

2000

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Urban Services)

Animal Welfare Amendment Bill 2000

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34433 (1999/049) (T53/2000)

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Animal Welfare Amendment No , 2000

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2000

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(Minister for Urban Services)

Animal Welfare Amendment Bill 2000

A BILL

FOR

An Act to amend the *Animal Welfare Act 1992*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 Name of Act

This Act is the *Animal Welfare Amendment Act 2000*.

5 **2 Commencement**

This Act commences on the day it is notified in the Gazette.

3 Act amended

This Act amends the *Animal Welfare Act 1992*.

Note Schedule 1 contains minor amendments.

4 **Interpretation**

Section 4 is amended—

(a) by omitting from the definition of *authority* “5” and substituting “4”; and

5 (b) by omitting the definitions of *animal*, *defined offence*, *director* and *native animal* and substituting the following definitions:

“animal means—

(a) a live member of a vertebrate species, including—

10 (i) an amphibian; and

(ii) a bird; and

(iii) a fish; and

(iv) a mammal (other than a human being); and

(v) a reptile; or

(b) a live cephalopod; or

15 (c) a live crustacean intended for human consumption.

defined offence means—

(a) an offence against this Act; or

20 (b) an offence in relation to animal welfare under another Territory law or a Commonwealth or State law.

director, of a corporation incorporated for a public purpose under a Territory, Commonwealth or State law, includes a member of the corporation.

25 *native animal—see Nature Conservation Act 1980, section 5.”*

(c) by omitting the definitions of *offence*, *repealed Act* and *veterinary surgeon*; and

(d) by inserting the following definitions:

30 *“interstate research authorisation means an authorisation (however described) to conduct research, or teach, using animals that—*

(a) has been granted under a State law; and

(b) has not been suspended.

interstate researcher means a person who holds an interstate research authorisation.

licensee means the holder of a licence.

5 ***poison*** includes glass or anything else that, if ingested, is likely to kill or injure an animal.”

5 Substitution

Section 12 is repealed and the following sections substituted:

“12 Administering poison

10 “(1) A person must not, without reasonable excuse, administer poison to a domestic or native animal.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

“(2) A person does not contravene subsection (1) by administering poison to a domestic or native animal if—

- 15 (a) the administration of the poison to the animal is authorised by a Territory or Commonwealth law; and
- (b) the administration is performed in a way that does not contravene that law.

“12A Laying poison

20 “(1) A person must not lay a poison in any place with the intention of killing or injuring a domestic or native animal.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

25 “(2) A person must not, with reckless indifference to causing the death of, or injury to, a domestic or native animal, lay a poison in any place if the poison results in the death of, or injury to, a domestic or native animal.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

“(3) A person must not, without reasonable excuse, lay a poison in any place if there is a reasonable likelihood that the poison will kill or injure a domestic or native animal.

30 Maximum penalty: 10 penalty units.

“(4) A person does not contravene subsection (1), (2) or (3) by laying a poison if—

- (a) the laying is authorised by a Territory or Commonwealth law; and
- (b) the laying is performed in a way that does not contravene that law.

5 “(5) It is a defence to a prosecution for a contravention of subsection (3) if the defendant establishes that the defendant took reasonable steps to avoid death or injury to domestic and native animals.”.

6 Insertion

After section 15 the following section is inserted:

10 “15A Carriage of dogs

“(1) A person must not carry a dog (other than a dog being used to work livestock) on the open back of a moving vehicle on a road or road related area unless the dog is restrained or enclosed in a way that would prevent the dog from falling or jumping from the vehicle.

15 Maximum penalty: 20 penalty units.

“(2) In this section:

road—see *Road Transport (Safety and Traffic Management) Act 1999*, dictionary.

20 *road related area*—see *Road Transport (Safety and Traffic Management) Act 1999*, dictionary.”.

7 Medical and surgical procedures

Section 19 is amended—

(a) by omitting the heading and substituting the following heading:

25 “19 **Medical and surgical procedures—people other than veterinary surgeons**”; and

(b) by omitting the penalty from subsection (1) and substituting the following penalty:

“Maximum penalty: 100 penalty units, imprisonment for 1 year or both.”; and

30 (c) by omitting paragraphs (2) (d) and (e) and substituting the following paragraph:

“(d) the removal of a dog’s dew claws within 10 days after its birth.”.

8 Insertion

After section 19 the following section is inserted:

5 **“19A Medical and surgical procedures—veterinary surgeons**

A veterinary surgeon must not, for a purpose other than a prophylactic or therapeutic purpose—

- (a) dock a dog’s tail; or
- (b) crop a dog’s ear; or
- 10 (c) remove a dog’s ear; or
- (d) remove a dog’s dew claws after 10 days after its birth; or
- (e) perform a clitoridectomy on a dog; or
- (f) perform a procedure prescribed under the regulations.

Maximum penalty: 50 penalty units.”.

15 **9 Defence—approved codes of practice**

Section 20 is amended by omitting from subsection (2) “or subsection 18 (1) or (2)” and substituting “, subsection 18 (1) or (2) or section 19A”.

10 Substitution

20 Section 25 is repealed and the following section substituted:

“25 Research, teaching and breeding

“(1) A person must not, without a licence, use or breed an animal for research or teaching.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

25 **“(2) This section does not apply—**

- (a) to an authorised person, or to a person while assisting an authorised person; or

- (b) to a person who uses or breeds an animal in the course of employment or engagement by a licensee; or
- (c) to a person who uses an animal prescribed under the regulations for teaching purposes in a preschool or primary school; or
- 5 (d) to an interstate researcher to whom subsection 49B (1) applies; or
- (e) to a person who uses or breeds an animal in the course of employment or engagement by an interstate researcher to whom subsection 49B (1) applies.”.

11 Research and teaching using animals

10 Section 37 is amended—

- (a) by omitting the penalty from subsection (1) and substituting the following penalty:

“Maximum penalty: 50 penalty units, imprisonment for 6 months or both.”; and

- 15 (b) by omitting subsection (2) and substituting the following subsection:

“(2) This section does not apply—

- (a) to a person providing research or teaching assistance for a program mentioned in paragraph (1) (a) or (b); or
- 20 (b) to an interstate researcher to whom subsection 49B (1) applies; or
- (c) to a person who uses or breeds an animal in the course of employment or engagement by an interstate researcher to whom subsection 49B (1) applies.”.

25 **12 Insertion**

After Division 2 of Part 4 the following Division is inserted:

“Division 2A—Interstate researchers

“49A Notification

30 An interstate researcher must, at least 7 days before using or breeding an animal for research or teaching in the ACT—

- (a) notify the authority of the researcher's intention to use or breed an animal for research or teaching; and

Note The authority may approve a form for this purpose (see s 110A).

- (b) give to the authority a copy of—

- 5 (i) the researcher's interstate research authorisation; and
- (ii) any protocol and conditions with which the researcher is required to comply under the authorisation and any submission on which the grant of the authorisation is based.

“49B Interstate researchers' authorisation in the ACT

10 **“(1)** An interstate researcher who has complied with section 49A may use or breed animals in the Territory in the same way, to the same extent and for the same purposes as the researcher is permitted to use or breed animals in the State where the researcher's interstate research authorisation was granted.

15 **“(2)** Subsection (1)—

- (a) does not apply to a researcher whose interstate research authorisation is suspended; and
- (b) ceases to apply to a researcher whose interstate research authorisation expires or is cancelled or revoked.

20 **“(3)** The authority may decide to end the application of subsection (1) to a researcher if satisfied on reasonable grounds that the researcher—

- (a) has contravened this Act; or
- (b) has contravened, in the Territory, an approved code of practice or a protocol or condition to which the researcher's interstate research authorisation is subject; or
- 25 (c) has failed to comply, in the Territory, with the proposals for carrying out the researcher's activities set out in a submission on which the grant of the authorisation is based.

30 **“(4)** When considering whether to make a decision under subsection (3) about an interstate researcher, the authority is not required to give the researcher an opportunity to make representations if satisfied that the public interest or the welfare of any animal requires that the decision be made immediately.

“(5) The authority may decide that subsection (1) should again apply to a researcher to whom the subsection has ceased to apply because of a decision under subsection (3).

“(6) Subsection (1)—

- 5 (a) ceases to apply to a researcher about whom the authority has made a decision under subsection (3); and
- (b) again applies to a researcher about whom the authority has made a decision under subsection (5).”.

13 Interpretation

10 Section 80 is amended—

(a) by omitting the heading and substituting the following heading:

“80 Definitions for div 3”; and

(b) by inserting the following definition:

15 “*business premises* means premises used for business or professional purposes, other than a part used for residential purposes.”.

14 Powers of entry and search

Section 81 is amended—

20 (a) by renumbering subsections (4) and (5) as subsections (5) and (6); and

(b) by omitting subsections (2) and (3) and substituting the following subsections:

“(2) For subsection (1), an inspector may—

25 (a) enter any premises at any time with the consent of the occupier of the premises; or

Note The procedures for obtaining consent are set out in section 88.

(b) enter business premises during business hours at the premises; or

30 (c) enter premises in accordance with a warrant under section 90; or

(d) enter premises at any time if the inspector believes on reasonable grounds that serious and urgent

circumstances require the immediate exercise of any of the inspector's powers without a warrant.

5 “(3) An inspector who enters premises under paragraph (2) (d) may have reasonable assistance and use reasonable force to enter the premises.

 “(4) An inspector who enters premises under this section may take into the premises any people, equipment or material the inspector reasonably needs for exercising a power under this Act.”.

10 **15 Powers of inspection**

Section 82 is amended—

(a) by omitting the heading and substituting the following heading:

 “**82 Powers of inspectors**”; and

15 (b) by renumbering existing paragraphs (1) (b) to (g) as paragraphs (1) (c) to (h); and

(c) by inserting after paragraph (1) (a) the following paragraph:

 “(b) give assistance to any animal on the premises; or”; and

(d) by omitting the penalty from subsection (2) and substituting the following penalty:

20 “Maximum penalty: 50 penalty units, imprisonment for 6 months or both.”.

16 Research and educational institutions—powers of entry and search

Section 83 is amended—

25 (a) by renumbering subsection (4) as subsection (5); and

(b) by omitting subsections (2) and (3) and substituting the following subsections:

 “(2) For subsection (1), an authorised officer may enter premises mentioned in paragraph (1) (a)—

30 (a) at any time with the consent of the occupier of the premises; or

Note The procedures for obtaining consent are set out in section 88.

- (b) in accordance with a warrant under section 90; or
(c) at any time if the officer believes on reasonable grounds that serious and urgent circumstances require the immediate exercise of any of the officer's powers without a warrant.

5

“(3) An authorised officer who enters premises under paragraph (2) (c) may have reasonable assistance and use reasonable force to enter the premises.

10

“(4) An authorised officer who enters premises under this section may take into the premises any people, equipment or material the officer reasonably needs for exercising a power under this Act.”.

17 Powers of authorised officers

Section 84 is amended—

- (a) by renumbering paragraphs (1) (b) to (g) as paragraphs (1) (d) to (i); and
(b) by inserting after paragraph (1) (a) the following paragraphs:
“(b) give assistance to any animal on the premises; or
(c) take a sample of tissue, blood, urine or other bodily material from an animal or carcass on the premises; or”;
and
(c) by omitting the penalty from subsection (2) and substituting the following penalty:
“Maximum penalty: 50 penalty units, imprisonment for 6 months or both.”.

25 18 Insertion

After Division 4 of Part 7 the following Division is inserted:

“Division 4A—Powers of veterinary surgeons

“84A Powers of veterinary surgeons regarding seized animals and carcasses

- 30 “(1) A veterinary surgeon may take a sample of tissue, blood, urine or other bodily material from—

- (a) an animal that has been seized under paragraph 82 (1) (f) or 84 (1) (g) (a *seized animal*); or
- (b) a carcass seized under paragraph 82 (1) (f) or 84 (1) (g) (a *seized carcass*).

5 “(2) A veterinary surgeon may perform a post-mortem on—

- (a) a dead seized animal; or
- (b) a seized carcass.”.

19 Inspectors and authorised officers

Section 85 is amended—

- 10 (a) by renumbering paragraphs (2) (b) and (c) as paragraphs (2) (c) and (d); and
- (b) by inserting after paragraph (2) (a) the following paragraph:
“(b) give assistance to the animal; and”; and
- (c) by omitting from subsection (3) “(c)” and substituting “(d)”; and
- 15 (d) by omitting from subsection (5) “and (b)” and substituting “, (b) or (c)”; and
- (e) by omitting the penalty from subsection (6) and substituting the following penalty:
“Maximum penalty (subsection (6)): 50 penalty units.”.

20 Veterinary surgeons

Section 86 is amended—

- 20 (a) by renumbering paragraphs (1) (d) and (e) as paragraphs (1) (e) and (f); and
- (b) by inserting after paragraph (1) (c) the following paragraph:
25 “(d) give assistance to the animal; and”.

21 Reports

Section 89 is amended by omitting from subsection (1) “after 7 days’ prior notice, with the occupier’s consent, the inspector or authorised officer shall,” and substituting “with the occupier’s consent, the inspector
30 or authorised officer must,”.

22 Substitution

Section 93 is repealed and the following section substituted:

“93 Definitions for div 8

In this Division:

5 **officer** means—

- (a) an inspector; or
- (b) an authorised officer; or
- (c) any other person who enters premises under subsection 81 (4) or 83 (4) while the person is on the premises; or
- 10 (d) in relation to a function under section 86—a veterinary officer.

owner, of an injured or dead animal, means the owner of the animal immediately before its injury or death.”.

23 Notice of decisions

15 Section 107 is amended—

- (a) by renumbering paragraphs (1) (g) to (1) (v) as paragraphs (1) (h) to (1) (w); and
- (b) by inserting after paragraph (1) (f) the following paragraph:
20 “(g) under subsection 49B (3) to end the application of subsection 49B (1) to a researcher; or”.

SCHEDULE 1

MINOR AMENDMENTS

[1.1] Sections 1, 2, and 3—

Repeal the sections, substitute the following sections:

5 **“1 Name of Act**

This Act is the *Animal Welfare Act 1992*.”.

“2 Dictionary

The dictionary at the end of this Act is part of this Act.

10 *“Note 1* The dictionary at the end of this Act defines certain words and expressions used in this Act and includes references (*signpost definitions*) to other words and expressions defined elsewhere in this Act or in other legislation.

For example, the signpost definition ‘*native animal—see Nature Conservation Act 1980, section 5.*’ means that the expression ‘*native animal*’ is defined in section 5 of that Act and the definition applies to this Act.

15 *“Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (*see Interpretation Act 1967, s 11F and s 11G*).

“3 Notes

A note included in this Act is explanatory and is not part of this Act.

20 *“Note* See *Interpretation Act 1967, ss 12 (1), (4) and (5)* for the legal status of notes.”.

[1.2] Section 4, as amended by section 4 of this Act—

(a) Relocate all the definitions in section 4 to the dictionary.

(b) Repeal the remainder of the section.

[1.3] Section 5—

25 Repeal the section, substitute the following section:

“4 Animal Welfare Authority

“(1) There is an Animal Welfare Authority (the *authority*).

“(2) The chief executive must establish a position in the public service, the duties of which include exercising the functions of the authority.

SCHEDULE 1—continued

“(3) The authority is the public servant for the time being exercising the duties of the position mentioned in subsection (2).”.

[1.4] Subsection 6A (3)—

Omit the penalty, substitute the following penalty:

5 **“Maximum penalty (subsection (3)): 1 penalty unit.”.**

[1.5] Subsection 8 (1)—

Insert the following penalty:

“Maximum penalty: 100 penalty units, imprisonment for 1 year or both.”.

[1.6] Subsection 8 (2)—

10 Omit the penalty, substitute the following penalty:

“Maximum penalty: 100 penalty units, imprisonment for 1 year or both.”.

[1.7] Section 15—

Omit “, or cause to be conveyed or contained,”.

[1.8] Section 23—

15 Omit all of the words from and including “for”.

[1.9] Subsection 26 (2)—

Omit the subsection, substitute the following subsection:

“(2) An application must be accompanied by the determined fee.”.

[1.10] Paragraph 28 (2) (f)—

20 After “convicted” insert “or found guilty”.

[1.11] Subsection 28 (4)—

Omit the subsection.

[1.12] Section 32—

Repeal the section, substitute the following section:

SCHEDULE 1—continued

“32 Renewal of licences

On application to the authority by a licensee, accompanied by the determined fee, the authority must renew the licence for 3 years.”.

[1.13] Subsection 38 (1)—

5 Omit “(1) Application”, substitute “Application”.

[1.14] Subsection 38 (2)—

Omit the subsection.

[1.15] Paragraph 40 (2) (d)—

After “convicted” insert “or found guilty”.

10 **[1.16] Subsection 42 (1)—**

Omit “in a form approved by the authority,”.

[1.17] Subsection 42 (2)—

Omit the penalty, substitute the following penalty:

“Maximum penalty (subsection (2)): 5 penalty units.”.

15 **[1.18] Section 44—**

Repeal the section, substitute the following section:

“44 Renewal of authorisations

20 On application to the ethics committee by an authorised person, accompanied by the determined fee, the ethics committee must renew the authorisation for the period, of no longer than 2 years, applied for.”.

[1.19] Section 52—

Omit “section 4”, substitute “the dictionary”.

[1.20] Subsection 53 (2)—

- 25 (a) Omit “shall”, substitute “must”.
- (b) Omit paragraphs (a) and (c).
- (c) Renumber paragraphs (b), (d) and (e) as paragraphs (a), (b) and (c).

SCHEDULE 1—continued

[1.21] Paragraph 54 (3) (e)—

After “convicted” insert “or found guilty”.

[1.22] Subsection 54 (5)—

Omit the subsection.

5 **[1.23] Subsection 62 (1)—**

Insert the following penalty:

“Maximum penalty: 50 penalty units, imprisonment for 6 months or both.”.

[1.24] Subsection 62 (2)—

Omit the penalty.

10 **[1.25] Subsection 64 (2)—**

Omit the subsection, substitute the following subsection:

“(2) An application must be accompanied by the determined fee for the permit applied for.”.

[1.26] Paragraph 65 (2) (d)—

15 After “convicted” insert “or found guilty”.

[1.27] Subsection 65 (4)—

Omit the subsection.

[1.28] Section 69—

Repeal the section, substitute the following section:

20 **“69 Renewal of trapping permits**

On application to the authority by the holder of a trapping permit, accompanied by the determined fee for the permit held, the authority must renew the permit—

(a) for a commercial trapping permit—for 3 years; or

25 (b) for a private trapping permit—for the period the authority considers, on reasonable grounds, to be desirable in the interests of animal welfare.”.

SCHEDULE 1—continued

[1.29] Section 74—

Omit the section, substitute the following section:

“74 Definitions for pt 7

In this Part:

5 ***connected***—an animal or thing is ***connected*** with a particular offence if—

(a) it is an animal or thing in relation to which the offence has been committed; or

(b) it will provide evidence of the offence; or

10 (c) it was used, or is or was intended to be used, to commit the offence.

occupier, of premises that an inspector or authorised officer is authorised to enter under this Part, includes a person the inspector or officer believes on reasonable grounds to be the occupier, or to be in charge, of the premises.

15 ***offence*** means—

(a) any conduct engaged in, whether by an act or omission, that there are reasonable grounds for believing is an offence; or

20 (b) an offence (within the meaning of paragraph (a)) that there are reasonable grounds for believing has been, or will be, committed.”.

[1.30] Sections 76 and 77—

Repeal the sections, substitute the following sections:

“76 Inspectors

25 **“(1)** The chief executive must establish 1 or more positions in the public service, the duties of which include exercising the functions of an inspector.

“(2) The following people are inspectors:

(a) any public servant for the time being exercising the duties of a position mentioned in subsection (1);

SCHEDULE 1—continued

- (b) the authority, including a delegate of the authority with any delegated powers of an inspector;
- (c) a police officer;
- (d) anyone else appointed in writing by the chief executive.

5 **77 Authorised officers**

“(1) The chief executive must establish 1 or more positions in the public service, the duties of which include exercising the functions of an authorised officer.

10 “(2) Only a public servant who is a veterinary surgeon may be an authorised officer.

“(3) Subject to subsection (2), an authorised officer is any public servant performing the duties of a position mentioned in subsection (1).”.

[1.31] Subsection 78 (3)—

Omit the penalty, substitute the following penalty:

15 “Maximum penalty (subsection (3)): 1 penalty unit.”.

[1.32] Section 91—

(a) Omit “, or the performance of his or her duties,”.

(b) Omit the penalty, substitute the following penalty:

20 “Maximum penalty: 50 penalty units, imprisonment for 6 months or both.”.

[1.33] Subsection 95 (1)—

(a) Omit paragraphs (c) and (d).

(b) Renumber paragraph (e) as paragraph (c).

[1.34] Paragraph 101 (1) (a)—

25 After “convicted” insert “or found guilty”.

[1.35] Subsection 102 (1)—

Omit “convicted person”, insert “person convicted or found guilty of the offence”.

SCHEDULE 1—continued

[1.36] Paragraph 103 (1) (a)—

After “convicted” insert “or found guilty”.

[1.37] Subsection 104 (1)—

Omit “convicted person”, insert “person convicted or found guilty”.

5 **[1.38] Section 110—**

Repeal the section, substitute the following sections:

“110 Determination of fees

“(1) The Minister may determine fees for this Act.

“(2) A determination under this section is a disallowable instrument.

10 **“110A Approved forms**

“(1) The authority may approve forms for this Act.

“(2) If the authority approves a form for a particular purpose, the form must be used for that purpose.”.

[1.39] Section 112—

15 Omit the heading and subsection (1), substitute the following heading and subsection:

“112 Regulation-making power

“(1) The Executive may make regulations for this Act.”.

[1.40] Subsection 112 (2)—

20 Omit all the words before paragraph (2) (a), substitute the following:

“(2) The regulations may make provision with respect to the following matters:”.

[1.41] Subsection 112 (3)—

Omit the subsection, substitute the following subsection:

25 **“(3) The regulations may create offences for contraventions of the regulations and prescribe maximum penalties of not more than 10 penalty units for offences against the regulations.”.**

SCHEDULE 1—continued

[1.42] Part 11—

Repeal the Part.

[1.43] Schedule—

Repeal the Schedule.

5 **[1.44] Dictionary**

Add at the end the following dictionary heading and note:

“DICTIONARY

(See s 2)

“Note Veterinary surgeon is defined in the dictionary to the Interpretation Act 1967.”.

[1.45] Further amendments—

10 The following provisions are amended by omitting the penalty and substituting “Maximum penalty: 100 penalty units, imprisonment for 1 year or both.”:

15 Section 7, subsections 9 (2), 10 (1), 11 (1) and (2), 13 (1) and 14 (1), sections 15 and 16, subsections 17 (1) and (2), 18 (1) and (2), 51 (1), (3) and (4) and 60 (1).

[1.46] Further amendments—

The following provisions are amended by omitting the penalty and substituting “Maximum penalty: 50 penalty units, imprisonment for 6 months or both.”:

20 Sections 61 and 92 and subsections 101 (4) and 103 (4).

[1.47] Further amendments—

The following provisions are amended by omitting the penalty and substituting “Maximum penalty: 10 penalty units.”:

Subsections 9 (1) and 10 (2) and section 36.

25 **[1.48] Further amendments—**

The following provisions are amended by omitting the penalty and substituting “Maximum penalty: 5 penalty units.”:

Subsection 14 (2), sections 49 and 59, subsection 60 (2) and section 73.

SCHEDULE 1—continued

[1.49] Renumbering

In the next reprint of the *Animal Welfare Act 1992* under the *Legislation (Republication) Act 1996*, the divisions of the *Animal Welfare Act 1992* must be renumbered as permitted under section 13 of the *Legislation (Republication) Act 1996*.

Endnotes

Act amended

1 Republished as in force on 31 January 1999.

Penalty units

2 Section 33AA of the *Interpretation Act 1967* deals with the meaning of offence penalties that are expressed in penalty units.