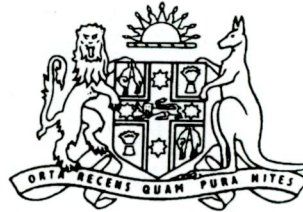


First print



New South Wales

Veterinary Surgeons Amendment Bill 1995

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Veterinary Surgeons Act 1986* ("the Principal Act") so as:

- (a) to increase the membership of both the Veterinary Surgeons Investigating Committee and the Disciplinary Tribunal by including a member who is not a veterinary surgeon to represent the interests of users of veterinary services, and
 - (b) to confer additional powers on the Investigating Committee and on the Disciplinary Tribunal in dealing with complaints against veterinary surgeons, and
 - (c) to transfer responsibility for the making of disciplinary orders against veterinary surgeons from the full Disciplinary Tribunal to the chairperson of that Tribunal following a finding by the full Tribunal that a complaint has been proved, and
-

- (d) to transfer responsibility for licensing veterinary hospitals from the Director-General of the Department of Agriculture to the Board of Veterinary Surgeons of New South Wales ("the Board"), and
- (e) to transfer responsibility for financing the operations of the Board from the Treasury to the Board, and
- (f) to make other changes of a minor or consequential nature.

Outline of provisions

Clause 1 specifies the name (also called the short title) of the proposed Act.

Clause 2 provides for the provisions of the proposed Act to commence on a day or days to be fixed by proclamation.

Clause 3 is a formal provision giving effect to the amendments set out in Schedules 1-4.

Schedule 1 Amendments relating to disciplinary proceedings

The amendments made by Schedule 1 relate to the disciplinary functions of the Investigating Committee (established under section 24) and the Disciplinary Tribunal (established under section 25).

An amendment to section 24 (which constitutes the Veterinary Surgeons Investigating Committee) will expand the membership of the Committee from 4 to 5. The additional member will be a person, who is not a veterinary surgeon, appointed by the Minister to represent the users of veterinary services. (See Schedule 1 [1]-[3].)

An amendment to section 25 (which constitutes the Veterinary Surgeons Disciplinary Tribunal) will provide for the appointment of an additional member of the Tribunal. The additional member will be a person, who is not a veterinary surgeon, appointed by the Minister to represent the users of veterinary services. (See Schedule 1 [4] and [5].)

An amendment to section 26 (which deals with the making of complaints against veterinary surgeons) will enable a complaint to be made against a veterinary surgeon who is alleged to have contravened a condition imposed on the veterinary surgeon under section 28 (1) or 32 (1). (See Schedule 1 [6] and [7].)

Veterinary Surgeons Amendment Bill 1995

Explanatory note

An amendment to section 28 (which sets out the decisions that the Investigating Committee can make when dealing with a complaint about the conduct of a veterinary surgeon) will enable that Committee to impose conditions on a veterinary surgeon's right to continue to practise veterinary science. For example, a veterinary surgeon may be required to undertake a course in anaesthesia as a condition of being allowed to administer anaesthetics to animals when practising veterinary science. (See Schedule 1 [8]–[10]). A further amendment to section 28 is intended to make it clear that a veterinary surgeon who is being investigated by the Investigating Committee has a right to make both written and oral representations before it exercises its powers to caution or reprimand a veterinary surgeon, to impose conditions on the veterinary surgeon's right to practise or to refer the complaint to the Disciplinary Tribunal. (See Schedule 1 [11].)

Proposed section 30A will enable a veterinary surgeon to appeal to the Disciplinary Tribunal against an order made against the veterinary surgeon by the Investigating Committee under section 28 of the Principal Act. (See Schedule 1 [14].)

Section 32 of the Principal Act, which currently provides for complaints against veterinary surgeons to be determined by the Disciplinary Tribunal, is to be replaced. The new section will provide for disciplinary orders to be made by the chairperson of the Tribunal instead of the full Tribunal if the full Tribunal finds that the complaint is proved. The section will also allow the chairperson, when dealing with a registered veterinary surgeon, to impose conditions relating to that surgeon's right to continue to practise veterinary science. (See Schedule 1 [18].)

The amendments made by Schedule 1 [12], [13], [15]–[17] and [19]–[30] are consequential on proposed section 30A and the substitution of section 32.

An amendment to clause 5 of Schedule 2 (Provisions relating to the members and procedure of the Investigating Committee) is consequential on Schedule 1 [1]. (See Schedule 1 [31].)

Amendments to Schedule 3 (Provisions relating to the members of the Disciplinary Tribunal) are consequential on Schedule 1 [4] and [5]. (See Schedule 1 [32]–[35].)

Schedule 2 Amendments relating to licensing of veterinary hospitals

The amendments made by Schedule 2 [2]–[3] provide for responsibility for administering the licensing of veterinary hospitals under Part 6 of the Principal Act to be transferred from the Director-General of the Department of Agriculture to the Board. (The Board already has responsibility for registering veterinary surgeons.) An amendment to section 55 of the Principal Act will replace the existing provision that provides for inspectors to be appointed by the Director-General of the Department of Agriculture with a provision that will allow the Board to appoint inspectors to enable it to enforce the provisions of the Principal Act. The amendment will also require inspectors to produce on request a written authority issued by the Board when exercising their powers under that Act. (See Schedule 2 [4].) The other amendments made by Schedule 2 are of a consequential nature.

Schedule 3 Amendments relating to finances of Board of Veterinary Surgeons

The amendments made by Schedule 3 have the effect of transferring responsibility for funding the Board's operations under the Principal Act from the Treasury to the Board.

Proposed Part 6A provides for the establishment of a fund to be known as the New South Wales Veterinary Surgeons Fund ("the Fund"). Expenses incurred in administering the Principal Act (including remuneration payable to Board members) are to be paid from the Fund. The Board will be able to invest money held in the Fund. (See Schedule 3 [1] and [2].)

The Board's staff are employed under Part 2 of the *Public Sector Management Act 1988* and are remunerated from the Consolidated Fund. In order to reimburse the Consolidated Fund, the Board will be required to reimburse the Treasurer for the costs involved in remunerating the Board's staff.

Section 67 of the Principal Act (which requires fees and other money payable under that Act to be paid into the Consolidated Fund) is to be consequentially repealed. (See Schedule 3 [3].)

Schedule 4 Miscellaneous amendments

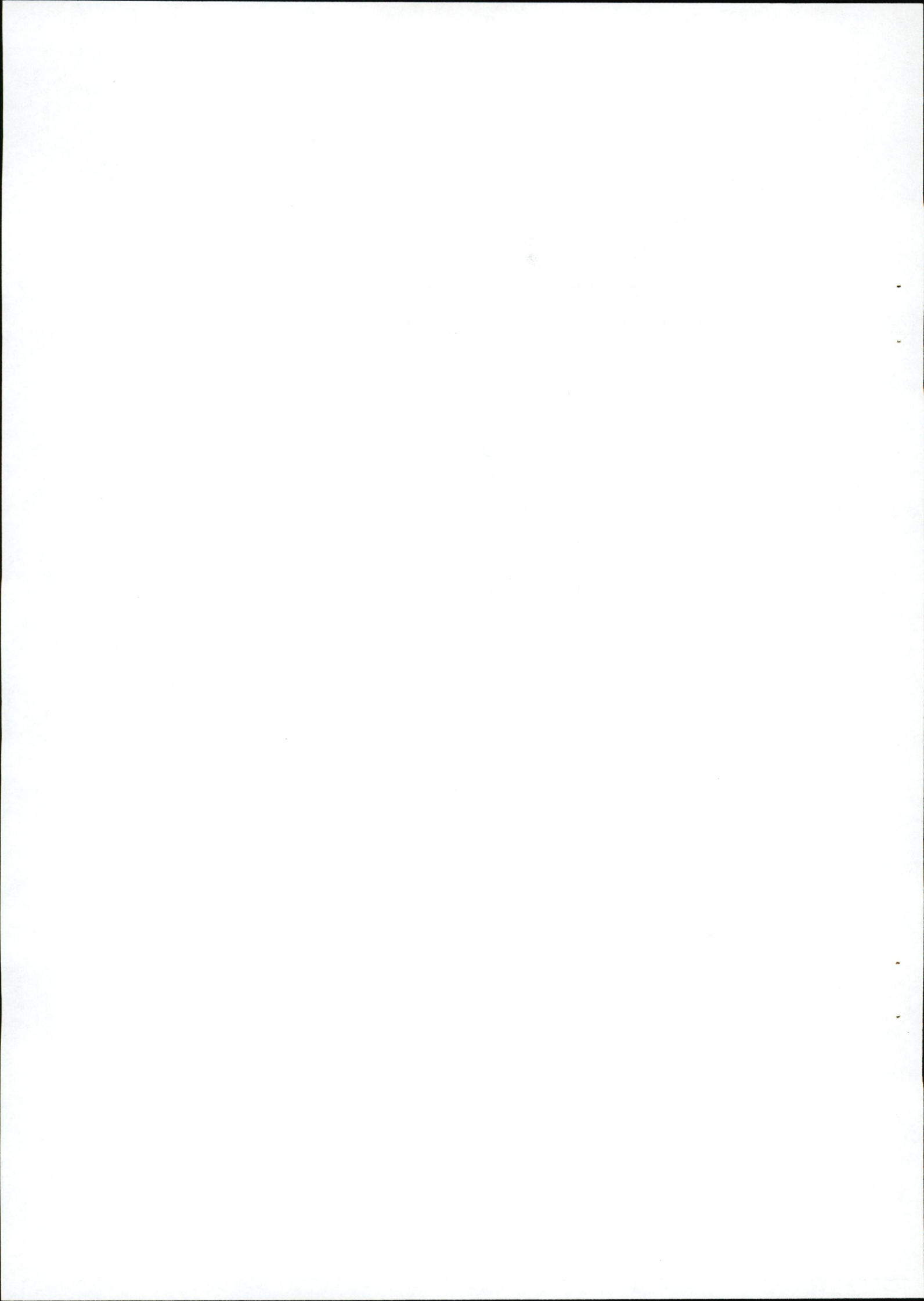
Schedule 4 [1] will require the annual licence fee payable by the licensee of a veterinary hospital to be paid before 1 July in each year (instead of 31 March as at present).

Schedule 4 [2] will enable proceedings for offences against the Principal Act or the regulations to be brought within 12 months after the offence is alleged to have been committed.

Schedule 4 [3] amends Schedule 1 to the Principal Act (Provisions relating to the members and procedure of the Board). The amendment will require members of the Board to disclose their pecuniary interests to the Board.

Schedule 4 [4] and [5] amend Schedule 2 to the Principal Act (Provisions relating to the members and procedure of the Investigating Committee). The amendments update clauses 8 and 9 of the Schedule. Those clauses respectively provide for the circumstances in which members of the Investigating Committee vacate office and the effect of certain other Acts on the appointment of those members.

Schedule 4 [6]–[9] contain amendments of a savings and transitional nature that are consequential on the amendments made by the proposed Act.





New South Wales

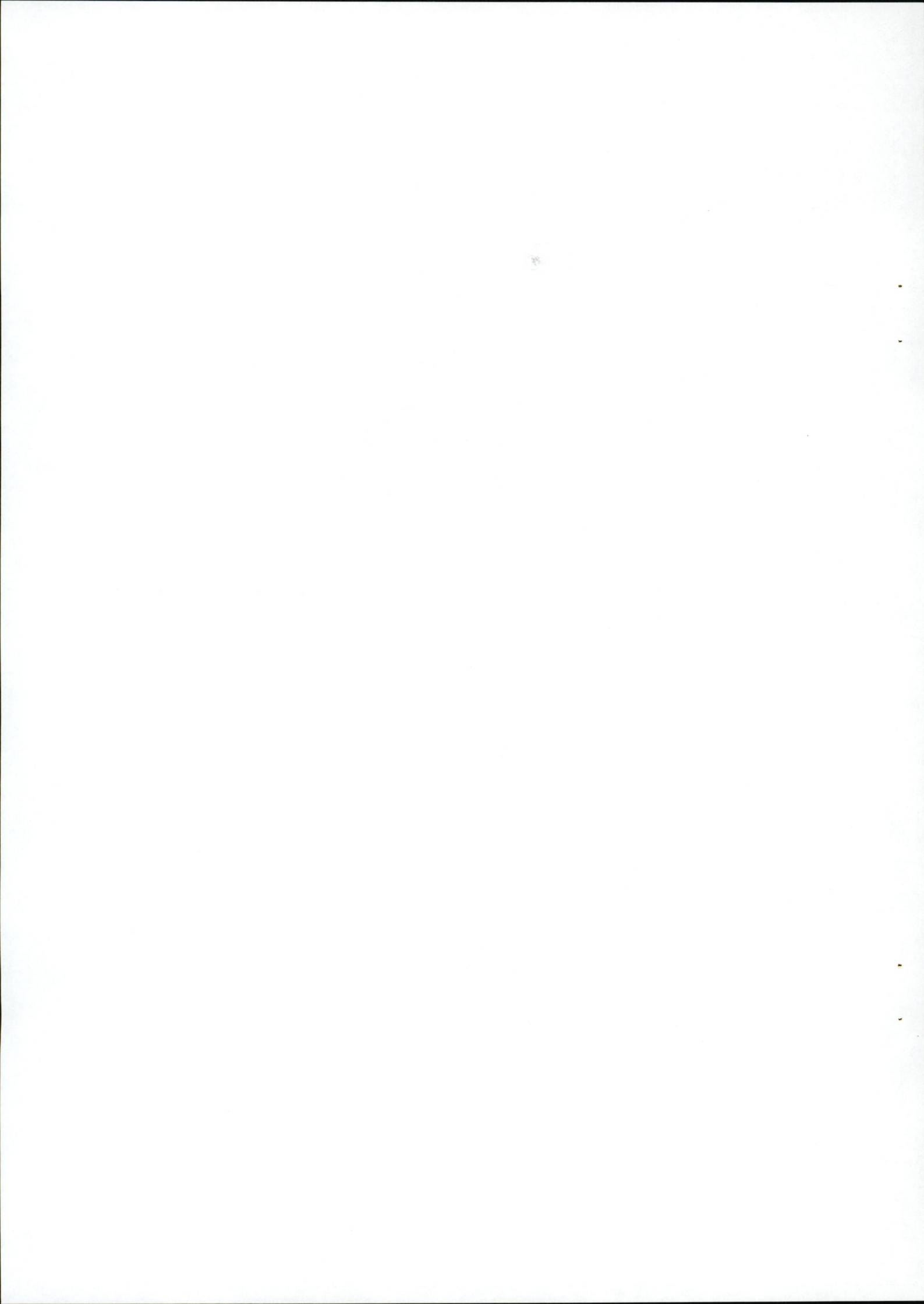
Veterinary Surgeons Amendment Bill 1995

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Veterinary Surgeons Act 1986 No 55	2

Schedules

1 Amendments relating to disciplinary proceedings	3
2 Amendments relating to licensing of veterinary hospitals	15
3 Amendments relating to finances of Board of Veterinary Surgeons	17
4 Miscellaneous amendments	20





New South Wales

Veterinary Surgeons Amendment Bill 1995

No. , 1995

A Bill for

An Act to amend the *Veterinary Surgeons Act 1986* with respect to disciplinary proceedings against veterinary surgeons, the licensing of veterinary hospitals and the financing of the operations of the Board of Veterinary Surgeons, and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Veterinary Surgeons Amendment Act 1995*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation. 5

3 Amendment of Veterinary Surgeons Act 1986 No 55

The *Veterinary Surgeons Act 1986* is amended as set out in Schedules 1-4.

Schedule 1 Amendments relating to disciplinary proceedings

(Section 3)

[1] Section 24 Constitution of Veterinary Surgeons Investigating Committee

5

Section 24 (2)

Omit "4 members". Insert instead "5 members".

[2] Section 24 (3)

Insert "and" at the end of section 24 (3) (a) and at the end of section 24 (3) (b).

10

[3] Section 24 (3) (e)

Insert at the end of section 24 (3) (d):

, and

- (e) 1 shall be a person who is not a veterinary surgeon and who is appointed to represent the interests of users of veterinary services.

15

[4] Section 25 Constitution of Veterinary Surgeons Disciplinary Tribunal

Section 25 (2)

Insert at the end of section 25 (2):

20

, and

- (c) a person who is not a veterinary surgeon and who is appointed by the Minister to represent the interests of users of veterinary services.

Veterinary Surgeons Amendment Bill 1995

Schedule 1 Amendments relating to disciplinary proceedings

[5] Section 25 (3)

Omit "and 2 members of the Board".

Insert instead ", 2 members of the Board and the person referred to in subsection (2) (c)".

[6] Section 26 Complaints against veterinary surgeons

5

Section 26 (1)

Insert at the end of section 26 (1) (a), (b), (c) and (d) "or".

[7] Section 26 (1)

Insert at the end of section 26 (1):

, or

10

(g) has contravened any condition imposed on the registration of the veterinary surgeon under section 28 (1) or 32 (1).

[8] Section 28 Decision of Investigating Committee on complaint

Section 28 (1) (b)

15

Omit "do either or both of the following".

Insert instead "do all or any of the following".

[9] Section 28 (1) (b) (ii)

Omit "or" where lastly occurring.

[10] Section 28 (1) (b) (iii)

Insert after section 28 (1) (b) (ii):

- (iii) by order impose conditions on the registration of the veterinary surgeon with respect to the practice of veterinary science, being conditions of a temporary nature (including limitations on the right to practise) in connection with the veterinary surgeon's continuing education, acquisition of skills and professional supervision, or

5

[11] Section 28 (3)

10

Omit section 28 (3). Insert instead:

- (3) The Investigating Committee must, before exercising its powers under subsection (1) (b) or (c), give the registered veterinary surgeon concerned an opportunity to make written representations to the Committee. If, after receiving written representations, the Committee is still considering whether or not it should exercise those powers, it must give that veterinary surgeon an opportunity to appear before it to make oral representations.

15

20

[12] Heading to Division 4 of Part 4

Omit the heading.

Insert instead "Division 4—Proceedings before Disciplinary Tribunal".

[13] Section 30 Inquiry by Disciplinary Tribunal

25

Section 30 (1)

Omit "The proceedings before".

Insert instead "An inquiry held by".

[14] Section 30A

Insert after section 30:

30A Right of appeal to Disciplinary Tribunal

- (1) A veterinary surgeon against whom the Investigating Committee has made an order under section 28 (1) (b) may appeal to the Disciplinary Tribunal against the order. 5
- (2) An appeal must be lodged in writing with the chairperson of the Disciplinary Tribunal within 28 days after the date on which the veterinary surgeon is notified of the Investigating Committee's order. The appeal must specify the grounds on which it is based. 10
- (3) An appeal against an order of the Investigating Committee is to be dealt with by way of a new hearing. Fresh evidence, or evidence in addition to or in substitution for the evidence given before the Investigating Committee, may be given at the hearing of such an appeal. 15
- (4) The Disciplinary Tribunal is, on the hearing of an appeal, required to sit in open court. The appellant may appear at the appeal in person or be represented by a legal practitioner. 20
- (5) The person who made the complaint that gave rise to the order that is the subject of an appeal may be (but is not obliged to be) present at the hearing and may be represented by a legal practitioner. 25
- (6) For the purpose of the hearing of an appeal, the Disciplinary Tribunal and the chairperson or deputy chairperson have the powers, authorities, protections and immunities conferred by the *Royal Commissions Act 1923* on a commissioner and the chairperson of a commission respectively appointed under Division 1 of Part 2 of that Act. That Act (Division 2 of Part 2 30

-
- excepted) applies to any witness summoned by or appearing before the Disciplinary Tribunal in the same way as it applies to a witness summoned before a royal commission.
- (7) At the end of the hearing of an appeal, the Disciplinary Tribunal may confirm, quash or vary the order appealed against, having regard to the merits of the case. The Disciplinary Tribunal must set out the reasons for its decision. 5
- (8) If the persons constituting the Disciplinary Tribunal are divided in opinion as to the decision to be given on any question (not being a question to which section 31 (5) relates), the question is to be decided according to the opinion of the majority, if there is a majority, but if those persons are equally divided in opinion, the decision is to be in favour of the appellant. 10
15
- (9) As soon as practicable after a decision under this section is made in respect of a registered veterinary surgeon, the Registrar must give notice of the decision to the veterinary surgeon. 20
- (10) A decision under this section does not take effect until 21 days after notice of the decision is given to the veterinary surgeon by the Registrar, subject to any decision of the Supreme Court on appeal under section 34.
- [15] Section 31 Powers of chairperson of Disciplinary Tribunal** 25
- Section 31 (1) and (6)**
- Insert “or an appeal” after “an inquiry” wherever occurring.
- [16] Section 31 (2) and (3)**
- Omit “inquiry” wherever occurring. Insert instead “hearing”.

Veterinary Surgeons Amendment Bill 1995

Schedule 1 Amendments relating to disciplinary proceedings

[17] Section 31 (5)

Insert "or appeal heard by the Disciplinary Tribunal" after "any inquiry".

[18] Section 32

Omit section 32. Insert instead: 5

32 Chairperson may make disciplinary orders

- (1) If the matter of a complaint against a registered veterinary surgeon has been proved to the satisfaction of the Disciplinary Tribunal, the chairperson may make any one or more of the following orders: 10
- (a) an order reprimanding or cautioning the veterinary surgeon,
 - (b) an order suspending the veterinary surgeon from practice for a period not exceeding 12 months,
 - (c) an order directing that the name of the veterinary surgeon be removed from the register of veterinary surgeons or the register of specialists, 15
 - (d) an order imposing a fine on the veterinary surgeon of an amount not exceeding \$10,000,
 - (e) an order imposing conditions on the registration of the veterinary surgeon with respect to the practice of veterinary science, 20
 - (f) an order requiring the veterinary surgeon to pay specified costs relating to the hearing.
- (2) Even though the matter of a complaint against a registered veterinary surgeon may have been proved to the satisfaction of the Disciplinary Tribunal, the chairperson must not make an order of the kind referred to in subsection (1) (b) or (c) if the Disciplinary Tribunal is of the opinion that: 25
- (a) because the matter of the complaint is of a trivial nature, or 30

-
- (b) because of the circumstances in which that matter occurred, or
- (c) for any other reason,
- it is in the public interest that the veterinary surgeon should be allowed to continue to practise veterinary science. 5
- (3) If the Disciplinary Tribunal considers that the matter of a complaint against a registered veterinary surgeon has not been proved to the satisfaction of the Tribunal, but the Tribunal nevertheless considers that the conduct of the veterinary surgeon was sufficiently unacceptable to warrant the making of the complaint, the chairperson may make an order against the veterinary surgeon under subsection (1) (a) or (f), or both. 10
- (4) On directing the name of a person to be removed from a register, the chairperson may fix a time after which the person may apply for restoration of the person's name to the register. 15
- (5) While an order under this section suspending a person from practice remains in force, the person is taken not to be a registered veterinary surgeon. 20
- (6) The chairperson must, when making an order under this section, specify the reasons for the order.
- (7) As soon as practicable after an order under this section is made against a registered veterinary surgeon, the Registrar must give notice of the order to the veterinary surgeon. 25
- (8) An order under this section does not take effect until 21 days after notice of the order is given to the veterinary surgeon by the Registrar, subject to any decision of the Supreme Court on appeal under section 34. 30

Veterinary Surgeons Amendment Bill 1995

Schedule 1 Amendments relating to disciplinary proceedings

[19] Section 33 Disciplinary proceedings against veterinary surgeon who ceases to be registered

Section 33 (2)

Omit "Disciplinary Tribunal" wherever occurring.
Insert instead "chairperson".

5

[20] Section 34 Appeal against order of chairperson

Section 34 (1)

Omit "Disciplinary Tribunal". Insert instead "chairperson".

[21] Section 34 (1A)

Insert after section 34 (1):

10

(1A) A registered veterinary surgeon may also appeal to the Supreme Court against a decision made under section 30A in respect of the veterinary surgeon by the Disciplinary Tribunal confirming or varying an order of the Investigating Committee made under section 28.

15

[22] Section 34 (5)

Insert "under subsection (1)" after "hearing of an appeal".

[23] Section 34 (6)

Omit section 34 (6). Insert instead:

(6) Without limiting subsection (4), the Supreme Court may, in respect of the veterinary surgeon concerned:

20

-
- (a) make any decision that could have been made under section 30A, or any order that could have been made under section 32, or
- (b) vary any decision made under section 30A, or any order made under section 32,
- as the case requires.

5

[24] Section 35 Restoration of name to register etc

Section 35 (1)

Omit "Disciplinary Tribunal". Insert instead "chairperson".

[25] Section 35 (3)

10

Omit "by it". Insert instead "by the chairperson".

[26] Section 35 (4)

Omit "Disciplinary Tribunal" where secondly occurring.
Insert instead "chairperson".

[27] Section 36 Recording of proceedings and decisions of Investigating Committee and Disciplinary Tribunal

15

Section 36 (1)

Insert "and all orders of the chairperson made under section 32" after "Disciplinary Tribunal".

[28] Section 36 (2) (a)

20

Omit "Disciplinary Tribunal". Insert instead "chairperson".

Veterinary Surgeons Amendment Bill 1995

Schedule 1 Amendments relating to disciplinary proceedings

- [29] Section 62 Proof of certain matters not required**
- Section 62 (b)**
- Insert “, or any order of the chairperson of that Tribunal” after “Disciplinary Tribunal”.
- [30] Section 66 Recovery of charges, fines etc** 5
- Section 66 (2)**
- Insert “the chairperson of” after “Investigating Committee or”.
- [31] Schedule 2 Provisions relating to the members and procedure of the Investigating Committee**
- Insert “or (e)” after “(a)–(c)” in clause 5 (a). 10
- [32] Schedule 3 Provisions relating to the members of the Disciplinary Tribunal**
- Schedule 3, clause 1A**
- Insert before clause 1:
- 1A Definition of consumer member** 15
- In this Schedule, *consumer member* means the member referred to in section 25 (2) (c).
- [33] Schedule 3, clauses 3A–3C**
- Insert after clause 3:
- 3A Acting consumer member** 20
- (1) The Minister may, from time to time, appoint a person to act in the office of the consumer member of the Tribunal during the illness or absence of the member, and, while so acting, has and may exercise all the functions of the member and is taken to be the consumer member. 25

-
- (2) The Minister may remove from office a person appointed under this clause.
- (3) A person is, while acting as consumer member of the Tribunal, entitled to be paid such remuneration (including travel and subsistence allowances) as the Minister may from time to time determine in respect of the person. 5
- (4) For the purposes of this clause, a vacancy in the office of consumer member of the Tribunal is taken to be an absence from office of the member. 10

3B Term of office of consumer member

Subject to this Schedule, the consumer member holds office for such period, not exceeding 3 years, as may be specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment. 15

3C Filling of vacancy in office of consumer member

If the office of consumer member becomes vacant, a person is to be appointed to fill the vacancy, subject to this Act.

[34] Schedule 3, clause 4 20

Insert at the end of clause 4:

- (2) The consumer member is taken to have vacated office if the member:
- (a) dies, or
- (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or 25
- (c) becomes a mentally incapacitated person, or 30

Veterinary Surgeons Amendment Bill 1995

Schedule 1 Amendments relating to disciplinary proceedings

- (d) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable, or 5
 - (e) resigns the office in writing addressed to the Minister, or
 - (f) is removed from office under subclause (3).
- (3) The Minister may remove the consumer member from office at any time. 10

[35] Schedule 3, clause 6

Insert after clause 5:

6 Effect of certain other Acts

- (1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of the consumer member. 15
 - (2) If, by or under any Act, provision is made:
 - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or 20
 - (b) prohibiting the person from engaging in employment outside the duties of that office,
- the provision does not operate to disqualify the person from holding that office or the office of consumer member, or from accepting and retaining any remuneration payable to the person under this Act as the consumer member. 25

Schedule 2 Amendments relating to licensing of veterinary hospitals

(Section 3)

[1] Section 3 Definitions

Omit the definition of "Director-General" from section 3 (1). 5

[2] Section 46 Veterinary hospitals to be licensed

Omit "Director-General" from section 46 (a).
Insert instead "Board".

[3] Sections 48, 49, 51, 52, 53 and 54

Omit "Director-General" wherever occurring. 10
Insert instead "Board".

[4] Section 55 Power of entry and examination

Omit section 55 (6). Insert instead:

(6) The Board may appoint as an inspector for the purposes of this Act: 15

(a) any member of its staff, or

(b) with the approval of the Minister, any public servant.

(7) The Board may, at any time, revoke the appointment of an inspector. 20

(8) An inspector must, at the request of a person in relation to whom the inspector is exercising or proposing to exercise powers under this Act, produce a written authority issued by the Board authorising the inspector to exercise those powers. 25

Veterinary Surgeons Amendment Bill 1995

Schedule 2 Amendments relating to licensing of veterinary hospitals

- [5] **Section 61 Certificate of President or Registrar of Board to be evidence**
- Omit "Director-General".
Insert instead "President or Registrar of the Board".
- [6] **Section 66 Recovery of charges, fines etc** 5
- Omit "or the Director-General" wherever occurring in section 66 (1) .
- [7] **Section 68 Liability of members etc**
- Omit ", the Director-General" wherever occurring.
- [8] **Section 68** 10
- Omit ", that Tribunal or the Director-General".
Insert instead "or that Tribunal".

Schedule 3 Amendments relating to finances of Board of Veterinary Surgeons

(Section 3)

[1] Section 3 Definitions

Insert after the definition of *Disciplinary Tribunal* in section 3 (1): 5

Fund means the New South Wales Veterinary Surgeons Fund referred to in section 54A.

[2] Part 6A

Insert after Part 6:

Part 6A Finance 10

54A Establishment of Fund

There is established by this section a fund to be known as the New South Wales Veterinary Surgeons Fund.

54B Payments into Fund

There are payable into the Fund: 15

(a) all fees paid to or recovered by the Board and all fines and costs paid or recovered in consequence of orders made by the Investigating Committee or the chairperson of the Disciplinary Tribunal under this Act, and 20

(b) other money received by or on account of the Board, and

(c) interest that accrues from the investment of money belonging to the Fund, and

(d) money borrowed by the Board or appropriated by Parliament for the purposes of the Board, and 25

(e) other money required by or under this or any other Act or law to be paid into the Fund.

54C Payments from Fund

- (1) There are payable from the Fund:
- (a) all expenses incurred by the Board, the Investigating Committee or the Disciplinary Tribunal in the administration of this Act, and 5
 - (b) any remuneration payable to members of the Board, the Investigating Committee or the Disciplinary Tribunal, and
 - (c) all other money required by or under this or any other Act or law to be paid from the Fund. 10
- (2) Without limiting subsection (1), there is to be paid from the Fund to the Treasurer, in accordance with the Treasurer's directions, for crediting to the Consolidated Fund such amounts as the Treasurer certifies to be chargeable against the Board in respect of the Board's staff. 15
- (3) The Board may apply money that is not required for the purposes of subsection (1) or (2) for the purpose of advancing veterinary science in any manner the Board considers appropriate. 20

54D Board to establish and maintain account at financial institution

The Board must establish and maintain an account at a bank located in New South Wales, or at any other financial institution approved by the Treasurer, and ensure that all money received by the Board for payment into the Fund is paid into the account. 25

54E Investment of Fund

The Board may invest money held in the Fund:

- (a) in such manner as may be authorised by the *Public Authorities (Financial Arrangements) Act 1987*, or 30
- (b) if that Act does not confer power to invest money held by the Board—in any manner authorised for the investment of trust funds or in any other manner approved by the Minister with the concurrence of the Treasurer. 35

54F Financial year of Board

- (1) The financial year of the Board is the year commencing on 1 July.
- (2) A different financial year may be determined by the Treasurer under section 4 (1A) of the *Public Finance and Audit Act 1983*.

5

[3] Section 67 Fees etc payable to Treasury

Omit the section.

Schedule 4 Miscellaneous amendments

(Section 3)

- [1] **Section 51 Annual licence fee**
Omit "31 March" from section 51 (1). Insert instead "30 June".
- [2] **Section 70 Proceedings for offences** 5
Insert at the end of the section:
(2) Proceedings for such an offence may be brought only within 12 months after the date on which the offence is alleged to have been committed.
- [3] **Schedule 1 Provisions relating to the members and procedure of the Board** 10
Insert after clause 9:
9A Disclosure of pecuniary interests
(1) A Board member who has a direct or indirect pecuniary interest: 15
(a) in a matter that is being considered, or is about to be considered, at a meeting of the Board, or
(b) in a thing being done or about to be done by the Board,
must, as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of the interest at a meeting of the Board. 20
(2) A disclosure by a Board member at a meeting of the Board that the member:
(a) is a member, or is in the employment, of a specified company or other body, or 25
(b) is a partner, or is in the employment, of a specified person, or

-
- (c) has some other specified interest relating to a specified company or other body or to a specified person,
- is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1). 5
- (3) The Board must ensure that particulars of any disclosure made under this clause are recorded in a book kept for the purpose and that the book is kept open at all reasonable hours for inspection by any person. 10
- (4) After a Board member has disclosed the nature of an interest in any matter or thing in accordance with this clause, the member must not, unless the Board otherwise determines: 15
- (a) be present during any deliberation of the Board, or take part in any decision of the Board, with respect to the matter, or
- (b) exercise any functions under this Act or the regulations with respect to that thing. 20
- (5) For the purposes of making a determination by the Board under subclause (4), if a Board member has a direct or indirect pecuniary interest in a matter to which the disclosure relates, he or she must not: 25
- (a) be present during any deliberation of the Board for the purpose of making the determination, or
- (b) take part in the making by the Board of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Board or the exercise of any function under this Act or the regulations. 30
- (7) This clause does not apply to or in respect of an interest of a Board member in a matter or thing that arises merely because the member is a registered veterinary surgeon or engaged in a veterinary science practice. 35

Veterinary Surgeons Amendment Bill 1995

Schedule 4 Miscellaneous amendments

- (8) A reference in this clause to a meeting of the Board includes a reference to a meeting of a committee of the Board.

[4] Schedule 2 Provisions relating to the members and procedure of the Investigating Committee 5

Schedule 2, clause 8

Omit clause 8 (1) (c). Insert instead:

- (c) becomes a mentally incapacitated person,

[5] Schedule 2, clause 9

Omit clause 9. Insert instead: 10

9 Effect of certain other Acts

- (1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a member.
- (2) If, by or under any Act, provision is made: 15
- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
- (b) prohibiting the person from engaging in employment outside the duties of that office, 20
- the provision does not operate to disqualify the person from holding that office and also the office of a member, or from accepting and retaining any remuneration payable to the person under this Act as a member.
- (3) The office of a member is not, for the purposes of any Act, an office or place of profit under the Crown. 25

[6] Schedule 4 Savings, transitional and other provisions

Insert before clause 1:

Part 1 Preliminary

1A Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts: 5

the Veterinary Surgeons Amendment Act 1995.

- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to the Act concerned or from a later date. 10

- (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than its date of publication in the Gazette, the provision does not operate: 15

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of the person existing before the date of publication, or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of publication. 20

Part 2 Provisions consequent on the enactment of this Act 25

[7] Schedule 4, clause 1

Omit "Schedule". Insert instead "Part".

[8] Schedule 4, clause 18

Omit clause 18.

[9] Schedule 4, Part 3

Insert at the end of the Schedule:

**Part 3 Provisions consequent on enactment of
Veterinary Surgeons Amendment Act 1995** 5

19 Director-General defined

In this Part:

Amending Act means the *Veterinary Surgeons
Amendment Act 1995*, 10

Director-General means the Director-General of the
Department of Agriculture.

20 Investigation of complaints by Investigating Committee

(1) A person appointed as the member of the Investigating
Committee referred to in section 24 (3) (e) of this Act 15
may participate in the investigation of a complaint made
to that Committee even though the complaint was made
before the appointment.

(2) The amendments made by Schedule 1 [8]–[11] to the
Amending Act do not apply to complaints made to the 20
Investigating Committee before those amendments took
effect.

21 Constitution of Disciplinary Tribunal

The amendment made by Schedule 1 [5] to the
Amending Act does not apply to the Disciplinary 25
Tribunal in respect of any proceedings for which it was
constituted before the amendment took effect.

22 Right of appeal to Disciplinary Tribunal

Section 30A of this Act does not apply to a veterinary surgeon against whom an order was made under section 28 (1) (b) of this Act before the commencement of Schedule 1 [14] to the Amending Act.

5

23 Powers of Disciplinary Tribunal to make orders

(1) Section 32 of this Act (as in force after the commencement of Schedule 1 [18] to the Amending Act) applies to proceedings before the Disciplinary Tribunal that have not been finally disposed of before that commencement.

10

(2) Section 32 (4) and (5) of this Act (as in force after the commencement of Schedule 1 [18] to the Amending Act) apply to a direction of the Disciplinary Tribunal under section 32 (4) of this Act (as in force immediately before that commencement) as if the direction were a direction of the chairperson of that Tribunal made under section 32 (4) of this Act (as in force after that commencement).

15

24 Appeal against order of Disciplinary Tribunal

20

Section 34 of this Act (as in force before the commencement of Schedule 1 [20]–[23] to the Amending Act) continues to apply to orders of the Disciplinary Tribunal made before that commencement.

25 Restoration of name to register

25

Section 35 of this Act (as in force after the commencement of Schedule 1 [24]–[26] to the Amending Act) applies to persons whose names were removed from a register by the Disciplinary Tribunal before that commencement as if their names had been removed from the register by the chairperson of that Tribunal.

30

26 Recovery of charges and fines

Section 66 of this Act (as in force before the commencement of Schedule 1 [30] to the Amending Act) continues to apply to costs or fines ordered to be paid by the Disciplinary Tribunal, but not recovered, before that commencement. 5

27 Licences issued by Director-General for veterinary hospitals

A licence issued by the Director-General under section 46 of this Act and in force immediately before the commencement of Schedule 2 [2] to the Amending Act is taken to be a licence issued by the Board under that section (as in force after that commencement). 10

28 Applications to Director-General for licences

An application for a licence for a veterinary hospital made to the Director-General under section 48 of this Act and not finally disposed of before the commencement of Schedule 2 [3] to the Amending Act is taken to be an application for such a licence made to the Board under that section (as in force after that commencement). 15
20

29 Licence fee recoverable by Board

A licence fee payable to the Director-General under section 51 of this Act but not paid or recovered before the commencement of Schedule 2 [3] to the Amending Act can be recovered by the Board under section 66 of this Act (as in force after the commencement of Schedule 2 [6] to that Act). 25

30 Suspension of licences for veterinary hospitals

- (1) A licence for a veterinary hospital suspended under section 52 of this Act at the commencement of Schedule 2 [3] to the Amending Act is taken to have 30

been suspended by the Board on the date on which it was suspended by the Director-General, and the suspension has effect as if the amendment made by Schedule 2 [3] to that Act had been in force on that date.

- (2) If the Director-General has served a notice under section 52 (3) of this Act (as in force immediately before the commencement of Schedule 2 [3] to the Amending Act) and has not suspended or cancelled the relevant licence before that commencement, the notice is taken to have been served by the Board on the date on which it was served by the Director-General and as if the amendment made by Schedule 2 [3] to that Act had been in force on that date.

31 Appeals against decisions of Director-General

Section 53 of this Act (as in force after the commencement of Schedule 2 [3] to the Amending Act) applies to decisions of the Director-General made before that commencement as if those decisions had been made by the Board.

32 Superintendents of veterinary hospitals

Permission given, and conditions imposed, by the Director-General under section 54 of this Act and in force immediately before the commencement of Schedule 2 [3] to the Amending Act are taken to have been given or imposed by the Board under that section (as in force after that commencement).

33 Certificates given by Director-General

A certificate purporting to have been signed by the Director-General under section 61 of this Act (as in force before the commencement of Schedule 2 [5] to the Amending Act) is taken to have been signed by the Registrar of the Board under that section (as in force after that commencement).

34 Protection of Director-General from liability

Section 68 of this Act (as in force immediately before the commencement of Schedule 2 [7] to the Amending Act) continues to apply to and in respect of matters or things done before that commencement by or at the direction of the Director-General as if the amendment made by Schedule 2 [7] to that Act had not been enacted. 5

35 Former functions of Director-General to be exercisable by Board 10

Without limiting the operation of the other provisions of this Part, if:

- (a) any act or thing required or permitted to be done by the Director-General under this Act (as in force before the commencement of the amendments made by the Amending Act) has not been done or completed by the Director-General before that commencement, and 15
- (b) that act or thing would be required or permitted to be done by the Board under this Act after that commencement, 20

that act or thing is required or permitted to be done or completed by the Board.

VETERINARY SURGEONS (AMENDMENT) BILL 1995

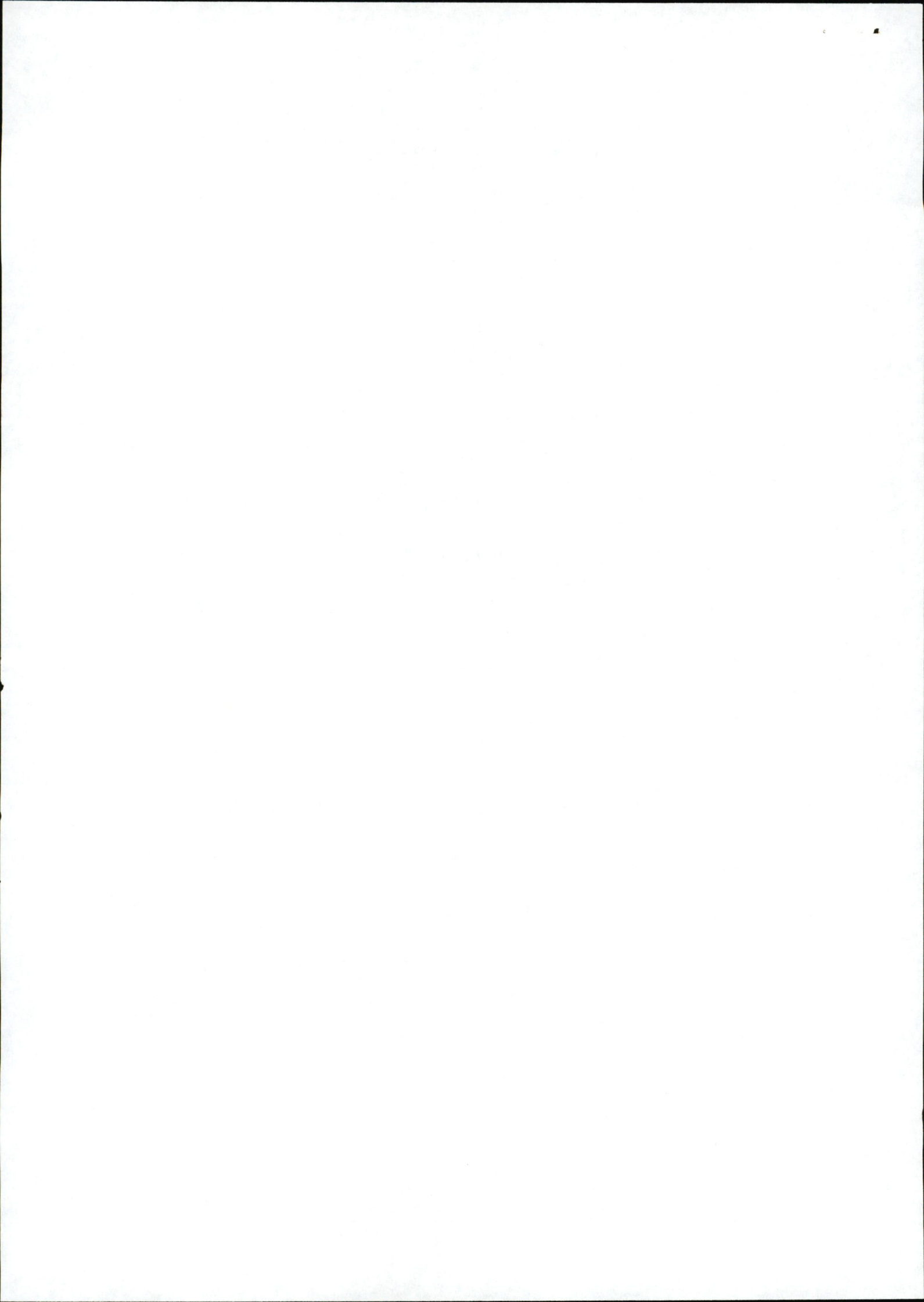
SECOND READING SPEECH

MR PRESIDENT

I MOVE THAT THIS BILL BE READ A SECOND TIME.

THIS BILL SEEKS TO ENABLE THE BOARD OF VETERINARY SURGEONS OF NEW SOUTH WALES TO BECOME FINANCIALLY SELF RELIANT AND TO REINFORCE THE TRUE PURPOSE OF THE VETERINARY SURGEONS ACT WHICH IS TO PROTECT THE PUBLIC AND TO ENHANCE THE WELFARE OF ANIMALS.

THE BOARD ADMINISTERS THE REGISTRATION OF THE STATE'S 1900 VETERINARY SURGEONS AS WELL AS VETERINARY HOSPITALS AND CLINICS, AND OVERSEES THE PROFESSION TO ENSURE A HIGH STANDARD OF SERVICE IS MAINTAINED. THE BOARD'S FUNCTIONS ARE CURRENTLY FUNDED FROM CONSOLIDATED REVENUE THROUGH THE ANNUAL ALLOCATION MADE TO THE DEPARTMENT OF AGRICULTURE.



HOWEVER, ALL FEES AND OTHER MONEYS PAYABLE TO THE BOARD ARE CURRENTLY REMITTED TO TREASURY AND CARRIED TO CONSOLIDATED REVENUE. THE RESPONSIBILITIES OF THE BOARD, NSW AGRICULTURE AND GOVERNMENT UNDER THESE EXISTING ARRANGEMENTS LACK CLARITY.

IN ORDER TO REMEDY THIS, THE AMENDMENTS I NOW PROPOSE WILL RESULT IN ALL REVENUE RAISED BY THE BOARD BEING DEPOSITED IN A DESIGNATED ACCOUNT TO BE USED SOLELY FOR THE PURPOSE OF FUNDING THE BOARD'S OPERATIONS.

A BUSINESS PLAN HAS BEEN PREPARED WHICH DEMONSTRATES THAT REVENUE RAISED BY THE BOARD SHOULD BE SUFFICIENT TO MEET THE BOARD'S NEEDS. THE BUSINESS PLAN HAS BEEN APPROVED BY TREASURY AND IS SUPPORTED BY THE BOARD AND PROFESSION OF VETERINARY SURGEONS GENERALLY.



AS A CONSEQUENCE THE BOARD'S OPERATIONS WILL BECOME MORE TRANSPARENT SINCE THE ACTUAL COST OF PROVIDING THE BOARD'S SERVICES TO THE PROFESSION WILL BE BORNE BY THE BOARD AND THROUGH THEM THE PROFESSION OF VETERINARY SURGEONS.

THE AMENDMENTS WILL ALSO ELIMINATE POTENTIAL CONFLICTS OF INTEREST WITH THE DEPARTMENT OF AGRICULTURE, A SIGNIFICANT EMPLOYER OF VETERINARY SURGEONS, AND CROSS SUBSIDISATION OF THE BOARD'S OPERATIONS BY GOVERNMENT.

IN ORDER TO ACHIEVE THESE OUTCOMES THE FOLLOWING PRINCIPAL AMENDMENTS ARE PROPOSED.

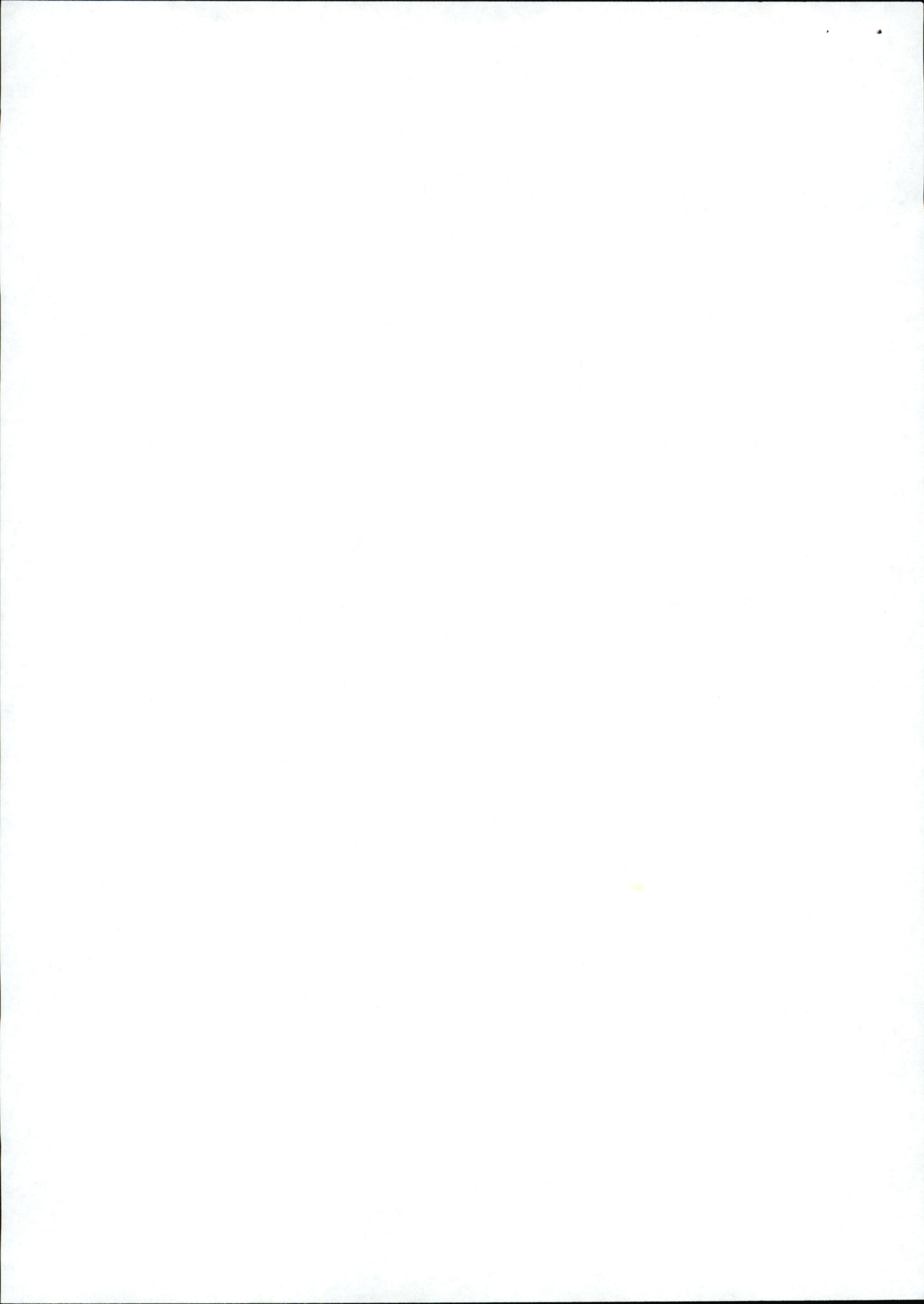
THE AMENDMENTS WHICH DEAL WITH THE BOARD'S FINANCES, HAVE THE EFFECT OF TRANSFERRING THE RESPONSIBILITY FOR FUNDING THE BOARD'S OPERATIONS UNDER THE PRINCIPAL ACT FROM THE TREASURER TO THE BOARD.

A SPECIAL FUND FOR THE BOARD, KNOWN AS THE 'NSW VETERINARY SURGEONS FUND' IS TO BE CREATED WITH ALL EXPENSES INCURRED IN ADMINISTERING THE PRINCIPAL ACT TO BE PAID FROM THE FUND.

SINCE STAFF ENGAGED BY THE BOARD ARE EMPLOYED UNDER THE PUBLIC SECTOR MANAGEMENT ACT 1988, PROVISION IS MADE FOR THE BOARD TO REIMBURSE THE CONSOLIDATED FUND AN AMOUNT EQUAL TO THE COST TO THE CONSOLIDATED FUND OF REMUNERATING THE BOARD'S STAFF.

TO ENSURE THAT FUNDS ARE EFFECTIVELY UTILISED, PROVISION HAS BEEN INCLUDED FOR THE BOARD TO INVEST MONEY HELD IN THE FUND IN ACCORDANCE WITH EXISTING GOVERNMENT POLICY.

OTHER CONSEQUENTIAL AMENDMENTS ARE SET OUT IN SCHEDULE 1. THESE AMENDMENTS WILL ALLOW THE BOARD TO APPOINT INSPECTORS TO ENABLE IT TO ENFORCE PROVISIONS OF THE PRINCIPAL ACT.

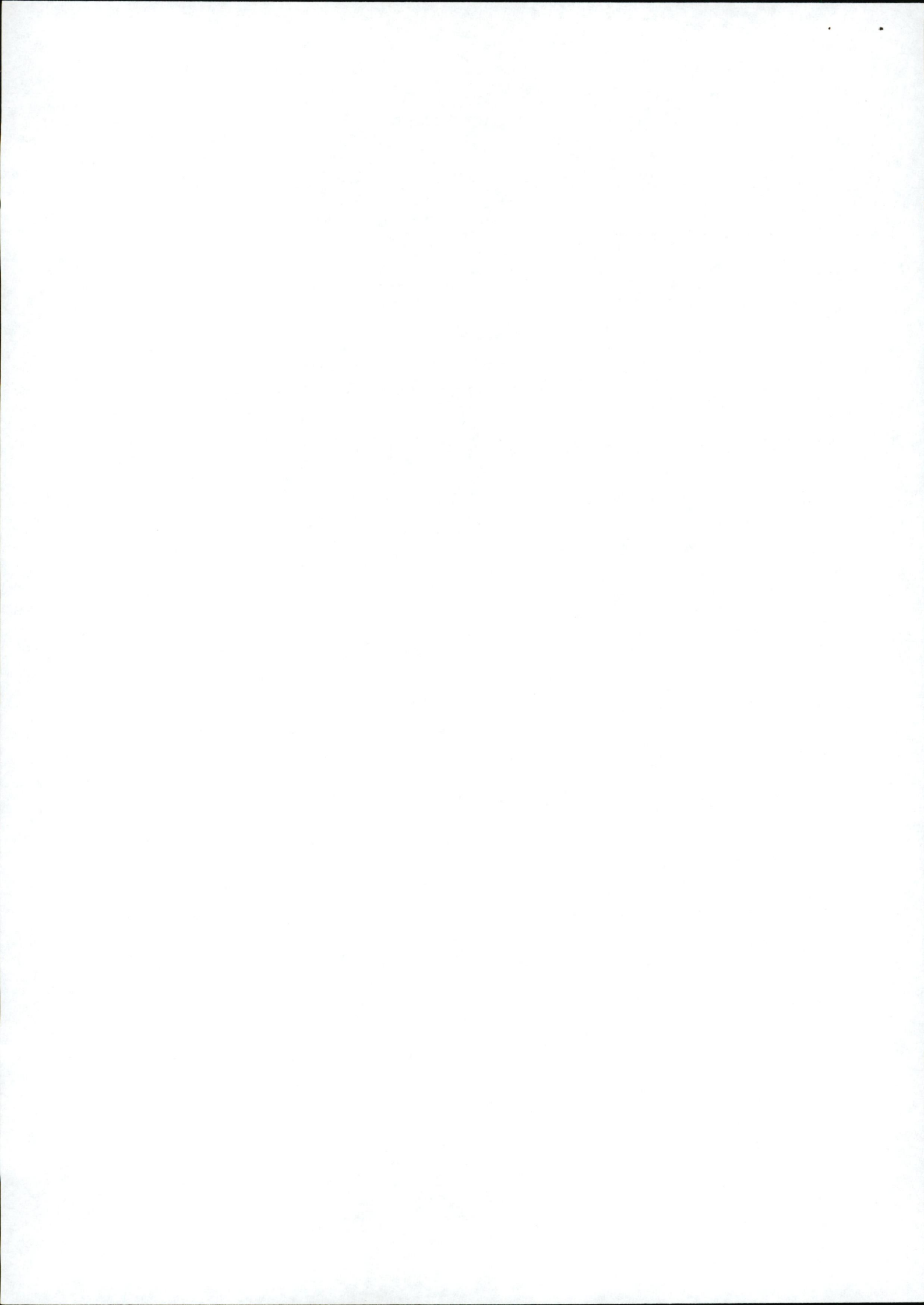


INSPECTORS APPOINTED WILL BE PROVIDED WITH WARRANTS OF AUTHORITY AND REQUIRED TO PRODUCE THOSE WARRANTS ON REQUEST WHEN EXERCISING POWERS UNDER THE ACT.

IF AN INSPECTOR FAILS TO PRODUCE THEIR WARRANT OF AUTHORITY THE PERSON TO WHOM THE INSPECTOR IS EXERCISING HIS POWERS IS NOT GUILTY OF AN OFFENCE UNDER THE PRINCIPAL ACT.

THESE PROVISIONS ENSURE THAT INSPECTORS WILL RESPECT THE RIGHTS OF THE PUBLIC, PROVIDE A GUARD AGAINST IMPERSONATION OF INSPECTORS AND WILL ASSIST IN ENSURING THAT ALL INVESTIGATIONS ARE UNDERTAKEN IN A FAIR AND REASONABLE MANNER.

PROVISION HAS BEEN MADE TO TRANSFER LICENSING OF VETERINARY HOSPITALS, UNDER PART 6 OF THE PRINCIPAL ACT, FROM THE DIRECTOR-GENERAL OF THE DEPARTMENT OF AGRICULTURE TO THE BOARD.



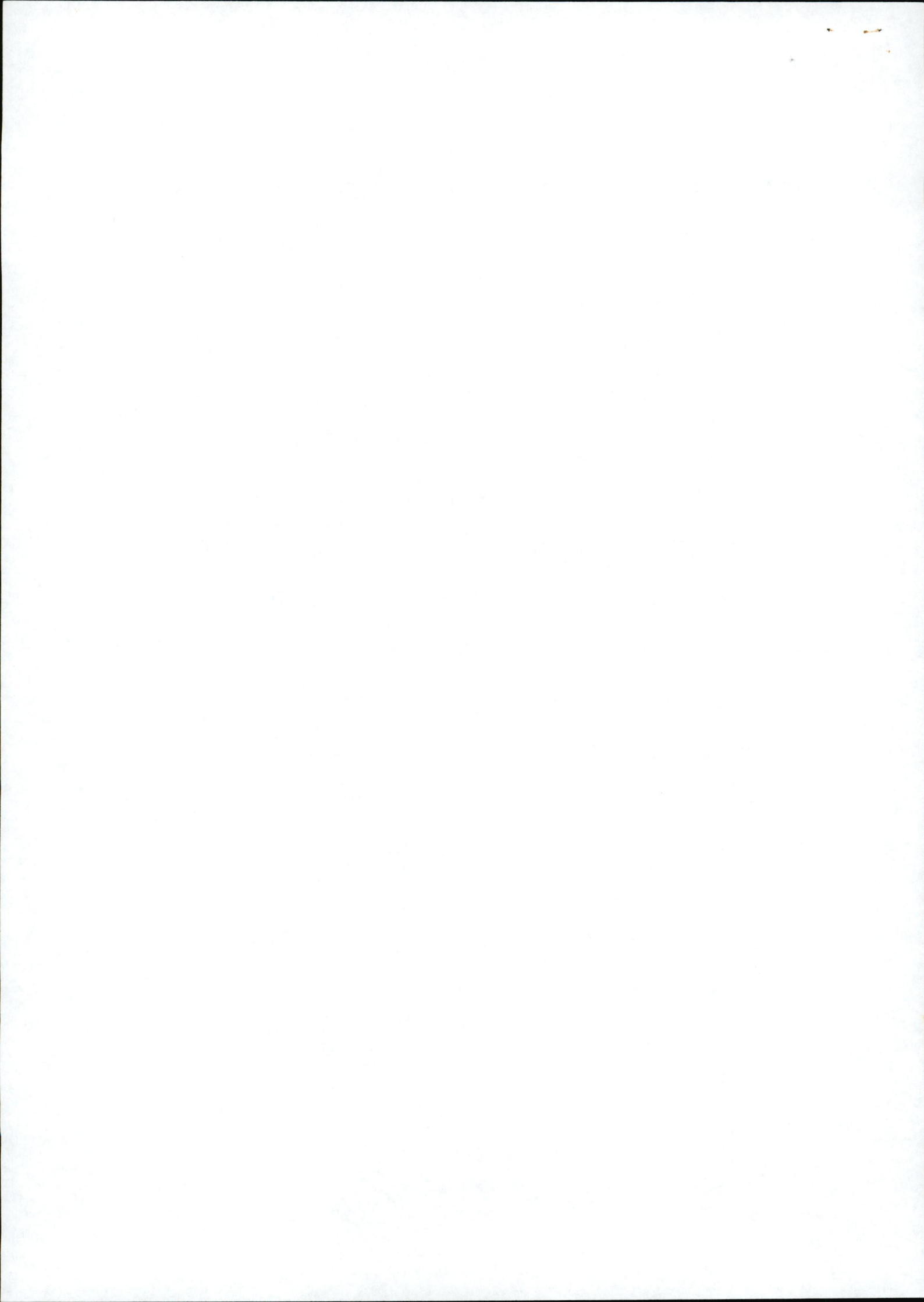
THESE PROVISIONS PROVIDE FOR LOGICAL CONSISTENCY AS THE BOARD ALREADY HAS RESPONSIBILITY FOR REGISTERING VETERINARY SURGEONS. OTHER AMENDMENTS INCLUDED IN SCHEDULE 1 ARE CONSEQUENTIAL ON THOSE AMENDMENTS.

PROVISION HAS ALSO BEEN MADE TO INCREASE THE MEMBERSHIP AND POWERS OF THE VETERINARY SURGEONS INVESTIGATING COMMITTEE. THE MEMBERSHIP OF THE COMMITTEE WILL BE EXPANDED TO PROVIDE FOR THE APPOINTMENT OF A CONSUMER REPRESENTATIVE TO GIVE A NON VETERINARY INPUT INTO THE DETERMINATION OF COMPLAINTS. EXPANSION OF THE COMMITTEE'S POWERS IS SOUGHT TO ENABLE COMPLAINTS TO BE MORE SATISFACTORILY DEALT WITH AT COMMITTEE LEVEL. THIS WILL SAVE VETERINARY SURGEONS AND THE BOARD FROM THE HIGH COSTS OF TRIBUNAL PROCEEDINGS. THE EXPANDED POWERS WILL ENABLE THE COMMITTEE TO PERFORM A MORE EFFECTIVE REHABILITATION ROLE, BENEFITING THE PUBLIC, THE PROFESSION AND THE VETERINARY SURGEON, RATHER THAN JUST A PUNITIVE ROLE.

FOR EXAMPLE, IT IS ENVISAGED THAT THE COMMITTEE WILL IMPOSE REMEDIAL EDUCATION REQUIREMENTS AS A CONDITION OF CONTINUED REGISTRATION WHERE APPROPRIATE.

IN SUMMARY, THESE AMENDMENTS WILL ENABLE THE BOARD OF VETERINARY SURGEONS OF NEW SOUTH WALES TO BECOME AN INDEPENDENT BODY WITH ALL REVENUE RAISED BEING DEDICATED TO ACHIEVING THE OBJECTS OF THE VETERINARY SURGEONS ACT 1986. FURTHERMORE THE AMENDMENTS WILL ENABLE THE BOARD TO CARRY OUT ITS DUTIES AND RESPONSIBILITIES IN A MANNER CONSISTENT WITH GOVERNMENT POLICY, MEETING THE NEEDS OF THE PUBLIC, THE PROFESSION AND THE WELFARE OF ANIMALS.

I COMMEND THIS BILL TO THE HOUSE.





New South Wales

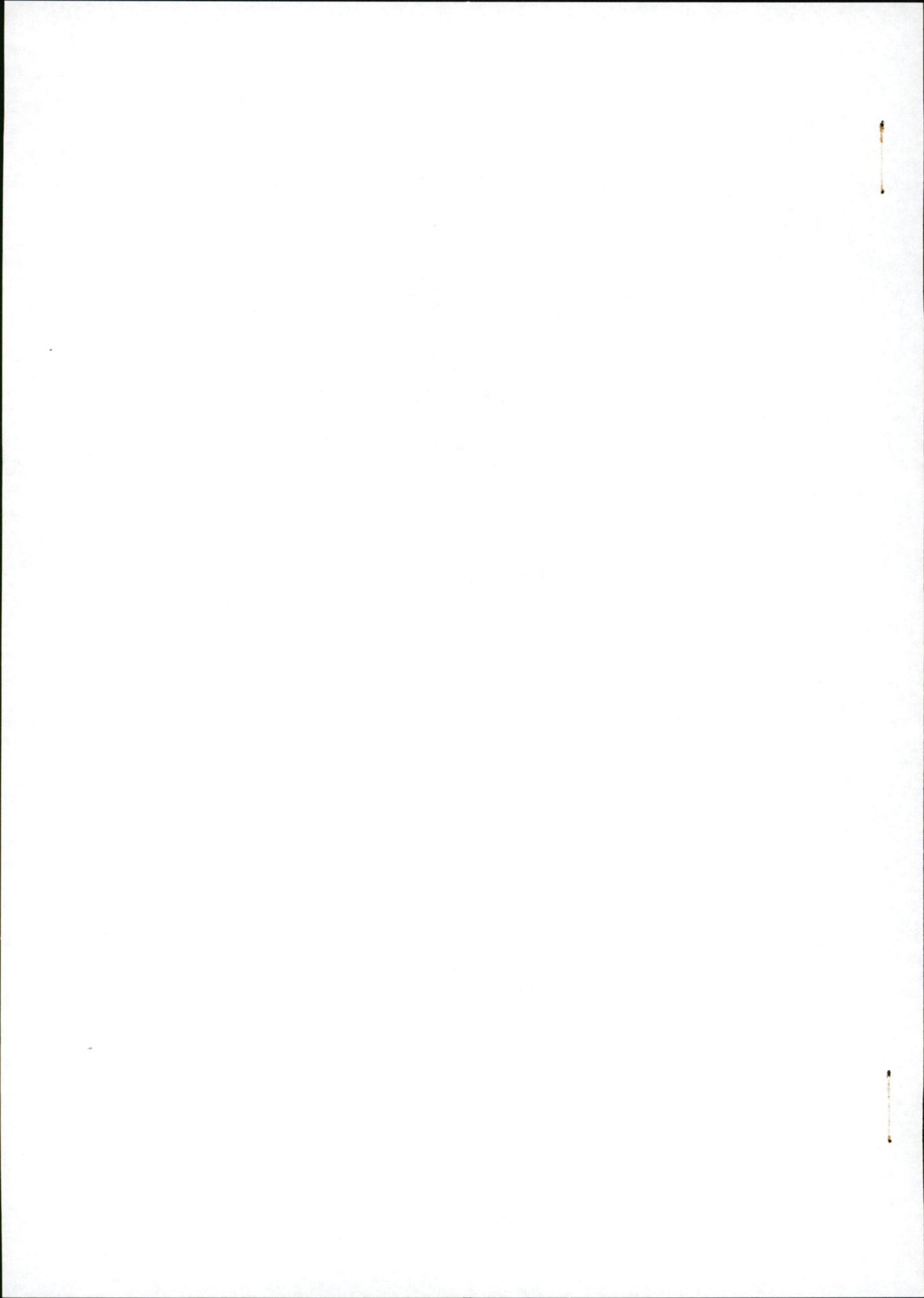
Veterinary Surgeons Amendment Act 1995 No 48

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Veterinary Surgeons Act 1986 No 55	2

Schedules

1 Amendments relating to disciplinary proceedings	3
2 Amendments relating to licensing of veterinary hospitals	15
3 Amendments relating to finances of Board of Veterinary Surgeons	17
4 Miscellaneous amendments	20





New South Wales

Veterinary Surgeons Amendment Act 1995 No 48

Act No 48, 1995

An Act to amend the *Veterinary Surgeons Act 1986* with respect to disciplinary proceedings against veterinary surgeons, the licensing of veterinary hospitals and the financing of the operations of the Board of Veterinary Surgeons, and for other purposes. [Assented to 26 October 1995]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Veterinary Surgeons Amendment Act 1995*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Veterinary Surgeons Act 1986 No 55

The *Veterinary Surgeons Act 1986* is amended as set out in Schedules 1-4.

Schedule 1 Amendments relating to disciplinary proceedings

(Section 3)

[1] Section 24 Constitution of Veterinary Surgeons Investigating Committee

Section 24 (2)

Omit "4 members". Insert instead "5 members".

[2] Section 24 (3)

Insert "and" at the end of section 24 (3) (a) and at the end of section 24 (3) (b).

[3] Section 24 (3) (e)

Insert at the end of section 24 (3) (d):

, and

- (e) 1 shall be a person who is not a veterinary surgeon and who is appointed to represent the interests of users of veterinary services.

[4] Section 25 Constitution of Veterinary Surgeons Disciplinary Tribunal

Section 25 (2)

Insert at the end of section 25 (2):

, and

- (c) a person who is not a veterinary surgeon and who is appointed by the Minister to represent the interests of users of veterinary services.

[5] Section 25 (3)

Omit "and 2 members of the Board".

Insert instead ", 2 members of the Board and the person referred to in subsection (2) (c)".

[6] Section 26 Complaints against veterinary surgeons

Section 26 (1)

Insert at the end of section 26 (1) (a), (b), (c) and (d) "or".

[7] Section 26 (1)

Insert at the end of section 26 (1):

, or

- (g) has contravened any condition imposed on the registration of the veterinary surgeon under section 28 (1) or 32 (1).

[8] Section 28 Decision of Investigating Committee on complaint

Section 28 (1) (b)

Omit "do either or both of the following".

Insert instead "do all or any of the following".

[9] Section 28 (1) (b) (ii)

Omit "or" where lastly occurring.

[10] Section 28 (1) (b) (iii)

Insert after section 28 (1) (b) (ii):

- (iii) by order impose conditions on the registration of the veterinary surgeon with respect to the practice of veterinary science, being conditions of a temporary nature (including limitations on the right to practise) in connection with the veterinary surgeon's continuing education, acquisition of skills and professional supervision, or

[11] Section 28 (3)

Omit section 28 (3). Insert instead:

- (3) The Investigating Committee must, before exercising its powers under subsection (1) (b) or (c), give the registered veterinary surgeon concerned an opportunity to make written representations to the Committee. If, after receiving written representations, the Committee is still considering whether or not it should exercise those powers, it must give that veterinary surgeon an opportunity to appear before it to make oral representations.

[12] Heading to Division 4 of Part 4

Omit the heading.

Insert instead "Division 4—Proceedings before Disciplinary Tribunal".

[13] Section 30 Inquiry by Disciplinary Tribunal

Section 30 (1)

Omit "The proceedings before".

Insert instead "An inquiry held by".

[14] Section 30A

Insert after section 30:

30A Right of appeal to Disciplinary Tribunal

- (1) A veterinary surgeon against whom the Investigating Committee has made an order under section 28 (1) (b) may appeal to the Disciplinary Tribunal against the order.
- (2) An appeal must be lodged in writing with the chairperson of the Disciplinary Tribunal within 28 days after the date on which the veterinary surgeon is notified of the Investigating Committee's order. The appeal must specify the grounds on which it is based.
- (3) An appeal against an order of the Investigating Committee is to be dealt with by way of a new hearing. Fresh evidence, or evidence in addition to or in substitution for the evidence given before the Investigating Committee, may be given at the hearing of such an appeal.
- (4) The Disciplinary Tribunal is, on the hearing of an appeal, required to sit in open court. The appellant may appear at the appeal in person or be represented by a legal practitioner.
- (5) The person who made the complaint that gave rise to the order that is the subject of an appeal may be (but is not obliged to be) present at the hearing and may be represented by a legal practitioner.
- (6) For the purpose of the hearing of an appeal, the Disciplinary Tribunal and the chairperson or deputy chairperson have the powers, authorities, protections and immunities conferred by the *Royal Commissions Act 1923* on a commissioner and the chairperson of a commission respectively appointed under Division 1 of Part 2 of that Act. That Act (Division 2 of Part 2

excepted) applies to any witness summoned by or appearing before the Disciplinary Tribunal in the same way as it applies to a witness summoned before a royal commission.

- (7) At the end of the hearing of an appeal, the Disciplinary Tribunal may confirm, quash or vary the order appealed against, having regard to the merits of the case. The Disciplinary Tribunal must set out the reasons for its decision.
- (8) If the persons constituting the Disciplinary Tribunal are divided in opinion as to the decision to be given on any question (not being a question to which section 31 (5) relates), the question is to be decided according to the opinion of the majority, if there is a majority, but if those persons are equally divided in opinion, the decision is to be in favour of the appellant.
- (9) As soon as practicable after a decision under this section is made in respect of a registered veterinary surgeon, the Registrar must give notice of the decision to the veterinary surgeon.
- (10) A decision under this section does not take effect until 21 days after notice of the decision is given to the veterinary surgeon by the Registrar, subject to any decision of the Supreme Court on appeal under section 34.

[15] Section 31 Powers of chairperson of Disciplinary Tribunal

Section 31 (1) and (6)

Insert "or an appeal" after "an inquiry" wherever occurring.

[16] Section 31 (2) and (3)

Omit "inquiry" wherever occurring. Insert instead "hearing".

[17] Section 31 (5)

Insert "or appeal heard by the Disciplinary Tribunal" after "any inquiry".

[18] Section 32

Omit section 32. Insert instead:

32 Chairperson may make disciplinary orders

- (1) If the matter of a complaint against a registered veterinary surgeon has been proved to the satisfaction of the Disciplinary Tribunal, the chairperson may make any one or more of the following orders:
 - (a) an order reprimanding or cautioning the veterinary surgeon,
 - (b) an order suspending the veterinary surgeon from practice for a period not exceeding 12 months,
 - (c) an order directing that the name of the veterinary surgeon be removed from the register of veterinary surgeons or the register of specialists,
 - (d) an order imposing a fine on the veterinary surgeon of an amount not exceeding \$10,000,
 - (e) an order imposing conditions on the registration of the veterinary surgeon with respect to the practice of veterinary science,
 - (f) an order requiring the veterinary surgeon to pay specified costs relating to the hearing.
- (2) Even though the matter of a complaint against a registered veterinary surgeon may have been proved to the satisfaction of the Disciplinary Tribunal, the chairperson must not make an order of the kind referred to in subsection (1) (b) or (c) if the Disciplinary Tribunal is of the opinion that:
 - (a) because the matter of the complaint is of a trivial nature, or

- (b) because of the circumstances in which that matter occurred, or
- (c) for any other reason,

it is in the public interest that the veterinary surgeon should be allowed to continue to practise veterinary science.

- (3) If the Disciplinary Tribunal considers that the matter of a complaint against a registered veterinary surgeon has not been proved to the satisfaction of the Tribunal, but the Tribunal nevertheless considers that the conduct of the veterinary surgeon was sufficiently unacceptable to warrant the making of the complaint, the chairperson may make an order against the veterinary surgeon under subsection (1) (a) or (f), or both.
- (4) On directing the name of a person to be removed from a register, the chairperson may fix a time after which the person may apply for restoration of the person's name to the register.
- (5) While an order under this section suspending a person from practice remains in force, the person is taken not to be a registered veterinary surgeon.
- (6) The chairperson must, when making an order under this section, specify the reasons for the order.
- (7) As soon as practicable after an order under this section is made against a registered veterinary surgeon, the Registrar must give notice of the order to the veterinary surgeon.
- (8) An order under this section does not take effect until 21 days after notice of the order is given to the veterinary surgeon by the Registrar, subject to any decision of the Supreme Court on appeal under section 34.

[19] Section 33 Disciplinary proceedings against veterinary surgeon who ceases to be registered

Section 33 (2)

Omit "Disciplinary Tribunal" wherever occurring.
Insert instead "chairperson".

[20] Section 34 Appeal against order of chairperson

Section 34 (1)

Omit "Disciplinary Tribunal". Insert instead "chairperson".

[21] Section 34 (1A)

Insert after section 34 (1):

- (1A) A registered veterinary surgeon may also appeal to the Supreme Court against a decision made under section 30A in respect of the veterinary surgeon by the Disciplinary Tribunal confirming or varying an order of the Investigating Committee made under section 28.

[22] Section 34 (5)

Insert "under subsection (1)" after "hearing of an appeal".

[23] Section 34 (6)

Omit section 34 (6). Insert instead:

- (6) Without limiting subsection (4), the Supreme Court may, in respect of the veterinary surgeon concerned:

- (a) make any decision that could have been made under section 30A, or any order that could have been made under section 32, or
 - (b) vary any decision made under section 30A, or any order made under section 32,
- as the case requires.

[24] Section 35 Restoration of name to register etc

Section 35 (1)

Omit "Disciplinary Tribunal". Insert instead "chairperson".

[25] Section 35 (3)

Omit "by it". Insert instead "by the chairperson".

[26] Section 35 (4)

Omit "Disciplinary Tribunal" where secondly occurring.
Insert instead "chairperson".

[27] Section 36 Recording of proceedings and decisions of Investigating Committee and Disciplinary Tribunal

Section 36 (1)

Insert "and all orders of the chairperson made under section 32" after "Disciplinary Tribunal".

[28] Section 36 (2) (a)

Omit "Disciplinary Tribunal". Insert instead "chairperson".

[29] Section 62 Proof of certain matters not required

Section 62 (b)

Insert “, or any order of the chairperson of that Tribunal” after “Disciplinary Tribunal”.

[30] Section 66 Recovery of charges, fines etc

Section 66 (2)

Insert “the chairperson of” after “Investigating Committee or”.

[31] Schedule 2 Provisions relating to the members and procedure of the Investigating Committee

Insert “or (e)” after “(a)–(c)” in clause 5 (a).

[32] Schedule 3 Provisions relating to the members of the Disciplinary Tribunal

Schedule 3, clause 1A

Insert before clause 1:

1A Definition of consumer member

In this Schedule, *consumer member* means the member referred to in section 25 (2) (c).

[33] Schedule 3, clauses 3A–3C

Insert after clause 3:

3A Acting consumer member

- (1) The Minister may, from time to time, appoint a person to act in the office of the consumer member of the Tribunal during the illness or absence of the member, and, while so acting, has and may exercise all the functions of the member and is taken to be the consumer member.

-
- (2) The Minister may remove from office a person appointed under this clause.
 - (3) A person is, while acting as consumer member of the Tribunal, entitled to be paid such remuneration (including travel and subsistence allowances) as the Minister may from time to time determine in respect of the person.
 - (4) For the purposes of this clause, a vacancy in the office of consumer member of the Tribunal is taken to be an absence from office of the member.

3B Term of office of consumer member

Subject to this Schedule, the consumer member holds office for such period, not exceeding 3 years, as may be specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

3C Filling of vacancy in office of consumer member

If the office of consumer member becomes vacant, a person is to be appointed to fill the vacancy, subject to this Act.

[34] Schedule 3, clause 4

Insert at the end of clause 4:

- (2) The consumer member is taken to have vacated office if the member:
 - (a) dies, or
 - (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
 - (c) becomes a mentally incapacitated person, or

- (d) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable, or
 - (e) resigns the office in writing addressed to the Minister, or
 - (f) is removed from office under subclause (3).
- (3) The Minister may remove the consumer member from office at any time.

[35] Schedule 3, clause 6

Insert after clause 5:

6 Effect of certain other Acts

- (1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of the consumer member.
- (2) If, by or under any Act, provision is made:
 - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
 - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office or the office of consumer member, or from accepting and retaining any remuneration payable to the person under this Act as the consumer member.

Schedule 2 Amendments relating to licensing of veterinary hospitals

(Section 3)

[1] Section 3 Definitions

Omit the definition of "Director-General" from section 3 (1).

[2] Section 46 Veterinary hospitals to be licensed

Omit "Director-General" from section 46 (a).
Insert instead "Board".

[3] Sections 48, 49, 51, 52, 53 and 54

Omit "Director-General" wherever occurring.
Insert instead "Board".

[4] Section 55 Power of entry and examination

Omit section 55 (6). Insert instead:

- (6) The Board may appoint as an inspector for the purposes of this Act:
 - (a) any member of its staff, or
 - (b) with the approval of the Minister, any public servant.
- (7) The Board may, at any time, revoke the appointment of an inspector.
- (8) An inspector must, at the request of a person in relation to whom the inspector is exercising or proposing to exercise powers under this Act, produce a written authority issued by the Board authorising the inspector to exercise those powers.

[5] Section 61 Certificate of President or Registrar of Board to be evidence

Omit "Director-General".

Insert instead "President or Registrar of the Board".

[6] Section 66 Recovery of charges, fines etc

Omit "or the Director-General" wherever occurring in section 66 (1) .

[7] Section 68 Liability of members etc

Omit ", the Director-General" wherever occurring.

[8] Section 68

Omit ", that Tribunal or the Director-General".

Insert instead "or that Tribunal".

Schedule 3 Amendments relating to finances of Board of Veterinary Surgeons

(Section 3)

[1] Section 3 Definitions

Insert after the definition of *Disciplinary Tribunal* in section 3 (1):

Fund means the New South Wales Veterinary Surgeons Fund referred to in section 54A.

[2] Part 6A

Insert after Part 6:

Part 6A Finance

54A Establishment of Fund

There is established by this section a fund to be known as the New South Wales Veterinary Surgeons Fund.

54B Payments into Fund

There are payable into the Fund:

- (a) all fees paid to or recovered by the Board and all fines and costs paid or recovered in consequence of orders made by the Investigating Committee or the chairperson of the Disciplinary Tribunal under this Act, and
- (b) other money received by or on account of the Board, and
- (c) interest that accrues from the investment of money belonging to the Fund, and
- (d) money borrowed by the Board or appropriated by Parliament for the purposes of the Board, and
- (e) other money required by or under this or any other Act or law to be paid into the Fund.

54C Payments from Fund

- (1) There are payable from the Fund:
 - (a) all expenses incurred by the Board, the Investigating Committee or the Disciplinary Tribunal in the administration of this Act, and
 - (b) any remuneration payable to members of the Board, the Investigating Committee or the Disciplinary Tribunal, and
 - (c) all other money required by or under this or any other Act or law to be paid from the Fund.
- (2) Without limiting subsection (1), there is to be paid from the Fund to the Treasurer, in accordance with the Treasurer's directions, for crediting to the Consolidated Fund such amounts as the Treasurer certifies to be chargeable against the Board in respect of the Board's staff.
- (3) The Board may apply money that is not required for the purposes of subsection (1) or (2) for the purpose of advancing veterinary science in any manner the Board considers appropriate.

54D Board to establish and maintain account at financial institution

The Board must establish and maintain an account at a bank located in New South Wales, or at any other financial institution approved by the Treasurer, and ensure that all money received by the Board for payment into the Fund is paid into the account.

54E Investment of Fund

The Board may invest money held in the Fund:

- (a) in such manner as may be authorised by the *Public Authorities (Financial Arrangements) Act 1987*, or
- (b) if that Act does not confer power to invest money held by the Board—in any manner authorised for the investment of trust funds or in any other manner approved by the Minister with the concurrence of the Treasurer.

54F Financial year of Board

- (1) The financial year of the Board is the year commencing on 1 July.
- (2) A different financial year may be determined by the Treasurer under section 4 (1A) of the *Public Finance and Audit Act 1983*.

[3] Section 67 Fees etc payable to Treasury

Omit the section.

Schedule 4 Miscellaneous amendments

(Section 3)

[1] Section 51 Annual licence fee

Omit "31 March" from section 51 (1). Insert instead "30 June".

[2] Section 70 Proceedings for offences

Insert at the end of the section:

- (2) Proceedings for such an offence may be brought only within 12 months after the date on which the offence is alleged to have been committed.

[3] Schedule 1 Provisions relating to the members and procedure of the Board

Insert after clause 9:

9A Disclosure of pecuniary interests

- (1) A Board member who has a direct or indirect pecuniary interest:
 - (a) in a matter that is being considered, or is about to be considered, at a meeting of the Board, or
 - (b) in a thing being done or about to be done by the Board,must, as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of the interest at a meeting of the Board.
- (2) A disclosure by a Board member at a meeting of the Board that the member:
 - (a) is a member, or is in the employment, of a specified company or other body, or
 - (b) is a partner, or is in the employment, of a specified person, or

- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

- (3) The Board must ensure that particulars of any disclosure made under this clause are recorded in a book kept for the purpose and that the book is kept open at all reasonable hours for inspection by any person.
- (4) After a Board member has disclosed the nature of an interest in any matter or thing in accordance with this clause, the member must not, unless the Board otherwise determines:
- (a) be present during any deliberation of the Board, or take part in any decision of the Board, with respect to the matter, or
- (b) exercise any functions under this Act or the regulations with respect to that thing.
- (5) For the purposes of making a determination by the Board under subclause (4), if a Board member has a direct or indirect pecuniary interest in a matter to which the disclosure relates, he or she must not:
- (a) be present during any deliberation of the Board for the purpose of making the determination, or
- (b) take part in the making by the Board of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Board or the exercise of any function under this Act or the regulations.
- (7) This clause does not apply to or in respect of an interest of a Board member in a matter or thing that arises merely because the member is a registered veterinary surgeon or engaged in a veterinary science practice.

- (8) A reference in this clause to a meeting of the Board includes a reference to a meeting of a committee of the Board.

[4] Schedule 2 Provisions relating to the members and procedure of the Investigating Committee

Schedule 2, clause 8

Omit clause 8 (1) (c). Insert instead:

- (c) becomes a mentally incapacitated person,

[5] Schedule 2, clause 9

Omit clause 9. Insert instead:

9 Effect of certain other Acts

- (1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a member.
- (2) If, by or under any Act, provision is made:
- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
- (b) prohibiting the person from engaging in employment outside the duties of that office,
- the provision does not operate to disqualify the person from holding that office and also the office of a member, or from accepting and retaining any remuneration payable to the person under this Act as a member.
- (3) The office of a member is not, for the purposes of any Act, an office or place of profit under the Crown.

[6] Schedule 4 Savings, transitional and other provisions

Insert before clause 1:

Part 1 Preliminary

1A Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

the Veterinary Surgeons Amendment Act 1995.

- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to the Act concerned or from a later date.

- (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than its date of publication in the Gazette, the provision does not operate:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of the person existing before the date of publication, or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of publication.

Part 2 Provisions consequent on the enactment of this Act

[7] Schedule 4, clause 1

Omit "Schedule". Insert instead "Part".

[8] Schedule 4, clause 18

Omit clause 18.

[9] Schedule 4, Part 3

Insert at the end of the Schedule:

**Part 3 Provisions consequent on enactment of
Veterinary Surgeons Amendment Act 1995**

19 Director-General defined

In this Part:

Amending Act means the *Veterinary Surgeons Amendment Act 1995*,

Director-General means the Director-General of the Department of Agriculture.

20 Investigation of complaints by Investigating Committee

- (1) A person appointed as the member of the Investigating Committee referred to in section 24 (3) (e) of this Act may participate in the investigation of a complaint made to that Committee even though the complaint was made before the appointment.
- (2) The amendments made by Schedule 1 [8]–[11] to the Amending Act do not apply to complaints made to the Investigating Committee before those amendments took effect.

21 Constitution of Disciplinary Tribunal

The amendment made by Schedule 1 [5] to the Amending Act does not apply to the Disciplinary Tribunal in respect of any proceedings for which it was constituted before the amendment took effect.

22 Right of appeal to Disciplinary Tribunal

Section 30A of this Act does not apply to a veterinary surgeon against whom an order was made under section 28 (1) (b) of this Act before the commencement of Schedule 1 [14] to the Amending Act.

23 Powers of Disciplinary Tribunal to make orders

- (1) Section 32 of this Act (as in force after the commencement of Schedule 1 [18] to the Amending Act) applies to proceedings before the Disciplinary Tribunal that have not been finally disposed of before that commencement.
- (2) Section 32 (4) and (5) of this Act (as in force after the commencement of Schedule 1 [18] to the Amending Act) apply to a direction of the Disciplinary Tribunal under section 32 (4) of this Act (as in force immediately before that commencement) as if the direction were a direction of the chairperson of that Tribunal made under section 32 (4) of this Act (as in force after that commencement).

24 Appeal against order of Disciplinary Tribunal

Section 34 of this Act (as in force before the commencement of Schedule 1 [20]–[23] to the Amending Act) continues to apply to orders of the Disciplinary Tribunal made before that commencement.

25 Restoration of name to register

Section 35 of this Act (as in force after the commencement of Schedule 1 [24]–[26] to the Amending Act) applies to persons whose names were removed from a register by the Disciplinary Tribunal before that commencement as if their names had been removed from the register by the chairperson of that Tribunal.

26 Recovery of charges and fines

Section 66 of this Act (as in force before the commencement of Schedule 1 [30] to the Amending Act) continues to apply to costs or fines ordered to be paid by the Disciplinary Tribunal, but not recovered, before that commencement.

27 Licences issued by Director-General for veterinary hospitals

A licence issued by the Director-General under section 46 of this Act and in force immediately before the commencement of Schedule 2 [2] to the Amending Act is taken to be a licence issued by the Board under that section (as in force after that commencement).

28 Applications to Director-General for licences

An application for a licence for a veterinary hospital made to the Director-General under section 48 of this Act and not finally disposed of before the commencement of Schedule 2 [3] to the Amending Act is taken to be an application for such a licence made to the Board under that section (as in force after that commencement).

29 Licence fee recoverable by Board

A licence fee payable to the Director-General under section 51 of this Act but not paid or recovered before the commencement of Schedule 2 [3] to the Amending Act can be recovered by the Board under section 66 of this Act (as in force after the commencement of Schedule 2 [6] to that Act).

30 Suspension of licences for veterinary hospitals

- (1) A licence for a veterinary hospital suspended under section 52 of this Act at the commencement of Schedule 2 [3] to the Amending Act is taken to have

been suspended by the Board on the date on which it was suspended by the Director-General, and the suspension has effect as if the amendment made by Schedule 2 [3] to that Act had been in force on that date.

- (2) If the Director-General has served a notice under section 52 (3) of this Act (as in force immediately before the commencement of Schedule 2 [3] to the Amending Act) and has not suspended or cancelled the relevant licence before that commencement, the notice is taken to have been served by the Board on the date on which it was served by the Director-General and as if the amendment made by Schedule 2 [3] to that Act had been in force on that date.

31 Appeals against decisions of Director-General

Section 53 of this Act (as in force after the commencement of Schedule 2 [3] to the Amending Act) applies to decisions of the Director-General made before that commencement as if those decisions had been made by the Board.

32 Superintendents of veterinary hospitals

Permission given, and conditions imposed, by the Director-General under section 54 of this Act and in force immediately before the commencement of Schedule 2 [3] to the Amending Act are taken to have been given or imposed by the Board under that section (as in force after that commencement).

33 Certificates given by Director-General

A certificate purporting to have been signed by the Director-General under section 61 of this Act (as in force before the commencement of Schedule 2 [5] to the Amending Act) is taken to have been signed by the Registrar of the Board under that section (as in force after that commencement).

34 Protection of Director-General from liability

Section 68 of this Act (as in force immediately before the commencement of Schedule 2 [7] to the Amending Act) continues to apply to and in respect of matters or things done before that commencement by or at the direction of the Director-General as if the amendment made by Schedule 2 [7] to that Act had not been enacted.

35 Former functions of Director-General to be exercisable by Board

Without limiting the operation of the other provisions of this Part, if:

- (a) any act or thing required or permitted to be done by the Director-General under this Act (as in force before the commencement of the amendments made by the Amending Act) has not been done or completed by the Director-General before that commencement, and
- (b) that act or thing would be required or permitted to be done by the Board under this Act after that commencement,

that act or thing is required or permitted to be done or completed by the Board.

[Minister's second reading speech made in—
Legislative Assembly on 20 September 1995
Legislative Council on 12 October 1995]