



New South Wales

Veterinary Practice Amendment Act 2010 No 87

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Veterinary Practice Amendment Act 2010 No 87

Act No 87, 2010

An Act to amend the *Veterinary Practice Act 2003* to make further provision in respect of complaints against veterinary practitioners and the powers and functions of the Veterinary Practitioners Board; and for other purposes. [Assented to 1 November 2010]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Veterinary Practice Amendment Act 2010*.

2 Commencement

This Act commences on the date of assent to this Act.

Schedule 1 Amendment of Veterinary Practice Act 2003 No 87

[1] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

health practitioner means a person registered in a health profession under the Health Practitioner Regulation National Law.

[2] Section 4 (3)

Insert after section 4 (2):

- (3) For the purposes of this Act, a person is considered to suffer from an *impairment* if the person suffers from any physical or mental impairment, disability, condition or disorder which detrimentally affects or is likely to detrimentally affect the person's physical or mental capacity to practise veterinary science. Habitual drunkenness or addiction to a deleterious drug is considered to be a physical or mental disorder.

[3] Section 15 Prohibition against directing or inciting misconduct

Omit section 15 (1).

[4] Section 15 (2)

Omit "to which this section applies".

[5] Section 18 Refusal of registration

Omit section 18 (d). Insert instead:

- (d) the Board is satisfied that the applicant is not fit to practise veterinary science because the applicant suffers from an impairment,

[6] Section 19 Conditions of registration

Insert after section 19 (3) (e) (before the note):

- (f) any impairment suffered by the veterinary practitioner.

[7] Section 21 Qualifications for full registration

Insert "on the advice of the Australasian Veterinary Boards Council Inc" after "Board" in section 21 (1) (a).

[8] Section 33 Annual return to be submitted

Omit section 33 (1) (b). Insert instead:

- (b) details of any impairment suffered by the veterinary practitioner,

[9] Section 33 (1) (e1)

Insert after section 33 (1) (e):

- (e1) such details of any continuing professional development undertaken by the veterinary practitioner as are prescribed by the regulations,

[10] Section 35 Definitions

Insert after paragraph (e) of the definition of *unsatisfactory professional conduct*:

- (e1) any failure by a veterinary practitioner, without reasonable excuse, to comply with any continuing professional development requirements determined by the Board that are applicable to the veterinary practitioner,

[11] Section 35, definition of “unsatisfactory professional conduct”

Omit “by reason of infirmity, injury or illness (whether mental or physical)” from paragraph (j).

Insert instead “because the practitioner suffers from an impairment”.

[12] Section 38A

Insert after section 38:

38A Time limit for making complaints

- (1) A complaint may be made about the conduct of a veterinary practitioner irrespective of when the conduct is alleged to have occurred.
- (2) However, the Board is not required to investigate a complaint if the complaint is made more than 3 years after the conduct is alleged to have occurred, unless the Board determines that it is just and fair to investigate the complaint having regard to the delay and the reasons for the delay.
- (3) A determination by the Board under this section is final and cannot be challenged in any proceedings by the complainant or the veterinary practitioner concerned.

[13] Section 40A

Insert after section 40:

40A Protection of complainants and other persons

- (1) If a person makes a complaint, and does so in good faith:
 - (a) the making of the complaint does not constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct, and
 - (b) no liability for defamation is incurred because of the complaint, and
 - (c) the making of the complaint does not constitute a ground for any other civil proceedings.
- (2) The protections given to a complainant by this section extend to:
 - (a) any person who, in good faith, provided the complainant with any information on the basis of which the complaint was made, and
 - (b) any person who, in good faith, was otherwise concerned in the making of the complaint.

[14] Section 44A

Insert after section 44:

44A Protection from incrimination

(1) **Self-incrimination not an excuse**

A person is not excused from answering any question, providing any information or producing a document if required to do so by the Board in any proceedings before the Board in respect of a complaint on the ground that the answer, information or document might tend to incriminate the person or make the person liable to a penalty.

(2) **Answer or information not admissible if objection made**

However, any answer given or information provided by a natural person in any proceedings before the Board in respect of a complaint is not admissible in evidence against the person in any criminal proceedings (except proceedings for an offence against section 44 or under Part 5A of the *Crimes Act 1900*) if:

- (a) the person objected at the time to doing so on the ground it might incriminate the person, or

(b) the person was not warned on that occasion that the person may object to answering the question or providing the information on the ground it might incriminate the person.

(3) **Documents admissible**

Any document produced by the person in compliance with a requirement of the Board in proceedings before the Board in respect of a complaint is not inadmissible in evidence against the person in criminal proceedings on the ground that the document might incriminate the person.

(4) **Further information**

Further information obtained as a result of an answer given or information provided in compliance with a requirement of the Board in proceedings before the Board in respect of a complaint is not inadmissible in any proceedings on the ground:

- (a) that the answer had to be given or the information had to be provided, or
- (b) that the answer given or information provided might incriminate the person.

[15] Section 45A

Insert after section 45:

45A Board may require practitioner to undergo examination

- (1) For the purpose of investigating or determining any complaint, the Board may, by notice given to the veterinary practitioner against whom a complaint has been made, require the practitioner to undergo an examination by a specified health practitioner at a specified time and place.
- (2) A veterinary practitioner must not be required to undergo an examination unless it is reasonable to require the examination.
- (3) The time and place for the examination must be reasonable.
- (4) The examination is to be at the expense of the Board.
- (5) A health practitioner must, as soon as possible after carrying out an examination of a veterinary practitioner under this section, give a report about the examination to the Board.
- (6) The Board must give a copy of such a report to the veterinary practitioner concerned as soon as possible after the Board receives the report from the health practitioner.

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- (7) A failure by a veterinary practitioner, without reasonable cause, to comply with a requirement to undergo an examination is, for the purposes of this Act, evidence that the practitioner does not have sufficient physical or mental capacity to practise veterinary science.
 - (8) If a health practitioner provides a report to the Board under this section, and does so in good faith:
 - (a) the provision of the report does not constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct, and
 - (b) no liability for defamation is incurred because of the provision of the report, and
 - (c) the provision of the report does not constitute a ground for any other civil proceedings.
 - (9) The protections given to a health practitioner by subsection (8) extend to:
 - (a) any person who, in good faith, provided the health practitioner with any information on the basis of which the report was prepared, and
 - (b) any person who, in good faith, was otherwise concerned in the preparation or the provision to the Board of the report.

[16] Section 46 Power to dismiss certain complaints

Omit “issue a caution” from section 46 (5).

Insert instead “make a recommendation”.

[17] Section 47 Decision after investigation of complaint

Omit section 47 (2)–(5). Insert instead:

- (2) If the Board is satisfied that the veterinary practitioner is guilty of unsatisfactory professional conduct or professional misconduct, the Board may:
 - (a) apply to the Tribunal for a disciplinary finding against the veterinary practitioner under Division 3, or
 - (b) take any one or more of the following actions:
 - (i) reprimand or caution the veterinary practitioner,
 - (ii) impose a fine on the veterinary practitioner of an amount not exceeding \$5,000,
 - (iii) impose conditions on the veterinary practitioner’s registration with respect to the practice of veterinary science,

- (iv) require the veterinary practitioner to complete specified educational courses,
 - (v) require the veterinary practitioner to report on his or her veterinary practice at specified times, in a specified manner and to specified persons,
 - (vi) require the veterinary practitioner to seek and take advice, in relation to the management of his or her veterinary practice, from a specified person or persons,
 - (vii) require the veterinary practitioner to pay specified costs relating to the hearing.
- (3) If the Board is satisfied that the veterinary practitioner is guilty of professional misconduct of a kind that is of a sufficiently serious nature to justify the suspension or cancellation of a veterinary practitioner's registration, the Board must apply to the Tribunal for a disciplinary finding against the veterinary practitioner under Division 3.
- (4) If the Board is satisfied that the veterinary practitioner is guilty of professional misconduct and has applied to the Tribunal for a disciplinary finding against the practitioner, the Board may suspend the practitioner's registration pending determination of the matter by the Tribunal.
- (5) The Board must not suspend the veterinary practitioner's registration unless the Board:
- (a) has caused notice of the proposed action to be given to the veterinary practitioner, and
 - (b) has given the veterinary practitioner at least 28 days within which to make written submissions to the Board in relation to the proposed action, and
 - (c) has taken any such submissions into consideration.
- (5A) However, the Board may suspend the registration of the veterinary practitioner with immediate effect if satisfied that immediate suspension of the veterinary practitioner's registration is justified:
- (a) to protect the health or safety of a person, or
 - (b) to protect the health or welfare of an animal, or
 - (c) to prevent damage to Australia's international reputation in relation to animal exports, animal welfare, animal produce or sporting events.

[18] Section 48 Person may apply to Tribunal for a review of disciplinary finding of Board

Omit “under section 47 (4)” from section 48 (2).

Insert instead “for a disciplinary finding against a veterinary practitioner”.

[19] Section 48 (2)

Omit “under that subsection”.

[20] Section 56A

Insert after section 56:

56A Confidentiality of health reports about veterinary practitioners

- (1) A person must not directly or indirectly make a record of or disclose to any person any information contained in a protected health report which has come to the person’s notice in the exercise of the person’s functions under this Act, except for the purposes of exercising functions under this Act.

Maximum penalty: 50 penalty units.

- (2) A protected health report may not be admitted or used in any civil proceedings before a court except with the consent of:

- (a) the health practitioner who prepared the report, and
- (b) the veterinary practitioner who is the subject of the report.

- (3) A person may not be compelled to produce a protected health report or to give evidence in relation to the report or its contents in any such civil proceedings.

- (4) In this section:

court includes any tribunal, authority or person having power to require the production of documents or the answering of questions, but does not include the Board, the Tribunal (in respect of proceedings under this Act) or the Supreme Court (in respect of appeal proceedings under this Act).

protected health report means a report prepared by a health practitioner in relation to the examination of a veterinary practitioner that was required by the Board under this Part.

[21] Section 63 Restrictions on publicising disciplinary action

Omit section 63 (2). Insert instead:

- (2) If disciplinary action is taken against a person because the person suffers from an impairment, the reason for the disciplinary action, and any other information relating to the impairment of the person, is not to be recorded in the register kept under this Division or otherwise publicised.

[22] Section 77 Membership of Board

Omit “by the University of Sydney” from section 77 (3) (b).

Insert instead “jointly by the University of Sydney and Charles Sturt University”.

[23] Section 79 Functions of Board

Insert “, including by determining the requirements for continuing professional development of veterinary practitioners” after “practitioners” in section 79 (2) (j).

[24] Schedule 4 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Veterinary Practice Amendment Act 2010

[25] Schedule 4, Part 3

Insert at the end of the Schedule:

**Part 3 Provisions consequent on enactment of
Veterinary Practice Amendment Act 2010**

21 Definition

In this Part, *amending Act* means the *Veterinary Practice Amendment Act 2010*.

22 Complaints

- (1) An amendment made to this Act by the amending Act does not apply in respect of a complaint made before the commencement of the amendment.

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- (2) In the case of a complaint about conduct that is alleged to have occurred before the commencement of section 38A, the 3 years referred to in section 38A (2) date from the commencement of section 38A and not from the date the conduct is alleged to have occurred.

23 Membership of Board

The amendment made to section 77 by the amending Act applies only to a member of the Board appointed after the commencement of the amending Act.

[Agreement in principle speech made in Legislative Assembly on 23 September 2010
Second reading speech made in Legislative Council on 26 October 2010]

BY AUTHORITY