

South Australia

## Veterinary Surgeons Act 1985

An Act to provide for the registration of veterinary surgeons; to regulate the practice of veterinary surgery for the purpose of maintaining high standards of competence and conduct by veterinary surgeons in South Australia; to repeal the *Veterinary Surgeons Act 1935*; and for other purposes.

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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 Surgeons Act 1985*.

**2—Commencement**

- (1) This Act shall come into operation on a day to be fixed by proclamation.
- (2) The Governor may, in a proclamation fixing a day for this Act to come into operation, suspend the operation of specified provisions of this Act until a subsequent day fixed in the proclamation, or a day to be fixed by subsequent proclamation.

**3—Repeal of *Veterinary Surgeons Act 1935***

The *Veterinary Surgeons Act 1935* is repealed.

**4—Interpretation**

- (1) In this Act, unless the contrary intention appears—  
*this Act* includes the Schedule to this Act;  
*the Board* means the Veterinary Surgeons Board established under this Act;  
*books* includes papers, documents, films and other records;  
*company* means a company incorporated under the law of this State;  
*director* of a company includes any person occupying or acting in the position of director of the company, whether validly appointed to occupy, or duly authorised to act in, that position or not, and includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act;  
*equipment* includes appliances, instruments, dressings, specimens or substances used in or for the purposes of veterinary surgery;  
*the former board* means The Veterinary Surgeons Board of South Australia established under the repealed Act;  
*member* means a member of the Board;  
*permit holder* means a person who holds a permit issued, or deemed to be issued, by the Board under Division 6 of Part 3;  
*prescribed relative*, in relation to a registered person, means a parent, spouse, child or grandchild of that person;

***putative spouse***, in relation to a registered person, means a person who is cohabiting with the registered person as the husband or wife *de facto* of that person and—

- (a) who has so cohabited continuously over the last preceding period of 5 years or for periods aggregating 5 years over the last preceding period of 6 years; or
- (b) who has had sexual relations with the registered person resulting in the birth of a child;

***register*** means a register established and maintained under this Act;

***registered person*** means a veterinary surgeon or a veterinary practitioner;

***Registrar*** means the person holding the office of registrar under this Act;

***the repealed Act*** means the *Veterinary Surgeons Act 1935* repealed by this Act;

***specialist*** means a veterinary surgeon or a veterinary practitioner who is registered on the register of specialists under this Act;

***spouse*** includes putative spouse;

***unprofessional conduct*** includes—

- (a) improper or unethical conduct in relation to the practice of veterinary surgery; and
- (b) incompetence or negligence in relation to the practice of veterinary surgery; and
- (c) a contravention of or failure to comply with—
  - (i) a provision of this Act; or
  - (ii) a condition imposed by or under this Act in relation to registration or the issue of a permit under this Act; and
- (d) conduct that constitutes a criminal offence punishable by imprisonment for one year or more;

***veterinary practitioner*** means a person who is registered, or is deemed to be registered, on the register of veterinary practitioners under this Act;

***veterinary surgeon*** means a person who is registered, or is deemed to be registered, on the register of veterinary surgeons under this Act;

***veterinary surgery*** means the provision of veterinary treatment;

***veterinary treatment*** includes—

- (a) the diagnosis of disease in, injury to, or the condition of, an animal; and
- (b) the administration of an anaesthetic to an animal; and
- (c) assistance of a prescribed kind to, or for the benefit of, an animal.

(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.

## Part 2—Administration

### 5—The Veterinary Surgeons Board

- (1) There shall be a board entitled the *Veterinary Surgeons Board*.
- (2) The Board—
  - (a) shall be a body corporate with perpetual succession and a common seal;
  - (b) shall be capable of suing and being sued.
- (3) Where an apparently genuine document purports to bear the common seal of the Board, it shall be presumed in legal proceedings, in the absence of proof to the contrary, that the document has been duly executed by the Board.

### 6—Members of the Board

- (1) The Board shall consist of 6 members appointed by the Governor of whom—
  - (a) five shall be nominated by the Minister; and
  - (b) one (who shall be a veterinary surgeon) shall be nominated by the Australian Veterinary Association, South Australian Division.
- (2) Of the members appointed on the nomination of the Minister—
  - (a) one (who shall be the presiding officer of the Board) shall be a special magistrate or a legal practitioner of not less than 10 years standing; and
  - (b) three shall be veterinary surgeons; and
  - (c) one shall be a person who is neither a veterinary surgeon nor a legal practitioner.
- (3) Subject to subsection (4), a member shall be appointed for a term of 3 years on such conditions as the Governor determines, and is, on the expiration of a term of appointment, eligible for reappointment.
- (4) The first members of the Board may be appointed for any term not exceeding 3 years.
- (5) The Governor may appoint a person to be a deputy of a member and the deputy may, in the absence of that member, act as a member of the Board.
- (6) The requirement of qualification and nomination made by this section in relation to the appointment of a member extends to the appointment of the member's deputy.
- (7) The Governor may remove a member from office for—
  - (a) a breach of, or non-compliance with, the conditions of the member's appointment; or
  - (b) mental or physical incapacity to carry out official duties; or
  - (c) neglect of duty; or
  - (d) dishonourable conduct.
- (8) The office of a member becomes vacant if that member—
  - (a) dies; or

- (b) completes a term of appointment and is not reappointed; or
  - (d) resigns by written notice to the Minister; or
  - (e) ceases to satisfy the requirement referred to in this section by virtue of which the member was eligible for nomination; or
  - (f) is removed from office by the Governor pursuant to subsection (7).
- (9) Upon the office of a member becoming vacant, a person shall be appointed in accordance with this Act to the vacant office.
- (10) A member who is one of the members constituting the Board for the purposes of proceedings under Part 4 and whose term of office expires before those proceedings have been completed may, for the purposes of continuing and completing those proceedings, continue to act as a member of the Board.

### **7—Procedures at meetings of the Board**

- (1) Four members constitute a quorum of the Board.
- (2) The presiding officer shall preside at meetings of the Board but, in the absence of the presiding officer, the members present shall decide who is to preside at that meeting.
- (3) A question arising before the Board shall be determined in accordance with the opinion of a majority of the members present or, where they are equally divided in opinion, in accordance with the opinion of the person presiding at the meeting.
- (4) The Board shall cause accurate minutes to be kept of the business conducted at its meetings.
- (5) Subject to this Act, the procedure for the calling of meetings of the Board and the conduct of business at meetings of the Board shall be determined by the Board.

### **8—Validity of acts of Board and immunity of members**

- (1) No act or proceeding of the Board is invalid by reason only of a vacancy in the office of a member or a defect in the appointment of a member.
- (2) No liability attaches to a member or the Registrar for any act or omission by the member or the Registrar, or by the Board, in good faith and in the exercise of powers or functions or in the discharge of duties under this Act.

### **9—Personal interest of member**

A member who has a personal interest or a direct or indirect pecuniary interest in a matter under consideration by the Board is disqualified from participating in the Board's consideration of that matter.

### **10—Remuneration etc of members**

A member shall be entitled to such remuneration, allowances and expenses as are determined by the Governor.

## **11—Functions and powers of the Board**

- (1) The functions of the Board are as follows:
  - (a) to consult with appropriate authorities as to syllabuses and courses to enable persons wishing to apply for registration under this Act to acquire the necessary qualifications, experience and skill;
  - (b) to make recommendations to the Governor in relation to regulations prescribing the qualifications, experience and other requirements to be fulfilled by persons applying for registration under this Act;
  - (c) to make recommendations to the Governor in relation to the making of other regulations under this Act;
  - (d) to establish and maintain registers of persons qualified to practise veterinary surgery in accordance with this Act and of persons entitled to be registered as specialists under this Act;
  - (e) to carry out such other functions as are prescribed by this Act.
- (2) For the purpose of carrying out its functions, the Board may—
  - (a) acquire, hold, deal with and dispose of real and personal property;
  - (b) enter into any kind of contract or arrangement;
  - (c) acquire or incur any other rights or liabilities;
  - (d) exercise such other powers as are vested in it under this Act or are necessary for, or incidental to, the efficient discharge of its functions.

## **12—Committees**

- (1) The Board may establish committees to advise the Board on any matter related to the administration of this Act or to carry out functions on behalf of the Board.
- (2) The Board may appoint a person who is not a member of the Board to be a member of a committee.

## **13—Delegation of functions and powers**

- (1) The Board may delegate any of its functions or powers except those relating to proceedings under Part 4.
- (2) A delegation under this section—
  - (a) may be made—
    - (i) to a member, to the Registrar or to an employee of the Board; or
    - (ii) to a committee established by the Board under this Act; and
  - (b) may be made subject to such conditions as the Board thinks fit; and
  - (c) is revocable at will and does not derogate from the power of the Board to act in any matter itself.
- (3) A person to whom functions or powers are delegated under this section is disqualified from acting in pursuance of the delegation in relation to any matter in which that person has a personal interest or a direct or indirect pecuniary interest.

## 14—Powers of the Board in relation to witnesses etc

- (1) For the purposes of proceedings before the Board (including an application for registration or reinstatement of registration), the Board may—
  - (a) by summons signed on behalf of the Board by a member, or the Registrar, require the appearance before the Board of any person or the production to the Board of any relevant books or equipment; or
  - (b) inspect any books or equipment produced to it and retain them for such reasonable period as it thinks fit, and make copies of the books or of any of their contents; or
  - (c) require a person appearing before the Board to make an oath or affirmation to truly answer all questions relating to any matter in issue before the Board (which oath or affirmation may be administered by a member or the Registrar); or
  - (d) require a person appearing before the Board to answer any relevant questions put by a member, or by a party or a person appearing on behalf of a party to a proceeding before the Board.
- (2) Upon the 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) having been served with a summons to appear before the Board fails, without reasonable excuse, to appear in obedience to the summons; or
  - (b) having been served with a summons to produce relevant books or equipment fails, without reasonable excuse, to comply with the summons; or
  - (c) misbehaves before the Board, wilfully insults the Board, or any member of the Board, or interrupts the proceedings of the Board; or
  - (d) refuses to be sworn or to affirm, or refuses or fails to answer truthfully any relevant question, when required to do so by the Board,is guilty of an offence and liable to a penalty not exceeding \$5 000 or imprisonment for 3 months.
- (4) A person is excused from answering a question put under this section or producing books or equipment in compliance with a summons under this section on the ground that the answer to the question or the production of the books or equipment would result in, or tend towards, self-incrimination.

## 15—Principles governing hearings

- (1) The Board is not bound by the rules of evidence and may inform itself upon any matter as it thinks fit.
- (2) Subject to this Act, the procedure of the Board upon the hearing of proceedings under this Act shall be determined by the Board.
- (3) Upon the hearing of proceedings, the Board shall act according to equity, good conscience and the substantial merits of the case.

## **16—Representation at proceedings before the Board**

Subject to this Act, a party to proceedings before the Board (including an applicant for registration or reinstatement of registration) shall be entitled to be represented by a legal practitioner at the hearing of those proceedings.

## **17—Costs**

- (1) The Board may award such costs against a party to proceedings before it 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.

## **18—Registrar**

- (1) The Board shall appoint a suitable person, upon such conditions as it determines, to be the Registrar of the Board.
- (2) The Board may employ such other persons as, in its opinion, are necessary to assist it in carrying out its functions under this Act.

## **19—Accounts and audit**

- (1) The Board shall cause proper accounts to be kept of its financial affairs.
- (2) The Auditor-General may at any time, and shall at least once in every year, audit the accounts of the Board.
- (3) For the purposes of an audit under subsection (2), the Auditor-General may exercise, in relation to the accounts of the Board and the members and employees of the Board, the powers that are vested in the Auditor-General by the *Audit Act 1921* in respect of public accounts and accounting officers.

## **20—Report**

- (1) The Board shall, on or before the 30th day of September in each year, deliver to the Minister a report upon the administration of this Act during the period of 12 months that ended on the preceding 30th day of June.
- (2) The report must incorporate the audited statement of accounts for the Board in relation to the relevant period.
- (3) The Minister shall, within 3 sitting days after delivery of the report, cause a copy of the report to be laid before each House of Parliament.

## **Part 3—Registration**

### **Division 1—Restrictions relating to the practice of veterinary surgery by unregistered persons**

#### **21—Illegal holding out as veterinary surgeon or veterinary practitioner**

- (1) A person who is not registered on the register of veterinary surgeons or veterinary practitioners shall not hold himself or herself out as a veterinary surgeon or veterinary practitioner or permit another person to do so.

Penalty: \$2 000 or imprisonment for 3 months.

- (2) No person shall hold out another person as a veterinary surgeon or a veterinary practitioner unless that other person is registered on the register of veterinary surgeons or veterinary practitioners (as the case requires).

Penalty: \$2 000 or imprisonment for 3 months.

#### **22—Illegal holding out as specialist**

- (1) A person who is not registered on the register of specialists shall not hold himself or herself out as a specialist or permit another person to do so.

Penalty: \$2 000 or imprisonment for 3 months.

- (2) No person shall hold out another person as a specialist unless that other person is registered on the register of specialists.

Penalty: \$2 000 or imprisonment for 3 months.

#### **23—Illegal holding out as permit holder**

- (1) A person who does not hold a permit issued under this Act shall not hold himself or herself out as a permit holder or permit another person to do so.

Penalty: \$2 000 or imprisonment for 3 months.

- (2) No person shall hold out another person as a permit holder unless that other person holds a permit issued under this Act.

Penalty: \$2 000 or imprisonment for 3 months.

#### **24—Restrictions relating to the provision of veterinary treatment**

- (1) No person, other than a qualified person, shall provide veterinary treatment for a fee or reward.

Penalty: \$2 000 or imprisonment for 3 months.

- (2) A permit holder shall not provide veterinary treatment for a fee or other reward through the instrumentality of another person.

Penalty: \$2 000 or imprisonment for 3 months.

- (3) It is a defence to a charge of an offence against subsection (1) to prove that—

- (a) the defendant was an employee of the owner of the animal and that the treatment was provided in the course of the defendant's employment; or

- (b) the treatment was of a class excluded by regulation from the operation of this section.
- (4) A regulation referred to in subsection (3) may exclude a class of treatment by reference to the nature of the treatment, to the circumstances in which it is provided or to the class of persons who provide the treatment.
- (5) In this section—  
*qualified person* means a veterinary surgeon, a veterinary practitioner or a permit holder.

## **Division 2—Registration**

### **25—Registration on the register of veterinary surgeons**

A natural person who, in the opinion of the Board—

- (a) has prescribed qualifications and experience; and
- (b) fulfils all other prescribed requirements; and
- (c) is a fit and proper person to be registered on the register of veterinary surgeons,

shall, subject to this Act, be registered on that register.

### **26—Registration on the register of veterinary practitioners**

- (1) A person who, immediately before the repeal of the *Veterinary Surgeons Act 1935*, was registered as a veterinary practitioner under that Act shall, from the repeal of that Act, be deemed to be registered on the register of veterinary practitioners under this Act.
- (2) A person whose name was removed from the register of veterinary practitioners under the repealed Act for any reason and whose name had not, before the repeal of that Act, been reinstated on that register, may apply under this Act for registration on the register of veterinary practitioners.

### **27—Registration on the register of specialists**

- (1) A natural person who is registered as a veterinary surgeon or veterinary practitioner and who, in the opinion of the Board—
  - (a) has prescribed qualifications and experience; and
  - (b) fulfils all other prescribed requirements; and
  - (c) is a fit and proper person to be registered on the register of specialists,
 shall, subject to this Act, be registered on that register.
- (2) The Governor may, on the recommendation of the Board, prescribe the branches of veterinary surgery in relation to which a person may be registered on the register of specialists under this section.

### **28—Reinstatement of person on register**

- (1) A person whose name has been removed from a register—
  - (a) at that person's request; or

- (b) because of failure to pay the annual practice fee,  
may apply to the Board at any time for the reinstatement of his or her name on the register.
- (2) A person whose registration on a register has been suspended may apply to the Board for the reinstatement of his or her name on the register after the period of suspension has expired.
- (3) A person whose registration on a register has been cancelled for unprofessional conduct may apply to the Board for reinstatement of his or her name on the register, but not before the expiration of 2 years from the date of cancellation.
- (4) The Board shall reinstate the name of a person who applies under this section and who, in the opinion of the Board—
- (a) has sufficient knowledge and experience of, and is able to exercise the necessary degree of skill required for, the practice of veterinary surgery; and
  - (b) is a fit and proper person to be registered under this Act.
- (5) Before granting an application under this section, the Board may require the applicant to obtain qualifications and experience specified by the Board and for that purpose may require the applicant to undertake a specified course of instruction and training in veterinary surgery.

### **Division 3—Limited registration**

#### **29—Limited registration for the purpose of gaining experience or teaching etc**

- (1) Where a person who applies for registration, or reinstatement of registration, under this Act does not have the necessary qualifications or experience or does not fulfil the other requirements prescribed by or under this Act, the Board may register that person in pursuance of this section—
- (a) in order to enable that person—
    - (i) to acquire the experience and skill required for full registration under this Act; or
    - (ii) to teach or to undertake research or study in South Australia; or
  - (b) if, in its opinion, that person's registration is in the public interest.
- (2) Where the Board is not satisfied that an applicant for registration or reinstatement of registration under this Act is a fit and proper person to be registered unconditionally, but is satisfied as to the other requirements prescribed by or under this Act for registration, the Board may register the applicant in pursuance of this section.
- (3) When granting an application referred to in subsection (1) or (2), the Board may—
- (a) restrict the places and times at which the applicant may practise veterinary surgery; or
  - (b) limit the branches of veterinary surgery in which the applicant may practise; or
  - (c) limit the period during which the registration will have effect; or
  - (d) impose such other conditions as the Board thinks fit.

## **Division 4—Provisional registration**

### **30—Provisional registration**

- (1) Where a person has applied for registration under this Act and the Registrar is of the opinion that the Board is likely to grant the application, the Registrar may provisionally register the applicant.
- (2) The provisional registration of a person registered pursuant to subsection (1) shall remain in force until the Board determines the application.
- (3) The registration by the Board under this Act of a person who was provisionally registered under this section shall have effect from the commencement of the provisional registration.

## **Division 5—Provisions relating to the practice of veterinary surgery by companies**

### **31—Registration of companies**

- (1) A company may, subject to this Act, be registered on the register of veterinary surgeons if it satisfies the Board—
  - (a) that the memorandum and articles of association of the company contain stipulations to the following effect:
    - (i) the sole object of the company must be to practise the profession of veterinary surgery; and
    - (ii) the directors of the company must be natural persons who are registered under this Act (but where there are only 2 directors one may be a registered person and the other may be a prescribed relative of that person); and
    - (iii) no share issued by the company, and no right to participate in the distribution of the profits of the company, is to be owned beneficially otherwise than by a registered person who is a director or employee of the company, or a prescribed relative of such a registered person; and
    - (iv) the total voting rights exercisable at a meeting of the members of the company must be held by registered persons who are directors or employees of the company; and
    - (v) no director of the company may, without the approval of the Board, be a director of any other company that is registered under this section; and

- (vi) where the right of a registered person and of that person's prescribed relatives to hold shares in the company ceases by virtue of that person ceasing to be a director or employee of the company, that person's shares and the shares of that person's prescribed relatives shall be redeemed by the company, distributed amongst the remaining members of the company, or transferred to a registered person who is to become a director or employee of the company, in accordance with the memorandum and articles of association of the company; and
  - (vii) the shares of a person who is a shareholder by virtue of being the spouse of a registered person shall—
    - (A) upon dissolution or annulment of the marriage; or
    - (B) in the case of a putative spouse, upon cessation of cohabitation with the registered person,  
be redeemed by the company, or distributed amongst the remaining members of the company, in accordance with the memorandum and articles of association of the company; and
  - (b) that the memorandum and articles of association are otherwise appropriate to a company formed for the purpose of practising the profession of veterinary surgery.
- (2) Where one or more of the stipulations required by this Act to be included in the memorandum and articles of association of a company registered under this Act are not complied with, the company shall, within 14 days, report the non-compliance to the Board.
- Penalty: \$1 000.
- (3) After receiving a report under subsection (2), the Board may give such directions as are necessary to secure compliance with those stipulations.
- (4) The registration of a company that has received a direction from the Board under subsection (3) shall, if the company has not satisfied the Board that it has complied with the direction, be suspended from the expiration of the time allowed by the Board for compliance with the direction and shall remain suspended until the company satisfies the Board that it has complied with the direction.

### **32—Returns by companies**

- (1) Every company that is a veterinary surgeon shall—
- (a) within one month after any person becomes or ceases to be a director or member of the company, lodge with the Board a notice stating the full name and usual residential address of that person and the fact that that person has become or ceased to be such a director or member; and
  - (b) in the month of July in each year, lodge with the Board a return that is in the prescribed form and that complies with the requirements of subsection (2).

Penalty: \$2 000.

- (2) The annual return shall state—
- (a) the full name and usual residential address of every person who on the 30th day of June preceding the lodging of the return was—
    - (i) a director or a member of the company; or
    - (ii) had a right to participate in the distribution of the profits of the company; and
  - (b) the number of shares in the company held by each such person and the number of votes that each such person is entitled to cast at a meeting of members of the company; and
  - (c) the qualification by virtue of which each member is entitled to be a member of the company; and
  - (d) all other prescribed information.

### **33—Companies not to practise in partnership**

A company that is a veterinary surgeon shall not practise as a veterinary surgeon in partnership with any other person unless it has been authorised to do so by the Board.

Penalty: \$1 000.

### **34—Employment of registered person by company**

- (1) A company that is a veterinary surgeon shall not, for the purpose of its veterinary practice, employ a number of registered persons greater than twice the number of directors of the company.

Penalty: \$1 000.

- (2) In determining the number of registered persons in the employment of a company for the purposes of subsection (1), any registered persons who are both employees and directors of the company shall be disregarded.

### **35—Criminal liability of directors**

Where a company that is a veterinary surgeon has committed an offence against this Act, or against another Act or against a regulation made under another Act, each person who was a director of the company at the time of the commission of the offence is guilty of an offence and liable to the penalty prescribed for the principal offence, unless it is proved that the director could not, by the exercise of reasonable diligence, have prevented the commission of the principal offence.

### **36—Joint and several liability**

Any civil liability incurred by a company that is a veterinary surgeon shall be enforceable jointly and severally against the company and persons who were directors of the company at the time the liability was incurred.

### **37—Alteration to memorandum or articles of association**

No alteration to the memorandum or articles of association of a company that is a veterinary surgeon shall be made unless the proposed alteration has been submitted to, and approved by, the Board.

Penalty: \$1 000

## Division 6—Permits

### 38—Issue of permit by Board

- (1) The Board may, on payment of the prescribed fee, issue a permit under this section if, in its opinion—
  - (a) the person who has applied for the permit has the necessary skill, knowledge and experience, and is a fit and proper person, to provide veterinary treatment; and
  - (b) the part of the State in which the applicant proposes to provide veterinary treatment is not adequately provided with the services of veterinary surgeons or veterinary practitioners.
- (2) A permit issued under this section—
  - (a) shall limit the part of the State in which the holder may provide veterinary treatment; and
  - (b) shall be subject to such conditions as the Board thinks fit; and
  - (c) may be varied or revoked by the Board at any time.
- (3) A permit holder who—
  - (a) provides veterinary treatment outside that part of the State to which the permit applies; or
  - (b) contravenes or fails to comply with a condition attached to the permit,is guilty of an offence.  
Penalty: \$2 000 or imprisonment for 3 months.

## Division 7—General

### 39—The registers

- (1) The registers and a list of permit holders shall be kept at the office of the Registrar and shall, during office hours, be available for inspection by any person on payment of the prescribed fee.
- (2) A registered person or a permit holder shall, within 3 months after a change of name or address, inform the Registrar in writing of the change.  
Penalty: \$100.
- (3) The Registrar shall, in March of each year, cause a copy of the registers and a list of permit holders to be published in the Gazette.
- (4) A certificate stating that a person—
  - (a) was, or was not, registered as a veterinary surgeon or a veterinary practitioner under this Act; or
  - (b) was, or was not, registered as a specialist under this Act; or
  - (c) did, or did not, hold a permit issued under this Act,

and purporting to be signed by the Registrar shall, in legal proceedings, in the absence of proof to the contrary, be accepted as proof of the matters stated as at the date, or during the period, specified in the certificate.

#### **40—Fees**

- (1) Subject to this Act, a person who has not paid the prescribed registration or reinstatement fee and the prescribed annual practice fee shall not be registered or reinstated (as the case requires) on a register.
- (2) Every registered person shall, in each calendar year, before the date fixed for that purpose by the Board, pay to the Board the prescribed annual practice fee and the Board may remove from the register the name of a person who fails to do so.
- (3) The Governor may, by regulation, exempt a person or a class of persons from the obligation to pay a fee under this section.

#### **41—Removal from register on request**

The Registrar shall, at the request of a registered person, remove that person's name from the register.

#### **42—Removal of name from specialist register**

A name that is removed from the register of veterinary surgeons or from the register of veterinary practitioners shall, if it is on the specialist register, be removed from that register also.

#### **43—Removal of name from register on suspension**

Upon the suspension of the registration of a person under this Act, that person's name shall be removed by the Registrar from the registers in which it appears.

### **Part 4—Proceedings before the Board**

#### **44—Inquiries by the Board as to competence**

- (1) A complaint alleging that within a period of 12 months immediately preceding the laying of the complaint a registered person has practised in a branch of veterinary surgery without having or exercising adequate or sufficient knowledge, experience or skill may be laid before the Board by—
  - (a) the Registrar; or
  - (b) the Minister; or
  - (c) The Australian Veterinary Association, South Australian Division; or
  - (d) a registered person; or
  - (e) the owner of an animal who is aggrieved by the standard of veterinary treatment provided to the animal by the registered person.
- (2) Where a complaint has been laid under this section, the Board shall, unless it considers the complaint frivolous or vexatious, inquire into the subject matter of the complaint.

- (3) If, after conducting an inquiry under this section, the Board is satisfied that the matters alleged in the complaint have been established, it may, by order, impose conditions restricting the right of the person against whom the complaint was laid to practise veterinary surgery.

#### **45—Incapacity of registered persons**

Where, on the application of—

- (a) the Registrar; or
- (b) the Minister; or
- (c) The Australian Veterinary Association, South Australian Division; or
- (d) a registered person,

the Board is satisfied that the ability of a registered person to practise veterinary surgery is impaired by mental or physical incapacity to such an extent that it is desirable, in the public interest, that an order be made under this section, the Board may, by order, exercise one or both of the following powers:

- (e) suspend that person's registration until the Board is satisfied with that person's recovery from the incapacity or for such lesser period as the Board determines; or
- (f) impose conditions restricting that person's right to practise veterinary surgery.

#### **46—Power to require registered person to submit to examination**

- (1) For the purpose of inquiring into the mental or physical capacity of a registered person under this Part, the Board may (without derogation from its other powers under this Act) order the person concerned to submit to an examination by a medical practitioner appointed by the Board.
- (2) The Board may suspend the registration of a person who fails to submit to an examination ordered by the Board under subsection (1) and that suspension shall remain in force until the examination is made.

#### **47—Inquiries by Board as to unprofessional conduct**

- (1) A complaint alleging unprofessional conduct—
  - (a) on the part of a registered person; or
  - (b) on the part of a person who was at the relevant time a registered person,may be laid before the Board by—
  - (c) the Registrar; or
  - (d) the Minister; or
  - (e) The Australian Veterinary Association, South Australian Division; or
  - (f) a registered person; or
  - (g) a person who is aggrieved by conduct of the registered person.
- (2) Where a complaint has been laid under this section, the Board shall, unless it considers the complaint frivolous or vexatious, inquire into the subject matter of the complaint.

- (3) If, after conducting an inquiry under this section, the Board is satisfied that the registered person or the person who was formerly registered under this Act is guilty of the alleged unprofessional conduct—
- (a) it may, in the case of a registered person, exercise, by order, one or more of the following powers:
    - (i) administer a reprimand;
    - (ii) order payment of a fine not exceeding \$2 000;
    - (iii) impose conditions restricting that person's right to practise veterinary surgery;
    - (iv) suspend that person's registration, either absolutely or conditionally, by removing that person's name from one or more of the registers for a period not exceeding one year;
    - (v) cancel that person's registration on any one or more of the registers;  
or
  - (b) it may, in the case of a person formerly registered under this Act, order payment of a fine not exceeding \$2 000.

#### **48—Variation etc of conditions imposed by Board**

- (1) The Board may, at any time, on application by a registered person, vary or revoke a condition imposed by the Board under this Part or under Part 3 or imposed by this Act, in relation to that person's registration under this Act.
- (2) The Registrar, the Minister and The Australian Veterinary Association, South Australian Division shall be entitled to appear and be heard on an application under this section.

#### **49—Provisions as to inquiries**

- (1) The Board shall give to all of the parties to proceedings under this Division not less than 14 days written notice of the time and place at which it intends to conduct the proceedings, and shall 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) 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 complaint or application in the absence of that party.
- (3) In the course of proceedings, 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 the Commonwealth 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.

## **50—Suspension of registration pending determination of complaint**

Where—

- (a) a complaint alleging unprofessional conduct has been laid before the Board against a person who is registered under this Act and who was registered pursuant to legislation that corresponds to this Act in another State or Territory of the Commonwealth or in another country; and
- (b) the registration of that person in that other State, Territory or country was suspended or cancelled by reason of conduct that is the subject matter of the complaint before the Board,

the Board may suspend that person's registration under this Act pending its determination of the complaint.

## **Part 5—Appeals to the Supreme Court**

### **51—Appeal to Supreme Court**

- (1) Subject to subsection (2), a right of appeal to the Supreme Court lies against—
  - (a) a refusal by the Board to register or to reinstate registration under this Act or the imposition by the Board of conditions in respect of registration; and
  - (b) a reprimand or order administered or made by the Board in proceedings under Part 4.
- (2) An appeal must be instituted within 60 days of the date of the decision, reprimand or order appealed against, but the Supreme Court may, if it is satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that the appeal should be instituted within that time.
- (3) The Supreme Court may, on the hearing of an appeal, exercise any one or more of the following powers:
  - (a) affirm, vary or quash the decision, reprimand or order against which the appeal has been instituted and make any consequential or other order that may be just in the circumstances;
  - (b) remit the subject matter of the appeal to the Board for further hearing or consideration or for rehearing;
  - (c) make any order as to costs.
- (4) When ordering the remission of the subject matter of an appeal to the Board for rehearing, the Court may disqualify a member from rehearing the matter and, in that case, the deputy of that member may, if the deputy is not also disqualified, take the place of that member for the purposes of the hearing.

### **52—Operation of order may be suspended**

- (1) Where an order has been made by the Board and an appeal against the order has been instituted, or is intended, the operation of the order may be suspended until the determination of the appeal.
- (2) A suspension under subsection (1) may be terminated—
  - (a) if the intended appeal is not in fact instituted; or

- (b) if the appeal is withdrawn or lapses.
- (3) A suspension may be granted or terminated under this section by the Board or by the Supreme Court.

### **53—Variation of condition imposed by the Court**

- (1) The Supreme Court may, at any time, on application by a registered person, vary or revoke a condition imposed by the Court in relation to that person's registration under this Act.
- (2) The Board, the Minister and The Australian Veterinary Association, South Australian Division shall be entitled to appear and be heard on an application under this section.

## **Part 6—Miscellaneous**

### **54—Practitioners to be indemnified against loss**

- (1) A veterinary surgeon or a veterinary practitioner who practises as such must be insured in a manner and to an extent approved by the Board against civil liabilities that might be incurred in the course of that practice.

Penalty: \$2 000.

- (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.

### **55—Penalty for breach of conditions**

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

Penalty: \$2 000.

### **56—Information relating to claim against a registered person to be provided**

Where a person has claimed damages or other compensation from a registered person for alleged negligence committed in the course of veterinary practice, the registered person concerned shall within 30 days after—

- (a) an order of a court to pay damages or other compensation in respect of the claim; or
- (b) the making of an agreement to pay a sum of money in settlement of the claim (whether with or without a denial of liability),

provide the Board with prescribed information relating to the claim.

Penalty: \$2 000.

### **57—Service**

A notice or other document that is required by this Act to be given or served on a registered person shall be properly given or served if it is sent by certified mail to that person at that person's address appearing in the register.

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

A person who by fraud or any other dishonest means procures his or her registration or the registration of another person under this Act (whether that registration is procured on initial application or on application for reinstatement of registration) is guilty of an offence.

Penalty: \$2 000.

## **59—Punishment of conduct that constitutes an offence**

Where 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.

## **60—Offences**

The offences constituted by this Act are summary offences.

## **61—Regulations**

- (1) The Governor may, on the recommendation of the Board, make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.
- (2) Without limiting the generality of the foregoing, those regulations may—
  - (a) prescribe qualifications, experience and other requirements for registration of any person or class of persons on a register; and
  - (b) prescribe rules of conduct to be observed by registered persons; and
  - (c) prescribe (or empower the Board to fix) fees or charges for the purposes of this Act and may provide for the recovery of a fee or charge so prescribed or fixed; and
  - (d) prescribe information to be included in a register maintained under this Act; and
  - (e) prescribe forms for the purposes of this Act; and
  - (f) regulate, restrict or prohibit the publication of advertisements by or on behalf of registered persons or classes of registered persons; and
  - (g) prescribe requirements to be observed by companies registered under this Act; and
  - (h) prescribe penalties, not exceeding \$2 000, for breach of, or non-compliance with, a regulation.
- (3) This section is in addition to, and does not derogate from, any other provision of this Act providing for the making of regulations.

## **Schedule—Transitional provisions**

- (1) All property, rights and liabilities vested in or attached to the former board immediately before the repeal of the repealed Act shall, upon the commencement of this Act, vest in or attach to the Board.

- (2) A reference in an instrument (whether or not of a statutory nature) to the former board shall, where the context admits, be construed as a reference to the Board.
- (3) A person registered on a register under the repealed Act immediately before the commencement of this Act shall be deemed to have been registered on the corresponding register under this Act upon the conditions (if any) to which his or her registration was subject under the repealed Act.
- (4) A person who, immediately before the commencement of this Act, held a permit issued under the repealed Act shall be deemed to be the holder of a permit issued by the Board under this Act on the same terms and conditions to which the permit under the repealed Act was subject.
- (5) A person who, immediately before the commencement of this Act, was registered temporarily under the repealed Act shall be deemed to be registered under this Act for a period ending when the registration under the repealed Act would have ended if that Act had not been repealed and that person's registration under this Act shall be subject to the same conditions *mutatis mutandis* as the conditions to which the registration under the repealed Act was subject.
- (6) The name of a person deemed to have been registered under this Act by virtue of clause (3) or (5) shall, without payment of a registration fee, be entered in the appropriate register under this Act.
- (7) The registration under this Act of a person who had given an undertaking (that was in force immediately before the commencement of this Act) to the former board pursuant to section 25(2)(c) of the repealed Act shall be subject to a condition requiring compliance with that undertaking.
- (8) Where a person whose name was removed from a register under the repealed Act for any reason and whose name had not, before the repeal of that 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 under this Act.

## Legislative history

### Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes.

### Repeal of Act

The *Veterinary Surgeons Act 1985* was repealed by Sch cl 1 of the *Veterinary Practice Act 2003* on 15.9.2005.

### Principal Act and amendments

Year	No	Title	Assent	Commencement
1985	112	<i>Veterinary Surgeons Act 1985</i>	10.11.1985	1.7.1987 ( <i>Gazette 25.6.1987 p1637</i> )
1993	75	<i>Statutes Amendment (Abolition of Compulsory Retirement) Act 1993</i>	21.10.1993	1.1.1994: s 2

### Provisions amended

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

Provision	How varied	Commencement
Pt 2		
s 6		
s 6(8)	(c) deleted by 75/1993 s 29(a)	1.1.1994
s 6(10)	amended by 75/1993 s 29(b)	1.1.1994