

Review of the *Veterinary Surgeons Act 1936* (Qld)

Information paper

The review

The *Veterinary Surgeons Act 1936* (Qld) (the VS Act) currently provides the head of power for the registration and oversight of veterinarians by the Veterinary Surgeons Board of Queensland; prohibits unregistered people from claiming, holding themselves out to be or using a title that suggests they are a veterinarian or veterinary specialist; prohibits non-veterinarians from practising veterinary science for fee or reward; and restricts where veterinary science can be practised.

In May 2012, the Minister for Agriculture, Fisheries and Forestry (Qld), the Honourable John McVeigh MP, approved a review of the VS Act. A steering group for the review was appointed by the minister in January 2013, comprising Associate Professor Robert Hedlefs (chair), Dr Robert Cassidy (Department of Agriculture, Fisheries and Forestry), and Associate Professor Phillip Moses, Dr David Lovell and Dr Edith Hampson (Veterinary Surgeons Board of Queensland). This group is tasked with overseeing the review being conducted by Biosecurity Queensland.

The review will:

- clarify the purpose of the existing *Veterinary Surgeons Act 1936* (Qld)
- evaluate requirements and restrictions and identify where red tape and regulation can be reduced
- review the current system of registration and oversight against other professional registration legislation
- review other aspects of how veterinary science is regulated
- recommend improvements to the legislation.

The full terms of reference for the review are available at www.biosecurity.qld.gov.au or by calling Biosecurity Queensland on 13 25 23.

Consultation process

This information paper summarises the main issues being considered by the steering group. It is the first step in a multi-stage consultation process that may result in changes to the VS Act. Your feedback on these issues will be considered by the steering group when it develops a report recommending improvements to the legislation, which is expected to be provided to the minister by the end of 2013.

We recommend that you read through this information paper first before commenting on these issues. The more detailed 'Review of the *Veterinary Surgeons Act 1936*: Background paper' (the background paper) is available at www.biosecurity.qld.gov.au for further information on the Act and relevant issues. Details on how to have your say are provided at the end of this paper.

Disclaimer

This information paper does not represent the policy of the Queensland Government.

While every effort has been made to ensure the accuracy of the information contained in this information paper, no responsibility is taken for reliance on any aspect of it and it should not be used as a substitute for legal advice.

Issues for consideration

A number of issues have already been identified by the steering group for consideration in the review. We are interested in your feedback on these issues and additional issues you identify.

The purpose of the Act

The Act does not expressly state its purpose. Its ‘long title’ describes some of the regulatory tools, such as registration of veterinary surgeons employed in the VS Act but does not state the desired outcomes of regulating veterinary science.

Identifying competent service providers

The VS Act establishes a system of registration of suitable and qualified veterinarians. Only those with general or specialist registration can claim, hold themselves out to be, or use a title that suggests they are a veterinarian or veterinary specialist respectively (protection of title). Registration and protection of title assists consumers who otherwise may not be able to select appropriate persons to provide animal health services to identify veterinarians competent in veterinary science generally and/or a specific area of specialty.

Maintaining high standards of services

Oversight (including discipline) of veterinarians by the Veterinary Surgeons Board of Queensland (the Board) and approval of premises where veterinary science can be conducted are directed at maintaining high standards of practice in the veterinary profession.

Empowering consumers and maintaining standards has animal welfare benefits

The VS Act assists consumers, who otherwise may have difficulty assessing the quality of animal health services they receive, by identifying suitable, competent veterinarians and ensuring that veterinarians maintain high standards of professional conduct and practice. This in turn benefits the animals under veterinary care. Therefore, the VS Act contributes to consumer protection and animal health and welfare.

Other restrictions directed at animal welfare

It is argued that empowering consumers is not sufficient to ensure animals receive appropriate health care services and this is why it is also necessary for the VS Act to prohibit providers who are not veterinarians from practising veterinary science, with some exceptions (see ‘Restrictions on who can practice veterinary science’). Regulation of more general animal health care service provision under the VS Act (i.e. beyond veterinary science) would also be consistent with improving animal welfare. Restricting who can practice veterinary science and/or other animal health care services would also have incidental biosecurity and public health benefits. The review must consider¹ whether, and to what extent, any restrictions on who can practice veterinary science and/or other animal health care services are justified, if they are the best way of achieving the intended policy outcomes and whether they would be more appropriate under the *Animal Care and Protection Act 2001* (the ACP Act).

Other legislation relies on registration and oversight of veterinarians under the VS Act

Registration and oversight of veterinarians under the VS Act also provides a platform for other Queensland and Australian Government laws that restrict certain activities (e.g. use of restricted drugs and chemicals, and live animal export/abattoir inspections) to registered veterinarians. They rely on the system of registration and oversight to identify competent veterinarians and ensure high standards are maintained to achieve a range of outcomes (e.g. to protect human and environmental health by ensuring appropriate use of drugs and chemicals and maintain market access and reputation for Queensland’s animals and animal products respectively).

¹ See Appendix 1 Review of the *Veterinary Surgeons Act 1936* (Qld): Terms of reference

Restrictions on who can practice veterinary science

The VS Act currently prohibits a non-veterinarian practising veterinary science for fee or reward (the practice restriction).

Restrictions in other jurisdictions

There are significant differences between the veterinary practice restrictions that apply in Australian and New Zealand jurisdictions. Legislation in Victoria does not prohibit non-veterinarians from practicing veterinary science—more limited access to drugs and poisons (including anaesthetics) imposes practical limits on what services non-veterinarians can provide and they could be investigated for animal cruelty if there was an adverse outcome resulting from their actions. In the Australian Capital Territory (ACT) and New Zealand, practice restrictions are imposed under animal welfare legislation instead of veterinary legislation. In the ACT a restriction applies generally to acts of veterinary science (subject to exceptions), while in New Zealand the practice restriction is much more targeted; it only applies to significant surgical procedures. In New South Wales the practice restriction imposed under veterinary registration legislation is somewhat targeted; it only applies to acts that are declared by regulation to be restricted acts of veterinary science. In Western Australia, South Australia, Tasmania and the Northern Territory the practice restriction is imposed under veterinary registration legislation and applies generally to acts of veterinary science, subject to exceptions that differ between these jurisdictions. Practice restrictions generally² no longer apply in human health care in Australia.

Common breaches of the practice restriction

The extent of the practice restriction under the Act is a matter for the courts, but it is likely that presently, non-veterinarians are commonly in breach of the practice restriction when they perform some lesser-skill and lower-risk animal health services (e.g. administering medical treatment) for fee or reward. Earning a wage or salary may constitute receiving a fee or reward for activities that are within the scope of the duties for which the person is paid (e.g. veterinary technologists and nurses, researchers, farm managers and farm workers).

Practice without fee or reward

The practice restriction in Queensland currently does not apply where veterinary science is practised without fee or reward. For example, it does not prevent an untrained person performing any act of veterinary science on their own animals. Many other Australian jurisdictions have a comparable exemption of varying scope. Such an exemption appears inconsistent with maintaining the restriction primarily to ensure animal health and welfare. Removing the exemption could have significant impacts, particularly in extensive agricultural industries where owners may currently lawfully administer some vaccines and undertake procedures, such as pregnancy testing of cattle.

Other providers

Recent years have seen the emergence of allied veterinary professions, such as veterinary technologists and animal physiotherapists, and the professionalisation of the veterinary nursing workforce. There are also an increasing number of complementary and alternative services being provided to animals by those with a background in complementary and alternative human health services (as well as by some veterinarians).

The practice restriction does not apply to animal health services that are outside the scope of veterinary science. Some allied animal health professionals (e.g. physiotherapists) and non-veterinarian complementary and alternative animal health service providers (e.g. chiropractors) are limited by the practice restriction only because it prevents them providing a diagnosis as the basis for treatment³. This may prevent allied, complementary and alternative health professionals providing primary health services to animals even though their human health equivalents can provide primary health care to humans.

The VS Act allows a regulation to prescribe acts of veterinary science that may be performed by an ‘animal nurse’, and the requirements for eligibility to practise as an ‘animal nurse’. However, this power contradicts express prohibitions elsewhere in the Act and has not been used.

² Only manipulation of the cervical spine and the core practices of dentistry and optometry are now restricted to relevant registered professionals in Australia.

³ The Act also prevents them using the title ‘veterinary surgeon’ or another title, name, initial or word suggesting they are practising veterinary science (protection of title).

Animals used in research

Some animal-based research may be in breach of the practice restriction. Under the ACP Act, such research requires approval by an Animal Ethics Committee (AEC) and must be undertaken in accordance with a national code of practice for the scientific use of animals. The code of practice does not mandate direct veterinary involvement in performance of these procedures but requires personnel to be appropriately trained and competent to perform these procedures. Some large scientific users of animals are concerned that requiring these animal research procedures to be performed by veterinarians would have significant cost and other impacts on research that could deliver socially and economically important outcomes. Conversely, other stakeholders do not believe the impacts would justify a reduction in the requirement for veterinary involvement.

Some procedures are excluded

Some animal husbandry (e.g. spaying of cattle by the Willis dropped ovary method) and animal dentistry procedures (i.e. filing or rasping horse teeth) are expressly excluded by regulation⁴ from the current practice restriction. Draft Australian Animal Welfare Standards and Guidelines do not mandate veterinary involvement in these procedures. Some sectors of the community are seeking further exclusions from the practice restriction in Queensland (e.g. artificial insemination of horses, nasogastric tubing of horses, pregnancy testing of cattle and expanded animal dentistry exclusions, such as removal of loose caps and wolf teeth). Other sectors of the community are concerned about adverse animal welfare outcomes as a result of the current excluded animal husbandry and dentistry practices (e.g. tooth damage as result of the use of power tools for filing horse teeth). Requiring all of the currently excluded procedures be performed by veterinarians would have significant financial and logistical ramifications for horse owners, primary producers and possibly rural and regional economies. Animals, families and businesses must all be considered when any changes to the VS Act are proposed.

Legislation that could regulate animal health services

It could be argued that exclusions from the practice restriction should be legislated in the ACP Act given that it is specifically directed at balancing a range of interests including the welfare of animals and the interests of those whose livelihood depends on animals. Indeed, the practice restriction under the VS Act could be replaced in its entirety by standards made under the ACP Act⁵ that stipulate competency requirements for animal health services (including acts of veterinary science) in various circumstances as necessary. Consideration could also be given to amending the ACP Act to deem animal health service providers guilty of an animal welfare offence if pain or injury to an animal may have resulted from them acting beyond their competence or without due care.

Conversely, the scope of the VS Act could be expanded to encompass more comprehensive regulation of animal health care service provision, including services provided without fee or reward and services that are outside the scope of veterinary science. Some procedures could be restricted to those who meet specific competency requirements and/or are registered and supervised by the Board and/or are supervised or directed by a veterinarian who is accountable for their practice. Consideration could also be given to adopting a code of professional conduct for providers of otherwise unrestricted animal health care services that is supported by disciplinary powers (i.e. practitioners could be prevented from practising if found in breach of the code of professional conduct, such as by offering services clearly outside the scope of their competency)⁶.

Restrictions on where veterinary science can be practised

The VS Act requires that veterinary practice is conducted at premises approved by the Board. The review must consider the appropriate nature and extent of the Board's control over where veterinarians can practise. General premise approval requirements apply in the ACT, while in New South Wales major surgery can only be performed at approved premises. In South Australia and Western Australia, certain titles are restricted to approved premises. Premise approval is not required in other Australian jurisdictions.

⁴ Veterinary Surgeons Regulation 2002, Part 2.

⁵ The ACP Act already provides for standards to be made about medical and surgical treatment of animals.

⁶ For example, see the code of practice for unregistered human health care providers that is supported by disciplinary powers introduced in New South Wales by the *Public Health (General) Amendment Regulation 2008* (NSW)

Registration of veterinarians

The system of registration under the VS Act is broadly consistent with veterinary registration legislation in other Australian jurisdictions.

National recognition of registration

Proposed amendments to the VS Act⁷ will implement the National Recognition of Veterinary Registration scheme in Queensland—a veterinarian who is registered in another Australian jurisdiction will be deemed to be registered in Queensland (and vice versa as other jurisdictions implement the scheme).

Continuing professional development

Continuing professional development (CPD) is not compulsory in Queensland, although it is in some other Australian jurisdictions and in many other professions. Mandatory CPD may help ensure animals benefit from contemporary knowledge and receive the most up-to-date treatments, but would place a financial burden on employee veterinary surgeons or their employers.

Limited or conditional registration

The VS Act generally does not provide for limited registration⁸ except to allow teaching or research at a university⁹, nor does it provide for conditional registration. Limited registration of overseas graduates whose training does not meet Australian veterinary registration requirements could be used to address specific sectoral shortages of veterinarians (e.g. enabling them only to supervise¹⁰ exporting abattoirs if they have relevant expertise). Arguably, the high number of veterinary graduates now being produced may decrease the need for such flexibility. Registration subject to conditions could be used to address specific deficiencies in an applicant's suitability or eligibility to practice. For example, it could be used to allow restricted practice by persons with a medical impairment. Limited registration and registration subject to conditions is available in some other jurisdictions and in human health care.

Oversight of veterinarians

Oversight of the profession under the VS Act is similar to other Australian jurisdictions and other professions generally, but there are some anomalies and variations. For example, there is no time limit for making a complaint against a veterinarian unlike some other jurisdictions and professions.

Disciplinary options

The Board has fewer disciplinary options than in some other jurisdictions and professions. The VS Act does not provide for a lower-end category of misbehaviour and there are few lower-end disciplinary options. It does not enable conditions to be imposed on a veterinarian's registration. For higher-end misbehaviour, the Board can only refer cases to the Queensland Civil and Administrative Tribunal (QCAT) if it believes suspension or cancellation of registration is warranted. Nor does the VS Act provide for immediate suspension of a veterinarian's registration (pending a full hearing by QCAT) for serious professional misconduct where public safety or animal welfare is at risk.

⁷ The Agriculture and Forestry Legislation Amendment Bill 2013 was introduced into Parliament in May 2013.

⁸ Although, it does provide that an overseas graduate who is eligible to sit the national veterinary qualifying examination and will be employed by and supervised by a veterinarian may be granted approval to practice for up to five years.

⁹ The Act provides for special registration of overseas-trained veterinarians for work in a veterinary teaching university.

¹⁰ For the Australian Quarantine Inspection Service (AQIS)

The Veterinary Surgeons Board of Queensland

The Board's organisational form and finances

The Board is constituted as a statutory authority¹¹, but it has some anomalous powers.

The Board's revenue is currently insufficient to fund its activities despite significant 'in kind' financial and other support from the Department of Agriculture, Fisheries and Forestry. Queensland's annual registration fees are currently the lowest of all Australian jurisdictions, except the Northern Territory.

The Board's functions

The Board has some express responsibilities under the VS Act, principally in relation to the registration and supervision of veterinarians, but its functions are not expressly stated. For example, the VS Act does not provide for the Board's involvement in the Australasian Veterinary Boards Council Incorporated (AVBC) nor a role for the Board in those matters that are the functions of AVBC.

Board membership

The Board consists of six members. Two members are veterinarians elected by registered veterinarians for a three-year term. The remaining four members (the chair, deputy chair and two others—one of whom may be a non-veterinarian) are appointed on the recommendation of the minister¹². The VS Act does not clarify the relationship between the Board and the department and minister. It is unclear what role the chair of the Board, who must be a senior departmental member, is expected to play in that relationship. The option to appoint one non-veterinarian to the Board contrasts with comparable registration boards where the ratio of layperson to professional members is higher.

The Board's powers

Members and officers of the Board have express powers to enter premises, including, in some circumstances, the power to enter without a warrant.¹³ However, there is no requirement for a person exercising these powers to possess appropriate expertise in investigations, which would safeguard these powers. Also, there is nothing preventing a Board member who has investigated a veterinarian's professional conduct (including by use of a power of entry) from also taking part in disciplinary proceedings against that veterinarian, which could compromise the perceived objectivity of the proceedings.

There are no statutory criteria to guide the exercise of some of the Board's powers. Lack of certainty and safeguards surround the Board's powers to decide suitability for registration, grant limited approval to practice veterinary science (without registration) and its control over many aspects of veterinary practice (using a combination of its powers to approve premises for veterinary practice, condition approvals and control premises).

Some, but not all, of the Board's decisions can be reviewed by QCAT¹⁴. QCAT can decide on a disciplinary matter on referral by the Board or at the election of the veterinarian. However, if a veterinarian elects for the Board to hear and decide on their disciplinary matter, then QCAT cannot review the Board's decision. Nor can it review the Board's decision to refuse, suspend or cancel a limited approval to practise veterinary science (without registration).

Other matters

The VS Act lacks some powers, offences and protections that are generally available to support investigation of compliance with legislation.

Many aspects of the VS Act may require amendment to address issues considered by the review, or modernisation to reflect contemporary drafting styles and standards. Subject to public consultation and government consideration, a complete re-write of the VS Act may be necessary.

¹¹ A statutory authority is a separate legal entity with a governing body that includes some members appointed by the Governor in Council, but which is not a separate entity for the purpose of financial accountability legislation.

¹² Under Administrative Arrangements Order (No. 1) 2012, the Act is currently administered by the Minister for Agriculture, Fisheries and Forestry and the Department of Agriculture, Fisheries and Forestry (Qld) is the relevant administrative unit.

¹³ See section 33D of the Act. The power of entry is limited to where veterinary science is or has been practised in order to investigate a complaint against a veterinarian or ascertain the possible commission of an offence against the Act.

¹⁴ See section 22H of the Act.

Have your say

You are invited to make written submissions to the review of the *Veterinary Surgeons Act 1936* (Qld).

Feedback from the community will ensure the final recommendations of the review are informed by a wide range of perspectives. The review will likely be of most interest to veterinarian and non-veterinarian animal health service providers and consumers of animal health services (e.g. animal owners); however, all members of the community are welcome to comment.

When making your submission, you should keep in mind that it may be provided to persons making an application under laws providing for freedom of information and that it may be published online at the conclusion of the review or cited in the final review report that may be publicly released. Your personal details will not be published or included in a report.

Submit your feedback

Please submit your responses to this information paper by 5pm, Monday 7 October 2013.

Responses can be submitted via the online 'Review of the *Veterinary Surgeons Act 1936* (Qld): Response form' at www.biosecurity.qld.gov.au, or more detailed written responses can be posted or emailed to:

Mail: Review of the Veterinary Surgeons Act
Biosecurity Queensland
Department of Agriculture, Fisheries and Forestry
GPO Box 46
Brisbane QLD 4001

Email: vetsurgactreview@daff.qld.gov.au

Further information

For more information on the issues highlighted in this paper, download the 'Review of the *Veterinary Surgeons Act 1936* (Qld): Background paper' from www.biosecurity.qld.gov.au or contact Biosecurity Queensland on 13 25 23.

You may also be interested in attending a meeting where you will have the opportunity to discuss the issues with representatives of Biosecurity Queensland and members of the steering group. Meeting times and locations will be advertised on www.biosecurity.qld.gov.au.

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