

VETERINARY PRACTICE BILL 2021

EXPLANATORY MEMORANDUM

Outline

The purpose of this Bill is to modernise and reform the regulation of the practice of veterinary medicine in Western Australia (WA), including veterinarians, veterinary nurses and veterinary premises; to facilitate the regulation of the practice of veterinary medicine on a national basis; and to repeal the *Veterinary Surgeons Act 1960* (Current Act) and the *Veterinary Surgeons Regulations 1979* (Current Regulations).

The language of the Bill reflects modern terminology, such as replacing the term “veterinary surgeon” in the Current Act with ‘veterinarian’ and the phrase “veterinary surgery” with “veterinary medicine”. It also reflects a modern regulatory approach. For example, the mutual recognition of veterinarians registered in other jurisdictions and ownership of veterinary practice businesses by non-veterinarians, have been introduced. Procedural fairness will be expressly applied to decisions which may have an adverse effect on a person.

Board membership has been broadened to add a consumer representative, a legal practitioner and a veterinary nurse, in addition to 5 veterinarians. While all Board members will be appointed by the Minister, one veterinarian and the veterinary nurse appointee will each be elected by the profession, and professional industry bodies will be invited to make recommendations to the Minister for three other veterinarian appointees. The remaining veterinarian appointee will be a Department officer.

This Bill incorporates the following reforms:

1. National Recognition of Veterinary Registration

The Bill introduces the mutual recognition of veterinarians registered in other Australian jurisdictions thereby implementing the 2015 recommendation of the Australian Productivity Commission, that Western Australia join other Australian jurisdictions to provide for mutual recognition of veterinarians registered in other Australian jurisdictions.

2. Impairment

The Bill supports the mental and physical health of veterinarians and veterinary nurses, while mitigating risks to consumers by separating impairment from unprofessional conduct matters. It introduces a third-party notification process and formal professional health assessments, and it shifts the focus from punitive penalties to managing the impairment and associated risks mainly by the imposition of appropriate conditions on registration.

Notifications apply only in restricted circumstances where an impairment places an animal or a person, including the veterinary practitioner, at substantial risk of injury or harm. They are not dealt with as complaints and are not subject to the full suite of investigative processes for complaints. Hence, confidentiality is maintained throughout the process.

Importantly, the scope of the impairment provisions in the Bill is limited to only those impairments which detrimentally affect a person's capacity to practise veterinary medicine.

3. Ownership of veterinary practice businesses

The Bill allows non-veterinarians to own veterinary practices, provided a registered veterinarian makes decisions relating to veterinary treatment and care. This reform brings WA into line with other Australian jurisdictions.

4. Immediate Action Orders

The Bill allows the New Board to make an immediate action order in relation to a veterinarian or veterinary nurse if it is satisfied that there is an imminent risk of substantial injury or harm to any person or animal. An immediate action order is subject to a show cause process and may impose or modify conditions on registration or may suspend veterinary practice for the maximum period of 28 days. After making this order the Board must take other appropriate or necessary steps to address the issue. Immediate action orders are found in the veterinary legislation of several Australian jurisdictions.

5. Complaints and discipline

The Bill reintroduces board powers to deal with disciplinary matters, which were transferred to the State Administrative Tribunal (Tribunal) in 2005. All disciplinary matters, regardless of their level of seriousness, have subsequently been referred to the Tribunal. In its May 2009 "Inquiry into the Jurisdiction and Operation of the State Administrative Tribunal," the Standing Committee on Legislation raised concerns about the lack of powers of vocational regulatory bodies, such as the Veterinary Surgeon's Board, to deal with minor disciplinary matters and impose penalties, such as a fine or reprimand.

The Bill empowers the New Board to investigate complaints, hold an inquiry and make orders following a finding of unprofessional conduct, including imposing fines of up to \$2,000, imposing or modifying conditions on registration, or issuing a reprimand. Conduct of a more serious nature (professional misconduct) must be referred to the Tribunal which has broader powers to make orders, including cancelling registration.

Under the Current Act, an investigation or proceeding before the Tribunal ceases when registration of the veterinarian is relinquished or lapses. As a result, the immediate concern regarding the public interest is protected, but complaints remain unresolved and there is no scope for formal disqualification from future registration. The Bill overcomes these limitations by permitting an investigation or proceedings to be undertaken or continue when a veterinarian or veterinary nurse is no longer registered, so long as they were registered at the time the alleged conduct occurred.

6. Veterinary nurses

WA is the only jurisdiction in Australia to specifically regulate veterinary nurses. Under the Current Act a person must apply to the Current Board for approval to be a veterinary nurse. Complaints of unprofessional conduct can be dealt with under the Current Regulations.

The Bill will elevate this regulatory process into the primary legislation and provide regulation for veterinary nurses that mirrors regulation for veterinarians. This approach is supported by the WA Division of the VNCA and reflects the significant responsibilities of veterinary nurses.

Provisions of the Bill

Part 1 - Preliminary

This part sets out the short title, commencement provisions and defines the terms used throughout the Bill, all of which are helpful in understanding the Bill as a whole.

Clause 1 Short title

This clause provides that the title is the *Veterinary Practice Act 2021*.

Clause 2 Commencement

Part 1 of the Bill is to come into operation on Royal Assent, with the rest to come into operation on a day fixed by proclamation.

Clause 3 Terms used

This clause defines a number of terms used in the Bill, including the following:

animal means a vertebrate other than a human. This definition includes fish, as acts of veterinary medicine may be performed on species of fish.

authorised person is a person who is, or who belongs to a class of persons authorised under the regulations to perform acts of veterinary medicine. It is intended that authorised persons will include veterinary students from veterinary schools recognised by the New Board, trainee veterinary nurses, and international veterinarians. An authorised person may be under the direction of a registered veterinarian or a veterinary nurse, depending on the act of veterinary medicine being carried out, and will be authorised to carry out only those acts prescribed in the regulations and specified in the person's authorisation. Reliance on the making of regulations provides the flexibility needed to address individual circumstances and ensure each situation is properly and fully considered to prevent authorising or retaining the authorisation of persons who are not fit for the category.

Corresponding law means the law of another jurisdiction that provides for registration of veterinarians and is prescribed by the regulations to be corresponding. This definition informs related phrases used in Bill such as participating jurisdiction, interstate registration, interstate regulatory authority and interstate veterinarian. For example, a participating jurisdiction is one in which a corresponding law is in place.

impairment means a physical or mental impairment, disability, condition or disorder, including substance abuse or dependence, that detrimentally affects, or is likely to detrimentally affect, a person's capacity to practise as a veterinarian or as a veterinary

nurse. An impairment that is being effectively managed by the person will not fall within this definition since it is not likely to detrimentally affect capacity to practise.

interstate veterinarian means a person who is taken to hold general or specialist registration as a WA veterinarian.

veterinary medicine sets out criteria for carrying on the practise of veterinary medicine, including general activities such as examining animals for the purpose of diagnosing diseases or physiological conditions (such as diagnosing pregnancy), treating animals, performing surgery, and administering anaesthetic agents. Veterinary medicine can include or exclude anything else prescribed by regulation. This will serve to accommodate the future development of veterinary medicine which is affected by rapidly changing science and community expectations, as well as improving technologies. For example, certain types of pregnancy testing for livestock are progressively being excluded from the definitions of veterinary medicine in other Australian jurisdictions, which demonstrates the need for flexibility.

veterinary supervisor for veterinary premises will be a WA veterinarian, and their functions may be the subject of regulation.

WA veterinarian means a person registered in one or more of the categories to practice veterinary medicine.

Clause 4 Act binds Crown

This clause provides that the Crown is bound by the provisions of the Bill.

Part 2 – Registration of veterinarians and veterinary nurses

This part of the Bill contains provisions relating to registration as a WA veterinarian or a veterinary nurse, and recognition of veterinarians registered in other jurisdictions.

Division 1 – Applications for registration

Clause 5 Application for registration

This clause provides that a person may apply for registration as a WA veterinarian in one or more categories in a written form approved by the Board and accompanied by both evidence that the applicant meets the requirements for registration and the prescribed application and registration fees. If the Board refuses the application, the registration component of the fees is refunded.

Clause 6 Application for renewal of registration

A person who is registered may apply for renewal of their registration. An application can be made after registration expires, but only if it is not later than one month after the registration expires. The application must be accompanied by the prescribed application and registration fees. An application made after expiry will attract an

additional fee, if prescribed in the regulations, which cannot be more than 50% of the application fee.

Clause 7 Board's powers in relation to application

Before the Board has made a decision on an application for registration it may require an applicant to give additional relevant information in writing or in person, failure of which may result in the Board refusing the application (see clause 8). For example, the Board may require the written consent of the applicant to seek information from another person, or may require an applicant to undergo a health assessment, which would be based on a reasonable belief formed by the Board in accordance with clause 129.

Clause 8 Refusal of application

This clause allows the Board to refuse an application for registration or renewal of registration if it is not made in accordance with the requirements set out in the Bill, or the applicant does not comply with a requirement under clause 7, or for a health assessment under clause 129(1) of the Bill. The Board must refund the registration fee if it refuses the application.

Clause 9 Non-standard application

A non-standard application, is one that requires more time and resources to process than a standard application. This may, for example, be due to the Board considering previous offences, or requiring a health assessment. If the Board determines that an application is a non-standard one, it must give the applicant written notice seeking the applicant's written agreement and setting out details, including any additional fee payable set by regulations.

Division 2 – Requirements for registration

Clause 10 General registration as WA veterinarian

A person is eligible for registration if they satisfy the listed requirements for general registration including any that are prescribed. The person must be a graduate of a course of education in veterinary science or surgery approved by the Board. The applicant must also be resident in WA, have sufficient physical and mental capacity, be proficient in English and be a fit and proper person in accordance with the criteria in clause 18. A refusal to grant registration is subject to the show cause process in clause 31.

Clause 11 Specialist registration as WA veterinarian

This clause provides that a person will be eligible for specialist registration, if they hold general or honorary registration as a WA veterinarian, and have the necessary qualifications and experience determined by the Board and set out in the regulations.

Clause 12 Honorary registration as WA veterinarian

This clause provides that to be eligible for honorary registration, a person must have held registration for at least 40 years in WA or in another jurisdiction in Australia or overseas and have standing in the veterinary profession that justifies honorary registration.

Clause 13 Limited registration as WA veterinarian

This clause sets out the criteria for eligibility for limited registration, which are similar to those for general registration and may include prescribed requirements. It also lists the purposes for which limited registration may be granted, which include relevant studies, teaching and assistance in veterinary emergency and the performance of a particular veterinary procedure for a limited period in WA.

Clause 14 Registration as veterinary nurse

A person is eligible for registration as a veterinary nurse if they are suitably qualified and satisfy the other listed requirements, including any prescribed in the regulations, and the criteria for being a fit and proper person set out in clause 18.

Division 3 – Grant or renewal of registration

Clause 15 Grant of registration

This clause provides that the Board must grant registration in a particular category of registration if it is satisfied that the applicant meets the requirements for that category.

Clause 16 Interim registration

This clause provides that the Board may grant interim registration in a particular category, for a period of up to three months, while assessing whether the applicant meets the relevant requirements, if the Board is satisfied that it is highly likely those requirements will be met.

Clause 17 Renewal of registration

This clause provides that the Board must renew a person's registration if it is satisfied that the applicant continues to meet the requirements for the relevant category, is complying with any conditions on the person's registration and has met any prescribed requirements for renewal.

If a person applies for renewal of registration before the day on which the registration expires, or within one month thereafter, the registration continues in force until the Board gives the person notice of its decision. If not, registration continues in force for one month after the day on which it expired.

Clause 18 Fit and proper person

This clause sets out the matters to which the Board must have regard in determining whether a person is a fit and proper person to hold registration. This includes information about any convictions for a criminal offence or an offence under this Bill or under a corresponding law. The Board must also consider any contravention of an order by a regulatory authority, previous refusal of application for registration, findings of unprofessional conduct or professional misconduct, or other behaviour which shows the person is not of good fame or character.

Clause 19 Duration of registration

This clause provides that a person's registration as a veterinarian or a veterinary nurse has effect for the period prescribed by the regulations, or the period specified in the person's certificate of registration, whichever is the shorter.

Clause 20 Registration of WA veterinarians affected by decisions of interstate regulatory authorities

This clause provides that if a WA veterinarian's registration is affected by a decision of an interstate regulatory authority, their registration in WA is similarly affected. The types of decisions to which this clause relates include the imposition or modification of a condition on registration and the cancellation, suspension, disqualification or reinstatement of registration.

Division 4 – Recognition of veterinarians registered in other jurisdictions

Clause 21 Terms used

This clause defines corresponding specialty as one under a corresponding law approved by the Board, and interstate registration as registration under a corresponding law.

Clause 22 Recognition of veterinarians registered in other jurisdictions

This clause provides that a person is taken to hold general or specialist registration in WA if the person has interstate registration substantially the same as registration granted under the Bill and practises veterinary medicine in WA, so long as the person's principal place of residence is either not in WA or has not been in WA for longer than 3 months during which their interstate registration has not been renewed.

Clause 23 Registration of interstate veterinarians affected by decisions of interstate regulatory authorities

This clause provides that, the effect of a decision of an interstate regulatory authority on an interstate veterinarian's registration applies in the same way to that veterinarian's deemed registration in WA. This may result from disciplinary action and includes the imposition or modification of a condition on registration, cancellation, suspension, disqualification or reinstatement of registration.

Division 5 – Conditions on registration

Clause 24 Conditions generally

This clause sets out the conditions to which the registration of a veterinarian or a veterinary nurse is subject, including those imposed by the Board, the Tribunal or an interstate regulatory authority as well as those identified for limited registration and those otherwise prescribed.

Clause 25 Conditions imposed by Board

This clause provides that the Board may, on reasonable grounds, impose conditions on the registration of a veterinarian or a veterinary nurse when granting or renewing their registration, or during its currency. The clause contains a non-exhaustive list of examples, including the requirement to complete a specified course, undertake a period of work under supervision, undergo counselling or medical treatment and do or refrain from doing something in connection with veterinary medicine. The show cause process in clause 31 applies.

Clause 26 Modification or removal of conditions by Board

This clause empowers the Board to modify or remove a condition on the registration of a veterinarian or veterinary nurse if it considers there are reasonable grounds to do so, subject to the consent of any interstate regulatory authority which imposed the condition.

Clause 27 Condition of limited registration

This clause provides that it is a condition of limited registration that the person only practise veterinary medicine in WA and for the purpose for which the registration was granted.

Division 6 – Cancellation or suspension of registration

Clause 28 Cancellation of registration generally

This clause lists the bases on which the registration of a veterinarian or a veterinary nurse may be cancelled by the Board by reference to specific provisions in the Bill. It includes if the person is not entitled to be registered, if requested by the registered person, or to implement an order of the Tribunal under Part 7 or a decision of an interstate regulatory authority.

Clause 29 Cancellation of registration by Board

This clause requires the Board to cancel the registration of a veterinarian or a veterinary nurse if requested in writing by the veterinarian or veterinary nurse, or if it becomes aware that:

- a qualification that enabled registration has been withdrawn, cancelled or was forged or fraudulently obtained; or

- the veterinarian or veterinary nurse is in arrears in respect of fees due under the Bill.

Clause 30 Suspension of registration

This clause provides that the registration of a veterinarian or a veterinary nurse may be suspended by an immediate action order made by the Board, an order of the Tribunal or a decision of an interstate regulatory authority. The person is taken not to be registered for the period of the suspension, except for the purposes of giving the person written notices under the Bill, and in relation to complaints and disciplinary proceedings.

Division 7 – Show cause process and notice of decisions

Clause 31 Show cause process for proposed decision

This clause requires the Board to give written notice to a person, and a reasonable opportunity for the person to make a written submission, to which the Board must have regard, if it is proposing to make one of the following decisions against that person:

- refusal to grant or renew registration;
- grant or renewal of registration in a category other than the one applied for;
- imposition or modification of a condition on registration during its currency;

A show cause process also applies to Board decisions with respect to veterinary premises (clause 48), immediate action orders (clause 71) and health assessments (clause 130).

Clause 32 Notice of decision on registration or renewal of registration

This clause requires the Board to give an applicant for registration notice of its decision as soon as practicable after making it, including details of the category granted and any conditions imposed. The notice must outline the reasons for imposing conditions or refusal and articulate the applicant's right to a review by the Tribunal.

Clause 33 Notice of decision to impose, modify or remove condition

This clause requires the Board to give a person written notice of the decision to impose, modify or remove a condition on their registration during its currency, as soon as practicable after making it, including reasons for the decision and the person's right of review by the Tribunal.

Clause 34 Notice of decision to cancel registration

This clause requires the Board to give a person written notice of a decision to cancel the person's registration, as soon as practicable after making it, including reasons for the decision, and that person's right of review by the Tribunal.

Part 3 – Registration of veterinary premises

Division 1 – Applications for registration

Clause 35 Application for registration

This clause provides that a person, who is or proposes to be a veterinary practice owner, may apply for registration of the premises from which the practice is to be operated. The application must be accompanied by the prescribed application and registration fees, and address the criteria for registration set out in clause 39. If granted, the person in whose name the premises are registered becomes the registered practice owner.

Clause 36 Application for renewal of registration

This clause provides for a registered practice owner to apply for renewal of registration of the veterinary premises. The applicant must pay the prescribed application and registration fees. The application can be made within the one month after the day on which the registration expires, in which case an additional fee of up to 50% of the application fee will be payable if this is prescribed.

Clause 37 Board's powers in relation to application

This clause empowers the Board to require additional relevant information, statutory declaration verification, inspection of premises or the attendance of the applicant in considering the application for registration of premises.

Clause 38 Refusal of application

Failure to comply with any requirement relating to the application process may result in the Board refusing the application, in which case the registration fee is refunded.

Division 2 – Requirements for registration

Clause 39 Requirements for registration of premises

This clause sets out criteria for registration of veterinary premises, including:

- the premises are in a satisfactory condition for carrying out a veterinary practice business and are designed and equipped in accordance with prescribed requirements;
- prescribed management arrangements are in place, including a veterinary supervisor and the proposed registered practice owner is not bankrupt or insolvent.

Division 3 – Grant or renewal of registration

Clause 40 Grant of registration

This clause requires the Board to grant registration of premises if the requirements in clause 39 are, or can be, met, or it is otherwise appropriate to grant registration.

Clause 41 Interim registration

This clause permits the Board to grant interim registration of premises as veterinary premises for up to three months, while assessing the application, if satisfied that it is highly likely the requirements for registration will be met.

Clause 42 Renewal of registration

This clause requires the Board to renew the registration of veterinary premises if satisfied that the requirements for registration are or can be met and that there is compliance with any conditions on the registration and with prescribed requirements.

If a registered practice owner applies for renewal of registration before the day on which registration expires, or within one month thereafter, the registration continues in force until the Board gives notice of its decision. If not, registration continues in force for one month after the day on which it expired.

Clause 43 Duration of registration

Registration of veterinary premises has effect for the period prescribed by the regulations, or specified in the certificate of registration, whichever is the shorter.

Division 4 – Conditions on registration

Clause 44 Conditions generally

The registration of veterinary premises is subject to any condition imposed by the Board or provided for in the regulations.

Clause 45 Conditions imposed by Board

This clause provides that the Board may on reasonable grounds, impose conditions when granting, renewing or during the currency of the registration of veterinary premises, which:

- specify how premises are to be utilised, equipped, redesigned, altered, managed or operated; and
- require a registered practice owner to do or refrain from doing something in connection with the premises.

Clause 46 Modification or removal of conditions by Board

The Board may, on application by the registered practice owner or on its own initiative, modify or remove a condition on the registration of veterinary premises, if it considers there are reasonable grounds for doing so.

Division 5 – Cancellation of registration

Clause 47 Cancellation of registration by Board

This clause provides that the Board must cancel the registration of veterinary premises at the written request of the registered practice owner, or in the event of outstanding fees, lack of a veterinary supervisor, cessation of business or because registration was obtained by incorrect or misleading information. Registration may be cancelled if the premises do not meet registration requirements or a condition is contravened.

Division 6 – Show cause process and notice of decisions

Clause 48 Show cause process for proposed decision

This clause provides that the Board must give the applicant written notice and the opportunity to make a written submission, to which the Board must have regard, if any of the following decisions with respect to the registration of veterinary premises are proposed:

- refusal to grant or renew;
- imposition or modification of a condition;
- cancellation.

Clause 49 Notice of decision on registration or renewal of registration

This clause requires the Board to give an applicant notice of its decision as soon as practicable after making it, including a description of the premises for which registration is granted or renewed, the registration period and any conditions imposed. The notice must outline the reasons for imposing conditions or refusal and the applicant's right to review by the Tribunal.

Clause 50 Notice of decision to impose, modify or remove condition

This clause requires the Board to give the registered practice owner notice of its decision to impose remove or modify conditions during the currency of registration for veterinary premises, as soon as practicable after making the decision, including reasons for the decision and the right of the registered practice owner to apply to the Tribunal for review.

Clause 51 Notice of decision to cancel registration

This clause requires the Board to give the registered practice owner, as soon as practicable after it is made, notice of its decision to cancel registration for veterinary premises including reasons for the decision and the right of the registered practice owner to apply to the Tribunal for review.

Part 4 – The register

Clause 52 Register to be kept

This clause provides that the Board must keep an accurate and up-to-date register of information listed in clause 53 and any other information the Board considers appropriate, which may include information in respect of interstate veterinarians. The Board may keep a copy of the register in any way it thinks appropriate, including an electronic version, and it may form part of registers of veterinarians kept under corresponding laws.

Clause 53 Information to be recorded in register

Information to be recorded in the register includes the name, title, qualifications, date, specialty or any limited purpose of registration of each WA veterinarian and veterinary nurse, as well as the town or suburb where they practice and any conditions on their registration, other than conditions which reveal impairment. Information about a registered veterinary premises must also be recorded in the register, such as its address and name, its registered practice owner and veterinary supervisor, and conditions on registration. Additional details may be prescribed.

Clause 54 Information about interstate veterinarians

This clause sets out the information that may be recorded in the register about an interstate veterinarian, as the Board considers appropriate, such as their name, speciality, any conditions on their registration and any information prescribed.

Clause 55 Inspection of, and obtaining information from, register

Members of the public are entitled to inspect or obtain a copy of the register, free of charge, other than information that is prescribed.

Part 5 - Offences

Division 1 – Practice of veterinary medicine

Clause 56 Carrying out acts of veterinary medicine

This clause makes it an offence for a person to carry out an act of veterinary medicine, unless the person is a veterinarian, a veterinary nurse or an authorised person. It also provides that veterinary nurses and authorised persons may only carry out acts of veterinary medicine for which they are authorised under the regulations.

The penalty for an offence under this clause is \$10,000 for a first offence and \$20,000 for a second or subsequent offence.

It is a defence to a charge under this clause if the person proves that the act was carried out in an emergency situation to save the life or relieve pain suffered by an animal.

Clause 57 Employing or engaging persons to carry out acts of veterinary medicine

It is an offence for a person to employ or engage another person to carry out an act of veterinary medicine who is not a veterinarian, a veterinary nurse or an authorised person; or to engage a veterinarian, veterinary nurse or authorised person to carry out an act of veterinary medicine contrary to what is authorised under their registration.

It is a defence to prove the accused did not know or could not reasonably be expected to know that the person engaged was not a veterinarian, a veterinary nurse or an authorised person; or that the act of veterinary medicine was not authorised under their registration.

Clause 58 Undue influence

This clause makes it an offence for a person to direct, cause, induce or knowingly permit or do anything that would constitute unprofessional conduct or professional misconduct. A first offence attracts a fine of \$10,000. A fine of up to \$30,000 applies for subsequent offences or if the offence is committed by a person in a position of responsibility for others engaged in veterinary practice, such as a practice owner or veterinary supervisor.

Division 2 – Conditions of registration or authorisation

Clause 59 Contravention of conditions

This clause makes it an offence to contravene a condition on an authorisation or on registration for veterinarians, veterinary nurses and veterinary premises. Penalties apply of \$10,000 for first offences and \$20,000 for subsequent ones.

Division 3 – Carrying on a veterinary practice business

Clause 60 Veterinary practice businesses to be carried on at or from veterinary premises

This clause makes it an offence to carry on a veterinary practice business from any premises other than veterinary premises and imposes penalties of \$10,000 for a first offence and \$20,000 for subsequent offences. However, the regulations may allow the use of other premises in specific circumstances, which may, for example, permit other business activities, such as administrative work, to be undertaken from alternative premises. The power to make regulations under this clause reflects the inability to identify all the types of premises or circumstances which will need to be excluded from the requirement to be registered as a result of the rapidly changing manner in which veterinary services are being dispensed. It provides the flexibility needed to consider future variations in the practice of veterinary medicine on a case-by-case basis.

Division 4 – False representations and use of words and abbreviations

Clause 61 False representations about being veterinarian

This clause creates an offence for a person to falsely represent themselves as a registered veterinarian, including use of a misleading description or title, and imposes penalties of \$10,000 for a first offence and \$20,000 for subsequent offences.

Clause 62 False representations about being veterinary specialist

Making a false claim to be a veterinary specialist is an offence under this clause, attracting penalties of \$10,000 for a first offence and \$20,000 for subsequent offences.

Clause 63 False representations about being veterinary nurse

Making a false representation to be a registered veterinary nurse is an offence under this clause, attracting penalties of \$2,500 for a first offence and \$5,000 for subsequent offences.

Clause 64 False representations about being authorised person

Making a false representation to be an authorised person is an offence under this clause, attracting penalties of \$2,500 for a first offence and \$5,000 for subsequent offences.

Clause 65 Use of certain words & abbreviations

This clause prohibits the use of veterinary language in connection with a business unless the person has qualifications, registration, authorisations or business concerns to support this use. Penalties apply of \$10,000 for a first offence and \$20,000 for subsequent offences.

Division 5 – Notice requirements

Clause 66 Notice about events relevant to the person's registration

It is an offence, attracting a penalty of up to \$5 000, for a veterinarian or veterinary nurse to fail to notify the Board within 14 days of events relevant to their registration, such as:

- the withdrawal or cancellation of a relevant qualification;
- a negative disciplinary finding or decision on registration by any regulatory authority;
- the commencement, withdrawal or dismissal of proceedings for a relevant offence such as offences related to veterinary medicine or punishable by imprisonment for more than 1 year.

Clause 67 Notice about changes of ownership of veterinary practice business

This clause requires a person who becomes or ceases to be a veterinary practice owner to, within 14 days, notify the Board of the change of ownership. The penalty is \$5,000.

Clause 68 Notice about change of veterinary supervisor

This clause provides that a person who becomes or ceases to be a veterinary supervisor must, within 14 days, notify the Board of the change of supervisor. The penalty is \$5,000.

Clause 69 Requirements for notice under this Division

This clause provides that notices under clauses 66-68 of the Bill must be in writing and contain the details or be any form approved by the Board.

Part 6 – Immediate action orders

Clause 70 Board may make immediate action order

This clause provides that the Board may make an immediate action order in relation to a veterinarian or a veterinary nurse if it is satisfied that there is an imminent risk of substantial injury or harm to a person or animal. This risk may be due to the conduct or an impairment of the veterinarian or veterinary nurse. The Board may make this order even if the conduct is being dealt with as a complaint or relates to a notification of an impairment under the Bill.

An immediate action order may impose a condition or modify an existing condition on the veterinarian or veterinary nurse's registration, or may suspend the registration, and it is subject to the show cause process in clause 71.

Clause 71 Show cause process for proposed order

This clause requires the Board to give written notice to a person against whom an immediate action order is proposed to be made and a reasonable opportunity for that person to make a submission, to which the Board must have regard in deciding whether to make the order. Due to the risk and urgency factors when an immediate action order is being contemplated, both the Board's notice and any submission in response can be oral, and the reasonable time frame for response may be shorter than for show cause processes relating to other Board decisions.

Clause 72 Notice of immediate action order

The Board must give written notice of the immediate action order to the affected person as soon as practicable, containing short reasons and articulating the right to review.

Clause 73 Duration of immediate action order

An immediate action order has effect for the period specified in the order, which must not be more than 28 days, and continues until it is set aside on review or revoked under clause 75.

Clause 74 Board to take other necessary or appropriate action

After making an immediate action order, the Board must take any other action in relation to the person that is necessary or appropriate. This may be to impose or modify a condition on registration under Part 2, require a health assessment or initiate an investigation.

Clause 75 Variation or revocation of immediate action order

The Board may vary or revoke an immediate action order it has made, unless the order relates to a complaint referred to the Tribunal. The Tribunal may vary or revoke an immediate action order made by the Board which relates to a complaint referred to it.

Part 7 – Complaints and discipline

Division 1 – When this Part applies

Clause 76 Application of Part

Part 7 applies to unprofessional conduct and professional misconduct engaged in by veterinarians and veterinary nurses who are currently registered, or who are no longer registered but were at the time of the conduct or alleged conduct.

Clause 77 Application to conduct of veterinarians

This clause addresses how Part 7 applies to the conduct of veterinarians, in WA, in another participating jurisdictions, or outside participating jurisdictions.

Part 7 applies to the conduct of veterinarians in WA, and also to conduct of WA veterinarians that occurs wholly or partly outside all participating jurisdictions.

In addition, Part 7 may apply to conduct of a veterinarian in the following circumstances:

- If the conduct is part of a course of conduct, occurring partly in WA and partly in another participating jurisdiction, and consent is given for it to be dealt with under this Part by either the other jurisdiction's regulatory authority or the complainant and the veterinarian;
- If the conduct concerns a WA veterinarian, occurs wholly in another participating jurisdiction, the Board consents, and the other jurisdiction's regulatory authority or the complainant and the veterinarian consent to it being dealt with under this Part.

Conduct of a veterinarian may be dealt with under a corresponding law, even if it occurs in WA, if the Board consents or the complainant and veterinarian consent to it being dealt with under a corresponding law. However, this is limited by whether the corresponding law is capable of dealing with that conduct.

Division 2 – Key concepts

Clause 78 Unprofessional conduct

This clause defines unprofessional conduct to include doing or omitting to do something in connection with the practice of veterinary medicine that falls short of the standard of competence, diligence and safety that a member of the public is entitled to expect of a reasonably competent veterinarian or veterinary nurse. The regulations may also prescribe certain conduct to be unprofessional conduct.

Clause 79 Professional misconduct

This clause defines the more serious category of professional misconduct to include:

- unprofessional conduct which involves a substantial or consistent failure to reach or maintain a reasonable standard of competence, diligence and safety; and
- conduct, whether occurring in connection with the practice of veterinary medicine or not, that is inconsistent with a person being a fit and proper person to hold registration as a WA veterinarian or veterinary nurse; and
- any conduct prescribed to be professional misconduct.

Clause 80 Conduct capable of constituting unprofessional conduct or professional misconduct

This clause lists conduct that may be either unprofessional conduct or professional misconduct. It includes offending against the Bill or other listed statutes relating to animal care and safety, contravening conditions on registration or the order of a regulatory authority, practising veterinary medicine when intoxicated or affected by drugs, or being convicted of an offence punishable by more than 1-year imprisonment.

Division 3 - Complaints

Clause 81 Making complaint

This clause provides for a complaint to be made to the Board that a veterinarian or a veterinary nurse has engaged in unprofessional conduct or professional misconduct. The complaint must, if possible, identify the person about whom it is made and describe the alleged conduct. If the complainant does not wish to be identified to the person the subject of the complaint, they must include reasons for non-disclosure.

It is not a bar to making a complaint if the person who is the subject of the complaint is also the subject of proposed or current court proceeding relating to the same subject matter.

Clause 82 Time limit for complaint

This clause provides that the Board cannot deal with a complaint made more than 3 years after the alleged conduct, unless the Board determines that to do so is just and fair having regard to the delay and reasons for the delay, and that it is also in the public interest to do so.

Clause 83 Respondent to be notified about complaint

This clause requires the Board to notify the veterinarian or veterinary nurse in writing about the complaint against them, setting out its nature and the name of the complainant, unless the Board chooses to omit the name after considering the complainant's reasons for non-disclosure. The Board may delay this notice until it has reasonable opportunity to assess the complaint, seek further information, or undertake preliminary inquiries.

Clause 84 Board may deal with matter as complaint

The Board may deal with a matter as if it were the subject of a complaint, even if a formal complaint has not been made.

Division 4 – Assessment of complaints

Clause 85 Board to assess complaint

This clause requires the Board to assess each complaint as soon as practicable after it is made, investigating it in any way it considers appropriate. This includes directing an inspector to investigate and/or requiring the respondent to undergo a health assessment based on its reasonable belief that the respondent may have an impairment. The Board may take into account any information obtained during its investigation in making its assessment, including any report on a health assessment and discussions with the respondent.

Clause 86 Ways in which the Board deals with complaint

This clause provides that, as soon as practicable after assessing a complaint, the Board must decide to deal with it in one of the following ways and give notice of its decision to the respondent and, if appropriate, to the complainant:

- Dismissing it;
- Dealing with it under Division 5 if it appears to be about unprofessional conduct;
- Referring it to the Tribunal if it appears to be about the more serious professional misconduct, or this is otherwise more appropriate; or
- Referring the complaint to an interstate regulatory authority.

Clause 87 Dismissing complaint

This clause requires the Board to dismiss a complaint if neither the Board nor the Tribunal have power to deal with it. The Board may dismiss the complaint if the conduct has previously been dealt with or is trivial, lacking in substance, could be more

appropriately dealt with by another person or body or if it is not in the public interest to deal with it.

Division 5 – Unprofessional conduct

Subdivision 1 - Inquiries

Clause 88 Inquiry into complaint of unprofessional conduct

This clause provides that the Board may conduct an inquiry into a complaint if it is about unprofessional conduct, and in doing so the Board must impose as little formality and as much speed as will permit a proper hearing, and may set its own procedures, subject to providing procedural fairness. The Board is not bound by the rules of evidence and can appoint a legal practitioner to assist.

Clause 89 Hearings

This clause permits the Board to hold hearings, which must be held in public unless the Board is satisfied of the need for confidentiality or any other reason for a private hearing.

Clause 90 Parties to inquiry

The parties to an inquiry conducted by the Board are the respondent, the complainant and any other person the Board considers has a sufficient interest in the matter.

Clause 91 Evidence and witnesses

In conducting an inquiry, the Board must give the respondent an opportunity to call and give evidence, examine and cross-examine witnesses, and make submissions, except where the Board has adopted any findings, decision, or reasons of a court, tribunal or other body in previous proceedings in which the respondent has already been given these opportunities.

Clause 92 Representation at inquiry

Parties to an inquiry may act in person or be legally represented.

Clause 93 Evidence and findings in other proceedings

The Board is permitted to receive in evidence transcripts from other proceedings and to adopt findings or draw conclusions as it considers proper.

Clause 94 Inquiry powers

This clause set out the powers of the Board when conducting an inquiry, including that a Board member may administer an oath or affirmation and that the Board may issue a written direction to attend or to produce a document or thing which must expressly notify the recipient of the requirements to comply, and with which failure to comply is an offence.

Clause 95 Failure to comply with direction

This clause provides that failure to comply with a direction by the Board under clause 94 is an offence, unless the person was not so informed or has a reasonable excuse, attracting a penalty of \$5,000. Self-incrimination is not a reasonable excuse because information given, or documents or things produced are not admissible in evidence against the person who gave them in any proceedings other than in disciplinary proceedings, proceedings for an offence of providing false and misleading information under clause 194, or proceedings for perjury. This does not affect the operation of section 11 of the *Evidence Act 1906*, which permits a court to issue a certificate which prevents a self-incriminating answer from being used in criminal proceedings against the person who provided it, other than in perjury proceedings.

Clause 96 Protection for compliance with direction

This clause provides that a person must comply with a direction under clause 94, despite any other law, and that no civil or criminal liability will be incurred as a result of compliance. Nor will compliance be regarded as a breach of a duty of confidentiality, a breach of professional ethics or standards, or unprofessional conduct.

Clause 97 Disruption of inquiry

A penalty of up to \$5,000 is imposed by this clause for disrupting an inquiry or insulting the Board during an inquiry

Clause 98 Immunity for person performing inquiry functions

This clause extends to the Board, witnesses and parties to Board proceedings, the immunities from liability that apply to judicial proceedings.

Subdivision 2 – Dealing with complaint after inquiry

Clause 99 Board to decide how to deal with complaint

This clause provides that, at the completion of an inquiry into a complaint, the Board must dismiss the complaint, make a finding of unprofessional conduct, or refer the complaint to the Tribunal if it reflects the more serious category of professional misconduct.

Clause 100 Orders following finding by Board

This clause provides that, if the Board finds that a respondent has engaged in unprofessional conduct, it may reprimand or fine the respondent, or impose or modify a condition on the respondent's registration.

Division 6 – State Administrative Tribunal

Clause 101 Powers of Tribunal to deal with complaint

This clause provides that, in dealing with a complaint that has been referred to it by the Board, either after the Board's assessment or after completion of a formal inquiry, the Tribunal may dismiss it or make a finding of either unprofessional conduct or professional misconduct against the respondent.

Clause 102 Orders following finding by Tribunal

If the Tribunal makes a finding of unprofessional conduct, it may make the same orders as the Board (clause 100). If the Tribunal makes a finding of professional misconduct, then additional or alternative orders are available to suspend or cancel the respondent's registration and, in the event of cancellation, to disqualify the respondent from applying for registration indefinitely or for a specified period.

Clause 103 Interlocutory or interim orders

This clause allows the Tribunal to make any interim order it considers appropriate before making its final decision in relation to a complaint, including imposing or modifying conditions on the respondent's registration, suspending registration, or requiring the respondent to undertake a health assessment, which the Board may be required to arrange and pay for.

Clause 104 Board to give effect to orders of Tribunal

This clause provides that the Board must give effect to any order made by the Tribunal.

Division 7 – Other matters

Clause 105 Examples of conditions

This clause provides a non-exhaustive list of conditions on registration that may be imposed by order of the Board or the Tribunal, and includes requirements to complete a specified course of education, undertake a specified period of practice or supervised work, undergo counselling or medical treatment, comply with medical directions, do or refrain from doing something, or conduct practice in a specified way.

Clause 106 Records of action taken by Board

This clause requires to Board to keep an accurate record of each decision or order it makes, or other action it takes, in relation to a person the subject of a complaint.

Clause 107 Order to pay costs and expenses of investigation or inquiry

The Board may order a respondent against whom a finding or order has been made, to pay to the Board any costs and expenses of the investigation or inquiry.

Clause 108 Notice of decision or orders under this Part

This clause requires the Board to give written notice of a decision or order to the respondent and, if the Board considers it appropriate, to the complainant, as soon as practicable following the assessment of a complaint, an inquiry into a complaint, a finding of unprofessional conduct, or an order to pay costs of an investigation or inquiry. Each notice must state the reasons for decision and inform the respondent if the decision is reviewable by the Tribunal.

Part 8 – Investigation

Division 1 – Inspectors

Clause 109 Designation of inspectors

The Board may designate any person employed or engaged by the Board as an inspector for the purpose of conducting and reporting on an investigation.

Clause 110 Identity card

This clause requires the Board to issue inspectors with identity cards with photographs, which must be carried with them whilst exercising their functions and powers.

Clause 111 Production or display of identity card

An inspector must produce or clearly display their identity card in order to exercise a power in relation to a person. If this is not practicable before exercising the power, then the identity card must be produced for inspection at the first reasonable opportunity thereafter.

Division 2 – Investigation

Clause 112 Direction to conduct investigation

This clause empowers the Board to direct an inspector to conduct and report on an investigation for one or more of the following purposes:

- to assist in determining an application for registration;
- to monitor compliance with conditions on registration, or with the Bill;
- to investigate a suspected contravention of the Bill or a complaint;
- for any purpose prescribed in the regulations.

Clause 113 Entry powers

This clause provides for an inspector to enter premises for the purposes specified in clause 112. An inspector may enter veterinary premises at any reasonable time, without consent or a warrant, if entry is to investigate a suspected contravention of the Bill or to investigate a complaint.

To enter veterinary premises for any of the other purposes in clause 112, or to enter non-veterinary premises for any of the purposes in clause 112, an inspector requires the informed consent of the occupier, or a warrant obtained from a magistrate.

Clause 114 Powers after entering premises

This clause sets out what an inspector may do when they enter premises in accordance with clauses 112 and 113. For example, an inspector can search the premises and anything at the premises; examine, measure, test, photograph or film any part of the premises or anything at the premises; make a copy or download or print documents; operate equipment such as a computer; or take onto the premises any person, equipment, or materials the inspector requires.

An inspector may also direct a person to provide reasonable assistance to the inspector as may be required to exercise these powers. Failure to comply with a direction given by the inspector may be an offence under clause 116.

Clause 115 Powers to obtain information

This clause empowers an inspector to obtain information for the purposes specified in clause 112 in a number of ways, including directing a person to obtain a criminal record check or directing a person to produce a document, provide certain information or answer a question. Failure to comply with a direction given by the inspector pursuant to this clause may be an offence under clause 116.

Clause 116 Failure to comply with direction

It is an offence under this clause to refuse or fail to comply with a direction to provide reasonable assistance, produce a document, criminal record check or other thing, or to give requested information or answers, unless the person was not informed that such failure may constitute an offence, or has a reasonable excuse for failing to comply. Penalty: \$5,000

Self-incrimination is not a reasonable excuse for not complying with a direction under clause 115. However information given, or documents or things produced in complying with a direction under clause 115 are not admissible in evidence against the person who gave them in any proceedings other than in disciplinary proceedings, in proceedings for an offence of providing false and misleading information under clause 193, or in proceedings for perjury.

This clause does not affect the operation of section 11 of the *Evidence Act 1906*, which provides that a court may compel an answer to an incriminating question and issue a certificate which prevents the answer from being used in criminal proceedings against the person who provided it, other than in perjury proceedings.

Clause 117 Obstruction

Obstruction of inspector is an offence subject to a penalty of \$10,000

Clause 118 Assistance to person entering premises

The veterinary practice owner and veterinarian or veterinary nurses who practice veterinary medicine at the veterinary premises must ensure all reasonable assistance is provided to an inspector entering and inspecting that premises. Failure to do so is an offence, attracting a penalty of up to \$10,000.

Division 3 – Entry warrants

Clause 119 Application for entry warrant

This clause provides that an inspector may apply to a magistrate for a warrant to enter premises for the purposes of an investigation, by setting out reasonable grounds, relevant purposes and other specified information. The provisions of section 13 of the *Criminal Investigation Act 2006* apply, which set out the process for making an application for a warrant, and provides that a copy of the original warrant, or the form of the warrant completed by the applicant and provided to the magistrate, has the same effect as the original warrant.

Clause 120 Issue of entry warrant

This clause empowers the magistrate to issue an entry warrant, if satisfied that there are reasonable grounds for believing that entry is necessary for investigative purposes, which are set out in clause 112. The warrant must specify the premises, purpose of entry and period for execution.

Clause 121 Duration of entry warrant

This clause provides that an entry warrant remains in force for the period not exceeding 30 days specified in the warrant, and ceases to have effect as soon as it is executed.

Clause 122 Effect of entry warrant

The provisions of this clause include that an executing warrant authorises the inspector to enter the premises described in the warrant and to exercise the powers listed in clause 114(1).

Clause 123 Execution of entry warrant

This clause empowers the inspector to execute an entry warrant and requires its production on request.

Part 9 – Notification of impairment

Clause 124 Notification

Under this clause a person may notify the Board that a veterinarian or veterinary nurse has, or may have, an impairment that has or may place a person or animal at substantial risk of injury or harm. If the notifier does not want his or her identity to be disclosed to the veterinarian or veterinary nurse, the notifier must provide reasons why.

Clause 125 Board to give notice of notification

This clause requires the Board to give written notice to a veterinarian or veterinary nurse, as soon as practicable after receiving it, that a notification has been made about them. The notice may omit the notifier's identity if, having regard to the reasons provided by the notifier, the Board considers it appropriate. The Board can refrain from or delay notifying the veterinarian or veterinary nurse if the notice is likely to place the notifier or another person at risk of intimidation or harassment, or be prejudicial to the physical or mental health or wellbeing of the veterinarian or veterinary nurse. The only person with whom the Board may communicate about the notification or request further information in preparing the notice is the notifier.

Clause 126 Board to assess notification

This clause provides that the Board must assess each notification as soon as practicable after it is made, including requesting further information from the notifier or from the veterinarian or veterinary nurse the subject of the notification. The Board must not request information from any other person or disclose to any other person that the notification has been made.

Clause 127 Ways in which Board deals with notification

This clause provides that the Board must, as soon as practicable after assessing a notification, decide to take no further action, or require the veterinarian or veterinary nurse to undergo a health assessment to which the provisions of Part 10 of the Bill apply.

The Board may decide to take no further action if the basis of the notification is the same as a previous notification that is already being dealt with, or is being dealt with in connection with a complaint under Part 7, or is vexatious, trivial, unreasonable or lacking in substance.

Part 10 – Health assessments

Clause 128 Terms used

This clause defines the terms “assessor” by reference to clause 131, and “veterinary practitioner” to mean a person who is registered as or who is an applicant for registration as a veterinarian or veterinary nurse.

Clause 129 Health assessments

This clause provides that, if the Board reasonably believes that a veterinary practitioner has, or may have, an impairment, it may require the veterinary practitioner to undergo a health assessment. Failure to comply permits the Board to continue to deal with an application, complaint, or other matter relating to the veterinary practitioner. For example, failure by an applicant for registration to undergo a health assessment required by the Board may be grounds for the Board to refuse registration (clause 8(1)(b)).

Clause 130 Show cause process for proposed requirement

If the Board proposes to require that a veterinary practitioner undergo a health assessment, then written notice must be given to that practitioner inviting a written submission within a reasonable time, to which the Board must have regard in making its decision.

Clause 131 Appointment of assessor

This clause provides that the Board must appoint an assessor, who must be a medical practitioner or psychologist, to conduct a health assessment. The Board must consult with the veterinary practitioner before appointing the assessor and provide the practitioner with written notice of the appointment.

Clause 132 Report on health assessment

This clause provides that the assessor must give the Board a written report about the assessment as soon as practicable after conducting it, and that the assessor may provide additional written information in relation to the health assessment if requested by the Board.

Clause 133 Copy of report and additional information to be given to veterinary practitioner

This clause provides that the Board must, as soon as practicable after receiving the assessor's report and any additional information, give a copy of these to the veterinary practitioner, unless the assessor considers their content may have a detrimental impact on the veterinary practitioner's health or wellbeing, in which case the Board must give a copy of the report to a medical practitioner or psychologist nominated by the veterinary practitioner. The nominated medical practitioner or psychologist must give a copy of the report to the veterinary practitioner as soon as they form the view that the report will no longer be detrimental to the practitioner.

If the assessor's report is critical of the practitioner's fitness to practise or suggests the practitioner has an impairment, then after the practitioner has been given a copy of it, a person nominated by the Board, which may for example be a Board member or the Registrar, must discuss it with the practitioner, including whether the practitioner is prepared to cease or alter their practise of veterinary medicine.

Clause 134 Decision by Board

After considering the assessor's report and any discussion with the veterinary practitioner, the Board may decide to take no further action. Alternatively, the Board may refuse an application for registration made under Part 2, impose or modify a condition on the practitioner's registration, deal with the matter as if it were the subject of a complaint if it appears to be a professional conduct issue, or make an immediate action order if an imminent risk arises.

Clause 135 Fees of assessor

This clause provides that the Board must pay the costs of the health assessment, the assessor's report and any additional information requested from the assessor.

Part 11 – Recording, disclosure or use of information

Clause 136 Term used: disclose

This clause defines the term "disclose" for the purposes of Part 11 as "to divulge or communicate to any person and to publish" information.

Clause 137 Confidentiality

This clause prohibits a person recording, disclosing or using any information that he or she has obtained because of the person's office, position, employment or engagement under or for the purposes of the Bill, unless so authorised under clause 138 or if the information is of a statistical or non-personal nature. This prohibition would apply to members of the Board, the Tribunal, inspectors, medical practitioners or psychologists who conduct health assessments, and persons nominated by the Board to discuss health assessments with practitioners.

Clause 138 Authorised recording, disclosure or use of information

This clause permits the recording, disclosure or use of information if it is done in good faith for the purposes of or under the Bill or another written law, to or under the order of a court or person acting judicially or an interstate regulatory authority, or with the consent of the person to which the personal information relates.

Clause 139 Disclosure of information by Board to interstate regulatory authority

This clause provides that the Board may disclose information to an interstate regulatory authority about any matter relating to or arising under the Bill or a corresponding law. The regulations may regulate disclosure. The clause does not affect the operation of clause 193, which allows the Board to enter into arrangements with an interstate regulatory authority.

Part 12 – Legal proceedings

Division 1 – General provisions about legal proceedings

Clause 140 Commencing legal proceedings

This clause empowers the Board or a person authorised by the Board to commence proceedings under the Bill, which, if they are proceedings for an offence, must be before a magistrate. The ability of any other person with authority at law to undertake prosecutions for an offence under the Bill is not limited.

Clause 141 Time limit for commencing prosecutions

This clause provides that a prosecution for an offence under the Bill must be commenced within 2 years of either its occurrence or the alleged offence first coming to the attention of the Board, whichever is the later.

Clause 142 Liability of officers for offence of body corporate

This clause provides that the officer of any body corporate is guilty of offences committed by the body corporate under clauses 57, 58, 60 and 65 of the Bill if the officer has failed to take all reasonable steps to prevent them. These clauses relate to:

- engaging persons to undertake acts of veterinary medicine when not registered or authorised to do so, or contrary to conditions on their registration;
- directing, inducing or permitting conduct contravening the Bill or professional standards;
- carrying on a veterinary business contrary to veterinary premises registration; or
- using veterinary terms, titles, letters that are not on the register.

In adjudicating reasonable preventative steps, the court must have regard to the officer's state of knowledge and ability to influence the conduct of the body corporate.

Clause 143 Further provisions relating to liability of officers of body corporate

This clause provides that the provisions of clause 142 do not affect the liability of a body corporate, an officer, or any other person, under *The Criminal Code* provisions which deal with parties, accessories or conspirators. An officer may be convicted whether or not the body corporate is charged with or convicted of the principle offence.

Clause 144 Act does not affect legal professional privilege

This clause protects legal advice from disclosure.

Clause 145 Recovery of amounts due

This clause permits the Board to recover outstanding fees and costs.

Division 2 – Evidence in legal proceedings

Clause 146 Certain matters taken to be proved

This clause identifies matters that are taken to be proved in the absence of evidence to the contrary, such as allegations in a prosecution notice relating to Board members or staff, the authenticity of documents executed by or on behalf of the Board, the content of the register and the names and periods of service of Board members and personnel.

Clause 147 Evidence of certain matters may be stated in certificate

This clause provides for the Board to certify registration information.

Clause 148 Evidence Act 1906 not affected

The provisions of the *Evidence Act 1906* apply to legal proceedings brought under the Bill.

Division 3 – Additional orders

Clause 149 Court may make additional orders

This clause provides that, in addition to any penalty for an offence under the Bill, a court may prohibit the convicted person from management, commercial or financial involvement with a veterinary practice business. The order may be enforced as if it were a judgment of the court.

Division 4 – Review by State Administrative Tribunal

Clause 150 Review of certain decisions

This clause lists reviewable decisions made by the Board by reference to clauses in the Bill, including, for example, refusal or cancellation of any category of registration, the imposition or modification of conditions on registration, immediate action orders, a finding of unprofessional conduct, penalties or costs imposed by the Board. It provides for a person aggrieved by a reviewable decision to apply to the Tribunal.

Part 13 – Veterinary Practice Board of Western Australia

Division 1 – Establishment of Board

Clause 151 Board established

This clause establishes the Veterinary Practice Board of Western Australia, which is a continuation of and the same legal entity as the current Veterinary Surgeons' Board.

Clause 152 Membership of Board

This clause provides for the Minister to appoint Board members comprising 4 veterinarians, 1 veterinary nurse, 1 departmental officer who is a veterinarian, 1 consumer representative, and 1 legal practitioner. One of the veterinarians and the veterinary nurse appointee will each be elected by their profession and the Minister must invite and consider any recommendation from specified professional bodies for the remaining veterinary appointments. These include the Australian Veterinary Association (WA Division) and the Veterinary Nurses Council of Australia (WA Division) or another professional body prescribed in regulations.

Clause 166 provides for the Minister to appoint a person in the event of a vacancy or election failure. Clause 215 provides for initial appointments to elected roles.

Clause 153 Chairperson of Board

The Chairperson is appointed by the Minister.

Clause 154 Deputy members

Deputy members are appointed by the Minister in consultation with the Board. A person who is appointed as deputy for an elected Board member is not required to be elected themselves.

Clause 155 Remuneration and allowances of Board members

Board member remuneration is determined by the Minister on recommendation by the Public Sector Commissioner.

Clause 156 Leave of absence

This clause provides for members to be granted leave of absence by the Board.

Clause 157 Execution of documents by Board

This clause provides for the Board to execute documents under common seal or by authorised signatory.

Division 2 – Functions, powers and delegation

Clause 158 Functions of Board

This clause sets out the Board's functions, including regulating veterinary practice, cooperating with participating jurisdictions to further a harmonised approach, providing information to practitioners and consumers, and advising the Minister on relevant matters.

Clause 159 Powers of Board

This clause gives the Board all the powers it needs to perform its functions but prohibits it from acquiring or disposing of real property apart from its office accommodation. This restriction applies equally to lease and licence arrangements as to purchase and sale.

Clause 160 Delegation by Board

This clause provides that the Board may delegate any of its powers or duties to a Board member, committee, committee-member, or a person employed or engaged by the Board, other than those relating to an immediate action order under Part 6 and execution of documents. Sub-delegation is not permitted. However, this does not limit the Board's ability to perform its functions through an employee or agent.

Division 3 – Staff

Clause 161 Registrar and other staff

This clause provides that the Board must employ or engage a person to be the registrar and may employ or engage others as required. The terms and conditions of employment are to be determined by the Board, subject to any relevant award, order or industrial agreement.

Division 4 – Accountability provisions

Clause 162 Minister may give directions to Board

This clause empowers the Minister to give the Board written general or specific directions, with which the Board must comply, regarding the performance of its functions other than with respect to a particular person, application, complaint, investigation or proceeding. Directions must be tabled in Parliament and captured in the Board's Annual Report.

Clause 163 Minister to have access to information

This clause entitles the Minister to obtain, with the assistance of Board employees, information that relates to the functions of the Board, other than personal information unless the person to whom the information relates consents.

Division 5 – Constitution and procedures of the Board

Subdivision 1 – General provisions

Clause 164 Term of office

This clause provides that a Board member holds office for up to 3 years and may be reappointed. It provides for a 3-month grace period in the absence of timely new appointments.

Clause 165 Vacancy in office

This clause sets out the circumstances in which the office of a Board member becomes vacant. These include removal from office due to insolvency, conviction of an indictable offence, cessation of qualification, suspension or cancellation of registration; or removal by the Minister for neglect of duty, misconduct, incompetence, incapacity or absence from meetings.

Clause 166 Minister may fill vacancy in office of elected member in certain circumstances

This clause provides for the Minister to appoint a person if a vacancy arises in relation to the position on the Board of an elected member, if an election is not held, or if an election does not result in eligible candidates for appointment.

Clause 167 Holding meetings

This clause requires Board meetings to be held at times and places determined by the Board and empowers the chairperson or a majority of the Board members to convene special meetings. The registrar will convene the first meeting upon the Bill coming into operation.

Clause 168 Meetings generally closed to public

Board meetings are closed to the public unless the Board allows otherwise by its own initiative or on application of any person.

Clause 169 Quorum

The quorum for a Board meeting is 5 members of which at least 3 are veterinarians.

Clause 170 Presiding at meetings

The Chairperson presides at a meeting, and if not the Board must elect another member to do so.

Clause 171 Procedure at meetings

This clause allows the Board to determine any meeting procedures not provided for in the Bill.

Clause 172 Voting

This clause provides for majority decision making at Board meetings, subject to conflict of interest considerations.

Clause 173 Inviting consultant to participate in meeting

This clause permits the Board to arrange for the participation of a non-voting consultant at a meeting.

Clause 174 Holding meetings remotely

This clause permits remote meeting attendance by Board members.

Clause 175 Resolution without meeting

This clause permits the making of out-of-session Board decisions.

Clause 176 Minutes

This clause requires the keeping of accurate Board meeting minutes.

Subdivision 2 – Committees

Clause 177 Establishment of committees

This clause provides for the establishment, alteration or discharge of committees to assist the Board to perform its functions.

Clause 178 Membership of committee

This clause requires at least one member of a committee, which must comprise at least 3 members, to be a Board member.

Clause 179 Board may give directions to committee

This clause provides for the Board to direct a committee's functions, procedures and reporting requirements.

Clause 180 Procedures and minutes

This clause requires the keeping and provision to the Board of committee meeting minutes, and permits a committee to determine its own procedures, subject to any Board directions.

Clause 181 Remuneration and allowances of committee members

Remuneration for committee members is determined by the Minister, on the recommendation from the Public Sector Commissioner.

Subdivision 3 – Disclosure of material personal interests

Clause 182 Term used: member

This clause defines the term "member" as a Board member or a member of a committee.

Clause 183 Disclosure of interests

This clause provides that a member who becomes aware of a “material personal interest” in a matter being or about to be considered, must make disclosure as soon as.

The term “material personal interest” is not defined. It is generally accepted that a material personal interest has some substance or value and has the capacity to influence the vote of an official. It may not be personal if it affects the official as a member of a wide group or class. It need not be pecuniary.

Clause 184 Voting by interested member

This clause provides that a member who has a material personal interest in a matter that is being considered by the Board or a committee must not vote on the matter and must not be present while the matter is being considered or when voting is taking place, including when the Board or committee is considering whether to disqualify the member from voting.

Clause 185 Section 184 may be declared inapplicable

This clause provides that the Board or committee may pass a resolution that the interest of a member in a matter is so trivial or insignificant that the member should not be disqualified from considering or voting on the matter.

Clause 186 Quorum where s. 184 applies

This clause permits a reduced quorum if a member is disqualified from considering or voting on a matter due to a material personal interest. However, if at least 4 voting members, at least 2 of whom are veterinarians, are not present at the Board meeting to vote on the matter, the Minister may deal with that matter. If a quorum cannot be achieved because a member of a committee is disqualified from voting on a matter, the Board may deal with that matter.

Clause 187 Minister may declare s. 184 and 186 inapplicable

This clause permits the Minister to declare the material personal interest provisions inapplicable in a particular matter, either generally or for the purpose of voting, subject to tabling that declaration in Parliament.

Division 6 – Financial and reporting provisions

Clause 188 Funds of Board

This clause provides that Board funds come from fees, fines, costs and other money received or recovered by the Board under the Bill; and from other money lawfully received by the Board in connection with the performance of its functions or otherwise. These funds are to be used to pay for the remuneration and allowances of Board and committee members, staff and other expenditure incurred by the Board in performing its functions.

Clause 189 Borrowing powers

This clause provides that the Board may borrow money from the Treasurer, or from another source, to enable the Board to perform its functions or to acquire or improve office premises.

Clause 190 Accounts and records

This clause requires the Board to prepare and keep proper accounts and financial information.

Clause 191 Audit

This clause requires formal annual auditing of the Board's accounts and financial statements.

Clause 192 Annual report of Board

This clause requires the Board to prepare and submit to the Minister its annual report including the auditor's report, audited financial statements, a report on the Board's operations for the year and proposed improvements as well as information about complaints, trends and workload forecasts. The Minister must table the annual report in Parliament.

Part 14 – Miscellaneous

Clause 193 Arrangements between Board and interstate regulatory authorities

This clause contemplates Board arrangements with interstate regulatory authorities to further mutual recognition and harmonised regulation of veterinary practice.

Clause 194 False or misleading information

This clause creates offences for knowingly providing false or misleading information to the Board when complying with or responding to various Board processes. The penalty for a first offence is \$10,000 and \$20,000 for subsequent offences.

Clause 195 Protection from liability for persons performing functions

This clause protects from civil liability the State and those who undertake their functions under the Bill in good faith.

Clause 196 Protection from liability for complainants, notifiers and other persons

This clause protects from civil and criminal liability, and also from allegations of breach of confidentiality, professional conduct or ethics, a person who in good faith makes or is concerned with the making of a complaint or impairment notification.

Clause 197 Regulations

This clause provides that regulations may be made prescribing matters that are required, permitted, necessary or convenient for giving effect to the Bill, and includes a non-exhaustive list of such matters. A regulation may prescribe a penalty for contravention not exceeding a fine of \$10,000 and a daily penalty not exceeding a fine of \$5,000.

Clause 198 Codes of practice

This clause permits the Board to issue, amend or revoke codes of practice which provide guidance in veterinary practice, each of which must be made publicly available and be announced by notice in the *Government Gazette*, but which do not constitute subsidiary legislation.

Clause 199 Breach of code of practice

This clause provides that a breach of a code of practice does not constitute unprofessional conduct or professional misconduct, nor does it attract civil or criminal liability. However, the breach may be asserted and taken into account in dealing with a complaint.

Clause 200 Review of Act

This clause requires 5-yearly reviews of the Bill, with reports to be tabled in Parliament.

Part 15 – Repeals

Clause 201 Written laws repealed

This clause provides that the *Veterinary Surgeons Act 1960* and the *Veterinary Surgeons Regulations 1979* are repealed.

Part 16 – Transitional and validation provisions

Division 1 - Preliminary

Clause 202 Terms used

This clause defines certain terms used in Part 16, including the following:

- “former Board”, which means the Veterinary Surgeons’ Board under the repealed Act;
- “new Board”, which means the Veterinary Practice Board of Western Australia;
- “transition day”, which means the day the Bill, other than Part 1, comes into operation.

Division 2 – Transitional matters

Subdivision 1 – Registration, approvals and authorisations

Clause 203 Registration of veterinary surgeons and specialists

This clause provides that veterinary surgeons, honorary veterinary surgeons and specialists, who held registration under the repealed Act immediately before transition day, are taken to hold registration on the same terms and conditions under the Bill, until 30 June immediately following transition day. This temporarily maintains the status quo for currently registered veterinarians, who will then need to renew registration prior to the 30 June deadline.

Clause 204 Provisional registration of veterinary surgeons

This clause provides that a veterinary surgeon, who held a certificate of provisional registration under the repealed Act immediately before transition day, is taken to hold interim registration under the Bill on the same terms and conditions until the date stated in the certificate or the date fixed by the Board under the repealed Act. This maintains the status quo for veterinarians who are the subject of interim arrangements pending finalisation of registration assessment.

Clause 205 Registration of bodies corporate ceases

This clause provides that if a body corporate was registered as a veterinary surgeon under the repealed Act immediately before transition day, the registration ceases on transition day and the body corporate is entitled to a pro rata refund of fees paid for any period after transition day to a maximum of 50% of the fee. This is because the Bill does not contemplate registration of bodies corporate as veterinarians.

Clause 206 Veterinary clinics and veterinary hospitals

This clause provides that those veterinary clinics and veterinary hospitals that were registered under the repealed Act immediately before transition day, and the veterinary surgeon who had management of these premises, are taken to be registered as veterinary premises and the veterinary supervisor of those premises, respectively, under and subject to the Bill. This maintains the status quo for premises currently registered to permit veterinary services to be carried out in them.

Clause 207 Approved veterinary nurses

This clause provides that persons who, immediately before transition day, were approved to carry out the duties of a veterinary nurse under the repealed Act, are taken to hold registration as a veterinary nurse under and subject to the Bill, on the same terms and conditions applicable to their approval, until 30 June immediately following transition day. This temporarily maintains the status quo for approved veterinary nurses, who will then need to apply for new registration status by the 30 June deadline.

Clause 208 Authorised persons

This clause provides that persons who, immediately before transition day, were authorised under the repealed Act are taken to be authorised under and subject to the Bill, and on the same terms and conditions as applied immediately before transition day. This maintains the status quo for currently authorised persons.

Clause 209 Applications for registration or approval

This clause provides that any application for registration or renewal of registration as a veterinary surgeon; or for approval or renewal of approval as a veterinary nurse; or for registration or renewal of registration of premises as a veterinary clinic or veterinary hospital under the repealed Act that was made but not decided before transition day, is taken to be an application under the Bill for registration or renewal of registration as a veterinarian, veterinary nurse or of veterinary premises, respectively. This prevents the requirement for re-submissions and allows the new Board to finalise assessment of the existing applications.

Clause 210 Certificates of registration and approval

This clause provides that a certificate of registration or approval that was issued under the repealed Act and was in effect immediately before transition day is taken to be a relevant certificate of registration under the Bill. For example, a certificate of registration of a veterinary clinic or hospital under the repealed Act will be taken to be a certificate of registration of veterinary premises under the Bill. This gives certificates issued under the repealed Act status as certificates under the Bill without the need to physically replace them.

Subdivision 2 – Investigations, inquiries and proceedings

Clause 211 Investigation and inquiries under repealed Act

This clause provides that an investigation or inquiry that was commenced under the repealed Act but not completed before transition day must be continued and dealt with under the Bill.

Clause 212 Current proceedings before Tribunal

This clause provides that proceedings before the Tribunal that were commenced under the repealed Act but not finally determined before transition day are taken to have been commenced under the Bill and must be dealt with under the Bill. This maintains continuity in existing Tribunal proceedings and prevents the need to re-issue them.

Subdivision 3 – The Board

Clause 213 Board a continuation of former Board

The Veterinary Practice Board of Western Australia (new Board) is a continuation of the Veterinary Surgeons' Board (former Board), and the assets, rights and liabilities of the former Board become those of the new Board.

Clause 214 Members of former Board go out of office

This clause provides for the members of the former Board to vacate office on transition day.

Clause 215 Initial membership of new Board

This clause provides for initial appointments to the Board, after this Bill is commenced, during a period of transition from the former Board (Veterinary Surgeons' Board) to the new Veterinary Practice Board. One elected veterinarian member of the former Board will be appointed by the Minister to the new Board. The other elected veterinarian member of the former Board will be appointed as their deputy.

For a transitional period, the Board will be constituted by only 7 members, pending election and appointment by the Minister of the veterinary nurse member to the Board.

Clause 216 Staff of former Board

This clause provides that all staff of the former Board, including the registrar, continue to be employed or engaged on the same terms and conditions by the new Board as they were by the former Board, unless otherwise agreed by a staff member.

Clause 217 Current proceedings involving former Board

This clause transitions current proceedings by or against the former Board so that they can be dealt with by the new Board.

Clause 218 Completion of things commenced

This clause permits the new Board to complete activities commenced by the former Board to the extent they are a function of the new Board.

Clause 219 Continuing effect of things done

This clause provides that actions or omissions of the former Board that have any force, significance or relevance to the new Board are taken to be those of the new Board.

Clause 220 First annual report of Board

This clause requires the new Board to include in its first annual report, information relating to the former Board which relates to the period after the former Board's previous annual report.

Subdivision 4 – Miscellaneous matters

Clause 221 Register

This clause ensures continuity of the current register

Clause 222 Certain references to this Act include repealed Act

This clause provides that references to this Act in the listed clauses include the *Veterinary Surgeons Act 1960*.

Clause 223 Interpretation Act 1984 not affected

This clause provides that provisions of the *Interpretation Act 1984* relating to the repeal of written law apply to the repeal of the laws referred to in clause 201, unless the transitional provisions of the Bill or regulations made under clause 224(2) provide otherwise.

Clause 224 Transitional regulations

This clause permits the making of transitional regulations to address any deficiencies in the transitional provisions of the Bill, subject to protecting a person from prejudice or liability that would otherwise arise from their impact. These may provide that specified provisions of the Bill do not apply or apply in a restricted capacity. Whilst it is not expected that regulations of this nature will be needed, the power to make them is essential to remedy any inadvertent failure to address a matter of inconvenience, hardship, cost, inconsistency, or other unintended consequence.

Division 3 – Validation

Clause 225 Validation provision

This clause validates regulations made, or purported to be made, under the repealed Act imposing a fee payable to the former Board for registration or renewal of registration of premises as a veterinary clinic or hospital, even if they were inconsistent with or repugnant to a provision of the repealed Act, and validates any such fee imposed.

Part 17 – Other Acts amended

Clauses 226 – 237 make necessary consequential amendments to various statutes, including the *Animal Welfare Act 2002*, *Biosecurity and Agricultural Management Act 2007*, *Cat Act 2011*, *Constitution Acts Amendment Act 1899*, *Dog Act 1976*, *Exotic Diseases of Animals Act 1993*, *Medicines and Poisons Act 2014*, *Oaths, Affidavits and Statutory Declarations Act 2005*, *Retail Trading Hours Act 1987*, *Sentencing Act 1995*, *State Administrative Tribunal Act 2004* and *Veterinary Chemical Control and Animal Feeding Stuffs Act 1976*.