

## **Veterinary Practice Bill 2003**

### **Explanatory note**

This explanatory note relates to this Bill as introduced into Parliament.

#### Overview of Bill

The objects of this Bill are:

- (a) to provide for the registration of persons as veterinary practitioners, and
- (b) to provide for the constitution and functions of the Veterinary Practitioners Board (the **Board**), and
- (c) to regulate the conduct of veterinary practitioners, and
- (d) to create offences that prohibit persons from representing themselves or others to be veterinary practitioners when they are not registered as veterinary practitioners, and
- (e) to create offences that prohibit a person from representing that premises are a veterinary hospital if the premises are not licensed as such, and
- (f) to repeal the *Veterinary Surgeons Act 1986* and the *Veterinary Surgeons Regulation 1995* and to enact savings, transitional and other provisions consequent on the enactment of the proposed Act.

The Bill arises from a National Competition Policy Review of the *Veterinary Surgeons Act 1986* and incorporates the following reforms:

- (a) to create an offence for a person to carry out restricted acts of veterinary science if the person is not a veterinary practitioner (with certain exceptions),
- (b) to provide that those restricted acts of veterinary science are to be specified in regulations to be made under the proposed Act and for advice on those regulations to be taken from an advisory committee established by the Minister,
- (c) to amend the registration scheme for veterinary surgeons that currently exists in the *Veterinary Surgeons Act 1986*,
- (d) to enable a corporation, partnership or other firm to represent that it is a veterinary practice if the controlling interest in the corporation or firm is held by one or more veterinary practitioners,
- (e) to enable premises to be licensed as a veterinary hospital if it is demonstrated that the premises are of a suitable standard and to prohibit a person representing that premises are a veterinary hospital if they are not so licensed,
- (f) to provide that acts of major surgery may only be carried out at a licensed veterinary hospital (with certain exceptions),
- (g) to require a veterinary hospital to have a veterinary practitioner as superintendent,
- (h) to introduce a new system for making complaints against, and the disciplining of, veterinary practitioners who are found guilty of unsatisfactory professional conduct or professional misconduct and, in particular, to remove the role of the current Investigating Committee from disciplinary proceedings,
- (i) to change the membership of the Board of Veterinary Surgeons of New South Wales (to be renamed the Veterinary Practitioners Board) and, in particular, to include representatives of consumers of veterinary services on the Board,
- (j) to remove the current restrictions on advertising by veterinary practitioners.

#### Outline of provisions

##### **Part 1 Preliminary**

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** sets out the object of the proposed Act.

**Clause 4** defines certain words and expressions used in the proposed Act. For instance, **veterinary practitioner** is defined to mean a person who is registered as a veterinary practitioner under the proposed Act. **Firm** is defined to mean a partnership or other unincorporated association of persons.

**Clause 5** provides that notes in the proposed Act do not form part of the proposed Act.

**Clause 6** provides that the proposed Act does not limit or otherwise affect the operation of the *Mutual*

*Recognition Act 1992 of the Commonwealth or the Trans-Tasman Mutual Recognition Act 1997 of the Commonwealth.*

### **Part 2 Restricted acts of veterinary science**

**Clause 7** provides that the expression *restricted act of veterinary science* means an act of veterinary science declared by the regulations to be a restricted act of veterinary science. Such regulations are to be made only after advice has been sought from an advisory committee established by the Minister. The advisory committee may also make recommendations that such a regulation should be made. Certain acts of veterinary science set out in **Schedule 1** that may currently be performed by unregistered persons cannot be declared by the regulations as restricted acts of veterinary science.

**Clause 8** requires the Minister to establish an advisory committee for the purposes of clause 7.

### **Part 3 Practice of veterinary science**

**Clause 9** makes it an offence for a person to do a restricted act of veterinary science unless the person is registered as a veterinary practitioner, is the owner of the animal concerned or is an employee of the owner and the act was done incidentally to the primary duties of that employment, is a veterinary student under the direct supervision of a veterinary practitioner, is acting in an emergency or is otherwise acting in circumstances prescribed by the regulations. The offences relating to cruelty to animals in the *Prevention of Cruelty to Animals Act 1979* and the defences to those offences are not affected.

**Clause 10** prevents a person from recovering fees or charges for doing restricted acts of veterinary science unless the person is a veterinary practitioner, is the holder of a veterinary hospital licence or falls within certain specified exceptions.

**Clause 11** makes it an offence for an individual (with specified exceptions) who is not a veterinary practitioner to be represented to be a veterinary practitioner.

**Clause 12** makes it an offence for a person to represent that he or she has qualifications entitling the person to be granted registration as a veterinary practitioner unless the person has such qualifications.

**Clause 13** makes it an offence for a person to represent that he or she is registered as a specialist under the proposed Act unless the person is registered as a specialist.

**Clause 14** makes it an offence for a corporation or firm (with specified exceptions) to be represented to be a veterinary practice unless the controlling interest in the corporation or firm is held by one or more veterinary practitioners.

**Clause 15** makes it an offence for a person who is not a veterinary practitioner to sign a certificate that is required by law to be signed by a veterinary practitioner.

### **Part 4 Registration of veterinary practitioners**

#### **Division 1 Registration procedures**

**Clause 16** provides for the granting of registration as a veterinary practitioner by the Board under the *Licensing and Registration (Uniform Procedures) Act 2002* and makes certain modifications as to the way in which that Act applies to registration matters.

**Clause 17** specifies the circumstances in which the Board may refuse to grant registration as a veterinary practitioner.

**Clause 18** enables the Board to impose conditions on registration as a veterinary practitioner having regard to certain matters.

**Clause 19** specifies the duration of registration as a veterinary practitioner.

#### **Division 2 Qualifications for registration**

**Clause 20** specifies the qualifications required for a person to be granted full registration as a veterinary practitioner. The proposed section also enables the Board to approve the institutions in Australia from which academic qualifications will be accepted and requires the Board to review those approvals every year. The proposed section also enables the Board to require a person with overseas qualifications to pass an examination prescribed by the regulations.

**Clause 21** specifies the qualifications required for a person to be granted honorary registration as a veterinary practitioner.

**Clause 22** provides for the grant of limited registration as a veterinary practitioner. The circumstances in which such registration might be granted include where a person has overseas qualifications and is doing research work or has not yet passed the requisite examination for full registration.

**Clause 23** enables the grant of provisional registration to persons who have the requisite academic qualifications for full registration but are awaiting the conferring of the actual academic award.

**Clause 24** specifies the qualifications required for the grant of registration as a specialist.

### **Division 3 Cancellation and suspension of registration**

**Clause 25** provides that a person ceases to be registered when the person's name is removed from the Register and that the person is taken not to be a veterinary practitioner during any period of suspension of the person's registration.

**Clause 26** specifies circumstances in which the Board must cancel registration as a veterinary practitioner and other circumstances in which registration as a veterinary practitioner may be cancelled (including for failure to pay annual registration fees or to lodge an annual return).

### **Division 4 Register of veterinary practitioners**

**Clause 27** requires the Board to keep a Register of veterinary practitioners.

**Clause 28** requires the Board to make the Register available to the public and contains other provisions relating to the way information is recorded in the Register.

**Clause 29** requires a veterinary practitioner to pay an annual registration fee to the Board.

**Clause 30** requires a veterinary practitioner to provide information to the Board in relation to changes in the registered particulars for the veterinary practitioner.

**Clause 31** enables the Registrar to give certificates as to certain matters that are admissible in proceedings as evidence of those matters.

### **Division 5 Returns and information**

**Clause 32** requires a veterinary practitioner to submit an annual return to the Board specifying certain information.

### **Division 6 Review of registration decisions**

**Clause 33** enables a person who has been refused full registration as a veterinary practitioner (or who has had conditions imposed on full registration) by the Board to apply to the Administrative Decisions Tribunal for a review of such a decision.

## **Part 5 Complaints and disciplinary proceedings**

### **Division 1 Interpretation**

**Clause 34** defines certain terms and expressions used in the proposed Part, including *professional misconduct* and *unsatisfactory professional conduct*.

**Clause 35** provides that the proposed Part extends to persons who have ceased to be registered as veterinary practitioners under the proposed Act.

**Clause 36** provides that the regulations may establish a code of professional conduct. The clause also provides for the Board to make recommendations to the Minister in relation to the code.

### **Division 2 Complaints**

**Clause 37** enables any person (including the Board) to make a complaint against a veterinary practitioner in respect of the veterinary practitioner's conduct as a veterinary practitioner.

**Clause 38** enables a complaint to be withdrawn by the complainant at any time.

**Clause 39** provides for the form that a complaint must take.

**Clause 40** provides that generally the Board must notify the person against whom a complaint has been made of the making of the complaint, the nature of the complaint, the type of unsatisfactory professional conduct or professional misconduct that the Board considers may be indicated by the complaint and the identity of the complainant.

**Clause 41** requires the Board to investigate complaints and provides for how multiple complaints may be dealt with.

**Clause 42** provides that, for the purposes of investigating or determining a complaint, the Board is not bound to observe the rules of evidence but may inform itself of any matter in such manner as it thinks fit. It also enables the Board to pursue alternative dispute resolution to assist in resolving issues raised by a complaint.

**Clause 43** enables a person to be summoned to appear before the Board to give evidence and produce documents for the purposes of investigating or determining a complaint. It also enables the Board to take evidence on oath or affirmation.

**Clause 44** enables the Board to require a veterinary practitioner to produce documents and assist in an investigation of a complaint.

**Clause 45** enables the Board to dismiss certain complaints.

**Clause 46** provides that, after the investigation of a complaint, the Board may take certain action.

If the Board is satisfied that the veterinary practitioner is not guilty of professional misconduct or unsatisfactory professional conduct, it must dismiss the complaint. If the Board is satisfied that the veterinary practitioner is guilty of professional misconduct, it must apply to the Tribunal for a disciplinary finding against the veterinary practitioner and it may, pending the determination of the application, suspend the veterinary practitioner's registration. If the Board is satisfied that the veterinary practitioner is guilty of unsatisfactory professional conduct (but not professional misconduct), it may apply to the Tribunal for a disciplinary finding against the veterinary practitioner or it may itself take any one or more of the following actions against the veterinary practitioner:

- (a) reprimand or caution the veterinary practitioner,
- (b) impose a fine on the veterinary practitioner of an amount not exceeding \$5,000,
- (c) impose conditions on the veterinary practitioner's registration with respect to the practice of veterinary science,
- (d) require the veterinary practitioner to complete specified educational courses,
- (e) require the veterinary practitioner to report on his or her veterinary practice at specified times, in a specified manner and to specified persons,
- (f) require the veterinary practitioner to seek and take advice, in relation to the management of his or her veterinary practice, from a specified person or persons,
- (g) require the veterinary practitioner to pay specified costs relating to the hearing.

**Clause 47** enables a person against whom a disciplinary finding has been made by the Board to apply to the Tribunal for a review of that finding and any action taken against the person by the Board.

**Clause 48** enables the Board to delegate its functions under the proposed Part to specially constituted committees of the Board.

### **Division 3 Applications to Tribunal for disciplinary findings**

**Clause 49** enables the Board to apply to the Tribunal for a disciplinary finding against a veterinary practitioner with respect to a complaint against the veterinary practitioner.

**Clause 50** provides that on any such application the Tribunal is to determine whether or not the veterinary practitioner is guilty of professional misconduct or unsatisfactory professional conduct. If the Tribunal finds that the veterinary practitioner is guilty of either, the Tribunal may make any one or more of the following orders against the veterinary practitioner:

- (a) an order reprimanding or cautioning the veterinary practitioner,
- (b) an order suspending the veterinary practitioner's registration for a period not exceeding 12 months,
- (c) an order cancelling the veterinary practitioner's registration,
- (d) an order imposing a fine on the veterinary practitioner of an amount not exceeding \$25,000,
- (e) an order imposing conditions on the veterinary practitioner's registration with respect to the practice of veterinary science,
- (f) an order requiring the veterinary practitioner to complete specified educational courses,
- (g) an order requiring the veterinary practitioner to report on his or her veterinary practice at specified times, in a specified manner and to specified persons,

(h) an order requiring the veterinary practitioner to seek and take advice, in relation to the management of his or her veterinary practice, from a specified person or persons,

(i) an order requiring the veterinary practitioner to pay specified costs relating to the hearing.

**Clause 51** provides that a decision of the Tribunal on an application for a disciplinary finding may be appealed to an Appeal Panel of the Tribunal under

Part 1 of Chapter 7 of the *Administrative Decisions Tribunal Act 1997*.

**Clause 52** enables a person whose registration has been suspended or cancelled to have the registration restored in certain circumstances.

**Clause 53** requires the Registrar of the Tribunal to notify the Board of any orders the Tribunal makes under clause 50 and requires the Registrar of the Board to keep a record of all proceedings and decisions under the proposed Part.

#### **Division 4 Confidentiality issues**

**Clause 54** provides that a veterinary practitioner may disclose confidential information to the Board, a committee of the Board or the Tribunal despite any duty of confidentiality.

**Clause 55** provides that the Tribunal is not required to include confidential information in its statement of a decision. If the statement would be false or misleading without the confidential information, the Tribunal is not required to provide the statement. However, a confidential information notice must then be provided indicating that confidential information is not given or the statement will not be provided.

#### **Division 5 Co-operation with other jurisdictions in respect of disciplinary action**

**Clause 56** requires the Board to notify various veterinary practitioner professional registration authorities in Australia and New Zealand of the taking of disciplinary action against a veterinary practitioner. It also enables the Board to notify the veterinary practitioner professional registration authorities of other jurisdictions outside the State of the taking of such action.

#### **Division 6 Publicising disciplinary action**

**Clause 57** defines certain terms used in the proposed Division.

**Clause 58** enables and requires the Board to publicise disciplinary action taken against a veterinary practitioner or former veterinary practitioner.

**Clause 59** requires the Registrar of the Board to keep a register of disciplinary action and to make it available to the public.

**Clause 60** requires the Board to publicise the quashing on appeal or review of any disciplinary action taken against a veterinary practitioner or former veterinary practitioner and to update the register of disciplinary action to reflect the quashing of the action.

**Clause 61** provides that no liability is incurred by the State, the Board, the Registrar or a person acting at the direction of the Board or Registrar in respect of anything done in good faith for the purpose of publicising disciplinary action or otherwise carrying out functions under the proposed Division. It also provides that no liability is incurred by a person who publishes a fair report or summary of disciplinary action that is publicised.

**Clause 62** specifies what matters cannot be published when publicizing disciplinary action.

### **Part 6 Veterinary hospitals**

#### **Division 1 Offences relating to veterinary hospitals**

**Clause 63** defines the expression *major surgery* for the purposes of the proposed Act.

**Clause 64** makes it an offence to carry out major surgery except on premises licensed as a veterinary hospital at which surgery of the type concerned may be carried out. Certain exceptions are specified such as major surgery carried out in emergency situations.

**Clause 65** makes it an offence to represent that premises are a veterinary hospital if the premises are not licensed as a veterinary hospital under the proposed Part.

**Clause 66** requires the holder of a veterinary hospital licence to ensure that the premises are managed by a superintendent that is a veterinary practitioner.

**Clause 67** requires the holder of a veterinary hospital licence to display certain information on the premises relating to the types of major surgery for which the premises are licensed.

### **Division 2 Licensing procedures**

**Clause 68** provides for the granting of veterinary hospital licences by the Board under the *Licensing and Registration (Uniform Procedures) Act 2002* and makes certain modifications to the way that Act applies in that regard.

**Clause 69** specifies the circumstances in which the Board must refuse to grant a veterinary hospital licence.

**Clause 70** enables the Board to impose conditions on a veterinary hospital licence.

**Clause 71** specifies the duration of a veterinary hospital licence.

**Clause 72** requires the holder of a veterinary hospital licence to pay an annual licence fee to the Board.

**Clause 73** specifies circumstances in which the Board may suspend or cancel a veterinary hospital licence.

**Clause 74** enables a person who has been refused a veterinary hospital licence, has had conditions imposed on such a licence, or has had the licence suspended or cancelled by the Board to apply to the Administrative Decisions Tribunal for a review of such a decision.

### **Part 7 Veterinary Practitioners Board**

**Clause 75** provides for the constitution of the Veterinary Practitioners Board as a body corporate.

**Clause 76** provides for the membership of the Board.

**Clause 77** provides for the election of a President of the Board.

**Clause 78** sets out the functions of the Board.

**Clause 79** provides for the employment of a Registrar of the Board and such other staff as are necessary to enable the Board to exercise its functions. The proposed section also enables the Board to make use of the services of consultants.

**Clause 80** provides for the establishment of committees of the Board.

**Clause 81** enables the Board to delegate its functions, subject to certain restrictions.

### **Part 8 Finance**

**Clause 82** requires the Board to maintain an account.

**Clause 83** sets out the ways in which the Board may invest its funds.

**Clause 84** provides for the financial year of the Board.

**Clause 85** requires the Board to submit proposed fees (including the proposed remuneration of members of the Board) to the Minister for approval after having undertaken consultation with the veterinary profession.

**Clause 86** enables the Board to waive, reduce or refund fees.

**Clause 87** provides that fees and other charges payable to the Board under the proposed Act may be recovered by the Board as a debt and that fines recovered under the Act are to be paid to the Board.

**Clause 88** requires the Board to conduct regular reviews of its revenue-raising strategies.

### **Part 9 Powers of inspectors**

**Clause 89** provides for the appointment of inspectors for the purposes of the proposed Act.

**Clause 90** gives inspectors certain powers of entry and examination for the purposes of administering the proposed Act.

### **Part 10 Miscellaneous**

**Clause 91** requires the Board to hold an annual general meeting of the veterinary profession.

**Clause 92** provides that certain provisions of the *Criminal Records Act 1991* do not apply for the purposes of the proposed Act.

**Clause 93** provides for the giving of notices.

**Clause 94** provides for the service of documents on the Board.

**Clause 95** excludes Board members, committee members and persons following their directions from

personal liability for certain acts done in good faith.

**Clause 96** requires the Board, the President or an authorised member of the Board to provide on request a written statement of a decision.

**Clause 97** provides for the authentication of official documents of the Board by signature instead of seal.

**Clause 98** provides that if a corporation contravenes any provision of the proposed Act or the regulations, each director or other person concerned in the management of the corporation is also taken to have contravened the same provision if the director or person knowingly authorised or permitted the contravention.

**Clause 99** provides that an offence under the proposed Act or the regulations may be dealt with summarily by a Local Court.

**Clause 100** enables penalty notices to be issued for offences against the Act or the regulations being an offence prescribed by the regulations.

**Clause 101** provides for the making of regulations under the proposed Act.

**Clause 102** provides that the proposed Act binds the Crown.

**Clause 103** provides for the repeal of the following:

- (a) the *Veterinary Surgeons Act 1986*,
- (b) the *Veterinary Surgeons Regulation 1995*.

**Clause 104** is a formal provision that gives effect to the amendments to the Acts and Regulations set out in Schedule 3.

**Clause 105** is a formal provision that gives effect to the savings, transitional and other provisions set out in Schedule 4.

**Clause 106** provides for a review of the operation of the proposed Act to be undertaken after 5 years from the date of assent to the proposed Act.

#### **Schedule 1 Unrestricted acts of veterinary science**

**Schedule 1** specifies certain acts of veterinary science that may not be declared by the regulations to be restricted acts of veterinary science.

#### **Schedule 2 Provisions relating to members and procedure of Board**

**Schedule 2** contains standard provisions relating to the constitution of the Board and the procedure of the Board.

#### **Schedule 3 Amendment of Other Acts and Regulations**

**Schedule 3** contains consequential amendments to various Acts and Regulations.

#### **Schedule 4 Savings, transitional and other provisions**

**Schedule 4** contains a number of savings, transitional and other provisions consequent on the enactment of the proposed Act, including a provision enabling the regulations under the proposed Act to make further provisions of a savings or transitional nature.