

2015

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

VETERINARY SURGEONS BILL 2015

EXPLANATORY STATEMENT

**Presented by
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VETERINARY SURGEONS BILL 2015

Introduction

This explanatory statement relates to the Veterinary Surgeons Bill 2015 (the Bill) as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.

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

Overview of the Bill

The purpose of this Bill is to repeal the *Health Professionals Act 2004* (HPA) and create professional specific legislation for veterinary surgeons. The HPA and associated regulations previously covered the regulation of all health profession occupational boards in the Territory. This covered around 17 boards. In July 2010, a nationally harmonized scheme was created for health professional regulation and new legislation enacted to cover the national arrangements.

The only health professional board in the Territory which continued operating under the HPA was the Veterinary Surgeons Board (the Board) which was not captured by the national scheme. It became apparent that it was no longer appropriate to continue covering a single board under the HPA.

This Bill creates legislation which mirrors the current arrangements under which the Board operates. It aims to modernise and update to reflect current drafting standards and also to streamline the broader provisions of the HPA to be profession specific. The Bill does incorporate provisions previously contained in regulations under the HPA although regulations will still be required.

The Bill also amends other legislation as a consequence of the repeal of the Bill.

In addition to creating a new Act and repealing the HPA, the Bill also contains technical amendments to the *Human Rights Commission Act 2005* which are consequential to the operation of the Health Practitioner Regulation National law (ACT).

OUTLINE OF PROVISIONS OF THE BILL

PART 1 PRELIMINARY

Clause 1 Name of Act

This clause provides that the name of the Act is the *Veterinary Surgeons Act 2015*.

Clause 2 Commencement

This clause provides for the commencement of the Act. The Act commences on a day fixed by the Minister by written notice. Section 79 of the *Legislation Act 2001* provides that if a provision of the Act has not commenced within six months of the Act's notification day, the provision automatically commences on the first day after that period.

Clause 3 Dictionary

Certain words and expressions used in the Bill are defined in the dictionary set out at the end of the Bill. A definition found in the dictionary applies to the use of words in the entire Bill unless another meaning applies in a particular part of the Bill. The dictionary is located at the end of the Bill.

Clause 4 Notes

Within the Bill notes are used to assist in the understanding of particular provisions. The notes themselves are for explanation purposes only and do not form part of the Bill.

Clause 5 Offences against Act – application of Criminal Code etc

Other legislation applies in relation to offences against this Act. The Criminal Code applies to all offences against this Act.

PART 2 Objects and important concepts

Clause 6 Objects of Act

The Bill provides that the object of the Act will be to regulate the provision of veterinary services by veterinary surgeons. It does this by ensuring that the provision of services is focussed on the welfare and protection of animals; that veterinary services are provided professionally and competently and that there are occupational discipline mechanisms for a veterinary surgeon found to have acted unprofessionally or incompetently.

Clause 7 Meaning of veterinary surgeon

This clause provides a legal definition of *veterinary surgeon*. As a legal definition it targets the registration of a person in the profession of veterinary surgeon as central to the definition. Registration is dependent on the qualifications and practice to an acceptable standard by the individual as assessed by the Veterinary Surgeons Board which is also created under this

Bill. In the community a veterinary surgeon is colloquially referred to as a vet, veterinarian or veterinary practitioner.

Clause 8 Meaning of *veterinary service*

The meaning of *veterinary service* relates to health services provided to animals in the control or possession of a person who is the *service user*. The definition of veterinary service is based on the definition of *health service* contained in the HPA.

Clause 9 Meaning of *regulated veterinary service*

The term regulated veterinary service means a veterinary service ordinarily provided by a veterinary surgeon in the veterinary surgeon profession.

Clause 10 Meaning of *registered veterinary surgeon*

This term means a veterinary surgeon registered under this Act.

Clause 11 Meaning of *required standard of practice*

The required standard of practice is a phrase used throughout the Bill and refers to the exercise of a veterinary surgeons exercise of professional judgement, knowledge, skill and conduct at a level that maintains public protection and safety.

This provision provides that regulations made under the Act may prescribe particular behaviours that do and do not meet the required standards of practice. The regulations do not however limit what behaviour does or does not meet the required standard of practice.

The Bill clarifies that where standards of practise operating under this Bill are inconsistent with the Health Code under the *Human Rights Commission Act 2005*, the regulation is ineffective to the extent of the inconsistency.

PART 3 REGISTRATION OF VETERINARY SURGEONS

Division 3.1 Veterinary surgeons - registration

Clause 12 Veterinary surgeon – registration requirements

The Veterinary Surgeons Board (the Board) is required to register or renew the registration of a person as a veterinary surgeon if the Board is satisfied that:

- the person satisfies the suitability to practise requirements; and
- knowledge of written and spoken English is adequate to allow the person to practice in the profession;
- is covered by the insurance required by the regulations; and,
- satisfies requirements prescribed by regulation.

Clause 13 Application for registration

A person can apply in writing to the Board to be registered and must include certain information prescribed in the clause and anything else that is prescribed by regulation.

Clause 14 Decision on application for registration

This clause provides that the Board must either

- register a person unconditionally or
- register the person conditionally or
- refuse to register the person.

The Board can only decide to register the person if they meet the requirements under section 12. The Board can also take into consideration whether a person has been suspended or cancelled from registration in another jurisdiction and may refuse registration on this basis.

A person who is registered must be provided with an individual unique registration number.

Section 15 Board may ask for further information

This clause provides the Board with the authority to make inquiries before making a decision on an application for registration. The Board can do this by asking in writing for specific information that is relevant to the applicant's entitlement to registration or have the person appear personally before the Board to give information.

If an application is made by a person registered in another jurisdiction as a veterinary surgeon or equivalent, then the Board cannot require that a person's appears before the Board. This is in line with mutual recognition of registration under the *Mutual Recognition Act 1992* (Cwlth).

The refusal to give information by an applicant is sufficient reason for the Board to refuse an application.

Clause 16 Conditions on registration

A veterinary surgeon registration is subject to the person complying with the Act, complying with any conditions prescribed by regulation and any that are imposed by the Board on the person. The Bill provides the example of professional indemnity insurance which a person is required to hold to maintain registration.

Clause 17 Term of registration

A person's registration comes into force on the day it is issued and other than short term registrations under clause 18, expires on 30 June each year.

Clause 18 Short term registration

This clause provides for short term registration by the Executive Officer on behalf of the Board in situations where the Board is unable to meet to

consider an application in a timely way. In effect it places a condition on the registration that it will end earlier than the 30 June expiry date. If the Board subsequently grant the registration then it will be taken to have started on the day the Executive Officer conditionally registered the person.

Clause 19 Conditional registration

The Board can conditionally register a person if satisfied that the registration of the person is in the public interest and the conditional registration will not endanger public safety. Conditions can also be place if the Board is satisfied that reasonable grounds exist that it is in the public interest to do so.

Clause 20 When conditional registration is in public interest

This clause provides the situations which constitute public interest although it does not limit when it is in the public interest to register a person conditionally. Situations that are covered include when a person's registration in another jurisdiction is subject to a condition or where a person wishes to take up a teaching or research position.

Clause 21 Conditional registration not limited

Despite clauses in the Bill that specifically address conditional registration, it is not intended that the Act limit when a veterinary surgeon may be conditionally registered or the condition that the Board can impose on registration.

Clause 22 Specialist area registration

This clause provides for specialist area registration, for example, in small animal surgery.

Division 3.3 Veterinary surgeons – performance review

Clause 23 Review of veterinary surgeon's professional practice

This clause relates to the Division and provides that the Board may review a veterinary surgeon's professional practice either with the veterinary surgeons agreement or if the veterinary surgeon has been required to take part in the review by the ACT Civil and Administrative Tribunal (ACAT). A review of professional practice may include asking the veterinary surgeon questions; requiring the taking of a test; and review of patient records.

Clause 24 Initial and final review reports

The *reviewer* is the person reviewing the professional practice on behalf of the Board and under this clause the reviewer must do a number of things in relation to that report. The report must be in writing and as an *initial review report* a copy provided to the relevant veterinary surgeon who can within 30 days of receiving the report, make representations to the reviewer on the report.

After considering any representation made by the veterinary surgeon the reviewer prepares a final review report which is provided to the veterinary surgeon and Board. The final review report can be treated under section 50

of the Act if the Board wishes and thus would form the basis of a complaint for the purposes of the legislation.

Division 3.4 Veterinary surgeons – practising certificates

Clause 25 Practising certificates

This clause provides that if a person is registered the Board must give the person a practicing certificate.

Clause 26 Replacement practising certificates

This clause provides for action when a practising certificate is damaged, lost, stolen or destroyed.

Clause 27 Return of practising certificates

Practising certificates must be returned in certain situations. This clause outlines the relevant circumstances for the return of practising certificates such as when a registration has been cancelled. It also prescribes the notification of relevant circumstances by the Board and the time frames for compliance that apply. It is an offence not to comply with a notice to return a practicing certificate.

The provision also provides for when the Board must return a practising certificate such as when a suspension has ended.

Division 3.5 Veterinary surgeons – end of registration and renewal

Clause 28 When does registration end?

This clause provides for when registration ends which is 2 weeks after the registration end date if it has not been renewed; if ACAT cancels the person's registration or if a person dies.

Clause 29 Failure to meet insurance requirements

A veterinary surgeon must produce on demand to the Board any certificates of insurance. A failure to produce the certificate can result in an application to ACAT for cancellation of registration.

Clause 30 Renewal notice for registration

This clause details the process for a renewal notice for registration under the Act and the obligation for the Board to send notices in certain timeframes.

Clause 31 Late payment of registration

This clause provides that a late payment made within 2 weeks after the registration end date does not preclude the Board from renewing registration effective from the end date of the expired registration.

Clause 32 Retrospective registration

This clause provides rules for registration when a registration has expired.

Division 3.6 Veterinary surgeons – register

Clause 33 Veterinary surgeons register

The Board must keep a register of veterinary surgeons. This clause provides for keeping accurate and current information to be kept in the register and that it can be changed to ensure that it is accurate and current.

Clause 34 Contents of register

This clause provides for what the register must contain but does not limit the information that the Board may consider necessary or desirable to include. The registration details must include for example the registration number of a given person and any condition on registration.

Clause 35 Information in register to be accessible and extractable

This clause provides that the register must be readily accessible and able to be reproduced in an easily readable form.

Clause 36 Executive officer responsible for register

The Executive Officer must keep the register on behalf of the board and can add, remove, or correct details in the register.

Clause 37 Assess to register

This clause provides that the register must be open for inspection by the public at reasonable times. The provision however provides that information not required under clause 34 need not be available. It also provides exceptions where a condition contains certain information including personal or prejudicial information the protection of which is outweighed by public interest.

Extracts or a copy of the register can be provided if asked for and a fee can be determined for such a request.

Clause 38 Requests for changes of details in register

A person can apply for a change to the information on the register. The Board must determine if the change is necessary and response to the person about their decision.

Clause 39 When board must not charge fees etc for register corrections

The Board cannot charge a fee for a change to the register if it is because of a mistake made by the Board.

PART 4 OFFENCES

Clause 40 Meaning of registered – pt 4

For this part a person is not registered if the person's registration has been suspended.

Clause 41 Person not registered

It is an offence to practise as a veterinary surgeon or provide veterinary services if the person is not registered as a veterinary surgeon. The maximum penalty is 50 penalty units, imprisonment for 6 months or both. In relation to registration, this component of the offence is strict liability.

Clause 42 Person pretending to be registered

If a person intentionally pretends to be registered as a veterinary surgeon and is not it is an offence. . The maximum penalty is 50 penalty units, imprisonment for 6 months or both. In relation to registration, this component of the offence is strict liability.

Clause 43 False representation of person as veterinary surgeon

This provision provides that it is an offence for a registered veterinary surgeon to represent that someone employed or engaged by them is a registered veterinary surgeon if this is false and was made in the course of practicing as a veterinary surgeon. The maximum penalty is 50 penalty units, imprisonment for 6 months or both.

Clause 44 Conditions on practice

If a registered veterinary surgeon knowingly provides a regulated veterinary service and fails to comply with a requirement of a condition on their registration then they commit an offence. This includes if the condition on the veterinary surgeon's registration is under a corresponding law of another jurisdiction. The maximum penalty is 50 penalty units.

Clause 45 Direction to engage in unprofessional conduct

This clause provides that it is an offence for a person who employs a registered veterinary surgeon or provides premises for them to practice veterinary surgery, to direct that the veterinary surgeon engage in conduct that would contravene a standard of practice that applies. The maximum penalty is 50 penalty units.

Clause 46 Change of registered details

A registered veterinary surgeon must tell the Board if their name or address changes no later than a month after the change. This is a strict liability offence and the maximum penalty is 5 penalty units.

Clause 47 No insurance

This clause provides that it is an offence for a veterinary surgeon fails to tell the Board as soon as practicable (but in any event within 1 month) that their

insurance has ceased. It is a strict liability offence that carries a maximum penalty of 5 penalty units.

PART 5 COMPLAINTS

The term 'complaint' has replaced the use of 'report' used in the HPA. The use of the term report was previously justified on the grounds that it differentiated protective action under the HPA from schemes involving health complaints. This is not considered necessary under this Bill which deals only with the veterinary surgeon profession. While the term reporting was also intended to be a largely pro-active process related only to registered health professionals and unrelated to dispute resolution, the actuality is that reports made under the HPA about veterinary surgeons can be generally characterised as complaints by service users. It also provides clarity as the term 'report' is used in other contexts under the Bill.

Division 5.1 Objects

Clause 48 Objects of Pt 5

Part 5 encourages the reporting of a complaint about a registered veterinary surgeon's behaviour where such behaviour contravenes or may have contravened a required standard of practice, or does not satisfy the suitability to practise requirements.

The purpose of making a complaint is both to promote action being taken to protect the public and to affect a scheme of early intervention in terms of rehabilitation or retraining for the veterinary surgeon concerned.

Division 5.2 Complaints

Clause 49 Meaning of *registered* veterinary surgeon – div 5.2

Under this part the term-registered veterinary surgeon refers to a person who is or was registered at the time an action or omission occurred.

Clause 50 Who may complain?

Anyone may complain if they have a reasonable believe that a registered veterinary surgeon may have been contravening or have contravened a required standard of practice or does not satisfy the suitability to practise requirements. Persons, who as a result of their occupation, gain information that could constitute a complaint under the Act are included in the definition of persons who may make a complaint. Such people include officers of the court and police officers.

Clause 50 subclause (2) provides that a veterinary surgeon or a health practitioner can make a complaint despite any other Territory law. This is to facilitate and allow the reporting of information which in other circumstances would not be able to be disclosed. For example, where a medical condition

would impede a veterinary surgeon's capacity to meet or comply with the required standard of practice.

Clause 51 Who may be given a complaint?

It is intended that a complaint be made to the Board although this does not preclude a complaint being made through the Human Rights Commission (Health Services Commissioner). The Board must refer the complaint and provide documents about the complaint to the Commissioner. The Health Services Commissioner has a role in the decision making processes in relation to complaints and the Board must consult with the Commissioner on action taken.

Clause 52 False or misleading complaint

Persons who provide a false or misleading complaint may be penalised under the Act.

Clause 53 How must a complaint be made?

The Bill intends that the legitimacy of a complaint be encouraged through requiring complaints to be in writing, to be signed and to include details of the complainant's name and address. Where a complainant does not comply with these requirements the Board or commissioner may still take action on the report. The Health Services Commissioner or the Board has, by exception, power to accept a verbal report. The Bill also allows for the Minister to make guidelines for the exercise of the discretion in relation to how the Board may accept a complaint that does not comply with the prescribed conditions. Guidelines are a disallowable instrument and must be notified.

Clause 54 Help in making a complaint

The Bill permits the Executive Officer of the Board to assist someone prepare a written complaint.

Clause 55 Further information about complaint etc.

The Bill provides that the Board can seek additional information and confirmation in relation to a complaint including requiring a complaint to be attested to by the making of a statutory declaration. The Bill requires that the Board set a reasonable time period for this requirement to be met.

If the complainant does not comply with a request to provide information in the form of a statutory declaration the complaint may still be made but the Board is not bound to take action in relation to the complaint.

Clause 56 Notice to veterinary surgeon complained about

The Bill requires that where a complaint is made about a veterinary surgeon, the Board must tell the veterinary surgeon concerned. The form of advice must be in writing, and it must provide information in relation to the general terms of the complaint and the intention of the Board to consider the report. The advice to the veterinary surgeon should also contain the name of the person making the report unless it is considered that the provisions of clause 131 of this Bill apply. The provisions of clause 131 of the Bill are derived from

earlier and related provisions that prevents the provision of information in circumstances where it is considered that the disclosure might;

- put someone's health or safety at risk; or
- cause anyone to receive a lower standard of service than the person would have received if the complainant had not been identified; or
- prejudice the management of a complaint or is consideration by the Commission or the Board.

Division 5.3 Complaints – Human Rights Commission

Clause 57 Interaction with Human Rights Commission

This clause puts beyond doubt that the Human Rights Commission and the Board must consult on complaints that come before them. Consultation also extends to reports where there is a requirement under the Act to consult with the Human Rights Commission. If agreement cannot be reached on action to be taken in respect to a complaint or report then it is the most serious action that is identified by either entity which prevails. This provision reflects section 12 of the *Health Professionals Act 2004* which was included in that Act as 'a guide to readers about the general scheme and effect of the Act' (see section 6 of the *Health Professionals Act 2004*).

PART 6 OCCUPATIONAL DISCIPLINE

Clause 58 Meaning of *veterinary surgeon* – pt 6

For this part a veterinary surgeon is a registered veterinary or a person who was but is no longer a registered veterinary surgeon.

Clause 59 Grounds for occupational discipline

The Bill provides the grounds for occupational discipline under this clause. The grounds are:

- The veterinary surgeon has contravened , or is contravening a standard of practice;
- The veterinary surgeon has put or is putting public safety at risk;
- The veterinary surgeon does not satisfy the suitability to practice requirements.

Clause 60 Applications to ACAT for occupational discipline

This clause provides that is the Board reasonably believes that a ground for occupational discipline exists then the Board may apply to ACAT for an occupational discipline order in relation to the veterinary surgeon.

Clause 61 Considerations before making occupational discipline orders – suspensions of cancellation of registration

This clause sets out what ACAT must consider in deciding to suspend or cancel a registration. ACAT must consider whether there has been a contravention of a standard of practice and whether the veterinary surgeon is putting public safety at risk.

Clause 62 Occupational discipline orders

This clause applies if the ACAT makes an order for occupational discipline in relation to a veterinary surgeon. It lists the occupational orders that ACAT can make under the Act in addition to any occupational discipline order that ACAT has the power to make under other legislation.

Clause 63 Emergency orders

ACAT can make an occupational discipline order as an emergency order but must be satisfied that it is necessary to protect the public or wellbeing of the veterinary surgeon.

Clause 64 Referral to panel by ACAT

The Bill provides the ACAT with facility to refer an application or part of an application for consideration by a personal assessment panel or professional standards panel. They may prepare a report on its consideration of the matter and refer its report back to the tribunal. The tribunal has power to adopt the Board's report as its own or it may adopt a decision made in a report as its own decision in respect to an application.

PART 7 JOINT CONSIDERATION WITH COMMISSION

The intent of this part is to prescribe joint consideration of a complaint between the Human Rights Commission (Health Services Commissioner) and the Board.

Clause 65 Application – pt 7

The Bill provides that certain matters will be jointly considered by the Human Rights Commission (Health Services Commissioner) and includes matters such as:

A complaint that the Board considers indicates that a veterinary surgeon may be contravening or have contravened a required standard of practice or does not satisfy the suitability to practise requirements;

- A complaint that has been considered by the Board's personal assessment panel and the Board considers that the matter now indicates a breach of standard of practice;
- where the Board rejects the recommendations of the Board's personal standards panel and the Board considers that a veterinary surgeon has breached or is likely to breach the required standard of practice;

- a professional standards panel refers a matter back to the Board because the panel considers the report or complaint to have been inappropriately referred to it.

Clause 66 Consultation with the commission etc

The Bill provides that the Board must consult with the Health Services Commissioner in relation to matters dealt with in part 7. The Board must also seek to make joint decisions with the commissioner in relation to matters dealt with under this part.

Where a jointly agreed decision cannot be made than the most serious action proposed by either the Board or the commissioner must be followed.

Decision on actions to be taken in respect to a matter considered under part 7 are as follows and are listed from most serious to least serious:

- make an application to ACAT for an emergency order under part 6 of the Bill;
- Apply to ACAT for suspension or cancellation of registration or for a declaration under section 61(2)(f) that had the person been registered the person would have contravened standards of practice or did not satisfy suitability to practice requirements;
- Consideration under the *Human Rights Commission Act 2005* of a report by the commission;
- refer the matter to a professional standards committee of Board;
- refer the matter to a personal assessment panel of Board;
- refuse to investigate the matter further.

If a complaint or report indicates that the veterinary surgeon may have committed an offence against a law of the Territory than the Board may provide information to the chief police officer.

The Bill does not restrict the Board from only taking a series of actions on a matter.

Clause 67 Indication that offence committed

The Bill provides that if a complaint or report indicates that an offence against another Territory law has occurred then the Board may give police a copy of the report or complaint. The Board may however continue to take action on a matter that it has reported to police.

PART 8 PERSONAL ASSESSMENT PANEL

Division 8.1 Establishment and purpose

A personal assessment panel is a panel that the Board may establish as a means to hear a matter concerning a veterinary surgeon mental or physical health. The panel is prescribed as a less formal forum that has a rehabilitation focus. Most matters addressed by the panel will take place with the consent of the veterinary surgeon involved. A personal assessment panel does not make decisions in its own right but recommends actions for the Board's consideration.

Clause 68 Personal assessment panel - establishment

The Board may establish one or more personal assessment panels. The Board may refer a report or a complaint to a personal assessment panel if -

- the report, complaint or review suggests that the state of a veterinary surgeon mental health or physical health, or both, are affecting the professionals competence to practise; and
- the Board is satisfied that there are grounds for believing that the veterinary surgeon may be rehabilitated.

The Bill requires that the Board refer a report or a complaint to a personal assessment panel if required to do so if the Human Rights Commission asks it to be referred.

Clause 69 Referral of application by ACAT

The Bill establishes that where ACAT refers an application or part of an application to a personal assessment panel the Board is obliged to make such a referral. In such circumstances the panel is required to inquire into the matter as if it was a complaint and to report back to the ACAT. The panel's report to the tribunal may include a recommendation that is the same type of recommendation that a panel can make to the Board under clause 77. The panel may alternatively recommend that the veterinary surgeon be counselled. The Bill further provides that a panel could report that it cannot make an appropriate recommendation.

Clause 70 Personal assessment panel – functions

This clause provides that the role of a personal assessment panel is to:

- assess whether the mental or physical health or both, of a registered veterinary surgeon are affecting the person's ability to meet the required standard of practice or suitability to practise requirements; and
- if the panel is satisfied that the person's mental or physical health, or both, are affecting the professionals ability to meet the required standard of practice, or the suitability to practise – decides whether and how the veterinary surgeon may be rehabilitated.

A personal assessment panel also considers applications to review conditions on registration that may have been imposed as a result of a panel's recommendation. A personal assessment panel cannot assess a complaint on its own motion.

Clause 71 Personal assessment panel – members

The clause provides that a personal assessment panel is appointed by the Board and consists of 3 members. At least one member of the panel must be a registered veterinary surgeon but may be registered in another jurisdiction.

The Bill seeks to ensure that a broad view of the report or complaint is considered by providing that one member of the panel is not to be a registered veterinary surgeon. The Bill also supports that members of the panel may be drawn both from the ACT or elsewhere. The Board appoints one member of the panel as the panel chairperson.

Division 8.2 Assessments by personal assessment panels

Clause 72 Natural justice

This clause provides that the panel must observe natural justice.

Clause 73 Assessment by personal assessment panel

The Bill allows a panel to consider information that is available to it including the report or complaint, any other information provided by the Commission or person who made the report and any other relevant information collected by the panel.

The personal assessment panel is also obliged consider information provided by the veterinary surgeon.

Clause 74 Powers of personal assessment panel on inquiry

The Bill requires that a personal assessment panel must:

- endeavour to talk to the veterinary surgeon about the complaint or application;
- give the veterinary surgeon an opportunity to respond to information given to the panel;

To assist the panel the Bill provides that a panel may make enquires or obtain information from anywhere appropriate. The panel may also require that a veterinary surgeon undergo a medical, psychiatric or psychological examination or test. Where such a test is performed the Board meets the cost of the initial examination or test.

Clause 75 Lawyer assisting personal assessment panel

The Board may appoint a lawyer to assist the panel for an inquiry.

Clause 76 Legal representation before personal assessment panel

The intention of the Bill is that panel inquiries are non-adversarial. The Bill however provides that a lawyer may represent a person before a personal assessment panel.

Clause 77 Personal assessment panel – decisions

The Bill provides that the agreed decision of a majority of panel members is the decision of the panel. If however the panel cannot reach a majority decision than the decision of the panel chairperson is the decision of the panel.

Clause 78 Action of personal assessment panel after inquiry

Following an inquiry the Bill provides that the personal assessment panel may with the veterinary surgeon agreement do one or more of the following:

- counsel the veterinary surgeon;
- recommend that the veterinary surgeon attend counselling or a rehabilitative program;
- recommend to the Board that they take no further action in relation to the veterinary surgeon;
- recommend to the Board that the Board accept a voluntary undertaking from the veterinary surgeon;
- recommend that a stated condition be placed on the veterinary surgeon registration by the Board.

The panel may recommendation that the veterinary surgeon attend a named counsellor or program. The panel may also recommend that a panel review a veterinary surgeon registration or a condition placed on registration, at a particular time.

If a panel considers that it has no appropriate action available to it than it does not need to take action under this section.

Clause 79 Inappropriate referral to personal assessment panel

A personal assessment panel may refer a matter back to the Board if the panel is of the view that the matter was inappropriately referred to it.

Clause 80 Referral to Board

Where a personal assessment panel has considered a matter the Bill requires that the panel report back to the Board that originally considered the matter with the following information:

- the information obtained by the panel;
- a description of the assessment of the veterinary surgeon;
- what the panel decided to do and why; and
- whether the veterinary surgeon agreed to the action proposed to be taken to the panel.

Division 8.3 Action by Board after inquiry by personal assessment panel

Clause 81 Board consideration of referral by personal assessment panel

This clause provides that where a personal assessment panel has referred a report to the Board, it must consider the report and decide what to do.

If the Board considers that the veterinary surgeon has, or may be contravening a standard of practice then it must take the matter back for consideration of appropriate action with the Human Rights Commission under part 7 or apply to the ACAT for an emergency order if satisfied this is necessary.

Unless this is a matter for further review with the commissioner or referral to ACAT for an emergency order the Board may do one or more of the following:

- Take action under clause 81 if it applies;
- refer the matter to a professional standards panel;
- Make an application to ACAT to suspend or cancel the registration;
- ask ACAT to make any other occupational discipline order it considers appropriate;
- take no further action.

Clause 82 Acceptance of condition

Where a personal assessment panel has recommended that a condition be placed on a veterinary surgeon's registration and the person has agreed, the Board may take such action.

Clause 83 Decision on referred veterinary surgeon

Where the Board makes a decision on a report of a personal assessment panel it is required to give the veterinary surgeon a notice of decision. The notice is to include an explanation of the reasons for the decision. The Board must also give written notice of the decision to the Commission.

Clause 84 Applications for condition review

If a decision has been placed on a veterinary surgeon registration the person may apply to have the condition removed or changed.

Clause 85 Review of application

The Bill provides that where an application has been received from a veterinary surgeon for a review under clause 83, the Board is to refer the matter to a personal assessment panel. The Board is, where possible, to refer the application to the panel that originally considered the matter.

The personal assessment panel must do one of the following after considering a review application –

- recommend that the application be granted;

- recommend that the stated parts of the application be granted or rejected;
- recommend that the application be rejected.

If a recommendation is made to reject in whole or part the application then the panel can recommend other action and explain why the action is appropriate.

Recommendations under this section by the panel must be given to the Board in writing.

Clause 86 Action by Board on recommendations by personal assessment panel

The Bill provides that where the Board has accepted the recommendations of a personal assessment panel then the Board is to advise the veterinary surgeon in writing and include reasons for the decision.

If the Board rejects the recommendations of the panel they must make a decision on the application and advise the veterinary surgeon in writing of the decision and the reasons for it.

If the Board considers that the application relates to whether the veterinary surgeon is contravening or has contravened the required standard of practise then it may choose to consider the matter jointly with the Commission under Part 7.

If the Board considers the matter without consultation with the commissioner then it may tell the commissioner about the decision.

PART 9 PROFESSIONAL STANDARDS PANEL

Division 9.1 Establishment of professional standards panel

A Professional Standards Panel is a panel that the Board may establish as a means to hear a complaint or application for a condition review about a veterinary surgeon's standard of practice. A professional standards panel considers reports or complaints where the outcome is not one that may lead to the suspension or removal of registration of a veterinary surgeon. The decisions of the professional standards panel are decisions of the Board.

Clause 87 Professional standards panel – establishment

The Bill provides that the Board may establish one or more professional standards panels.

Clause 88 Professional standards panel – functions

Under this Bill the role of the professional standards panel is to decide whether a registered veterinary surgeon has contravened or is contravening the required standard of practice or fails to satisfy the suitability to practise requirements.

The professional standards panel may consider a range of information that is available to it, including:

- the complaint;
- any information provided by the Commission, or by the person made the report or complaint;
- any other relevant information given to the panel.

The panel must consider information provided by the veterinary surgeon before it makes any decision under this section.

A professional assessment panel may not consider a matter on its own motion but may only act on a matter that is the subject of a referral to it.

Clause 89 Professional standards panel – members

A professional standards panel consists of three members appointed by the Board. One member of the panel must be registered, either locally or in an equivalent jurisdiction, as a veterinary surgeon and at least one member of the panel must not be a registered veterinary surgeon. Panel members may be drawn from the ACT or elsewhere.

The Board must appoint one member as the panel chairperson. A panel may consider one or more referred matters.

Clause 90 Referral of application by ACAT

The Bill provides that the Board must refer an application or part of an application to a professional standards panel if required to do so by the ACAT. The professional assessment panel must conduct an inquiry into applications referred to it as if the matter was a complaint. It is however not appropriate in these circumstances that the panel exercises its powers to make an interim order as provided for under clause 97.

After the professional standards panel considers an application it must provide a report to ACAT called the *referral report*. The referral report may recommend that ACAT make an occupational discipline order.

If the panel is unable to make an appropriate recommendation to ACAT then it must state this fact to the Tribunal.

Division 9.2 Inquiries by professional standards panel

Clause 91 When may professional standards panel choose not to inquire?

This clause provides that where a veterinary surgeon admits to a matter, a professional standards panel may consider that it is appropriate to make a decision without the need for an inquiry.

Clause 92 Professional standards panel – decisions

Decisions of a professional standards panel are the decisions of the majority of panel members. Where a panel is unable to reach a majority decision than the decision of the panel is the decision of the panel chairperson.

Clause 93 Inappropriate referral to professional standards panel

The Bill provides that a panel may refer a matter back to the Board when it considers that the original referral of the matter was inappropriate. An inappropriate referral may be made in circumstances where the panel:

- believes on reasonable grounds that the complaint if substantiated may provide grounds for suspension or cancellation of a person's registration;
- considers the matter should appropriately be considered by a personal assessment panel; or
- considers that emergency action is necessary.

Where a matter is referred back to the Board as an inappropriate referral than the Board is to consider the referral jointly with the Commission.

Division 9.3 Procedural requirements for inquiry hearings

Clause 94 Setting inquiry hearing times

If a matter is referred to a professional standards panel the panel must set a time for holding an inquiry about a veterinary surgeon. The Bill also requires that at least 1 month before the hearing day the panel give written notice of the hearing time and place to the veterinary surgeon, the Board and the Commission. The panel may also give notice of the inquiry to the person who made the complaint.

Clause 95 Conduct of inquiry hearing

This clause provides that a professional standards panel can conduct a hearing in any way it considers fit. The panel is required however to observe natural justice.

Clause 96 Inquiry by professional standards panel

The Bill permits a standards panel to make inquiries and obtain any information it needs to decide a matter before it. The panel has power in this regard to arrange for a performance review to be conducted of veterinary surgeon's practise. The panel need not confine itself to a review of one incident but may also consider information relating to a pattern of practice of a veterinary surgeon.

Clause 97 Role of commission

The Bill provides that the Commission may give evidence about consideration of the complaint. The Bill further permits the Commissioner to be present at a professional standards panel hearing even though he or she is not giving evidence.

Clause 98 Interim actions

A professional standards panel may take action under clause 102(2) on an interim basis prior to the finalisation of a hearing. Action taken of an interim

nature is to be based on a need to protect the public. An interim decision has effect until the panel reaches its final decision.

Clause 99 Adjournment

A standards panel may adjourn an inquiry if such action is appropriate. The Bill however provides that a decision to adjourn a matter should be balanced by the desirability to deal with matters promptly.

Clause 100 Lawyer assisting professional standards panel

This clause provides that the Board can appoint a lawyer to assist the panel for a standards inquiry.

Clause 101 Representation at inquiry hearing

The Bill provides that the veterinary surgeon, Commission or a witness attending the standards panel inquiry may be accompanied by a legal adviser or other support person.

The intention of the Bill is that a professional standards panel be conducted in a manner that is as non-adversarial as possible. The panel will also in most instances be conducted in the first person. This does not preclude the panel from agreeing to a person being represented by a lawyer or other support person if the circumstances warrant.

Clause 102 Record of standards inquiry

A professional standards panel must keep a record of a standards inquiry.

Clause 103 Action of professional standards panel after inquiry

The Bill provides that a decision of a professional standards panel involves consideration of –

- if the veterinary surgeon has contravened or is contravening the required standard of practice or fails to satisfy the suitability to practise requirements; or
- if the veterinary surgeon has or is otherwise putting or has put public safety at risk.

Where a professional standards committee is satisfied that a veterinary surgeon has breached the requirements or put public safety at risk the panel may do one or more of the following:

- counsel, caution or reprimand the veterinary surgeon;
- require the veterinary surgeon to undergo stated medical, psychiatric or psychological assessment, counselling or both;
- impose on the veterinary surgeon's registration a condition that the panel considers appropriate to protect the public;
- require the veterinary surgeon to take part in a review of the veterinary surgeon professional practice;

- require the veterinary surgeon to complete a stated professional development course;
- require the veterinary surgeon to report on their practice at stated times, in a way stated and to a named person;
- require that the veterinary surgeon seek and take advice from stated entities in relation to the management of their practice;
- require the supervision, monitoring or reporting about the affect of something the veterinary surgeon is required to do by the panel;
- refer the report or application for conditions review back to the Board with a recommendation that that an application be made to the ACAT for the suspension or cancellation of registration;
- refer the report or complaint to the Board with a recommendation that it be referred to the ACAT for a declaration under clause 61(2)(f);
- accept a voluntary undertaking from the veterinary surgeon.

If the professional standards panel acts in the above ways then the action is an act of the Board except where it is referred back to the Board with a recommendation that it be referred to the ACAT.

Clause 104 Inquiry report

The Bill requires that a professional standards panel will, as soon as practical after finishing a standards inquiry, prepare a written report called the *standards inquiry report* that includes the following information;

- if there is a decision that there has been a contravention of the required standard of practice or failure to satisfy the suitability to practise requirements panel, how the requirements were contravened;
- whether there is, or was a risk to the public from the veterinary surgeon's practise and what the risk is or was;
- the action taken by the panel and reasons for the action.

The Bill requires that the panel, within 28 days of the end of a standards inquiry, give the standards inquiry report to the veterinary surgeon; the Board; and the Commission.

The panel may also give the report to anyone else that it considers appropriate. The panel may however omit from a copy of the report material in order to protect someone's confidentiality.

PART 10 VETERINARY SURGEONS BOARD

Division 10.1 Establishment and functions of board

Clause 105 Veterinary surgeons board – establishment

This clause establishes the Board and provides that it is a body corporate with a seal. The Board can sue and be sued and hold property in its corporate name.

Clause 106 Board – functions

This clause outlines the Boards functions which cover the range of functions required to regulate the veterinary surgeons profession in the Territory. For example, functions include administering a scheme of registration for veterinary surgeons.

Division 10.2 Board membership

Clause 107 Membership of board

The Bill provides for membership of the Board to be made up of a President appointed by the Minister; three elected members; and three members appointed by the Minister, one of whom is a community representative. This reflects the makeup of the Board under the HPA. Other clauses of this Bill provide that all Members (other than the community member) and the President must be registered veterinary surgeons and have been registered for a continuous period of at least three years before they are appointed.

A regulation may prescribe how the election for board members takes place. It is intended that the regulations be adopted from the HPA regulations whereby the election will be run by the Electoral Commission and follow the same or similar process.

Clause 108 Board president

This clause provides how the Minister appoints the Board President including the relevant qualifications. An appointment is for a term of no longer than four years.

Clause 109 Board deputy president

This clause provides that the Board by majority must elect a board member as the Deputy President of the Board. The Deputy President may be elected for one year but can be re-elected for subsequent terms. The Deputy President can exercise functions of the Board President when the President cannot exercise the function.

Clause 110 Appointment of board members

This clause outlines the appointment of members to the board, the relevant qualifications of appointees and the term of appointment.

Clause 111 Consultation about appointment to board

The Board must be consulted by the Minister about appointing someone (other than the community representative) to the Board. The Minister can also seek advice and nominations from other entities they consider suitable to give advice and make nominations.

Clause 112 Disclosure of interests by Board members

Board members must disclose a material interest in an issue and the nature of that interest being considered at a board meeting and the disclosure must be recorded in the Board's minutes. If the Board decides otherwise the member must not be present when the Board considers the issue or take part in a decision of the board on the issue.

Clause 113 Ending of appointment to Board

This clause provides for the process to be followed if the Board President believes on reasonable grounds that someone should no longer board member. If, after following the process, the Board President still believes that a member should be removed, then an application can be made to the Minister for the Minister to make a decision about whether the person should remain on the Board or not.

Clause 114 Conditions of Board appointment generally

This clause covers general conditions and includes provision for decisions about remuneration for board members; the taking of leave; the need for the Board to seek Ministerial approval before taking action that is likely to incur an extraordinary liability; and, how the Board can apply to the Minister for financial assistance in certain circumstances.

Clause 115 Reporting on exercise of functions

The Bill provides that the Minister, in writing, may request that the Board provide a report about the exercise of its functions. The request may be for a general report or may be for a report on specific matter or issue. The Board must respond in writing to the Minister within a reasonable time set by the Minister.

Clause 116 Failure by Board to exercise functions diligently

The Board is entrusted with significant roles in relation to public protection and the welfare of animals. Where the Board fails to perform their functions as required by the Bill or regulations, then the Minister has an obligation to take action on such matters and the Bill provides certain powers to the Minister

responsible where he or she is satisfied that the Board is not exercising its functions diligently. The Minister may in writing advise the Board of his or her concerns and an explanation of why he or she is not satisfied. The Minister can advise the Board in relation when it needs to respond but must allow a minimum of 14 days.

If after considering any representations the Minister remains dissatisfied that the Board is not exercising its functions diligently than he or she may write to the Board to tell them what they are to do to conduct themselves diligently.

The regulations can prescribe matters that the Minister is to take into consideration for clause 115 and 116.

Clause 117 Discharging Board

After giving the Board written notice, and after a reasonable time has passed the Minister may advise the Board of why he or she is not satisfied that the Board is exercising its functions diligently and give reasons. Again the Board has a minimum of 14 days to provide reasons why it should not be discharged. If the Minister is satisfied that the Board should be discharged then the Minister must ask the Legislative Assembly to approve the discharge. If approved by the Legislative Assembly, the Minister may discharge the Board by written notice.

Clause 118 Effect of discharge – interim Board

If action has been completed to discharge the Board the Minister may appoint veterinary surgeons to an interim Board if the Minister is satisfied that the person has the experience to exercise the functions required of the Board member. An appointment is for six months only and may not be extended. The period of six months is to permit the necessary arrangements to be made to appoint a replacement board including the calling of nominations and the fulfilment of electoral processes for elected members.

Division 10.3 Board administration

Clause 119 Banking and investment of money of board

The Boards must:

- maintain at least one account with an authorised deposit-taking institution; and
- pay all monies received into an accounts; and
- pay all amounts it spends out of an account.

The Board can also invest its money in a manner that it considers appropriate.

Clause 120 Offence – prohibition on business

Members of the Board must not knowingly agree to the Board engaging in business that is outside of its functions.

Clause 121 Borrowing powers

The Bill permits the Board, following an unopposed resolution, to borrow money required for the exercise of its functions and to secure repayment of any amount borrowed and the payment of interest on the borrowed amount.

An *unopposed resolution* means a resolution that no one votes against and there is at least one vote in favour of the resolution.

Clause 122 Appointment of executive officer

The Board must in writing appoint an executive officer.

Clause 123 Executive officer – functions

This clause outlines the functions of the executive officer which includes responsibility, under direction, for the day to day management of the Board's affairs and advising the Board.

Clause 124 Employment of staff

The Bill provides that the Board can engage the people it needs or buy services required to exercise its functions.

Clause 125 Delegation by Board

The Board may delegate a function to:

- a Board member;
- the executive officer;
- a committee of the Board; or
- anyone else the Board considers appropriate.

PART 11 NOTIFICATION AND REVIEW OF DECISIONS

Provisions contained in this part are standard legislative provisions.

Clause 126 Meaning of reviewable decision – pt 11

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

Clause 127 Reviewable decision notices

This clause provides that if a person makes a reviewable decision that they must notify relevant entities (which are prescribed by regulation) in relation to the decision.

Clause 128 Applications for review

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

PART 12 PROTECTION AND INFORMATION

Clause 129 Meaning of *informed* person – pt 12

The Bill provides for the use and definition of the term ‘informed person’ where a person is or has been –

- a member of the Board; or
- a member of a personal assessment panel or a professional standards panel; or
- a member of the staff of the Board; or
- acting under the direction or authority of the Board.;

Clause 130 Protection of participants and people reporting

The Bill provides that an action cannot be taken against certain persons to whom this section applies in relation to an act done or omitted to be done where they have acted honestly.

The Bill prescribes these persons as being a person who is or has been a participant in a proceeding about a complaint or an application for a condition review before either the Board; a personal assessment panel; or, a professional standards panel.

This section also protects the person who made a report.

Clause 131 Protection of informed people

This clause is a general protection clause.

It provides that a person who is an informed person under the Act does not incur civil or criminal liability for anything done or not done by the person acting honestly and without negligence for the Act.

The Bill further provides that if a civil liability arises then this is a liability of the Territory and not the informed person.

Clause 132 Nondisclosure of complaints

The Bill contains a fundamental provision in relation to the protection of persons who make a report. This provision is based on the similar provision contained in the HPA. An informed person as defined under the Bill (see clause 134) must not disclose information to a veterinary surgeon that allows the identification of the complainant if it would either directly or indirectly:

- put at risk the health or safety of anyone; or
- cause anyone to receive a lower standard of veterinary service than the person would have received if the reporter had not been identified; or

- prejudice the management of the report or an investigation by the Commission or the Board.

Clause 133 Use and disclosure of protected information

This clause is a standard template secrecy provision.

The clause provides that it is an offence for an information holder to use protected information about somebody else and is reckless about whether the information is protected information. The maximum penalty is 50 penalty units, six months imprisonment or both.

The clause also provides that an information holder commits an offence in the same circumstances and in doing so the result is that the information is disclosed to someone else. The maximum penalty is 50 penalty units, six months imprisonment or both.

There are exceptions to the offences. The exceptions include if the use or disclosure of the information was under another law, was used in a court proceeding or with the protected person's consent.

PART 13 MISCELLANEOUS

Clause 134 Exemptions from Act

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

Clause 135 Costs of supervising protective action

The Bill provides that the Board may charge a veterinary surgeon a fee or require the veterinary surgeon to pay reasonable costs associated with monitoring compliance with a condition or requirement on their registration.

Clause 136 Determination of fees by board

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

Clause 137 Determination of fees by Minister

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

Clause 138 Approved forms

This clause provides the Board with the ability to approve forms. An approved form is a notifiable instrument and must be used for the purpose it was approved.

Clause 139 Regulation-making power

The Bill provides for the Executive to have a general regulation making power in relation to the Act. This regulation power includes the making of regulations that impose conditions, including restrictions, on the practice of the veterinary surgeon profession. Regulations may also apply, adopt or incorporate an instrument such that it may be applied in full or in part in the Territory. The Executive must be satisfied that the regulations are necessary to protect the public or are in the public interest.

PART 14 REPEALS AND CONSEQUENTIAL

Clause 140 Legislation repealed

This clause repeals the *Health Professionals Act 2004* and associated regulations. It also repeals legislative instruments made under the repealed Act.

Clause 141 Legislation amended – schs 2 and 3

The Act amends the legislation mentioned in Schedules 2 and 3.

PART 20 TRANSITIONAL

The transitional provisions provided in this part of the Bill will ensure the smooth running and transition of the existing Board established under the Health Professionals Act 2004 to the new Act. This includes carrying over registrations of veterinary surgeon, the register and any inquires under the repealed Act.

Clause 200 Definitions – pt 20

This clarifies the meaning of commencement day and that the repealed Act is the *Health Professionals Act 2004*.

Clause 201 Members of board

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

Clause 202 Veterinary surgeons – registration

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

Clause 203 Suspended registration

This clause provides that any suspended registration of a veterinary surgeon continues as if suspended under this Act.

Clause 204 Register

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

Clause 205 Inquiry under repealed Act

This clause provides that an inquiry under the repealed Act which has not concluded or where the findings of the inquiry have not been actioned is taken to be an inquiry under part 6 of this Act. The inquiry will not be affected only because something that is required of the new Act was not required under the repealed Act.

Clause 206 Executive officer

The appointment of the executive officer continues as if the appointment was made under this Act and not the repealed Act.

Clause 207 Transitional regulations

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

Clause 208 Expiry – pt 20

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

Schedule 1 Reviewable decisions

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

Schedule 2 Consequential amendments

This schedule makes changes to a number of statutes in relation to the repeal of the *Health Professionals Act 2004*. The consequential amendments identify legislation which currently contains reference to the Act or to 'health professionals'. In most cases, such references have been removed entirely as no longer relevant. In these instances, references remain to health practitioners and the health practitioner Regulation National law. In these cases the matters relate to the care of people rather than animals such as in the Children and Young People's Act 2008.

In other consequential amendments, 'health professional' has been replaced or provisions changed to recognise the status of veterinary surgeons. By way of example, relevant legislation will now read 'health practitioner and veterinary surgeon'.

Schedule 3 Technical amendments – Human Rights Commission Act 2005 – consequential on operation of Health Practitioner regulation National law (ACT)

Schedule 3 addresses technical amendments to the *Human Rights Commission Act 2005* (HRC Act). As part of the repeal of the *Health Professionals Act 2004* it was identified that parts of the HRC Act had not been amended in 2010 to reflect changes as a result of the introduction of the Health Practitioner Regulation National Law (ACT). This was an oversight. In effect, the provisions will remove reference to 'Health Professional' and replace with 'Health Practitioner'. Together with the amendments to the HRC Act made in Schedule 2 of this Bill, it will provide the Human Rights Commission with continuing powers in relation to complaints about health practitioners and veterinary surgeons.