



New South Wales

Veterinary Practice Amendment Bill 2010

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Veterinary Practice Act 2003* (the *principal Act*) to give effect to recommendations arising from a statutory review of the principal Act.

The Bill amends the principal Act as follows:

- (a) to enable the Veterinary Practitioners Board (the *Board*) to require a veterinary practitioner to undergo an examination by a health practitioner for the purpose of investigating a complaint against the practitioner,
- (b) to protect persons who make complaints against veterinary practitioners from certain kinds of liability,
- (c) to authorise the Board to suspend the registration of a veterinary practitioner with immediate effect in certain circumstances,
- (d) to impose a 3-year time limit on the making of complaints against veterinary practitioners,
- (e) to make further provision with respect to the continuing professional development of veterinary practitioners,

(f) to make other miscellaneous amendments.

Outline of provisions

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

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 Amendment of Veterinary Practice Act 2003 No 87

Complaints against veterinary practitioners

Schedule 1 [16] enables the Board to require a veterinary practitioner against whom a complaint has been made to undergo an examination by a health practitioner. The health practitioner will be required to prepare a report for the Board and will be protected from certain kinds of liability in relation to the preparation of the report. If a veterinary practitioner refuses to undergo an examination, it will be evidence, for the purposes of the principal Act, that the practitioner does not have sufficient physical or mental capacity to practise veterinary science. **Schedule 1 [21]** makes it an offence to disclose any information contained in a report by a health practitioner (maximum penalty: 50 penalty units, currently \$5,500). Such a report may not be used in civil proceedings before a court and a person may not be compelled to produce a report or give evidence in relation to a report or its contents in any such civil proceedings. **Schedule 1 [1]** defines *health practitioner* to mean any person registered in a health profession under the Health Practitioner Regulation National Law.

Schedule 1 [18] makes further provision in respect of the powers of the Board after it has completed an investigation into a complaint against a veterinary practitioner. The Board will be able to take various actions against a veterinary practitioner if it is satisfied that the practitioner is guilty of unsatisfactory professional conduct or professional misconduct. The Board will not be required to apply to the Administrative Decisions Tribunal (the *Tribunal*) for a disciplinary finding against a veterinary practitioner in all cases of professional misconduct as it is currently required to do. However, if the Board is satisfied that a 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 practitioner. The Board will be able to suspend the registration of a veterinary practitioner with immediate effect if satisfied that it is justified to protect the health or safety of a person or the health or welfare of an animal or to prevent damage to Australia's international reputation in relation to animal exports, animal welfare, animal produce or sporting events. **Schedule 1 [19] and [20]** are consequential amendments.

Schedule 1 [14] protects a person who makes a complaint in good faith against a veterinary practitioner, so that the making of a complaint does not constitute a breach of professional ethics or a ground for civil proceedings and no liability for defamation is incurred.

Schedule 1 [13] provides that the Board is not required to investigate a complaint about the conduct of a veterinary practitioner 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.

Schedule 1 [17] authorises the Board, if it dismisses a complaint against a veterinary practitioner, to make a recommendation to the practitioner, rather than issuing a caution, as it is currently authorised to do.

Impairment

The proposed Act replaces the concept of a veterinary practitioner who is not fit to practise by reason of infirmity, injury or illness (whether mental or physical) with the concept of suffering from an impairment. **Schedule 1 [3]** provides that a person suffers 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. **Schedule 1 [6]** authorises the Board to refuse to register a person as a veterinary practitioner if the Board is satisfied that the person is not fit to practise veterinary science because the person suffers from an impairment. **Schedule 1 [7]** authorises the Board to impose a condition on the registration of a veterinary practitioner having regard to any impairment suffered by the practitioner. **Schedule 1 [9]** requires a veterinary practitioner to include details of any impairment suffered by the practitioner in the practitioner's annual return to the Board. **Schedule 1 [12] and [22]** are consequential amendments.

Continuing professional development

Schedule 1 [10] requires a veterinary practitioner to include details (prescribed by the regulations) of any continuing professional development undertaken by the practitioner in the practitioner's annual return to the Board.

Schedule 1 [11] extends the definition of *unsatisfactory professional conduct* to include a failure by a veterinary practitioner, without reasonable excuse, to comply with any continuing professional development requirements determined by the Board.

Schedule 1 [24] makes it clear that the Board's function to promote, provide for and facilitate the professional development of veterinary practitioners includes the function of determining the requirements for continuing professional development of veterinary practitioners.

Protection from incrimination

Schedule 1 [15] provides that a person is not excused from answering any question, providing any information or producing a document in complaint proceedings before the Board on the grounds of self-incrimination. However, any answer given or information provided by the person cannot be used as evidence against the person in criminal proceedings if the person objected at the time to giving the answer or providing the information on the ground of self-incrimination or if the person was not warned that the person may object.

Miscellaneous provisions

It is an offence under the principal Act for a corporation to represent itself as a veterinary practice unless one or more veterinary practitioners has, or have, the controlling interest in the corporation. **Schedule 1 [2]** amends the definition of *controlling interest* so that a veterinary practitioner will no longer be required to be involved in decisions about the financial policies of the corporation.

Schedule 1 [8] provides that the Board is to consider the advice of the Australasian Veterinary Boards Council Inc when it approves courses of study in veterinary science for the purposes of the registration of veterinary practitioners.

Schedule 1 [4] extends an existing offence that prohibits an employer from directing or inciting a veterinary practitioner to engage in unsatisfactory professional conduct or professional misconduct to all employers of veterinary practitioners, not only employers whose principal business is the supply of goods or materials used in connection with agriculture. **Schedule 1 [5]** is a consequential amendment.

Schedule 1 [23] provides that the Minister is to select the academic members of the Board from a panel prepared jointly by the University of Sydney and Charles Sturt University, not only the University of Sydney as is currently the case.

Schedule 1 [25] enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.

Schedule 1 [26] inserts savings and transitional provisions.

First print



New South Wales

Veterinary Practice Amendment Bill 2010

Contents

	Page
1 Name of Act	2
2 Commencement	2
Schedule 1 Amendment of Veterinary Practice Act 2003 No 87	3



New South Wales

Veterinary Practice Amendment Bill 2010

No. , 2010

A Bill for

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.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Veterinary Practice Amendment Act 2010</i> .	3
2 Commencement	4
This Act commences on the date of assent to this Act.	5

Schedule 1	Amendment of Veterinary Practice Act	1
	2003 No 87	2
[1] Section 4 Definitions		3
	Insert in alphabetical order in section 4 (1):	4
	<i>health practitioner</i> means a person registered in a health profession under the Health Practitioner Regulation National Law.	5 6 7
[2] Section 4 (2)		8
	Omit “financial and”.	9
[3] Section 4 (3)		10
	Insert after section 4 (2):	11
	(3) For the purposes of this Act, a person is considered to suffer from an <i>impairment</i> 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.	12 13 14 15 16 17 18
[4] Section 15 Prohibition against directing or inciting misconduct		19
	Omit section 15 (1).	20
[5] Section 15 (2)		21
	Omit “to which this section applies”.	22
[6] Section 18 Refusal of registration		23
	Omit section 18 (d). Insert instead:	24
	(d) the Board is satisfied that the applicant is not fit to practise veterinary science because the applicant suffers from an impairment,	25 26 27
[7] Section 19 Conditions of registration		28
	Insert after section 19 (3) (e) (before the note):	29
	(f) any impairment suffered by the veterinary practitioner.	30
[8] Section 21 Qualifications for full registration		31
	Insert “on the advice of the Australasian Veterinary Boards Council Inc” after “Board” in section 21 (1) (a).	32 33

[9] Section 33 Annual return to be submitted	1
Omit section 33 (1) (b). Insert instead:	2
(b) details of any impairment suffered by the veterinary practitioner,	3 4
[10] Section 33 (1) (e1)	5
Insert after section 33 (1) (e):	6
(e1) such details of any continuing professional development undertaken by the veterinary practitioner as are prescribed by the regulations,	7 8 9
[11] Section 35 Definitions	10
Insert after paragraph (e) of the definition of <i>unsatisfactory professional conduct</i> :	11 12
(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,	13 14 15 16
[12] Section 35, definition of “unsatisfactory professional conduct”	17
Omit “by reason of infirmity, injury or illness (whether mental or physical)” from paragraph (j).	18 19
Insert instead “because the practitioner suffers from an impairment”.	20
[13] Section 38A	21
Insert after section 38:	22
38A Time limit for making complaints	23
(1) A complaint may be made about the conduct of a veterinary practitioner irrespective of when the conduct is alleged to have occurred.	24 25 26
(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.	27 28 29 30 31
(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.	32 33 34

[14] Section 40A	1
Insert after section 40:	2
40A Protection of complainants and other persons	3
(1) If a person makes a complaint, and does so in good faith:	4
(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	5 6 7
(b) no liability for defamation is incurred because of the complaint, and	8 9
(c) the making of the complaint does not constitute a ground for any other civil proceedings.	10 11
(2) The protections given to a complainant by this section extend to:	12
(a) any person who, in good faith, provided the complainant with any information on the basis of which the complaint was made, and	13 14 15
(b) any person who, in good faith, was otherwise concerned in the making of the complaint.	16 17
[15] Section 44A	18
Insert after section 44:	19
44A Protection from incrimination	20
(1) Self-incrimination not an excuse	21
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.	22 23 24 25 26 27
(2) Answer or information not admissible if objection made	28
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 <i>Crimes Act 1900</i>) if:	29 30 31 32 33
(a) the person objected at the time to doing so on the ground it might incriminate the person, or	34 35

(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.	1 2 3
(3)	Documents admissible	4
	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.	5 6 7 8 9
(4)	Further information	10
	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:	11 12 13 14
(a)	that the answer had to be given or the information had to be provided, or	15 16
(b)	that the answer given or information provided might incriminate the person.	17 18
[16]	Section 45A	19
	Insert after section 45:	20
45A	Board may require practitioner to undergo examination	21
(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.	22 23 24 25 26
(2)	A veterinary practitioner must not be required to undergo an examination unless it is reasonable to require the examination.	27 28
(3)	The time and place for the examination must be reasonable.	29
(4)	The examination is to be at the expense of the Board.	30
(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.	31 32 33
(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.	34 35 36

(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.	1 2 3 4 5
(8)	If a health practitioner provides a report to the Board under this section, and does so in good faith:	6 7
(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	8 9 10
(b)	no liability for defamation is incurred because of the provision of the report, and	11 12
(c)	the provision of the report does not constitute a ground for any other civil proceedings.	13 14
(9)	The protections given to a health practitioner by subsection (8) extend to:	15 16
(a)	any person who, in good faith, provided the health practitioner with any information on the basis of which the report was prepared, and	17 18 19
(b)	any person who, in good faith, was otherwise concerned in the preparation or the provision to the Board of the report.	20 21
[17]	Section 46 Power to dismiss certain complaints	22
	Omit “issue a caution” from section 46 (5).	23
	Insert instead “make a recommendation”.	24
[18]	Section 47 Decision after investigation of complaint	25
	Omit section 47 (2)–(5). Insert instead:	26
(2)	If the Board is satisfied that the veterinary practitioner is guilty of unsatisfactory professional conduct or professional misconduct, the Board may:	27 28 29
(a)	apply to the Tribunal for a disciplinary finding against the veterinary practitioner under Division 3, or	30 31
(b)	take any one or more of the following actions:	32
(i)	reprimand or caution the veterinary practitioner,	33
(ii)	impose a fine on the veterinary practitioner of an amount not exceeding \$5,000,	34 35
(iii)	impose conditions on the veterinary practitioner’s registration with respect to the practice of veterinary science,	36 37 38

Veterinary Practice Amendment Bill 2010

Schedule 1 Amendment of Veterinary Practice Act 2003 No 87

- (iv) require the veterinary practitioner to complete specified educational courses, 1
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 - (v) require the veterinary practitioner to report on his or her veterinary practice at specified times, in a specified manner and to specified persons, 3
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 - (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, 6
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 - (vii) require the veterinary practitioner to pay specified costs relating to the hearing. 10
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- (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. 12
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- (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. 18
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- (5) The Board must not suspend the veterinary practitioner's registration unless the Board: 23
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 - (a) has caused notice of the proposed action to be given to the veterinary practitioner, and 25
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 - (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 27
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 - (c) has taken any such submissions into consideration. 30
- (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: 31
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 - (a) to protect the health or safety of a person, or 35
 - (b) to protect the health or welfare of an animal, or 36
 - (c) to prevent damage to Australia's international reputation in relation to animal exports, animal welfare, animal produce or sporting events. 37
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39

[19]	Section 48 Person may apply to Tribunal for a review of disciplinary finding of Board	1 2
	Omit “under section 47 (4)” from section 48 (2).	3
	Insert instead “for a disciplinary finding against a veterinary practitioner”.	4
[20]	Section 48 (2)	5
	Omit “under that subsection”.	6
[21]	Section 56A	7
	Insert after section 56:	8
	56A Confidentiality of health reports about veterinary practitioners	9
	(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.	10 11 12 13 14
	Maximum penalty: 50 penalty units.	15
	(2) A protected health report may not be admitted or used in any civil proceedings before a court except with the consent of:	16 17
	(a) the health practitioner who prepared the report, and	18
	(b) the veterinary practitioner who is the subject of the report.	19
	(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.	20 21 22
	(4) In this section:	23
	<i>court</i> 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).	24 25 26 27 28
	<i>protected health report</i> 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.	29 30 31

[22] Section 63 Restrictions on publicising disciplinary action	1
Omit section 63 (2). Insert instead:	2
(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.	3 4 5 6 7
[23] Section 77 Membership of Board	8
Omit “by the University of Sydney” from section 77 (3) (b).	9
Insert instead “jointly by the University of Sydney and Charles Sturt University”.	10 11
[24] Section 79 Functions of Board	12
Insert “, including by determining the requirements for continuing professional development of veterinary practitioners” after “practitioners” in section 79 (2) (j).	13 14 15
[25] Schedule 4 Savings, transitional and other provisions	16
Insert at the end of clause 1 (1):	17
<i>Veterinary Practice Amendment Act 2010</i>	18
[26] Schedule 4, Part 3	19
Insert at the end of the Schedule:	20
Part 3 Provisions consequent on enactment of Veterinary Practice Amendment Act 2010	21 22
21 Definition	23
In this Part, <i>amending Act</i> means the <i>Veterinary Practice Amendment Act 2010</i> .	24 25
22 Complaints	26
(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.	27 28 29

(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.