

**2015**

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

**VETERINARY SURGEONS REGULATION 2015  
SL2015-39**

**EXPLANATORY STATEMENT**

**Circulated by  
Shane Rattenbury MLA**

**Minister for Territory and Municipal Services**  
**VETERINARY SURGEONS REGULATION 2015**

This explanatory statement relates to the *Veterinary Surgeons Regulation 2015* (the regulation).

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

The *Veterinary Surgeons Act 2015* (VSA) was notified on 20 August 2015 and will commence by written notice of the Minister or by default commencement under section 79 of the *Legislation Act 2001* on 20 February 2016.

The purpose of the regulation is to contribute to the aims of the VSA by providing the operating provisions that give effect to that Act.

The object of the VSA is to regulate the provision of veterinary services by veterinary surgeons. It does this by ensuring that the provision of services is focused 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.

On commencement, the VSA will repeal the *Health Professionals Act 2004* (HPA) and take over the statutory coverage of the veterinary profession from that Act. The VSA mirrors the arrangements that govern the operation of the ACT Veterinary Surgeons Board under the HPA.

The VSA modernises and updates the statutory coverage of the veterinary profession to reflect current drafting standards and to streamline the broader provisions of the HPA to be profession-specific.

The VSA incorporates some provisions previously contained in the *Health Professionals Regulation 2004*, with the remaining relevant provisions replicated in this regulation.

## OUTLINE OF PROVISIONS OF THE REGULATION

### PART 1 PRELIMINARY

#### Clause 1 Name of regulation

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

#### Clause 2 Commencement

This clause provides that the regulation will commence on the commencement of section 3 of the *Veterinary Surgeons Act 2015*.

#### Clause 3 Dictionary

Certain words and expressions used in the regulation are defined in the dictionary at its end. A definition found in the dictionary applies to the use of words in the entire regulation unless another meaning applies in a particular part of the regulation.

#### Clause 4 Notes

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

### PART 2 REGISTRATION OF VETERINARY SURGEONS

The note under this part relates to mutual recognition of veterinary surgeons' registration and provides that the Commonwealth *Mutual Recognition Act 1992* and *Trans-Tasman Mutual Recognition Act 1997* apply.

#### Clause 5 Application for registration—Act, s 13 (2) (e)

This clause prescribes information that must be provided in an application for registration of a veterinary surgeon. Prescribed information includes the applicant's date of birth and evidence of the applicant's qualifications.

#### Clause 6 General area of operation

This clause provides information about the scope of general practice of veterinary surgery. This includes, amongst other matters, attending to the health of animals, the prevention of animal diseases, and the diagnosis and medical or surgical treatment of disease or injury in animals.

#### Clause 7 Suitability to practise requirements

This clause provides that a veterinary surgeon must have specific qualifications and be generally competent. It also sets out that a veterinary surgeon practising in a specialist area must have the additional qualifications set out in sections 9 and 10.

### **Clause 8 General competence to practise**

This clause outlines what the board must consider when deciding whether a person is generally competent to practise. A competent veterinary surgeon, for example, must be mentally and physically healthy enough to practise and must not have been convicted or found guilty of a relevant offence. The board may also consider any other relevant matter when deciding on a person's general competence.

### **Clause 9 Qualifications**

This clause specifies the qualifications that a person must have obtained to practise as a veterinary surgeon.

### **Clause 10 Specialist areas and suitability to practise requirements**

This clause provides that an individual may be registered in a specialist area of veterinary surgery if the individual is a veterinary surgeon and holds specialist qualifications as approved by the Australasian Veterinary Boards Council.

## **PART 3 MAINTAINING COMPETENCE AND CONTINUING PROFESSIONAL DEVELOPMENT**

### **Clause 11 Obligation to maintain competence and continue professional development**

This clause provides that a registered veterinary surgeon must ensure that he or she remains suitable to practise. Suitability to practise requirements are set out in section 7 of the regulation.

### **Clause 12 Programs for maintenance of competence**

This clause places an obligation on the board to establish or facilitate programs to enhance the general and professional competence of veterinary surgeons.

### **Clause 13 Standards for maintenance of competence**

This clause outlines the obligations of the board on suitability to practise standards relating to the maintenance of competence. The clause provides for consultation on the development or endorsement of written standards, which are made by notifiable instrument. The clause also outlines what the standards must include. The board may establish a committee to assist in overseeing the board's continuing competence and professional development program.

### **Clause 14 Use of information about continuing competence etc**

This clause provides for the use of information about a veterinary surgeon to take action to protect public safety or in the public interest. Information about the continuing competence or professional development of a veterinary surgeon may be used to provide feedback to that person or, with the veterinary surgeon's consent, provided to someone else. The clause also

allows for annual reporting to the Minister on the general performance or achievement of registered veterinary surgeons as a whole or within specialist areas, using non-identifying information.

Subsection (3) of the clause provides that if information is received under part 3 that indicates a potential risk to public safety, the board may treat the information as a complaint about a veterinary surgeon.

## **PART 4 REQUIRED STANDARD OF PRACTICE**

Part 4 outlines the required standard of practice for registered veterinary surgeons.

### **Division 4.1 General**

#### **Clause 15 Purpose—pt 4**

The clause outlines the purpose of part 4, which includes allowing the board to decide on standards of behaviour and practice for veterinary surgeons. The clause also provides for judgments against the required standard, which, if breached, would mean that the veterinary surgeon is not competent to practise.

#### **Clause 16 Standards and standards statements**

This clause allows for the board to develop and approve standards of practice. The standards of practice must be consistent with any standards approved by a professional body representing veterinary surgeons as long as these are necessary to protect the public. It may also approve a standard developed by another entity. Approval of standards is notifiable under subsection (6) of this clause.

#### **Clause 17 Pattern of practice or particular acts**

This clause provides that the acts and pattern of practice of a veterinary surgeon may be considered by the ACT Civil and Administrative Tribunal, the board or a panel formed by the board when considering whether the veterinary surgeon meets the required standard of practice.

#### **Clause 18 Endangering public**

This clause provides that a registered veterinary surgeon breaches the required standard of practice if the veterinary surgeon engages in a standard of practice that endangers public health and safety.

#### **Clause 19 Lack of competence to practise etc**

This clause provides that a registered veterinary surgeon breaches the required standard of practice if the veterinary surgeon demonstrates a lack of competence, knowledge, skill, judgment or care.

## **Division 4.2 Specific breaches of the required standard of practice**

### **Clause 20 Purpose—div 4.2**

This clause outlines the purpose of division 4.2, which is to prescribe a minimum for the required standard of practice for veterinary surgeons. If a veterinary surgeon breaches the required standard, the surgeon is not considered competent to practise, unless otherwise decided by the board.

### **Clause 21 Breach of standards statements**

This clause provides that a veterinary surgeon must not breach a standards statement.

### **Clause 22 Telling board about proceedings relating to veterinary surgeon**

This clause provides that a veterinary surgeon must tell the board if the surgeon is charged with an offence, and provides for specific information to be provided to the board and the time in which this must be done.

### **Clause 23 Biosecurity, infection control and notifiable diseases**

This clause provides that a veterinary surgeon must comply with legislation related to biosecurity, infection control and the reporting of notifiable diseases.

### **Clause 24 Substances that affect veterinary surgeon's abilities**

This clause provides that a veterinary surgeon must not practise while under the influence of, or dependent on, a substance that would affect the surgeon's ability to practise.

### **Clause 25 Reporting other veterinary surgeons**

This clause provides that a registered veterinary surgeon is taken to have contravened the required standard of practice if the surgeon believes another registered veterinary surgeon is contravening a standard of practice and fails to report the belief to the board. A veterinary surgeon is only required to report a belief where the contravention by the second veterinary surgeon has had, or is likely to have, a substantial effect on a member of the public.

### **Clause 26 Clinical records**

This clause requires a registered veterinary surgeon to keep adequate clinical records, and provides that the records must not be changed in order to deceive anyone.

### **Clause 27 Misrepresenting facts in certificates**

This clause prohibits a registered veterinary surgeon from signing a certificate that misrepresents a fact.

### **Clause 28 Treatment by assistants**

This clause prohibits a registered veterinary surgeon from allowing an assistant to provide a service or treatment or perform a procedure on the

veterinary surgeon's behalf if the treatment or procedure requires professional development or skill. Subsection (2) provides an exception to this prohibition where the service, treatment or procedure is part of a program to train another registered veterinary surgeon. Registered veterinary surgeons must adequately supervise anyone who provides services on their behalf.

### **Clause 29 Misleading advertising**

This clause prohibits a veterinary surgeon from advertising a service in a misleading way.

### **Clause 30 Practising under allowed name**

This clause provides that a registered veterinary surgeon must only practise under a name that the person is allowed to practise under, being the name on the person's practising certificate.

### **Clause 31 Behaviour that contravenes another law**

This clause provides that a veterinary surgeon must not engage in behaviour that contravenes another law where it would reflect on the ability or commitment of the veterinary surgeon to provide an adequate standard of care. Subsection (2) provides an example of behaviour that reflects on the ability or commitment of a veterinary surgeon; specifically, conviction of an offence punishable by imprisonment for 6 months or longer where the conviction adversely reflects on the surgeon's suitability to practise.

### **Clause 32 Maintenance and demonstration of professional development continued competence and recency of practice for veterinary surgeons**

This clause provides that an applicant for registration as a veterinary surgeon must give the board written evidence of certain matters on request, including that the applicant has practised under the supervision of a veterinary surgeon and that the applicant has undertaken professional development activities.

The clause further provides that an applicant must give the board written evidence of recency of practice on request, such as that the applicant has practised as a veterinary surgeon in the 5 years before the day the application was made.

## **PART 5 ELECTION OF BOARD MEMBERS**

Part 5 provides procedures for the election of members of the board. It provides general electoral procedures as well as procedures for filling casual and temporary vacancies and dealing with disputed board elections.

### **Division 5.1 General**

The board is comprised of both members appointed by the Minister and members elected by registered veterinary surgeons. Division 5.1 provides general procedures for ordinary election of members to the board. The electoral scheme created by division 5.1 is administered by the electoral commissioner.

Particular points of the electoral scheme created by division 5.1 include:

- Section 34 provides in detail the requirements to be satisfied by the president for election dates.
- Veterinary surgeons registered in the ACT are eligible to nominate for a position as a member of the board (see below, section 37). This is facilitated by the president giving the electoral commissioner a certified list of veterinary surgeons (section 35). The electoral commissioner must notify each person on the list about their eligibility for nomination for election (section 36).
- Eligibility criteria for nomination to membership of the board are prescribed in section 37 and require the person to be a registered veterinary surgeon and to have been continuously registered, or continuously registered under a corresponding law of a local jurisdiction and the ACT for at least three years before the election start day.
- Direction is provided in sections 43 to 45 in relation to the actions required of the electoral commissioner in circumstances where the numbers of candidates is less than, equal to, or greater than the number of membership positions available.
- Section 46 limits eligibility to vote to a person who is a registered veterinary surgeon on the election start day.
- Section 47 provides that an elector may only vote once in an election.
- Procedures for ballot papers, manner of voting and scrutiny of elections can be found in sections 48 to 56, 59 and 60.
- Section 58 provides that the electoral commissioner must declare each successful candidate elected.
- The term of a person declared elected is for four years under section 59.

### **Division 5.2 Casual and temporary vacancies in elected positions**

Division 5.2 provides procedures for filling casual and temporary vacancies in elected positions of the board. A summary of the procedures outlined in division 5.2 is below:

- To ensure that board member positions do not remain unfilled for long periods of time, section 63 requires the president of the board to inform the electoral commissioner in writing of a casual vacancy in cases where the former member's term had more than a year to run.
- Section 65 provides that a person may apply to be a candidate for a casual vacancy on the board if the person was a candidate in the last election for the position, was not elected at that election and is eligible to be elected.
- Sections 66 and 67 outline the actions required of the electoral commissioner in cases where there is more than one candidate, there are no candidates or there is only one candidate for a casual vacancy.
- Section 68 allows the Minister to nominate a person to be a member of the board in cases where the formerly-elected board member's term had less than a year to run, and where other specified criteria apply. If



the Minister nominates an eligible person under this section, the Minister must tell the electoral commissioner who must then declare the person elected.

- Section 69 specifies the term of a board member declared elected to fill a casual or temporary vacancy.
- Section 70 allows the board to ask the Minister to appoint a member in circumstances where the board is unable to exercise its functions due to a temporary vacancy.

### **Division 5.3 Disputed elections**

Division 5.3 provides procedures to deal with disputed results of board elections. The Supreme Court has jurisdiction to hear and decide disputed election applications, sitting as the Court of Disputed Elections. A summary of the procedures outlined in division 5.3 is below:

- Section 73 provides for the Supreme Court to have the same powers when exercising jurisdiction under part 5 as it has when exercising its original jurisdiction.
- Under section 74, the Court of Disputed Election's decision is final and conclusive and not subject to appeal.
- Section 75 establishes the circumstances when the validity of an election is to be taken to be in dispute. Only a candidate in the election, an elector for the election, and the electoral commissioner are entitled, under section 76, to dispute the validity of an election. The necessary administrative requirements for an application (or withdrawal of an application) disputing the validity of an election are specified in sections 77 to 82.
- Section 83 specifies the circumstances when a person ceases to be a respondent to a disputed election application and the actions required of the person (or his or her personal representative).
- Under section 86, the court must hear and decide a disputed election application and take actions that the court considers appropriate.
- Section 87 authorises the court to make a declaration on the grounds of an illegal election practice if it is satisfied that the result of the election was, or was likely to have been, affected by the practice. If the court finds an illegal election practice has occurred, the registrar of the court is required to report the finding to the electoral commissioner, the director of public prosecutions, and the president of the board.
- Section 88 requires the court to declare the election of a person void if the court finds that the person committed, or attempted to commit, bribery or undue influence in relation to the election.
- The court is authorised under section 90 to make any inquiries it considers appropriate in deciding a disputed election application. Areas of regard and disregard by the court, including the inspection of electoral papers, are specified in sections 90 to 93.
- The serving of copies of declarations made by the court and the effect of court declarations are specified in sections 95 and 96.
- Under section 98, a party in a proceeding is entitled to be represented by only one lawyer appearing as counsel.

- Section 99 authorises the court to order the Territory to pay some or all of the costs of the proceeding, even if the Territory is not a party to a proceeding.

## **PART 6 BOARD MEMBERSHIP**

### **Clause 100 Eligibility to remain in office—board members**

This clause provides that if a board member ceases to be a registered veterinary surgeon, that person also stops being a board member.

## **PART 7 BOARD MEETINGS**

Part 7 provides procedural guidance in relation to meetings of the board.

### **Clause 101 When are board meetings held**

This clause provides that the board may hold the meetings it considers appropriate in order to exercise its functions, one of which must be open to the public each year. The board president may call a meeting at a stated time and place, and must do so if asked by a majority of board members.

### **Clause 102 Board meetings usually in public**

This clause provides that board meetings must be open to the public unless the board decides otherwise. The board must notify each registered veterinary surgeon of public board meetings.

### **Clause 103 Ministerial referrals to board**

This clause permits the Minister to refer matters relating to veterinary surgeons to the board for consideration.

### **Clause 104 Presence at board meetings**

This clause allows board meetings to be held via various methods of communication rather than face-to-face, if the members of the board agree. This provision allows a board member who cannot be physically present at a board meeting to take part in the meeting.

### **Clause 105 Presiding member at board meetings**

This clause provides that the board president is the presiding member of the board. In the president's absence, the deputy president is the presiding member. If both the president and deputy president are absent from a meeting, the members present may elect the presiding member.

### **Clause 106 Board quorum**

This clause provides that a majority of board members makes a quorum.

### **Clause 107 Voting at meetings**

This clause provides for voting procedure at meetings. Importantly:

- a question must be decided by a majority of members;
- the member presiding has a casting vote, if he or she is the president or deputy president; and
- voting is usually by show of hands but may also be by ballot.

### **Clause 108 Records of board meetings**

This clause provides that the board must keep records of its meetings.

### **Clause 109 Board meeting procedures**

This clause permits the board to decide its own meeting procedures if they are not prescribed by part 7 of the regulation.

## **PART 8 BOARD FUNCTIONS**

Part 8 directs the board to perform certain functions.

### **Clause 110 Board to seek to form ties**

This clause provides that the board must actively seek to form ties with professional entities and its interstate counterparts in order to promote practise and professional development standards.

### **Clause 111 Performance of board on standards**

This clause provides that the Minister may assess the board's performance by considering whether the standards statements approved by the board benefit, or are likely to benefit, the public.

### **Clause 112 Performance of board on applications and reports**

This clause provides that the Minister may assess the board's performance by considering how it deals with applications for registration under the Act and reports. The clause further provides that the board must ensure that veterinary surgeons referred to panels are dealt with as promptly as possible while allowing for proper consideration of any issues.

### **Clause 113 Community representative list**

The clause provides that the board must give the Minister a community representative list of at least three members not earlier than six months before the expiry of the appointment of the community representative member of the board. The community representative list is required by section 110 (4) of the Act.

## **PART 9 MISCELLANEOUS**

### **Clause 114 Inspection of incorporated documents**

An incorporated document is defined as a standards statement developed by another entity that has been approved by the board. This clause provides that the board must ensure that any incorporated document (or amendment or

replacement of an incorporated document) is available for inspection free of charge.

**Clause 115 Notification of certain incorporated documents**

This clause provides that the board must notify incorporated documents or their amendments and replacement. The clause also outlines the requirements that must be included in an incorporated document notice.