



**Industry &
Investment**

Report to Parliament

by

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Minister for Primary Industries***

**on the review of the
*Veterinary Practice Act 2003***

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Introduction

I am pleased to table this report on the review of the *Veterinary Practice Act 2003*.

The Act came into operation incrementally between 2004 and 2006 and since its introduction has gained a high level of industry support.

The statutory five-year review found that the objects of the Act remain relevant and that the terms of the Act continue to deliver the desired outcomes. The review considered the objects of the Act in detail as well as some additional issues of concern.

The report makes a number of recommendations in relation to some of the issues of concern and submissions received in response to the discussion paper that was released for consultation.

Further work will be undertaken on these recommendations with a view to putting amendments to the Act before Parliament in 2010.

I commend this report to you.

Steve Whan MP

1. Executive Summary

This report on the statutory five-year review of the *Veterinary Practice Act 2003* (“the Act”) is required to be tabled in both houses of Parliament.

The background, terms of reference and review process are outlined in the initial sections of the report.

The report concludes that the policy objectives of the Act are still valid and that no additional objectives are required.

The report considers the terms of the Act to assess whether they are still appropriate to secure the Act’s objectives. In some cases provisions of the Act require fine-tuning. Additional issues of concern are also examined, and proposed approaches noted.

The report makes the following recommendations:

No	Recommendation
1	Retain objectives (a) – (d) as set out in section 3 of the Act
2	No additional objectives are required
3	Amend the definition of ‘controlling interest’ to exclude the requirement for veterinary practitioners to have the capacity to determine the outcome of decisions about the financial policies of the corporation
4	Amend the Act to prohibit any employer from directing or inciting a veterinary practitioner to engage in conduct in the course of professional practice that would constitute unsatisfactory professional conduct or professional misconduct
5	Amend the Act to provide for a veterinary practitioner to undergo a medical examination if a complaint has been made against that practitioner in relation to infirmity, injury, impairment or illness (whether mental or physical) or if during the investigation of a complaint, the Board suspects that the practitioner was/is suffering from infirmity, injury, impairment or illness (whether mental or physical)
6	Amend the Act to insert the word “impairment” wherever the words “infirmity, injury or illness” occur and insert a definition of impairment
7	Amend the Act to give the Board the ability to immediately suspend a veterinary practitioner’s registration following completion of its investigation into a complaint where there has been a finding of professional misconduct and: <ul style="list-style-type: none">• there is a possible serious risk to the health and safety of a person;• the health and welfare of animals is likely to be endangered;• Australia’s international reputation may be compromised; or• infirmity, injury, impairment or illness (whether mental or physical) has been found which may result in an unacceptable risk to the health and safety of persons or health and welfare of animals
8	Amend the Act to provide that a complaint against a veterinary practitioner may only be made to the Board if the grounds on which the complaint is made arose within three (3) years immediately before the making of the complaint, unless the Board makes a determination to exercise its discretion to deal with a complaint that is made outside this time period
9	Amend the Act to provide protection for any person who makes a complaint to the Board about veterinary practitioners in good faith

10	Amend the Act to expressly exclude privilege against self-incrimination when a person is required to answer questions or produce documents in accordance with section 44(5) of the Act, whilst conferring upon that person a protection that the answer given to a question or the document produced in compliance with such a requirement is not admissible in evidence against them in criminal proceedings
11	Amend section 46(5) of the Act to substitute the word 'recommendation' for 'caution'
12	Amend section 77(3)(b) of the Act to include a reference to the Charles Sturt University Veterinary School
13	Amend the Act to require a veterinary practitioner to undertake continuing professional development in accordance with a model approved in writing by the Board
14	Amend the Act to provide recognition of the role that the Australasian Veterinary Boards Council plays in accreditation when the Board is reviewing universities, colleges and institutions that are approved under section 21 (1)(a) of the Act

2. Terms of reference for the review

Section 107 of the Act states:

- “(1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.*
- “(2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.*
- “(3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.”*

The Act was assented to on 5 December 2003 and came into operation incrementally between 2004 and 2006.

To assist in the review process, a Review Group was formed consisting of members from the Veterinary Practitioners Board (“the Board”) and staff from Industry & Investment NSW, including the Deputy Chief Veterinary Officer of NSW.

Consistent with provisions in the Act, the following terms of reference were determined to guide the review:

- a) Assess whether the policy objectives of the Act remain valid;
- b) Assess whether the provisions of the Act remain appropriate for effectively and efficiently securing these objectives; and
- c) Make recommendations on amendments to the Act, if required.

3. Policy objectives of the Act

For the purposes of the review, the policy objectives are taken to be the object and purposes of the Act.

Section 3 provides:

“The object of this Act is to regulate the provision of veterinary services for the following purposes:

- (a) to promote the welfare of animals,*
- (b) to ensure that consumers of veterinary services are well informed as to the competencies required of veterinary practitioners,*
- (c) to ensure that acceptable standards are required to be met by veterinary practitioners so as to meet the public interest and national and international trade requirements,*
- (d) to provide public health protection.”*

4. Review process

The review commenced in March 2009.

The then NSW Department of Primary Industries, on behalf of the Review Group, released a discussion paper relating to the review of the Act on 19 June 2009. The closing date for submissions was 10 July 2009.

Targeted consultation took place with stakeholder groups and NSW registered veterinary practitioners. Nine responses were received from a representative range of stakeholders including industry bodies and individual veterinary practitioners. Issues raised in the discussion paper and the submissions are discussed in section 9.

Table 1 of the Appendix to this Report details the stakeholders groups that were consulted and Table 2 of the Appendix contains details of the submissions.

The recommendations included in this report draw upon the consultation process and the submissions received.

It is anticipated that amendments to the Act resulting from the recommendations will be progressed in 2010.

5. Structure of the report

Sections 6 and 7 examine the performance of the Act, including whether the objectives of the Act remain valid, and whether additional objectives are required.

Section 8 considers some amendments to the Act which are currently being progressed by Industry & Investment NSW.

Section 9 considers issues of concern identified by the Review Group and stakeholders. All of the issues raised in this section were identified in the discussion paper.

Section 10 considers two additional proposed legislative amendments identified by the Review Group subsequent to targeted consultation. These proposed amendments are not regarded as contentious as they simply seek to adopt in legislation the position that currently exists. Consequently, further stakeholder consultation on these issues has not been undertaken.

Each section contains one or more recommendations. The recommendations are also listed in the Executive Summary.

6. Are the objectives of the Act still valid?

6.1 Purpose (a) - To promote the welfare of animals

Animals are important to the community, particularly animals under human care and control whether they be livestock, performance, guide animals or companion animals. The community consequently has high expectations regarding the care that should be provided to

animals and the people who provide this care. This Act provides a specific list of veterinary practices that, on animal welfare, human health and domestic and international trade grounds, can only be undertaken by registered veterinary practitioners.

The community expects those who provide professional care to animals to do so in such a way as to minimise suffering and promote animal welfare. This expectation needs to be reconciled with the fact that some treatments and procedures, despite being in the animal's long term interest, may cause considerable short term pain and suffering unless accompanied by relevant pharmacological and/or medical intervention. The Act clearly promotes animal welfare by ensuring that those performing procedures on animals are competent to do so and therefore do not produce adverse welfare outcomes for the animals.

The purpose in section 3(a) is supported by the provisions of the Act and no amendment is required.

6.2 Purpose (b) - To ensure that consumers of veterinary services are well informed as to the competencies required of veterinary practitioners

The Act contains several provisions requiring the provision of information in relation to veterinary practitioners:

- a) Section 28 requires the Board to keep a Register of Veterinary Practitioners. This Register is available for inspection by any person;
- b) Section 60 requires the Registrar of the Board to keep a Register of disciplinary action taken against a veterinary practitioner. This Register is available to the public for inspection and the Registrar may, on request, provide information recorded in the Register to members of the public in any other manner.

Information regarding competencies of individual veterinary practitioners and hospitals is also available from other sources, including:

- a) The website of the Board contains a search mechanism whereby persons can search for veterinary practitioners by name or by suburb, and information regarding their qualifications, registration and/or specialty is generated;
- b) The website of the Board contains a search mechanism whereby persons can search for information about licensed veterinary hospitals by name or by suburb, including the qualifications, registration and/or specialty of all licensees and the superintendent;
- c) When enquiries are made to the Board about registration of a veterinary practitioner or a veterinary hospital or disciplinary action taken against a veterinary practitioner, the required information is given by telephone, email or post (linked to section 60(4) of the Act).

A full list of competencies required of Australian veterinary practitioner graduates and the accreditation of veterinary universities is contained in the Policies and Procedures Manual for Accreditation for Veterinary Schools (on the Australasian Veterinary Boards Council website www.avbc.asn.au). To ensure that the information contained in this document is easily accessible to users of veterinary services, the Board has recently included a direct link to the Policies and Procedures Manual on their website under 'consumer information' (http://www.vpb.nsw.gov.au/page/Consumer_Information_and_Complaints).

The purpose in section 3(b) is met in the ways outlined above, and no amendment is required.

6.3 Purpose (c) - To ensure that acceptable standards are required to be met by veterinary practitioners so as to meet the public interest and national and international trade requirements

Skilled veterinary practitioners play a vital role in the diagnosis, detection, prevention and cure of animal health related issues. The community generally accepts that the capacity to perform many treatments, procedures and other interventions requires comprehensive knowledge and understanding which in turn requires many years of dedicated study. This position is consistent with the status quo whereby restricted acts of veterinary science such as animal surgery can only be performed by registered veterinary practitioners. This position is also consistent with procedures such as animal husbandry performed by non-veterinarians, where even though some knowledge is required, it is basic knowledge that is readily available to those working with the animals.

Division 2 of Part 4 of the Act provides for the Board to grant a number of different kinds of registration to veterinary practitioners - full, honorary, limited, provisional and specialist. The requirement that full registration can only be granted to a person who holds an academic award in veterinary science from a recognised university, college or institution ensures that veterinary practitioners have undergone the appropriate training in veterinary science and that they have the requisite skills and experience to meet the standards expected by the public.

Honorary, limited, provisional and specialist registration can only be granted if the Board is satisfied that the veterinary practitioner demonstrates compliance with the relevant criteria. Again, the existence of criteria and the requirement to meet such criteria ensures that a certain standard is met.

It is appropriate that a person who performs a procedure is competent to do so whether the procedure relates to a trade or a professional service. The relevant competency maximises the likelihood that the procedure is performed properly and safely, and minimises the possibility of adverse outcomes, in this case for animals and people. Furthermore, working with animals can pose risks to human safety through potential exposure to zoonotic diseases and physical risk in the case of large animals such as horses which can cause serious injury or death if not handled and treated correctly.

In relation to national and international trade, animals must be inspected and certified free of certain diseases before they can travel. The inspection and certification requirements vary depending on the State or the importing country's specific requirements. Registered veterinary practitioners are responsible for providing accurate and reliable information on an animal's health status, with the trade reputation of NSW, and consequently Australia, being dependent on the integrity of the veterinary services provided.

Section 18 of the Act allows the Board to refuse to register an applicant as a veterinary practitioner if they:

- a) are not of good character;
- b) have been found guilty of offences under this Act and other prescribed Acts;
- c) have been refused registration, licensing or other authorisation as a veterinary practitioner in another State or Territory or has had his or her authority to practice veterinary science suspended or cancelled in another State or Territory;
- d) are not fit to practice veterinary science by reason of infirmity, injury or illness (whether mental or physical) or by reason of habitual drunkenness or addiction to a deleterious drug;
- e) have not made the declaration, prescribed by the regulations, relating to the conduct to be observed by veterinary practitioners.

This provision in the Act provides a safeguard to the public by ensuring that persons who are unable to meet the standards required of veterinary practitioners do not perform restricted acts of veterinary science.

The Act also provides for the Board to grant a veterinary hospital licence which allows premises to be used to perform major surgery on an animal. Section 70(2) of the Act requires the Board to refuse a licence unless *“the applicant for the licence demonstrates to the Board that the premises for the proposed veterinary hospital will be able to provide acceptable levels of care for animals before, during and after major surgery”* (emphasis added).

Veterinary practitioners are bound by the “Veterinary Practitioners Code of Professional Conduct” (“the Code”). The Code, which can be found in Schedule 2 to the *Veterinary Practice Regulation 2006*, sets out the rules of conduct that should be observed by a veterinary practitioner in carrying on the practice of veterinary science. The existence of the Code ensures that acceptable standards continue to be met by veterinary practitioners during their career.

To maintain and enhance professional skills and knowledge, continuing professional development is required of all registered veterinary practitioners in NSW. A minimum of 60 points is required over a consecutive 3 year period.

Finally, Part 5 of the Act establishes a complaints process which allows for any person to make a complaint against a veterinary practitioner in respect of their conduct as a veterinary practitioner. Once the Board has investigated a complaint, the Board may take disciplinary action against a veterinary practitioner which can include cancellation, suspension or the placement of conditions on a veterinary practitioner’s registration. Members of the public can take comfort in the fact that veterinary practitioners whose conduct falls below the standard set out in the Code will be disciplined.

The purpose in section 3(c) is supported by the provisions of the Act and no amendment is required.

6.4 Purpose (d) - To provide public health protection

Veterinary practitioners play a very important role in aspects of public health, particularly in relation to:

- a) animal diseases that can be transferred to humans;
- b) animal disease epidemics which may cross infect humans;
- c) antimicrobial resistance from animals to humans;
- d) emerging international disease issues such as avian influenza and bovine spongiform encephalopathy; and
- e) export meat inspection and related issues of meat and food contamination.

Relevant competencies of veterinary practitioners include knowledge and practical understanding of pharmacodynamics, the epidemiology of diseases and drug withholding periods as well as skills in the detection of emerging diseases.

Another aspect of public health is the correct use of veterinary chemicals, including stock medicines. The Act provides that the Board can refuse to register a veterinary practitioner who has been convicted of an offence under a number of Acts, including the *Stock Medicines Act 1989* and the *Poisons and Therapeutic Goods Act 1966*, or any of the regulations under those Acts.

The purpose in section 3(d) is supported by the provisions of the Act and no amendment is required.

Recommendation 1: Retain objectives (a) – (d) as set out in section 3 of the Act.

7. Are additional objectives required?

No submissions were received suggesting that additional objects or purposes are required and the Review Group did not propose any additional objects or purposes.

Recommendation 2: No additional objectives are required.

8. Amendments currently being progressed

8.1 Professional misconduct provisions

Currently, the Board must apply to the Administrative Decisions Tribunal (“ADT”) for a disciplinary finding of professional misconduct against a veterinary practitioner. The Board has advised that there are many instances where professional misconduct is not serious enough to warrant automatic application to the ADT for a disciplinary finding.

Amendments to the Act are currently being progressed to allow the Board to deal with less serious professional misconduct and to refer to the ADT only matters that justify the suspension or cancellation of a veterinary practitioner’s registration.

8.2 Adoption of the National Recognition of Veterinary Registration Model

Currently, veterinary practitioners require separate registration with the veterinary surgeons’ board of each jurisdiction in which they practice acts of veterinary science.

To eliminate the requirement for separate registration in each jurisdiction, a National Registration of Veterinarians Working Group was formed to develop a model for National Recognition of Veterinary Registration (“NRVR”). The NRVR model would allow registration in one State or Territory to be recognised by other States and Territories.

The NRVR model has been endorsed by the Primary Industries Ministerial Council, the Australasian Veterinary Boards Council, the Australian Veterinary Association and the NSW Veterinary Practitioners’ Board. Amendments to the NSW Act (and corresponding Acts in other states) to allow for full national recognition of interstate registration based on the NRVR model are currently being examined.

9. Recommendations for amendments to the Act

9.1. Corporate ownership

The Act allows particular forms of business arrangements to be used to set up a veterinary practice so long as the majority interest in its ownership is held by one or more registered veterinary practitioners. Section 14(1) of the Act states that *“A corporation must not represent itself to be a veterinary practice unless one or more veterinary practitioners has or have the controlling interest in the corporation.”*

The purpose of section 14 is to ensure that persons with a controlling interest in a veterinary practice are directly accountable for the standards of veterinary care provided, because such persons are in a position to influence business decisions of the practice. This is consistent with objects 3(a) and 3(c) of the Act.

9.1.1 Definition of controlling interest

In relation to the definition of ‘controlling interest’, section 4(2) of the Act provides that *“For the purposes of this Act, a person has, or persons have, a controlling interest in a corporation or firm if the person has, or persons have, the capacity to determine the outcome of decisions about the financial and operating policies of the corporation or firm.”*

The effect of this section when read with section 14(1) of the Act is that a corporation may represent itself to be a veterinary practice if at least one veterinary practitioner has the capacity to determine the outcome of decisions about the financial and operating policies of the corporation.

It is considered that the capacity of a veterinary practitioner to determine the outcome of decisions about the *financial* policies of a veterinary practice is of less importance than their capacity to determine the *operating* policies. This is because the focus of a veterinary practice must be the standard of veterinary care that can be provided and the outcome of veterinary treatment, both of which relate to operating policies.

It is therefore proposed that the definition in section 4(2) be amended to exclude the requirement for a person to have the capacity to determine the outcome of decisions about the *financial* policies of the corporation.

The removal of the word financial from the definition of controlling interest will allow for different corporate ownership models and will encourage corporate investment in veterinary practices.

Veterinary practitioners employed in such a practice will be fully accountable for the standard of veterinary care that they provide and the outcome of veterinary treatment through their registration with the Board. Veterinary practitioners are bound by the Veterinary Practitioners Code of Conduct. As stated earlier, this Code sets out the rules of conduct that should be observed by a veterinary practitioner in carrying on the practice of veterinary science.

Clause 13 of the Code provides that a veterinary practitioner must ensure that all persons assisting in the provision of veterinary services to animals in his or her care have the skills, knowledge and available equipment to enable them to perform their duties according to current standards of the practice of veterinary science, except in the case of an emergency.

The Code is binding on all veterinary practitioners and a breach of clause 13 is declared to be professional misconduct for the purposes of the Act.

The requirement that the main decision makers for a veterinary practice are bound to comply with professional ethics ensures that persons with a controlling interest are directly accountable for the standards of care provided at that practice and that animal welfare or human health will not be compromised. In this respect, as long as a veterinary practitioner has the capacity to determine the *operating* policies of the veterinary practice, they are in a position to influence business decisions of the practice.

No significant impact on the provision of services by a veterinary practitioner or the impartiality of a veterinary practice is anticipated as a result of this proposal, particularly when introduced in combination with the safeguard regarding ethical behaviour and the protection against pressure from corporate employers proposed in section 9.1.2 below.

Recommendation 3: Amend the definition of 'controlling interest' to exclude the requirement for veterinary practitioners to have the capacity to determine the outcome of decisions about the financial policies of the corporation.

9.1.2 Undue pressure

Concerns have been raised about veterinary practitioners being pressured by company directors to behave unethically or unprofessionally. Legislation governing veterinary practitioners in other states, including Victoria, has addressed this concern by allowing corporate ownership but introducing provisions to protect veterinary practitioners from pressure by directors.

Section 15(2) of the NSW Act provides that a person (the employer) who employs a veterinary practitioner *"must not direct or incite the practitioner to engage in conduct in the course of professional practice that would constitute unsatisfactory professional conduct or professional misconduct."* However, this protection currently only relates to the provision of veterinary services by a corporation or firm whose principal business is the supply of goods or materials used in connection with agriculture.

It is proposed that the Act be amended to prohibit any employer (not just one whose principal business is the supply of goods or materials used in connection with agriculture) from directing or inciting a veterinary practitioner to engage in conduct in the course of professional practice that would constitute unsatisfactory professional conduct or professional misconduct.

It is noted that similar offence provisions exist in Victoria, Queensland and South Australia.

Recommendation 4: Amend the Act to prohibit any employer from directing or inciting a veterinary practitioner to engage in conduct in the course of professional practice that would constitute unsatisfactory professional conduct or professional misconduct.

9.2. Medical impairment of veterinary practitioners

During its period of operation, the Board has received a number of complaints alleging that the performance of particular veterinary practitioners has been affected by alcohol, drugs or certain medical conditions.

9.2.1 Requirement to undergo medical examination

The Act currently contains no provisions to allow the Board to require a veterinary practitioner to undergo a medical examination in such circumstances.

It is proposed that a process be prescribed in the Act to give the Board discretion to require a veterinary practitioner to undergo a medical examination if:

- a) a complaint has been made against that practitioner in relation to infirmity, injury, impairment or illness (whether mental or physical); or
- b) during the investigation of any complaint, the Board suspects that the practitioner was/is suffering from infirmity, injury, impairment or illness (whether mental or physical).

The veterinary practitioner must not be directed to undergo an examination unless it is reasonable to require the examination, given the nature of the complaint against the practitioner or the suspicion by the Board.

The examination referred to above is to be conducted by a specified registered medical practitioner or a specified registered health practitioner at a specified time and place. The time and place specified for the examination must be reasonable and the examination is to be at the expense of the Board.

The specified registered medical practitioner or specified registered health practitioner will be required to make a written report to the Board as soon as possible after conducting the examination. The Board must, as soon as practicable after receiving the report, provide a copy of that report to the veterinary practitioner concerned. To ensure patient confidentiality, it is intended that only the Board and that practitioner will have access to the medical report.

It is noted that this proposal is similar to the model contained in the *Medical Practice Act 1992* (NSW).

Recommendation 5: Amend the Act to provide for a veterinary practitioner to undergo a medical examination if a complaint has been made against that practitioner in relation to infirmity, injury, impairment or illness (whether mental or physical) or if during the investigation of a complaint, the Board suspects that the practitioner was/is suffering from infirmity, injury, impairment or illness (whether mental or physical).

9.2.2 Actions by the Board following a medical examination

The Board may take immediate action against a veterinary practitioner who has undergone a medical examination by relying on section 19(2) of the Act which allows it to impose conditions on the registration of a practitioner at any time. Currently, conditions may only be imposed by the Board in the circumstances prescribed in section 19(3) of the Act. For clarity, it is proposed to amend this subsection to make it clear that a condition may be imposed having regard to the outcome of such a medical examination.

The Board will not disclose a medical condition that a veterinary practitioner has/may have when an enquiry is received by the Board with respect to any conditions that the practitioner may have on their registration.

After the Board has completed an investigation into a complaint against a veterinary practitioner which involves infirmity, injury, impairment or illness the complaint will be dealt with in accordance with section 47 of the Act.

The ability of the Board to use section 47 in relation to the outcome of such an investigation will be dependent on “infirmity, injury, impairment or illness” falling within the meaning of unsatisfactory professional conduct.

To achieve this, the word “impairment” needs to be defined and inserted into section 35(j) so that any conduct that demonstrates that a veterinary practitioner is not fit to practice veterinary science by reason of infirmity, injury, impairment or illness (whether mental or physical) constitutes unsatisfactory professional conduct.

A possible definition of impairment, taken from the *Medical Practice Act 1992* (NSW) is:

“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 practice medicine. Habitual drunkenness or addiction to a deleterious drug is considered to be a physical or mental disorder.”

If infirmity, injury, impairment or illness results in disciplinary action being taken against a veterinary practitioner, the register of disciplinary action kept by the Registrar will only record the disciplinary action taken against the practitioner (ie. the outcome) and not the reasons for the decision.

Recommendation 6: Amend the Act to insert the word “impairment” wherever the words “infirmity, injury or illness” occur and insert a definition of impairment.

9.3 Power of suspension

Section 47 of the Act sets out what the Board must do after it has completed an investigation into a complaint against a veterinary practitioner.

Section 47 relevantly states:

“(4) If the Board is satisfied that the veterinary practitioner is guilty of professional misconduct, the Board:

(b) may suspend the veterinary practitioner's registration pending the determination of the matter by the Tribunal.

(5) Action is not to be taken under subsection (4) (b) 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."

It is proposed that, in addition to the Board having the power of suspension in the circumstances described in section 47(5), the Board be given the ability to immediately suspend (that is, without carrying out the 28 day submission procedure described in section 47(5)) a veterinary practitioner's registration in the following limited situations:

- a) where there is a possible serious risk to the health and safety of any person;
- b) where the health and welfare of animals is likely to be endangered;
- c) where Australia's international reputation may be compromised; or
- d) where infirmity, injury, impairment or illness (whether mental or physical) has been found which may result in an unacceptable risk to the health and safety of persons or health and welfare of animals.

This additional power of immediate suspension would only be available where a finding of professional misconduct has been made following completion of the Board's investigation into a complaint.

As outlined in section 9.2.2, it is proposed to amend paragraph (j) of the definition of "unsatisfactory professional conduct" in section 35 to allow the Board to make a finding of unsatisfactory professional conduct if a veterinary practitioner is not fit to practice veterinary science by reason of infirmity, injury, impairment or illness (whether mental or physical). Paragraph (a) of the definition of "professional misconduct" in section 35 provides that where unsatisfactory professional conduct is sufficiently serious to justify the suspension or cancellation of their registration, a finding of professional misconduct can be made by the Board.

Taken together, these provisions would give the Board the power to immediately suspend a veterinary practitioner's registration where infirmity, injury, impairment or illness (whether physical or mental) has been found which may result in an unacceptable risk to the health and safety of persons or the health and welfare of animals.

Recommendation 7: Amend the Act to give the Board the ability to immediately suspend a veterinary practitioner's registration following completion of its investigation into a complaint where there has been a finding of professional misconduct and:

- ***there is a possible serious risk to the health and safety of a person;***
- ***the health and welfare of animals is likely to be endangered;***
- ***Australia's international reputation may be compromised; or***
- ***infirmary, injury, impairment or illness (whether mental or physical) has been found which may result in an unacceptable risk to the health and safety of persons or health and welfare of animals.***

9.4 Limitation period

With respect to complaints made about veterinary practitioners, it is proposed to introduce a time limit for making complaints.

Currently, there is no time limit for making a complaint about a veterinary practitioner. The making of a complaint more than three years after the grounds on which the complaint is made arose is often met with practical difficulties because clause 15(3) of the Code requires that records of any consultation, procedure or treatment only have to be retained for three years after they are made.

It is proposed that a complaint against a veterinary practitioner may only be made to the Board if the grounds on which the complaint is made arose within 3 years immediately before the making of the complaint.

A period of less than 3 years is considered too short as there will be medical conditions that may not be discoverable for a certain period of time. For example, the outcome of chemotherapy and treatment for cancer, and nutritional advice to livestock owners that may result in poor fertility rates that only become evident by comparing year on year results.

Allowing a period of 3 years to make a complaint will ensure, assuming compliance with the Code, that records will be available to the Board and all parties during the investigation of a complaint.

It is however proposed that the Board be given discretion to deal with a complaint more than 3 years after the grounds on which the complaint is made arose, if the Board makes a determination that it is just and fair to deal with the complaint having regard to the period of delay and the reasons for the delay. It is intended that the Board's discretion will only be exercised in very limited circumstances and that a determination by the Board regarding its discretion will be final and cannot be challenged in any proceedings by the complainant or the veterinary practitioner concerned.

Recommendation 8: Amend the Act to provide that a complaint against a veterinary practitioner may only be made to the Board if the grounds on which the complaint is made arose within three (3) years immediately before the making of the complaint, unless the Board makes a determination to exercise its discretion to deal with a complaint that is made outside this time period.

9.5 Protection for complainants

Complaints about veterinary practitioners are predominately made by members of the public, other veterinary practitioners and staff who work with veterinary practitioners. The Act does not provide any protection to these persons, or any persons, who make complaints about veterinary practitioners. It is therefore proposed to introduce a protection for persons where a complaint is made to the Board about a veterinary practitioner in good faith.

Where such a person makes a complaint to the Board in good faith, it is proposed to provide that:

- 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 civil proceedings for malicious prosecution or for conspiracy.

It is noted that this proposal is similar to the model contained in the *Medical Practice Act 1992* (NSW).

Recommendation 9: Amend the Act to provide protection for any person who makes a complaint to the Board about veterinary practitioners in good faith.

9.6 Self incrimination

Section 44(5) of the Act states:

“A person appearing in proceedings before the Board in respect of a complaint to give evidence must not, without reasonable excuse:

(a) when required to be sworn or to affirm - fail to comply with the requirement, or

(b) fail to answer a question that the person is required to answer by the person presiding, or

(c) fail to produce a document that the person is required to produce by this section.

Maximum penalty: 20 penalty units.”

Despite this requirement, a person who is questioned in proceedings before the Board or is required to produce documents to the Board has a common law right to refuse to answer any question or produce any document if the answer or the document could expose that person to the imposition of a civil penalty or to conviction for a crime. This concept is often referred to as the privilege against self-incrimination.

It is proposed to introduce a provision which expressly excludes the privilege against self-incrimination so that a person will not be able to rely on the common law right to refuse to

answer a question or produce a document on the basis that the answer or the document may incriminate them.

However, to compensate for the removal of this right, it is proposed to confer some protection on the person by not allowing any answer given to a question or any document produced in compliance with the requirement in section 44(5) to be admissible in evidence against the person in criminal proceedings.

The proposed protection afforded to veterinary practitioners relates only to criminal proceedings. This is because in criminal proceedings, the prosecution must prove its case beyond a reasonable doubt and it should not be able to use evidence that a veterinary practitioner has been compelled to give under section 44(5) of the Act.

A number of Acts relating to other professions expressly exclude privilege against self-incrimination but compensate for its exclusion by conferring some protection on the person, similar to what is proposed for veterinary practitioners.

The Board's complaints process encourages openness, frankness and candour. To this effect, requiring a person to answer questions and produce documents in relation to a complaint, while protecting that person from possible criminal penalty, allows the Board to fairly and efficiently investigate complaints and expeditiously make a finding in relation to a complaint. This proposal also protects a person from financial penalty if they refuse to answer a question or produce a document on the grounds of self-incrimination.

Recommendation 10: Amend the Act to expressly exclude privilege against self-incrimination when a person is required to answer questions or produce documents in accordance with section 44(5) of the Act, whilst conferring upon that person a protection that the answer given to a question or the document produced in compliance with such a requirement is not admissible in evidence against them in criminal proceedings.

9.7 Cautions

Section 46(5) of the Act provides that if the Board dismisses a complaint, it may issue a caution in respect of the matter complained of.

Section 47(3)(a) of the Act gives the Board the power to issue a reprimand or caution after investigating a complaint and making a finding of unsatisfactory professional conduct.

It is considered that the use of the word 'caution' in section 46(5) is potentially confusing when read alongside section 47(3)(a) because the impression is given that whether the Board dismisses a complaint or makes a finding of unsatisfactory professional conduct, the outcome may be the same.

To avoid confusion and make it clear that the term 'caution' is intended to be used in a less formal sense in section 46(5), it is proposed that the term 'caution' be replaced with the term 'recommendation.'

Recommendation 11: Amend section 46(5) of the Act to substitute the word 'recommendation' for 'caution'.

9.8 Membership of the Board

Section 77 of the Act details the membership of the Board.

Section 77(3)(b) provides that the Minister is to select “*the member that is to represent academics referred to in subsection (2) (a) (iv) from a panel prepared by the University of Sydney.*”

In late 2010, Charles Sturt University will be graduating registrable veterinary practitioners for the first time. As such, both Sydney University and Charles Sturt University should have equal opportunity to nominate persons for the list that is prepared for the Minister.

It is therefore proposed to amend section 77(3)(b) of the Act such that the Minister is to select the member that is to represent academics from a panel prepared jointly by the Charles Sturt University Veterinary School and by the University of Sydney.

Recommendation 12: Amend section 77(3)(b) of the Act to include a reference to the Charles Sturt University Veterinary School.

10. Subsequent recommendations for amendments to the Act

10.1 Continuing professional development (CPD)

Section 33 of the Act requires a veterinary practitioner to submit an annual return and clause 10(b) of the *Veterinary Practice Regulation 2006* provides that the further information that a veterinary practitioner must furnish is details of any CPD undertaken by the veterinary practitioner.

CPD is expected of all registered veterinarians in all States and Territories in Australia. All jurisdictions have agreed, through the Australasian Veterinary Boards Council (AVBC) and the Australian Veterinary Association (AVA), that the minimum attainment of points is 60 over a consecutive three year period.

Of the 60 points required, at least 15 points must be structured points (ie. attendance at courses, seminars etc). The remaining points can be structured or unstructured points. A comprehensive list of activities, points and validation of points is available in the CPD diary distributed by the Board each year or on the Board’s website.

Veterinary practitioners submitted their first annual returns by June 2007 in accordance with the legislation. As the profession had no prior ‘detailed’ warning about the new CPD reporting system, the Board did not record the points for the first year and they did not count in the three year cycle. All veterinary practitioners were made aware that the Boards recording of CPD points would start in 2008 and that they were expected to reach the minimum CPD points unless they had a reasonable excuse for failing to comply.

In 2008 and 2009, CPD points were recorded by the Board, and each year veterinary practitioners are informed about how many points have been reported to date and how far through the three year cycle they are. The third year of the cycle ends on 31 March 2010 and the start of the next three year period is 1 April 2010.

In order to maintain and enhance a veterinary practitioner's professional skills and knowledge, and to ensure the health and welfare of animals or any particular type of animals, it is proposed to formalise the current CPD expectation into legislation.

It is proposed that a provision be inserted into the Act which strengthens the requirement for a veterinary practitioner to undertake CPD in accordance with a model approved in writing by the Board. The model approved by the Board will appear in the Board's annual report and be published on their website.

Failure to comply with the CPD requirements without a reasonable excuse may result in the Board imposing conditions on the registration of a veterinary practitioner as set out in section 19(4) of the Act.

This proposal is consistent with object 3(c) of the Act.

Recommendation 13: Amend the Act to require a veterinary practitioner to undertake continuing professional development in accordance with a model approved in writing by the Board.

10.2 Accreditation of veterinary schools

Section 21(1)(a) of the Act sets out the requirements for a person to be granted full registration, which include consideration of whether the person holds an academic award in veterinary science from a university, college or institution approved in writing by the Board.

Section 21(2) of the Act provides that the Board is to review the universities, colleges and institutions that are approved for the purposes of subsection (1) (a) at least once every year and the results of the review are to be included in the Board's annual report.

The Australasian Veterinary Boards Council ("AVBC") has a membership of all the State and Territory Registration Boards plus the New Zealand Veterinary Council. The AVBC's advisory committee, the Veterinary Schools Accreditation Advisory Committee ("VSAAC") conducts regular rigorous accreditation visits to all Australasian veterinary schools.

The VSAAC has a clear and regularly reviewed Policy, Procedures and Standards Manual and provides recommendations to the AVBC on accreditation of veterinary schools at universities, colleges and institutions. The AVBC then agree to accept or reject the recommendation of VSAAC and then advise the registration boards of accepted recommendations.

Currently the legislation of Queensland, Western Australia, Northern Territory and Australian Capital Territory provide for recognition of the role of AVBC as an accreditation body. The other jurisdictions including NSW contemplate the veterinary board itself carrying out the function of accreditation.

Under section 82(1) of the Act, the Board is not empowered to delegate any of its functions to an outside body, such as the AVBC.

In view of the fact that the NSW Board relies on the advice and recommendations of the AVBC in making decisions about the recognition of qualifications and accreditation of courses, it is proposed that reference to the role of AVBC in approving universities, colleges and institutions be included in the Act.

Recommendation 14: Amend the Act to provide recognition of the role that the Australasian Veterinary Boards Council plays in accreditation when the Board is reviewing universities, colleges and institutions that are approved under section 21 (1)(a) of the Act.

APPENDIX

Table 1 – Stakeholder Groups Consulted

Animal Welfare League NSW
Australian Veterinary Association
School of Animal and Veterinary Sciences, Charles Sturt University
NSW Farmers Association
RSPCA New South Wales
Faculty of Veterinary Science, The University of Sydney

Table 2 – Summary of Submissions Received in Response to Consultation

Response Received	Recommendation Concerned	Summary of Submission
Animal Welfare League NSW	All	The discussion paper is satisfactory as it stands
The Australian Veterinary Association Limited – NSW Division	<p>6.2 Purpose (b) - To ensure that consumers of veterinary services are well informed as to the competencies required of veterinary practitioners</p> <p>6.3 Purpose (c) - To ensure that acceptable standards are required to be met by veterinary practitioners so as to meet the public interest and national and international trade requirements</p> <p>9.1 Corporate ownership</p> <p>9.2 Medical impairment of veterinary practitioners</p>	<p>Recommendation that after 5 years, the information should be removed</p> <p>The Act ensures that acceptable standards are met by veterinary practitioners by way of continuing education requirements and imposing disciplinary action when standards are not met. However, procedures no longer regarded as acts of veterinary science are not subject to the same rigorous checks and balances</p> <p>The preferred position is that veterinary practices should have one or more veterinarians with a controlling interest and with majority ownership</p> <p>To ensure patient confidentiality, the persons who will have access to the medical report should be identified. Clarification is required as to how the reason for any suspension under this section will be publicly reported</p>

	9.4 Limitation period	Supportive of the recommendation that a time limit should be introduced for the making of a complaint about a veterinary practitioner however recommends that a 12 month limitation period be considered
	9.5 Protection for complainants	Supportive of the recommendation but it is important to distinguish between complaints made to the Board and those made in the public arena
	9.7 Cautions	Supportive of the recommendation, noting that there may be a need for further explanation to define the various grades of punishment in lay terms for public use
School of Animal and Veterinary Sciences, Charles Sturt University	9.8 Membership of the Board	Strong support of the recommendation but queries how a joint list will be achieved
NSW Farmers Association	All	There is broad support for measures that improve the efficiency, corporate governance, credibility and professional conduct of veterinary practitioners. Recommendation however that consultation occur directly with persons affected such as the NSW Division of the Australian Veterinary Association and the District Veterinarians Association
RSPCA New South Wales	6.2 Purpose (b) - To ensure that consumers of veterinary services are well informed as to the competencies required of veterinary practitioners	Supportive of listing all of the qualifications of veterinary practitioners
	9.4 Limitation period	Three years is too long because if a veterinary practitioner makes an accidental mistake, they will have to wait 3 years to clear his/her name and it will definitely cause some stress and grief to the practitioner for that period
	9.7 Cautions	Supportive of the adoption of the term "recommendation" as the term caution is too harsh
Faculty of Veterinary Science, The University of Sydney	All	There are no submissions on the discussion paper at this time
Veterinary Practitioner	9.1.1 Definition of controlling interest	Removing a veterinary practitioner's controlling interest from the financial control of the business is a backwards step and will

		emasculate their control of the practice. This is because if you control the finances, you control the business
Veterinary Practitioner	9.5 Protection for complainants	Persons that complain in good faith leave veterinary practitioners open to frivolous or malicious complaints as it is easy to claim that one acted in good faith
Veterinary Practitioner	All	Dissatisfaction with the use of the term "practitioner" in the Act as opposed to the term "veterinarian"