

**2018**

**THE LEGISLATIVE ASSEMBLY FOR  
THE AUSTRALIAN CAPITAL TERRITORY**

**VETERINARY PRACTICE BILL 2018**

**EXPLANATORY STATEMENT**

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## VETERINARY PRACTICE BILL 2018

### Introduction

This explanatory statement relates to the Veterinary Practice Bill 2018 as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the bill and help inform debate on it. It does not form part of the bill and has not been endorsed by the Assembly.

This statement must be read in conjunction with the bill. It is not, and is not intended to be, a comprehensive description of the bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

### Overview of the Bill

The bill repeals the *Veterinary Surgeons Act 2015 (VSA)* and replaces it with a new scheme of occupational regulation for veterinary surgeons.

The ACT veterinary industry is regulated by the ACT Veterinary Surgeons Board (VS board), a statutory body established under the VSA. The VSA repealed the *Health Professionals Act 2004 (HPA)* as a result of other health professions moving to a national occupational regulatory scheme.

The VSA created occupational specific legislation for veterinary surgeons modelled on the HPA. At the time, it was announced that a review of the ACT veterinary surgeons occupational scheme would be undertaken to ensure that the profession's regulatory legislation was contemporary and functional.

A review by TCCS of the VS board operations was undertaken in July 2016. In summary the findings identified issues with the composition of the board; the complexity in the occupational discipline scheme that had carried over from the former health professions model; the legislative basis for the registration of premises; and cross jurisdictional interaction through mutual recognition of veterinary surgeons registered in other jurisdictions.

### The bill

The bill has been based on the *NSW Veterinary Practitioners Act 2003* (NSW Act) and the *NSW Veterinary Practitioners Regulation 2013* (NSW Regulations).

The language of the bill reflects contemporary terminology including the replacement of the term 'veterinary surgeon' with 'veterinary practitioner' and associated changes such as the new board title of veterinary practitioner board.

The bill has been titled Veterinary Practice Bill as it regulates the practice of veterinary science in the ACT. This includes the regulation of both veterinary practitioners and veterinary premises.

The bill enshrines in law a process for recognition of veterinary practitioners registered in other Australian jurisdictions under the Commonwealth mutual recognition scheme as agreed by Council of Australian Governments. This scheme deems ACT registration where a person is a non-resident of the ACT and is registered under the relevant home jurisdiction as a registered veterinary practitioner.

The bill provides the necessary powers for the board to register veterinary practitioners and veterinary premises. In so doing, the board has the regulatory role of investigating and imposing disciplinary measures where practitioners breach their standards of practice or where premises do not meet the veterinary premises standards as prescribed.

Such investigations can be initiated by complaint or on the board's own initiative where there is concern to do so. This assists the board in its responsibilities where information is provided but no formal complaint is made or where there is a series of minor complaints that leads to concerns in regard to patterns of behaviour that are of greater concern when taken as a whole.

Procedural fairness through prescribed processes of notice and show cause process are contained in the bill. This covers situations where decisions may have an adverse effect on a person. The board is required to provide reasonable time for a person to make submissions or comment on proposed decisions and then take the response into consideration when finalising the decision.

Certain decisions as contained in schedule 1 of the Act are reviewable by the ACT Civil and Administrative Tribunal (ACAT).

Consistent with the NSW model, the bill removes the cumbersome process of panel investigation of complaints and empowers the board to, at its discretion, create committees to review complaints and appoint investigators as appropriate.

This process is undertaken in partnership with the Human Rights Commission (the HRC) which retains its role under the bill for ACT joint consideration of veterinary complaints. This ensures that the expertise of the HRC in health complaints are brought to bear on the deliberations of the board.

The bill includes template powers for inspectors who are appointed by the board to undertake investigations or to audit premises for compliance with the requirements of the premises standards. The template powers contained at part 8 of the bill engage a number of human rights which is discussed in more detail below. Court warrants are required where searching and seizing items except in emergency situations. The Court must be satisfied that there are reasonable grounds for the issuing of the warrant as provided in the Bill.

In all cases the inspector is required to produce identification on request and must explain their actions and the powers they operate under including any action that an individual can take if they do not agree with the action.

Matters of occupational discipline which may result in suspension or cancellation of registration for people or premises continues to be subject to an application to ACAT which hears occupational discipline matters under powers contained in the *ACT Civil and Administrative Tribunal Act 2008*.

Veterinary practitioner registration types are retained under the bill. Registration continues as either general registration or specialist registration. Recognition is also provided for a general registration where the veterinary practitioner is non-practicing such as when retired. This allows for the requirement for insurance to be waived. A non-practicing practitioner will be captured by offence provisions in relation to undertaking restricted acts of veterinary science.

The bill provides for the board to be appointed by the Minister following legislatively prescribed processes. There will no longer be elected members appointed to the board. However, consultation must be undertaken with the board and industry.

The bill establishes a board of seven members. This includes a president, four members who are registered veterinary practitioners, a community representative who is not a veterinary practitioner and a member who is not a veterinary practitioner. When appointing the two non veterinary practitioner members the Minister must be satisfied they have the interests, skills or qualifications to help the board reach its objectives. All appointments have continuous registration for a period of three (3) years immediately prior to the day of appointment.

This compares with the board membership under the VSA which was also seven members but with all, except the community member, being registered veterinary surgeons.

Under the bill, the president cannot be a person who works in a veterinary practice or has a material interest in a veterinary practice. This deals with the governance issue of conflict of interest. Other members, and the president if it occurs, are required to declare conflicts and the bill provides the procedures by which member conflicts are dealt with.

### Section 28 Human Rights Act assessment

Section 28 of the HR Act provides that human rights are subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic society. Section 28(2) of the HR Act provides that, in deciding whether a limit on a human right is reasonable, all relevant factors must be considered, including:

- a) the nature of the right affected;
- b) the importance of the purpose of the limitation;
- c) the nature and extent of the limitation;

- d) the relationship between the limitation and its purpose; and
- e) any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

The following matters are considered relevant:

### *Powers of inspectors*

Veterinary practitioners and people who operate veterinary premises have specialist knowledge and skills and are aware of the need to comply with their professional standards and apply their skills diligently and competently. The profession recognises the role of a board in managing professional standards and discipline. The model is one that operates in all Australian jurisdictions with largely consistent rules.

It is through a complaint mechanism and the power to undertake investigations that the board determines whether the requirements under the Act are being met or if there are grounds for discipline action. The board has the power to appoint inspectors who can undertake such investigation.

The template powers for inspectors under part 8 of the bill, engage the right to privacy and reputation. It may also engage the right to freedom from self-incrimination in relation to provisions to reasonably assist an inspector.

Inspections are the basis of regulatory work and ensuring that the requirements of the legislation are being met. Inspectors require the powers necessary to undertake these functions on behalf of the board.

The limitation on the right to privacy and reputation are reasonable in a fair and just society where issues of public health and animal health and welfare are at issue.

The powers and the limitation on rights is discussed in more detail under the specific provisions dealing with the powers of inspectors (see Division 8.2).

### *Strict liability*

The bill contains a number of offences some of which are strict liability offences. This engages the right to a fair trial and the presumption of innocence. In this case, as the offences regulate a profession it is appropriate that the offences are strict liability.

Registered veterinary practitioners are well aware of the requirements of their profession and if they act contrary to the standards of practice should be accountable. The limitation on the right to innocence and the reversal of proof in the case of strict liability is warranted in the case where it attaches to professional competence and expertise. A number of offences in the bill which are strict liability do include defences to the offence. For example, where the action that leads to the offence is carried out in an emergency situation. The onus of proof is on the defendant to prove the defence.

The incorporation of strict liability elements has been carefully considered.

Strict liability offences arise in a regulatory context where reasons such as animal welfare, public safety and the public interest in ensuring that regulatory schemes are observed require the sanction of criminal penalties.

In particular, where an offender can reasonably be expected to know what the requirements of the law are then the mental and fault elements of the offence can be justifiably excluded. Where a person is the subject of a regulatory regime particularly where their skills and knowledge are special such as those of a veterinary practitioner, the expectation should be that the person guard against the activity that is unlawful.

The bill is designed to encourage compliance, not disproportionately penalise those who fail to comply. It provides the necessary powers to enforce compliance with the law through suitable sanctions.

It is appropriate that the scheme for the regulation of veterinary practitioners is sufficiently robust. Strict liability offences ensure that action can be taken without requiring prosecution in all cases when it meets the purpose of ensuring high animal welfare standards and public safety in situation. This is particularly so where the fault element of the offence can be excluded because of the special characteristics of the offender as a qualified and registered veterinary practitioner or the operator of a veterinary facility.

Strict liability offences are designed to enable a quick and effective response to stop harm where parties have failed to meet obligations or the requirements of the law. A strict liability offence can also provide a deterrent to a person as action by the regulator can be quickly taken to enforce or warn a party against the behaviour. It provides an immediate response to address and stop harm including protecting animal welfare or the public.

In developing the bill an assessment has been made as to whether there is any less restrictive means available to achieve the purposes of the Act. This is considered the least restrictive means whilst ensuring high standards of animal welfare and community safety. It is done so in the context of individual professional reputation and the broader reputation of the profession both in the Territory and more generally in Australia. It does this by providing consistent professional obligations and sanctions.

Due regard has been given to the *Guide for Framing Offences*. Furthermore, the Criminal Code defences are still available to a person charged under these offence provisions, particularly the mistake of fact defence (*Criminal Code 2002* section 36 and section 53) and the defence of intervening conduct or event (*Criminal Code* section 39, noting section 54).

## **Climate Change impacts**

The Bill has no identifiable climate change impacts.

## OUTLINE OF PROVISIONS OF THE BILL

### PART 1 PRELIMINARY

#### Clause 1 Name of Act

This clause provides that the name of the Act is the *Veterinary Practice Act 2018*.

#### Clause 2 Commencement

This clause provides for the commencement of the Act. The Act will commence on the day notified by the Minister by written notice.

#### Clause 3 Dictionary

Definitions for the Act can be found in the Dictionary at the end of the Act. The dictionary is part of the Act.

#### Clause 4 Notes

This clause explains that notes in the Act are not part of the Act and are provided to explain and provide examples about how a provision is intended to operate.

#### Clause 5 Offences against Act – application of Criminal Code etc

This clause provides that other legislation applies in relation to offences against the Act. Chapter 2 of the criminal code for example applies to all offences against the Act. That chapter covers principles such as the burden of proof and general defences. It also covers other elements of an offence.

#### Clause 6 Objects of Act

The object of the Act is to regulate the provision of veterinary services. In doing so, the Act ensures that veterinary services focus on the welfare and protection of animals; that veterinary practitioners provide services professionally and competently; that premises are of an acceptable standard; that services comply with standards and that are acceptable to the community and meet national and international trade requirements; that consumers are well informed about the competencies that are required of a practitioner and that public health is protected.

### PART 2 PRACTICE OF VETERINARY SCIENCE

#### Clause 7 Meaning of *restricted act of veterinary science*

The meaning of *restricted act of veterinary science* is prescribed by regulation. The Minister must seek the board's advice on what acts should be prescribed and the Minister must consider the board's advice. The board cannot however advise the Minister that an act should be an act of veterinary science if the board considers that the act would cause unacceptable harm or suffering to

the animal or is likely to adversely affect human health or adversely affect domestic or international trade.

A restricted act of veterinary science cannot be prescribed in regulation as an act of veterinary science. Unrestricted acts of veterinary science are mentioned in schedule 2 of the Act.

#### **Clause 8      Meaning of *veterinary science***

This clause provides the meaning of *veterinary science*. It means any branch of the science or art of veterinary medicine or veterinary surgery and includes a list of specific criteria.

This criteria includes the general activities associated with the job of a veterinary practitioner such as examining or attending to an animal for diagnosis of diseases or injury and extends to the giving of anaesthetic or performing an operation.

Criteria to note include: the diagnosing of pregnancy in an animal; the carrying out of an artificial breeding procedure that involves surgery; and the de-antlering of deer. This makes it clear that these activities are acts of veterinary science and are specifically covered by the legislation as such.

Veterinary science can include anything else prescribed by regulation.

#### **Clause 9      Meaning of *registered veterinary practitioner***

This clause provides that a registered veterinary practitioner means a veterinary practitioner registered under this Act. The definition however expressly excludes a veterinary practitioner whose registration is suspended.

#### **Clause 10      Carrying out restricted act of veterinary science without authority**

This clause makes it an offence for a person to carry out a restricted act of veterinary science on an animal and that person is not a registered veterinary practitioner with general or specialist registration.

It should be noted that this means that a non-practising veterinary practitioner is also subject to the offence if carrying out a restricted act of veterinary science.

Subclause 10(1) (b) is a strict liability offence in relation to registration as a veterinary practitioner. This engages the right to a fair trial and the presumption of innocence. In addition to removing the mental and fault elements of the offence it also reverses the burden of proof. The defendant would need to establish that they are, in fact, a registered practitioner with general or specialist registration. As the board will be relying on the formal register (see clause 123) it is appropriate that any challenge to the accuracy of the official record, should be proved by the defendant and is therefore justifiable. This rationale also applies to clause 11 and 13 as outlined below.

It is an offence which carries a penalty of 50 penalty units or six (6) months imprisonment or both.

The clause also provides exceptions to the offence. The exceptions include if the person is the owner of the animal or is employed by the owner of the animal and the act is incidental to the primary duties of their employment.



People who are students enrolled in courses accredited by the Australasian Veterinary Boards Council (AVBC) or approved by the board and the act is part of that course of education and under direct supervision of a registered veterinary practitioner.

It is also an exception where the act is necessary because an animal requires urgent treatment and a registered veterinary practitioner is unavailable.

#### **Clause 11 Person pretending to be registered veterinary practitioner**

This clause makes it an offence if a person pretends to be a registered veterinary practitioner and the person is not registered. It is a strict liability offence in relation to subclause 11(1)(b) in relation to registration. This engages the right to a fair trial and the presumption of innocence.

In addition to removing the mental and fault elements of the offence in relation to registration, it also reverses the onus of proof. A person who believes that they are, in fact, registered have the burden to establish this fact in a defence (see discussion at clause 10).

The offence carries a penalty of 50 penalty units, imprisonment for six (6) months or both.

#### **Clause 12 False representation of person as veterinary practitioner or specialist**

This clause creates an offence where a person represents as a registered veterinary practitioner or holds a specialist registration and that representation is not true.

Amongst other things this clause ensures that a person using a description or title that is misleading so that they appear as if they were a veterinary practitioner will be captured by the offence. Examples provided are not exhaustive and include a person being represented as an animal doctor, a vet or that their work is veterinary practice.

This offence carries a penalty of 50 penalty units, imprisonment for six (6) months or both.

#### **Clause 13 Unqualified to practise as specialist**

If a person carries out a restricted act of veterinary science that requires specialist registration and the person does not hold the required registration then it is an offence under clause 13.

It is a strict liability offence in relation to subclause 13 (1)(b) and registration as a specialist. The strict liability reverses the burden of proof and it would be for the defence to establish if the person did in fact hold specialist registration (see clause 10).

The offence carries a penalty of 50 penalty units, imprisonment for six (6) months or both.

#### **Clause 14 Direction to engage in unprofessional conduct**

Clause 14 creates an offence if a person employs a registered veterinary practitioner and the person directs that person to engage in conduct that if it were engaged in would be unsatisfactory professional conduct or professional misconduct.

The clause provides that the direction of a person who is an employee or acting as an agent of the employer is taken to be a direction of the employer. There is a reverse burden of proof on the employer to prove that the employer did not have knowledge of the direction or exercised proper diligence to prevent the direction.

This offence carries a maximum penalty of 50 penalty units.

#### **Clause 15    Restriction on recovery of fees or charges if not registered**

This clause provides that if a person carries out a restricted act of veterinary science and the person is not a registered veterinary practitioner holding general or specialist registration or is not the registration holder of a registered veterinary premises, then the person is not entitled to recover a fee or charge for doing the restricted act of veterinary science.

There is no offence provision in relation to this clause.

## **PART 3    REGISTRATION OF VETERINARY PRACTITIONERS**

### **Division 3.1 Application and decision**

A note is provided on the application of the *Mutual Recognition Act 1992* (Commonwealth) and the *Trans-Tasman Mutual Recognition Act 1997* (Commonwealth) referred in the note as *the Commonwealth Acts*.

The note asserts the principles of mutual recognition and provides information about the application of the Commonwealth Acts. In effect the Commonwealth Acts allow people to be registered and work across jurisdictions and nothing under this Act can require anything of people being registered that would be inconsistent with the Commonwealth Acts and the principles of mutual recognition. The note directs people to the Commonwealth Acts for more information.

#### **Clause 16    Application**

This clause provides that an individual can apply to the board for either general registration or specialist registration as a veterinary practitioner. Alternatively, a person may apply for a non-practicing veterinary practitioner registration if they do not intend to carry out a restricted act of veterinary science.

This provides a registration point for a person who is working in research or teaching or who is retired and no longer actively practicing in veterinary science. It also provides for registration of veterinary practitioners in government who are working in regulatory services or other similar capacities where they are not carrying out restricted acts of veterinary science.

Sub clause 2 provides that an application must be in writing and contain information as specified in the clause. For example, information about the individual's qualifications and suitability information.

The application also requires details of insurance unless the applicant is a non-practising veterinary practitioner.

The clause also contains notes cross referencing requirements to other relevant parts of the Act.

Note 3 states that it is an offence under the Criminal Code to provide false or misleading statements or information in documents.

Note 4 puts beyond doubt that fee provisions apply and a fee can be determined for this clause.

#### **Clause 17    Withdrawal of application**

This clause provides that an applicant can withdraw an application at any time before the board makes a decision on the application and that a refund of the application fee less processing fee must be made to the withdrawing applicant.

#### **Clause 18    Board may ask for further information**

Before the board has made a decision on an application for registration it may ask in writing for additional information in relation to the application or for a person to appear before the board to give additional information about the application. An applicant must comply or the board may, if it chooses, refuse to further consider the application for registration.

The board cannot ask a person to appear in person if the person is applying under mutual recognition provisions (that is the person is already registered in another Australian or New Zealand jurisdiction) under the *Mutual Recognition Act 1992* (Commonwealth).

#### **Clause 19    Decision on application**

This clause provides that the board on application for registration must do one of two things: either register the person or refuse to register the person.

The board must only register a person if it is satisfied that a person is covered by insurance as required by regulation (unless the person is a non-practising veterinary practitioner) and the person is qualified to hold the registration they have applied for which if practicing is either a general or specialist registration.

The person must also be a suitable person and satisfy any other prescribed requirement for registration as a veterinary practitioner.

The board must tell the person within seven (7) days after the day it considers the application of its decision, and if the person is registered, enter details in the register (see section 124 (2)) and give the person a registration document.

It is noted in the clause that the qualifications to hold a registration are covered in division 3.2 and the suitability requirements in division 3.3.

If the board does not decide the application within forty (40) days after the board received the application or additional information requested under clause 18, then the board is taken to have refused the application. The board may refuse to register a person if the person's registration has been suspended or cancelled in another jurisdiction. This closes a loop hole in the *Veterinary Surgeons Act 2015* where such sanctions were not an identified restriction to registration. It would still require the board to consider the registration as the provision provides a discretion rather than an automatic refusal. It is however a provision consistent with mutual recognition and the maintenance of standards and quality across jurisdictions.

## **Clause 20     Refund of application fees**

If the board refuses an application for registration under clause 19, the board must refund the application fee (less any processing fee) to the applicant.

## **Clause 21     Conditions of registration**

Under this clause the registration of a veterinary practitioner is subject to the condition that the practitioner undertakes continuing professional development. The board may impose any other condition at any time consistent with the application of subclause 2 as indicated below. The clause contains an example of a condition being a restriction on prescription of a therapeutic drug. The example is not exhaustive nor does it limit the conditions that the board can apply.

As mentioned subclause 2 provides that the board cannot only impose a condition that is justified having regard to a number of considerations. These considerations in full are listed in the Act and relate to the fulfilment of the objectives of the act such as the health and welfare of animals. A condition on registration may also include a requirement on the veterinary practitioner to undertake and successfully complete additional training and/or demonstrate to the satisfaction of the board, knowledge of the law and ethics relating to the practice of veterinary science generally and in particular concerning the supply, dispensing, storage and use of poisons and therapeutic substances that are relevant to the practice of veterinary science.

## **Clause 22     Amendment of registration by board on its own initiative**

This clause allows the board to amend registration at any time on its own initiative. This includes by imposing a condition on or amending an existing condition of the registration.

Consistent with procedural fairness subclause 2 of the provision provides that the board can only amend the registration after written notice has been given of the proposed amendment and the board has considered any written comments received from the veterinary practitioner on the proposal. The board must tell the practitioner the period of time in which they have to respond to the proposal but it cannot be less than fourteen (14) days.

A person holding registration can apply for an amendment (see clause 23) or agree in writing to an amendment and then the notice and response provisions under subclause 2 will not apply.

## **Clause 23     Amendment of registration on application**

Under this clause a registered veterinary practitioner may apply to the board to amend the practitioner's registration, including by removing or amending conditions of the registration. A fee can be determined for this provision.

The board can seek additional information in writing including documents that the board would reasonably need to decide the application for amendment. If the applicant does not comply with a request for additional information then the board may refuse to consider the application.

In deciding whether to amend an applicant's registration, clause 19 is relevant as the board can consider anything that it may consider under that clause in relation to an application for registration.

The board has two options in deciding the proposal of amendment. The board can either amend the registration in the way applied for or refuse to amend the registration.

The Bill does not preclude the board making an additional decision to amend the registration under its own initiative, should the board refuse to amend the registration in the way that was requested by the applicant.

#### **Clause 24 Annual renewal of registration**

This clause provides that renewal of registration can be applied for anytime within eight (8) weeks before the day that registration ends. Current administrative arrangements have registration ending at the end of the financial year (30 June). Section 26 deals with the term of registration which is generally twelve (12) months.

Renewal may have a fee determined under clause 143.

The application must be in writing and include suitability information about the practitioner and include a statement about the continuing professional development undertaken by the practitioner in the period since registration or the last renewal of registration.

The board must renew registration if the person is a suitable person (see division 3.3 of the Bill) and they have completed the requirements for continuing professional development. If not, the board must refuse to renew the registration.

Within seven (7) days after the decision on the renewal application the board must tell the person of its decision and provide a registration document.

#### **Clause 25 Renewal out of time**

This clause applies if a person is registered and the person's registration as a veterinary practitioner was not renewed under section 24 and no more than three (3) months has passed since the previous registration ended.

In this case the person may apply to the board to renew the previous registration by putting in an *out of time application*. This application should comply with the requirements under section 24(2). The board is required to deal with the *out of time application* in the same manner as an application made under section 24 for renewal.

#### **Clause 26 Term of registration**

Registration is generally for twelve (12) months. A new application for registration starts on the day the registration document is issued or on the date stated in the registration document. The registration continues to be in force for up to twelve (12) months unless the registration is suspended or cancelled before the end of that period. Being up to twelve (12) months allows for the renewal of registration to be harmonised with all other registrations to the financial year.

Renewals and out of time renewals start on the day after the registration that is renewed ends and continues in force for twelve (12) months unless the registration ends through suspension or cancellation before the end of the twelve-month period.

#### **Clause 27    Surrender**

This clause provides that a registered veterinary practitioner may surrender their registration by giving written notice to the board. The notice is called a *surrender notice* under the Bill.

The surrender notice must be accompanied by the registration document or if the registration document has been lost, stolen or destroyed a statement verifying this fact.

Registration is taken to be cancelled if surrendered under this section.

### **Division 3.2      Qualification for registration**

#### **Clause 28    Qualification for general or non-practising registration**

This clause contains detail of the qualification of a person eligible for general registration as a veterinary practitioner.

The person must be a graduate of a course of education in veterinary surgery or veterinary science in Australia, New Zealand or in a foreign institution that is accredited by the AVBC or approved by the board.

If the course is outside Australia or New Zealand and not AVBC accredited or board approved, a person must have completed the course and passed an exam held by the AVBC to be qualified to hold a veterinary registration.

The AVBC is contained in the dictionary of the Act and refers to the Australasian Veterinary Boards Council (incorporated).

#### **Clause 29    Qualification for specialist registration**

A person is qualified to hold a specialist registration if that person holds or is eligible to hold general registration as a veterinary practitioner, and has the necessary qualifications and experience as determined by the board to hold the specialist registration.

### **Division 3.3      Suitability of people to be registered veterinary practitioners**

#### **Clause 30    Meaning of *suitable person***

A *suitable person* is defined in this clause to mean a person who the board is satisfied is a suitable person to be registered as a veterinary practitioner.

In deciding if a person is suitable to be registered, the board must consider the suitability information about that person.

### **Clause 31    Meaning of *suitability information***

Clause 31 details what, under the Act, is *suitability information*.

It includes information about any convictions or finding of guilt against a person for a criminal offence or an offence under this Act or a corresponding law in another jurisdiction; animal welfare laws as defined in subsection 2 of this clause; consumer law as defined in subsection 2 of this clause; any law in the ACT with a maximum penalty of imprisonment for one (1) year or more; or a law elsewhere that if it was committed in the ACT would have had a maximum penalty of imprisonment for one (1) year or more.

Suitability information also includes information about any impairment suffered by a person that would prevent the person doing a restricted act of veterinary science.

Any findings of professional misconduct or unsatisfactory professional conduct or any refusal of an application by the person for registration in relation to the practice of veterinary science are also suitability information.

Suitability information also includes information about bankruptcy or personal insolvency (as defined in subsection 2 of this clause) during the previous five (5) years or involvement in the management of a corporation which was insolvent at the time of managing.

## **Division 3.4        Registration and removal from register**

The Bill notes that part 9 sets the requirement to keep a register of registered veterinary practitioners.

### **Clause 32    Removal of veterinary practitioner from register**

This clause outlines when the board can remove a veterinary practitioner from the register.

The name of the veterinary practitioner **must** be removed from the register if the person has died; requested to have their name removed; has failed to renew their registration; or, where ACAT has ordered that a practitioners registration be suspended or cancelled.

The board has discretion to remove a veterinary practitioner from the register in a range of circumstances including where continuous professional development requirements are not met; where fees or fines under the Act are not paid or where authority to practice veterinary science has been suspended or cancelled in another jurisdiction. The discretion allows the board to make other arrangements, such as conditions on registration under section 21 of the Act, depending on the situation.

When removing a veterinary practitioner from the register, the board must provide written notice of its intention and give the practitioner at least twenty-eight (28) days from the day notice is given to make written submission in relation to the proposed removal and take any submission into consideration. This process provides natural justice.

## **PART 4 RECOGNITION OF VETERINARY PRACTITIONERS FROM OTHER JURISDICTIONS**

This part of the Act is about the mutual recognition of veterinary practitioners who are registered in other jurisdictions and working in the ACT.

### **Clause 33 Definitions - Act**

Clause 33 defines *another jurisdiction* to mean under the Act a State or jurisdiction prescribed by regulation. A State is defined in the Legislation Act and refers to Australian states including the Northern Territory.

The clause also defines *deemed registration* with reference to section 34(1).

### **Clause 34 Recognition of veterinary practitioners registered in other jurisdictions**

The definition of *deemed registration* is contained in this clause. A veterinary practitioner who practices in the ACT is deemed to be registered if certain criteria are met. These criteria are that the person's principal place of residence is in another jurisdiction AND the person is registered as a veterinary practitioner in the other jurisdiction AND the person is not registered as a veterinary practitioner in the ACT.

An example is provided in the Act to assist the reader. The example is part of the Act but it is not exhaustive and does not limit the meaning of the provision.

If a person has specialist registration in a branch of veterinary science in another jurisdiction, the deemed registration is taken to be specialist registration in that branch.

### **Clause 35 Application of Act to veterinary practitioners with deemed registration**

Clause 35 clarifies a number of issues about deemed registration. It clarifies that part 3 of the Act about the process for registration does not apply to a person who has deemed registration although they are taken to be registered as a veterinary practitioner under the Act and any other ACT laws. The clause also clarifies that any suspension or cancellation of a person's registration under the Act is taken to be a reference in relation to the deemed registration.

### **Clause 36 Condition of deemed registration**

This clause clarifies how conditions on a registration of a veterinary practitioner in another jurisdiction affects the deemed registration.

In the first instance conditions on the registration in the primary jurisdiction also apply to the deemed registration. The board however may vary or waive a condition if it considers this appropriate either if the person applies for such treatment or on the board's own initiative, it can vary or impose a condition on the deemed registration. If the motion is on the board's own initiative, written notice must be provided to the person of the proposal.

In imposing or varying a condition on the deemed registration, the board must consider it necessary to ensure that the authority conferred by the person's



deemed registration is substantially the same as the authority conferred by the person's registration in other jurisdictions.

#### **Clause 37 Suspension and cancellation of deemed registration**

Under clause 37 the board has discretion to suspend or cancel deemed registration of a veterinary practitioner if their registration as a practitioner in another jurisdiction (including if that registration is deemed registration or other mutually recognised registration) is suspended or cancelled. The board can do this without further investigation or hearing using the grounds on which the registration in the other jurisdiction was suspended or cancelled.

#### **Clause 38 ACT becomes principal residence**

If the ACT becomes the principal place of residence for a veterinary practitioner they must apply within three (3) months of taking residence for registration to practice in the ACT. This makes it very clear that home jurisdictions under the mutual recognition scheme are related to the place of residence. The clause clarifies that deemed registration under the Act continues until the application is decided and the veterinary practitioner notified of the board's decision. This provides continuity in practice.

## **PART 5 COMPLAINTS AND DISCIPLINARY PROCEEDINGS**

### **Division 5.1 Definitions and code of professional conduct**

This division deals with the standard of conduct expected of a veterinary practitioner.

#### **Clause 39 Meaning of *veterinary practitioner* – pt 5**

*Veterinary practitioner* is defined in this clause for this part of the Act as a registered veterinary practitioner or a person who was a veterinary practitioner but who is no longer registered as a veterinary practitioner or where registration is suspended.

This allows complaints and disciplinary proceedings to progress notwithstanding that the person at the time of a complaint or an investigation is not registered for the purpose of the Act as a whole.

#### **Clause 40 Meaning of *professional misconduct***

*Professional misconduct* is defined in this clause to mean unsatisfactory professional conduct or a pattern of unsatisfactory professional conduct. The conduct must be of a sufficiently serious nature to justify the suspension or cancellation of a veterinary practitioner's registration. Alternatively, it can be any other conduct prescribed by regulation.

Unsatisfactory professional conduct is defined in clause 41.

#### **Clause 41 Meaning of *unsatisfactory professional conduct***

Clause 41 defines the meaning of *unsatisfactory professional conduct*. It is determined in reference to a number of situations or circumstances.

Under clause 41(a) it means for a veterinary practitioner engaging in conduct in the practitioner's professional capacity that, if repeated or continued, is likely to have a specified outcome. The outcomes are listed and include unnecessary suffering of an animal; cause the inappropriate death of an animal; adversely affect the safety or health of any person; or damage the international reputation of Australia in relation to animal exports, welfare, produce or sporting events.

Clause 41 (b) provides that a contravention of a condition of the veterinary practitioner's registration is *unsatisfactory professional conduct*.

Clause 41(c) unsatisfactory professional conduct may be failing to comply with the code of professional conduct. The code is prescribed under section 146 of the Act.

Clause 41 (d) providing false and misleading information about the practitioner's qualifications.

Clause 41 (e) failing to supervise a person properly.

Clause 41 (f) failing to comply with the Act.

Clause 41 (g) engaging in conduct that demonstrates incompetence to practise; the lack of adequate knowledge, skill, judgement or care; or is not fit because the practitioner is suffering an impairment.

Under clause 41(h) unsatisfactory professional conduct means engaging in improper or unethical conduct in the course of practising veterinary science.

And under clause 41(i) engaging in any other prescribed conduct. Conduct can be prescribed under regulation.

### **Clause 42    Veterinary practitioner's code of professional conduct**

Under clause 42 the board must establish a code of conduct called a *veterinary practitioners code of professional conduct*. The code is a notifiable instrument. This means it must be notified under the Legislation Act and be placed on the Legislation register.

The code sets out the standards of conduct. It may include legal instruments as provided under subsection (2). It may also include requirements for continuing professional development.

## **Division 5.2       Complaints**

This division sets out the rules about the making of complaints.

### **Clause 43    Who may complain**

This clause provides that any person may make a complaint about a veterinary practitioner on one or more grounds that are listed in the clause. A veterinary practitioner can complain under this provision.

The grounds for complaint as outlined in the clause are in summary: engaging in unsatisfactory professional conduct or professional misconduct; if there is an impairment that means the practitioner is not fit to practise; if there is a contravention of the Act by the practitioner; contravention of a condition or undertaking made to the board; and improperly obtained registration.

This clause does not preclude a person complaining directly to the HRC under that Commission's Act.

A person who complains is protected from legal liability as making a complaint is prescribed as not being a breach of confidence; professional etiquette; professional ethics; or a rule of professional conduct and there is not civil or criminal liability incurred only because of the making of a complaint. There is an exception to civil or criminal liability in relation to the making of a complaint that the person knows is false or misleading.

#### **Clause 44 Consideration without complaint or appropriate complaint**

This Clause introduces a new power to the board from previous legal regimes it has been under. The board now has the power to consider matters about a veterinary practitioner on its own initiative.

The board can do this if an act or service by the practitioner appears to the board to be an act or service such that a person could make a complaint but has not done so or any other matter that relates to the registration of the veterinary practitioner.

If the board undertakes a board initiated consideration then it must as far as possible be conducted as if it were considered as a complaint.

#### **Clause 45 False or misleading complaint**

It is an offence to make a complaint that is materially false or misleading. The offence carries a maximum penalty of 30 penalty units.

#### **Clause 46 Time limit for making complaints**

Principles of natural justice and procedural fairness require that complaints made must be made within a reasonable timeframe. Clause 46 provides that a complaint can be made about conduct that it is alleged to have happened at any time however there is no requirement for the board to investigate complaints that are made more than three (3) years after the alleged conduct occurred. The board can decide that it is just and fair to investigate older complaints if having regard to the delay and why the delay in complaint occurred.

#### **Clause 47 How complaints are made**

Complaints must be given to the board in writing and include the name and contact details of the complainant. The complainant however is entitled to reasonable assistance from the board registrar to put the complaint in writing. For example this may be because the person cannot write or has difficulty in doing so. Notwithstanding that the complaint must be in writing the board can in exceptional circumstance take a complaint orally if satisfied that the grounds are reasonable to do so without a written complaint.

It may be justified where a complaint needs to be acted on immediately and the writing of a complaint would delay action inappropriately.

A person need not provide their name and contact details under the provision. This is in recognition of the *Information Privacy Act 2014* and Territory Privacy Principle (TPP) number 2 where an individual must have the option of not identifying themselves or providing a pseudonym. The provision however recognises that the board has discretion as to whether they investigate as

without an identified complainant a matter is difficult to investigate and evidence.

#### **Clause 48    Withdrawal of complaints**

A complainant may at any time withdraw a complaint with written notice to the board however this does not stop the board from deciding to continue on a board-initiated consideration as provided for in section 44.

#### **Clause 49    Further information about complaint etc.**

Clause 49 provides the power for the board to seek further information about the complaint or to seek statements verifying aspects of the complaint. The board must be reasonable in setting timeframes in which the required information is required and can provide extensions.

If a person fails to give a statement verifying information about the complaint the failure does not affect the making of the complaint but the board need not continue with action on the complaint.

#### **Clause 50    Notice to veterinary practitioner complained about**

This clause provides obligations on the board to tell the registered veterinary practitioner in writing about the complaint. This includes that a complaint has been made and is to be considered by the board; the general terms of the complaint and the name of the person making the complaint unless section 134 of the Act applies about nondisclosure of complaints. Section 134 provides an offence in certain circumstance where the release of the complaints information may have adverse outcomes as detailed in that section. These include where a person's health or safety is at risk, where it may cause someone to receive a lower standard of service or prejudice the management of the investigation report or consideration.

In the interests of procedural fairness the board must tell the practitioner that they may make written representation in relation to the complaint and the time period for making such submissions.

### **Division 5.3      Dealing with complaints**

#### **Subdivision 5.3.1    Immediate action**

#### **Clause 51    Meaning of *immediate action* div 5.3.1**

This subdivision uses the term *immediate action* and it means either the suspension, or imposition of a condition on a veterinary practitioner's registration or accepting an undertaking from the veterinary practitioner or accepting the surrender of the person's registration.

#### **Clause 52    Power to take immediate action**

This clause provides power to the board to take immediate action if it reasonably believes that because of the person's conduct, performance or health there is a serious risk to people or animals and it is necessary to protect public health and safety or the safety of animals.

Alternatively it can be used where a registration has been improperly obtained through false or misleading material or when a registration has been cancelled or suspended under the law of another jurisdiction. The later power supports the mutual recognition system.

In using this power the board must have complied with section 53 in relation to show cause.

#### **Clause 53 Show cause process**

If the board is going to use its power under section 52 then procedural fairness and natural justice are applied through this clause. Notice must be given to the registered veterinary practitioner about a proposed suspension or condition of registration and the practitioner invited to make a submission to the board.

The notice must include a time in which to provide submissions. The notice and submissions may be in writing or provided orally. This accounts for the need to take immediate action.

The board must have regard to submissions made by the registered veterinary practitioner.

#### **Clause 54 Notice to be given to registered veterinary practitioner about immediate action**

After the process of notice and submission the board can make a decision to take immediate action. The board must give written notice of the decision and then take further action as the board considers appropriate. Action may include investigation or requiring the practitioner to undergo health or performance assessment.

The notice of the decision must include certain things as listed in section 54 for example the immediate action that will be taken, the reasons for the decision, further actions and the appeal process that can be made and the time periods for appeal applications.

#### **Clause 55 Period of immediate action**

A decision by the board to take immediate action in relation to a veterinary practitioner, takes effect on the day as stated in the notice, or if stated, the later day.

The decision continues until either the decision is set aside on appeal, either a suspension or condition on the registration is revoked or if the immediate action was an undertaking the board and the registered veterinary practitioner agree to end the undertaking.

### **Subdivision 5.3.2 Investigation**

#### **Clause 56 Investigation of complaints**

This clause determines that the board must conduct an investigation into a complaint in consultation with the HRC. The HRC has carriage of health complaints under the *Human Rights Commission Act 2005*.

Investigations can deal with more than 1 complaint at a time. Further that if in investigating a complaint it is apparent that another matter related to the complaint could have been made then that other matter can also be included

in the investigation at the board's discretion. It does not matter if the additional matter relates to the original complainant or whether the complaint is in addition to or instead of the original complaint. If such a matter is dealt with as an additional complaint then the board must give notice of the additional complaint to the veterinary practitioner complained about under the requirements set out in section 50 of the Act.

#### **Clause 57 Investigation procedure**

This clause provides that investigations into a complaint under the Act must be conducted with as little formality and technicality as a proper consideration of the matter permits. It need not involve a hearing of any sort.

If the board has appointed a committee to undertake the investigation the committee must have at least three members and include a member representing the HRC and a member representing the board. The investigation must be conducted consistent with any applicable code of practice.

The clause provides that the board is not bound by the rules of evidence but must observe the rules of natural justice. In general this means that there is a duty to act fairly without bias, fair notice and an opportunity to respond to allegations and present a case is provided to the veterinary practitioner.

A person appearing for the purposes of an investigation may be represented by any other person subject to any applicable code of practice.

#### **Clause 58 People to give information, provide documents or answer questions**

The board when investigating a complaint can require a person to appear and give evidence or to answer any relevant questions. The board can require a person to provide evidence under oath or affirmation. The board can take statements and receive affidavits or require the production of any relevant documents including clinical records.

#### **Clause 59 Person failing to comply with direction**

It is an offence if a person is directed to do something by the board under section 58 and the person fails to comply with the direction and does not have a reasonable excuse. The offence carries a maximum penalty of 20 penalty units.

#### **Clause 60 Board may dismiss certain complaints**

Clause 60 deals with the dismissal of a complaint by the board. The board must be satisfied that the complaint was frivolous, vexatious or otherwise lacking in merit; or it has already been dealt with under this part of the Act about complaints and disciplinary action or is trivial in nature.

The board can dismiss the complaint under this section without investigation or without completing an investigation. It is not required to investigate a complaint that is so dismissed.

The veterinary practitioner and complainant must be told by the board of the dismissal of the complaint and the details of the complaint can be provided to the veterinary practitioner if the board chooses.

### **Clause 61    Decision on completion of investigation**

This clause lays out what decisions can be made on completion of an investigation.

The board must apply to ACT Civil and Administrative Tribunal (ACAT) for an occupational disciplinary finding against a veterinary practitioner if it is satisfied that the practitioner has engaged in professional misconduct.

If on the other hand the board is satisfied that the conduct is unsatisfactory professional conduct (but not professional misconduct) then a number of options are open to the board.

For a finding of unsatisfactory professional conduct the board can reprimand or caution; impose a monetary penalty not exceeding \$1000; impose a condition on the registration; require a completing of a course of training; require the veterinary practitioner to take part in a review of the professional practice of the practitioner; require the practitioner to report on their practice at stated time in a particular way to a named person by way of overseeing the continued compliance with standards. Other options include the practitioner seeking and taking advice about the management of the practice; overseeing or reporting on options that the board requires or referring the complaint to the HRC.

If an offence may have been committed then the board need not apply this section in favour of section 62.

### **Clause 62    Indication that offence committed**

If there is indication that a veterinary practitioner has or may be committing an offence against a territory law then the board may give the chief police officer a copy of the complaint and any other information the board has in relation to the complaint.

This clause provides the board with a clear path of action in situations where an offence may have occurred.

### **Clause 63    Board's obligation to keep complainant informed**

The board must kept the complainant informed consistent with the requirements under this clause. A *progress report* in writing must be provided within six weeks after the day the complaint was received by the board and then at intervals no later than six weeks as the matter progresses.

An exception is if the board includes a statement in a progress report to the effect that on the basis of provided reasons a further progress report will not be provided until a later time or event.

If the board dismisses the complaint without investigation it must provide notice to the complainant that the complaint has been dismissed.

## **Division 5.4      Occupational discipline**

Occupational discipline are matters that are heard by the ACT Civil and Administrative Tribunal (ACAT).

#### **Clause 64    Grounds for occupational discipline**

That a veterinary practitioner has or may have engaged in professional misconduct is a ground for occupational discipline. Another ground is that the veterinary practitioner is not a suitable person to be a registered veterinary practitioner. The ground applies even if the veterinary practitioner is no longer registered if the ground occurred while they were registered.

The meaning of suitable person is the same meaning as defined in section 30 of the Act and is determined in relation to the suitability information contained in section 31.

#### **Clause 65    Application to ACAT for occupational discipline**

Under this clause the board may apply to ACAT for an occupational discipline order in relation to a practitioner if the board believes on reasonable grounds that a ground exists for such an order.

#### **Clause 66    Considerations before making occupational discipline orders – suspensions of cancellation of registration**

If ACAT is considering an application for occupational discipline to suspend or cancel a veterinary practitioner's registration then ACAT must consider whether there has been a contravention of the code of professional conduct or if the public safety or the safety of animals has been but at risk.

#### **Clause 67    Occupational discipline orders**

Under this clause ACAT is able to make an order for occupational discipline. These orders are listed in the Act and include requiring the veterinary practitioner to undergo medical, psychiatric or psychological assessment, counselling or both. Other orders may require monitoring and supervision of the veterinary practitioner. The occupational discipline orders reflect similar actions the board can take under section 61.

#### **Clause 68    Interim suspension of registration**

The board may apply to ACAT for an interim order to suspend the registration of the veterinary practitioner. It can do this if it has made an occupational discipline application to ACAT and believes on reasonable grounds that it is in the public interest to suspend the veterinary practitioner's registration before ACAT hears the application for occupational discipline.

The clause provides ACAT with the power to issue an interim order which has the same effect as an order made under section 53 about interim orders under the *ACT Civil and Administrative Tribunal Act 2008*.

#### **Clause 69    Giving registering authority in other jurisdictions information about cancelling or suspending registration**

This clause applies if ACAT suspends or cancels a veterinary practitioner's registration or disqualifies a veterinary practitioner from applying for registration.

Under the clause the board must give the registering authority in each of the other jurisdictions information about the matter including the name and other identifying details about the veterinary practitioner.



The clause specifically does not limit any other requirement or power under this or any other Act to give information to a registering authority in another jurisdiction. Other jurisdictions is defined in section 33 but means any other state or the Northern Territory or any jurisdiction proscribed by law.

## **Division 5.5      Joint consideration with commission**

This division provides for the board to consult with the HRC about complaints and matters of occupational discipline.

### **Clause 70      Consultation with commission**

Clause 70 provides that the board must consult with the HRC and must attempt to agree with the commission about the action to be taken in relation to a complaint or occupational discipline matter.

If the board or commission cannot agree then the most serious action chosen by either is the action to be taken.

The Act lists in order of most serious to least serious the actions that can be taken.

The clause also references section 61 and that the board must act to notify the chief of police if there is indication of an offence being committed if either the board, commission or both consider it applies to the matter under consideration.

## **PART 6      REGISTRATION OF VETERINARY PREMISES**

This part deals with veterinary premises. It is a new part to the veterinary practitioner's profession scheme in the ACT and reflects similar provisions to those in New South Wales. The part is not intended to displace legislation that may also operate to regulate business in the ACT more broadly.

The scheme established under this section recognises that a registration holder of a veterinary premises may not be a registered veterinary practitioner. To ensure that the premises and business are run in accordance with the veterinary practice standards a business owner must appoint a superintendent to manage the premises. A superintendent manager of premises must be a registered veterinary practitioner.

## **Division 6.1      Preliminary**

### **Clause 71      Definitions – pt 6**

This clause contains definitions for the section including the meaning of *registered* and *registration* which for the purposes of the part mean registration of a veterinary premises. It introduces the concept of a *superintendent* who manages the premises on behalf of the *registration holder*.

*Veterinary premises* means a number of things including a mobile veterinary clinic or mobile veterinary hospital. These concepts of premises are further defined under the Act. For example a mobile veterinary clinic means a vehicle including a trailer which may be moved from one location to another and is modified to operate as a veterinary clinic.

A *veterinary hospital*, *veterinary consulting rooms* and *veterinary clinic* are all types of *veterinary premises* which are defined. Acts of veterinary science including major veterinary surgery or emergency care can be undertaken at a *veterinary hospital* which by definition must also have a higher level of diagnostic facilities than a *veterinary clinic* while a *veterinary consulting room* is limited by not being able to carry out major surgery or emergency care.

*Veterinary premises standards* are also defined and refer to the standards made by the board under section 72.

#### **Clause 72 Board may make veterinary premises standard**

A veterinary premises standard may be made by the board and is a notifiable instrument under the Act. Other instruments can be applied, adopted or incorporated into the instrument.

The standard relates to the requirements that veterinary premises are required to comply.

### **Division 6.2 Application and decision**

#### **Clause 73 Application for registration of veterinary premises**

This clause provides that a person may apply to the board for veterinary premises to be registered. The provision includes the information that the application must include. A fee can be determined under section 143 for this provision.

#### **Clause 74 Board may ask for further information**

Before deciding on an application the board may seek additional information in relation to the application. If the information sought by the board is not provided then the board may refuse to consider the application.

#### **Clause 75 Decision on application to register veterinary premises**

Clause 75 provides that on application the board must decide to either register the premises as veterinary premises or refuse to register the premises.

It is taken to be a refusal to register the premises if the board fails to decide the application within forty (40) days of receiving it or receiving information requested under section 74.

Importantly this clause also provides that criteria for consideration can be prescribed by regulation and that the board must consider those criteria although it does not limit the consideration of the board and it can consider additional matters.

Having made a decision, the board must tell the person of the decision within seven (7) days and provide a registration document if it decides to register the premises.

### **Clause 76 Conditions on registration of veterinary premises**

Clause 76 provides that the veterinary premises registration is subject to a number of conditions. These are that the premises are maintained in compliance with the veterinary premises standard (see section 72) and that the board must be notified if there is a change in the name or address of the registration holder. If the premises are a veterinary hospital any change in the nature of the veterinary services provided at the hospital. The board may also impose any other conditions that it decides.

### **Clause 77 Term of registration for veterinary premises**

This clause determines when the registration of veterinary premises comes into force. It is either the day the certificate of registration is issued or the date stated in the certificate of registration. This allows for the date on the certificate to be determined prior to the commencement date if required. The registration remains in force until it is cancelled or suspended. Unlike the veterinary practitioner's registration it is not required to renew registration every year through a registration process however ongoing compliance with the veterinary premises standard as a condition of registration (clause 75) is a requirement and it is within an inspector's powers to inspect or audit premises. There is annual registration fee (see section 79).

### **Clause 78 Refund of application fees**

If the board refuses an application for registration of veterinary premise then clause 78 provides that the board must refund the application fee. It can however retain any processing fees.

### **Clause 79 Annual registration fee**

An annual registration fee is payable on a veterinary premises registration. It is payable to the board each financial year or part of a financial year while the registration is in force. The fee is due before the start of the financial year to which the fee relates. If a veterinary premises does not pay the annual fee then the board may cancel registration. (See section 84).

The annual fee remains in force even if the registration of the premises is suspended.

## **Division 6.3 Amendment of registration**

### **Clause 80 Amendment of registration by board on its own initiative**

This Clause provides that the board on its own initiative may amend the registration of veterinary premises. It could for example impose a condition or amend an existing registration condition.

Procedural fairness is provided by provisions under subclause (2) which provides that written notice of a proposed amendment be provided to the registration holder. The board must provide the registration holder with at least fourteen (14) days after the day the notice is given to provide written comments on the proposal. The board must state in the notice the period of time to provide comments and the board must consider any comments that are made before the end of the notice period.

If the registration holder applied for the changes or agreed in writing to the changes then the process of notice does not apply.

#### **Clause 81 Amendment of registration on application**

This provision provides the registration holder with the ability to apply to the board to amend the registration. A fee may be determined under section 143 for an application to amend.

The board may seek additional information or documents that it reasonably needs to make a decision. Any request for additional information or documents must be in writing to the registration holder. If the registration holder does not comply with the request then the board may refuse to consider the application.

The board must take into consideration anything that it considered when the application was first considered.

An application to amend must either be refused or a decision made by the board to amend the registration in the way applied for.

It is noted that other provisions allow the board to consider amending or varying the registration on its own initiative. This would provide the opportunity to make an amendment in a way that is a variation on the application made by the registration holder if it is appropriate to do so.

### **Division 6.4 Suspending or ending registration**

#### **Clause 82 Surrender of registration**

Registration can be surrendered by the registration holder by giving written notice to the board. The notice must include a copy of the registration document or a statement verifying if the registration document has been lost stolen or destroyed.

The registration is taken to be cancelled if it is surrendered under this clause.

#### **Clause 83 Cancellation of registration – death or winding-up of registration holder**

This clause provides for the situation of death or winding-up of a business. In these cases the board must cancel the registration. The cancellation takes effect on the earlier of either the day the board approves registration of the premises by somebody else or, in the case of death of a registration holder, three (3) months after the registration holder died or in the case of winding-up a corporation the day the corporation is deregistered.

#### **Clause 84 Cancellation or suspension of registration by ACAT**

Clause 84 provides that the board may apply to the ACAT for an order to suspend or cancel the registration of veterinary premises. It can do so if the premises are in a condition that could cause harm or suffering to an animal or affect public safety. It can also do this where the registration holder is convicted of an offence under this Act or if the executive office of a corporation holding registration under the Act has committed an offence

against the Act. In addition, the board can seek and order when a condition of the registration is breached.

The ACAT can only make an order to suspend or cancel premises registration if it is satisfied that it is in the public interest to make such an order.

## **Division 6.5      Offences - registered veterinary premises**

### **Clause 85    Veterinary practice to be conducted at registered veterinary premises**

It is an offence if a veterinary practitioner conducts a veterinary practice at premises and the premises are not registered veterinary premises.

The maximum penalty is 50 penalty units, imprisonment for six (6) months or both.

### **Clause 86    Unauthorised restricted act of veterinary science carried out at registered veterinary premises**

It is an offence if a person carries out a restricted act of veterinary science on an animal at registered premises and the premises are not authorised for that act to be carried out.

The maximum penalty is 50 penalty units, imprisonment for six (6) months or both.

It is a defence to prosecution if the defendant proves that it was necessary to carry out the restricted act of veterinary science if the act was carried out in an emergency and there was not time to move the animal to another registered practice where the act could be undertaken e.g. a hospital. It is also a defence if the act was necessary and the size of the animal or the kind of animal made it impractical to move the animal. Lastly, it is also a defence if it was dangerous to the health of the animal to move it to registered premises where the act could be carried out.

This provision includes a reverse burden of proof as it establishes a defence to prosecution. The reverse burden engages the right to a fair trial under section 21 of the *Human Rights Act 2004*. It is a right to be presumed innocent until proven guilty. It is appropriate in this case for a registered veterinary practitioner to provide evidence of defence. It is not only within the veterinary practitioner's knowledge but part of their professional and expert knowledge that resulted in their decision to carry out a restricted act in a situation outside the most appropriate premises.

### **Clause 87    False representation of premises as registered veterinary premises**

Clause 87 provides that it is an offence for a person to falsely represent premises as registered veterinary premises.

The maximum penalty is 50 penalty units, imprisonment for six (6) months or both.

### **Clause 88 Superintendent of registered veterinary premises**

This clause is critical to the operation of veterinary premises. A person must be appointed as a superintendent of the premises and that person must be a registered veterinary practitioner.

While a holder of registration can be any business entity (e.g. individual or corporation), the premises cannot operate without a registered veterinary practitioner to oversee operations. This ensures that all veterinary premises are operated under the direction of a registered veterinary practitioner.

The holder of registration must provide to the board the name of the superintendent and this information must be provided before the superintendent starts duty.

It is an offence if the registration holder fails to comply with these requirements.

The maximum penalty is 50 penalty units.

### **Clause 89 Failure to display sign about registered veterinary premises**

If a person, either the registration holder or the superintendent, fails to display the *registration information* about the registered veterinary premises at the premises then it is an offence.

The maximum penalty is 20 penalty units.

If a person, either the registration holder or the superintendent, of a mobile veterinary clinic or hospital fails to produce registration information when requested to do so it is an offence.

The maximum penalty is 20 penalty units.

The offences in this clause are strict liability.

*Registration information* is defined for this section and means information about the kind of major veterinary surgery that is authorised to be carried out and the proof that the premises are registered.

## **PART 7 VETERINARY PRACTITIONERS BOARD**

### **Division 7.1 Establishment and functions of board**

#### **Clause 90 Veterinary practitioners board – establishment**

This clause establishes the board. It provides that the board is a body corporate and must have a seal and may sue and be sued and hold property in its corporate name.

#### **Clause 91 Board – functions**

This clause states the functions of the board. In summary these are the registering of veterinary practitioners and veterinary premises and investigating and taking action on complaints against veterinary practitioners. The functions also include the setting of relevant standards and codes,

providing advice and ensuring the professional development and ongoing training of veterinary practitioners.

The board may exercise any other function the board is given under this Act or another territory law.

### **Clause 92    Annual general meeting of veterinary profession**

The board is required to hold an annual general meeting. Every ACT registered veterinary practitioner is entitled to attend the annual general meeting. This provision excludes deemed registration (Part 4). This provision does not provide any restriction on who else the board may wish to invite.

## **Division 7.2      Board members**

### **Clause 93    Board membership**

The board is composed of seven members. The members are appointed by the Minister.

The board includes a president (see clause 95 for requirements), four members who are registered veterinary practitioners with a minimum period of registration, and two members who are not veterinary practitioners. One of the non-practitioners must be appointed to represent the communities' interests and can only be appointed if the Minister is satisfied that the person has interests, skills or qualifications that help the board in carrying out the objects of the Act.

### **Clause 94    Term of appointment**

Under clause 94 a board member must not be appointed for longer than three (3) years.

### **Clause 95    President and deputy president of board**

This clause provides that the president of the board must not be a person who works in a veterinary practice or has a material interest in a veterinary practice. A material interest is defined in section 97(4).

The clause provides for the election by the board of the deputy president who must be a member who is a veterinary practitioner. The deputy president is elected for one (1) year and may be re-elected if still eligible. They can also resign by written notice given to the president.

### **Clause 96    Consultation about the appointment to board**

Under the Bill, the Minister must consult the board as long as the board is active and has not been suspended. The only position that the Minister can appoint without consultation is the community representative.

The Minister can also seek advice and nomination from other places they consider suitable to provide such advice in relation to the board. For example, this includes academic institutions, professional and industry bodies.

### **Clause 97 Disclosure of interests by the board members**

Board members must disclose interests under this clause to avoid actual or the perception of bias. Interests that must be disclosed are *material interests* in a matter being considered by the board. The disclosure must be made as soon as the relevant facts that alert the member to the interest come into the member's knowledge.

The disclosure must be noted in the board's minutes and unless the board decides otherwise the member must not be present for the matter's consideration or must not take part in a decision of the board on the issue.

An example is provided of how the provision should operate.

The provision defines material interest if the member has a direct or *indirect* interest which is a financial interest in the issue or an interest of any other kind which could conflict with the proper exercise of the member's function in relation to the board's consideration of the matter.

An *indirect* interest is also defined and in summary includes a range of business relationships including an *associate* of a person. An *associate* can include a person's business partner; close friend or a family member as provided in the definition at subsection 97(4).

### **Clause 98 Conditions of board appointment generally**

This clause provides that the Minister may allow the president to take leave and can do so conditionally.

The president can allow a board member to take leave for no longer than one (1) year. The leave can be allowed on condition.

The board may decide the allowance to be paid to board members but if the remuneration tribunal sets a maximum amount allowances cannot exceed this amount.

The board may also pay anyone who helps the board. Examples are provided under the bill, for example, people who serve as experts or on panels or committees established by the board.

Anything that may or is likely to incur an extraordinary liability for the board must, if practicable, have had the Minister's approval before action is taken. The action must be in relation to the Act.

If in incurring extraordinary expenses in relation to legal fees or damages because of the administration of the Act, the board can apply to the Minister for financial assistance.

## **Division 7.3 Board meetings**

### **Clause 99 Board procedures**

Clause 99 determines the procedures that the board must comply with. The president presides at meetings but if they are absent the deputy president presides. Questions which arise at a meeting may be decided by a majority of



votes of members present (who are not barred from voting because of a conflict of interest see section 97).

If votes are equally divided then the presiding member has the deciding vote.

The board must keep minutes of its meeting.

The board can decide its own procedures in relation to anything for which the Act does not provide a procedure.

#### **Clause 100 Quorum at board meetings**

There must be at least four members present for business to be considered by the board and one of the four members must be the president or deputy president.

#### **Clause 101 Reporting on exercise of functions**

The Minister may ask in writing for a written report from the board about the exercise of its functions. The Minister may seek general information or specific information. The report must be provided with a reasonable period of time as determined by the Minister.

### **Division 7.4 Board misconduct**

#### **Clause 102 Failure by board to exercise functions diligently**

This clause applies if the Minister is not satisfied that the board is exercising its functions diligently.

The Minister may in writing tell the board they are not satisfied and give the board reasons why, providing at least fourteen (14) days after the day this notice is given, for the board to make representations to the Minister about the matter.

After considering any representations, if the Minister is not satisfied that the board is exercising its functions diligently then the Minister can tell the board what it must do for the Minister to be satisfied. That direction must be provided in writing.

A regulation may prescribe matters that the Minister must or may take into consideration in making decisions under this provision.

### **Division 7.5 Board administration**

The board is a territory authority and is subject to financial and governance requirements under the *Financial Management Act 1996* parts 8 and 9 in addition to any requirements under this Act.

#### **Clause 103 Offence – prohibition on business**

It is an offence for a member of the board to authorise the board to carry on business except in the exercise of its functions.

The maximum penalty is 50 penalty units.

#### **Clause 104 Appointment of registrar**

The board must in writing, appoint a person as registrar for the board.

#### **Clause 105 Registrar – functions**

The functions of the registrar include the day to day management of business affairs of the board and to advise the board. The registrar also has any other function provided to the position under territory law with these specific functions able to be delegated to a public servant by the registrar.

#### **Clause 106 Employment of staff etc**

Clause 106 provides the board with the power to engage people and buy services for the exercise of its functions. Engagement of people can be on a fee or contractual basis.

#### **Clause 107 Committees**

The board has the power to establish committees under this clause. It provides discretion as to whether the board or committee decides how the committee is to exercise its functions and the procedures to follow for meetings of the committee.

#### **Clause 108 Delegation by board**

The board has the power to delegate functions to board members, the registrar, a committee of the board or anyone else the board considers appropriate.

## **PART 8 ENFORCEMENT**

### **Division 8.1 Inspectors**

#### **Clause 109 Inspectors**

The board may appoint an inspector for the purposes of the Act.

#### **Clause 110 Identity cards**

Under clause 110, it is the registrar who is responsible for providing an inspector with an identity card. The card must include information as specified in the provision.

It is an offence for a person who stops being an inspector not to return the identity card in the times specified.

The maximum penalty is 1 penalty unit.

The penalty is a strict liability offence.

## **Division 8.2 Powers of inspectors**

The powers of inspectors under the Act are general template powers provided to officers authorised under Territory law to undertake regulatory functions and actions.

### **Clause 111 Definitions – div 8.2**

This clause defines premises as including land, structure, vehicle or boat.

### **Clause 112 Powers of entry and search**

This clause provides an inspector with the power to enter premises in specific listed situations. Premises is defined for this division to include land, structures, vehicles or boats.

The powers include the ability to enter premises with permission, if premises are open for business, in accordance with a registration condition or a search warrant or in serious or urgent situations. The remainder of the clause places conditions or criteria on the situations listed in subsection (1).

This clause is based on templated powers for regulatory officers and mirrors other legislation. It has been modified with respect to the specifics of regulating the veterinary profession and premises.

Subclause 2 excludes the entering of residential premises under Clause 112(1)(a), (b) and (c) to protect the right to privacy.

Entry to premises, including residential premises, can however be made with consent, a search warrant or under a registration condition which has, to all intents and purposes, the agreement of the veterinary practitioner or owner of premises. It can also be undertaken if the inspector believes on reasonable grounds that there are serious and urgent circumstances. This engages and limits the right to privacy and reputation under section 12 of the *Human Rights Act 2004*.

The limitation on the right is justifiable. Many veterinary premises operate in conjunction with residential premises. In addition, veterinary practitioners may, in certain circumstances, operate out of vehicles or boats, and also outdoors.

Entry to private premises is not lightly taken and in most, if not all cases, consent will be sought even where there is a condition on the registration that allows entry. If consent is not given or the nature of the complaint is such that notice is not appropriate (eg. to prevent the destruction of evidence) warrants will be sought. Court oversight of such actions is appropriate.

The power to enter premises, including residential and other private premises, without consent or a warrant is provided to inspectors when an immediate response to a situation is needed. An inspector can take action to enter premises if they reasonably believe that on reasonable grounds, circumstances are so serious and urgent that entry is required. This would include, for example, where animal welfare or public health were under immediate threat or the potential risk so great as to warrant action.

Entry to premises that are not designated as veterinary premises (that is, registered premises for the purpose of the Act) would only be entered where there was insufficient time to seek a warrant or consent and where there is immediate risk of harm. This would be particularly so in cases of private property.

Under the circumstances, the powers in serious and urgent situations are proportionate to the need to ensure animal welfare and the protection of public health and safety and therefore the limitation on the right to privacy is justified under this provision.

### **Clause 113 Production of identity card**

An inspector must not remain at premises entered unless the inspector produces their identity card when asked by the occupier.

### **Clause 114 Consent to entry**

This clause outlines what an inspector must do when seeking the consent of an occupier to enter premises.

The inspector must produce an identity card and tell the occupier the purpose of entry and that anything found and seized may be used in evidence in a court or tribunal and that consent may be refused.

If the occupier consents then the inspector must have the occupier sign a written *acknowledgement of consent* and a signed copy provided to the occupier. The acknowledgement of consent must include certain information as listed in the clause.

A court must find that the occupier did not consent to entry if the question arises in proceedings before the court and the acknowledgement of consent is not produced in evidence and it is not proved that the occupier consented to the entry.

### **Clause 115 Powers of inspectors**

Clause 115 provides what an inspector has power to do if they enter premises in accordance with section 112 and they believe it is reasonably necessary to carry out their functions under the Act. For example, they can examine animals, take measurements or conduct tests; take samples; make copies or take extracts from documents; photograph or otherwise visually record anything or seize anything that the inspector believes on reasonable grounds is connected with an offence or ask questions.

Clause 115 (1) (i) provides that a person must provide reasonable assistance to enable the inspector to exercise their powers under this section. This, combined with the offence at subclause (4) may be considered to engage the right not to self-incriminate under section 22(2)(i) of the *Human Rights Act 2004*. The preservation of the privilege against self-incrimination is asserted in section 170 of the *Legislation Act 2001* and thus a claim of the privilege could still be sustained and would be a defence against the offence provision contained in subclause 4. This preserves the right and does not limit it.

It is an offence if the inspector provides documents inspected or seized or communicates the contents of the document to any other person than to the board. An exception to this is if the communication is made for the purpose of the investigation or prosecution of an offence.

The maximum penalty is 20 penalty units.

#### **Clause 116 Directions to give name and address – inspector**

The inspector has the power to direct a person to provide their full name and the person's home address if the inspector believes on reasonable grounds that the person committed or is about to commit an offence against the Act or may be able to assist in an investigation.

The inspector may seek evidence of the personal information if the inspector believes the information given is false or misleading.

The inspector is obliged to tell the person it is an offence if they fail to comply with the direction and the person may ask the inspector to produce their inspector's identity card.

#### **Clause 117 Offence- fail to comply with inspector's direction to give name and address**

It is an offence if the person is subject to a direction to provide their full name and home address and fails to comply with the direction.

The penalty is a maximum 5 penalty units.

#### **Clause 118 Warrants generally**

This clause provides the power to the inspector to apply to a magistrate for a warrant to enter premises. The requirements for seeking a warrant are outlined in the provision as is the information that the warrant must state.

The warrant can only be issued if the magistrate is satisfied that there are reasonable grounds for suspecting connected to an offence against the Act or that the thing or activity is or will be engaged in at the premises within the next seven (7) days.

#### **Clause 119 Warrants- application made other than in person**

This clause provides for warrants by phone, email, radio or other form of communication in urgent circumstance or other special circumstances.

#### **Clause 120 Search warrants – announcement before entry**

This clause specifies what an inspector must do before an inspector enters premises under a search warrant.

#### **Clause 121 Details of search warrant to be given to occupier etc**

This clause provides that a copy of a warrant and document setting out the rights and obligations of a person are provided to the occupier.

#### **Clause 122 Occupier entitled to be present during search etc**

An occupier or their representative is entitled to be present and observe during a search if they are present when the search warrant is being executed.

A person is not entitled to observe the search if they would impede the search or the person is under arrest and allowing the person to observe the search would interfere with the objectives of the search.

This requirement does not prevent two or more areas of the premises being searched at the same time. This means that the observer cannot impede or slow the search only because they cannot observe multiple sites of search.

## **PART 9 REGISTER AND DEALING WITH INFORMATION**

### **Division 9.1 Register**

#### **Clause 123 Board to maintain register of veterinary practitioners and veterinary premises**

This provision provides that the board must keep a register of veterinary practitioners and veterinary premises registered under the Act.

The register can be kept in more than one form or part as long as it complies with the requirements of the Act.

The register must be as accurate and current as practicable. The board can on application or its own initiative make changes to keep it accurate and current. And it must make changes that a court or the ACAT orders be made to the register.

#### **Clause 124 Contents of register –practitioners**

The register must contain the *registration details* for each person registered as a veterinary practitioner and any other information relating to a registered veterinary practitioner that the board considers necessary or desirable.

*Registration details* for this clause are defined and listed. In addition to information provided at registration it includes a registration number.

#### **Clause 125 Contents of register – premises**

For the veterinary premises the register must include the registration details and anything else the board considers necessary or desirable.

Registration details for this clause are defined and listed. In addition to information provided at registration it includes a registration number and the name of the superintendent for the premises. It must also contain details of any other registration or licence that relates to the premises. For example, where there are x-ray machines a licence is required to deal with a regulated radiation source.

### **Clause 126 Information in register to be accessible and extractable**

The Bill provides that the register must be kept in a way that allows information about a registered veterinary practitioner or registered premises to be readily reproduced in an easily readable form.

### **Clause 127 Registration Documents**

This provision provides that the board may issue evidence of registration in a document containing such registration details as the board considers necessary. The registration document is evidence of matters stated in the document in relation to registration.

### **Clause 128 Registrar responsible for register**

This clause states that the registrar must keep the register on behalf of the board. It includes the actions that the registrar may do in relation to the register including removing details of a registration that no longer exists. The clause clarifies that the removal of details does not prevent the registrar from keeping a record of details removed.

### **Clause 129 Assess to register**

The register must be open for inspection by the public at reasonable times although information that is not required to be in the register under section 124 and 125 (that is information that the board by its discretion decides to include) need not be made available to the public.

The board also has discretion in allowing public inspection of a condition on the registration of a veterinary practitioner if the information is confidential or in the board's opinion the benefit to the public of knowing the condition is outweighed by the personal or prejudicial nature of the condition.

The board can give someone a copy of or extract from the register. A fee may be determined for this.

### **Clause 130 Requests for changes of details in register**

A registered veterinary practitioner or registration holder may apply to the board to vary information in the register in relation to their information in the register. The board can ask for additional information in relation to the application.

The board must tell the applicant in writing whether it thinks the change necessary. The power to change the record if the board thinks it is necessary is through its obligation to keep the register accurate and correct under section 123.

### **Clause 131 When board must not change fees etc for register corrections**

The board cannot charge a fee on an application for a change where that change is necessary because of a mistake of the board. Any fee paid for the application must be refunded.

### **Clause 132 Evidentiary certificate – contents of register**

The clause provides that a certificate of the details of the register signed by the president is evidence of the matters stated in the certificate for

proceedings in a court. The certificate must include the date or period to which the particulars of the register relate.

## **Division 9.2      Dealing with information**

### **Clause 133    Meaning of *information holder***

The Bill defines an information holder as a person who is or has been a member of the board or anyone else who exercises or has exercised a function under the Act.

### **Clause 134    Nondisclosure of complaints**

This clause protects the identity of a *complainant* if the information holder has reason to believe that the disclosure would, directly or indirectly put the health or safety of anyone at risk or cause the person to receive a lower standard of service that or prejudice the management of the complaint or its consideration by the board or the HRC.

The clause creates an offence with a maximum penalty of 20 penalty units.

### **Clause 135    Use and disclosure of protected information**

This clause relies on a number of concepts with important terminology defined. It deals with *information* which for this clause means information, whether it is true or not in any form and includes an opinion and advice. It also deals with *protected information* which is information about a person that is disclosed or obtained by an information holder because of the exercise of a function under the Act by themselves or anyone else.

The clause also defines *use* for the purposes of the section to include making a record of the information.

It is an offence for an information holder to use information if it is protected information about someone else (*a protected person*) and the information holder is reckless about whether the information is protected information about the protected person.

The maximum penalty is 50 penalty units, imprisonment for six (6) months or both.

It is also an offence under this provision if the information holder does something that discloses the information about a protected person and the information holder is reckless resulting in the information being disclosed to someone else.

The maximum penalty is 50 penalty units, imprisonment for six (6) months or both.

The offences do not apply if the information holder uses or discloses protected information about the protected person under this Act or another territory law or in exercising a function under the Act or another territory law or in court proceedings or with the protected person's consent.

*Court* proceedings include proceedings before a tribunal or other authority or person who has powers to require the disclosure of information.



There is no obligation for the information holder to disclose protected information or produce a document containing protected information in court proceedings unless it is necessary to do so for this Act or another territory law.

## **PART 10 NOTIFICATION AND REVIEW OF DECISIONS**

Provisions contained in this part are standard legislative provisions.

### **Clause 136 Meaning of reviewable decision – pt 10**

A reviewable decision means a decision that is mentioned in schedule 1 to the Bill.

### **Clause 137 Reviewable decision notices**

This clause provides that if a person makes a reviewable decision that they must notify in relation to the decision, relevant entities as identified in column 4 of the table in schedule 1.

### **Clause 138 Applications for review**

This clause provides who can apply to the ACAT for review of a reviewable decision.

## **PART 11 MISCELLANEOUS**

### **Clause 139 Information sharing**

This clause specifies that the board may disclose information to a *relevant authority* about a contravention of the Act or an *animal welfare law* or any other information prescribed by regulation.

Relevant authority is defined and includes entities of a state responsible for the administration of corresponding laws or an entity responsible for the administration of an animal welfare law in the Territory. It also includes inspectors or authorised officers under the *Animal Welfare Act 1992* or the *Domestic Animals Act 2000*.

### **Clause 140 Protection of participants**

If a person is involved in proceedings before the board about a complaint or review of conditions on a registered veterinary practitioner registration, the clause provides that any action or proceedings cannot be taken against the person if the action was done honestly.

### **Clause 141 Protection of informed people**

This clause applies to an information holder which is defined in section 133 to be a person who is or has been a member of the board or anyone else who exercises or has exercised a function under the Act.

An information holder is not civilly liable for conduct engaged in honestly and without recklessness in the exercise of a function under the Act or in the reasonable belief that the conduct was in the exercise of its function.

An information holder in any legal proceedings is competent but not compellable to give evidence or produce documents in any manner in which the person was involved in the course of exercising the person's functions.

#### **Clause 142 Exemptions from Act**

The Minister may exempt under a disallowable instrument, a veterinary practitioner from a provision of this Act if satisfied that public interest is served by doing so. The Minister may also make guidelines for the giving of exemptions which are also disallowable instruments.

#### **Clause 143 Determination of fees by board**

The Bill permits the board to determine and apply fees to its activities under the Act. The board is required to notify under the *Legislation Act 2001* any fee determination. A fee determination is a disallowable instrument.

#### **Clause 144 Determination of fees by Minister**

The Minister may determine fees for this Act excluding fees in relation to the board. The determination is a disallowable instrument.

#### **Clause 145 Fee waiver**

This clause provides the board with the power to waive a fee if the board considers it appropriate. Waiver is on the basis of an application made to the board.

#### **Clause 146 Regulation-making power**

The Bill provides for the Executive to have a general regulation making power in relation to the Act. This regulation power includes the making of regulations that impose conditions, including restrictions, on the practice of the veterinary surgeon profession.

Regulations may also prescribe offences for contravention of a regulation and prescribe a maximum penalty of no more than 30 penalty units for offences.

A regulation may prescribe matters about the application for registration, requirements about insurance and requirements about the annual general meetings such as the giving of notice of a meeting.

A regulation may also apply, adopt or incorporate an instrument such that it may be applied in full or in part in the ACT.

## **PART 12 REPEALS AND CONSEQUENTIAL AMENDMENTS**

#### **Clause 147 Legislation repealed**

Clause 147 repeals the *Veterinary Surgeons Act 2015* and the *Veterinary Surgeons Regulation 2015*. It also repeals all legislative instruments under the *Veterinary Surgeons Act 2015*.

#### **Clause 148 Legislation amended – Sch 3**

This clause notes that the Act amends the legislation mentioned in schedule 3 of the Bill.

## **PART 20 TRANSITIONAL**

The transitional provisions provided in this part of the Bill will ensure the smooth running and transition of the existing board established under the *Veterinary Surgeons Act 2015* to the new Act. This includes carrying over registrations of veterinary surgeon, the register and any inquiries under the repealed Act.

### **Clause 200 Definitions – pt 20**

This clarifies the meaning of commencement day and that the repealed Act is the *Veterinary Surgeons Act 2015*.

### **Clause 201 Veterinary surgeons – applications**

This clause provides that an application for registration made under the repealed Act where a decision has not been made is taken to have been made under the new Act.

### **Clause 202 Veterinary surgeons – registration**

This clause provides that the registration of veterinary surgeons continue as if determined under this Act.

### **Clause 203 Veterinary surgeons – suspended registration**

This clause provides that any suspended registration of a veterinary surgeon continues as if suspended under this Act until the time the suspension would have ended under the repealed Act.

### **Clause 204 Veterinary surgeons – complaints**

This clause provides that a complaint made under the repealed Act which has not concluded or where the findings of the inquiry have not been actioned is taken to be a complaint. The inquiry will not be affected only because something that is required of the new Act was not required under the repealed Act.

### **Clause 205 Veterinary surgeons board – agreements and undertakings**

If the board entered an agreement or undertaking with a person under the repealed Act, this clause provides that the agreement or undertaking is made for this Act.

### **Clause 206 Members of board**

This clause provides that the existing members of the board continue as appointed as if the appointment was made under this Act.

The special requirements of the president and deputy president under the new legislation do not apply for the period of the person's appointment under this section.

The person's appointment ends at the end of the period stated in the appointment under the repealed Act.

#### **Clause 207 Register**

This clause provides that the register kept under the repealed Act is taken to be the register under section 33 of this Act.

#### **Clause 208 Grounds for occupational discipline**

This clause provides that contraventions of the standard of practice that applied to a veterinary surgeon or which put public safety or the safety of animals at risk, or did not satisfy the suitability to practice requirements for a veterinary surgeon under the repealed Act, are all taken to be grounds for occupational discipline under section 64 of the new Act.

#### **Clause 209 Occupational discipline applications before ACAT**

This clause provides that if the board has applied to the ACAT for an occupational discipline order and a decision was not made before the commencement day of the new Act then the application must continue to be dealt with by ACAT as if the repealed Act were still in force. Any suspension of registration then section 203 applies to the suspension as if it happened immediately before the commencement day of the new Act.

This means that actions started under the *Veterinary Surgeons Act 2015* will continue to be heard under that Act but the outcome will ensure that under transitional arrangements will apply to suspension. No transitional arrangement is required if the registration is cancelled.

#### **Clause 210 Executive officer to be registrar**

The person appointed as the executive officer of the ACT Veterinary Board under the repealed Act is the Registrar of the board on the same conditions as the person was appointed under the repealed Act. The person's appointment ends at the end of the period stated in the appointment under the repealed Act.

#### **Clause 211 Transitional regulations**

This clause provides for regulations to prescribe transitional matters necessary or convenient because of the enactment of this Act. It allows provision for anything that in the Executive's opinion is not or is not adequately or appropriately dealt with in this part of the bill. This allows for a legislative solution to unforeseen consequences in transitioning to the new Act.

#### **Clause 212 Expiry – pt 20**

This is a sunset clause which provides that this part of the Bill will be removed from the Act two (2) years after its commencement day.

## **Schedule 1      Reviewable decisions**

This schedule provides a list of decisions that are subject to a merit review process under part 11.

## **Schedule 2      Unrestricted acts of veterinary science**

This schedule contains a list of unrestricted acts of veterinary science.

## **Schedule 3      Consequential amendments**

This schedule includes consequential amendments to a range of laws. In most cases the changes are made to change terminology. For example, veterinary surgeon to veterinary practitioner. Other changes include references to new definitions and reference to the new Act to replace the repealed Act.

More substantial amendments are required in the *Medicines, Poisons and Therapeutic Goods Regulation 2008* but these are required to ensure consistency with the new Act.