

**1994**

**AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY**

**VETERINARY SURGEONS (AMENDMENT) BILL 1994**

**EXPLANATORY MEMORANDUM**

**Circulated by authority of the Minister for Health**

**Terry Connolly MLA**

## VETERINARY SURGEONS (AMENDMENT) BILL 1994

### EXPLANATORY MEMORANDUM

#### Outline

The Veterinary Surgeons (Amendment) Bill 1994 ("the Bill") amends the *Veterinary Surgeons Registration Act 1965* ("the Act") for the purpose of ensuring that the registration and certain other provisions of the Act are consistent with the requirements for registration of veterinary surgeons in other Australian jurisdictions and is one of a series of Bills to amend the ACT's legislation regulating health professions for a similar purpose.

#### *The Veterinary Surgeons Registration Act 1965*

The Act regulates the registration of persons as veterinary surgeons and, in particular, Parts III and IV, respectively, set out the qualifications and requirements for registration as a veterinary surgeon and provide that disciplinary action may be taken by the Veterinary Surgeons Board established under Part II of the Act in respect of the conduct of a person registered under the Act.

#### *The Veterinary Surgeons (Amendment) Bill 1993*

The Bill amends the Act to ensure that the provisions relating to registration of veterinary surgeons and specialist veterinary surgeons and disciplinary action which may be taken under the Act comply with the approach to these matters which has been agreed between the States and Territories.

In particular the Bill recognises the entitlement of a person who is registered as a veterinary surgeon or a specialist veterinary surgeon in a State or another Territory to registration in the ACT and provides for conditions which may be imposed upon such a person's registration in another jurisdiction or disciplinary action taken against the person in another jurisdiction to be applied in respect of the person's registration in the Territory.

These provisions are intended to be consistent with the mutual recognition principle relating to occupations as set out in section 17 of the *Commonwealth Mutual Recognition Act 1992* ("the Mutual Recognition Act").

The application of that principle to the Territory and to other jurisdictions has given rise to the desirability of adopting agreed minimum requirements for registration as a veterinary surgeon or a specialist veterinary surgeon. Unless all jurisdictions where mutual recognition applies have the same standard for registration of such professionals a jurisdiction with a lower standard will provide a means for a person who satisfies that standard, but not the higher standards required in other jurisdictions, to gain registration, under the mutual recognition principle, in those other jurisdictions.

**Financial implications**

There are no financial implications arising from the Bill.

**Details of the Bill are included in the Attachment.**

**VETERINARY SURGEONS (AMENDMENT) BILL 1994**

**Explanatory Memorandum**

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## MAIN AMENDMENTS

### *Clause 8- Insertion of new registration provisions*

**Clause 8** creates 3 new divisions in Part III of the Act which are comprised of new sections 8, 9, 10, 10A, 10B, 10C, 10D, 10E, 10F, 10G, 10H, 10J, 10K 10L and 10M dealing with requirements for registration including registration procedure.

### *Registration based on qualifications and training*

**New section 8** deals with the requirements for registration as a veterinary surgeon where the applicant relies on his or her qualifications and training.

**New subsection 8(1)** entitles a person to registration as a veterinary surgeon if he or she -

- is a graduate of a course of education and training in veterinary surgery offered by an Australian institution, being a course that is accredited by the Board or approved by an interstate registration authority; or
- has completed a course in veterinary surgery at an overseas institution, being a course accredited by the Board and has undertaken such further education or training and gained such experience in practising veterinary surgery (up to a maximum of 12 months) as the Board determines, and passed such examinations as the Board may require.

**New subsection 8(2)** prohibits the Board from accrediting a course offered by an overseas institution unless the course is substantially equivalent to a course offered by an Australian institution.

**New subsection 8(3)** specifies that registration granted under new section 8 is unconditional registration.

*Registration as a specialist veterinary surgeon*

**New section 9** deals with the requirements for registration as a specialist veterinary surgeon and provides that a person may be registered as a specialist veterinary surgeon if the person is a registered veterinary surgeon who -

- holds a qualification in a specialist branch of veterinary surgery, being a qualification accredited by the Board or approved by an interstate registration authority; and
- has gained such experience practising in the specialist branch of veterinary surgery as the Board requires to regard the person as a specialist veterinary surgeon in that Branch.

*Registration under mutual recognition principle*

**New section 10** deals with registration under the mutual recognition of qualifications principle.

**New subsection 10(1)** entitles a person who is licensed or registered as a veterinary surgeon in a State or another Territory that is a participating jurisdiction, within the meaning of the Mutual Recognition Act, to registration as a veterinary surgeon under the Act.

**New subsection 10(2)** entitles a person who is licensed or registered as a specialist veterinary surgeon in a State or another Territory that is a participating jurisdiction, within the meaning of the Mutual Recognition Act, to registration as a specialist veterinary surgeon in the same specialist branch of veterinary surgery under the Act.

**New subsection 10(3)** entitles a veterinary surgeon or specialist veterinary surgeon to unconditional registration under this Act where the person's registration in the other State or Territory is unconditional.

**New subsection 10(4)** qualifies the right of such a person to be registered under this Act by restricting registration under this Act to registration subject to the same conditions (if any) as apply to the person's registration in the other jurisdiction where the person is registered.

*Registration at the discretion of the Board*

**New section 10A** provides the Board with a discretion to register a person as a veterinary surgeon in a range of circumstances, notwithstanding that the person is not entitled to registration pursuant to **new sections 8 or 10**.

**New subsection 10A(1)** enables the Board to register a person as a veterinary surgeon, for the purpose of enabling the person to undertake a course of education or training or to gain experience in practising veterinary surgery.

**New subsection 10A(2)** enables the Board to register a person as a veterinary surgeon for the purpose of filling an unmet area of need provided the Board is satisfied that the person has suitable qualifications and experience to practise in that unmet area of need.

**New subsection 10A(3)** enables the Board to register a person as a veterinary surgeon for the purpose of enabling the person to fill a teaching or research position provided that the person has qualifications that the Board considers appropriate for the purpose and the person's application is supported, in writing, by the institution by which it is proposed that the person be engaged in the teaching or research position.

**New subsection 10A(4)** enables the Board to register a person as a veterinary surgeon on a temporary basis where it is satisfied that it is in the public interest to do so.

**New subsection 10A(5)** provides that the Board may impose such conditions upon registration under this section as the Board considers appropriate.

*Interim registration*

**New section 10B** provides for the interim registration of an applicant for registration as a veterinary surgeon or a specialist veterinary surgeon.

**New subsection 10B(1)** enables the interim registration of such an applicant -

in the case of a person entitled to registration under either **new section 8 or 9**, where it is not practicable to wait for the Board to consider the application; or

where a person would be entitled to registration under either new section 8 or 9 but for the fact that a degree or award to which the person is entitled has not yet been conferred or granted by the institution concerned.

New subsection 10B(2) enables a person authorised by the Board to grant interim registration to an applicant for registration, in accordance with this section. This will enable a person nominated by the Board, such as a member of the Board, to grant interim registration to an applicant for registration in circumstances where it may be some time before the Board will find it possible to meet to consider the person's application.

New subsection 10B(3) provides that interim registration remains in force until the person to whom it is granted is given written notice that -

- registration has been granted;
- registration has been refused; or
- the interim registration has been cancelled.

New subsection 10B(4) gives the Board the discretion to cancel a person's interim registration for any reason it considers proper and requires the Board to immediately notify a person, in writing, of the cancellation of his or her interim registration.

The effect of new subsection 10B(5) is that a person who holds interim registration is taken to be a registered veterinary surgeon or specialist veterinary surgeon, as the case may be.

#### *Conditions of registration in cases of impairment*

New section 10C deals with conditions which may be imposed upon the registration of a person as a veterinary surgeon or a specialist veterinary surgeon where the person suffers from an impairment. The term impairment is defined in new section 4B to encompass physical or mental impairment, a disability or condition or disorder which detrimentally affects, or is likely to detrimentally affect, a person's physical or mental capacity to practise as a veterinary surgeon or specialist veterinary surgeon, and it includes habitual drunkenness or addiction to a deleterious drug.

**New subsection 10C(1)** enables the Board to impose conditions upon a person's registration where the Board is satisfied that the person suffers from an impairment and the conditions are reasonably required having regard to the impairment.

**New subsection 10C(2)** enables the Board to review conditions imposed upon a person's registration under **new section 10C**, and to alter or remove such conditions or impose new conditions where the Board is satisfied that the person no longer suffers from the impairment or the degree of the impairment has reduced.

*Refusal of registration where applicant convicted of offence*

**New section 10D** gives the Board a discretion to refuse to register an applicant for registration as a veterinary surgeon or specialist veterinary surgeon if the applicant has been convicted of an offence in the Territory or convicted in a court elsewhere of an act or omission which, had it taken place in the Territory, would have constituted an offence, where the Board is of the opinion that the conviction renders the person unfit, in the public interest, to practise as a veterinary surgeon or specialist veterinary surgeon, as the case may be.

**New subsection 10D(2)** requires the Board to have regard to the nature of the offence and the circumstances in which it was committed in making its decision.

In order to be consistent with the provisions of subsection 23(1) of the Mutual Recognition Act, relating to refusal of registration, **new subsection 10D(3)** specifies that **new subsection 10D(1)** does not apply in relation to a person who is entitled to registration pursuant to that Act and who has lodged a notice with the Board pursuant to section 19 of that Act.

*Refusal of registration where applicant deregistered outside Territory*

**New section 10E** deals with refusal of registration because an applicant has been deregistered in another jurisdiction.

**New subsection 10E(1)** gives the Board a discretion to refuse to register an applicant as a veterinary surgeon if the applicant's name has been removed from a register of veterinary surgeons kept under the law of another country, State or another Territory for any reason relating to the conduct of the person as a veterinary surgeon or on any basis relating to the person's physical or mental capacity to practise veterinary surgery.

**New subsection 10E(2)** gives the Board a discretion to refuse to register an applicant as a specialist veterinary surgeon if the applicant's name has been removed from a register of specialist veterinary surgeons kept under the law of another country, State or another Territory for any reason relating to the conduct of the person as a specialist veterinary surgeon or on any basis relating to the person's physical or mental capacity to practise the branch of specialist veterinary surgery in relation to which he or she has applied for registration.

In order to be consistent with the provisions of subsection 23(1) of the Mutual Recognition Act, relating to refusal of registration, **new subsection 10E(4)** specifies that **new subsections 10D(1) and (2)** do not apply in relation to a person who is entitled to registration pursuant to that Act and who has lodged a notice with the Board pursuant to section 19 of that Act.

*Applicant to be competent and of good character*

**New section 10F** requires all persons registered as veterinary surgeons or specialist veterinary surgeons to be competent and of good character.

**New subsection 10F(1)** prohibits the Board from registering a person as a veterinary surgeon unless the Board is satisfied that the person is competent to practise veterinary surgery and is of good character.

**New subsection 10F(2)** prohibits the Board from registering a person as a specialist veterinary surgeon unless the Board is satisfied that the person is competent to practise specialist veterinary surgery and is of good character.

However, in order to be consistent with the provisions of subsection 23(1) of the Mutual Recognition Act, relating to refusal of registration, **new subsection 10F(3)** specifies that **new subsections 10F(1) and (2)** do not apply in relation to a person who is entitled to registration pursuant to that Act and who has lodged a notice with the Board pursuant to section 19 of that Act.

*Restriction on registration of deregistered or suspended persons*

**New section 10G** restricts the registration of persons whose registration has been cancelled or suspended. Other than a person whose registration has been cancelled pursuant to -

- **new subsection 20(1)**, where a specialist veterinary surgeon's registration is cancelled consequential on that person's registration as a veterinary surgeon being cancelled;
- **new section 22**, as a consequence of cancellation of the person's registration in another jurisdiction; or
- **new subsection 25B(2)** for non-payment of a fee,

or whose registration has been suspended pursuant to -

- **new subsection 21(1)** where a specialist veterinary surgeon's registration is suspended consequential on that person's registration as a veterinary surgeon being suspended; or
- **new subsection 25F(2)** pending the outcome of an inquiry,

a person may not apply for re-registration or termination of the suspension, other than by applying to the Board pursuant to section 27.

However, in order to be consistent with the provisions of subsection 23(1) of the Mutual Recognition Act, relating to refusal of registration, **new subsection 10G(2)** specifies that **new subsection 10G(1)** does not apply in relation to a person who is entitled to registration pursuant to that Act and who has lodged a notice with the Board pursuant to section 19 of that Act.

#### *Applications for registration*

**New section 10H** applies to applications for registration other than applications by persons who are entitled to registration pursuant to the Mutual Recognition Act and who lodge with the Board a notice under section 19 of that Act.

**New subsection 10H(2)** requires that an application for registration be in a form approved by the Board and be accompanied by the determined fee.

#### *Applications to be considered and determined*

**New section 10J** requires the Board to consider and determine all applications for registration under **new section 10H** and that the determination of applications is to be by either registering the applicant, unconditionally or otherwise, or by refusing the application.

*Registration of applicants*

New section 10K requires that where a person who is applying for registration other than under the Mutual Recognition Act applies for registration in accordance with new section 10H and appears personally before the Board or its nominee, if required to do so, and is entitled to registration in accordance with the Act, the Board shall register the applicant as a veterinary surgeon or specialist veterinary surgeon, as the case requires.

*Fee for registration pursuant to Mutual Recognition Act*

New section 10L requires an applicant for registration pursuant to the Mutual Recognition Act to pay the determined fee.

*Conditions of registration*

New section 10M provides that the conditions which the Board may impose upon registration at the time of registration relate to the duration of registration, the aspects of practice in which the person who is registered may be engaged and such other matters as the Board considers appropriate.

*Clause 9 - Register*

Clause 9 amends section 11 of the Act, which requires the Board to keep a register of veterinary surgeons, by adding a new subsection 11(2) which specifies that the Register may be kept by electronic means.

*Clause 10 - Repeal and substitution*

Clause 10 repeals sections 12, 15, 17, 17A, 17B, 17C, 17D and 17E of the Act dealing with, respectively, qualifications for registration, registration procedure, payment of an annual fee, notification of change of address, provisional, temporary and special registration and the effect of such types of registration. Sections 12 and 15 are redundant being superseded by the provisions of new sections 8 and 13, respectively. Section 17 is made redundant by the inclusion of new sections 25 to 25C, dealing with annual fees and section 17A is replaced by the provisions of new section 16. Sections 17B, 17C and 17D are superseded by new section 10B, new paragraph 10A(4)

and new paragraph 10A(3), respectively and section 17E is made redundant by the repeal of sections 17B, 17C and 17D.

*Clause 10* also inserts new sections 12, 13 14, 15 and 16 in the Act, dealing with the register of specialist veterinary surgeons, method of registration, certificate of registration and notification of change of address.

*Register of Specialist Veterinary Surgeons*

New section 12 requires the Board to keep a register of specialist veterinary surgeons, and provides that such a register may be kept by electronic means.

*Particulars to be entered in the Register of Veterinary Surgeons*

New section 13 provides that registration of veterinary surgeons is effected by the entering of certain particulars in the Register of Veterinary Surgeons including particulars relating to the identity and address of the applicant, the qualifications of the applicant, the date of registration and registration number of the applicant and any conditions imposed upon the applicant's registration.

*Particulars to be entered in the Register of Specialist Veterinary Surgeons*

New section 14 provides that registration of specialist veterinary surgeons is effected by the entering of certain particulars in the Register of Specialist Veterinary Surgeons including particulars relating to the identity and address of the applicant, the specialist branch of veterinary surgery in which the applicant is being registered, the qualifications of the applicant in that specialist branch of veterinary surgery, the date of registration and registration number of the applicant and any conditions imposed upon the applicant's registration.

*Certificate of Registration*

New section 15 deals with certificates of registration for veterinary surgeons.

New subsection 15(1) requires the issue of a certificate of registration, signed by the Chairperson or the Deputy Chairperson, to a person who is registered as a veterinary surgeon.

New subsection 15(2) requires that the certificate indicate -

- the provision of the Act by virtue of which the certificate holder is entitled to be registered as a veterinary surgeon;
- where the person is registered as a specialist veterinary surgeon, the branch of veterinary surgery in which the person is registered and the provision by virtue of which the person is entitled to be registered as a specialist veterinary surgeon; and
- any conditions to which the person's registration is subject.

**New subsection 15(3)** enables the Chairperson of the Board to require, in writing, that a certificate issued to a registered veterinary surgeon be delivered to the Board for the purpose of endorsing the certificate with details of the person's registration as a specialist veterinary surgeon.

**New subsection 15(4)** provides that a certificate of registration is evidence of the registration as a veterinary surgeon and, if applicable, as a specialist veterinary surgeon, of the person to whom the certificate is issued.

**New subsection 15(5)** requires that where a person's certificate of registration has been lost or destroyed the Board must issue a duplicate to the person, provided the determined fee is paid.

**New subsection 15(6)** requires that the Board request the delivery to the Chairperson of the Board of the certificate of a person whose registration as a veterinary surgeon or specialist veterinary surgeon has been suspended or cancelled.

**New subsection 15(7)** requires that where a person's registration as a specialist veterinary surgeon is cancelled the Board, must, on receipt of the person's certificate, in accordance with **new subsection 15(6)**, issue to the person a certificate of registration as a veterinary surgeon.

**New subsection 15(8)** requires that where a person whose registration as a veterinary surgeon has been suspended delivers his or her certificate of registration to the Board the Board retain the certificate for the duration of the suspension and return it to the person at the expiration of the period of suspension unless the person's registration is sooner cancelled.

**New subsection 15(9)** requires that where a person whose registration as a specialist veterinary surgeon has been suspended delivers his or her certificate of registration

to the Board the Board retain the certificate for the duration of the suspension and return it to the person at the expiration of the period of suspension unless the person's registration as a veterinary surgeon or specialist veterinary surgeon is sooner cancelled.

The Board must also issue to the person a temporary certificate of registration as a veterinary surgeon, for the duration of the period of the suspension.

**New subsection 15(10)** enables the Chairperson of the Board to request in writing that a certificate be delivered to the Board for the purpose of endorsing the certificate to indicate that conditions have been imposed upon the registration of a person, as a veterinary surgeon or specialist veterinary surgeon, as the case may be, or that conditions imposed upon the registration of such a person have been varied.

**New subsection 15(11)** makes it an offence for a person to fail to comply with a request under **new subsections 15(3), (6) and (10)** and provides a maximum penalty of \$500.

*Change of address to be notified*

**New section 16** requires a registered veterinary surgeon to notify the Board within one month of either a change of address of the veterinary surgeon, as shown in the Register, or the establishment or cessation of a professional address in the Territory, by the veterinary surgeon.

*Clause 12 - Repeal and substitution*

**Clause 12** repeals sections 21, 22, 23, 24 and 25 of the Act dealing with, respectively, cancellation and suspension of registration, circumstances in which an inquiry must be conducted by the Board, the suspension of registration or restriction of practice on health grounds, the effect of suspension of registration and surrender of certificate. These provisions are superseded by **new sections 25D to 25K** in **new Part IV - Disciplinary Procedures**, inserted by this clause.

In addition, this clause inserts **new sections 20, 21, 22, 23, 24, 25, 25A, 25B, and 25C** dealing with deregistration and suspension of a specialist veterinary surgeon based on deregistration or suspension of the person as a veterinary surgeon, deregistration or imposition of conditions on registration based on similar action having been

taken in another jurisdiction, cessation of registration and the payment of an annual fee.

*Deregistration as a specialist veterinary surgeon on basis of deregistration as a veterinary surgeon*

New section 20 deals with the implications of deregistration as a veterinary surgeon for persons who are also registered as specialist veterinary surgeons.

New subsection 20(1) requires that where a person is deregistered as a veterinary surgeon, and that person is registered as a specialist veterinary surgeon, the Board must cancel the registration of the person as a specialist veterinary surgeon.

New subsection 20(2) provides for the re-registration of a specialist veterinary surgeon, where such a person, deregistered pursuant to new subsection 20(1), is subsequently re-registered as a veterinary surgeon.

*Suspension as a specialist veterinary surgeon on basis of suspension as a veterinary surgeon*

New section 21 deals with the implications of suspension as a veterinary surgeon for persons who are also registered as specialist veterinary surgeons.

New subsection 21(1) requires that where a person is suspended as a veterinary surgeon, and that person is registered as a specialist veterinary surgeon, the Board must suspend the registration of the person as a specialist veterinary surgeon for the duration of the person's suspension as a veterinary surgeon.

New subsection 21(2) provides that where the suspension of a person as a veterinary surgeon is terminated, any suspension of that person as a specialist veterinary surgeon, must also be terminated.

*Deregistration on basis of disciplinary action under foreign law*

New section 22 provides for the deregistration of a person where that person's name has been removed from a register or roll of veterinary surgeons or specialist veterinary surgeons kept under a law of a State or another Territory or a law of another country.

**New subsection 22(1)** requires that the Board cancel the registration of a person, as a veterinary surgeon, where the Board is satisfied that the name of the person has been removed from a register kept under a law of a State or another Territory for any reason relating to the conduct of the person as a veterinary surgeon or on any basis relating to the person's physical or mental capacity to practise veterinary surgery.

**New subsection 22(2)** requires that the Board cancel the registration of a person, as a specialist veterinary surgeon, where the Board is satisfied that the name of the person has been removed from a register kept under a law of a State or another Territory for any reason relating to the conduct of the person as a specialist veterinary surgeon or on any basis relating to the person's physical or mental capacity to practise as a specialist veterinary surgeon.

Where a person whose registration has been cancelled under either **new subsection 22(1)** or **(2)** has his or her name restored to the register for the removal from which the person's registration was cancelled and the person applies for re-registration, **new subsection 22(3)** requires the Board to re-register the person as a veterinary surgeon or specialist veterinary surgeon, as the case may be.

**New subsection 22(4)** gives the Board a discretion to cancel the registration of a person as a veterinary surgeon where the Board is satisfied that the name of the person has been removed from a register kept under a law of a place outside Australia for any reason relating to the conduct of the person as a veterinary surgeon or on any basis relating to the person's physical or mental capacity to practise veterinary surgery.

**New subsection 22(5)** gives the Board a discretion to cancel the registration of a person as a specialist veterinary surgeon where the Board is satisfied that the name of the person has been removed from a register kept under a law of a place outside Australia for any reason relating to the conduct of the person as a specialist veterinary surgeon or on any basis relating to the person's physical or mental capacity to practise as a specialist veterinary surgeon.

**New subsection 22(6)** gives the Board a discretion to re-register a person whose registration has been cancelled under **new subsection 22(4)** or **(5)** where the Board is satisfied that it is appropriate in the circumstances to re-register the person.

*Imposition of conditions under foreign law*

**New section 23** provides for the imposition of conditions upon the registration of a person where conditions are imposed upon the registration of that person in another jurisdiction.

**New subsection 23(1)** requires that where conditions are imposed on the registration of a person as a veterinary surgeon or specialist veterinary surgeon under the law of a State or another Territory the Board must impose similar conditions on the registration of the person under this Act.

**New subsection 23(2)** gives the Board a discretion to impose conditions similar to those it is satisfied have been imposed on the registration of a person as a veterinary surgeon or as a specialist veterinary surgeon, as the case may be, under the law of a place outside Australia.

*Cessation of registration*

**New section 24** provides that a person ceases to be registered as a veterinary surgeon or specialist veterinary surgeon -

- . when the Board gives the person notice that his or her registration has been cancelled in accordance with the Act; or
- . if registration is conditional and the period of registration is specified in the condition - when that period expires.

*Annual fee payable by registered veterinary surgeon*

**New section 25** provides for the payment of an annual fee by a registered veterinary surgeon.

**New subsection 25(1)** requires that on or before 1 July each year a registered veterinary surgeon pay to the Board the determined fee.

**New subsection 25(2)** requires that the Board send to each registered veterinary surgeon, at least one month before the due date for payment, a notice requiring the veterinary surgeon to pay the fee by the due date.

**New subsection 25(3)** precludes a veterinary surgeon from relying upon a failure of the Board to send such a notice as a basis for avoiding liability to pay the fee by the due date.

*Annual fee payable by registered specialist veterinary surgeon*

**New section 25A** provides for the payment of an annual fee by a registered specialist veterinary surgeon.

**New subsection 25A(1)** requires that on or before 1 July each year a registered specialist veterinary surgeon pay to the Board the determined fee.

**New subsection 25A(2)** requires that the Board send to each registered specialist veterinary surgeon, at least one month before the due date for payment, a notice requiring the specialist veterinary surgeon to pay the fee by the due date.

**New subsection 25A(3)** precludes a specialist veterinary surgeon from relying upon a failure of the Board to send such a notice as a basis for avoiding liability to pay the fee by the due date.

*Registration to be cancelled for non-payment*

**New section 25B** provides for the cancellation of the registration of a veterinary surgeon or specialist veterinary surgeon for failure to pay the annual fee.

**New subsection 25B(1)** requires that where a veterinary surgeon or specialist veterinary surgeon fails to pay the determined fee by the due date the Board must send the veterinary surgeon or specialist veterinary surgeon, as the case may be, a notice requiring him or her to pay the fee by a day specified in the notice and advising him or her that if the fee is not paid by that later date his or her registration as a veterinary surgeon or specialist veterinary surgeon, as the case may be, will be cancelled.

**New subsection 25B(2)** requires the Board to cancel the registration of a veterinary surgeon or specialist veterinary surgeon who fails to pay the fee by the day specified in the notice under new subsection 25B(1) or (2), as the case requires.

*Entitlement to re-registration on payment of fees*

**New section 25C** provides for the re-registration of a person where the person pays the determined fee.

**New subsection 25C(1)** entitles a person whose name has been removed from either the Register of Veterinary Surgeons or the Register of Specialist Veterinary Surgeons for failure to pay the annual fee to re-registration if he or she applies in accordance with the requirements of the section and pays the determined fee.

**New subsection 25C(2)** qualifies the entitlement of a person to re-registration by limiting it to a right to re-registration on the same terms and conditions (if any) as applied to the person's registration immediately prior to the removal of the person's name from the Register.

**New subsection 25C(3)** gives the Board a discretion to refuse re-registration to a person where the Board is satisfied that the person is not competent to practise veterinary surgery or specialist veterinary surgery, as the case may be, or is not of good character.

**New subsection 25C(4)** provides that a person's right to re-registration under new section 25C is subject to the other provisions of the Act.

*Cancellation or suspension of registration*

**New section 25D** deals with the cancellation and suspension of registration and **new subsection 25D(1)** gives the Board a discretion to cancel the registration of a person or order the suspension of the person's registration where the Board is satisfied that

- the registration of the person was obtained by fraud or misrepresentation;
- the qualification of the person which entitled him or her to registration has been withdrawn or cancelled by the body which granted it;
- the person has contravened the Act or the regulations;
- the person has contravened a condition of his or her registration;
- the person has been convicted of an offence punishable by imprisonment for more than one year or any offence which in the opinion of the Board renders the person unfit to practise as a veterinary surgeon or specialist veterinary surgeon, as the case requires;

- the person has advertised for the purpose of procuring practice as a veterinary surgeon, or has sanctioned or been associated with or employed by a person who sanctions such an advertisement;
- the person has canvassed or employed an agent or canvasser for the purpose of procuring practice as a veterinary surgeon, or has sanctioned, or been associated with or employed by a person who sanctions the employment of an agent or canvasser for that purpose;
- the person is guilty of habitual drunkenness or addiction to a deleterious drug that renders the person unfit to practise as a veterinary surgeon or specialist veterinary surgeon, as the case requires;
- the person has engaged in any conduct, whether in practising as a veterinary surgery or specialist veterinary surgeon, or not, that adversely affects the way the person practises veterinary surgery or specialist veterinary surgery, as the case requires;
- the person has engaged any improper or unethical conduct relating to practising veterinary surgery or specialist veterinary surgery, as the case may be;
- the person has failed to exercise adequate judgement or care in practising veterinary surgery or specialist veterinary surgery, as the case may be; or
- the person is not competent to practise as a veterinary surgeon or specialist veterinary surgeon, as the case requires.

**New subsection 25D(2)** defines a reference to advertising as excluding a reference to -

- the fact that a registered veterinary surgeon or specialist veterinary surgeon practises veterinary surgery and details of the place or places at which that person practises;
- the fact that a veterinary surgeon or specialist veterinary surgeon has commenced or resumed practice or details of a change of the address at which he or she practises; or
- the display, at his or her place or places of practice, of details of the qualifications of the veterinary surgeon or specialist veterinary surgeon,

provided that such references conform to accepted customs and usages in the veterinary profession.

*Cancellation, suspension or restriction of right of practise on health grounds*

**New section 25E** deals with the cancellation, suspension or restriction of a person's right to practise on health grounds.

**New subsection 25E(1)** requires that subject to the provisions of **new subsection 25E(2)** the Board must cancel or order the suspension of the registration of a person where it is satisfied that the mental or physical condition of the person renders him or her unfit to practise.

**New subsection 25E(2)** gives the Board the option of, instead of cancelling or suspending the registration of a person, directing by order, that the person not give or perform specified veterinary services where the Board is satisfied that the person remains fit to give or perform some services.

**New subsection 25E(3)** enables the Board, where it is requested to do so, to review the order and, where it is satisfied that the mental or physical condition of the person in respect of whom the order was made has changed, the Board may amend or remove the order.

**New subsection 25E(4)** deems a person upon whom the Board has served an order suspending or restricting practising rights and who provides a veterinary service in contravention of such an order to be other than a registered veterinary surgeon.

*Practising when registration suspended*

**New subsection 25F** gives the Board a discretion to cancel or order the further suspension of a person whose registration has been suspended and who is convicted of an offence of practising as a veterinary surgeon or specialist veterinary surgeon or holding himself or herself out as a veterinary surgeon or specialist veterinary surgeon, as the case may be, whilst the person is, by virtue of the suspension of his or her registration, deemed to be other than a registered veterinary surgeon or specialist veterinary surgeon, as the case requires.

*Power of Board to caution, reprimand, etc.*

**New section 25G** provides the Board with a range of disciplinary or counselling options in addition to the options of cancellation, suspension or restriction of practising rights.

It permits the Board to do one or more of the following in relation to the conduct of a registered veterinary surgeon or registered specialist veterinary surgeon -

caution or reprimand the person;

- order the person to seek and undergo medical or psychiatric treatment or counselling;
- impose appropriate conditions upon the person's registration;
- order the person to complete specified educational courses;
- order that the person seek and follow advice in relation to his or her practice as a veterinary surgeon or specialist veterinary surgeon, as the case may be, from persons specified by the Board.

However, in order to be consistent with the provisions of paragraph 20(4)(b) of the Mutual Recognition Act, new subsection 25G(2) specifies that new paragraph 25G(1)(d), enabling the Board to order a person to complete specified educational courses, does not apply to a person who has obtained registration pursuant to that Act.

#### *Power of Board to impose fines*

New section 25H provides the Board with a power to impose a fine upon a registered veterinary surgeon or specialist veterinary surgeon.

New subsection 25H(1) enables the Board to impose a fine where the Board finds that a person has failed to comply with an order of the Board under new section 25G. However, this power is qualified by the operation of new subsection 25H(2) which prohibits the Board from imposing a fine in respect of conduct for which a court has already imposed a fine or other penalty.

New subsection 25H(3) requires that a fine be paid to the Territory within the time specified in the order imposing the fine and new subsection 25H(4) empowers the Board to cancel or order the suspension of the registration of a person where the person fails to comply with the order imposing the fine.

#### *Inquiry by Board*

New section 25J requires that the Board conduct an inquiry prior to taking certain types of action in relation to a registered veterinary surgeon or registered specialist veterinary surgeon.

**New subsection 25J(1)** requires that the Board conduct an inquiry prior to -

- cancelling the registration of a person, other than cancellation of the registration of a specialist veterinary surgeon, consequential upon the cancellation of that person's registration as a veterinary surgeon, cancellation for failure to pay an annual fee, or cancellation consequential upon deregistration in another jurisdiction;
- suspending the registration of a person, other than suspension of the registration of a specialist veterinary surgeon, consequential upon the suspension of that person's registration as a veterinary surgeon;
- directing that a person not provide a specified veterinary service; or
- taking counselling or disciplinary action under **new section 25G**.

**New subsection 25J(2)** permits the Board to, by order, suspend the registration of a person pending the holding of an inquiry.

*Effect of suspension and conditions*

**New section 25K** deals with the effect of suspension of registration and the imposition of conditions upon registration.

**New subsection 25K(1)** deems a veterinary surgeon or specialist veterinary surgeon whose registration is suspended not to be a veterinary surgeon or specialist veterinary surgeon, as the case requires, for the duration of the period of the suspension.

**New subsection 25K(2)** similarly deems a veterinary surgeon or specialist veterinary surgeon who provides a veterinary service in contravention of a condition imposed on the person's registration to be other than a registered veterinary surgeon or registered specialist veterinary surgeon, as the case requires, in the provision of that service.

*Clause 13 - Publication of notice of decision*

**Clause 13** amends section 26 of the Act which enables the publication in the *Gazette* of a notice in respect of decisions of the Board or of the Administrative Appeals Tribunal, where the Tribunal reviews a decision of the Board, to cancel or suspend the registration of a person or reprimand a person.

The amendment extends the application of the provision to decisions -

- . imposing a condition on the registration of a person;
- . directing a person to refrain from providing a specified veterinary service;
- . ordering disciplinary or counselling action pursuant to new section 25G; and
- . imposing a fine under new section 25H.

The notification power in relation to decisions to suspend the registration of a person does not include decisions to suspend registration, pursuant to new subsection 25J(2), pending the outcome of an inquiry.

*Clause 13* also amends section 26 to remove sexist language and substitute gender neutral terms.

*Clause 16 - Amendment of section 29*

*Clause 16* amends section 29 of the Act which prohibits a person other than a registered veterinary surgeon from practising veterinary surgery or holding himself or herself out as a veterinary surgeon.

The amendments to section 29 are to the effect that a person other than a registered veterinary surgeon must not hold himself or herself out to be a specialist veterinary surgeon in a specialist branch or veterinary surgery or use the title of a specialist veterinary surgeon unless the person is appropriately registered as a specialist veterinary surgeon. A penalty of \$3000 is provided.

The clause also removes sexist language from the section.

*Clause 17 - Publishing advertisements*

*Clause 17* amends section 31 of the Act which prohibits the publication of an advertisement holding out a person who is not a veterinary surgeon to be a veterinary surgeon. The amendments extend the application of this provision to advertisements holding a person out to be a specialist veterinary surgeon.

*Clause 18 - Insertion of new Part VA - Appeals*

*Clause 18* inserts a new Part VA, comprising new sections 35 and 36, dealing with appeals and notification of decisions, respectively.

*Review of decisions*

**New section 35** enables a person to apply to the ACT Administrative Appeals tribunal in respect of a decision of the Board to -

- . impose conditions upon registration;
- . cancel interim registration;
- . refuse to review, alter or remove conditions upon registration;
- . to alter conditions imposed upon registration;
- . impose new conditions upon registration;
- . refuse to register a person;
- . cancel the registration of a person;
- . refuse to re-register a person;
- . suspend the registration of a person;
- . direct a person not to provide a specified veterinary service;
- . refuse to review, amend or revoke an order, directing a person not to provide a specified veterinary service;
- . amend an order directing a person not to provide a specified veterinary service;
- . take one of the forms of disciplinary or counselling action under new section 25G in relation to a person;
- . impose a fine;
- . refuse to terminate the suspension of registration of a person; or
- . refuse to extend beyond 6 months the period during which the executor or executrix of a deceased registered veterinary surgeon's estate or the administrator or administratrix or trustee of such an estate may continue the business of the deceased;
- . fix a period longer than 6 months during which the executor or executrix of a deceased registered veterinary surgeon's estate or the administrator or administratrix or trustee of such an estate may continue the business of the deceased.

*Notification of decisions*

**New section 36** deals with the notification of persons affected by decisions of the Board.

**New subsection 36(1)** requires the Board to give written notice of particular decisions of the Board, in respect of which an appeal may be made to the ACT Administrative Appeals Tribunal, to the person affected by the relevant decision.

**New subsection 36(2)** requires that a notice to a person of a decision referred to in **new subsection 36(1)** or under **new subsection 10B(4)**, advising of the cancellation of interim registration, or a notice under section 31 of the *Health Professions Boards (Procedures) Act 1981* include a statement advising the person of his or her right to appeal to the Administrative Appeals Tribunal and of his or her rights in respect of the provision of a statement of reasons for the decision to the person.

**New subsection 36(3)** imposes a similar requirement in respect of a notice to a person in relation to an order suspending the person's registration, restricting the person's right to practise or fining the person.

**New subsection 36(4)** prevents the validity of a decision of the Board dealt with in **new subsections 36(2)** and **(3)** from being affected by a failure to comply with the notification requirements of **new section 36**.

### TRANSITIONAL PROVISIONS

#### *Clause 21- Continuation of registration*

**Clause 21** preserves the registration of persons who were registered, immediately before the commencement of the provisions of the Bill, under those provisions of the Act which are repealed by the Bill and replaced with new registration provisions.

#### *Clause 22 - Provisional registration*

**Clause 22** has the effect of converting the provisional registration held by a person immediately prior to the repeal of section 17B and the commencement of **new section 10A** to interim registration under **new section 10B**.

#### *Clause 23 - Temporary registration*

**Clause 23** has the effect of converting the temporary registration held by a person immediately prior to the repeal of section 17C and the commencement of **new subsection 10A(4)** to temporary registration under **new subsection 10A(4)**.

***Clause 24 - Failure to pay annual fee under repealed provisions***

**Clause 24** has the effect of converting a failure to pay an annual fee under provisions which are repealed by the Bill to a failure to pay under the equivalent new provisions inserted in the Act.

**Subclause 24(1)** treats a failure to pay the annual fee under section 17, which is repealed by the Bill, as a failure to pay the annual fee under **new section 25**.

**Subclause 24(2)** treats the cancellation of a veterinary surgeon's registration for a failure to pay an annual fee under section 17, which is repealed by the Bill, as a cancellation of registration for failure to pay an annual fee under the provisions of **new section 25**, thus entitling the person to apply for re-registration under the provisions of **new section 25C**.

***Clause 25 - Applications for registration***

**Clause 25** treats an application for registration, under the provisions of the Act repealed by the Bill, which had not been determined prior to the commencement of the new registration provisions, as an application for registration under the new provisions and authorises any inquiry or investigation for the purposes of the application to be continued or completed.

***Clause 26 - Continuation of inquiries and reviews***

**Subclause 26(1)** preserves the application of the provisions of the Act in force immediately prior to the commencement of the amendments effected by the Bill in relation to any inquiry or review commenced under the Act and pending immediately before the commencement of the amendments.

**Subclause 26(2)** treats an order, decision or determination resulting from an inquiry or review under the Act immediately prior to its amendment by the Bill as an order, decision or determination made under the Act as amended by the Bill and as having effect accordingly.

***Clause 27 - Complaints relating to previous conduct***

***Subclause 27(1)*** enables the holding of an inquiry under the Act, as amended by the Bill, with respect to conduct or any other matter or thing that occurred before, or partly before or partly after, the commencement of the amendments.

However ***subclause 27(2)*** qualifies this provision to the effect that such an inquiry may only be held if it is an inquiry which could have been held under the Act prior to the commencement of the amendments.

***Clause 28 - Existing orders***

***Clause 28*** converts an order which has effect under a provision of the Act repealed by the Bill to an equivalent order under the Act as amended.

***Clause 29 - Interim entitlement to be registered as a specialist veterinary surgeon***

***Clause 29*** enables certain veterinary surgeons to be registered as specialist veterinary surgeons, notwithstanding that they may not satisfy the requirements of new section 9.

***Subclause 29(1)*** entitles a person to be registered as a specialist veterinary surgeon if the person applies to the Board for registration within 12 months of the commencement of the clause and the person -

- has been registered and practising as a veterinary surgeon for a 6 year period immediately preceding the date of the application, and during that period has practised for at least 4 years and 6 months in the ACT; and
- has practised in the specialist branch of veterinary surgery to which the application relates for a period of, or periods totalling, 5 years.

***Subclause 29(2)*** requires the Board to register a person as a specialist veterinary surgeon where the person is entitled to registration pursuant to ***subclause 29(1)*** and the Board is satisfied that the person is competent to practise veterinary surgery in the branch to which the application relates.

***Subclause 29(3)*** enables the Board to impose such conditions on the registration of a person, under this provision, as the Board thinks fit.

***Clause 30 - Review of decisions***

***Clause 30*** provides a right of appeal to the Administrative Appeals Tribunal to a person in respect of a decision of the Board to -

- refuse to register a person as a specialist veterinary surgeon, pursuant to ***subclause 29(2)***; or
- impose conditions on a person registered as a specialist veterinary surgeon, pursuant to ***subclause 29(3)***.

***Subclauses 30(2)*** and ***(3)*** require that where the Board makes such a decision, appropriate notice of the Board's decision must be given to the applicant within 28 days after the date of the decision. The notice must include information about the applicant's right to appeal against the decision and to a statement of reasons for the decision.

***Subclause 30(4)*** is to the effect that a failure to comply with the requirement to notify an applicant in respect of his or her appeal rights does not affect the validity of a decision.

**FORMAL, TECHNICAL AND CONSEQUENTIAL PROVISIONS**

***Clauses 1 and 2 - Short title and commencement***

***Clauses 1 and 2*** are formal provisions dealing with the short title and commencement of the Bill, respectively.

***Clause 3 - Principal Act***

***Clause 3*** is an interpretation provision which defines the term "Principal Act" to mean the *Veterinary Surgeons Registration Act 1965*.

***Clause 4 - Short title***

***Clause 4*** is an interpretation provision which amends the short title of the Act to reflect the ambit of the Act.

**Clause 5 - Interpretation**

**Clause 5** effects consequential and technical amendments to section 4 of the Act.

**Paragraphs 5(a), (b) and (c)** insert definitions in section 4 for a number of new terms used in the Bill and replace the existing definitions for a number of terms to reflect modifications to the meaning of some terms and to make the section consistent with modern drafting practice.

**Paragraph 5(d)** omits subsection 4(2).

Subsection 4(2) is repealed as it is redundant, all references in the Act to prescribed fees having been removed or replaced with references to determined fees.

**Clause 6 - Substitution**

**Clause 6** repeals section 4A, which exempts veterinary surgeons who practise in the performance of their duties as public servants and Defence Force personnel from the application of the Act as it is intended that the Act bind the Crown in right of the Territory and there is no need for a provision to the effect that the Crown in right of the Commonwealth is not bound by the requirements of the Act.

**Clause 6** substitutes new sections 4A and 4B in the Act which, respectively establish what is meant by the expression -

- . "to be competent to practise as a veterinary surgeon or specialist veterinary surgeon"; and
- . "to suffer from an impairment".

**Clause 7 - Heading to Part III**

**Clause 7** effects a formal amendment to the heading to Part III of the Act to better reflect the ambit of that Part.

***Clause 11 - Alteration of Registers***

***Clause 11*** effects consequential amendments to section 19 of the Act, providing for the amendment of the Register of Veterinary Surgeons, to reflect the inclusion of new section 12, requiring the keeping of a Register of Specialist Veterinary Surgeons.

In addition the amendments have the effect of requiring that the name of a registered veterinary surgeon or specialist veterinary surgeon must be removed from the relevant register where the person's registration has been cancelled. The amendment also replaces a reference in subsection 19(3) to a "prescribed fee" with a reference to a "determined fee".

***Clause 14 - Application for re-registration***

***Clause 14*** consequentially amends section 27 of the Act which enables a person whose registration has been cancelled other than because of his or her deregistration in another jurisdiction or for non-payment of an annual fee or suspended otherwise than pending an inquiry by the Board, to apply for re-registration or termination of the suspension, as the case may be, on the ground that by reason of a specified change in circumstances that has occurred since the date of the cancellation or suspension, it is just that the person should be re-registered or his or her suspension should be terminated. The clause clarifies that an application may not be made pursuant to section 27 in relation to registration cancelled consequential on the cancellation of a person's registration in another jurisdiction or on the cancellation or suspension of a specialist veterinary surgeon's registration, consequential on the cancellation or suspension of that person's registration as a veterinary surgeon. In addition sexist language in section 27 is replaced with gender neutral expressions.

***Clause 15 - Repeal of sections 27A, 27B and Part IV***

***Clause 15*** repeals sections 27A and 27B which have been superseded by provisions of new section 15. Part IV is also repealed as its provisions have been replaced by those of new sections 35 and 36.

***Clause 19- Inspection of Registers***

***Clause 19*** effects amendments to section 42 of the Act, which permits the inspection of the Register of Veterinary Surgeons -

to reflect the fact the amendments effected by new section 12 requiring the keeping by the Board of a Register of Specialist Veterinary Surgeons; substituting references to "prescribed fees" with references to "determined fees"; and substituting a reference to a "registration authority", as newly defined in section 4, for a reference to a registration authority, as defined by subsection 42(4), which is, consequentially, omitted by this clause.

***Clause 20 - Further amendments***

***Clause 20*** is a technical provision which amends the Act in accordance with the Schedule. The Schedule amends various provisions of the Act to remove sexist language.

***Clause 31 - Renumbering of provisions***

***Clause 31*** is a technical provision which effects the renumbering of the Act as amended by the Bill. As a consequence of the previous amendments made to the Act and the considerable number of amendments effected by the Bill the numbering of the provisions of the Act has become significantly disrupted. ***Clause 31*** renumbers the sections of the Act in a single series so that they bear consecutive numbers making the legislation easier to follow.