

South Australia

Prevention of Cruelty to Animals (Animal Welfare) Amendment Act 2008

An Act to amend the *Prevention of Cruelty to Animals Act 1985*.

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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 *Prevention of Cruelty to Animals (Animal Welfare) Amendment Act 2008*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Prevention of Cruelty to Animals Act 1985*

4—Amendment of long title

Long title—delete "to discourage cruelty to animals" and substitute:
for the promotion of animal welfare

5—Amendment of section 1—Short title

Section 1—delete "*Prevention of Cruelty to Animals Act 1985*" and substitute:
Animal Welfare Act 1985

6—Amendment of section 3—Interpretation

(1) Section 3—after the definition of *animal* insert:

animal welfare notice means a notice given by an inspector under section 31B;

animal welfare order means an order of a court under section 32A;

- (2) Section 3, definition of *the Code*—delete "1997, 6th" and substitute:
2004, 7th
- (3) Section 3—after the definition of *the Committee* insert:
electrical device means any of the following devices designed for the purpose of confining or controlling an animal:
- (a) an electrical prod or goad;
 - (b) a collar designed to impart an electric shock;
 - (c) an electroimmobiliser;
 - (d) any other electrical device prescribed by the regulations;
- electroimmobiliser* means an electrical device designed to temporarily immobilise an animal;
- harm* means any form of damage, pain, suffering or distress (including unconsciousness), whether arising from injury, disease or any other condition;
- (4) Section 3, definition of *inspector*, (a)—delete paragraph (a) and substitute:
- (a) a police officer; or
- (5) Section 3—after the definition of *inspector* insert:
organised animal fight means an event in which an animal is encouraged to fight with another animal;
- (6) Section 3, definition of *pain*—delete the definition
- (7) Section 3—after the definition of *premises* insert:
rodeo means a competition involving cattle or horses (or both) and featuring 1 or more rodeo events, but does not include a competition declared by the regulations not to be a rodeo;
- rodeo event* means any of the following events:
- (a) saddle bronc riding;
 - (b) bareback bronc riding;
 - (c) bull riding;
 - (d) steer riding;
 - (e) roping or tying;
 - (f) team roping;
 - (g) steer wrestling;
 - (h) a prescribed event,
- serious harm* means—
- (a) harm that endangers an animal's life; or
 - (b) harm that results in an animal being so severely injured, so diseased or in such physical condition that it would be cruel not to destroy the animal; or

- (c) harm that consists of, or results in, serious and protracted impairment of a physical or mental function;
- (8) Section 3, definition of *the Society*—delete "S.A. " and substitute:
South Australia
- (9) Section 3, definition of *vehicle*—delete the definition and substitute:
vehicle includes an aircraft, a vessel, a caravan, a trailer and anything attached to a vehicle;
- (10) Section 3, definition of *veterinary surgeon*—delete "*Veterinary Surgeons Act 1985*" and substitute:
Veterinary Practice Act 2003

7—Amendment of section 6—Establishment of Animal Welfare Advisory Committee

- (1) Section 6(2)(a)—delete "for Primary Industries, Natural Resources and Regional Development" and substitute:
responsible for the administration of the *Livestock Act 1997*
- (2) Section 6(2)(f)—delete "for Human Services" and substitute:
responsible for the administration of the *Institute of Medical and Veterinary Science Act 1982*

8—Substitution of Part 3

Part 3—delete the Part and substitute:

Part 3—Animal welfare offences

13—Ill treatment of animals

- (1) If—
 - (a) a person ill treats an animal; and
 - (b) the ill treatment causes the death of, or serious harm to, the animal; and
 - (c) the person intends to cause, or is reckless about causing, the death of, or serious harm to, the animal,the person is guilty of an offence.
Maximum penalty: \$50 000 or imprisonment for 4 years.
- (2) A person who ill treats an animal is guilty of an offence.
Maximum penalty: \$20 000 or imprisonment for 2 years.
- (3) Without limiting the generality of subsection (1) or (2), a person ill treats an animal if the person—
 - (a) intentionally, unreasonably or recklessly causes the animal unnecessary harm; or
 - (b) being the owner of the animal—

- (i) fails to provide it with appropriate, and adequate, food, water, living conditions (whether temporary or permanent) or exercise; or
 - (ii) fails to take reasonable steps to mitigate harm suffered by the animal; or
 - (iii) abandons the animal; or
 - (iv) neglects the animal so as to cause it harm; or
- (c) having caused the animal harm (not being an animal of which that person is the owner), fails to take reasonable steps to mitigate the harm; or
 - (d) uses the animal in an organised animal fight; or
 - (e) releases the animal from captivity for the purpose of it then being hunted or killed; or
 - (f) causes the animal to be killed or injured by another animal; or
 - (g) kills the animal in a manner that causes the animal unnecessary pain; or
 - (h) unless the animal is unconscious, kills the animal by a method that does not cause death to occur as rapidly as possible; or
 - (i) carries out a medical or surgical procedure on the animal in contravention of the regulations; or
 - (j) ill treats the animal in any other manner prescribed by the regulations for the purposes of this section.
- (4) A person charged with an offence against subsection (1) (the ***aggravated offence***) may be convicted of an offence against subsection (2) (the ***lesser offence***) if the court is not satisfied that the aggravated offence has been established beyond reasonable doubt but is satisfied that the lesser offence has been so established.
 - (5) It is a defence to a charge of an offence against subsection (2) if the defendant proves that the offence did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence.
 - (6) In this section—
cause—a person's act or omission causes the death of, or harm to, an animal if the act or omission substantially contributes to the death or harm.

14—Organised animal fights

- (1) A person must not organise or promote, or participate in organising or promoting, an organised animal fight.
Maximum penalty: \$20 000 or imprisonment for 2 years.

- (2) A person must not keep an animal wholly or partly for the purpose of the animal being used (whether by that person or another person) in an organised animal fight.

Maximum penalty: \$20 000 or imprisonment for 2 years.

- (3) A person must not, without the approval of the Minister, have in his or her possession or control—
- (a) a cock-fighting spur; or
 - (b) an implement, article or other thing made or adapted for attachment to an animal—
 - (i) for the purpose of training the animal to fight another animal; or
 - (ii) for the purpose of inciting or assisting the animal to fight another animal or to inflict injury on another animal during a fight; or
 - (iii) for the purpose of protecting the animal in a fight with another animal; or
 - (c) a drug (not being a drug supplied on the prescription of, and given to an animal in accordance with the directions of, a veterinary surgeon) to be administered to an animal for the purpose of inciting or assisting the animal to fight another animal or to inflict injury on another animal during a fight.

Maximum penalty: \$20 000 or imprisonment for 2 years.

- (4) A person must not knowingly allow premises owned or occupied by, or a vehicle owned by or under the control of, the person to be used for the purposes of—
- (a) an organised animal fight; or
 - (b) housing or transporting an animal that is to be used in an organised animal fight.

Maximum penalty: \$20 000 or imprisonment for 2 years.

- (5) A person must not, without lawful excuse (the proof of which lies on the defendant)—
- (a) be present at an organised animal fight; or
 - (b) be in a place at which an organised animal fight is taking place.

Maximum penalty: \$10 000 or imprisonment for 1 year.

15—Electrical devices not to be used in contravention of regulations

A person must not, for the purpose of confining or controlling an animal, use an electrical device in contravention of the regulations.

Maximum penalty: \$10 000 or imprisonment for 1 year.

9—Amendment of section 19—Conditions of licence

Section 19(2)—after paragraph (e) insert:

and

- (f) requiring the holder of the licence to comply with such provisions of the Code as may be specified in the conditions.

10—Amendment of section 23—Animal ethics committees

Section 23(3)—after paragraph (d) insert:

and

- (e) at least 1 will be a person who is independent of the licensee and has never been involved in teaching or research activities involving animals.

11—Substitution of heading to Part 5

Heading to Part 5—delete the heading and substitute:

Part 5—Enforcement

Division 1—Appointment and identification of inspectors

12—Substitution of sections 28 to 31

Sections 28 to 31 (inclusive)—delete the sections and substitute:

28—Appointment of inspectors

- (1) The Minister may, by instrument in writing, appoint a qualified person to be an inspector for the purposes of this Act.
- (2) An appointment may be made subject to conditions specified in the instrument of appointment.
- (3) Without limiting the conditions that may be imposed under subsection (2), the conditions may include the following:
 - (a) a condition restricting the powers of the inspector;
 - (b) a condition requiring the inspector to undertake suitable training;
 - (c) a condition requiring compliance with prescribed protocols and operational procedures;
 - (d) any other condition that the Minister thinks fit.
- (4) The Minister may, at any time, revoke an appointment or vary, revoke or add a condition of an appointment.
- (5) In this section—

qualified person means a person who has successfully completed training as prescribed by the regulations.

29—Identification of inspectors

- (1) An inspector appointed under this Part must be issued with an identity card—
 - (a) containing the person's name and a photograph of the person; and
 - (b) stating that the person is an inspector for the purposes of this Act.
- (2) If the powers of an inspector have been limited by conditions, the identity card issued to the inspector must contain a statement of the conditions imposed on the inspector's powers.
- (3) An inspector appointed under this Part must, at the request of a person in relation to whom the inspector intends to exercise powers under this or any other Act, produce for the inspection of the person his or her identity card.
- (4) If an inspector who is a police officer is not in uniform, the officer must, at the request of a person in relation to whom the officer intends to exercise powers under this Act, produce for the inspection of the person his or her warrant card.
- (5) If a person in possession of an identity card issued to the person under this section ceases to be an inspector, the person must immediately return the identity card to the Minister.

Maximum penalty: \$2 500.

Expiation fee: \$210.

Division 2—Powers of inspectors

30—General powers

- (1) An inspector may—
 - (a) enter and search and, if necessary, use reasonable force to break into or open—
 - (i) premises or a vehicle to which this section applies; or
 - (ii) part of, or anything in or on, premises or a vehicle to which this section applies; and
 - (b) give directions with respect to the stopping or movement of a vehicle to which this section applies; and
 - (c) require a person to produce a document, including a written record that reproduces in an understandable form information stored by computer, microfilm or other process; and
 - (d) examine, copy or take extracts from a document or information so produced or require a person to provide a copy of any such document or information; and

- (e) take photographs, films or audio, video or other recordings; and
 - (f) seize and retain any animal or other thing that the inspector reasonably suspects has been used in, or may constitute evidence of, a contravention of this Act; and
 - (g) identify, by marking, tagging or otherwise, an animal or other property in respect of which powers have been exercised under this Act; and
 - (h) require a person who the inspector reasonably suspects has committed, is committing, or is about to commit, a contravention of this Act to state the person's full name and usual place of residence and to produce evidence of the person's identity; and
 - (i) require a person who the inspector reasonably suspects has knowledge of matters in respect of which information is required for the administration or enforcement of this Act to answer questions in relation to those matters; and
 - (j) require a person holding or required to hold a licence, permit or approval under this Act to produce it for inspection; and
 - (k) give a direction required in connection with the exercise of a power conferred by this Act or otherwise in connection with the administration or enforcement of this Act.
- (2) An inspector—
- (a) may only exercise the powers conferred by subsection (1) as reasonably required for the administration and enforcement of this Act; and
 - (b) may only exercise the power to use force under subsection (1)(a) on the authority of a warrant issued by a magistrate or in circumstances in which the inspector reasonably believes that urgent action is required in order to prevent or mitigate serious harm occurring to an animal.
- (3) An inspector may be assisted in the exercise of powers under this Act by such persons as the inspector considers necessary in the circumstances.
- (4) An inspector may require an occupier of premises or a person apparently in charge of a vehicle, animal or other thing to give to the inspector or a person assisting the inspector such assistance as is reasonably required by the inspector for the effective exercise of powers under this Act.
- (5) This section applies to the following premises and vehicles:
- (a) premises or a vehicle in or on which an inspector reasonably suspects that an offence against this Act has been, is being or is about to be, committed;

- (b) premises or a vehicle in or on which an inspector reasonably suspects there is an animal that is being, or has been, harmed unnecessarily or that will, if urgent action is not taken, be harmed unnecessarily;
- (c) premises or a vehicle subject to, or being used for the purposes of an activity that is the subject of, a licence, permit or approval under this Act;
- (d) premises or a vehicle in or on which an inspector reasonably suspects there is an animal in respect of which an animal welfare notice or animal welfare order is in force;
- (e) premises or a vehicle that an inspector reasonably suspects is being used for or in connection with a business, or organised event or activity, involving animals;
- (f) premises or a vehicle in which an inspector reasonably suspects there may be records relating to a business or organised event or activity involving animals or an animal or other thing that has been used in, or may constitute evidence of, a contravention of this Act.

31—Routine inspections

- (1) Subject to this section, if, for the purposes of administering this Act, an inspector proposes to exercise powers under this Act to conduct a routine inspection of premises or a vehicle in circumstances where there is no suspicion of an offence, the inspector must—
 - (a) give the occupier of the premises or the owner of the vehicle reasonable notice of the proposed inspection; and
 - (b) give the following persons (as required) a reasonable opportunity to accompany the inspector throughout the inspection:
 - (i) the occupier of the premises or the owner of the vehicle;
 - (ii) a nominee of the occupier of the premises or the owner of the vehicle;
 - (iii) the occupier of the premises or the owner of the vehicle and a nominee of the occupier or owner; and
 - (c) take such steps as are necessary in the circumstances to minimise any adverse effect of the inspection on the business or activities of the occupier of the premises or the owner of the vehicle.
- (2) No notice is required to be given of a routine inspection of premises or a vehicle in or on which an inspector reasonably suspects there is an animal in respect of which an animal welfare notice or animal welfare order is in force.

- (3) Non-compliance with this section does not affect the validity of the exercise of powers by the inspector under this Act.

31A—Special powers relating to animals

- (1) An inspector may examine an animal and its living conditions and, if the inspector suspects on reasonable grounds that the animal is suffering or may if urgent action is not taken suffer unnecessary harm, do 1 or more of the following:
- (a) provide treatment and care for the animal;
 - (b) cause the living conditions of the animal to be modified;
 - (c) seize and retain the animal for treatment and care.
- (2) For the purposes of subsection (1), an inspector has all of the powers conferred on an inspector by section 30.
- (3) The costs and expenses reasonably incurred by a person or the Crown in seizing, treating or caring for an animal, or in causing the living conditions of an animal to be modified, under this section may be recovered as a debt from the owner of the animal.
- (4) Subject to this section, an inspector may destroy an animal if of the opinion that the condition of the animal is such that the animal is so weak or disabled (whether physically or mentally), or in such pain, that it should be destroyed.
- (5) An inspector must not exercise a power under subsection (4) unless—
- (a) the owner of the animal consents; or
 - (b) the owner of the animal has refused or failed to give consent and a magistrate has, on application by an inspector, issued a warrant authorising the destruction of the animal; or
 - (c) the inspector has been unable to determine who owns the animal, or has been unable to contact the owner, after taking reasonable steps to do so; or
 - (d) the inspector is satisfied that the animal is wild.
- (6) An inspector who destroys an animal under this section does not incur any civil liability for the destruction.

31B—Animal welfare notices

- (1) If an inspector believes on reasonable grounds that the exercise of powers under this section is warranted because the welfare of an animal is being adversely affected, the inspector may, by written notice (an *animal welfare notice*) given to the owner of the animal—
- (a) direct the owner to provide the animal with such food, water, shelter, rest or treatment as the inspector thinks necessary;

- (b) require the owner to ensure the animal is not worked or used for any purpose specified in the notice for such period as is specified in the notice;
 - (c) require the owner to ensure the animal is exercised in accordance with the stipulations of the notice;
 - (d) direct or require the owner to take any other action specified in the notice, within the time specified in the notice, that the inspector considers necessary for the improvement of the animal's welfare.
- (2) A person to whom an animal welfare notice has been given must not refuse or fail to comply with the direction or requirement set out in the notice.
- Maximum penalty: \$2 500.
Expiation fee: \$210.

Division 3—Miscellaneous

31C—Dealing with seized animals and objects

- (1) The Minister may sell, destroy or otherwise dispose of an animal or object that has been seized under this Act but is no longer required to be retained if—
- (a) the whereabouts of the owner of the animal or object cannot, after reasonable inquiries, be ascertained; or
 - (b) the whereabouts of the owner are known but the owner has failed, within 3 clear working days of being given written notice that the animal or object may be collected from a specified place, to collect the animal or object.
- (2) If, on application by an inspector, a magistrate is satisfied that—
- (a) an animal has been seized and retained under this Act; and
 - (b) legal proceedings under this Act relating to the animal are pending; and
 - (c) in the circumstances, it is impractical or unreasonable for the animal to continue to be retained until the proceedings have been concluded or otherwise terminated,
- the magistrate may make an order authorising that the animal be sold, destroyed or otherwise disposed of as the Minister thinks fit.
- (3) If an animal is disposed of by sale under subsection (2), the proceeds of the sale are to be held by the Minister until the conclusion or termination of the proceedings when they are to be disbursed in accordance with a further order of the court.
- (4) In this section—
- working day** means any day except a Saturday, Sunday or public holiday.

31D—Warrant procedures

- (1) A magistrate must not issue a warrant for the purposes of this Part unless satisfied that the warrant is reasonably required in the circumstances.
- (2) An application for a warrant may be made personally or, if, in the opinion of the applicant, the warrant is urgently required and there is not enough time to lodge a written application and appear before a magistrate, by fax or telephone.
- (3) The grounds of an application for a warrant must be verified by affidavit.
- (4) If an application for the issue of a warrant is made by fax transmission, the following provisions apply:
 - (a) the application must be in a form approved by the Chief Magistrate;
 - (b) the application must be accompanied (through fax transmission) by an affidavit made by the applicant verifying the facts referred to in the application;
 - (c) the applicant must be available to speak to the magistrate by telephone;
 - (d) the magistrate is entitled to assume, without further inquiry, that a person who identifies himself or herself as the applicant acting in the capacity of an inspector during a telephone conversation with the magistrate is indeed the applicant acting in that capacity;
 - (e) the magistrate may, on being satisfied as to the circumstances of urgency and the grounds for the issue of a warrant, make out and sign a warrant;
 - (f) the warrant is to be taken to have been issued, and comes into force, when signed by the magistrate;
 - (g) the magistrate must forward the warrant to the applicant by fax transmission.
- (5) If an application for a warrant is made by telephone, the following provisions apply:
 - (a) the applicant must inform the magistrate of the applicant's name and identify himself or herself as an inspector and the magistrate, on receiving that information, is entitled to assume its accuracy without further inquiry;
 - (b) the applicant must inform the magistrate of the purpose for which the warrant is required, the grounds on which it is sought and the circumstances giving rise to the urgency of the application;

- (c) the magistrate may, on being satisfied as to the circumstances of urgency and the grounds for the issue of the warrant, inform the applicant of the facts on which the magistrate relies as grounds for the issue of the warrant, and must not proceed to issue the warrant unless the applicant undertakes to make an affidavit verifying those facts;
 - (d) if the applicant gives such an undertaking, the magistrate may then make out and sign a warrant;
 - (e) the warrant is to be taken to have been issued, and comes into force, when signed by the magistrate;
 - (f) the magistrate must inform the applicant of the terms of the warrant;
 - (g) the applicant must fill out and sign a warrant form (the *duplicate warrant*) that—
 - (i) sets out the name of the magistrate who issued the original and the terms of the warrant; and
 - (ii) complies with any other prescribed requirements;
 - (h) the applicant must, as soon as practicable after the issue of the warrant, forward to the magistrate an affidavit verifying the facts referred to in paragraph (c) and a copy of the duplicate warrant.
- (6) A warrant, if not executed at the expiration of 1 month from the date of its issue, then expires.

31E—Offence to hinder etc inspectors

A person who—

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

is guilty of an offence.

Maximum penalty: \$5 000.

13—Amendment, redesignation and relocation of section 33—Duty of person in charge of vehicle in case of accidents involving animals

- (1) Section 33, penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (2) Section 33—re designate the section as amended by this section as section 15A and relocate the section so that it follows section 15 in Part 3 (Animal welfare offences)

14—Insertion of section 33

Following the redesignation and relocation of section 33 (see section 13) insert after the heading to Part 6 (Miscellaneous):

33—Delegation

- (1) The Minister may delegate to a body or person (including a person for the time being holding or acting in a specified office or position) a function or power of the Minister under this Act (except a prescribed function or power).
- (2) A delegation under this section—
 - (a) must be by instrument in writing; and
 - (b) may be absolute or conditional; and
 - (c) does not derogate from the power of the delegator to act in any matter; and
 - (d) is revocable at will.

15—Amendment of section 34—Permit to hold rodeos

- (1) Section 34(1) penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$5 000.
- (2) Section 34(4), penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$5 000.

16—Insertion of sections 34A and 34B

After section 34 insert:

34A—False or misleading statements

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 a particular) in an application made, or information provided, under this Act.

Maximum penalty:

- (a) if the person made the statement knowing that it was false or misleading—\$10 000 or imprisonment for 2 years;
- (b) in any other case—\$5 000.

34B—Power of veterinary surgeons to destroy animals

A veterinary surgeon may destroy an animal if of the opinion that the condition of the animal is such that the animal is so weak or disabled (whether physically or mentally), or in such pain or distress, that it should be destroyed.

17—Amendment, redesignation and relocation of section 36—Court orders on finding of guilt etc

- (1) Section 36(1)—delete "Where the owner of an animal is convicted of an offence against this Act in respect of the animal, the court make all or any of the following orders:" and substitute:

A court may, on finding a person guilty of an offence against this Act or on declaring a person charged with an offence against this Act liable to supervision under Part 8A of the *Criminal Law Consolidation Act 1935*, make 1 or more of the following orders:

- (2) Section 36(1)—before paragraph (a) insert:
- (aa) an order requiring the person to care for any animal owned by the person (whether or not the subject of the offence) in accordance with the conditions of the order (which may include a condition that the care of any such animal be supervised or monitored by an inspector), either until further order, or for the period specified in the order;
- (3) Section 36(1)(a)—delete "the animal" and substitute:
- an animal that is owned by the person and is the subject of the offence
- (4) Section 36(1)(c)—delete "Society" and substitute:
- Crown
- (5) Section 36(1)—after paragraph (d) insert:
- (e) an order forfeiting to the Crown an object that is the property of the person and is the subject of the offence or used by the person in the commission of the offence.
- (6) Section 36(2), penalty provision—delete the penalty provision and substitute:
- Maximum penalty: \$5 000.
- (7) Section 36—after subsection (2) insert:
- (3) The Minister may sell, destroy or otherwise dispose of an animal or object that has been forfeited to the Crown.
- (8) Section 36—redesignate the section as amended by this section as section 32A and relocate the section so that it follows section 32 in Part 5 (Enforcement)

18—Substitution of section 40

Section 40—delete the section and substitute:

40—Vicarious liability of employers in certain circumstances

If a person commits an offence against this Act in the course of employment by another, the employer is guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless it is proved that the employer could not by the exercise of reasonable diligence have prevented the commission of that offence.

19—Substitution of section 42

Section 42—delete the section and substitute:

42—Evidence

- (1) In proceedings, a certificate apparently executed by the Minister certifying as to a matter relating to—
 - (a) a licence, permit, approval, certificate or other authorisation under this Act; or
 - (b) the appointment of an inspector; or
 - (c) a delegation; or
 - (d) an application; or
 - (e) the receipt or non-receipt of information,under this Act constitutes proof, in the absence of proof to the contrary, of the matters so certified.
- (2) An allegation in a complaint or an information that—
 - (a) an animal was an animal of a specified species; or
 - (b) a person was the owner of a specified animal,will be accepted as proved in the absence of proof to the contrary.

20—Insertion of sections 43A and 43B

After section 43 insert:

43A—Reports in respect of alleged contraventions

If a person reports to an inspector an alleged contravention of this Act, the inspector must, at the request of the person, inform the person if practicable of any action proposed to be taken under the Act in respect of the allegation.

43B—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.

21—Amendment of section 44—Regulations

- (1) Section 44(2)(c)—delete paragraph (c) and substitute:
 - (c) require a person to hold a certificate or other authorisation for specified purposes and provide for the issuing and cancellation of certificates and authorisations by the Minister, a specified body or a person or body approved by the Minister;
- (2) Section 44(2)(h)—delete paragraph (h) and substitute:
 - (h) impose fines, not exceeding \$5 000, for offences against the regulations;
 - (i) fix expiation fees, not exceeding \$315, for alleged offences against the regulations.
- (3) Section 44—after subsection (4) insert:
 - (5) The regulations may leave a matter or thing to be determined, dispensed with, regulated or prohibited according to the discretion of the Minister, either generally or in a particular case or class of cases.