct the proceedings, and must afford to the parties a reasonable opportunity to call and give evidence, to examine or cross-examine witnesses, and to make submissions to the Board.
- (2) However—
  - (a) the Board may, if it thinks special reasons exist for doing so, give a lesser period of written notice under subsection (1); and
  - (b) the Board may, if of the opinion that it is necessary to do so to protect the health, safety and welfare of animals or the public interest, suspend the registration of the person the subject of the proceedings pending hearing and determination of the proceedings.
- (3) The requirement to give written notice under subsection (1) does not extend to adjournments.
- (4) If a party to whom notice has been given pursuant to subsection (1) does not attend at the time and place fixed by the notice, the Board may proceed to hear and determine the matter in the absence of that party.
- (5) In the course of proceedings before the Board under this Part, the Board may—
  - (a) receive in evidence a transcript of evidence taken in proceedings before a court, tribunal or other body constituted under the law of South Australia or of any other State or Territory of Australia or of another country, and draw any conclusions of fact from the evidence that it considers proper;
  - (b) adopt, as in its discretion it considers proper, any findings, decision, judgment, or reasons for judgment, of any such court, tribunal or body that may be relevant to the proceedings.
- (6) The Board should conduct proceedings under this Part as expeditiously as possible.

## **Part 6—Appeals**

### **66—Right of appeal to District Court**

- (1) An appeal lies to the District Court against—
  - (a) a refusal by the Board to register, or reinstate the registration of, a person under this Act; or
  - (b) the imposition by the Board of conditions on a person's registration under this Act; or
  - (c) a decision made by the Board in proceedings under Part 5; or

- (d) a refusal by the Board to accredit a facility as a veterinary hospital or a decision of the Board to suspend or cancel the accreditation of such a facility.
- (2) An appeal under subsection (1)(c) against a decision may be instituted by the complainant or the respondent in the proceedings in which the decision was made.
- (3) An appeal must be instituted within one month of the date of the decision appealed against.
- (4) The Board must, on application by a person seeking to appeal a decision of the Board, state in writing the reasons for the decision.
- (5) If the reasons of the Board are not given in writing at the time of making a decision and the person affected by the decision, within one month of the making of the decision, requires the Board to state the reasons in writing, the time for instituting an appeal runs from the time when the person receives the written statement of those reasons.

## **67—Variation or revocation of conditions imposed by Court**

- (1) The District Court may, at any time, on application by a veterinary surgeon, vary or revoke a condition imposed by the Court in relation to the person's registration under this Act.
- (2) The Board and the Minister are entitled to appear and be heard on an application under this section.

## **Part 7—Miscellaneous**

### **68—False or misleading statement**

A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information provided under this Act.

Maximum penalty: \$20 000.

### **69—Procurement of registration by fraud**

A person who, by fraud or any other dishonest means, procures registration or reinstatement of registration under this Act (whether for himself or herself or for another person) is guilty of an offence.

Maximum penalty: \$20 000 or imprisonment for 6 months.

### **70—Victimisation**

- (1) A person commits an act of victimisation against another person (the *victim*) if he or she causes detriment to the victim on the ground, or substantially on the ground, that the victim—
  - (a) has disclosed or intends to disclose information; or
  - (b) has made or intends to make an allegation,that has given rise, or could give rise, to proceedings against the person under this Act.
- (2) An act of victimisation under this Act may be dealt with—
  - (a) as a tort; or

- (b) as if it were an act of victimisation under the *Equal Opportunity Act 1984*, but, if the victim commences proceedings in a court seeking a remedy in tort, he or she cannot subsequently lodge a complaint under the *Equal Opportunity Act 1984* and, conversely, if the victim lodges a complaint under that Act, he or she cannot subsequently commence proceedings in a court seeking a remedy in tort.
- (3) Where a complaint alleging an act of victimisation under this Act has been lodged with the Commissioner for Equal Opportunity and the Commissioner is of the opinion that the subject matter of the complaint has already been adequately dealt with by a competent authority, the Commissioner may decline to act on the complaint or to proceed further with action on the complaint.
- (4) In this section—  
*detriment* includes—
- (a) injury, damage or loss; or
  - (b) intimidation or harassment; or
  - (c) discrimination, disadvantage or adverse treatment in relation to the victim's employment or business; or
  - (d) threats of reprisal.

## **71—Self-incrimination and legal professional privilege**

- (1) It is not an excuse for a person to refuse or fail to answer a question or to produce a document as required under this Act on the ground that to do so might tend to incriminate the person, or make the person liable to a penalty, or on the ground of legal professional privilege.
- (2) If a person objects to answering a question or to producing a document on the ground that the answer or document might tend to incriminate the person or make the person liable to a penalty, then—
- (a) in the case of a person who is required to produce a document—the fact of production of the document (as distinct from the contents of the document); or
  - (b) in any other case—the information furnished in compliance with the requirement,

is not admissible in evidence against the person in proceedings (other than proceedings in respect of the making of a false or misleading statement or perjury) in which the person might be found guilty of an offence or liable to a penalty.

- (3) If a person objects to answering a question or to producing a document on the ground of legal professional privilege, the answer or document will not be admissible in civil or criminal proceedings against the person who would, but for this section, have the benefit of the legal professional privilege.

## **72—Punishment of conduct that constitutes offence**

If conduct constitutes an offence and is also a ground for disciplinary action under this Act, the taking of disciplinary action under this Act is not a bar to conviction and punishment for the offence, nor is conviction and punishment for the offence a bar to disciplinary action under this Act.

## **74—Confidentiality**

- (1) A person engaged or formerly engaged in the administration of this Act or the repealed Act must not divulge or communicate personal information obtained (whether by that person or otherwise) in the course of official duties except—
- (a) as required or authorised by or under this Act or any other Act or law; or
  - (b) with the consent of the person to whom the information relates; or
  - (c) in connection with the administration of this Act or the repealed Act; or
  - (d) in accordance with a request of an authority responsible under the law of a place outside this State for the registration or licensing of persons who provide veterinary treatment, where the information is required for the proper administration of that law.

Maximum penalty: \$10 000.

- (2) Subsection (1) does not prevent disclosure of statistical or other data that could not reasonably be expected to lead to the identification of any person to whom it relates.
- (3) Information that has been disclosed under subsection (1) for a particular purpose must not be used for any other purpose by—
- (a) the person to whom the information was disclosed; or
  - (b) any other person who gains access to the information (whether properly or improperly and whether directly or indirectly) as a result of that disclosure.

Maximum penalty: \$10 000.

## **76—Evidentiary provision**

- (1) In proceedings for an offence against this Act or in disciplinary proceedings under Part 5, an allegation in the complaint—
- (a) that a person named in the complaint is or is not, or was or was not on a specified date, a qualified person;
  - (b) that a person named in the complaint is or is not, or was or was not on a specified date, registered on the general register or the specialist register or in a specified specialty;
  - (c) that the registration of a person named in the complaint is, or was on a specified date, subject to specified conditions;
  - (d) that a person named in the complaint is, or was on a specified date, a veterinary services provider;
  - (e) that a person named in the complaint is, or was on a specified date, occupying a position of authority in a trust or corporate entity;
  - (f) that a facility specified in the complaint is or is not, or was or was not on a specified date, accredited by the Board as a veterinary hospital;
  - (g) that a person named in the complaint is, or was on a specified date, an inspector,

must be accepted as proved in the absence of proof to the contrary.

- (2) In legal proceedings, a document apparently certified by the Registrar to be a copy of a register under this Act, or a copy of a code of conduct or professional standards prepared or endorsed by the Board under this Act, must be accepted as such in the absence of proof to the contrary.

## 77—Service

- (1) A notice or document required or authorised to be given or sent to, or served on, a person for the purposes of this Act may—
- (a) be given to the person personally; or
  - (b) be posted in an envelope addressed to the person at the person's last known residential, business or (in the case of a corporation) registered address; or
  - (c) be left for the person at the person's last known residential, business or (in the case of a corporation) registered address with someone apparently over the age of 16 years; or
  - (d) be transmitted by facsimile transmission or electronic mail to a facsimile number or electronic mail address provided by the person (in which case the notice or document will be taken to have been given or served at the time of transmission).
- (2) Without limiting the effect of subsection (1), a notice or other document required or authorised to be given or sent to, or served on, a person for the purposes of this Act may, if the person is a company or registered body within the meaning of the *Corporations Act 2001* of the Commonwealth, be served on the person in accordance with that Act.

## 78—Variation or revocation of notices

The Board may, by subsequent notice in the Gazette, vary or revoke a notice in the Gazette published by the Board under this Act.

## 79—Regulations

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- (2) Without limiting the generality of subsection (1), the regulations may—
- (a) prescribe, or empower the Board to fix—
    - (i) fees or charges for the purposes of this Act;
    - (ii) fees or charges for services provided by the Board in the exercise of its functions under this Act,and may provide for the waiver, reduction or recovery of such fee or charge;
  - (b) prescribe penalties, not exceeding \$5 000, for breach of, or non-compliance, with a regulation.
- (3) The regulations may—
- (a) refer to or incorporate, wholly or partially and with or without modification, a code, standard or other document prepared or published by a prescribed body, either as in force at the time the regulations are made or as in force from time to time; and

- (b) be of general or limited application; and
  - (c) make different provision according to the persons, things or circumstances to which they are expressed to apply; and
  - (d) provide that a specified provision of this Act does not apply, or applies with prescribed variations, to any person, circumstance or situation (or person, circumstance or situation of a prescribed class) specified by the regulations, subject to any condition to which the regulations are expressed to be subject; and
  - (e) provide that any matter or thing is to be determined, dispensed with, regulated or prohibited according to the discretion of the Minister, the Board, the Registrar or another prescribed person or authority.
- (4) If a code, standard or other document is referred to or incorporated in the regulations—
  - (a) a copy of the code, standard or other document must be kept available for public inspection, without charge and during ordinary office hours, at an office or offices specified in the regulations; and
  - (b) evidence of the contents of the code, standard or other document may be given in any legal proceedings by production of a document apparently certified by the Minister to be a true copy of the code, standard or other document.

## **Schedule—Transitional provisions**

### **2—Transitional provisions relating to Board**

A member of the Board in office on the commencement of this clause continues in office, subject to this Act, for the remainder of the term for which he or she was appointed.

### **3—Transitional provisions relating to registration**

- (1) The register of veterinary surgeons maintained under the repealed Act continues in existence as the general register under this Act.
- (2) The register of specialists maintained under the repealed Act continues in existence as the specialist register under this Act.
- (3) On the commencement of this clause—
  - (a) the name of any company that was registered as a veterinary surgeon under the repealed Act will be taken to be removed from the general register; and
  - (b) the name of each person who, immediately before the commencement of this clause, was the holder of a permit that was in force under the repealed Act will be taken to be added to the general register (as if the person had been granted limited registration),and the Registrar will modify the registers accordingly.

- (4) A person whose name is on the general register or the specialist register immediately following the commencement of this clause will be taken to be registered under this Act on the relevant register and any restrictions, limitations or conditions that applied to the registration of the person, or the permit held by the person, under the repealed Act immediately before that commencement will be taken to continue to apply to the registration of the person under this Act as if they had been imposed by the Board under this Act.
- (5) If a person whose name was removed from a register under the repealed Act for any reason and whose name had not, before the commencement of this Act, been reinstated on that register, applies for registration under this Act, the Board may deal with the application as though it were an application for reinstatement on the appropriate register under this Act.

#### **4—Regulations**

The regulations may make other provisions of a savings or transitional nature consequent on the enactment of this Act.

## Legislative history

### Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Legislation repealed by principal Act

The *Veterinary Practice Act 2003* repealed the following:

*Veterinary Surgeons Act 1985*

### Principal Act and amendments

New entries appear in bold.

| Year        | No        | Title   | Assent           | Commencement  |
|-------------|-----------|---|------------------|---|
| 2003        | 41        | <i>Veterinary Practice Act 2003</i>   | 23.10.2003       | 15.9.2005 ( <i>Gazette</i> 15.9.2005 p3344)                     |
| 2006        | 43        | <i>Statutes Amendment (Domestic Partners) Act 2006</i>                      | 14.12.2006       | Pt 91 (s 217)—1.6.2007 ( <i>Gazette</i> 26.4.2007 p1352)        |
| 2009        | 84        | <i>Statutes Amendment (Public Sector Consequential Amendments) Act 2009</i> | 10.12.2009       | Pt 160 (ss 362 & 363)—1.2.2010 ( <i>Gazette</i> 28.1.2010 p320) |
| <b>2011</b> | <b>36</b> | <b><i>Statutes Amendment (Directors' Liability) Act 2011</i></b>            | <b>22.9.2011</b> | <b>Pt 26 (s 35)—1.1.2012 (<i>Gazette</i> 15.12.2011 p4988)</b>  |

### Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

| Provision  | How varied   | Commencement |
|------------|--|--------------|
| Long title | amended under <i>Legislation Revision and Publication Act 2002</i> | 1.6.2007     |
| Pt 1       |  |              |
| s 2        | <i>omitted under Legislation Revision and Publication Act 2002</i> | 1.6.2007     |
| Pt 2       |  |              |
| s 18       | substituted by 84/2009 s 362                                       | 1.2.2010     |
| Pt 4       |  |              |
| s 46       |  |              |
| s 46(1)    |  |              |



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|                        |  |                 |
|------------------------|--|-----------------|
| domestic partner       | inserted by 43/2006 s 217(1)                                       | 1.6.2007        |
| prescribed relative    | amended by 43/2006 s 217(2)  | 1.6.2007        |
| <i>putative spouse</i> | <i>deleted by 43/2006 s 217(3)</i>                                 | 1.6.2007        |
| spouse                 | substituted by 43/2006 s 217(3)                                    | 1.6.2007        |
| Pt 7                   |  |                 |
| <b>s 73</b>            | <b><i>deleted by 36/2011 s 35</i></b>                              | <b>1.1.2012</b> |
| s 75                   | <i>deleted by 84/2009 s 363</i>                                    | 1.2.2010        |
| Sch                    |  |                 |
| cl 1                   | <i>omitted under Legislation Revision and Publication Act 2002</i> | 1.6.2007        |

## Historical versions

1.6.2007

1.2.2010