

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

Background paper

CS2547 08/13

This publication has been compiled by the steering group for the review of the *Veterinary Surgeons Act 1936*, in consultation with the Department of Agriculture, Fisheries and Forestry.

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About this document

An information paper for the review of the *Veterinary Surgeons Act 1936* has been released for public comment. It highlights the main issues being considered by the steering group appointed to oversee the review. The information paper summarises the issues to make it accessible to all community members who may have an interest in the review. Feedback from a broad cross-section of the community will ensure the final recommendations of the review are informed by a wide range of perspectives.

The purpose of this supporting document is to provide more information about issues under consideration by the steering group than is available in the information paper. It includes questions as prompts for those who are interested in making a detailed submission to the review.

This background 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 background paper, no responsibility is taken for reliance on any aspect of it and it should not be used as a substitute for legal advice.

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, which may be publicly released. Your personal details will not be published or included in a report.

Submit your feedback

Please submit your responses to the information paper by 5 pm, 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 review, issues highlighted in this paper, or public meetings about the review, contact Biosecurity Queensland on 13 25 23 or visit www.biosecurity.qld.gov.au.

Part 1 Introduction

The review

The *Veterinary Surgeons Act 1936* (Qld) (the VS Act) is the oldest piece of legislation regulating the practice of veterinary science in Australia. Since its commencement there have been significant changes in the animal health service industry as well as in professional registration schemes, animal welfare regulation and competition policy. Although parts of the VS Act have been amended on an ad hoc basis in light of these changes, a comprehensive review of the VS Act has not been undertaken since assent of the VS Act in 1936.

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

The terms of reference included an indicative timetable suggesting the steering group aim to provide a final report on the review to the minister by the end of 2013.

Animal health services in Queensland

In this document, the term ‘animal health services’ is used to refer to services provided by both veterinarians and non-veterinarians. It encompasses services that are primarily directed at improving the health and welfare of animals, from animal husbandry through to medical or surgical treatment of sick animals. It also extends to services obtained for other reasons where significant risks to animal health and welfare must be carefully managed.

Animal health services in Queensland are provided by both veterinarians and non-veterinarians. Non-veterinarians often provide general husbandry for animals. Some other services may be provided by non-veterinarians such as farriers, who trim, balance and place shoes on horse hooves, and equine dentists, who file or rasp horse teeth.

There has been a rapid growth in the variety of animal health services in the past two decades that was generally not contemplated when the VS Act was enacted. A number of these services are broadly equivalent to complementary and alternative medicine services for humans. These include herbal treatments, acupuncture, massage, hydrotherapy, chiropractic care and various other treatments.

Veterinary professional services (consisting of veterinary practitioners and animal hospitals) make significant contributions to the Australian economy. In 2011–12 it was projected to generate revenue of \$2.48 billion and contribute around \$1.38 billion to the Australian economy.¹ The companion animal sector is by far the greatest generator of revenue—it was projected to account for 79% of revenue in 2011–12, or in monetary terms, around \$1.96 billion.² The revenue generated from the provision of veterinary services to performance horses and greyhounds, and also farm animals, was projected at a much smaller proportion of total revenue—4% and 6% respectively.³ Nevertheless, at approximately \$100 million and \$150 million respectively, the projected revenue generated by these sectors was not insignificant.

1 Fitzpatrick, N 2011, *IBISWorld Industry Report 08640: Veterinary Services in Australia*, p. 4.

2 *ibid.*, p. 5.

3 *ibid.*, p. 6.

Professional and non-professional service providers make an indirect contribution to the economy that is difficult to estimate or quantify. Veterinarians employed (by the Australian Quarantine and Inspection Service, AQIS) at export meat processing facilities play an essential role in ensuring market access for Australia's meat exports. Veterinarians contribute to domestic confidence in the food safety industry and the animal health and welfare (livestock) industry. Providing veterinary services to production animals or animals used in racing may improve the economic return from the animal and contribute to the multibillion dollar livestock and performance animal sectors.

Veterinarians play a key role in Australia's biosecurity by helping to combat risks that can adversely impact upon human health, social amenity, the economy and the environment.

The profession also provides social and environmental benefits to the community. Veterinarians play an important role in promoting and ensuring animal health and wellbeing, in line with the increased importance of animal welfare to the broader community.

Australia currently has 30% more veterinarians per capita (360) than the United States of America and United Kingdom (270 each)—both countries have comparable numbers of animals per capita and expectations of veterinary service levels to Australia.⁴ This reflects that the number of persons registered as veterinarians in Australia has increased considerably over the last two decades. In 2001, the number of registered veterinarians in Australia totalled 6358, an increase of 50% since 1991.⁵ As of 30 June 2012 there were 10 318 registered veterinarians in Australia⁶—a further increase of around 62% since 2001. Note, however, that there has not been a comparable increase in the numbers of animals requiring veterinary care.

The number of graduates is the main factor driving the increase. The average number of graduates increased from 220 in the 1980s to 250 in the 1990s and 320 in the 2000s.⁷ Australia now has 7 veterinary schools and approximately 3000 veterinary undergraduates, with 640 expected to graduate in 2013, when the most recently opened school graduates its first class.⁸ By contrast, the US state of California has in excess of 35 million people and produces approximately 200 veterinarians per year through 2 veterinary schools.⁹

Growth in number of veterinary registrants compared to growth in Queensland's population 1981–2012

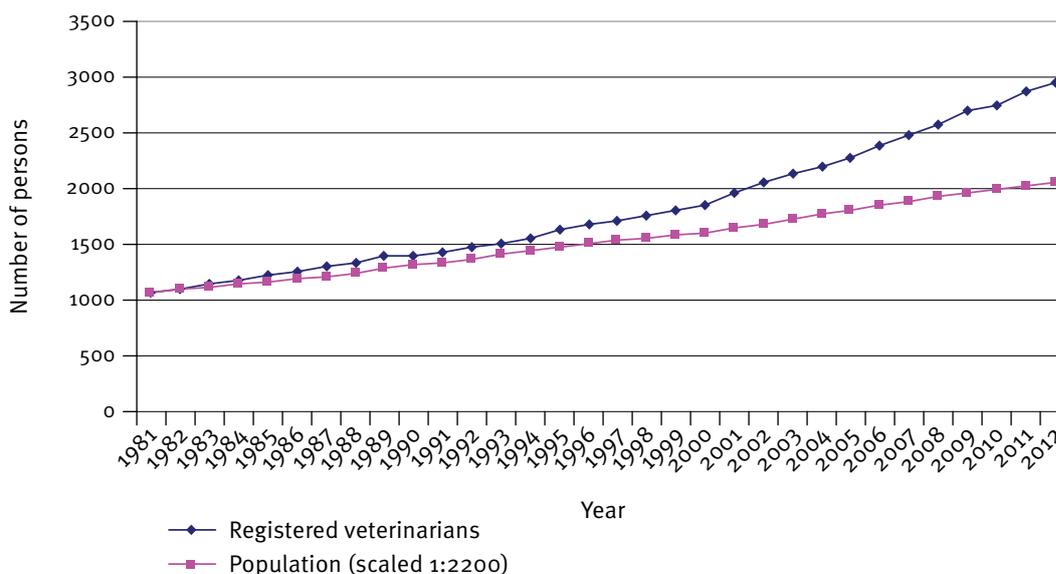


Figure 1 Proportional growth in veterinary registrants compared with population in Queensland

4 Viewed 7 December 2012, <<http://www.ava.com.au/news/media-centre/hot-topics-9>>.
 5 Fitzpatrick, N 2011, *IBISWorld Industry Report 08640: Veterinary Services in Australia*, p. 12.
 6 Australian Veterinary Association, *Submission to the Australian Workforce and Productivity Agency on the Skilled Occupation List*, 18 November 2012, viewed 6 May 2013, <http://www.ava.com.au/sites/default/files/AVA_website/pdfs/sol_2013_ava.pdf>.
 7 Heath, T 2007, 'Where have all the planners gone?', *Australian Veterinary Journal*, vol. 85, pp. 435–6.
 8 Australian Veterinary Association, *Submission to the Australian Workforce and Productivity Agency on the Skilled Occupation List*, 18 November 2012, viewed 6 May 2013, <http://www.ava.com.au/sites/default/files/AVA_website/pdfs/sol_2013_ava.pdf>.
 9 Viewed 7 December 2012, <<http://www.ava.com.au/news/media-centre/hot-topics-9>>.

As shown in Figure 1, the Queensland population approximately doubled in the period 1981–2012, while in the same period the total number of registrants approximately tripled. Queensland now has the highest number of primary registrants of any Australian jurisdiction (see Table 1). As of December 2012, there were 2950 registrants in Queensland¹⁰ (including 236 secondary registrants¹¹) of which 88 were also registered veterinary specialists.

Table 1 Number of ‘full’ registrants¹² in Australian jurisdictions as at 30 June 2012

	Number of primary registrants
Qld	2856
NSW	2632
Vic.	2395
WA	1209
SA	613
ACT	256
Tas.	240
NT	117

(Source: Australasian Veterinary Boards Council Inc.)

Increasing numbers of veterinary graduates are undertaking postgraduate study in Australia, generally to become members or fellows of the Australian and New Zealand College of Veterinary Scientists. Fellowship enables registration as a specialist. In 2002 there were 102 membership exam candidates and 9 fellowship candidates.¹³ In 2012 the numbers had increased to 198 and 28 respectively.¹⁴

There have been marked changes in the membership profile of the veterinary profession in Australia over the past 50 years. In the 1960s and 1970s, the overwhelming majority of registrants were men. Current intakes of undergraduate veterinary students across all schools are overwhelmingly (approximately 80%–90%) female.¹⁵ Currently, about half of all registrants in Australia are women and the overwhelming majority of graduates are women, meaning the female representation among registrants is set to rise further. The change in gender balance is a contributing factor to an increase in part-time practice as women may prefer different working hours to men and are more likely to use part-time work as a strategy to reconcile work and family life.¹⁶

The vast majority (around 80%) of veterinarians are employed in private practice. Across Australia, persons employed as veterinarians in the public sector (at state or national level) and persons employed as veterinarians in academic or research institutions are estimated (broadly) to account for 5% of total registrants each.

Private practice can be divided into rural practice, urban practice and speciality or referral practice. The majority of private practitioners work in urban practices that cater for companion animals and some equine pleasure and performance animals.¹⁷ A survey conducted in 2001 suggested that less than 12% of Australian veterinary effort was devoted to farm animals.¹⁸ That proportion is likely to have fallen further. Most rural practices are becoming increasingly dependent on dogs and cats for their financial viability.¹⁹

10 Typically, some registrants are removed from the register in December for non-payment of renewal fees; therefore, discrepancies exist in data for primary registrants in June 2012 compared with December 2012 (they may subsequently apply for reinstatement on the register).

11 Veterinarians who undertake the majority of their practice outside of Queensland.

12 Does not include honorary non-practising registrants or limited registrants.

13 Australian Veterinary Association, *Submission to the Australian Workforce and Productivity Agency on the Skilled Occupation List*, 18 November 2012, at question 6, viewed 6 May 2013, <http://www.ava.com.au/sites/default/files/AVA_website/pdfs/sol_2013_ava.pdf>.

14 College Manager of the Australian and New Zealand College of Veterinary Scientists, personal communication, 17 June 2013.

15 Australian Veterinary Association, *Submission to the Australian Workforce and Productivity Agency on the Skilled Occupation List*, 18 November 2012, viewed 6 May 2013, <http://www.ava.com.au/sites/default/files/AVA_website/pdfs/sol_2013_ava.pdf>.

16 Several longitudinal studies by Professor Trevor Heath, past Dean of The University of Queensland Veterinary School, indicated that the increasing number of female practitioners has led to a subsequent increase in part-time work.

17 Fitzpatrick, N 2011, *IBISWorld Industry Report 08640: Veterinary Services in Australia*, p. 12.

18 Heath, T 2007, ‘Where have all the planners gone?’, *Australian Veterinary Journal*, vol. 85, pp. 435–6.

19 *ibid.*

Despite the increased number of registered veterinarians in Queensland, there is anecdotal evidence that there are some shortages of veterinarians in rural practice and in specific sectors. Although workforce planning is not a matter for the review, any shortages are relevant to assessing the costs associated with restricting who can practise veterinary science and whether potential benefits to animals and the community can be realised.

Many factors contribute to difficulties in the retention of veterinary practitioners in some rural areas including deficiencies in income and lifestyle, coupled with family and other issues.²⁰ This is consistent with factors contributing to difficulties attracting and retaining other professionals to meet demand for services in rural Australia—the availability of many health professionals including doctors, medical specialists, dentists and allied health professionals is a major concern for those living in parts of rural and regional Australia. However, in some of these professions there is a net shortage of registrants in Australia, which does not appear to be the case in the veterinary profession.

A 2003 report on Australia's future animal health needs and the roles, availability and capabilities of rural veterinarians to meet those needs (prepared by Peter T Frawley, *Review of rural veterinary services*²¹) found that long hours, and limited social and childhood education opportunities were significant factors that rural veterinarians had to contend with. Other factors, such as rising costs faced by production animal veterinarians and the reluctance of producers to utilise their services, were also identified. It found that while there was no immediate crisis, these factors impact on the willingness of veterinarians to live in rural areas, create local shortages and could lead to a chronic shortage of production animal veterinarians (to address Australia's future animal health needs).

It is not clear whether the increasing number of registrants in Queensland has or will improve any shortages of veterinarians in rural areas, and particularly whether it will ensure there are sufficient production animal veterinarians to address Australia's future animal health needs. There are suggestions that the changing demographics and work preferences of veterinary graduates is contributing to a shortage of veterinarians in rural Queensland (e.g. changing attitudes to work–life balance, coupled with an increase in the numbers of women entering the profession, may be reducing the number of hours worked). It is also suggested that an increasing number of graduates are not interested in long-term private practice, particularly in rural areas. Conversely, students from James Cook University are predominantly drawn from rural areas and a high proportion could be expected to return there following graduation.

Aside from possible shortages in rural areas, there may be niche areas of practice that are undersupplied. Veterinarians are employed in a wide variety of circumstances and these vary in their requirements and attractiveness. There are reports of shortages in some skill sets and specialisations necessary for particular roles; and supply can be affected by perceptions about the desirability of work in particular sectors or for particular employers. Some government and not-for-profit employers have reported difficulties recruiting to particular roles and suggest that the difficulties are related to the nature of the work and/or the level of remuneration they can offer compared to private practice.

No specific sustainable solutions—to these sectoral shortages or shortages experienced by specific employers—have been proposed other than requests to conditionally register persons with overseas veterinary qualifications (who do not qualify for registration in Queensland) or allow non-registered persons to perform veterinary science under the supervision of a registered veterinarian.

The number of persons in Queensland with overseas veterinary qualifications—who do not qualify for registration—is unknown. These persons provide services to the meat hygiene and tertiary teaching sectors, as well as private practice as veterinary technologists and veterinary nurses.

20 *ibid.*

21 Viewed 13 June 2013, <<http://www.ava.com.au/sites/default/files/documents/Other/Frawley%20report.pdf>>.

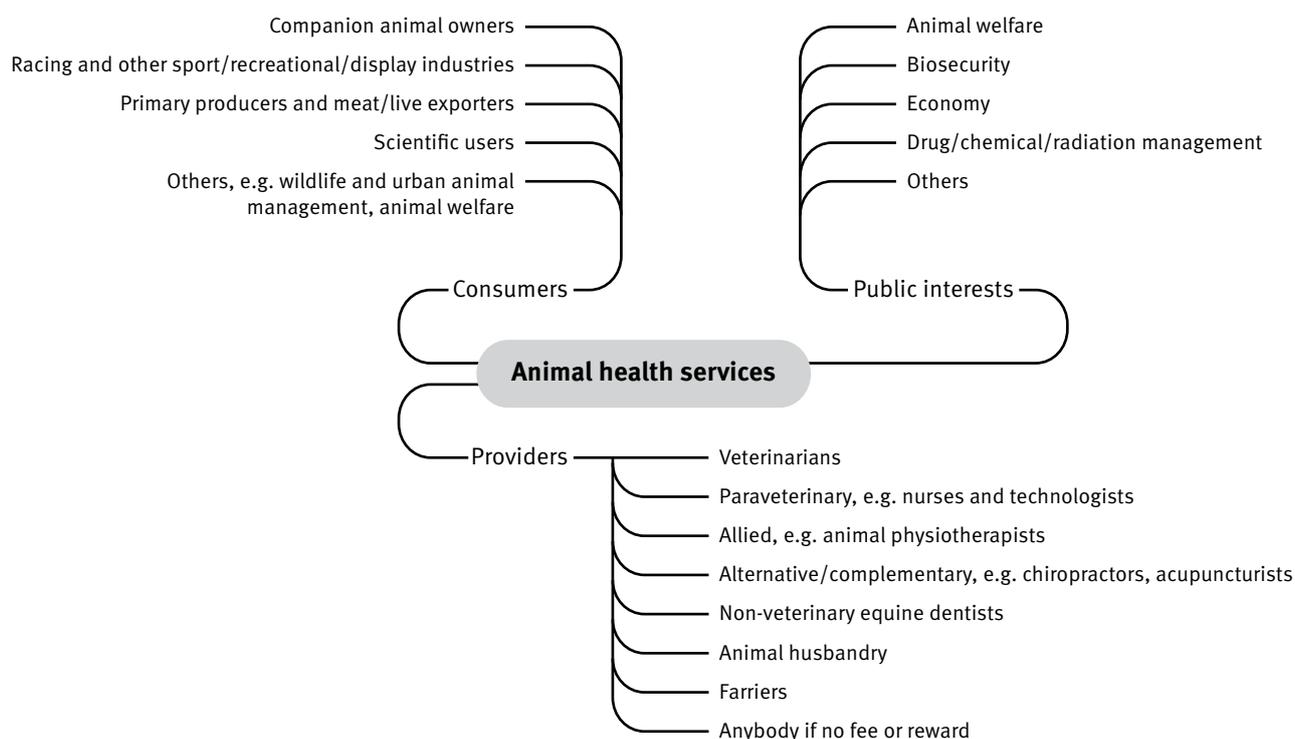


Figure 2 Stakeholder map of animal health services

Figure 2 is indicative of the broad range of providers and consumers of veterinary services in Queensland. These interests are represented by a range of bodies that are relevant to the review, including the following groups.

- The Australian Veterinary Association (AVA)—the largest peak body for veterinarians, representing about 48% of registered veterinarians in Australia.²² It operates nationally and at state level and has statutory recognition under veterinarian legislation in several Australian jurisdictions where it plays a role in the nomination of some veterinary registration board members. Although membership in Queensland (close to 40%) is lower than nationally, it still has good membership penetration into private practices (an overwhelming proportion of private practices have at least one AVA member).²³ Within the AVA are a number of special interest groups such as Equine Veterinarians Australia.
- Bodies that represent specific occupations or specialties and are not restricted to veterinarians—such as the Australian Veterinary Chiropractic Association, the Equine Dental Association of Australia and the Veterinary Nurses Council of Australia.
- Animal welfare groups—such as the RSPCA Qld, Animal Welfare League of Queensland and Animals Australia, which also have an interest in the way the animal health care industry is regulated.
- Consumers of veterinary services—such as primary producers (represented by agricultural peak bodies) and keepers of companion animals.
- The University of Queensland and James Cook University—the only providers of undergraduate and postgraduate veterinary training in Queensland.
- Institutions that use animals for scientific purposes²⁴—including the Department of Agriculture, Fisheries and Forestry, The University of Queensland, James Cook University, Queensland Institute of Medical Research, Queensland University of Technology and Griffith University.

²² Australian Veterinary Association annual report 2010.

²³ Information provided by the AVA (Queensland Division), May 2013.

²⁴ Under the *Animal Care and Protection Act 2001*, scientific users must be registered and must not use an animal for scientific purpose without approval by an animal ethics committee.

How provision of animal health services is currently regulated

The provision of animal health services in Queensland is currently regulated under the following legislation:

- the VS Act, which (very broadly)
 - restricts who can be registered by the Veterinary Surgeons Board of Queensland (the Board)
 - provides disciplinary powers to the Board and the Queensland Civil and Administrative Tribunal (QCAT) that may be exercised where a registrant engages in professional misconduct
 - restricts use of the titles ‘veterinary surgeon’, ‘veterinary specialist’ and similar to registered veterinary surgeons and specialists
 - restricts who can practise veterinary science for fee or reward
 - restricts where a veterinary practice can be conducted.
- the *Animal Care and Protection Act 2001* (ACP Act), which establishes a duty of care to all vertebrate and some specific invertebrate animals in a person’s control and nominates some specific animal welfare offences including a cruelty offence; the ACP Act also prescribes codes of practice for some specific industry sectors and references others as best practice
- other Queensland and Australian Government legislation, which imposes other restrictions on who²⁵ can provide particular animal health services²⁶; examples include restrictions on who can
 - use and supply particular drugs and chemicals for veterinary treatment (which can affect human and environmental health)²⁷
 - operate sources of radiation for diagnostic and therapeutic purposes
 - undertake abattoir and live animal inspections and certifications to maintain access to export markets²⁸
 - perform cosmetic surgical procedures (and for what purposes).²⁹

25 Many of these restrictions rely on the system of registration and supervision under the Act.

26 These restrictions are directed at a specific purpose of the relevant legislation. They apply whether or not the activity is regulated by the Act (e.g. regardless of whether a fee or reward is involved).

27 *Health Act 1937*.

28 *Export Control Act 1982* (Cth).

29 ACP Act.

Part 2 The scope and purpose of the VS Act and its relationship to other legislation

Objectives of the VS Act

The terms of reference require that the review ‘clarify the purpose of the ... Act’. It is likely that the policy objectives of the VS Act when it was enacted in 1936 would no longer be wholly relevant or appropriate today. Clearly stating contemporary objectives in an Act is important because the objectives may be used in the legal interpretation of its provisions.

The VS Act is currently described as ‘an Act relating to the qualifications and registration of veterinary surgeons and the regulation and control of the practice of veterinary science, and for other purposes’. This description mentions some of the things that the VS Act does, but does not state the intended outcomes.

Some of the more immediate objectives of the VS Act are straightforward and common to most professional registration legislation. These are:

- The systems of registration and protection of title under the VS Act are directed at identifying suitable competent professionals.
- The oversight of the professional conduct of veterinarians, and the approval and control of premises, are directed at maintaining high standards of conduct and practice.

Identifying suitable competent veterinarians and maintaining high standards of conduct and practice contributes to:

- animal health and welfare
- consumer protection
- protecting public and environmental health (especially through oversight of veterinarians using particular drugs and chemicals)
- maintaining export market access (especially through oversight of veterinarians using particular drugs and chemicals which can enter the food chain and through veterinarian involvement in export abattoir inspection)
- biosecurity
- a large number of other outcomes.

Animal health and welfare and relationship with the ACP Act

The primary purpose of the prohibition of non-veterinarians performing acts of veterinary science is animal health and welfare. This is in addition to the benefits to animal health and welfare that result from the identification of competent professionals and the maintaining of high standards of service.

It is argued that without this restriction, some consumers may purchase inexpert services (that could result in animal suffering) because:

- they lack knowledge of the harm that could be caused by incompetent providers

or

- they lack the same degree of respect for the welfare of animals (compared to the welfare of humans) to be entrusted to choose appropriate service providers for their animals.

This argument finds it necessary to make the practice of veterinary science by non-veterinarians illegal. However, this may be difficult to reconcile with the ‘fee or reward exemption’³⁰ that, in effect, allows a non-veterinarian to perform acts of veterinary science on an animal provided it is not for fee or reward.

The terms of reference require the review to consider the relationship between the VS Act and the ACP Act, and whether some matters are (or would be) more appropriately addressed under the ACP Act. At the time the VS Act was proposed, little other legislation to regulate the provision of animal health services existed. Significantly, the VS Act predated the ACP Act.³¹

The measures that must be taken to fulfil the duty of care imposed on a person in control of an animal under the ACP Act depend on the use of the animal. In particular, the ACP Act expressly recognises the interests of persons whose livelihoods are dependent on animals. In contrast, the restriction on practice under the VS Act does not accommodate a compromise between the welfare of animals and the interests of those whose livelihoods depend on animals—although in practice some compromise is achieved by the exclusion of certain animal husbandry and dentistry procedures from the definition of veterinary science (see ‘Excluded animal dentistry procedures’ and ‘Excluded animal husbandry procedures’).

Some people suggest that the definition of veterinary science is not the appropriate mechanism for balancing animal welfare considerations against other interests, and that those exceptions to the restriction on practice would be more appropriately accommodated in the ACP Act. In the Australian Capital Territory and New Zealand, restrictions on the performance of certain procedures are prescribed in animal welfare legislation rather than a veterinary practice act (see ‘Part 3 Restrictions on who can practise veterinary science’).

Alternatively, others suggest that the scope of new legislation be expanded to encompass the regulation of animal health care service provision more generally³² (whether or not for fee or reward), with the objective of ensuring the best possible standards of animal health, husbandry and treatment. The new legislation could stipulate competency requirements for performance of specific procedures, complemented with more clearly defined roles for veterinarians in supervision, direction and/or collaboration with these animal health service providers to ensure continuity of care. This may also provide a more complete platform for regulation under other Australian Government and Queensland Government legislation to achieve benefits such as market access.

One implication of expanding the scope of any new legislation may be an increased role for the Board in investigating, disciplining and/or potentially prosecuting non-veterinarians. Under many of the options for regulating other animal health care providers discussed in this paper³³, non-veterinarians would not contribute at all to, or would not significantly contribute to, the Board’s funds. Any funding shortfall would need to be met by government or by veterinarians via an increase in fees. Also, particular sectors of non-veterinarian animal health care providers may seek representation on the Board in proportion to its power to oversee the activities of their sector.

What are the benefits in maintaining restrictions on who can practise veterinary science (or similar measures) under the VS Act compared with under the ACP Act?

What are the benefits in extending the scope of the VS Act to cover regulation of competency and standards of animal health care provision more broadly, compared with regulating these under the ACP Act?

30 Act, s. 25M(2)(a). See Part 3 of this paper for a detailed discussion of the ‘fee or reward exemption’.

31 Although the predecessor of the ACP Act, the *Animals Protection Act 1925*, predated the VS Act, it provided less extensive regulatory protection for animals.

32 Excluding non-invasive services directed at maintaining the wellbeing of a healthy animal, such as grooming and bathing, providing there were no physiologic impacts.

33 Some options for regulating other animal health care providers are discussed in Part 3 (see ‘Non-veterinarian animal health care providers’ and ‘Relationship with regulation of providers under the ACP Act’ in particular).

Consumer assistance and relationship with the Australian Consumer Law

The terms of reference require the review to consider the relationship between the VS Act and the Australian Consumer Law.³⁴

The Australian Consumer Law provides general protection to consumers of services, including animal health services.³⁵ Among other things, it provides protections from:

- unconscionable conduct³⁶
- misleading or deceptive conduct³⁷
- false or misleading representations.³⁸

The Australian Consumer Law contains various regulatory tools, including powers to:

- grant an injunction to prevent contravention of the legislation³⁹
- issue a public warning notice⁴⁰
- issue a substantiation notice requiring a person to provide information to substantiate any claim or representation they have made.⁴¹

Nevertheless, without specific regulation, consumers of some animal health services would not be well placed to assess:

- whether or not a person is appropriately qualified to provide an animal health service to a standard that meets their needs
- whether the standard of service, once provided, was acceptable.

This information imbalance is a primary justification for registration, protection of title and oversight of veterinarians under the VS Act. These measures identify suitable competent veterinarians and ensure they maintain high standards of practice.⁴²

Veterinary legislation in some jurisdictions⁴³ provides a role for their veterinary registration board in providing information to consumers more generally. If the Board was empowered in this way it could provide information to consumers about accepted standards of practice that would guide their choices (e.g. frequency of dog vaccinations). However, an expanded role for the Board would need to be matched by an increase in funding.

Do you think the VS Act should provide any consumer assistance beyond identification of suitable competent veterinarians and ensuring they maintain high standards of practice?

34 The Australian Consumer Law is set in Schedule 2 of the *Competition and Consumer Act 2010* (Cth). It is adopted by legislation in all Australian states and territories.

35 Outside these protections, consumers must generally take care of their own interests, although a person who has suffered loss due to the negligent provision of animal health services may have recourse to compensation under the common law tort of negligence.

36 Australian Consumer Law, Chapter 2, Part 2–2.

37 Australian Consumer Law, Chapter 2, Part 2–1.

38 Australian Consumer Law, Chapter 3, Part 3–1, Division 1.

39 Australian Consumer Law, Chapter 5, Part 5–2, Division 2.

40 Australian Consumer Law, Chapter 5, Part 5–1, Division 3.

41 Australian Consumer Law, Chapter 5, Part 5–1, Division 2.

42 Statutory intervention is not the only means of ensuring that consumers can identify competent professionals. Self-regulation by the industry (e.g. through the provision of an industry accreditation scheme) may be used to identify competent professionals (e.g. self-regulation achieves this benefit for the accounting profession). However, self-regulation is arguably not appropriate for the veterinarian profession. The incompetent or careless provision of veterinary services may have consequences beyond the interests of consumers of veterinary services, which warrant statutory intervention, such as adverse impacts on animal welfare.

43 For example, New South Wales and the Northern Territory.

Other objectives

The VS Act makes an indirect contribution to many other public goods, including protecting public and environmental health (through oversight of veterinarians using particular drugs and chemicals) and maintaining export market access (through oversight of veterinarians using particular drugs and chemicals that can enter the food chain and through veterinarian involvement in export abattoir inspection). It provides a platform for regulation to achieve these benefits but its role is only enlivened by other legislation⁴⁴ that reserves particular activities to veterinarians.

For example, it is for the Australian Government to decide whether certain roles in export abattoirs should be reserved to veterinarians in order to maintain export market access, and it is Australian Government legislation⁴⁵, not the VS Act, that reserves some of these roles to veterinarians. The VS Act's contribution to maintaining market access is primarily in identifying competent veterinarians and maintaining high standards of conduct and practice by veterinarians where they are mandated by the Australian Government.

Similarly, a range of other legislation also reserves certain activities to veterinarians in confidence that registration requirements under the VS Act identify suitable, competent professionals and the system of oversight (including discipline) ensures a high standard of professional conduct.

There are also incidental public health (see below) and biosecurity benefits of maintaining a high level of presence of suitable competent veterinarians in the animal health service sector. For example, other providers are unlikely⁴⁶ to be able to provide the same level of incidental disease surveillance (see below), advice on animal welfare and advice on animal management. However, the realisation of these incidental benefits is dependent on many factors and the contribution of measures under the VS Act is difficult to quantify (e.g. there is no guarantee that the restriction on who can practise veterinary science will ensure a high level of veterinarian presence is maintained in rural areas).

Public health benefits of the practice restriction

Many veterinary practices treat companion animals, such as pet dogs and cats, as well as horses. There are many examples of animal diseases present in Australia (e.g. toxoplasmosis in cats, intestinal parasites in dogs and cats and Hendra virus in horses) and exotic to Australia (e.g. rabies in cats and dogs, and brucellosis in dogs) that pose potentially significant risks to the health of their owners. The comprehensive training provided to veterinarians enables them to recognise the signs of these diseases and recommend that the animal's owner or carer seek further advice from a medical practitioner.

If provision of animal health services in Queensland was deregulated and non-veterinarians were the first point of contact for some animal health services, they may not have the expertise and awareness to protect themselves from and/or recognise potentially deadly diseases, such as rabies or Hendra virus. There is also a risk that disease prevention measures or treatments administered to an animal by a non-veterinarian (such as an off-the-shelf vaccination) may give sub-optimal protection, not only for the animal but also for its owner and the general public.

Incidental disease surveillance benefits of the practice restriction

Early detection of an emergency animal disease may enable it to be eradicated or managed in a way that would not otherwise have been possible, with consequential benefits to human health, social amenity, the economy and the environment.

It is argued that the practice restriction should be retained because the services provided by registered veterinarians (compared to other potential providers) contain an element of collateral public benefit, i.e. active disease surveillance is being conducted at no extra cost.

For exotic diseases that pose a serious threat, the *Exotic Diseases in Animals Act 1981* imposes an obligation on a veterinarian who diagnoses or suspects the exotic disease in an animal to notify the authorities. Although the *Exotic Diseases in Animals Act 1981* also imposes an obligation on a person in charge of an animal that is infected or suspected to be infected to notify the authorities, there may be circumstances where a non-veterinarian is unlikely to recognise the seriousness of the infection. This could delay notification of, and response to, the biosecurity threat.

It is difficult to assess the extent of incidental disease surveillance benefits provided by private veterinarians compared to where veterinarians contribute explicitly to national animal disease surveillance programs (such as the National Significant Disease Investigation and National TSE Surveillance Programs).

44 For example, the *Health Act 1937*, *Chemical Usage (Agricultural and Veterinary) Control Act 1988*, *ACP Act*, *Stock Act 1915*, *Exotic Diseases in Animals Act 1981*, *Racing Act 2002* and *Animal Management (Cats and Dogs) Act 2008* reserve certain activities to veterinarians.

45 *Export Control Act 1982* (Cth).

46 The provision (Act, s. 33E) enabling the minister, acting on the advice of the Board, to authorise stock inspectors to carry out tuberculosis testing of animals is now redundant.

Part 3 Restrictions on who can practise veterinary science

The VS Act currently restricts the practice of veterinary science for fee or reward to veterinarians (the practice restriction).⁴⁷ There are significant differences in the veterinary practice restrictions that apply throughout Australian and New Zealand jurisdictions:

- Legislation in Victoria does not prohibit non-veterinarians from performing acts of veterinary science.
- In the Australian Capital Territory and New Zealand, practice restrictions are imposed under animal welfare legislation instead of veterinary legislation—in the Australian Capital Territory it applies to all acts of veterinary science, subject to exceptions, while in New Zealand the practice restriction only applies to significant surgical procedures.
- In New South Wales the practice restriction is imposed under veterinary registration legislation and applies only to acts of veterinary science that are declared 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 to all acts of veterinary science, subject to exceptions that differ between these jurisdictions.

Under the *Health Practitioner Regulation National Law Act 2009* (HPR Act), manipulation of the cervical spine and the core practices of dentistry and optometry are the only human health care practices restricted to relevant registered professionals in Australia.

Practice restrictions in human health care prior to the introduction of the HPR Act

Prior to the introduction of the HPR Act, different Australian jurisdictions also took different approaches to restriction of the practice of medical science. Queensland and Victoria did not have restrictions on who could practise medicine.⁴⁸ Under the (now repealed) *Medical Practice Act 2004* (SA), certain diseases and conditions could only be treated by medical doctors. In other Australian states and territories, all practice of medicine was restricted to medical doctors.

However, as with the term *veterinary science* under the VS Act (see page 12), the definition of *medicine* was imprecise under legislation in these jurisdictions and there was a general reluctance to prosecute complementary and alternative medical practitioners unless the practitioner has stepped outside the normal practice (of complementary medicine and alternative medicine), such as by purporting to treat cancer or other serious illnesses.⁴⁹

Evaluating the costs and benefits of the practice restriction is made more difficult by data deficiencies. There is only anecdotal evidence as to its contribution to animal welfare—there is no publicly available data on welfare incidents linked to services provided by unregistered providers and cases are probably significantly under-reported in all jurisdictions. There is also sparse evidence to suggest that a more robust market for animal health service providers has developed in Victoria as a consequence of removing the practice restriction in that jurisdiction.

⁴⁷ Act, s. 25M.

⁴⁸ Although there were no restrictions on the practice of medicine, there were some practice restrictions on particular health care services. For example, in Queensland there were practice restrictions on chiropractic and osteopathy.

⁴⁹ Weir, Michael 2005, 'Complementary and alternative medicine—legal issues', *The National Legal Eagle*, vol. 11, iss. 1, art. 4, <<http://epublications.bond.edu.au/nle/vol11/iss1/4>>.

Interpretation of the practice restriction

Whether a procedure is restricted under the VS Act depends on whether it falls within the legal meaning of ‘veterinary science’, which is defined in section 2A of the VS Act.

2A Meaning of veterinary science

- (1) *Veterinary science means the science of veterinary surgery or veterinary medicine.*
- (2) *Veterinary science includes the following—*
 - (a) *diagnosing diseases in, and injuries to, animals, including, for example, testing animals for diagnostic purposes;*
 - (b) *giving advice based on a diagnosis under paragraph (a);*
 - (c) *medical or surgical treatment of animals;*
 - (d) *performing surgical operations on animals;*
 - (e) *administering anaesthetics to animals;*
 - (f) *signing or issuing certificates relating to the description, health, diagnosis or treatment of animals.*
- (3) *However, veterinary science does not include an act done for animal husbandry or animal dentistry prescribed under a regulation not to be veterinary science.*

Judicial interpretation of an ‘act of veterinary science’

In 1990, a majority of the Queensland Supreme Court⁵⁰ held that pregnancy testing, in itself, was an act of veterinary science. The majority’s reasoning was that a person performs an act of veterinary science if they use skill and knowledge of the same kind (but not necessarily the same quality) as that used by a veterinarian. All judges saw as irrelevant whether the act is commonly performed by non-veterinarians.

Proceedings that went to the Privy Council in 1996⁵¹ suggest that the equivalent of ‘veterinary science’ under UK veterinary legislation may be interpreted broadly and includes vaccination.⁵²

The extent of the practice restriction is a matter for the courts, but it is likely that only a veterinarian can legally provide some of the animal health services that are commonly performed for fee or reward by non-veterinarians (see following pages). Either industry practice needs to come back into line with the legislation (which is likely to cause significant disruption and increase costs for animal health services) or the practice restriction needs to be amended or abolished.

It appears that veterinarians may unlawfully delegate and/or non-veterinarians may unlawfully perform some acts of veterinary science for a number of reasons, including:

- the incorrect belief (due to common practice, incorrect advice or the lack of restrictions in human health care) that it is lawful for a non-veterinarian to perform such acts
- the impracticality or costs for veterinarians to perform the acts
- the opinion that the restriction is not justified.

⁵⁰ *Muggleton v. Hall; ex parte Hall* [1990] 1 Qd R 26.

⁵¹ *Plenderleith v. Royal College of Veterinary Surgeons* [1996] 1 WLR 224.

⁵² The decision concerned a determination of professional misconduct made by the Royal College of Veterinary Surgeons (RCVS) against a veterinarian for allowing a non-veterinarian to vaccinate a cat (which the RCVS found to be an act of veterinary medicine). The fact that the RCVS finding was not contested supports the proposition that vaccinating an animal is an act of veterinary medicine under the relevant UK legislation.

Medical treatment of animals

In the absence of any clarification on what constitutes medical treatment in the VS Act, it is uncertain but seems likely that administering a medical treatment⁵³—and not just formulating the plan of treatment for the animal—is an act of veterinary science.⁵⁴ A veterinarian may be committing an offence under the VS Act if they direct a non-veterinarian to administer a medical treatment (even though this is common practice, such as when a course of treatment is required, a treatment needs to be administered whenever symptoms or circumstances recur or where the treatment needs to be administered to multiple animals). This appears inconsistent with the Health (Drugs and Poisons) Regulation 1996, which provides that a veterinary surgeon may (among other things) dispense and prescribe a restricted drug for an animal and dispense, prescribe or sell a controlled drug or S2, S3 or S7 poison.

The Health (Drugs and Poisons) Regulation 1996 also allows a veterinary nurse who has successfully completed a certified course of training to administer a restricted drug or a S2 or S3 poison to an animal under the supervision of a veterinary surgeon or, if the drug or poison is a dispensed medicine, in accordance with the label instructions. Further, some veterinary chemicals, including some vaccines, can be purchased and administered in accordance with approved label instructions by non-veterinarians under the *Chemical Usage (Agricultural and Veterinary) Control Act 1988*.

Allowing non-veterinarians to perform acts of veterinary science that do not involve significant risks would reduce the inconsistency between the legislation and common practice—acts could be prescribed in a regulation⁵⁵ as restricted (or otherwise regulated) only where there was a high risk of unnecessary suffering or impairment.⁵⁶

53 In some other jurisdictions there is an express exclusion of certain relevant procedures. The Veterinary Practice Regulations 2005 (SA) expressly excludes the vaccination of livestock from the ambit of the definition of (restricted) veterinary treatment. Veterinary practice legislation in Tasmania expressly defines (restricted) ‘veterinary services’ to include ‘performing medical or physical treatment of animals’ in addition to ‘giving advice based on a diagnosis ... including prescribing treatment, drugs, medications or medical appliances’. A regulation allows non-veterinarians to administer veterinary medicines in accordance with the approved label instructions by subcutaneous or intramuscular injection, oral administration (except oesophageal intubation) or application to any external body surface. A regulation under the *Veterinarians Act* (NT) excludes from the definition of (restricted) veterinary services vaccinating animals kept in the course of primary production with a registered veterinary chemical product in accordance with the label and treatment of internal or external parasites except by nasogastric intubation.

54 Note the proceedings in the Privy Council discussed above that suggest the act of vaccination is an act of veterinary medicine under the relevant UK legislation.

55 Restricted acts could be prescribed under either an amended Act or ACP Act (which may be more appropriate if the restriction was primarily directed at averting harm to animals). The prescription could be part of a standard that set competency requirements for a range of animal health services.

56 Consideration would need to be given to whether unnecessary suffering or impairment could be caused if the act was undertaken where reasonably common contraindications would be difficult for a non-veterinarian to identify, or where the provider did not have access to sedation or anaesthetic or have expertise in perioperative management.

Practice restrictions in New South Wales and New Zealand

In New South Wales, a practice restriction only applies to ‘acts of veterinary science’ prescribed by regulation as ‘restricted acts of veterinary science’. Currently, these comprise:

- examination of or attendance on any animal for the purpose of diagnosing the physiological or pathological condition of the animal (including pregnancy diagnosis in horses but not other animals)
- any treatment, procedure or test on an animal that:
 - according to current standards of the practice of veterinary science, to avoid harm or suffering to the animal, should not be undertaken without anaesthetising the animal (otherwise than by a topical anaesthetic) or without sedating or tranquillising the animal
 - involves the insertion of any thing into certain (listed) body cavities of animals
 - involves the insertion of any thing into the uterus or rectum (other than a thermometer into the rectum) of a horse
- administering anaesthetic (other than a topical anaesthetic) unless under immediate and direct veterinary supervision
- dental procedures on animals other than horses (except tooth cleaning)
- certain listed dental procedures on horses⁵⁷
- other listed procedures⁵⁸ (e.g. the castrating of cattle, sheep or goats that are 6 months of age or older or castrating of other animals at any age).

The minister must consult an advisory committee before any changes are made to the ‘restricted acts of veterinary science’. There are some ‘unrestricted acts of veterinary science’ that cannot be declared to be restricted by the regulation.

The Veterinary Practice Regulation 2006 (NSW), which prescribes ‘restricted acts of veterinary science’, is due to sunset later this year. In June 2013, the New South Wales Government released a draft of the proposed replacement regulation that would prescribe some additional procedures as ‘restricted acts of veterinary science’, including the use of power tools in equine dentistry.

In New Zealand, the practice restriction is imposed under animal welfare legislation⁵⁹ as opposed to veterinarian legislation. The practice restriction only applies to a ‘significant surgical procedure’ performed on an animal. A regulation can declare an act to be a significant surgical procedure. Similar to New South Wales, the minister must consult an advisory committee before any changes are made to acts declared to be significant surgical procedures. A Bill was introduced into the New Zealand Parliament in May 2013 that would amend the legislation to also allow a regulation to declare a surgical procedure was not a significant surgical procedure and to allow a regulation to prescribe mandatory standards for any surgical or painful procedure.

57 For a discussion of restrictions on equine dentistry in New South Wales see ‘Excluded animal dentistry procedures’.

58 Generally the inverse of animal husbandry procedures that are excluded from the Queensland practice restriction by regulation (see ‘Excluded animal husbandry procedures’).

59 *Animal Welfare Act 1999* (NZ).

Should the practice restriction apply to every act of veterinary science?

Subject to one qualification⁶⁰, it is an offence under the VS Act for a veterinarian to direct a non-veterinarian to perform an act of veterinary science in relation to an animal under the veterinarian's care⁶¹, whether or not that person receives a fee or reward.⁶² The veterinarian would commit an offence even though the non-veterinarian would not, such as if they were the owner who would not be acting for fee or reward (see 'Fee or reward exemption' below).

Allowing practice under the direction or supervision of a veterinarian would reduce the inconsistency between the legislation and common practice. It would make animal welfare risk management dependent on the judgement and diligence of the individual directing or supervising veterinarian. Non-veterinarian service providers would rely on individual veterinarians being prepared to provide direction or supervision for their activities.

Should non-veterinarians be allowed to practise some aspects of veterinary science under the direction or supervision of a veterinarian (e.g. administration of medical treatments)?

Fee or reward exemption

The practice restriction currently only applies to acts of veterinary science that are performed for fee or reward.⁶³ Some other jurisdictions similarly also only restrict practice for fee or reward.⁶⁴

The practice restriction does not prevent non-veterinarians performing high-risk procedures on their own animals⁶⁵ or in an emergency. In some jurisdictions there are explicit exemptions allowing non-veterinarians to practise veterinary science on their own animals⁶⁶ or in an emergency.⁶⁷

Is maintaining a restriction only on practice for fee or reward consistent with the implied animal welfare objective of the VS Act?

A very large number of non-veterinarians performing procedures that fall within the definition of veterinary science in the course of their employment may assume the practice restriction does not apply to them. These may include government workers, researchers, farm managers and employees and paraveterinarians (e.g. veterinary nurses). However, if 'for fee or reward' is interpreted to include the receipt of a salary or a wage, these persons may be acting unlawfully.

60 A veterinarian does not commit an offence if the person they direct is undertaking a course of study or a qualifying examination and is acting under the veterinarian's supervision: Act, s. 25N.

61 The phrase 'under the care of' is not defined in the Act. It is also used in legislation in the United Kingdom and the Royal College of Veterinary Surgeons takes it to mean (in the context of prescribing medicines):

- the veterinary surgeon must have been given the responsibility for the health of the animal or herd by the owner or the owner's agent
- that responsibility must be real and not nominal
- the animal or herd must have been seen immediately before prescription, or recently enough or often enough for the veterinary surgeon to have personal knowledge of the condition of the animal or current health status of the herd or flock to make a diagnosis and prescribe
- the veterinary surgeon must maintain clinical records of that herd/flock/individual.

Viewed on 9 May 2013, <<http://www.rcvs.org.uk/advice-and-guidance/code-of-professional-conduct-for-veterinary-surgeons/pdf/>>.

62 Act, s. 25N.

63 Act, s. 25M(2)(a).

64 South Australia, Western Australia.

65 For example, section 3(1)(h) of the Veterinary Surgeon Regulation 2002 allows a veterinarian to teach techniques about pregnancy testing to an owner of cattle. This contemplates that those cattle owners would then pregnancy test their own cattle.

66 In New South Wales the practice restriction does not apply to an act performed on an animal by its owner or by an employee of its owner in connection with the employee's duties.

67 New South Wales, Northern Territory and Tasmania. In Western Australia the practice restriction applies to veterinary science practised for fee or reward. However, the practice restriction does not prevent a non-veterinarian from performing, for fee or reward, first aid on an animal to save its life or relieve its suffering.

Farm manager or worker treating herd under direction

Both the directing veterinarian and a farm manager or worker may be committing an offence if the farm manager or worker administers a treatment to a herd (for example, penicillin for pneumonia) on advice from the veterinarian. In one interpretation, the farm manager or worker may be receiving a fee or reward for practising veterinary science because medical or surgical treatment of animals falls within the definition of veterinary science and administering the treatment may be within the duties for which the farm manager or worker receives a salary or wages. Legislation in both New South Wales and South Australia expressly exempts an employee of the owner of an animal from the practice restriction if they are performing the restricted acts in the course of their duties.

Oesophageal intubation (stomach tubing) of horses

The owner of a race horse who performs nasogastric (stomach) tubing of a race horse would not be committing an offence under the VS Act. However, if a trainer or an employee administered a saline drench in this way, as part of the services they were engaged to provide, they may be committing an offence.

Non-veterinarian animal health care providers

The practice restriction generally does not allow for recognition of the competence of non-veterinarian animal health care providers to perform particular acts of veterinary science that are within the scope of their competence. Nor does it allow them to assist veterinarians in the practice of veterinary science. For example, veterinary nurses may currently be unlawfully performing some acts of veterinary science for fee or reward (see below).

Impact of practice restriction on veterinary nurses

The Australia New Zealand Standard Classification of Occupations⁶⁸ identifies tasks performed by veterinary nurses, including giving medications to animals and assisting veterinarians to administer anaesthetics. In Queensland, these may be acts of veterinary science under the VS Act.

Veterinary technology is an emerging profession in Australia and internationally. The University of Queensland offers the only⁶⁹ veterinary technology degree in Australia. Students of The University of Queensland's Bachelor of Applied Science, Veterinary Technology Extended Major, are educated in the care and handling of companion and production animals, the basic principles of normal and abnormal life processes, and in routine laboratory and clinical procedures including veterinary radiography, clinical pathology and veterinary surgical and anaesthetic support procedures.⁷⁰ The first students graduated in 2003. About 40 students graduated in 2012.

Recognition of paraveterinary workers in the United Kingdom and United States of America

The American Veterinary Medical Association (AVMA) accredits programs in veterinary technology that graduate veterinary technicians (two- or three-year programs that generally lead to an associate degree or certificate) and/or veterinary technologists (four-year bachelor's degree). There are now accredited courses in a large number of states. Some US states license veterinary technologists/technicians. Many have laws and/or regulations that govern what procedures veterinary technologists/technicians (and veterinary assistants—those who are not graduates of an accredited course) may and may not perform.⁷¹ Specifically, they generally cannot diagnose, prescribe or perform surgery.

In the United Kingdom, suitably qualified veterinary nurses⁷² can pay an annual fee to be registered on the Royal College of Veterinary Surgeons' (RCVS) list of veterinary nurses. This enables the listed nurse to undertake certain privileged roles under the *Veterinary Surgeon's Act 1966 (Schedule 3 Amendment) Order 2002* including some minor surgery and medical procedures under the supervision of a veterinarian. Animal nursing assistants⁷³ or veterinary care assistants have usually undertaken some basic veterinary nurse training⁷⁴ but their role is limited by the legislation to assisting veterinary surgeons and registered veterinary nurses in the general husbandry and care of animals.

68 *Australian and New Zealand standard classification of occupations*, First edition, Revision 1.

69 However, Massey University in New Zealand offers a three-year Bachelor of Veterinary Technology.

70 'About veterinary technology', The University of Queensland, viewed on 22 March 2013, <<http://www.uq.edu.au/veterinarytechnology/index.html?page=88355>>.

71 A summary of the relevant legislation prepared by AVMA researchers is accessible at <https://www.avma.org/Advocacy/StateAndLocal/Documents/scope_vet_assistant_duties.pdf>.

72 Generally, a two-year diploma course.

73 The term approved by the British Veterinary Nursing Association.

74 The Level 2 Certificate for Animal Nursing Assistants.

Many allied, complementary and alternative animal health care providers are captured by the practice restriction only to the extent that they provide a diagnosis⁷⁵ because the services they provide are otherwise not (traditional) acts of veterinary science. Recent years have seen an increase in recognition of complementary and alternative animal health services among the veterinary profession, which may have implications for the application of the practice restriction to these services. This includes the establishment of Integrative Veterinarians Australia—a special interest group of the Australian Veterinary Association—that represent veterinarians who provide a range of complementary and alternative animal health services (including chiropractic). Whether this brings these services within the scope of the ‘practice of veterinary science’ has not been judicially tested.

Impact of practice restriction on chiropractors and physiotherapists

In a Queensland Magistrates Court decision in the early 1990s, a non-veterinarian equine chiropractor was found to have practised veterinary science not because they performed actual manipulation but because they made a diagnosis. This implies that a non-veterinarian could lawfully perform manipulation for fee or reward, provided they did not diagnose the underlying condition.

The practical effect of this is that non-veterinarian animal chiropractors and physiotherapists cannot practise as primary contact practitioners, even though they could provide primary health care to humans. For example, members of the Animal Physiotherapy Group, a branch of the Australian Physiotherapy Association, must be registered as human physiotherapists. To obtain registration for human practice, physiotherapists must have completed a four-year undergraduate degree. Some animal physiotherapists may have also undertaken a (now discontinued) Masters Degree in Animal Studies (Animal Physiotherapy) offered by The University of Queensland. The program was only available to holders of an undergraduate degree in physiotherapy.

In contrast, with the exception of manipulation of the cervical spine—which is a restricted practice—manipulative therapies in human health are regulated only by restricting the use of the titles ‘osteopath’, ‘physiotherapist’ and ‘chiropractor’ to qualified professionals who are registered and supervised by relevant registration boards.

The practice restriction prevents allied, complementary and alternative animal health care service providers from causing harm, but it also prevents these people providing services that may⁷⁶ contribute to animal health care. In practice, this limits consumer choice, which may place a strain on the affordability and availability of animal health services. In contrast, practice restrictions generally⁷⁷ do not limit provision of conventional, complementary or alternative medicine for humans under the HPR Act.

Potential recognition of other animal health professionals

The VS Act makes provision for a regulation to prescribe particular acts of veterinary science that may be performed by an *animal nurse*, and the requirements for eligibility to practise as an *animal nurse*.⁷⁸ However, this power has not been used. It appears inconsistent with the current formulation of the practice restriction.⁷⁹

If it was desired to amend the VS Act to allow (limited) practice by some non-veterinarians (such as veterinary nurses), several options for determining who can practise could be considered. Firstly, a veterinarian could be allowed to assess the competency of a non-veterinarian to practise under their direction, supervision or personal supervision. Secondly, the Board could be required to assess a non-veterinarian’s competency to practise certain aspects of veterinary science. Thirdly, the legislation could establish eligibility criteria for practice.

75 In New South Wales, the Veterinary Practice Regulation 2006 (NSW) restricts examination of, or attendance on, any animal for the purpose of diagnosing the physiological or pathological condition of the animal. The Regulatory Impact Statement for this regulation explained, however, that it was not intended that this would prevent alternative animal health service providers (non-veterinarians) examining or attending on animals if their dominant purpose did not involve diagnosis of the animal’s physiological or pathological condition. Given that the animal’s owner is not captured by the practice restriction in New South Wales, the animal owner could seek treatment from an alternative service provider on the basis of their own diagnosis or a diagnosis provided by a veterinarian.

76 Some veterinarians and community members question the scientific basis for, and efficacy of, some complementary and alternative animal health care.

77 The HPR Act imposes a practice restriction on the performance of manipulation of the cervical spine—a stroke may occur in extremely rare cases following manipulation of the human cervical spine. Otherwise, the only practice restrictions in human health concern core practices of dentistry and optometry.

78 Act, s. 37.

79 As they currently appear, ss. 25M and 25N of the Act may prevent animal nurses from performing acts that involve practice of veterinary science, even if a regulation prescribed acts that could be performed by veterinary nurses.

There are already established non-statutory competency standards for veterinary nurses in Australia⁸⁰ that could be adopted as eligibility criteria if nurses were permitted to practise some aspects of veterinary science under the VS Act. For professions other than veterinary nurses, there may not be competency standards readily available for adoption, although some training packages are being developed (see the discussion of ‘Excluded animal dentistry procedures’, page 22). The cost of ensuring robust competency assessment may be very significant relative to the number of potential practitioners.

Consideration could also be given to whether non-veterinarians should be allowed to practise without veterinary oversight. Eligible practitioners could be enabled to practise only under the supervision or direction of a veterinarian (e.g. veterinary nurses or technicians to administer anaesthetic during surgery) or alternatively they could be allowed to provide primary health services (e.g. as do physiotherapists in human health care).

Approval for independent practice or practice under supervision, direction or authority of a veterinarian in other Australian jurisdictions

Under the *Veterinary Surgeons Act 1960* (WA), the registration board may approve a person to practise as a veterinary nurse if they meet the competency and character requirements. A veterinary nurse is authorised to perform prescribed acts, most of which would constitute acts of veterinary science within the meaning of the VS Act (Qld), under either the supervision or the direction of a veterinary surgeon. Corresponding standards and supervisory powers are prescribed in a regulation.

The *Veterinary Surgeons Act 1960* (WA) also allows a regulation to prescribe services that may be performed under the direction of a veterinarian by non-veterinarians who have been authorised by the registration board. The prescribed services currently comprise:

- administering sedatives, tranquilisers and euthanasia agents by injection
- equine dentistry
- embryo transplantation
- diagnosis of disease
- administering contraceptives or other medications to dogs in the pastoral region
- examination of cattle for pregnancy by rectal palpation or rectal probe and ovarian examination per rectum
- artificial insemination by surgical (laparoscopic) method.

An individual may apply to the registration board in Tasmania to be allowed to perform to a specific (otherwise restricted) veterinary service.⁸¹ A decision of the registration board to grant, grant with conditions or refuse an application may be appealed to the minister.

Additionally, in Tasmania the practice restriction does not apply to a person who administers anaesthetic under the instruction of, and in the presence of, a registered veterinarian. Also, procedures in research and teaching may be undertaken by non-veterinarians being supervised, or under the authority of, a veterinarian (see ‘Application of the practice restriction to researchers’, page 20).

In South Australia, the practice restriction does not apply to a non-veterinarian who provides the treatment ‘through the instrumentality of’ a veterinarian. The legislation explains that providing treatment through the instrumentality of a veterinarian includes providing services to the veterinarian for which the person is entitled to receive a share in the profits of the veterinarian’s practice.

80 The Accredited Veterinary Nursing Scheme, developed by the AVA and the Veterinary Nurses Council of Australia.

81 *Veterinary Surgeons Act 1987* (Tas.), s. 13.

Definition of supervision already used in Queensland legislation

Section 5A of the Health (Drugs and Poisons) Regulation 1996 provides that supervision includes supervision using any technology that allows reasonably contemporaneous and continuous communication between the persons. In contrast, personal supervision includes supervision using any technology that allows reasonably contemporaneous and continuous communication between the persons, and allows reasonably contemporaneous and continuous observation by the supervisor of actions taken by the other person (e.g. videoconferencing).

A further issue is accountability (beyond civil or criminal liability more generally)⁸² for the standards of professional practice and conduct by non-veterinarians. If non-veterinarians were allowed to practise only under supervision or direction of a veterinarian, the veterinarian could retain accountability for their practice. Alternatively, non-veterinarians could be made directly accountable for their practice either through a system of registration and oversight or a 'negative licensing' system (discussed below).

Introducing registration and oversight for non-veterinarians allowed to practise some aspects of veterinary science under the VS Act would likely ensure a higher standard of practice by the registered group. The relatively low number of members of some animal health professions would significantly impact the relative costs and benefits of giving these professions their own restricted titles and registration board (e.g. a veterinary nurses board under new legislation). Introducing additional categories of registration that are overseen by the existing Board would be a cheaper option.

A more flexible option would be for the Board to grant conditional registration/approval to practise or general registration subject to conditions to allow practice by non-veterinarians with relevant expertise in areas of need within their competence. In human health care, conditional registration to meet an area of need is confined to internationally trained practitioners. However, human health care has many professional registration schemes that are lacking in animal health care (e.g. for nurses). In the absence of a registration scheme for allied professionals and paraprofessionals, conditional registration/approval to practise could be used more widely in animal health care to allow limited practice by these professionals in areas of need.

Providing additional categories of registration or approval may have other implications, such as for other Queensland and Australian Government legislation that relies on registration under the VS Act. Whether the activities should be restricted under that legislation only to those with unconditional general veterinary registration under the VS Act, or whether authorisation should extend to other registered non-veterinarian providers, would need to be considered carefully and are generally beyond the scope of the review.

Alternative mechanisms could be used to regulate practice by non-veterinarians. For example, in New South Wales (see page 20), accountability of some human health professions is achieved through a statutory code of practice supported by disciplinary powers. Such a 'negative licensing system' (whereby practitioners found in breach of a code of conduct are prevented from practising) could be used to ensure accountability for animal health professionals against standards adopted under legislation.

82 For example, civil liability for negligence or criminal liability for misleading or deceptive conduct under the Australian Consumer Law.

Code of conduct for unregistered human health practitioners

There are health complaints bodies in all Australian jurisdictions that may investigate complaints made about the conduct of unregistered practitioners but there is generally no avenue available, except in New South Wales, through which a hearing may be conducted and sanctions imposed.

In 2008, New South Wales adopted a statutory code of conduct for unregistered health providers.⁸³ The code of conduct sets out a range of generic professional obligations and is supported by powers for the New South Wales Government's Health Care Complaints Commission to investigate breaches and issue orders (if necessary) that prohibit, limit or attach conditions to the practice of an unregistered provider. A similar scheme is proposed in South Australia.

The Australian Health Workforce Ministerial Council is currently considering whether there is a need for national action to strengthen regulatory protections for consumers of unregistered health practitioners. In February 2011, the Australian Health Ministers' Advisory Council (AHMAC) released the consultation paper, *Options for regulation of unregistered health practitioners*. Public comments were invited on four broad options for regulated unregistered health professionals:

- no regulation
- self-regulation (e.g. voluntary code of practice)
- legislating standards of conduct and providing for investigation of breaches of the code and issue of (court-enforceable) prohibition orders (as in New South Wales)
- establishing a system of registration and supervision.

Should the competence of non-veterinarian animal health professionals be recognised? How should their competence be determined (e.g. by a veterinarian who will be responsible for their practice, by the Board or against criteria)? To what extent should they be allowed to practise (e.g. independently, under direction, with supervision or with personal supervision)? How should they be accountable for the standard of their practice (e.g. to a registration board or with negative licensing)?

Application of the practice restriction to researchers

Longstanding and widespread non-veterinarian practices in research may be in breach of the practice restriction under the VS Act. Some large, scientific users of animals are concerned that requiring veterinary oversight of all procedures would be costly and impractical to administer, impede progress in delivering socially and economically important research outcomes, and be at odds with the ACP Act. Conversely, some community members argue that the number of procedures that constitute acts of veterinary science and the cost of compliance with the VS Act has been overstated⁸⁴ and that animals used in research deserve the same protection from inexperienced providers as other animals.

The ACP Act requires a person using animals for scientific purposes to register as a scientific user, comply with the scientific use code⁸⁵ and conduct the activities with the approval of, and under the supervision of, an animal ethics committee. Ethics approval may be granted without direct observation of the competence of the researcher in performing a procedure. Animal ethics committees must include a veterinarian, but the veterinarian is generally not an employee of the research institution and while they have a role in monitoring the scientific use of animals they are not expected to directly supervise the conduct of the research. The scientific use code currently states that research institutions should consider appointing veterinary officers to oversee such projects, but institutions have varied greatly in their adoption of this recommendation.

In September 2011, the National Health and Medical Research Council (NHMRC) released a consultation draft of a revised scientific use code that would require persons performing procedures to be 'competent in the procedure or under the direct supervision of a competent person'. It would not require direct veterinary involvement in the performance of all procedures. The NHMRC specifically asked for public feedback on the question: *Should the document include a requirement for direct veterinary involvement in the oversight of a veterinary care program and research involving animals including, for example, the conduct of procedures such as anaesthesia and surgery?*⁸⁶ The revised scientific use code has not yet been finalised.

83 Public Health (General) Amendment Regulation 2008 (NSW).

84 Scientific users are required to report the number of animals they have used annually. However, many of these animals may not have been the subjects of acts of veterinary science.

85 The scientific use code means the most recent edition or revision of the *Australian code of practice for the care and use of animals for scientific purposes* published by or for the NHMRC.

86 This followed questioning during the initial phase of consultation with stakeholders on revising the code as to whether some procedures, such as anaesthesia and surgery, should be performed only by a veterinarian or under the direct supervision of a veterinarian.

Application of the practice restriction to scientific users in other jurisdictions

Veterinarian legislation in most other Australian jurisdictions exempts procedures performed during research from the practice restriction. For example:

- In New South Wales, veterinarian legislation exempts from the practice restriction a person who holds an authority to carry out animal research under the *Animal Research Act 1985* (NSW) and acts in accordance with that authority.
- In the Australian Capital Territory, the practice restriction⁸⁷ does not apply to a procedure for which animal ethics approval has been given.
- In South Australia, the practice restriction does not apply to the treatment of an animal pursuant to a licence to carry out research under the *Animal Welfare Act 1995* (SA).
- In Western Australia, veterinary legislation⁸⁸ allows any person to perform vivisection and other experiments or operations on animals (including giving any necessary anaesthetic) if authorised under, and acting in accordance with, the *Animal Welfare Act 2002* (WA).
- In Tasmania, since December 2012⁸⁹, non-veterinarians have been able to render a veterinary service in teaching or research (approved by an animal ethics committee) if the non-veterinarian has either been assessed as competent in that technique in the last 12 months by a veterinarian nominated by the institution and is acting under the veterinarian's authority or is being supervised by and is in the presence of the veterinarian.
- In Victoria, there is no practice restriction in veterinary registration legislation.

In New Zealand, significant surgical procedures are restricted to veterinarians under the *Animal Welfare Act 1999* (NZ) and there is no specific exemption for scientific users. Because 'significant surgical procedures' is not expressly defined, it is uncertain which procedures are restricted. It appears that at least some non-veterinarians are performing surgical procedures as part of their research. Each animal ethics committee in New Zealand has a role in ensuring all reasonable steps are taken to alleviate unreasonable or unnecessary pain or distress.

In Canada, the practice restriction does not apply to acts performed in the course of scientific research.

In the United Kingdom, establishments, persons and projects are licensed to undertake research under the *Animals (Scientific Procedures) Act 1986* (UK). A licensed establishment is required to employ an animal care and welfare officer, veterinary surgeon, and training and competency officer to assist in the management of the use, and care, of animals. Assessment of the competency of personal licence holders is the responsibility of the named training and competency officer. A researcher with a non-veterinary background can obtain categories of personal licence that may allow them to administer anaesthetics, sedation and analgesia and perform surgical procedures on anaesthetised animals, provided they have completed the necessary formal training modules (developed and accessed through the Home Office—a ministerial department of the Government of the United Kingdom) and have been deemed competent to perform the procedures they wish to be licensed for. They also require a project licence for their program of work.

In the United States of America, there is no restriction on who can perform procedures involving surgery and the administration of anaesthetics in a research situation under the *Animal Welfare Act 1966*. However, the research facility must ensure personnel are appropriately qualified and trained. Each research facility is also required to have an attending veterinarian whose role is to ensure adequate veterinary care is provided to the facility's animals. They are also required to provide guidance to the principal investigator and other personnel who are involved in the care and use of animals, specifically with regard to handling, immobilisation, anaesthesia, analgesia, tranquillisation and euthanasia.

Should research that has animal ethics approval and is being conducted in accordance with the scientific use code be subject to the practice restriction? Should there be an exception for researchers whose competence has recently been assessed by a veterinarian?

87 *Animal Welfare Act 1992* (ACT), s. 19.

88 *Veterinary Surgeons Regulation 1979* (WA), s. 45.

89 When the *Veterinary Surgeons Regulation 2012* (Tas.) commenced, see s. 5(4).

Exclusions from the practice restriction

Veterinary students

The VS Act allows (by exception to the relevant offence provisions) that a student enrolled in a veterinary science course approved by the Board may practise veterinary science under the supervision of a veterinarian.⁹⁰

Excluded animal dentistry procedures

The VS Act⁹¹ provides that a regulation may prescribe animal dentistry procedures that are not acts of veterinary science. Some find the terminology in the Act problematic; they argue that it is legal fiction that the procedures are not within the scope of veterinary science, while others suggest that filing and rasping have never been acts of veterinary science. In practice, the exclusion means that the procedures can be provided for fee or reward by non-veterinarians.

Currently the Veterinary Surgeons Regulation 2002 (VS Regulation) provides that filing and rasping horse teeth is not veterinary science.⁹² The use of power tools in equine dentistry was not anticipated when filing and rasping of horse teeth (by any method) were excluded from the definition of veterinary science (see below).

Use of power tools in equine dentistry

Using power tools for filing or rasping significantly increases the risk of exposure of sensitive dentine and the underlying interior pulp cavity. Also, there is a significant risk of thermal damage if water cooling is inadequate when power tools are used.

QCAT considered the use of power tools in equine dentistry in a 2010 disciplinary hearing.⁹³ QCAT observed⁹⁴ that the exempted dentistry procedures may need to be revisited in light of the introduction of power tools in equine dentistry—such tools posed a serious risk to animal welfare if used by a provider without proper training.

Other Australian jurisdictions differ in their regulation of using power tools in equine dentistry. In New South Wales, a non-veterinarian can currently use a power tool to carry out a procedure to maintain or restore correct dental function on a horse (that has been adequately sedated) under the immediate and direct supervision of a veterinary practitioner. However, it is proposed to make a new regulation later in 2013 that would prescribe use of power tools in equine dentistry as a restricted act of veterinary science.⁹⁵ Under the Veterinary Surgeons Regulations 1979 (WA), non-veterinarians (who have received training and are authorised by the registration board) may use motorised dental instruments under the direction of a veterinarian. In South Australia, equine dentistry involving the administration of an anaesthetic, sedative or analgesic (which would generally capture use of power tools) can be provided by a non-veterinarian in accordance with the directions of a veterinary surgeon. In Tasmania, a regulation that commenced in December 2012 prescribed filing or rasping of horse teeth as a service that non-veterinarians may provide but only if the service is provided without the use of power tools. In the Northern Territory, cleaning and rasping the teeth of horses with a manual tooth rasp (but not power tools) and scaling and polishing the teeth of animals is excluded by a regulation from the definition of (restricted) veterinary services. In Victoria there is no practice restriction.

90 Act, ss. 25M and 25N.

91 VS Regulation, Part 2.

92 VS Regulation, s. 3(1)(f).

93 *Veterinary Surgeons Board of Queensland v. MacIntosh* [2010] QCAT 601.

94 at [21].

95 A copy of the draft Veterinary Practice Regulation 2013 (NSW), viewed 14 June 2013, <<http://www.dpi.nsw.gov.au/aboutus/about/legislation-acts/review/veterinary-practice-regulation-2013>>.

Victorian Government accredited training⁹⁶ in equine dentistry [Certificate IV in Work Practices for Equine Dental Technicians (22178VIC)] covers some practices that are acts of veterinary science in Queensland, such as removal of deciduous caps⁹⁷ (see below), but can be lawfully performed by non-veterinarians in Victoria, where there is no practice restriction. The certificate is available through South West TAFE (in Victoria) and is delivered in association with the Equine Dental Association of Australia (EDAA, see below).

In February 2012, the National Skills Standards Council endorsed the Certificate IV in Equine Dentistry (ACM40512) developed by AgriFood Skills Australia. However, currently there are no registered training organisations approved to deliver this qualification.

The development of the national training package by AgriFood Skills Australia was highly contentious because the certificate covers procedures (such as appropriate treatment of retained deciduous teeth and any digitally loose permanent teeth) that cannot be performed by non-veterinarians for fee or reward in some Australian jurisdictions.

Removal of horse teeth

A tooth that has to be forcibly removed has a nerve and blood supply, meaning that removal will be painful and there exists risks of haemorrhage, infection and damage to surrounding tissues. But there are fewer risks involved in removal of deciduous teeth that are in the process of shedding.

Under legislation in both New South Wales and Western Australia, lay practitioners may remove a deciduous tooth cap without supervision. In New South Wales, they may also remove a loose tooth without supervision, while in Western Australia they may remove teeth that are digitally loose but only if they have received training and are under supervision. In Western Australia, lay practitioners may also extract wolf teeth⁹⁸ if they have received training and are under supervision. In South Australia, equine dentistry (which involves administration of an anaesthetic, sedative or analgesic) can be provided by a non-veterinarian in accordance with the directions of a veterinary surgeon. In Tasmania, non-veterinarians cannot perform equine dentistry except for manual filing and rasping. In the Northern Territory, removing loose tooth caps from horses is excluded by a regulation from the definition of (restricted) veterinary services. In Victoria, there is no practice restriction.

A nationally recognised diploma-level course that would cover sedation and a wider range of procedures was also proposed. However, in most Australian jurisdictions the practical requirement for sedation mandates the involvement of a veterinarian in most equine dentistry, other than manual filing and rasping (see above). Some veterinarians and other community members argued that a diploma-level course could not provide sufficient knowledge to manage the risks involved in the procedures to be taught and raised concerns that the training package could bolster the case for exceptions to the practice restriction. Bodies representing equine dentists varied in their desires to extend the current scope of the practice.

96 Among other things, formal qualifications allow equine dentists to obtain appropriate insurances to cover procedures they perform.

97 Deciduous (milk or temporary) teeth are pushed out by new permanent teeth erupting underneath, but sometimes do not shed as they should and remain attached to the permanent tooth (a 'cap'). They may cause pain and chewing problems. In Queensland, removal of retained deciduous caps would be an act of veterinary science.

98 Wolf teeth are the first premolar teeth in horses. Some horses do not have wolf teeth. Pain caused by contact between a bit and a wolf tooth may affect the behaviour of a horse when ridden, so they are often removed. The risks involved in removing wolf teeth are consistent with the risks involved in forcible removal of other teeth, but the practice is comparatively widespread.

Safe use of sedation requires knowledge of pharmacology and expertise in monitoring and responding to changes in the animal's status (e.g. its level of pain, depth of sedation, hydration and blood pressure) including emergencies and complications. Some veterinarians argue that sufficient, integrated multisystemic knowledge to provide complete perioperative⁹⁹ care could not be taught to non-veterinarians in a diploma-level course. Conversely, the Australasian Association of Equine Dentistry Incorporated (AAED Inc)¹⁰⁰ argued, in its 2010 submission to a Senate inquiry¹⁰¹, that allowing equine dentists who had demonstrated competency to use sedation would prevent anti-competitive behaviour by veterinarians and additional expense for clients who must engage both a veterinarian and an equine dentist. They highlighted that while veterinarians have multisystemic knowledge and expertise in use of sedation, veterinarians who have not undertaken further training do not have expertise in equine dentistry sufficient to manage the risks involved in some procedures.¹⁰² However, this ignores that veterinarians who attempt equine dentistry beyond the scope of their competency may be disciplined by the Board.

Sedation for equine dentistry in Western Australia and South Australia

In Western Australia, non-veterinarian equine dentists can be authorised by a sponsoring veterinarian to sedate horses.

In South Australia, a veterinarian can supply anaesthetic, sedative or analgesic to the owner/manager of a horse if they are a bona fide client (i.e. not the equine dentist) and the veterinarian is confident that he/she can administer it appropriately. Equine dentistry that involves administration of an anaesthetic, sedative or analgesic can only be provided by a non-veterinarian in accordance with the directions of a veterinary surgeon.

Other bodies representing equine dentists report that their style of dentistry is more traditional and their work is largely non-invasive, restraint free and sedation free.

For example, membership of the EDAA¹⁰³ is restricted to those who hold (the Victorian) Certificate IV. It appears to be the largest body representing non-veterinarian dentists in Australia. Members must undertake continuing professional development, maintain professional indemnity insurance and abide by a code of conduct supported by disciplinary powers. The code of conduct expressly prohibits members undertaking any procedure that involves making an incision, extraction of teeth by repulsion or lateral buccotomy, endodontics (root canal treatment) and repair of mandibular fractures. They require that sedation is prescribed and administered by a veterinarian. In addition to manual filing and rasping, EDAA members in jurisdictions where it is lawful (see page 23), remove loose caps, obvious wolf teeth and digitally loose permanent molars. The members of the EDAA do not endorse the use of non-water-cooled powered instruments.

The Association of Equine Dental Practitioners (Aust.) Inc. (AEDP) is also reported¹⁰⁴ to be putting in place structures for self-regulation of those who operate as equine dentists including a code of practice that prohibits use of non-water-cooled power tools. It is also reported¹⁰⁵ that the AEDP does not want legislation to be amended to legalise non-veterinarians administering sedatives.

99 Perioperative care includes prior assessment of an animal with selection of appropriate treatment; continual assessment of local and systemic impacts throughout the procedure with adjustments to treatment made and appropriate action as necessary; use of appropriate sedation, medication and pain relief during and following the procedure; and appropriate postoperative care.

100 The AAED was formed with the primary function of pursuing the development of nationally recognised competency-based training for non-veterinarian equine dental providers in Australia.

101 Australasian Association for Equine Dentistry Inc, submission 107 to Senate Standing Committee on Education, Employment and Workplace Relations in the matter of Industry Skills Councils.

102 Undergraduate veterinary degree courses in Australia now include basic training in equine dentistry. Generally, veterinarians undertake further training before practising equine dentistry. The award of membership of the Australian and New Zealand College of Veterinary Scientists Veterinary Dentistry Chapter may be conferred upon a veterinarian who is eligible to sit and successfully passes an examination in equine dentistry. The award of fellowship of the chapter may be conferred on a veterinarian who has completed several years of training supervised by a specialist, met a number of other eligibility criteria, and successfully passed a more rigorous examination in equine dentistry. Several hundred veterinarians Australia-wide have completed intensive postgraduate courses (often as preparation for chapter membership examinations) run by expert veterinary equine dentists that build on the integrated multisystemic knowledge they have acquired during five years of undergraduate study.

103 The EDAA advises that it represents 35 accredited and insured horse industry professionals who earn their full-time living in delivering humane routine dental care to horses. It has two members who reside in Queensland and several members based in Victoria, New South Wales and South Australia who are regularly contracted to provide their services to horse owners, trainers and outback stations in Queensland.

104 by the Australian Equine Dental Practice, <<http://www.equinedentalpractice.com/Index.html>>.

105 by the Australian Equine Dental Practice, <<http://www.equinedentalpractice.com/Index.html>>.

Who should be allowed to:

- manually (i.e. without power tools) rasp sharp enamel points from horse teeth?
 - use power tools to rasp sharp enamel points from horse teeth?
 - remove retained deciduous teeth?
 - remove wolf teeth?
 - remove other teeth and perform dental surgery?
-

Excluded animal husbandry procedures

Similarly, the VS Act¹⁰⁶ provides that a regulation may prescribe animal husbandry procedures that are not acts of veterinary science. As mentioned for excluded animal dentistry procedures above, some argue that it is legal fiction that the procedures are not within the scope of veterinary science. However, the intent and effect of the provision is clear—the prescribed procedures can be provided for fee or reward by non-veterinarians. Arguably, this is inconsistent with the implied animal welfare objective of the VS Act.

Currently the VS Regulation provides that the following animal husbandry procedures are not veterinary science¹⁰⁷:

- castrating
 - cattle or sheep of less than 6 months of age
 - goats of less than 2 months of age
 - pigs of less than 3 weeks of age
- dehorning
 - cattle of less than 6 months of age
 - goats or sheep of less than 3 months of age
- spaying cattle using the Willis dropped ovary technique
- tailing sheep of less than 6 months of age
- mulesing sheep of less than 1 year of age
- artificially inseminating cattle, deer, goats, pigs or sheep
- teaching techniques in pregnancy testing of cattle by a veterinary surgeon to an owner of cattle.

Sectors of the community argue to remove some exclusions (e.g. mulesing) and other sectors argue to expand others (e.g. pregnancy testing of cattle and artificial insemination of horses). Many of the exclusions are opposed by animal welfare groups due to the procedures causing pain and suffering to the animals—they do not believe this is justified, particularly when performed by non-veterinarians who do not have access to anaesthetic.

Restrictions on the age of the animal on which some of the procedures may be performed, and the methods that may be employed, are designed to reduce the adverse impacts. Conversely, requiring all these procedures to be performed by veterinarians would have significant effects on primary producers, on rural and regional economies, and potentially on the national balance of trade. Another option is to allow non-veterinarian providers whose competence has been assessed to perform certain procedures under an arrangement with a veterinarian (see page 26).

¹⁰⁶ VS Regulation, Part 2.

¹⁰⁷ VS Regulation, s. 3(1).

The National Velvet Accreditation Scheme

The National Velvet Accreditation Scheme was developed by the Deer Industry Association of Australia in conjunction with the AVA based on programs in Western Australia, Victoria and South Australia. Under this scheme, non-veterinarians are accredited to velvet deer under an arrangement with a veterinarian who supplies restricted drugs for pain relief and provides indirect supervision and advice.

Techniques for spaying cattle

In 2002, the exclusion in the VS Act which previously applied to all methods of spaying cattle was limited to the Willis spay method (the dropped ovary technique, or ‘DOT’) on animal welfare grounds. The Regulatory Impact Statement (RIS) for the VS Regulation stated that DOT is accepted as the quickest, simplest and least stressful means of spaying, unlike flank spaying and passage spaying, which were considered stressful and painful.

While DOT is the preferred technique, it is not without issues in relation to animal welfare, particularly if performed on weak or stressed stock. Some community members argue that the technique should not be included in the list of excluded procedures. A recent study by Petherick et al. (2012)¹⁰⁸ concluded that both flank and DOT spaying should not be conducted without measures to manage the associated pain and stress.

It is proposed to include a guideline in the *Australian animal welfare standards and guidelines for cattle* that recommends DOT should be used in preference to other surgical methods of spaying where possible.

A proposed standard would require that a person spaying a cow must be a veterinarian or, if permitted in the jurisdiction, be accredited or be under the direct supervision of a veterinarian or a person who is accredited. A draft unit of competency for performing DOT has been developed by AgriFood Skills Australia and is supported by AgForce Cattle. Public consultation on the draft unit of competency is currently underway (as a separate process to consultation on the draft standards and guidelines).

Some community members argue that better herd management (e.g. fencing) would obviate the need for routine spaying altogether and is likely to be cost-effective as there can be significant mortalities and adverse animal welfare impacts associated with spaying. It is proposed to include a guideline in the *Australian animal welfare standards and guidelines for cattle* recommending that spaying should only be done where there are no alternatives and the procedure results in life-time benefits to cattle welfare, or better herd management, or a reduced work health and safety risk.

A proposed draft standard requires pain relief to be used for flank spaying (but not DOT). The draft is silent on traditional passage spaying. In Queensland, flank spaying and traditional passage spaying currently could not be performed by a non-veterinarian for fee or reward due to the practice restriction under the VS Act.

The consultation draft of the RIS for the *Australian animal welfare standards and guidelines for cattle* also assesses the costs and benefits of some variations to the draft standards and guidelines, including requiring pain relief for all spaying and/or banning flank spaying.

Reproductive services

There is particular interest in restrictions on pregnancy diagnosis in cattle by non-veterinarians that reflects the value of the cattle industry to the Queensland economy. Pregnancy testing may significantly increase the commercial value of a cow (exporters and feedlots may pay a premium for heifers and cows that are not pregnant and will gain more meat weight than pregnant cows). Aside from diagnosing cattle as pregnant or non-pregnant, veterinarians can advise of the relative expectation of pregnancy in animals that are intended for breeding. This veterinary involvement in pregnancy testing may also have other benefits—a significant proportion of non-pregnant animals in a group of ‘normal’ cows would indicate the presence of disease and a requirement to implement further veterinary intervention.

In 1990, a majority of the Queensland Supreme Court¹⁰⁹ held that pregnancy testing, in itself, was an act of veterinary science. The majority’s reasoning was that a person performs an act of veterinary science if they use skill and knowledge of the same kind (but not necessarily the same quality) as that used by a veterinarian. However, pregnancy testing can be performed by a non-veterinarian who does not receive a fee or reward, such as the animal’s owner. The VS Regulation expressly excludes teaching techniques about pregnancy testing of cattle by a veterinary surgeon to an owner of cattle from the current practice restriction.

108 Petherick, JC, McCosker, K, Mayer, DG, Letchford, P & McGowan, M 2012, ‘Evaluation of the impacts of spaying by either the dropped ovary technique or ovariectomy via flank laparotomy on the welfare of *Bos indicus* beef heifers and cows’, *Journal of Animal Science*, 9 October.

109 *Muggleton v. Hall, ex parte Hall* (1990) 1 Qd R 26.

Some community members argue non-veterinarians should be able to perform pregnancy testing of cattle because it is not as invasive as artificial insemination of cattle (which is excluded from the practice restriction) and has less potential risks (although there are risks of bowel perforation, haemorrhage and cross-infection of animals). On another view, maintaining a veterinarian monopoly on pregnancy testing not only lowers the risk of adverse animal welfare outcomes but is also critical to retaining veterinarians in rural Queensland and contributes to Australia's system of biosecurity and other public goods (see page 10 'Other objectives').

The Australian Agricultural College Corporation offers a Certificate IV in Agriculture (Emphasis on Beef Production) at its Emerald Agricultural College that includes the unit *AHCLSK408A—Pregnancy test animals*. This unit is also offered separately as a two- or three-day short course at various other locations. The Australian Agricultural College Corporation also offers *AHCLSK312A—Coordinate artificial insemination and fertility management of livestock*, which provides participants with the necessary skills to conduct an artificial insemination program on their own livestock as a four-day short course at various locations.

Cattle must be pregnancy tested prior to export in some circumstances. The *Australian standards for the export of livestock (version 2.3) 2011* (ASEL)¹¹⁰ allows pregnancy testing of feeder cattle (for determination that they are not pregnant) to be provided by an accredited non-veterinarian in the Northern Territory and Western Australia. However, pregnancy testing of breeding heifers (guaranteed in calf but not so heavily pregnant that it might impact on their welfare in transit) is restricted to veterinarians.

There are significant differences between the restrictions that apply to pregnancy testing in Australian jurisdictions:

- In Western Australia, an authorised non-veterinarian may examine cattle for pregnancy by rectal palpitation or rectal probe and ovarian examination per rectum.
- Pregnancy testing of cattle is not a restricted act of veterinary science in New South Wales, but pregnancy testing of horses is restricted because it involves insertion of a thing (other than a thermometer) into the rectum (see below).
- South Australian legislation expressly allows non-veterinarians to perform pregnancy diagnosis for any animal (except horses) using ultrasound or by testing blood or milk.
- In Tasmania, restricted 'veterinary services' expressly includes pregnancy testing but a regulation allows non-veterinarians to examine any species for pregnancy using external ultrasound scanning. Tasmania recently reviewed its legislation and public comment was invited on the possibility of prescribing internal ultrasound scanning (allowing non-veterinarians to perform it). However, the Tasmanian Veterinary Board recommended the legislation remained silent, effectively keeping internal ultrasound as a restricted practice.
- In the Northern Territory, pregnancy testing of cattle or buffalo by rectal examination or another technique approved by the chief inspector is excluded by regulation from the definition of (restricted) veterinary services.
- There is no practice restriction in Victoria.

There is a greater risk of adverse animal welfare outcomes related to reproductive work on horses than for cattle. As a result, artificial insemination (as well as pregnancy diagnosis) of horses is currently not able to be performed by non-veterinarians in Queensland, even though artificial insemination of cattle, deer goats, pigs and sheep is excluded from the practice restriction by the VS Regulation.

Similarly, New South Wales expressly restricts any act of veterinary science involving the insertion of any thing into the rectum or uterus of a horse (other than a thermometer into the rectum). In Tasmania, restricted 'veterinary services' expressly includes carrying out, by manual operation or use of instrumental appliances, any procedure on an animal for artificial breeding purposes, but a regulation allows non-veterinarians to perform artificial insemination, provided that the semen is introduced via the vagina and cervical canal.

110 Viewed 6 May 2013, <http://www.daff.gov.au/__data/assets/word_doc/0011/1904366/australian-standards-v2.3.doc>.

There is significant disparity developing between the practice restriction under the VS Act and the requirements in national animal welfare standards that are being progressively developed for key industries.

At least one standard has already been adopted under the ACP Act¹¹¹ to regulate who can perform procedures that may be acts of veterinary science. This reflects that these practices could otherwise be performed by anyone in Queensland without fee or reward.

Under the Australian Animal Welfare Strategy, requirements for certain animal industries under the *Model codes of practice for the welfare of animals* are being progressively replaced by *Australian animal welfare standards and guidelines*. Once finalised, the Standing Council on Primary Industries (all state and territory Ministers of Primary Industries) will be asked to endorse the relevant standards, which will generally be adopted as mandatory codes of practice under the ACP Act.

Under the model codes, administration of anaesthetic was generally required when procedures were performed outside certain age limits (which are generally consistent with the age limits for exclusion of the relevant procedures under the VS Regulation). Given that administration of anaesthetics is expressly included in the definition of veterinary science in the VS Act, also restricting performance of the procedures above the age limits to veterinarians simply reflects the requirement for anaesthetic in the model codes.

Public consultation on the draft *Australian animal welfare standards and guidelines* for cattle and sheep was conducted between 7 March 2013 and 5 August 2013. Feedback from public consultation will inform the finalisation of the draft standards and guidelines for cattle and sheep. The draft standards propose only that pain relief (compared to anaesthetic under the model codes) must be provided when the relevant procedures are performed above certain age limits. The administration of appropriate pain relief to animals is not restricted to veterinarians under the VS Act or generally by the *Health Act 1937*. The requirement for pain relief does not imply a restriction of the procedures above certain age limits to veterinarians in Queensland.

The draft standards for cattle also propose some changes in the relevant age limits for performance of some procedures without pain relief—cattle would be able to be castrated or dehorned without pain relief if they are less than 6 months or less than 12 months if at their first yarding (compared to 6 months currently).

Relationship with regulation of providers under the ACP Act

Animal welfare standards

The VS Act provides very little guidance on how (and if) competing considerations should be taken into account when exercising the power to exclude procedures from the practice restriction by regulation. In contrast, to avert harm to animals, the ACP Act is specifically directed at balancing a range of interests in regulating.¹¹²

It could be argued that excluding things from the definition of veterinary science is not an appropriate mechanism for balancing animal welfare considerations against other interests, and exceptions to the practice restriction would be more appropriately accommodated in standards under the ACP Act. One of the objectives of the ACP Act is to provide ‘standards for the care and use of animals that achieve a reasonable balance between the welfare of animals and the interests of persons whose livelihood is dependent on animals’.¹¹³

Given the extensive public consultation on the *Australian animal welfare standards and guidelines* (which follows their development by working groups including representatives of peak industry bodies and animal welfare agencies), it is arguable that other legislation—such as the VS Act—should not impose additional restrictions on performance of these procedures. Conversely, some community members note that many jurisdictions have existing practice restrictions on who can perform the procedures (albeit restrictions that generally only apply if the procedures are performed for fee or reward or in some jurisdictions that do not apply if the person owns the animals or is an employee of the owner). They argue it is wholly reasonable for Queensland and some other jurisdictions to maintain the restrictions to complement pain relief requirements in the standards, given that relaxation of the restrictions was not canvassed in the development of the standards.

111 The pig code is based on a national animal welfare standard (model codes of practice). Among other things, the pig code regulates competency to perform animal husbandry procedures that are not restricted to veterinarians in all jurisdictions and/or that are subject to various exemptions from practice restrictions in others, including Queensland. Some proposed national animal welfare standards, for example the *Australian animal welfare standards and guidelines: horses*, may take a similar approach. Another emerging problem is inconsistency between the practice restriction under the Act and the national animal welfare standards more generally. To resolve the inconsistencies, some national standards have been amended when adopted as compulsory codes of practice under the ACP Act while in other cases the practice restriction under the Act was modified for consistency with the standard.

112 This contrasts with the animal rights position that animals should not be used or regarded as property and the interests of non-human animals should be afforded the same consideration as the similar interests of humans.

113 ACP Act, s. 3(b)(i).

Relationship between the practice restrictions and animal welfare standards in the Australian Capital Territory

The *Animal Welfare Act 1992* (ACT) restricts the performance of medical or surgical procedures on animals to a veterinarian. However, the restriction does not apply to a procedure done in accordance with a code of practice approved under the VS Act.

Should the practice restriction apply where there is an animal welfare standard adopted under the ACP Act that regulates a procedure?

A more radical option would be to replace the practice restriction under the VS Act in its entirety with standards under the ACP Act. There is scope in the existing standard making power under the ACP Act¹¹⁴ for restrictions to be imposed on the practice of veterinary science as well as a wide range of other animal health services (that do not fall within the definition of veterinary science, such as alternative and complementary treatments).

Standards have the potential to provide flexible and proportional regulation compared to a practice restriction. Many gradations of restriction are possible under a standard, so requirements can be proportional to a particular circumstance, whereas the practice restriction under the VS Act currently either applies to, or does not apply to, a particular circumstance. For example, standards can prescribe different requirements (including who can perform particular acts) in different circumstances (e.g. services for companion animals compared to primary production in remote areas). Standards have the potential to apply comprehensively to the specified circumstances whereas, under the VS Act, the practice restriction only applies if the procedure is practised for fee or reward. Standards could be developed for a wide range of animal health services (e.g. including services that do not involve the practice of veterinary science).

Should competency standards for animal health services more generally under the ACP Act replace the practice restriction under the VS Act?

Duty of competence and care for animal health service providers

Currently under the ACP Act, a person who provides cruel treatment or fails to provide appropriate treatment to an animal may be liable to prosecution for the offence of animal cruelty or failing to meet their duty of care to the animal (respectively). The court could make a prohibition order on conviction (such as prohibiting the person from providing those services in the future).

Some animal health services are inherently risky and there may be adverse animal health and welfare outcomes even when they are provided with care and expertise. It may be difficult to establish animal cruelty or a breach of the duty of care under the ACP Act where an animal health service was provided carelessly or without relevant expertise (i.e. it may be difficult to attribute the adverse outcomes to the careless or inexperienced provider).

A similar issue exists in human health where the negligent provision of health services results in death or injury. To overcome this, the Criminal Code contains a provision that deems the death or injury to have been caused by the negligent provider, paving the way for criminal liability (see below). Essentially, it imposes a requirement to provide human health services with reasonable skill and reasonable care.

Duty of care for human life and health owed by providers of human health treatments

Section 282 of the Criminal Code protects a person who performs, in good faith and with reasonable care and skill, a surgical operation or administers medical treatment on another person from criminal responsibility if it is reasonable to perform the operation or administer the treatment. Without section 282, a health practitioner could be criminally responsible for the death or injury of a patient.

To balance this, section 288 of the Criminal Code deems a person administering surgery or medical treatment to have caused the death or injury of another if that person does not have reasonable skill and fails to use reasonable care. Section 288 has been interpreted broadly by the courts—it has been held to include a decision to commend or embark on surgery rather than being confined to the act of surgery itself.¹¹⁵

¹¹⁴ ACP Act, s. 13 enables a standard to be made about animal welfare, including the care and handling of animals and the performance of medical or surgical procedures on animals. There is no standard-making power under the VS Act.

¹¹⁵ *R v. Patel; Ex Parte A-G (Qld)* [2011] QCA 081, 53.

Do you think that a provider of grossly negligent animal health services (regardless of whether they are a veterinarian) should be criminally responsible for any consequential pain, injury, distress or death?

Similarly, clarifying the duty of care owed by providers in the ACP Act may deter under-skilled providers from performing high-risk procedures, regardless of whether they were performed for fee or reward. It could complement the practice restriction under the VS Act or standards under the ACP Act. However, this assumes that an under-skilled person recognises that their services are not optimal. Where this assumption is not true, then action could only be taken reactively with significant financial and welfare costs to the community.

Ensuring continuity of care

Some veterinarians and community members are concerned that there are cases where providers of services are not making appropriate arrangements for post-procedural care in contingencies. Examples cited include procedures undertaken by veterinarians outside the geographical area where their practice is located and who are later unavailable to attend if complications develop. Concerns have also been expressed about practices that cannot be accessed after hours or in which animals are not continually supervised when kept overnight. It is suggested that there should be a requirement for veterinarians to make formal arrangements for care in contingencies.

Concern for continuity of care also extends to provision of any animal health services, including by non-veterinarians where this is allowed. It is suggested that non-veterinarians providing animal health services could be required to have a formal collaborative arrangement with a veterinarian who can provide pre- and post-procedural care as required.

Clarifying that the (proposed) duty of care owed by providers of animal health services includes a requirement to ensure reasonable continuity of care in contingencies is one option for addressing community concerns.

Regulation of the practice of veterinary science if there was no practice restriction

If there was no practice restriction in the VS Act or under the ACP Act, veterinarians in Queensland would still be supervised (and disciplined) by the Board. Protection of title would still enable consumers to identify veterinarians who would provide a high standard of care. Also, there would still be a number of aspects of veterinary science that would be restricted to veterinarians. For example, the *Health Act 1937* would still ensure that non-veterinarians would generally be unable to access scheduled drugs and the *Chemical Usage (Agricultural and Veterinary) Control Act 1988* that they could not use veterinary-only chemicals.

If there was no practice restriction under the VS Act, the regulation of animal health services would be similar to the regulation of human health services in Australia.¹¹⁶ It is likely that even without a practice restriction many consumers would continue to seek the services of a veterinarian. However, some communities argue that respect for the welfare of animals (compared to humans) in the general community is not yet sufficiently widespread that owners can be relied on to choose appropriate service providers for their animals—even if competent veterinarians are identified for them by registration. They provide anecdotal evidence of adverse animal welfare outcomes as a result of the lack of a practice restriction in Victoria, but the extent of the problem is difficult to quantify. While the incidental benefits (e.g. disease surveillance) of high levels of veterinary involvement in animal health services cannot be underestimated, there is no evidence that the lack of a practice restriction in Victoria, and the targeted practice restriction under animal welfare legislation in New Zealand, significantly affects disease surveillance in those jurisdictions.

¹¹⁶ The duty of care for human life and health under the Queensland Criminal Code could be matched with a similar requirement under the ACP Act to provide animal health services with reasonable skill and care (see ‘Duty of competence and care for animal health service providers’).

Part 4 Restrictions on where veterinary science can be practised

The VS Act allows the Board to exert control over many aspects of veterinary practices.¹¹⁷ There are no clear limits on the premises that must be approved or how such premises may be controlled by the Board.

The Australian Capital Territory is the only other Australian jurisdiction that has premises approval requirements that apply to veterinary practice generally (under the registration board's professional standards statement).¹¹⁸ In New South Wales, major surgery can only be performed at approved premises¹¹⁹, but there is no restriction on where other acts of veterinary science can be performed. In South Australia¹²⁰ and Western Australia¹²¹ certain titles are restricted to approved premises, but there is no restriction on where any acts of veterinary science can be performed.¹²² Veterinarian legislation in other Australian jurisdictions does not provide for premises approval.

The current requirement¹²³ under the VS Act that veterinary practice must be conducted at veterinary premises approved by the Board is ambiguous. It could be interpreted as applying to the conduct of every act of veterinary science performed or referring only to a place of business. Both interpretations are problematic.

The Board has generally interpreted the relevant provisions as requiring approval of a place of business for a private veterinary practice. Where a private veterinary practice does not operate from a fixed address (such as mobile veterinarian service providers), the Board's practice has been to condition the relevant 'premises' approval to limit the scope of the veterinary practice.

In September 2011, there were 520 premises approved by the Board. It was estimated that approval of about 40% of these had occurred more than 15 years earlier.¹²⁴ For the past several years, premises inspection prior to approval has been a focus for the Board. For some years prior to that, the Board generally approved premises based on self-assessment by the applicant and undertook inspections only on complaint.

An application fee of \$135.45 (plus a fee of \$271.10 if the Board requires the premises to be inspected)¹²⁵ must be paid for premises approval and there are other compliance costs for practices associated with the inspection requirement. If it was intended that the Board inspect premises periodically (e.g. every five years), an alternative fee structure may need to be considered. (A requirement for renewal of premises approval could be introduced with the initial application and renewal fees set to reflect the cost of inspection before approval or renewal and possibly provision for follow-up visits where deficiencies are identified.) The costs associated with premises approval would increase considerably and would likely be passed on to consumers of veterinary services.

117 Act, s. 29A.

118 Made under the Health Professionals Regulation 2004 (ACT), s. 134 (Standards Statement).

119 In New South Wales, a person generally must not perform major surgery except at premises that are licensed by the registration board. Unlicensed premises must not be advertised as a veterinary hospital, clinic or surgery, or with any other name or description that could be understood to mean they could be licensed.

120 In South Australia, a facility that is not accredited as a veterinary hospital by the registration board must not be held out as a veterinary hospital or animal hospital.

121 In Western Australia, a person must not conduct or carry on a veterinary clinic or veterinary hospital unless it is registered.

122 In *The Veterinary Surgeons' Board Of Western Australia and Alexander* [2011] WASAT 175, the West Australian State Administrative Tribunal left open the possibility that undertaking veterinary surgery at premises other than an approved veterinary clinic or hospital may amount to professional misconduct (even in the absence of a premises approval requirement) provided adequate guidance as to what type of surgery may be undertaken outside of these premises was available.

123 Act, s. 25L. Prior to amendments to the Act in 2001, a veterinarian was free to practise at any place under their own name. The power of the Board to approve and regulate use of premises for veterinary practice only applied where they were advertised as a veterinary surgery, veterinary centre, clinic or hospital.

124 *Vetregister*, The Newsletter of the Veterinary Surgeons Board of Queensland, September 2011, p. 11.

125 In 2012–13 financial year.

The Board continues to restrict the use of the titles ‘hospital’, ‘centre’ and ‘emergency’—even though restrictions on advertising that includes these titles were removed from the VS Act in 2001 following a review against National Competition Policy.

The Board’s powers to approve and control premises allow the Board to oversee aspects of a practice that are beyond the control of veterinarians employed there.¹²⁶ However, in practice this involves only an initial visit to premises.

Greencross Ltd

The deregulation of restrictions on ownership of veterinary practices in Queensland allowed non-veterinarians to acquire a financial interest in veterinary practices. Greencross Ltd is the largest provider of veterinary services in Australia. As of 30 June 2012 it had a portfolio of 81 premises (including animal hospitals, clinics and laboratories) focused primarily on companion animal care and a target acquisition rate of one practice per month. More than half its practices are located in Queensland.¹²⁷

It is feared by some that increased corporatisation may lead to animal welfare and consumers’ interests being sacrificed to shareholders’ interest in profitability. Conversely, it could be argued that corporate practice management might improve practice standards—having facilities in good condition and providing good working conditions are likely to be key success factors for commercial entities.¹²⁸

In theory, the premises approval power allows the Board to ensure premises are suitable for the scope of work being performed there before practice is undertaken. However, restricting all practice to approved premises is not practical (e.g. veterinary services cannot be provided to extensive industries in approved premises). There is currently no express prohibition on a veterinarian whose practice is based in approved premises providing some services elsewhere. There are anecdotal reports of regular provision of veterinary services (e.g. spaying of cats and dogs) from vehicles, or in pet shops with which the providing veterinarian has a business connection (e.g. spaying undertaken as part of a responsible pet ownership campaign). Requiring animal health service providers to make formal arrangements for continuity of care in contingencies may address some concerns about practice outside approved premises (see ‘Ensuring continuity of care’).

If there was no premises approval requirement, the Board could still hold veterinarians accountable for practising in sub-standard conditions using its disciplinary powers.¹²⁹ However, some veterinarians working in a practice, such as recent graduates, may have limited influence over those responsible for managing it.

Other alternatives include creating an offence for a person operating a veterinary practice that offers to provide services in premises that are unsuitable, or developing regulations, standards or guidelines¹³⁰ about veterinary practices. Regulations, standards or guidelines could stipulate an appropriate level of staffing, and facilities and hygiene requirements for practices of varying scope (e.g. standards could stipulate the services that could be offered only if 24-hour supervision of animals was provided). There would, however, need to be a compelling public benefit for such additional regulation, given that the terms of reference for the review (see Appendix 1) require the review to identify where red tape and regulation can be cut to benefit Queensland families and businesses, and reduce administrative costs for government.

126 Restrictions on ownership and control of veterinary practices in Queensland were lifted when the Act was amended in 2001 following a review against National Competition Policy principles. The Act prohibits an employer (e.g. non-veterinarian company director) from directing a veterinarian to practise in a way that would constitute professional misconduct. There are similar prohibitions in New South Wales, Victoria and South Australia. In New South Wales non-veterinarians are also prohibited from having a controlling interest in corporations presenting themselves as veterinary practices. A non-veterinarian is taken to have a controlling interest if they determine the outcome of decisions about operating policies (but not financial policies). Legislation in Western Australia and South Australia requires that the practice is managed by a veterinarian but stops short of prohibiting non-veterinarian ownership. Legislation in Tasmania does not prohibit non-veterinarian ownership of veterinary practices but it requires a body corporate to be listed before it can provide veterinary services.

127 Investor Presentation, Greencross Vets, August 2012, viewed 27 February 2013, <<http://www.openbriefing.com.au/AsxDownload.aspx?pdfUrl=Report%2FComNews%2F20120823%2F01325577.pdf>>.

128 In 2008, the RCVS (in the United Kingdom) expressed the fear that non-veterinary ownership could lead to inadequate veterinary care, but the Department for Environment, Food and Rural Affairs concluded this was not supported by evidence provided to them. They noted that there may even be a case for expecting a move to corporate management of practice to result in higher standards of service to the customer—a position supported by the British Veterinary Association in their submission to a House of Commons Select Committee inquiry into the *Veterinary Surgeons Act 1966* (UK) that examined (among other things) whether veterinary services should be regulated through a mandatory practice standards scheme, with a professional code of ethics, rather than the RCVS regulating practitioners on an individual basis. See, for example, <<http://www.publications.parliament.uk/pa/cm200708/cmselect/cmenvfru/348/8030310.htm>>.

129 The Board can instigate an investigation of a veterinarian’s professional conduct of its own volition.

130 Currently there is no standard or guideline making power under the Act. However, Act s. 37(2) provides that a regulation may be made about the operation, control and management of veterinary premises; the care of animals at veterinary premises; equipment and staffing at veterinary premises; and methods of hygiene and standards of cleanliness at veterinary premises.

Standards for premises where surgery is performed in Tasmania

Under the *Veterinary Surgeons Act 1987* (Tas.), the registration board can make registration standards for veterinary surgeons, veterinary specialists, and veterinary services companies. Under the standards, a veterinary practitioner must only perform major surgery (surgery that requires a general or spinal anaesthetic) in premises that comply with prescribed requirements. Where major surgery is undertaken, the veterinary surgeon must ensure that after-surgery care is made available in the veterinary hospital. For example, a practitioner who carries out an ovariohysterectomy on a dog or cat is required to have in place after-hours care should it be required.

There is also potential for overlap between regulations, standards and/or guidelines about veterinary practices and requirements under other legislation. (For example, improvement in infection control measures in the profession is highly desirable—regulations, standards and/or guidelines under the VS Act could play a role in driving improvement but would duplicate requirements under workplace health and safety legislation. If regulations or standards under the VS Act were not matched by funding of enforcement activities, they could become merely token.)

Another option that could complement regulations or standards is ‘negative licensing’ whereby a veterinary practice found in breach of a regulation or standard could be prevented from offering services until deficiencies are rectified to the satisfaction of the Board.

What should be the nature and scope of the Board’s control over veterinary practices?

Currently veterinarians must display a sign at premises where they practise stating their name, whether they are a veterinary surgeon or specialist and their qualifications as recorded in the relevant register.¹³¹ Given that non-veterinarians may be performing lower-risk acts of veterinary science in some practices (see practice restriction, previously discussed), the sign may assist clients identify who is the responsible veterinarian. Potentially it may also assist them making a complaint to the Board if they are unsatisfied with the service they receive. The public benefit in displaying the qualifications of the veterinarian is less clear.

Should veterinarians display their name, category of registration and qualifications?

¹³¹ VS Regulation, s. 24. There is no requirement to display the sign if the practice at the premises is in a temporary capacity or in locum tenens for not more than 30 days.

Part 5 Registration, oversight and protection of title

Registration of veterinarians

A common feature of veterinary legislation in all Australian jurisdictions is a system of registration for veterinarians. Registration (together with protections of title, see following discussion) ensures consumers can identify persons who can be entrusted to exercise the privileges conferred upon them properly and will provide an appropriate standard of care in the practice of veterinary science. To register as a veterinarian under the VS Act, a person must satisfy suitability requirements (i.e. that they are of good fame and character) and eligibility requirements (i.e. academic).¹³²

Proposed amendments to the VS Act¹³³ would implement the National Recognition of Veterinary Registration scheme (NRVR) in Queensland. The amendments will deem a person who is registered in another Australian jurisdiction to be registered in Queensland (and vice versa as other jurisdictions implement the scheme). New South Wales, Victoria and Tasmania have already implemented the NRVR. The NRVR will benefit veterinarians by allowing them to seamlessly practise nationally, but it will not create a system of national registration and inconsistencies between statutory requirements and authorisations in each jurisdiction will remain.

Suitability for registration

The Board has powers to decide suitability (but not eligibility) for registration. There are no criteria to guide its decisions on whether an applicant is of the required good fame and character.¹³⁴ Veterinary registration legislation in some other jurisdictions¹³⁵ and registration legislation for some other professions (see below) expressly states considerations in deciding suitability that extend beyond the character of the applicant.

Suitability for admission to the legal profession

Under the *Legal Profession Act 2007*, a person must be a ‘fit and proper person’ to be admitted as a legal practitioner. In deciding whether a person is a fit and proper person, the Supreme Court must consider an express list of ‘suitability matters’ (as well as any other matter it considers relevant). However, it may consider a person to be a fit and proper person despite a suitability matter because of the circumstances relating to the matter.

Medical fitness to practice may be outside the Board’s power to consider when deciding whether a person is suitable for registration (although following registration the Board may appoint a committee of medical practitioners to make an assessment and subsequently apply to QCAT for the person’s name to be removed from the register). This has led to some disagreement about whether a university should graduate a veterinary student whose practice may be affected by a physical impairment but who has been able to complete their studies. A similar situation could arise where a student has a history of drug or alcohol abuse that is known to a university but has not prevented the student completing their studies.

Impairment notifications by education providers in human health

Under the *Health Practitioner Regulation National Law Act 2009*, an education provider must notify the national agency of student impairments that may place the public at substantial risk of harm during their training.¹³⁶ The Board may decide if the individual is a suitable person to hold registration in the health profession, including by imposing conditions on the registration that it considers necessary or desirable in the circumstances.

¹³² Act, s. 18.

¹³³ The Agriculture and Forestry Legislation Amendment Bill 2013 was introduced into Queensland Parliament in May 2013.

¹³⁴ Although such criteria could be implied, having regard to the subject matter, scope and purpose of the Act: *Minister for Aboriginal Affairs v. Peko-Wallsend Ltd* [1986] HCA 40.

¹³⁵ See, for example, *Veterinary Practice Act 2003* (NSW), s. 18 and *Veterinary Practice Act 1997* (Vic.), s. 6.

¹³⁶ *Health Practitioner Regulation National Law Act 2009* (Qld), s. 143.

What should guide the Board's decisions on whether an applicant is suitable for registration (competency is assessed separately) and other approvals to practise?

The VS Act does not enable a person to apply for early consideration (e.g. before embarking on a course of study) of whether a matter may adversely affect their suitability.

Early consideration of suitability for legal practitioners

Under the *Legal Profession Act 2007*, a person may seek a declaration that a matter will not, without more, adversely affect the assessment as to person's suitability for admission to the legal profession.

Should a person be able to seek early consideration of their suitability for registration (for a fee that reflects the cost of consideration by the Board)?

Eligibility for general registration

The VS Act allows graduates of courses accredited by the Australasian Veterinary Boards Council Inc. (AVBC)¹³⁷ to register in Queensland. The AVBC consists of representatives from the nine veterinary registration boards in Australia and New Zealand. It has no clear statutory basis but has developed extensive expertise relevant to its role in accreditation.

Additionally, members of the RCVS in the United Kingdom and graduates of courses accredited by overseas bodies prescribed in the VS Regulation can register in Queensland without further examination.¹³⁸ Graduates of certain courses accredited by other bodies, such as the AVMA, can register if they have passed a further examination conducted by the overseas accreditation body.

Overseas-trained veterinarians with other qualifications prescribed by the VS Regulation generally¹³⁹ are required to pass the (Australian) national veterinary qualifying examination¹⁴⁰ in order to be eligible for registration in Queensland.

Ongoing requirements for registration

Registration must be renewed annually. Currently, renewal is not contingent upon a veterinarian having undertaken any continuing professional development (CPD). In Queensland, as in some other jurisdictions¹⁴¹, a record must be kept about CPD undertaken.¹⁴² In contrast, CPD is compulsory in New South Wales.¹⁴³ CPD enables professionals to maintain and enhance their expertise, including keeping abreast of developments in knowledge, skills and operating environments.

The VS Act does not require recent practice by registered veterinarians. In the Australian Capital Territory, recency of practice must have been maintained before services may be provided. In South Australia, an applicant may be required to demonstrate recency of practice where registration is sought after a gap.

¹³⁷ Schedule 1 of the VS Regulation lists the Veterinary Schools Accreditation Advisory Committee (VSAAC) as the accrediting body but VSAAC makes accreditation recommendations that are either accepted or rejected by the AVBC.

¹³⁸ See Act, s. 18(1a) and VS Regulation, s. 21. A person whose degree or diploma is accredited by the European Association of Establishments for Veterinary Education or the RCVS, United Kingdom, may register in Queensland without further examination.

¹³⁹ Unless they are members of the RCVS.

¹⁴⁰ See Act, s. 18(2) and VS Regulation, s. 21.

¹⁴¹ New South Wales, Australian Capital Territory. In South Australia the Board may make guidelines about CPD and can require information about CPD undertaken to be provided in the annual return.

¹⁴² Regulation, s. 26. As of 1 January 2012, the Board also requires that any CPD undertaken must be documented in the annual renewal application.

¹⁴³ In New South Wales, failure to complete CPD is capable of constituting unsatisfactory professional conduct.

The VS Act does not require that veterinarians maintain professional indemnity insurance as a prerequisite to registration or renewal of registration. Holding professional indemnity insurance is required in two Australian jurisdictions¹⁴⁴ and for some other professions in Queensland, such as medical practitioners and lawyers. Compulsory professional indemnity ensures a plaintiff will be able to identify a viable party from whom to seek compensation, but only if the requirement is enforced. However, the size of claims against veterinarians (compared with medical practitioners, for example) may not be such that difficulty identifying a viable party would be common; and the cost of administration and enforcement to ensure comprehensive coverage¹⁴⁵ is justified.

Should CPD, recency of practice and/or professional indemnity insurance be prerequisites for registration or obligations of registered veterinarians?

Proposed amendments to the VS Act¹⁴⁶ would require veterinarians whose 'home' registration is in Queensland¹⁴⁷ to provide the Board with emergency contact details¹⁴⁸ that could be used (only where necessary) to enable the relevant department, or another department prescribed in regulation, to provide veterinarians with information about controlling, eradicating or preventing the spread of an exotic disease, a declared pest or a disease.

Specialist registration

The VS Act provides for a separate system of registration for veterinary specialists.¹⁴⁹ Registration as a veterinary surgeon is a precondition for specialist registration, even for those persons who no longer practise outside their specialty.

Specialist registration under the HPR Act

Some specialist health practitioners may be eligible for, and may hold, both general registration and specialist registration at the same time. Other specialist health practitioners (e.g. people who qualified overseas who do not hold an approved undergraduate or entry-level qualification) may hold specialist registration but may be limited to practising only in their specialty. The competency of a specialist health practitioner is assessed in accordance with the registration standard. This may entail a period of supervised practice or an examination or assessment undertaken by an approved entity.

AVBC has published *Minimum standards as part of the requirements for registration as a veterinary specialist in Australia and New Zealand*. Some of the standards¹⁵⁰ do not reflect the criteria set out under the VS Act¹⁵¹ and, consequently, it is unclear whether (in Queensland) they could be taken into account in approving an application for registration as a specialist.¹⁵²

Should the VS Act adopt the AVBC's 'minimum standards' for recognition as a veterinary specialist?

Other registration categories and approvals

The VS Act currently provides that an overseas-trained person—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 practise for up to five years.¹⁵³ There are no criteria in the VS Act to guide the Board's decisions on applications for approval. The Board has refused all approval applications in recent years. Further, a decision by the Board to refuse, suspend or cancel such an approval cannot be reviewed by QCAT.

144 South Australia and the Australian Capital Territory.

145 For example, the Medical Board of Australia maintains a list of approved insurers and may audit declarations made about insurance.

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

147 The same Bill would implement NVR and the requirement to provide emergency contact details and the capacity to contact veterinarians in an emergency would not extend to veterinarians who are deemed to be registered in Queensland due to being registered interstate.

148 Emergency contact details are a telephone number and email address at which a veterinary surgeon may be contacted immediately during or outside of ordinary business hours.

149 Act, s. 19C.

150 For example, the requirement for an applicant to be currently working a minimum of 25 hours per week in their area of speciality.

151 The criteria are set out in the Act, s. 19C(1).

152 It is a principle of administrative law that a non-statutory rule that changes the operation of statutory decision-making criteria is invalid: *Green v. Daniels* (1977) 51 ALJR 463.

153 Act, s. 18A.

The VS Act also provides that ‘special registration’ may be granted to an overseas-trained person who has not passed the national veterinary qualifying examination, to allow them to engage in teaching or research at James Cook University or The University of Queensland. Recruitment of veterinary specialists to work in an academic environment can be particularly challenging for universities as they need to recruit across a broad range of specialties and cannot match the remuneration packages that may be offered in private practice.¹⁵⁴

However, the VS Act does not provide for ‘limited’ registration (outside of a university setting) or for the Board to grant general registration subject to conditions (e.g. limiting the scope of veterinary science that a registrant may practise). Limited registration is available in some other jurisdictions¹⁵⁵ and in human health care (see below).

Limited registration of health practitioners and registration subject to conditions

Under the HPR Act there are four sub-types of limited registration, for:

- postgraduate training or supervised practice—for those who hold qualifications in the profession, but who must practise under supervision or sit an examination or assessment before full registration
- an area of need—for overseas-trained practitioners who have skills and qualifications considered sufficient to work under supervision in a particular role or position in a geographic location or specific health service (the minister or delegate in the relevant state or territory must decide an area of need exists due to insufficient practitioners to meet the needs of people living in the area)
- teaching or research—for those qualified for a teaching or research position, but not qualified or not intending to engage in clinical practice
- the public interest—for practitioners visiting from overseas for a short period, filling a locum position or exchanging practice with a local practitioner, who do not qualify for registration, but who hold qualifications in the profession (the registration board must be satisfied that it is in the public interest for the practitioner to practise the profession given the practitioner’s qualifications and experience).

A national board can also grant registration subject to any condition the board considers necessary or desirable in the circumstances.

Arguably, the high numbers of veterinary graduates now being produced will soon ameliorate the need for sub-types of registration to address sectoral shortages of veterinarians. However, there are some employers (such as the Australian Government Department of Agriculture, Fisheries and Forestry—one of the biggest employers of veterinarians in Australia) who report difficulties attracting veterinarians into certain streams of practice, such as to perform AQIS inspection functions at exporting abattoirs.

The national veterinary qualifying examination focuses on general clinical practice. If an overseas graduate has been working in other settings for many years (e.g. in primary production or an area of formal specialisation), they may lack recent practice in the necessary breadth of recent clinical experience and may have to retrain to pass the examination. Undertaking the national veterinary qualifying examination is a rigorous and costly process with a high failure rate.

Limited registration could be used to allow the placement of such graduates who have expertise relevant in specific stream of practice in which there is a sectoral shortage (e.g. as AQIS veterinarians). The AVBC does not have competency assessments for specific areas of practice, but large employers may have such capacity or be willing to fund development of competency assessment.

Registration subject to conditions could be used to address specific deficiencies in an applicant’s suitability or eligibility to practise. For example, it could be used to allow restricted practice by persons with a medical impairment (see ‘Suitability for registration’ and ‘Disciplinary powers’) or as an alternative mechanism for allowing limited practice by overseas graduates who do not meet the eligibility requirements.

Should the VS Act provide for limited registration and registration subject to conditions?

154 Initial submission to the steering group for the review on behalf of The University of Queensland, dated 1 May 2013.

155 See, for example, *Veterinary Practice Act 1997* (Vic.), s. 7, which allows the board to grant specific registration to:

- undertake supervised study or training or a course
- fill a veterinary teaching or research position at a tertiary institution
- undergo training, under the direct supervision of a registered veterinary practitioner
- meet an identified need for which the applicant has suitable qualifications
- undertake an exchange program with prior approval of the board.

Oversight of veterinarians

Another common feature of veterinarian legislation across all Australian jurisdictions is oversight of registered veterinarians by a board that has powers to investigate and take disciplinary action in relation to the professional conduct of veterinarians. Oversight maintains public confidence in the veterinary profession by ensuring that registered veterinarians can be entrusted to exercise the privileges conferred upon them for a proper purpose and provide an appropriate standard of care to animals. The NRVF will further benefit consumers by linking oversight of veterinarians nationally.

Bringing proceedings

Under the VS Act, a person has standing to make a complaint to the Board in respect of a veterinarian's conduct if they are a 'person aggrieved'.¹⁵⁶ The term 'person aggrieved' is not defined in the VS Act. On a narrow interpretation, a 'person aggrieved' could be a person whose strict legal rights have been affected by a veterinarian's conduct (e.g. a consumer of veterinary services). On a broad interpretation, a 'person aggrieved' could be any person with an interest in a veterinarian's conduct. Given that several other pieces of legislation rely on the system of oversight under the VS Act to achieve their own objectives, there is a strong argument for allowing any person to make a complaint in respect of a veterinarian's conduct (e.g. an officer of the RSPCA concerned about a veterinarian's role in a matter they had investigated). The capacity of the Board to cause an investigation to be made 'of its own motion' probably could achieve the same result in practice.

Although there is a time limit for bringing proceedings for an offence against the VS Act, currently there does not appear to be a time limit for making a disciplinary complaint against a veterinarian.¹⁵⁷ Because the VS Regulation only requires records to be kept for three years¹⁵⁸, there may be practical difficulties investigating a complaint received more than three years after the grounds for making the complaint arose. Also, the absence of a time limit may expose a veterinarian to an indefinite threat of disciplinary action. But in some circumstances it may be reasonable to progress a complaint notwithstanding a delay.

Time limit for complaints about the conduct of legal practitioners

Under the *Legal Profession Act 2007*, if a complaint is received more than three years after the conduct (i.e. the subject of the complaint) happened, the complaint may be dismissed, unless:

- it is just and fair to deal with the complaint having regard to the extent of, and reasons for, the delay
- or
- the Commissioner considers that the conduct (or the subject of the complaint) may amount to professional misconduct and it is in the public interest to deal with the complaint.

Should there be a time limit for making a complaint against a veterinarian?

Advances in communication technologies not anticipated when the VS Act was developed have increased the ability of veterinarians to provide services remotely. This may give rise to jurisdictional uncertainty (e.g. where a veterinarian in one state negligently diagnoses an animal in another state over the internet, it may be unclear which registration board has jurisdiction to discipline the veterinarian;¹⁵⁹ the NRVF scheme may increase the chance of this occurring because it will facilitate provision of cross-border veterinary services).

¹⁵⁶ Act, s. 22.

¹⁵⁷ In its *Guidelines to veterinary professional standards and complaints*, published on its website, the Board indicates that 'any proceedings under the Act must be initiated within twelve (12) months after an offence is committed or within twelve (12) months of discovery of the offence, whichever is the latter'. However, section 35(1) of the Act provides only that proceedings in relation to an offence against the Act may only be brought within 12 months after the commission or the discovery of the offence (whichever is later). This would not prevent a disciplinary complaint being made against a veterinarian after this time, even where the act or omission upon which the complaint was made could also amount to an offence against the Act. Further, not every act or omission that is capable of attracting disciplinary sanction necessarily also amounts to an offence.

¹⁵⁸ VS Regulation, s. 25(2).

¹⁵⁹ The Board's view appears to be that the person who performs the act is subject to the regulatory regime in the jurisdiction in which the animal that is the subject of the diagnosis is located. The July 2004 edition of *Vetregister* stated that 'if an animal located in Queensland was harmed as a result of a diagnosis and supply of a product from a veterinarian located in another jurisdiction, the owner would be asked to lodge a complaint with the Queensland Board not the Board of the other jurisdiction'. Conversely, under the *Veterinary Practice Act 2003* (Vic.), professional conduct involving the treatment or diagnosis of an animal situated outside Victoria by a veterinarian while in Victoria is taken to be professional conduct in Victoria.

Investigation of conduct

The VS Act gives the Board's members and officers the power to enter premises to ascertain the commission of professional misconduct¹⁶⁰ and subsequent powers, including powers to search for, take samples of and seize property. The review must consider whether providing such powers to enable investigation of complaints about professional conduct is justified with regard to the fundamental legislative principle that legislation should confer power to enter property to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer.¹⁶¹ Other Queensland professional registration legislation varies in whether it provides a power of entry to premises.¹⁶² Some form of power of entry without warrant to investigate complaints made about the conduct of a veterinarian is available in many Australian jurisdictions but not in Victoria, Western Australia or the Australian Capital Territory.

Virtually all investigations by the Board currently comprise an exchange of written material involving the Board, the complainant and the veterinarian that culminates in a hearing at which the veterinarian may elect to appear.¹⁶³ The Board has the power to require a veterinarian to produce records that relate to their practice of veterinary science,¹⁶⁴ but it could be argued that these powers may not be sufficient to ensure documentary evidence (e.g. files, notes, computer disks) is preserved and secured. Where the allegation is serious, exercising a power of entry early in the investigation could prevent anyone with a personal interest in distorting the outcome of the investigation from destroying or removing documentary evidence or concocting documents retrospectively. Exercising a power of entry may also assist an investigation where visual information or the physical context is critical to the allegation or an understanding of the issues.

What powers should be available to support complaint investigation?

The VS Act also does not require that persons investigating complaints have any expertise in investigation (see 'Enforcement' for further discussion of expertise requirements to safeguard use of investigation powers). The Board can co-opt investigatory expertise by appointing a person with expertise as the registrar or an officer of the Board. It is unclear whether the Board can delegate its investigatory functions and powers to a person it engages, for example, as a consultant.¹⁶⁵

Provision for specialist investigators in other jurisdictions

Under the *Veterinary Practice Act 2003* (SA), persons authorised by the registration board as inspectors are responsible for investigating suspected misconduct by a veterinarian, medical unfitness to practise or the commission of offences against that Act. Inspectors are drawn from the Department of the Attorney-General.¹⁶⁶

Under the *Veterinary Practice Act 1997* (Vic.), preliminary investigation into a complaint may be delegated to a lawyer or investigator retained by the registration board (among other classes of persons to whom this function may be delegated).

Under the *Veterinary Practice Act 2003* (NSW), the registration board is allowed to establish a committee and this committee is required to make recommendations to the registration board in relation to a complaint. There is no requirement for the members of the committee to be members of the registration board and at least one must be a non-veterinarian.

There is nothing in the VS Act preventing a Board member who has investigated a veterinarian's conduct (including by use of a power of entry) from also taking part in disciplinary proceedings against that veterinarian. This could compromise the perceived objectivity of such proceedings.

160 The power is limited to entering premises upon which it is suspected, on reasonable grounds, that an act of veterinary science is being, or has been, performed to ascertain the commission of professional misconduct or an offence against the Act (e.g. practising veterinary science, using a protected title or inappropriately directing a veterinarian to practise veterinary science).

161 *Legislative Standards Act 1992*, s. 4(3)(e).

162 A power of entry without warrant is not available under the *Architects Act 2002* and the *Professional Engineers Act 2002*, but is available under some circumstances under the *Legal Profession Act 2007*.

163 The process used by the Board has been refined in consultation with the Queensland Ombudsman's office to ensure both the complainant and the veterinarian have the opportunity to respond to information provided by the other party or otherwise obtained. The conduct of particular investigations is beyond the scope of the review.

164 Act, s. 33C.

165 The wording of the Act, s. 22, 'cause an investigation to be made', is ambiguous. See also the discussion of ambiguity about implied powers to delegate in the discussion of 'Delegation of functions and powers'.

166 Although there does not appear to be anything preventing the South Australian board from appointing a member as an inspector.

The *Veterinary Practice Act 1997* (Vic.) precludes a person who has undertaken a preliminary investigation of a veterinarian's conduct from sitting on the panel at the hearing that determines whether the veterinarian has engaged in misconduct.

In New South Wales, there is no legislated separation of investigatory and disciplinary functions, but there is provision for separation in the legislation—the registration board can establish committees that do not include registration board members to hear and/or determine (if chaired by a lawyer) complaints. Currently, however, the registration board has delegated its investigatory responsibilities to a complaints committee that includes three registration board members and invites experts to join the committee as it needs. The complaints committee may refer very serious complaints for investigation by the full registration board. Otherwise, the complaints committee completes their investigation and makes a recommendation to the full registration board as to whether to dismiss the complaint, or to penalise and to what extent. The registration board may discuss the recommendation, request more information from the complaints committee and decide on the course of action to be taken (they may depart from the committee's recommendation).

Under the HPR Act, investigators drawn from the Australian Health Professional Regulation Agency are responsible for investigating professional conduct.

The RCVS has two statutory committees that deal with disciplinary proceedings—the Preliminary Investigation Committee (PIC) and Disciplinary Committee (DC). If there is an arguable case, the PIC will consider it in private. If the PIC decides that there is a case to answer, it will refer the case to the DC for a hearing. Under the *Veterinary Surgeons Act 1966* (UK) a person may not sit on a DC case hearing if they were involved in the PIC for the same case. Amendments to the *Veterinary Surgeons Act 1966* (UK) are proposed that will affect the size and membership of the PIC and DC. However, consistent with strong support in public submissions, the provision barring a person from sitting on a DC if they were involved in the PIC for the same case will be retained.

One option for providing for investigation of very serious complaints by a person with suitable expertise is to allow the Board to appoint an inspector appointed under the ACP Act to investigate complaints. This approach would be particularly advantageous where an investigation might give rise to disciplinary action under the VS Act and/or prosecution under the ACP Act and it is not known at first which course of action is more appropriate. A similar argument could be made for appointing a person with expertise in investigating complaints made under the Australian Consumer Law.

Who should exercise investigatory powers relating to professional conduct?

Conduct that may attract disciplinary sanction

Under the VS Act, improper conduct by a veterinarian is capable of attracting disciplinary sanction even if it does not occur in the course of professional practice (e.g. addiction to a deleterious drug).¹⁶⁷ This ensures that veterinarians can be entrusted to appropriately exercise the special skills and knowledge they possess as well as the privileges conferred upon them under the VS Act or other legislation (e.g. the ability to prescribe dangerous drugs under the *Health Act 1937*).

The VS Act is silent as to whether the standard of acceptable conduct or practice is measured by reference to the expectations of the profession or the expectations of the public. Although the common law notion of professional misconduct favours the former approach¹⁶⁸, for some professions, statutory intervention has implemented the latter approach (see page 41). Consumers of veterinary services have voiced concerns about deeming conduct or practice as unacceptable only if the majority of veterinarians are doing things differently.¹⁶⁹

167 For example, Act, s. 22F(a) provides that addiction to a deleterious drug can amount to professional misconduct.

168 *Alroe v. Medical Board of Queensland* [2003] QHPT 010, [2004] QCA 634. For example, in *Kyle v. Legal Practitioners' Complaints Committee* [1999] WASCA 115, it was held that the common law notion of unprofessional conduct is concerned with conduct that '... to a substantial degree, falls short of the standard of professional conduct observed or approved by *members of the profession of good repute and competence*' (emphasis added).

169 These concerns related to what was seen as the standard industry practice of recommending annual vaccinations for dogs. They were raised in submissions in response to the *Consumer Voices* Issues Paper released by the Commonwealth Treasury in 2009.

The VS Act includes a non-exclusive list of what constitutes misconduct in a professional respect.¹⁷⁰ Legislation in some other jurisdictions¹⁷¹ also defines unprofessional conduct, although there is some variation. Legislation in some jurisdictions¹⁷² provides for a code of conduct or standards of service that details the expectations on registered veterinarians. Provisions in a statutory code of practice with potential use in disciplinary proceedings could only include obligations that are necessary and reasonable to achieve the objectives of the VS Act. As a result such a code may be more limited than, for example, the *AVA Code of professional conduct*, which includes a broader range of ethical obligations that many veterinarians voluntarily commit to adhere to.

The VS Act provides for a single category of conduct capable of attracting sanction—misconduct in a professional respect. Professional misconduct has been interpreted by the courts as involving conduct that would be reasonably regarded as disgraceful or dishonourable by a practitioner’s peers¹⁷³ or, in more modern times, conduct involving a substantial departure from professional standards.¹⁷⁴ There may be forms of misconduct by veterinarians that, although not falling substantially below the standards of the profession (so as to constitute professional misconduct), should attract sanction. If the above interpretation applies to professional conduct within the meaning of the VS Act, some forms of inappropriate conduct may not attract sanction. Alternatively, if professional misconduct is interpreted as applying to any misconduct regardless of its gravity, a finding of professional misconduct may, in itself, cause reputational damage disproportionate to the gravity of the conduct in question (even though the gravity of conduct is instructive in determining the appropriate sanction).

In contemporary registration schemes for legal practitioners, a finding of professional misconduct (or similar) is generally reserved for conduct of a serious nature and the standard of acceptable conduct is measured by reference to the expectations of a member of the public (see below).

Misconduct in the legal profession

Under the *Legal Profession Act 2007* (Qld), there are two tiers of misconduct:

- unsatisfactory professional conduct, which includes
 - conduct happening in the course of practice that falls short of the standard of competence and diligence a member of the public is entitled to expect of a reasonably competent practitioner
- professional misconduct, which includes
 - conduct involving a substantial or consistent failure to reach or keep a reasonable standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent practitioner
 - conduct of a practitioner, whether or not happening in connection with professional practice that would, if established, justify a finding that the practitioner is not a fit and proper person to practice.

It is unclear whether failing to provide information that a member of the public might reasonably expect to be provided to enable them to give fully informed consent to the provision of a veterinary service is capable of attracting disciplinary sanction. For example, the VS Act does not expressly require a veterinarian to disclose if they do not have expertise in a particular matter.¹⁷⁵ Similarly, the VS Act does not expressly require a veterinarian to disclose if they are proposing to provide a service that a reasonable person, having the knowledge a competent veterinarian would reasonably be expected to have, may consider unnecessary. Nor does it expressly require them to disclose a potential conflict between their duty to their client and the animal being treated, and the veterinarian’s own interests (although this may constitute professional misconduct). By failing to provide such information a veterinarian could exploit the information imbalance between themselves and consumers.

170 Act, s. 22F.

171 See, for example, *Veterinary Practice Act 2003* (NSW), s. 35 and *Veterinary Practice Act 1997* (Vic.), s. 3.

172 Australian Capital Territory, New South Wales, Northern Territory, Tasmania.

173 *Allison v. General Council of Medical Education and Registration* (1894) QBD 750, 678.

174 *Adamson v. Queensland Law Society Inc* [1990] 1 Qd R 498.

175 However, even in the absence of disclosure, if the veterinarians carried out a task that a reasonable person would believe requires an expert to perform, their services would be judged against the standard required of such an expert: *Papantonakis v. Australian Telecommunications Commission* (1985) 57 ALR 1, 11.

Disclosure of conflicts of interest in South Australia

The *Veterinary Practice Act 2003* (SA) contains provisions for the avoidance of conflicts of interest. It requires veterinarians to disclose to their clients and the registration board their interests in businesses involving the provision of veterinary services or the manufacture, sale or supply of a veterinary product.

Expertise and specialisation in the legal profession

If a solicitor inexperienced and lacking knowledge in the field accepts instructions to act for a person injured at work, the solicitor should inform the client of their lack of experience and give the client the alternative to instruct a solicitor who has a degree of experience and expertise in that field.¹⁷⁶

Annual vaccinations for dogs

Consumers have raised concerns¹⁷⁷ that by encouraging dog owners to have their dogs vaccinated annually without advising them of the associated risks and benefits, some veterinarians are over-servicing their clients without obtaining fully informed consent.

What types of conduct should attract disciplinary sanction? Should disciplinary powers be available for use in cases of conduct less serious than professional misconduct? Should the standard of acceptable conduct by a veterinarian be measured by reference to the standard expected by members of the profession? Would a code of conduct for veterinarians clarify what is expected?

Disciplinary powers

The VS Act empowers the Board to investigate the conduct of veterinarians and take limited disciplinary action, or where warranted, refer a matter to QCAT for possible disciplinary action (including deregistration).

The extent of disciplinary action the Board can take in relation to a veterinarian is relatively limited—the Board may impose a fine and/or admonish or reprimand the veterinarian.¹⁷⁸ The Board lacks other lower end disciplinary powers, such as the power to refer a matter to mediation or request a veterinarian to give an enforceable undertaking.

Neither the Board nor QCAT, in exercising their disciplinary functions, are empowered to impose conditions on a veterinarian's registration. Conditions on registration could limit a veterinarian's practice without preventing them earning their livelihood from the profession, as would suspension or deregistration.

For example, under the VS Act, deregistration is the only action available if a veterinarian is medically unfit to practise veterinary science.¹⁷⁹ Conditioning a veterinarian's registration may be a more proportionate response to some impairments (e.g. where a physical impairment that affects a veterinarian's ability to perform delicate surgical procedures but not more basic procedures).

Conditioning powers under veterinary legislation in other states

Under the *Veterinary Practice Act 2003* (NSW), the registration board may impose conditions on a veterinarian's registration with respect to the practice of veterinary science if the registration board is satisfied that the veterinarian is guilty of unprofessional conduct or professional misconduct.

Under the *Veterinary Practice Act 1997* (Vic.), a panel may impose conditions on a veterinarian's registration if the ability of the veterinarian to practise is affected by their mental or physical health, an incapacity or a severe substance dependence, or if the veterinarian has engaged in unprofessional conduct of a serious nature.

176 *Vulic v. Bilinsky* (1983) 2 NSWLR 427, 483.

177 These concerns were raised in submissions in response to the *Consumer Voices* Issues Paper released by the Commonwealth Treasury in 2009.

178 Act, s. 22A(1).

179 Act, s. 22D(6).

Should the Board/QCAT be empowered to impose conditions on a veterinarian's registration? What other lower end disciplinary powers should the Board have?

The maximum fine that the Board can impose on a veterinarian who has engaged in professional misconduct is 10 penalty units (currently \$1100; 1 penalty unit = \$110). Table 2 shows how this compares with the maximum financial penalty that veterinary registration boards can impose in other Australian jurisdictions.

Table 2 Maximum financial penalty that can be imposed on a veterinarian found guilty of professional misconduct in Australian jurisdictions (as at April 2013)

	Maximum financial penalty for professional misconduct
Qld	\$1100 (10 penalty units; 1 penalty unit = \$110)
NSW	\$5000
Vic.	\$2000
WA	\$2000
SA	\$10 000
ACT	\$0
Tas.	\$6500 (50 penalty units; 1 penalty unit = \$130)
NT	\$22 000 (200 penalty units; 1 penalty unit = \$110)

Although it generally does not exercise these powers, the Board also has powers to order a veterinarian who it deems as having engaged in professional misconduct to pay costs determined by the Board (in addition to any penalty imposed).¹⁸⁰

Investigation cost orders by registration boards in other jurisdictions and professions

As in Queensland, the veterinary registration board can order a veterinarian to pay costs under veterinary registration legislation in Victoria, New South Wales and South Australia when disciplinary action is taken.

Under the HPR Act, only the tribunals (to whom the more serious matters must be referred) can make costs orders.

The veterinary registration board in the Northern Territory has the power to order a veterinarian to pay an amount of compensation to the complainant.¹⁸¹

Should the Board have powers to order a veterinarian to pay costs?

The VS Act enables a veterinarian who the Board alleges is guilty of professional misconduct to request a hearing before the Board. It is unclear under the VS Act whether a veterinarian is entitled to legal representation. The Board has raised concerns about the requests of veterinarians to be legally represented when appearing at its hearings. It argues that representation would increase the complexities and ultimately the costs of conducting its hearings (which would be reflected in higher registration and renewal fees). These costs may not be justified given that the Board's disciplinary powers are minor in nature. This argument would be further strengthened if QCAT (who allows legal representation at the review of disciplinary decisions)¹⁸² was empowered to review the Board's disciplinary decisions.

180 Act, s. 22A(4).

181 Veterinarians Act (NT), s. 34(1)(d).

182 Queensland Civil and Administrative Tribunal Act 2009, s. 43(2)(b)(ii).

Legal representation at registration board hearings in Victoria

Under the *Veterinary Practice Act 1997* (Vic.), there is no entitlement to representation at an informal hearing (where only lower end disciplinary action can be taken). However, there is an entitlement to representation at a formal hearing, where higher end disciplinary action (which in Queensland could only be taken by QCAT) can be taken. The findings of an informal hearing can be reviewed at a formal hearing.

The limited disciplinary powers exercisable by the Board arguably justifies that the Board's disciplinary powers are not reviewable by QCAT. However, the sanctions that may be imposed by the Board may not be of as much concern to a veterinarian as the damage to their professional reputation resulting from an adverse finding.

Instead of having a matter heard by the Board, a veterinarian may elect for the matter to be heard by QCAT. When a veterinarian elects to have a matter that could have been resolved in a hearing before the Board heard by QCAT, it adds to QCAT's workload and increases the Board's costs (due to the costs associated with appearing before QCAT).

If the Board initially elects to decide a matter itself and gives a veterinarian written notice that its intention is to exercise its disciplinary powers, it is unclear whether (if further information came to light, for example, during a hearing requested by the veterinarian) the Board could then refer the matter to QCAT if it believed more significant disciplinary action was justified.

In Victoria and South Australia, the registration board has considerably more disciplinary power than the Queensland Board, including the power to cancel registration, which in Queensland would be exercisable only by QCAT. In Victoria, the exercise of these powers is reviewable by the Victorian Civil and Administrative Tribunal, while in South Australia registration board decisions are reviewable by the Administrative and Disciplinary Division of the District Court.

Currently the Board cannot immediately suspend or impose conditions on registration (e.g. requiring that a veterinarian work under supervision or limiting a veterinarian's scope of practice), pending a determination by QCAT, even if the person's ongoing conduct poses an imminent and serious risk to public health or animal welfare.

Immediate suspension of registration in human health care

Under the HPR Act, a registration board may immediately suspend or impose conditions on a health practitioner's registration if:

- the board reasonably believes that because of the practitioner's conduct, performance or health, the practitioner poses a serious risk to persons

and

- it is necessary to take immediate action to protect public health or safety.

Before deciding to take immediate action, the registration board must give the practitioner notice of the proposed action and invite a submission within the time specified in the notice of proposed action. A decision to take immediate action is reviewable by an administrative appeals tribunal.

Should the Board hear all lower end disciplinary matters in the first instance? Should the Board have the power to suspend and cancel registration? Should registration be able to be suspended immediately pending a full hearing? When and by whom would immediate suspension be appropriate? Should all disciplinary decisions by the Board be reviewable by QCAT? Should veterinarians be allowed legal representation at Board hearings?

Investigatory and disciplinary powers under the VS Act only appear to be exercisable in relation to a person whose name *remains* on the register of veterinary surgeons.¹⁸³ Consequently, a veterinarian may avoid being the subject of investigation or disciplinary action by revoking their registration (although under the VS Act, the Board does not appear to be obliged to accede to a veterinarian's request to revoke their registration).¹⁸⁴ There would arguably be nothing preventing that person from subsequently obtaining registration in another Australian jurisdiction—the Board is not empowered to notify registration boards in other states of an unresolved complaint, investigation or disciplinary proceeding against a veterinarian (which otherwise may be a relevant matter when considering an applicant's suitability for registration; see below). Balancing this, upon registering in another jurisdiction, that person would, via NRV, be deemed to be registered in Queensland and therefore the investigatory and disciplinary powers under the VS Act in relation to that person would be re-enlivened. However, there may be a considerable delay before the person's registration in another state comes to the (Queensland) Board's attention, during which time the person could continue to practise veterinary science in any NRV jurisdiction (including Queensland).

Complaints against former registrants in other professions and jurisdictions

Under the HPR Act, investigations may be made and disciplinary action taken in relation to the behaviour of a person while they were registered as a health professional under that Act, even if they are no longer registered. However, in practice if a person decides to cancel their registration while a matter is under investigation, the investigation is put on hold and resumes if the person reapplies for registration. The practical effect of this is that upon reapplying, the person must satisfy (at their expense) the registering authority that the matter does not adversely affect their suitability for registration.

Under the *Veterinary Surgeons Act 1987* (Tas.), the registration board may fix a time during which a former veterinarian cannot apply for re-registration if, had that person been registered, the board could have cancelled that person's registration.

Should the Board have the power to investigate and take disciplinary action against former veterinarians for conduct that occurred while they were registered? Should the Board have the power to notify registration boards in other jurisdictions of unresolved complaints, investigations or disciplinary proceedings against a former veterinarian?

Under the VS Act, deregistration is the only action available if a veterinarian is medically unfit to practise veterinary science.¹⁸⁵ Deregistration may be disproportionate with some impairments. For example, a physical impairment may affect a veterinarian's ability to perform delicate surgical procedures but not the veterinarian's ability to perform diagnosis or more basic procedures.

What powers should be available if a veterinarian is medically unfit to practise?

The VS Act requires the Board to prepare a report into all disciplinary matters and lodge these with the registrar. However, publication of disciplinary action is at the Board's discretion. The Board generally does not name veterinarians when reporting (at its discretion) on cases in its newsletter. This reflects that more serious matters (i.e. those which warrant suspension or deregistration) would be dealt with by QCAT, which already publishes its decisions. However, the lack of a public record of all disciplinary action denies consumers the opportunity to inform themselves before choosing a provider who has been subject to disciplinary action.

183 The Act, s. 22(1), empowers the Board to investigate the professional conduct of a veterinary surgeon. Similarly, the Act, ss. 22A and 22E, empower the Board and QCAT respectively to take disciplinary action against a veterinary surgeon. A veterinary surgeon is defined under the schedule to the Act as 'a person registered as a veterinary surgeon under [that] Act and whose name *remains* upon the register of veterinary surgeons' (emphasis added). Consequently, when read together, these sections arguably do not allow these powers to be exercised against a person who is no longer registered as a veterinary surgeon.

184 Under the Act, s. 21(1)(d), the Board *may* remove from the register the name of a veterinarian who has requested in writing to the Board that their name be removed.

185 Act, s. 22D(6).

Record of disciplinary action for legal practitioners and health practitioners

The *Legal Profession Act 2007* requires the Legal Services Commissioner to maintain a publicly accessible register of disciplinary action taken against legal practitioners that includes the identity of the person against whom action was taken and particulars of the disciplinary action taken.

Under the HPR Act, particular disciplinary action taken against a health practitioner must be included against that person's entry in the register, including a reprimand, or suspension of registration. A separate register of all health practitioners whose registration has been cancelled by an adjudication body must also be maintained.

Should the Board be required to publish details of disciplinary action?

In Victoria, where there is no practice restriction, there is nothing to prevent a veterinarian whose misconduct was so serious that they were deregistered from providing other animal health services provided they did not hold themselves out to be a veterinarian.

Protection of title

Another common feature of veterinarian legislation across all Australian jurisdictions is a title restriction that prohibits a person who is not appropriately registered from using the title 'veterinary surgeon', 'veterinary specialist' and similar.¹⁸⁶ Title restrictions enable consumers to identify persons who can provide a high level of animal health care. However, they only apply to services for which registration is required under the VS Act.

Veterinarians and consumers have reported that some providers of animal dentistry services, animal husbandry services and complementary and alternative animal health care services are advertising in a way that may mislead consumers as to their qualification to provide services. The Australian Consumer Law may provide some remedy if such representations are false, misleading or deceptive.

There are a growing number of veterinarians who are not eligible for registration as a veterinary specialist, who nonetheless have an interest in, and have developed expertise in, particular areas of veterinary practice and want to advertise as such.

Should a person who is not registered as a veterinary specialist be able to indicate they are in general practice in a particular area of veterinary science?

¹⁸⁶ See, for example, the Act, ss. 25P and 25Q.

Part 6 The Veterinary Surgeons Board of Queensland

Another common feature of veterinarian legislation in all Australian jurisdictions is the establishment of a governing body responsible for administering the legislation. The VS Act establishes the Board¹⁸⁷, which has responsibilities under the VS Act principally in relation to registration and oversight of veterinarians.

Organisational form and funding of the Board

The Board is constituted as a statutory authority.¹⁸⁸ This is the organisational form identified by the Webbe–Weller report¹⁸⁹ as most desirable for administering a professional registration scheme. However, some other professional registration boards in Queensland are statutory bodies.¹⁹⁰

Any costs in relation to statutory authorities are generally incurred by an ‘administering’ agency (in this case the department) on their behalf. Statutory authorities generally do not control funds or incur liabilities or own assets in their own right, but the Board has some powers that are generally more appropriate for a statutory body.¹⁹¹

Board members and officers are remunerated for their services. Board members receive fees and allowances (for the cost of travel and other expenses) set by the Governor in Council for a body of this nature.¹⁹² The registrar is a public service officer¹⁹³ paid, from Board funds¹⁹⁴, a salary that reflects the classification of the position. Other officers employed by the Board from time to time are paid according to an applicable award.¹⁹⁵

The Board’s legal costs (which are incurred due to progressing disciplinary matters through QCAT) accounted for about 16% of the Board’s expenditure in 2011–12 (compared to 20% in 2010–11). Although section 15D of the VS Act empowers QCAT to make any costs order it considers appropriate¹⁹⁶, costs are not awarded as a matter of course.¹⁹⁷ Rather, the power is discretionary and exercisable according to the interests of justice.¹⁹⁸ (In September 2011, QCAT ordered a veterinarian to pay costs to the Board¹⁹⁹ subsequent to its decision in November 2010²⁰⁰ that the veterinarian be reprimanded and her registration be suspended for three months. In essence, QCAT awarded costs on the basis that the veterinarian had put the Board to unnecessary expense. It ordered that she pay the Board’s costs ‘from the point in time’ when she was fully apprised of the case against her and should have realised that her defence had little prospect of success.)

The Board also has the power to order costs in matters it decides (see ‘Oversight of veterinarians’) but generally does not exercise that power.²⁰¹

187 Act, s. 4.

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

189 Weller, P & Webbe, S 2008, *A public interest map: Part A Report of the independent review of Queensland Government boards committees and statutory authorities*, Brisbane (Webbe–Weller Report).

190 For example, the Board of Architects Queensland established under the *Architects Act 2002* is a statutory body. A statutory body takes the same form as a statutory authority except it is a separate entity for the purpose of financial accountability legislation. The *Statutory Bodies Financial Arrangements Act 1982* makes provision for a statutory body to bank, borrow, invest and enter into other financial arrangements. A statutory body does not necessarily have power to set fees. For example, despite being constituted as a statutory body, the Board of Architects Queensland does not set fees—they are set by regulation just as they are for the Board. A statutory board incurs additional costs compared to a statutory authority because it is required to maintain separate accounts and produce an annual report for tabling in parliament. It incurs the sole legal liability for any future debts, damages or legal costs. Also, direct appropriation funding from the consolidated fund is generally not permitted for statutory bodies (see *Statutory Bodies Financial Arrangements Act 1982*, s. 6(2); *Financial Accountability Act 2009*, s. 9).

191 For example, it can contract in its own name, acquire, hold and dispose of property, appoint agents and attorneys, engage consultants, charge for services and other things an individual can do.

192 Act, s. 29B.

193 Act, s. 14(2).

194 Act, s. 15(1).

195 Act, s. 14(4).

196 Act, s.15D displaces the position in the *Queensland Civil and Administrative Tribunal Act 2009*, which exhibits a strong intention that the parties must generally bear their own costs of the proceeding: *Veterinary Surgeons Board of Queensland v. McIntosh* [2011] QCAT 417, [5]–[7].

197 *Veterinary Surgeons Board of Queensland v. McIntosh* [2011] QCAT 417, [8].

198 *Veterinary Surgeons Board of Queensland v. McIntosh* [2011] QCAT 417, [9].

199 *McIntosh* (No. 2), [42]. The costs were assessed as amounting to approximately \$75 000.

200 *Veterinary Surgeons Board of Queensland v. McIntosh* [2010] QCAT 601.

201 In one recent case that was referred to QCAT by a veterinarian, the parties agreed during a conciliation conference that the Board should decide the matter and the veterinarian would be ordered to pay costs incurred.

In 2011–12, approximately 14% of the Board’s fee revenue went toward financing the business of AVBC. The fee set by annual resolution of the members of the AVBC is levied on a rate per primary registrant. The rate for 2012 was \$22.34 per registrant (compared to \$22.74 per registrant in 2011) and will remain the same for 2013. Arguably, there is currently no legislative basis for the payment of these levies (see ‘Functions and powers of the Board’ and ‘Participation in AVBC’).

Despite significant in-kind support to the Board that is provided by the department²⁰², the Board’s fee revenue is currently insufficient to fund all of its activities. In 2011–12, the Board’s total expenditure of \$417 378 exceeded its total revenue of \$401 787, despite the amount of \$43 750 awarded for costs incurred in 2010–11 in relation to the abovementioned case heard by QCAT. In 2010–11, its total expenditure of \$453 000 exceeded its total fee revenue of \$385 000. Excess expenditure is being met from funds accumulated in the Board’s fund from previous years.²⁰³ Reliance on funds accumulated from previous years to meet year-on-year deficit is not a sustainable approach to financing the Board’s expenses.

Registration fees

Fees that provide the Board’s funds are set by regulation rather than the Board. In some other Australian jurisdictions the veterinary registration board may set its own fees.²⁰⁴ As shown in Table 3, Queensland’s annual fees are currently the lowest of all Australian jurisdictions except the Northern Territory.

Table 3 Annual fees payable for registration in Australian jurisdictions (as at April 2013)

	Primary registration renewal fee	Additional registration renewal fee for specialists
Qld	\$148.95	\$148.95
NSW	\$235	n/a
Vic.	\$305	\$100
WA	\$365	\$75
SA	\$385	n/a
ACT	\$300	\$186
Tas.	\$350	n/a
NT	\$105	\$157

The Financial and Performance Management Standard 2009²⁰⁵ provides that when setting charges for services, the full cost of providing the services must be considered. The review must consider whether fees payable under the VS Act need to be increased to recover the full cost of the activities of the Board, or whether there are sufficient public benefits of registration to warrant some government subsidisation of the Board’s activities.

Should fees increase to cover the full cost of the Board’s activities?

Public service officers are exempt from registration and renewal fees.²⁰⁶ In the 2013 calendar year there were 69 registrants who were public service officers who did not pay the registration fee. Registration is not an essential requirement for all the roles they occupy and there is nothing in the VS Act preventing a public service officer who has obtained the benefit of the fee exemption from engaging in private practice for fee or reward.²⁰⁷

202 The Board’s accounts are audited with the department’s accounts, the Board registry is situated in a departmental building and the Board registrar is a departmental employee with the overheads associated with that appointment being borne by the department. Note that becoming a separate statutory body would not necessarily preclude provision of departmental support.

203 Although the VS Act gives the Board recourse to the consolidated fund where its funds are insufficient, this provision has not been relied upon.

204 Victoria, the Australian Capital Territory and Tasmania (as of December 2012). In New South Wales the board submits a proposed fee to the minister for approval after consultation with the veterinary profession.

205 Made under the *Financial Accountability Act 2009*.

206 VS Regulation, s. 29(2).

207 Although the Board has a policy of waiving fees for public service officers on the condition that they do not engage in private practice for fee or reward, its validity is doubtful because there is no provision under the VS Act enabling the Board to impose conditions on a veterinarian surgeon’s registration.

Fee exemptions for other government-employed professionals

The HPR Act does not exempt government-employed health professionals from registration or renewal fees.

The *Legal Profession Act 2007* does not exempt a person employed as a government legal officer from the fee payable for an application for admission to the legal profession (the rough equivalent to an initial application for registration under the VS Act).

However, the *Legal Profession Act 2007* exempts a legal practitioner employed in the public sector from the requirement to obtain an annual practising certificate (the rough equivalent of paying an annual fee for renewal of registration under the VS Act) but only for ‘government work’ engaged in by a person employed as a ‘government legal officer’.

Renewal fees are significantly discounted for persons who are 55 years or older, residents of Australia and not engaged in the practice of veterinary science. However, it is unclear whether the VS Act²⁰⁸ would, or if the Board²⁰⁹ could, prevent a person who had obtained a discounted renewal from subsequently practising veterinary science for fee or reward.

Should there be any fee exemptions (e.g. veterinarians employed in the public service) or discounts (e.g. non-practising registrants)?

A veterinary specialist must pay two annual renewal fees—one for registration as a veterinary surgeon and another for registration as a veterinary specialist. It is debatable whether the Board provides ongoing additional services to specialists (i.e. beyond the initial assessment for registration as a specialist for which a separate fee is payable) beyond those provided to other registered veterinary surgeons. Specialists in New South Wales, South Australia and Tasmania²¹⁰ do not pay an additional fee for registration as a specialist.

Should there be a special fee for registration as a specialist?

Functions and powers of the Board

The VS Act does not expressly state the Board’s functions. Its functions must be implied from express requirements and from its powers; its functions have been altered without holistic review every time the VS Act has been amended. Ambiguity about the Board’s functions could cause it to inadvertently fail to perform functions that it was intended to perform or, conversely, perform functions that exceed its authority.

One of the major functions that can be implied for the Board is registering veterinarians. It can also approve practice by others in limited circumstances (under section 18A).

Another major implied function of the Board is to oversee the professional conduct of veterinarians and investigate offences against the VS Act.

The Board also has powers to approve premises for veterinary practice, condition approvals and control premises.²¹¹ In combination, these powers allow the Board to exert control over many aspects of veterinary practice without clear limits on the nature or degree of the control that may be exerted.

The VS Act also allows the Board to expend any surplus funds for the purposes of advancing veterinary science.

208 A person who obtained a discounted renewal would still appear on the register of veterinary surgeons and therefore would be a ‘veterinary surgeon’ within the meaning of the Act. Consequently, that person would arguably be entitled to practise veterinary science for fee or reward.

209 The Board does not have the power to impose conditions on a veterinarian’s registration, which could otherwise be used to prohibit a person who obtained a discounted renewal from practising veterinary science for fee or reward.

210 However, currently there are no veterinary specialists with primary registration in Tasmania.

211 Act, ss. 25C, 25G and 29A.

Functions of the Veterinary Practitioners Board of New South Wales

The *Veterinary Practice Act 2003* (NSW) provides that the functions of the Veterinary Practitioners Board include:

- to register veterinary practitioners and license veterinary hospitals
- to investigate complaints against veterinary practitioners
- to take disciplinary action against veterinary practitioners
- to enforce the provisions of this Act and the regulations, including to take proceedings for offences against this Act or the regulations
- to develop codes of professional conduct for veterinary practitioners
- to co-operate with other jurisdictions in Australia and New Zealand to further a common and harmonious approach to the administration of legislation relating to veterinary practitioners
- to provide information to the veterinary profession relating to continuing education issues, developments in the field of veterinary science and disciplinary matters
- to provide general advice to consumers of veterinary services with respect to the ethics and standards of professional competence that are generally expected of veterinary practitioners
- to provide advice to the minister with respect to any other matter in connection with the administration of this Act
- to promote, provide for or facilitate the professional development of veterinary practitioners, including by determining the requirements for continuing professional development
- to provide, if practicable, scholarships for veterinary study
- to liaise with and/or become a member of professional organisations concerned with veterinary science.

Functions of the Veterinary Practitioners Registration Board of Victoria

Under the *Veterinary Practice Act 1997* (Vic.), the functions of the Veterinary Practitioners Registration Board are:

- to register persons who meet the requirements of the Act
- to recognise qualifications and accredit courses of training
- to establish competency in veterinary practice, whether by conducting or arranging examinations or by other means
- to investigate the professional conduct or fitness to practise of registered veterinary practitioners and impose sanctions where necessary
- issue guidelines about appropriate standards of veterinary practice and veterinary facilities
- to advise the minister on any matters relating to its functions
- when so requested by the minister, give to the minister any information reasonably required by the minister
- any other functions conferred on that board by the Act.

Functions of the Veterinary Surgeons Board of South Australia

Under the *Veterinary Practice Act 2003* (SA), the functions of the Veterinary Surgeons Board of South Australia are to:

- approve courses of education or training that provide qualifications for registration on the general register or the specialist register
- determine the requirements necessary for registration on the general register or the specialist register
- determine the specialties in which a person may be registered on the specialist register
- establish and maintain the registers contemplated by the Act
- prepare or endorse codes of conduct and professional standards for veterinary surgeons
- prepare or endorse guidelines on continuing education for veterinary surgeons
- establish administrative processes for handling complaints received against veterinary surgeons or veterinary services providers (which may include processes under which the veterinary surgeon or veterinary services provider voluntarily enters into an undertaking)
- provide advice to the minister as may be appropriate
- carry out other functions assigned to that board by or under the Act, or by the minister.

Without clearly articulated functions it is not clear what, if any, role the Board is expected to play in providing information or advice to veterinarians and consumers. The Board produces an irregularly published²¹² newsletter, *Vetregister*, for the information of registered veterinarians.

It is also unclear what role, if any, the Board is expected to play in providing policy advice to the government. It currently does, from time to time, provide advice on policy matters including legislation.²¹³ However, there is a risk that involvement of the Board in advising on policy matters could be perceived as compromising its impartiality in exercising its other functions and vice versa. (There could be a perception that the Board may tend to favour legislative changes that expand its role and powers; conversely, there could be a perception that the Board will not take action in a matter according to the law where it knows the government is considering changes to the relevant law. It is generally accepted that the credibility and effectiveness of regulation can potentially be improved by establishing a structural separation between policy development and regulatory administration.)

Proposed separation of roles in the United Kingdom

The RCVS governs the veterinary profession in the United Kingdom through its council and system of committees. This includes the two statutory committees that deal with disciplinary proceedings—the Preliminary Investigation Committee (PIC) and Disciplinary Committee (DC). Council members set the professional and ethical standards for the veterinary profession and may be involved in policy debates that are relevant to cases coming before the PIC and DC. In response to concerns that the overlap of functions could compromise the impartiality of council members sitting on the PIC or DC, an amendment to the *Veterinary Surgeons Act 1966* is proposed that will make members of council, as well as employees of council or the college, ineligible to serve on either the PIC or DC.²¹⁴ Removing the overlap of functions would reduce the risk of legal challenge²¹⁵ against a decision of the PIC and DC.

What functions should the Board have?

Participation in AVBC

The VS Act does not provide for the Board's participation in AVBC, via which it participates in accrediting courses and assessing overseas-trained veterinarians (among other things). The Board has been a member of AVBC since AVBC was established in 1999 (and prior to that was a member of AVBC's predecessor, the Australian Veterinary Boards Conference).²¹⁶

AVBC's decisions (e.g. accreditation of veterinary schools) have the effect of determining who is eligible for registration in Queensland, but there is no clear accountability to the Queensland Government.

There is no question of AVBC's legitimacy. Although it has no legislative underpinnings, it enjoys statutory recognition under the VS Act²¹⁷ and has played a key role in reforms, such as the proposed NRVF scheme.

²¹² The Board has attributed the irregularity of the newsletter to a lack of resources.

²¹³ For example, the Board provided advice on future regulation of acts of veterinary science in research during 2011. At that time, the Board raised concerns with the then minister that the then chair was perceived to have a conflict of responsibility when considering policy matters in their role as a senior departmental officer, given that they had already expressed an opinion on those matters on behalf of the Board.

²¹⁴ *Explanatory document to accompany draft legislative reform (Constitution of veterinary surgeons preliminary investigation and disciplinary committees) order 2013*, Department of Environment, Food and Rural Affairs, November 2012.

²¹⁵ Arguments about the independence of members of DC were raised in a case before the Judicial Committee of the Privy Council (*Holmes v. Royal College of Veterinary Surgeons* [2011] UKPC 48). The Privy Council supported statutory reform to ensure that members of the statutory committees will be chosen from outside RCVS Council.

²¹⁶ The AVBC has existed informally since 1984 and was formally incorporated in 1999. It is composed of board representatives from each jurisdiction in Australia and New Zealand. Consistent with Australian Government policy of devolution of assessment of overseas-trained professionals to the professions, it became responsible for skills assessment of overseas veterinary graduates and administration of the National Veterinary Examination from 1 July 2000.

²¹⁷ For example, the VSAAC, which is a committee under AVBC, is recognised in the VS Regulation, Schedule 1, as an accrediting body.

Most other Australian veterinary registration boards have an express role in their constituting Acts to participate in the accreditation of courses and this arguably provides a statutory basis for participation in AVBC to achieve that function. Conversely, under the VS Act the Board has no express role in the accreditation of courses²¹⁸, although it does have the power to approve a course of study or qualifying examination for the purpose of allowing students to practise under supervision.

Should the Board's functions expressly provide for participation in a body such as AVBC?

Relationship with the minister and department

The VS Act is generally²¹⁹ silent on the relationship between the minister, the department and the Board. For example, it does not expressly state what role the chair of the Board, who is a senior departmental member, is expected to play in that relationship.

Guidance for public service employees on Queensland Government Boards

Welcome aboard: a guide for members of government boards, committees and statutory authorities is one of a suite of policy and administrative handbooks published by the Queensland Government Department of Premier and Cabinet. It explains the role of Queensland Government board members in this way:

'Where public service employees are members of Government Boards either as the Minister's or Chief Executive's nominee or in an ex officio capacity, it is necessary to carefully determine and document their role on the Government Board as a government representative and the reporting relationship with the responsible Minister. This should occur in consultation with the Minister, prior to commencing the term of office.'

'A public service employee's role might include acting as a conduit to the Minister concerning the Government Board and its affairs and representing the government's position in relation to matters being considered.'

'A public service employee should ensure that the Minister is regularly informed of matters before the Government Board (e.g. by providing an agenda to the Minister before a meeting) and provide advice to the Minister on the Government Board's recommendations.'

'When appointed to a Government Board in an official capacity, the public service employee should be aware of the government's policy imperatives and should not present a personal opinion or position that is contrary to either the Minister's directives or the government's policy agenda.'

The extent of the minister's express role (if any) in the exercise of board functions in veterinarian legislation in other jurisdictions varies considerably.

218 As discussed above, the Act provides for accredited courses to be prescribed in regulation and the VS Regulation delegates the power to accredit courses entirely to external bodies (such as VSAAC).

219 Under s. 33A of the Act, the Board is required to report to the minister on disciplinary action it has taken against a veterinarian. Otherwise, the Act does not expressly require the Board to provide advice or information to the minister.

Ministerial involvement with veterinary registration boards in other jurisdictions

Veterinary practitioner registration legislation in Victoria provides for a broad ministerial role in the exercise of the board's functions. Under the *Veterinary Practice Act 1997* (Vic.), the registration board must, in the exercise of its functions, consult with the minister and take into account the minister's advice.

In South Australia and Tasmania, the minister has powers to intervene in particular decisions. Under the *Veterinary Practice Act 2003* (SA), the minister may overturn a registration board decision to refuse or revoke an approved course of training and may appear and be heard in relation to a decision by the board to vary or revoke a condition on a person's registration. (This Act provides a right of appeal to the District Court for other decisions of the board, such as refusal to register an application.) Under the *Veterinary Surgeons Act 1960* (Tas.), the minister may affirm or overturn the board's decision not to allow a non-veterinarian to perform a particular veterinary service upon appeal by the aggrieved person. (This Act provides a right of appeal to the Administrative Appeals Division of the Magistrates Court for other decisions of the board.)

Under the *Veterinarians Act* (NT) the minister may direct the registration board to investigate a matter and provide a report to the minister.

Veterinary practitioner registration legislation in Western Australia and New South Wales is silent on the nature and extent of ministerial involvement in the exercise of the registration board's functions.

Ministerial involvement with other registration boards in Queensland

Under the *Architects Act 2002* (Qld), the Board of Architects of Queensland must act independently, impartially and in the public interest in the performance of its functions. However, the registration board must comply with ministerial direction about the performance of its functions or exercise of its powers. A direction must be in the public interest and may include the application to the board of a policy applying to a public sector unit. The minister must consult with the board before giving a direction. A direction cannot relate to a particular registration decision. The board must also enter into a performance agreement (with the minister) that identifies the board's strategic direction for the next three years and may include other matters.

Under the *Professional Engineers Act 2002* (Qld), the minister may similarly give the Board of Professional Engineers of Queensland direction about similar matters and must enter into a performance agreement.

How and when should the minister or department be able to direct the Board?

The VS Act also does not require the Board to report on its activities. However, the VS Act does provide that the Board may make a written report about a particular disciplinary matter available to the minister.²²⁰ Also, the director-general of the department is the (financially) accountable officer in relation to the Board and is responsible for liabilities of the Board (see 'Organisational form and funding of the Board'). It can be implied that the Board is accountable to the director-general of the department (presumably through its chair, who is a senior departmental member) for management of its finances.

Accountability of the veterinary registration boards of New South Wales and South Australia

The Veterinary Practitioners Board of New South Wales must hold an annual general meeting of the veterinary profession at which all attendees must be provided with a copy of the report by the president of the board as to the activities of the board for the past financial year (as well as its audited accounts and proposed fees and remuneration on which veterinarians are consulted).

The Veterinary Surgeons Board of South Australia must deliver a report on the administration of the *Veterinary Practice Act 2003* (SA) and its work for each financial year (including its audited accounts). The minister must table the report before both Houses of Parliament within 12 sitting days of delivery.

Both boards have more financial independence than the (Queensland) Board, which results in the emphasis on financial accountability.

How and when should the Board report to the minister or department?

²²⁰ Act, s. 33A.

Delegation of functions and powers

The VS Act does not expressly authorise the Board to delegate any of its powers. The question of whether the VS Act impliedly authorises the Board to delegate any of its powers²²¹ is ultimately a matter of statutory interpretation. However, to provide the Board with certainty as to the extent of its powers, it may be desirable for the VS Act to expressly provide for the powers that the Board may delegate.

Some functions and powers of the Queensland registrar are expressly stated in the VS Act²²², while others are implied. The VS Act enables a regulation to be made about the functions and powers of the registrar and officers appointed by the Board, but this power has not been exercised. In some Australian jurisdictions²²³, the registration board may delegate certain functions to the registrar or an officer of the board.

In some Australian jurisdictions²²⁴, the registration board can establish committees to perform certain functions—committees including non-board members may play a role in complaint investigation and/or complaint hearings in New South Wales and Victoria (see ‘Oversight of veterinarians’).

Should the Board be able to appoint committees and delegate certain functions and powers?

Membership of the Board

The Board consists of six members.²²⁵ Two members are elected by registered veterinarians.²²⁶ The chair (who must be a senior departmental officer)²²⁷, the deputy chair and the remaining two members (one of whom may be a non-veterinarian) are appointed by the Governor in Council on the recommendation of the minister.²²⁸ Table 4 compares the membership of the Board with that of veterinary registration boards in other Australian jurisdictions.

221 Even in the absence of an express provision, an Act may impliedly authorise the delegation of a power: *Minister for Aboriginal Affairs v. Peko-Wallsend* (1986) 162 CLR 24.

222 For example, Act, s. 17, 19A and 19B.

223 For example, New South Wales allows functions other than the power to delegate and matters related to deciding disciplinary complaints to be delegated to the registrar.

224 New South Wales, Northern Territory, South Australia, Victoria.

225 Act, s. 4C(1).

226 Act, s. 4C(1)(b).

227 Act, s. 4D(1).

228 Act, s. 4C(1).

Table 4 Summary of the legislative requirements for composition of veterinary registration boards in Australian jurisdictions

	Veterinarians			Non-veterinarians	Total members
	<i>Chosen by minister</i>	<i>Nominated by AVA</i>	<i>Elected</i>		
Qld	3 or 4, including 1 senior departmental veterinarian (chair)	0	2	0 or 1	6
NSW	6, including 1 academic from panel jointly prepared by veterinary schools and 3 selected by minister from panel prepared by AVA (with some criteria for sectoral representation)	0	0	2	8
Vic.	6, including 1 Crown veterinarian and 1 University of Melbourne veterinarian	0	0	3 (at least 1 lawyer and others with expertise in at least 1 prescribed area)	9
WA	1 or 2, including 1 chief of animal health division	1	2	0 or 1	5
SA	3 (with some criteria for sectoral representation)	1	0	3 (at least 1 lawyer and at least 1 with animal health, safety or welfare expertise)	7
ACT	2	0	3	1	6
Tas.	5, including 1 departmental nominee and 3 selected by minister from panel prepared by AVA				5
NT	1 or 2, including 1 chief inspector (chair)	0	2	1 or 2	5

The Professions Australia *Blueprint for national registration of the professions*²²⁹ recommends that membership of a board should provide an effective mix of skills and expertise, including provision for membership that is independent of government and the relevant profession, and that broadly reflects a balance of community interests.²³⁰

Membership of health practitioner registration boards

Under the *Health Practitioner National Law Act 2009*, each board is chaired by a member of the relevant profession, with at least one-half *but no more than two-thirds* of remaining members also being members of the profession.

Queensland is the only jurisdiction, other than the Northern Territory, where veterinarian registration legislation reserves the office of chair to a departmental member. However, there are several other jurisdictions that mandate the presence of a government member²³¹ (in most cases a departmental officer or similar who is generally a veterinarian).

The VS Act does not require a university member on the Board. However, by convention, the office of the deputy chair is reserved to a senior veterinarian academic.²³² Legislation in some jurisdictions mandates the presence of an academic veterinarian member.²³³ An academic member may bring an appreciation of the competencies of a veterinarian on graduation to a registration board.

²²⁹ Professions Australia 2006, *Blueprint for national registration of the professions*.

²³⁰ *ibid.*, p. 27.

²³¹ In Western Australia and the Northern Territory, a member's office is reserved to particular senior departmental positions, namely Chief of the Animal Health Division of the Department of Agriculture and Chief Inspector of Livestock, respectively. In Tasmania and Victoria, government registration board members tend to be senior departmental officers (e.g. the current Victorian government member is the Deputy Chief Veterinary Officer).

²³² Until recently there was only one veterinary school in Queensland and this member was always the Dean of the Veterinary School at The University of Queensland. Now the nominee could conceivably be drawn from either of the two veterinarian schools in Queensland.

²³³ New South Wales and Victoria.

Should there be both a government member and an academic member on the Board?

Veterinarian legislation in several other Australian and New Zealand jurisdictions²³⁴ provides for the election of at least some registration board members. In Queensland, participation of eligible voters in the election of Board members remains significant, although it has decreased steadily over the last decade.²³⁵ The Board meets its triennial election costs from Board funds—in 2013, election costs (net of staffing costs) will comprise approximately \$2650 in advertising and \$1800 in printing and postage if a ballot is required (compared to total expenditure, which runs into hundreds of thousands of dollars).

In some Australian jurisdictions, the AVA has an express role in the nomination process.²³⁶ In Queensland, the VS Act provides only that the governor must have regard to the nomination of the Queensland division of the AVA when appointing a deputy to act during the extended absence of an elected Board member²³⁷, and that an extraordinary vacancy of the office of an elected member must be filled by a person recommended by the minister from a panel of three nominees prepared by the Queensland division of the AVA.²³⁸ In Queensland, just over one-third (38%) of registered veterinarians are members of the AVA—a higher percentage than have participated in any of the last three Board elections.

Should some veterinarian members of the Board be elected? What role should be played by the AVA in the nomination and/or election of Board members?

In Queensland, the final veterinarian member of the Board nominated by the minister (i.e. other than the departmental officer member and the university member) is, by convention, chosen to reasonably balance the veterinarian expertise on the Board. In some Australian jurisdictions, certain veterinarian members' offices are expressly reserved to veterinarians from particular sectors or with a particular scope of practice.²³⁹

Traditionally, there has been strong representation on the Board of veterinarians from South East Queensland. Use of modern communication technology may facilitate a greater representation of veterinarians outside South East Queensland without a significant increase in Board costs.

Should members be nominated to balance the veterinarian expertise on the Board?

The VS Act does not expressly require a layperson (i.e. non-veterinarian) member, but a layperson has been appointed by convention to provide a consumer perspective since the VS Act was amended in 2001²⁴⁰ (to allow for a sixth member). Some layperson members in other jurisdictions are expressly required to bring a consumer perspective²⁴¹ or a non-veterinarian perspective on animal welfare or animal health policy.²⁴²

234 In Western Australia and the Northern Territory, two of five members are elected; in the Australian Capital Territory three of six members are elected; in New Zealand, three of seven members are elected.

235 In 2010, 25% of registrants participated in the election of Board members, down from 30% in 2007 and 35% in 2004.

236 In South Australia and Western Australia, the AVA directly nominates a member. In Tasmania and New South Wales, the AVA provides a shortlist of candidates from which members are nominated by the minister.

237 Act, s. 13(1A).

238 Act, s. 5(2).

239 In South Australia, one veterinarian member must have expertise relating to primary production animals or horses and another must have expertise relating to other animals. In New South Wales, some members' offices are reserved to specialist veterinarians, veterinarians practising in urban areas, or veterinarians practising in rural areas.

240 *Primary Industries Legislation Amendment Act 2001*, s. 38.

241 New South Wales.

242 South Australia.

The VS Act does not require a legal practitioner member on the Board. Legislation in some other jurisdictions²⁴³ requires a legal practitioner member; however, this arguably reflects the higher end disciplinary and quasi-judicial powers conferred on those registration boards compared to the Queensland Board (e.g. the power to cancel registration, which in Queensland would be exercisable only by QCAT)²⁴⁴ and, consequently, the need to ensure these powers are exercised appropriately. For example, veterinary legislation in South Australia safeguards the registration board's higher end disciplinary powers²⁴⁵ by requiring that the Board is chaired by a legal practitioner²⁴⁶ and allowing only the chair to make determinations on questions of law during disciplinary proceedings.²⁴⁷

Nevertheless, even in the absence of higher end disciplinary powers, legal participation on the Board may be beneficial. It could ensure the Board understands the nature and the extent of its powers, and exercises them appropriately.

Recommendation for stronger legal participation in medical complaints in Queensland

The Honourable Justice Richard N Chesterman AO RFD QC was appointed in 2012 to investigate a whistleblower's allegations of medical malpractice within the Queensland health system. His report recommended the number of medical practitioners on the Queensland Board of the Medical Board of Australia be reduced with more legal expertise on the board and that there be stronger legal participation in the review of complaints about medical cases.

What proportion of members of the Board should be non-veterinarians? Should there be express expertise requirements for some non-veterinarians? Should a member of the Board be a legal practitioner?

243 South Australia and Victoria.

244 Although, the Victorian Civil and Administrative Tribunal has jurisdiction to review disciplinary action taken by the Victorian registration board; and the Administrative and Disciplinary Division of the District Court has jurisdiction to review disciplinary action taken by the South Australian registration board.

245 For example, the South Australian registration board has the power to cancel a veterinarian's registration: *Veterinary Practice Act 2003* (SA), s. 64(4)(d)(i).

246 *Veterinary Practice Act 2003* (SA), s. 6(1)(b)(i).

247 *Veterinary Practice Act 2003* (SA), s. 64(4).

Part 7 Enforcement and other matters

Enforcement

The terms of reference require the review to ensure there is appropriate provision for investigation of offences and enforcement of the VS Act.

The VS Act provides for a number of offences, including where:

- a person conducts a veterinary practice other than at an approved premises—maximum 40 penalty units^{248, 249}
- a non-veterinarian practises veterinary science (except where the practice is not for fee or reward or the non-veterinarian is a student in a course approved by the Board and they are being supervised by the veterinarian)—maximum 40 penalty units²⁵⁰
- a veterinary surgeon allows or directs a non-veterinarian to practise veterinary science (except where the practice is not for fee or reward or the non-veterinarian is a student enrolled in a veterinary science course approved by the Board and they are being supervised by the veterinarian)—maximum 40 penalty units²⁵¹
- a person in control of veterinary premises directs a veterinary surgeon to practise veterinary science in a way that would amount to professional misconduct—maximum 40 penalty units²⁵²
- a person falsely claims or holds themselves, or another person, out to be a veterinary surgeon or specialist—maximum 40 penalty units²⁵³
- a person uses a title that includes ‘veterinary surgeon’ or ‘veterinary specialist’ or an abbreviation, or another title, name, initial or word suggesting they are a veterinary surgeon or specialist if they are not—maximum penalty 40 penalty units²⁵⁴
- a person forges an entry in a register or attempts to achieve registration by fraudulent misrepresentation—maximum 20 penalty units²⁵⁵
- a veterinary surgeon fails to produce records requested in writing by the Board in the specified time—maximum 10 penalty units²⁵⁶
- a non-veterinarian assaults, resists, obstructs or hinders, threatens or intimidates a member or deputy member of the Board or any officer of the Board in the exercise of their power to enter premises or the powers available to them (including to search, interview, takes samples, photograph and seize)—maximum 20 penalty units²⁵⁷
- a Board member fails to disclose and exclude themselves from disciplinary hearings if they have a conflict of interest—maximum 40 penalty units.²⁵⁸

Although the VS Act²⁵⁹ allows a regulation to create offences with a penalty of up to 10 penalty units, no such regulations have been made.

Most offences under the VS Act can be broadly categorised as either:

- offences peculiar to regulation of the profession (e.g. breaching the practice restriction)

or

- offences that are broadly analogous to those that support effective administration and enforcement under most Queensland legislation (e.g. for supplying false and misleading information and for failing to produce records).

248 Act, s. 25L.

249 Currently, 1 penalty unit equals \$110; *Penalties and Sentences Act 1992*, s. 5.

250 Act, s. 25M.

251 Act, s. 25N.

252 Act, s. 25O.

253 Act, s. 25P.

254 Act, s. 25Q.

255 Act, s. 30.

256 Act, s. 33C(2).

257 Act, s. 33D.

258 Act, s. 12C.

259 Act, s. 37.

The offences that support effective administration and enforcement appear to be limited to the exercise of specific powers under the VS Act and may not apply, for example, where a veterinarian has provided false and misleading information in written communication with, or at a hearing before, the Board.²⁶⁰

Investigation of compliance with the VS Act

Generally²⁶¹, contemporary legislation expressly requires the appointment of persons with appropriate expertise to exercise investigatory powers (which would provide some safeguard against the inappropriate use of these powers, especially the power of entry without warrant). The VS Act does not include such a requirement; it provides members, deputy members and officers of the Board with a power of entry to investigate compliance with the VS Act.²⁶² (The VS Act limits the capacity of the Board to utilise investigators with appropriate expertise by requiring the Board to employ persons it wishes to exercise investigatory powers—as opposed to allowing non-Board investigators who are employed by the department, or other non-Board employees with suitable expertise, being appointed as investigators.)

Investigation of suspected offence under other Queensland professional registration legislation

Both the *Architects Act 2002* and the *Professional Engineers Act 2002* provide that if the (relevant) registration board reasonably suspects a person has committed an offence against the (relevant) Act, the board may investigate the suspected offence or authorise, in writing, an investigator to conduct the investigation.

The *Legal Profession Act 2007* allows investigators appointed by the Legal Services Commissioner to investigate suspected offences or complaints about a legal practitioner's conduct.

There is nothing in the VS Act preventing a Board member or deputy member who has investigated a suspected offence against the VS Act by a veterinarian (including by use of a power of entry) from also taking part in disciplinary proceedings against that veterinarian. This could compromise the perceived objectivity of such proceedings.

Investigators and inspectors under human health legislation

Under the HPR Act, one class of officers (investigators) investigates professional misconduct and another class (inspectors) investigates compliance with that Act. Investigators and inspectors are appointed by a health profession board and are drawn from the Australian Health Practitioner Regulation Agency. There does not appear to be anything preventing a person from being both an inspector and an investigator. Neither investigators nor inspectors would be involved in deciding disciplinary matters.

260 In some circumstances a person who provided false and misleading information may be liable for prosecution under the Criminal Code (e.g. for fraud). However, there may be additional elements of the offence that would need to be proven (e.g. that they gained a benefit or advantage as a result) that would not need to be proven if there was a simple offence of providing false and misleading information under the VS Act.

261 Exceptions include the *Architects Act 2002* and the *Professional Engineers Act 2002*, which provide the relevant board with the same investigatory powers as an investigator; although it should be noted that these do not extend to a power of entry without warrant.

262 Act, s. 33D.

Most investigatory powers are available to members, deputy members and officers of the Board only after a power of entry has been exercised.²⁶³ In general terms, a power of entry can only be exercised at a place where it is suspected that veterinary science is being, or has been, practised. Consequently, the circumstances in which powers to investigate compliance with the VS Act are available may be narrower²⁶⁴ than contemporary regulatory schemes (see below). This view is supported by an independent report²⁶⁵ that raised concerns that it may not be possible for an investigator to interview any person other than a person found at the veterinary surgery being investigated (i.e. subsequent to the exercise of a power of entry) to ascertain whether an offence against the VS Act has been committed.²⁶⁶ The same report also raised concerns that under the VS Act there is no power for an investigator to compel third parties to provide documents or information.²⁶⁷ This power is commonly available to investigators in contemporary professional registration schemes, regardless of whether a power of entry has been exercised (see below).

Availability of investigatory powers under human health legislation

Under the HPR Act, there are a number of investigatory powers that inspectors can exercise without first having to exercise a power of entry. These include powers to:

- require a person to provide information about the commission of an offence against the Act
- inspect, copy and retain possession of documents produced to the inspector.

Offence proceedings

The VS Act does not expressly state that offences are summary offences. However, the *Acts Interpretation Act 1994*²⁶⁸ provides that if an offence provision does not expressly or impliedly make the offence an indictable offence, the offence is a summary offence.

The responsibility for prosecuting offence proceedings under the VS Act is left open. The operation of the *Justices Act 1886* essentially allows any person, including the Board acting on behalf of the State of Queensland, to initiate proceedings for an offence against the Act.

Penalties

The maximum penalty for a breach of the practice restriction or title restriction in Queensland is 40 penalty units (currently \$4400). Table 5 shows how this compares with the maximum penalty for comparable offences in other Australian jurisdictions.

263 The wording of Act, s. 33D(5) suggests that the investigatory powers which it confers may only be exercised by a person who enters any land or premises pursuant to a warrant or s. 33D(1).

264 Although it could be argued that in practice, making investigation powers available only after a power of entry had been exercised would not frustrate the investigation of suspected offences. This is because all of the 'primary' offences (i.e. those set out in the Act, Part 4B) involve the practice (either actual or perceived) of veterinary science. Thus, where an investigator formed a reasonable suspicion that a person was committing or had committed one of the offences set out in the Act, Part 4B at a particular place, it would also be reasonable to suspect that veterinary science had been or was being practised at that place, thereby enlivening the power of entry under Act, s. 33D(1) and subsequently enlivening the investigatory powers set out in s. 33D(5).

265 DLA Phillips Fox 2008, *Redland Veterinary Clinic investigation report*, p. 48.

266 *ibid.*, p. 48.

267 *ibid.*

268 *Acts Interpretation Act 1994*, s. 44.

Table 5 Summary of maximum penalties for certain offences in Australian jurisdictions (as at April 2013)

	Breach of practice restriction	Breach of title restriction
Qld	40 penalty units (\$4400)	40 penalty units (\$4400)
NSW	50 penalty units (\$5500) <i>and/or</i> 12 months imprisonment	50 penalty units (\$5500) <i>and/or</i> 12 months imprisonment
Vic.	n/a	100 penalty units (\$14 084)
WA	\$2000	\$2000
SA	\$20 000 <i>or</i> 6 months imprisonment	\$20 000
ACT	100 penalty units (\$11 000) <i>and/or</i> 12 months imprisonment	50 penalty units (\$5500) <i>and/or</i> 6 months imprisonment
Tas.	50 penalty units (\$6500)	10 penalty units (\$1300)
NT	500 penalty units (\$55 000)	500 penalty units (\$55 000)

This compares with the maximum penalties under the ACP Act for:

- a breach of the duty of care toward animals—300 penalty units (currently \$33 000; 1 penalty unit equals \$110) or 1 year imprisonment
- an offence of animal cruelty—1000 penalty units (currently \$110 000; 1 penalty unit equals \$110) or 2 years imprisonment.²⁶⁹

Comparing the penalties for a breach of the practice restriction or title restriction with those under other Queensland professional registration legislation (e.g. for lawyers, dentists and architects) is unhelpful, given the difference in context and the consequences of non-compliance.

The difference between the maximum penalties for the offences that support effective administration and enforcement under the VS Act and those for analogous offences in other Queensland legislation generally reflect the difference in context and the consequences of non-compliance. For example, the maximum penalty for the offence of failing to comply with a document production request under the *Environmental Protection Act 1994* is ten times higher than for the corresponding offence under the VS Act.²⁷⁰

Although the VS Act provides that all penalties and fees recovered by the Board under the VS Act shall be paid to the Board and become part of its funds²⁷¹, it is unclear whether this applies to fines imposed by a court for offences where proceedings for the offence are taken by the Board. It is unlikely to have a significant impact on funding of the Board, given that the Board has not initiated any offence proceedings in recent years.

Does the VS Act adequately provide for investigation of offences and enforcement? Are there appropriate safeguards for the powers provided?

²⁶⁹ The Agriculture and Forestry Legislation Amendment Bill 2013 was introduced into Queensland Parliament in May 2013. It proposes to increase the penalty for animal cruelty in Queensland to 2000 penalty units (currently \$220 000) or 3 years imprisonment.

²⁷⁰ Act, s. 33C(2). Under Act, s. 53(2) the maximum penalty is 10 penalty units (currently \$1000).

²⁷¹ See, for example, Act, s. 36.

Modernisation and other matters

There are many other ways that the VS Act varies from comparable contemporary legislation that are not discussed in this issues paper because they are largely technical in nature.

For example, the VS Act does not protect Board members or officers who exercise functions under the VS Act from civil liability for acts done or omissions made honestly and without negligence under the Act. Nor does the VS Act protect a person who makes a complaint about a veterinarian or gives information in the course of an investigation from civil (e.g. defamation) or criminal liability. These provisions are common features of many contemporary regulatory schemes.²⁷²

Many other 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 rewrite of the Act may be necessary. During the drafting of new legislation, consideration could be given to addressing matters that, for reasons of brevity, are not discussed in this paper.

Name of the Act

The current name of the VS Act reflects the terminology traditionally used for all veterinarians in the United Kingdom. In some other English-speaking countries, ‘veterinary surgeon’ denotes a surgical specialist. The equivalent legislation in two other states²⁷³ is also titled ‘Veterinary Surgeons Act’ but in three other states²⁷⁴ it is titled ‘Veterinary Practice Act’. The Northern Territory legislation is simply the ‘Veterinarians Act’.²⁷⁵

While the name of the VS Act has no implications for the interpretation of its provisions, it can guide public perceptions of its purpose and scope. For example, the name might be misleading if the VS Act provided for practice of veterinary science by paraveterinary or allied veterinary professionals (e.g. veterinary nurses) in some circumstances, or regulated a broader range of providers of animal health services.

Should the VS Act be renamed?

²⁷² See Division 4 of the *Health Practitioners (Professional Standards) Act 1999*.

²⁷³ Tasmania and Western Australia.

²⁷⁴ South Australia, New South Wales and Victoria.

²⁷⁵ The profession is regulated under the *Health Professionals Act 2004* in the Australian Capital Territory.

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

Background

The Queensland Government, in its Economic Blueprint for Queensland, commits to cutting red tape and regulation by 20% and changing the culture within government to one that actively reduces red tape.

The *Veterinary Surgeons Act 1936* (the VS Act) regulates:

‘the qualifications and registration of veterinary surgeons and the regulation and control of the practice of veterinary science, and for other purposes’.

A review of the VS Act in 2001 narrowly focused on restrictions on competition (against national competition principles). For example, it did not review the VS Act against contemporary practitioner registration legislation, or for consistency with fundamental legislative principles.

Terms of reference

The review of the VS Act (including the Veterinary Surgeons Regulation 2002) must:

- clarify the purpose of the VS Act
- evaluate requirements and restrictions and identify where red tape and regulation can be cut to benefit Queensland families and businesses and reduce administrative costs for government
- review the current system of registration and supervision—including the governance and role of the Veterinary Surgeons Board—against more modern professional registration legislation, as well as veterinary registration legislation in other jurisdictions; and consider
 - whether registration and supervision of veterinary practitioners is transparent, fair, effective, efficient and justified
 - whether the composition, governance (including appointment and reporting), powers and functions of the Veterinary Surgeons Board of Queensland are appropriate to its role
- review other aspects of the regulation of veterinary science, in particular
 - to consider the relationship between the VS Act and other relevant legislation in achieving policy objectives and if some matters are, or would be, more appropriately addressed under the Australian Consumer Law, the *Animal Care and Protection Act 2001* or other legislation
 - to ensure there are appropriate investigation and enforcement provisions for offences
- report to the minister on recommended improvements to the legislation.

Role and responsibilities of the steering group for the review

The role of the steering group is to:

- oversee the review process and ensure that the issues paper and the final report
 - is informed by a wide range of perspectives and assesses the strengths and weaknesses of these perspectives
 - includes recommendations that are based on evidence that is both impartial and balanced
 - reconciles, where practicable, any divergent views and presents any residual divergent views.

In overseeing the review, the steering group must:

- ensure that the steering group conducts its business in an appropriate manner (responsibility of the chairperson of the steering group)
- ensure that the review is holistic and closely follows and is consistent with these terms of reference
- ensure that the review gives due consideration to
 - opportunities to remove unnecessary red tape and the framework for reducing the burden of regulation that is being developed by the Office of Best Practice Regulation in conjunction with national competition principles
 - the interests of all stakeholders, including veterinarian and non-veterinarian animal health providers and consumers of animal health services
 - the desirability of nationally consistent registration for veterinarians
- ensure that affected stakeholders, including veterinarian and non-veterinarian animal health providers and consumers of animal health services, are given an adequate opportunity to express their views
- give due consideration to advice provided by Biosecurity Queensland and any issues it refers.

Meeting and reporting obligations of the steering group

- At its first meeting, the steering group will agree on its role and responsibilities and broadly how they are to be achieved.
- Indicative meeting dates for the steering group are given in the indicative timetable for review below. If necessary, the chairperson, in consultation with Biosecurity Queensland, may convene up to two additional meetings or request consideration of issues by members out of session.
- Biosecurity Queensland will provide secretariat support and advice to the steering group and draft the issues paper and final report for consideration by the steering group. Papers must be finalised for consideration by the steering group one week before it is scheduled to meet.
- The chairperson is to preside at all steering group meetings.
- A quorum for a meeting of the steering group is three members, one of whom must be the chairperson.
- The steering group will report to the minister quarterly on the progress of the review.

Indicative timetable for review

Action	Date	Indicative steering group meeting dates
Issues paper developed and refined in consultation with affected stakeholders	January–April 2013	January 2013 February 2013 April 2013
Issues paper to minister	May–June 2013	n/a
Public release of issues paper and consultation	July–August 2013	n/a
Final report developed and refined in consultation with affected stakeholders	September–November 2013	October 2013 November 2013
Final report to minister	November 2013	n/a

