

[Act 2000 No 37]



New South Wales

Veterinary Surgeons Amendment Bill 2000

Explanatory note

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

Overview of Bill

The objects of this Bill are the following:

- (a) to permit the Board of Veterinary Surgeons (*the Board*) to impose conditions on the registration of veterinary surgeons,
 - (b) to permit complaints about veterinary surgeons to be made by the Board and the Veterinary Surgeons Investigating Committee (*the Investigating Committee*),
 - (c) to provide for an additional specific kind of conduct of a veterinary surgeon that constitutes *misconduct in a professional respect*,
 - (d) to provide for a category of conduct of a veterinary surgeon that is *serious misconduct in a professional respect*, and to specify certain conduct that constitutes professional misconduct of that kind,
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- (e) to permit the Investigating Committee to direct the Board, in certain circumstances, to suspend from practice, or to impose conditions on the registration of, a veterinary surgeon against whom a complaint of serious misconduct in a professional respect has been made,
- (f) to permit the Investigating Committee to require a person to provide written information, verified by statutory declaration, in connection with the investigation of a complaint against a veterinary surgeon,
- (g) to provide for the transaction of business by the Board and the Investigating Committee outside meetings or by telephone,
- (h) to permit the Board and the Investigating Committee to delegate their functions of collecting evidence,
- (i) to permit the Board to control its funds and employ its staff,
- (j) to make other minor amendments to the *Veterinary Surgeons Act 1986*, including amendments of a consequential, saving or transitional nature.

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 a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Veterinary Surgeons Act 1986* (*the Act*) set out in Schedule 1.

Schedule 1 Amendments

Conditions on registration as a veterinary surgeon

Schedule 1 [4] inserts proposed section 17A in the Act. The proposed section permits the Board to impose conditions on the registration of a veterinary surgeon. However, conditions may be imposed only if the Board is satisfied that they are warranted, having regard to the criteria (such as the safety or health of any person) set out in the proposed section.

Schedule 1 [5] and **[6]** make consequential amendments to section 18 (Registration certificate) of the Act.

Schedule 1 [7] amends section 21 (Reviews by the Tribunal) of the Act so as to permit the veterinary surgeon concerned to apply to the Administrative Decisions Tribunal (*the Tribunal*) for a review of the Board's decision to impose conditions under proposed section 17A.

Serious misconduct in a professional respect

Schedule 1 [8] inserts proposed section 22A in the Act. Section 22 (Misconduct in a professional respect) of the Act specifies certain circumstances in which a veterinary surgeon will be taken to be guilty of *misconduct in a professional respect*. Proposed section 22A specifies certain circumstances in which a veterinary surgeon will be taken to be guilty of *serious misconduct in a professional respect* (for example, if the veterinary surgeon engages in conduct in a professional capacity that, if repeated or continued, is likely to affect adversely the safety or health of any person). Neither section 22 nor proposed section 22A is exhaustive.

Schedule 1 [12] amends certain sections of the Act that refer to misconduct in a professional respect so as to include a reference to serious misconduct in a professional respect.

Schedule 1 [10] inserts proposed Division 2A (proposed sections 25A–25H) in Part 4 of the Act.

Proposed section 25A permits the Investigating Committee to make a complaint about any alleged conduct of a registered veterinary surgeon that, in the opinion of the Investigating Committee, is such as to give rise to a complaint of serious misconduct in a professional respect against the veterinary surgeon (unless the Investigating Committee has already received a complaint about the alleged conduct).

Proposed section 25B permits the Investigating Committee, on receiving a complaint that a registered veterinary surgeon is guilty of serious misconduct in a professional respect, and at any stage of its investigation of the complaint, to direct the Board to suspend the veterinary surgeon from practice for a specified limited period or to impose specified conditions on the veterinary surgeon's registration. However, such a direction may be given only if the Investigating Committee is satisfied that the suspension or imposition of conditions are urgently needed, having regard to the criteria (such as the safety or health of any person) set out in the proposed section. The Board must comply with any such direction.

Proposed section 25C requires the Investigating Committee, before giving a direction under proposed section 25B, to notify the registered veterinary surgeon concerned of its intention to give the direction (and of its reasons for doing so). The Investigating Committee must give the veterinary surgeon the opportunity to make

representations about the complaint to the Investigating Committee before it gives the direction to the Board.

Proposed section 25D permits a person against whom an order of the Board is in force under the proposed Division to apply to the Tribunal for a review of the decision of the Investigating Committee that gave rise to the order. The proposed section also permits the Investigating Committee to apply to the Tribunal for an order extending the period for which a former registered veterinary surgeon is suspended under the proposed Division.

Proposed section 25E requires an application under proposed section 25D to be determined by a judicial member of the Tribunal, and provides that the Tribunal is to determine the application having regard to all relevant information that the Investigating Committee and the veterinary surgeon have furnished to it by the time the application is determined. The proposed section also sets out the interim orders that the Tribunal may make on determining the application.

Proposed section 25F permits the Tribunal to make any of the interim orders set out in proposed section 25E at any stage of the Tribunal's inquiry into a complaint referred to it by the Investigating Committee.

Proposed section 25G provides that a registered veterinary surgeon who has been suspended from practice under the proposed Division is taken not to be a registered veterinary surgeon. The proposed section also provides that the person concerned is reinstated as a registered veterinary surgeon on the expiry of the period of suspension or the final disposal of the complaint (whichever occurs first), subject to any order of the Tribunal or the Supreme Court in relation to the complaint.

Proposed section 25H provides that conditions imposed under the proposed Division have effect (subject to the Division) until the final disposal of the relevant complaint.

Schedule 1 [18] amends section 36 (Recordings of proceedings and decision of Investigating Committee and orders of Tribunal) so as to provide for the notation in the register of veterinary surgeons (or specialists) of the terms of any order of the Board under proposed section 25B.

Schedule 1 [19] amends section 52 (Suspension or cancellation of licence) in consequence of the insertion of proposed Division 2A.

Complaints against veterinary surgeons

Schedule 1 [11] amends section 26 (Complaints against veterinary surgeons) of the Act so as to permit the Board and the Investigating Committee to make complaints against registered veterinary surgeons.

Schedule 1 [13] also amends section 26. The effect of the proposed amendment is to provide that a registered veterinary surgeon's contravention of a condition imposed under proposed section 17A, 25B or 25E constitutes grounds for a complaint against the veterinary surgeon.

Schedule 1 [14] and **[15]** make amendments consequential on the amendment proposed to be made by Schedule 1 [11].

Schedule 1 [16] amends section 27 (Investigation by Investigating Committee) to permit the Investigating Committee to delegate its function of collecting evidence in the investigation of a complaint.

Board of Veterinary Surgeons

Schedule 1 [3] repeals and re-enacts section 7 (Staff of the Board) of the Act so as to permit the Board to employ staff and to use contractors.

Schedule 1 [20] repeals sections 54A–54C of the Act. Those sections establish a Fund known as the New South Wales Veterinary Surgeons Fund and specify what is payable into and from that Fund.

Schedule 1 [1], [21] and **[22]** make amendments consequential on the amendment proposed to be made by Schedule 1 [20].

Schedule 1 [24] enables the Board to delegate its function of collecting any evidence necessary for the exercise of its functions.

Summoning witnesses and requiring information

Both the Board and the Investigating Committee currently have the power under section 57 (Power to summon witnesses) to summon persons to appear before them to give evidence or provide a document. Failure to comply with such a summons is a criminal offence.

Schedule 1 [23] amends section 57 to provide that a registered veterinary surgeon who does not comply with such a summons is guilty of misconduct in a professional respect. The proposed amendment also empowers the chairperson of the Investigating Committee to require a person to provide written information, verified by statutory declaration, to it. The proposed amendment applies the same sanctions for refusal or failure to comply with such a requirement as for refusal or failure to comply with a summons under the section.

Miscellaneous

Schedule 1 [2] inserts proposed section 3A in the Act. The proposed section provides that notes in the Act do not form part of the Act.

Schedule 1 [9] amends section 24 (Constitution of Veterinary Surgeons Investigating Committee) of the Act to remove the requirement that one member of the Investigating Committee be an officer of the Department of Agriculture.

Schedule 1 [17] omits a redundant provision.

Schedule 1 [25] extends the power to make regulations under the Act so as to permit the making of regulations prescribing fees payable for such services provided by the Board as will assist the Board to operate on a cost-recovery basis.

Schedule 1 [26] and **[27]** permit the Board and the Investigating Committee, respectively, to transact their business outside meetings or by telephone.

Schedule 1 [28] permits the making of regulations of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [29] inserts a transitional provision in the Act in relation to the amendment made by Schedule 1 [9].