

Legislative Council—No 190

As introduced and read a first time, 26 September 2013

South Australia

**Veterinary Practice (Miscellaneous) Amendment
Bill 2013**

A BILL FOR

An Act to amend the *Veterinary Practice Act 2003*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Veterinary Practice (Miscellaneous) Amendment Act 2013*.

5 2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

10 Part 2—Amendment of *Veterinary Practice Act 2003*

4—Amendment of long title

Long title—after "veterinary surgeons;" insert:

to recognise the registration of veterinary surgeons in certain jurisdictions;

5—Amendment of section 3—Interpretation

15 (1) Section 3(1)—after the definition of *Board* insert:

corresponding law means a law of another jurisdiction recognised by the regulations as a corresponding law under this Act;

corresponding specialty, in relation to a specialty, means—

20 (a) a specialty under a corresponding law of the same name as the specialty; or

(b) a specialty under a corresponding law declared by the Board, by notice in the Gazette, to correspond to the specialty;

deemed registration means registration under section 38A;

25 (2) Section 3(1)—after the definition of *inspector* insert:

interstate registration authority means a person or body having the function of the registration of persons under a corresponding law;

jurisdiction means—

(a) a State; or

- (b) a Territory; or
- (c) an overseas jurisdiction brought within the ambit of this definition by the regulations;

(3) Section 3(1)—after the definition of *legal practitioner* insert:

participating jurisdiction means this State or a jurisdiction in which a corresponding law is in force;

primary registration—means registration under Part 3 Division 2;

(4) Section 3(1)—after the definition of *Registrar* insert:

registration means primary or deemed registration;

(5) Section 3(1), definition of *veterinary surgeon*—delete the definition and substitute:

veterinary surgeon means—

- (a) a person with primary registration under this Act; or
- (b) a person with deemed registration under this Act who provides veterinary treatment or engages in other conduct as a veterinary surgeon in this State;

(6) Section 3(3)—delete "section 27" and substitute:

section 38F

(7) Section 3—after subsection (7) insert:

- (8) For the purposes of this Act, a reference to *disqualification* from registration under a corresponding law is a reference to any form of prohibition from general or specialist registration or registration in a corresponding speciality under the corresponding law.

6—Amendment of section 6—Composition of Board

(1) Section 6(1)—delete "7 members" and substitute:

8 members

(2) Section 6(1)—after paragraph (b) insert:

and

- (c) 1 must be a veterinary surgeon engaged in teaching veterinary science nominated by the Council of The University of Adelaide.

(3) Section 6—after subsection (4) insert:

- (5) If a body fails to make a nomination within a period specified by the Minister, the Governor may appoint a person nominated by the Minister and the person so appointed will be taken to have been appointed after due nomination under this section.

7—Amendment of section 13—Functions

(1) Section 13(1)(a)—delete "approve" and substitute:

recognise

(2) Section 13—after subsection (1) insert:

(1a) In recognising a course of education or training, the Board may act on the recommendation of the Australasian Veterinary Boards Council Incorporated relating to the course.

5 (3) Section 13(2)(a)—after "Gazette" insert:

and on the Internet

(4) Section 13(2)(b)—delete paragraph (b)

(5) Section 13(2)—delete ", (b)"

8—Repeal of section 14

10 Section 14—delete the section

9—Amendment of section 17—Procedures

Section 17(1)—delete "4 members" and substitute:

5 members

10—Substitution of sections 26 and 27

15 Sections 26 and 27—delete the sections and substitute:

26—Registers

(1) The Registrar must keep the following registers:

(a) a general register;

(b) a specialist register;

20 (c) a register of persons who have been removed from the general register or specialist register or a particular specialty under this Act or any other Act or law or former Act or law;

(d) a register of persons whose deemed registration under this Act has been affected by a decision of the Board or who have been disqualified by the Board from deemed registration under this Act.

(2) The registers may be kept in conjunction with 1 or more registers kept under corresponding laws.

11—Amendment of section 28—General and specialist registers

30 (1) Section 28(2)—delete "veterinary surgeon" and substitute:

person with primary registration under this Act

(2) Section 28(2)(c) and (d)—delete paragraphs (c) and (d) and substitute:

(c) in the case of a person registered on the specialist register, the specialty in which the person is registered; and

35 (d) particulars of any limitation or condition of the person's registration; and

(da) particulars of any decision of the Board—

(i) waiving or modifying restrictions, limitations or conditions imposed on the person's registration under a corresponding law; or

(ii) waiving any suspension, cancellation or disqualification imposed on the person's registration or the person under a corresponding law,

(being a registration that is deemed registration under this Act); and

12—Amendment of section 29—Register of persons removed from general or specialist register

Section 29—delete "and who have not been reinstated to that register or specialty"

13—Insertion of section 29A

After section 29 insert:

29A—Register of decisions relating to deemed registration

The register of persons whose deemed registration under this Act has been affected by a decision of the Board or who have been disqualified by the Board from deemed registration under this Act—

(a) must include, in relation to each person on the register—

(i) the person's full name and business address; and

(ii) the registration or specialty affected by the decision; and

(iii) the date of the decision; and

(iv) the reasons for and the terms of the decision, including—

(A) any conditions imposed by the Board; and

(B) any waiver or modification by the Board of restrictions, limitations and conditions imposed under a corresponding law; and

(C) any suspension, cancellation or disqualification imposed by the Board; and

(D) any waiver by the Board of a suspension, cancellation or disqualification under a corresponding law; and

(b) must have deleted from it all information relating to a person if the Board's decision has ceased to be operative.

14—Heading to Part 3 Division 2

Heading to Part 3 Division 2—delete the heading and substitute:

Division 2—Primary registration

15—Amendment of section 32—Registration of natural persons on general or specialist register

(1) Section 32(1)—delete subsection (1) and substitute:

5 (1) Subject to this Act, a natural person is eligible for registration on the general register, and a person registered on the general register is eligible for registration on the specialist register in a particular specialty, if the person, on application to the Board, satisfies the Board that—

(a) he or she—

10 (i) has qualifications recognised by the Board for the purposes of registration on the register or in the specialty to which the application relates; and

15 (ii) has met the requirements determined by the Board to be necessary for the purposes of registration on that register or in that specialty; and

(iii) is medically fit to provide veterinary treatment as a veterinary surgeon; and

(iv) is a fit and proper person to be registered on that register or in that specialty; and

20 (b) he or she is, unless exempted by the Board, insured in a manner and to an extent approved by the Board against civil liabilities that might be incurred by the person in the course of providing veterinary treatment as a veterinary surgeon; and

25 (c) he or she has, or proposes to have, his or her principal place of residence in this State.

(2) Section 32(2)—after paragraph (c) insert:

or

30 (ca) does not, and does not propose to, have his or her principal place of residence in a participating jurisdiction but is visiting, or proposes to visit, this State,

(3) Section 32(2)(d)—after subparagraph (ii) insert:

(iii) to provide veterinary treatment or engage in other conduct as a veterinary surgeon while visiting this State; or

35 **16—Amendment of section 33—Application for registration**

Section 33—after subsection (3) insert:

(4) The Board may refuse to determine an application for registration until any complaint made against the applicant under a corresponding law has been finally determined.

17—Amendment of section 34—Removal from register or specialty

(1) Section 34(1)—after "veterinary surgeon" insert:

with registration under this Division

(2) Section 34(2)(d)—after "Act" insert:

(including under section 38E)

(3) Section 34—after subsection (4) insert:

(5) Without limiting subsection (2), the Registrar must suspend the registration of a person if the Board has determined that the registration should be suspended pending the outcome of any disciplinary proceedings under Part 5.

(6) If the Board is of the opinion that a person with registration under this Division should instead have registration under a corresponding law because the person's principal place of residence is in another participating jurisdiction, the Board may direct the Registrar to remove the person from the appropriate register.

(7) However, before the Board gives a direction under subsection (6), the person must be given at least 28 days notice in writing of the proposed removal and the Board must consider any submissions made in response to the notice.

18—Amendment of section 35—Reinstatement on register or in specialty

(1) Section 35(2)—delete "registration on a register or in a specialty has been suspended" and substitute:

registration or registration in a specialty under this Division has been suspended

(2) Section 35(3)—delete "being registered on a register or in a specialty under this Act" and substitute:

registration or registration in a specialty under this Division

19—Amendment of section 36—Fees and returns

(1) Section 36(1)—delete "registered, nor will a" and substitute:

granted registration under this Division, nor will registration under this Division

(2) Section 36(2)—delete "A veterinary surgeon" and substitute:

A person with registration under this Division

(3) Section 36(2)(b)—delete "during the preceding year or to any other matter relevant to the person's registration under this Act" and substitute:

(in or outside this State) during the preceding year or to any other matter relevant to the person's registration under this Act or a corresponding law

20—Amendment of section 37—Variation or revocation of conditions of registration

Section 37(1)—delete "veterinary surgeon" and substitute:

person with registration under this Division

5 **21—Amendment of section 38—Contravention of conditions of registration**

Section 38—delete "registration" and substitute:

registration under this Division

22—Insertion of Part 3 Divisions 3, 4 and 5

After Part 3 Division 2 insert:

10 **Division 3—Deemed registration**

38A—Recognition of veterinary surgeons registered in other jurisdictions

- 15 (1) Subject to this Act, a natural person will, in relation to providing veterinary treatment or engaging in other conduct as a veterinary surgeon in this State, be taken to be registered under this Act (referred to in this Act as *deemed registration*) if—
- (a) the person's principal place of residence is another jurisdiction; and
- (b) the other jurisdiction is a participating jurisdiction; and
- 20 (c) the person is registered under the corresponding law of that other jurisdiction (being registration that corresponds to primary registration under this Act); and
- (d) the person does not hold primary registration under this Act.
- 25 (2) For the purposes of subsection (1), a person's principal place of residence includes any jurisdiction which was, in the last 3 months, the person's principal place of residence.
- 30 (3) A natural person with registration under a corresponding law of a kind recognised by the regulations as corresponding to registration on the specialist register under this Act will be taken to be registered on the specialist register under this Act in each specialty that is a corresponding specialty and in which the person has registration under the corresponding law (insofar as registration under the corresponding law corresponds to primary registration under this Act).

35 **38B—Variation or revocation of conditions of registration**

- (1) The Board may, at any time, on application by a person with deemed registration, vary or revoke a condition imposed by the Board on the person's registration.

- (2) The Registrar and the Minister are entitled to appear and be heard on an application under this section.

38C—Contravention of conditions of deemed registration

A person who contravenes, or fails to comply with, a condition of the person's deemed registration under this Act is guilty of an offence.

Maximum penalty: \$20 000 or imprisonment for 6 months.

Division 4—Relationship between registration in participating jurisdictions

38D—Conditions of registration

- (1) If, under a corresponding law, a person's registration is or is made subject to a restriction, limitation or condition, the person's registration under this Act is subject to a condition to the same effect.
- (2) The Board may—
- (a) on application by the person, waive or modify any such restriction, limitation or condition if it thinks it appropriate in the circumstances; or
 - (b) on its own initiative by written notice to the person, modify any such restriction, limitation or condition if it thinks it necessary to do so for the application of the restriction, limitation or condition in this State.
- (3) The Board may, on its own initiative by written notice to a person with deemed registration under this Act, impose conditions on the registration if it thinks it appropriate in the circumstances.
- (4) The Board may stipulate that a waiver or modification is only to apply on the fulfilment of specified conditions.
- (5) The Registrar and the Minister are entitled to appear and be heard in proceedings under this section.

38E—Suspension or cancellation of registration or disqualification

- (1) If, under a corresponding law, a person's general or specialist registration or registration in a particular specialty is suspended or cancelled, the registration of the person under this Act is suspended or cancelled on the same terms as apply under the corresponding law.
- (2) If, under a corresponding law of another participating jurisdiction, a person is disqualified from general registration, specialist registration or registration in a corresponding specialty, the person is disqualified from registration under this Act on the same terms as apply to the disqualification under the corresponding law.

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- (3) The Board may, on application by a person whose registration has been suspended or cancelled under a corresponding law or who has, under a corresponding law, been disqualified from registration, waive the suspension, cancellation or disqualification if it thinks it appropriate in the circumstances.
- (4) The Board may stipulate that a waiver is only to apply on the fulfilment of specified conditions.
- (5) The Registrar and the Minister are entitled to appear and be heard in proceedings under this section.
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- (6) The effect of a waiver is as follows:
- (a) if suspension of registration under a corresponding law is waived by the Board—
- (i) in the case of a person with primary registration under this Act—the person is taken to be reinstated on the relevant register or in the relevant specialty;
- (ii) in the case of a person with deemed registration under this Act—Division 3 applies to the registration as if the person's registration under the corresponding law had not been suspended;
- (b) if cancellation of registration under a corresponding law is waived by the Board—
- (i) in the case of a person with primary registration under this Act—the person is taken to be reinstated on the relevant register or in the relevant specialty;
- (ii) in the case of a person with deemed registration under this Act—Division 3 applies to the registration as if the person's registration under the corresponding law had not been cancelled;
- (c) if disqualification from registration under a corresponding law is waived by the Board—
- (i) in the case of a person who had primary registration under this Act—the person is taken not to be disqualified;
- (ii) in the case of a person who had deemed registration under this Act—Division 3 applies to the registration as if the person's registration under the corresponding law had been reinstated and the person were not disqualified.
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- 5 (7) If, as a consequence of a waiver under this section, a person has deemed registration under this Act but does not have registration under a corresponding law, the person must pay to the Board an annual practice fee and furnish the Board with a return as if the person had primary registration under this Act and, if the person fails to do so by the due date, the Board may, by written notice to the person, suspend the person's deemed registration under this Act until the fee is paid or the return furnished (as the case requires).

10 **Division 5—Authority conferred by primary or deemed registration**

38F—Authority conferred by primary or deemed registration

Subject to any restrictions, limitations or conditions imposed under this Act—

- 15 (a) general registration under this Act authorises the person to provide veterinary treatment; and
- (b) specialist registration under this Act authorises the person to provide veterinary treatment in the specialty in which he or she is registered or taken to be registered.

20 **23—Amendment of section 40—Illegal holding out as veterinary surgeon or specialist**

- (1) Section 40(1)—delete "registered on the appropriate register and, in the case of a particular class of specialist, in the specialty relevant to that class" and substitute:
- the person has, respectively, general registration, specialist registration, or registration in the relevant specialty, under this Act
- 25 (2) Section 40(2)—delete "is registered on the appropriate register and, in the case of a particular class of specialist, in the specialty relevant to that class" and substitute:
- has, respectively, general registration, specialist registration, or registration in the relevant specialty, under this Act

30 **24—Amendment of section 41—Illegal holding out concerning limitations or conditions**

- (1) Section 41(1)—delete "is limited or subject to a condition under this Act must not hold himself or herself out as having" and substitute:
- under this Act is limited or subject to a condition must not hold himself or herself out as having or being taken to have
- 35 (2) Section 41(2)—delete "is limited or subject to a condition under this Act as having" and substitute:
- under this Act is limited or subject to a condition as having or being taken to have

25—Amendment of section 42—Use of certain titles or descriptions prohibited

- (1) Section 42(1)—delete "is not registered on the appropriate register or in the relevant specialty" and substitute:

5 does not have general registration, specialist registration or registration in a particular specialty under this Act (as the case requires)

- (2) Section 42(2)—delete "is not registered on the appropriate register or in the relevant specialty" and substitute:

who does not have general registration, specialist registration or registration in a particular specialty under this Act (as the case requires)

- 10 (3) Section 42(3), definition of *prescribed word*—delete the definition and substitute:

prescribed word means—

- (a) in relation to general or specialist registration under this Act—

- (i) veterinary surgeon; or
(ii) veterinary practitioner; or

- 15 (b) in relation to registration in a particular specialty under this Act—

- (i) the words comprising the name of the specialty; or
(ii) the words comprising the name under a corresponding law of a corresponding specialty; or

- (c) any other word or expression prescribed by the regulations.

20 **26—Amendment of section 43—Board's approval required where veterinary surgeon has not practised for 3 years**

- (1) Section 43(1)—after "veterinary treatment" first occurring insert:

(whether in or outside the State)

- (2) Section 43(2)(b)—after "registration" insert:

25 under this Act

27—Amendment of section 60—Medical fitness of veterinary surgeon

Section 60(c), (d) and (e)—after "registration" wherever occurring insert:

under this Act

28—Amendment of section 61—Cause for disciplinary action

30 Section 61(1)(a) and (b)—delete paragraphs (a) and (b) and substitute:

- (a) the person's primary registration under this Act was improperly obtained; or

- (ab) a waiver or modification under this Act relating to the person or person's registration was improperly obtained; or

- 35 (b) the person is for any reason no longer a fit and proper person to have primary or deemed registration or registration in a particular specialty under this Act; or

29—Amendment of section 62—Inquiries by Board as to matters constituting grounds for disciplinary action

(1) Section 62(4)(c) to (f)—delete paragraphs (c) to (f) (inclusive) and substitute:

5 (c) if the respondent is a veterinary surgeon—impose conditions on the respondent's registration under this Act restricting the respondent's right to provide veterinary treatment or revoke or vary a waiver or modification that applies in respect of the respondent's registration under this Act;

10 (d) if the respondent has general registration under this Act but not specialist registration—

(i) suspend the respondent's general registration under this Act for a period not exceeding 1 year;

(ii) cancel the respondent's general registration under this Act;

15 (e) if the respondent has specialist registration under this Act—

(i) suspend the respondent's specialist registration or registration in a particular specialty, or the respondent's general and specialist registration, under this Act for a period not exceeding 1 year;

20 (ii) cancel the respondent's specialist registration or registration in a particular specialty, or the respondent's general and specialist registration, under this Act;

(f) disqualify the respondent from general registration, specialist registration or registration in a particular specialty, or both general and specialist registration, under this Act;

25 (2) Section 62(9)—delete subsection (9) and substitute:

(9) If a person fails to pay a fine imposed under this section, the Board may—

30 (a) in the case of a person with primary registration under this Act—without further notice, remove the person from the registers on which the person is registered; or

(b) in the case of a person with deemed registration under this Act—by written notice to the person, disqualify the person from registration under this Act until the fine is paid.

(3) Section 62—after subsection (10) insert:

35 (11) The Board may determine that the registration of a person should be suspended pending the outcome of disciplinary proceedings against the person under this Part.

(12) However—

40 (a) the Board may only act under subsection (11) if it thinks that it is necessary to do so because there is a serious risk that the health and safety of the public or the health and welfare of animals will be endangered; and

- (b) if the Board acts under subsection (11), it must—
- (i) immediately notify the person of the suspension and the reasons for the suspension; and
 - (ii) ensure that the disciplinary proceedings are dealt with under this section as quickly as is reasonably practicable.

30—Amendment of section 66—Right of appeal to District Court

Section 66(1)—after paragraph (b) insert:

- (ba) a refusal by the Board to vary or revoke a condition imposed by the Board on a person's registration under this Act; or
- (bb) a refusal by the Board to grant a waiver or modification under this Act in relation to a person or person's registration; or
- (bc) a direction by the Board to remove a person from a register under section 34(5); or

31—Amendment of section 74—Confidentiality

Section 74(1)(d)—delete paragraph (d) and substitute:

- (d) to an authority with responsibility for administering a corresponding law in connection with the administration of that law; or
- (e) to an authority or other body in connection with the establishment or administration of a national database envisaged by section 75.

32—Insertion of sections 75 and 75A

After section 74 insert:

75—Arrangements between the Board and interstate registration authorities

- (1) The Board may enter into an arrangement with interstate registration authorities for the purposes of establishing a national database of veterinary surgeons, practitioners or service providers (however described) and for other purposes related to the recognition of people engaged in veterinary practice or treatment in other jurisdictions.
- (2) Such an arrangement may, without limitation, involve the establishment of a national database by the Australasian Veterinary Boards Council Inc.

75A—Notification of disciplinary action to interstate registration authorities

- (1) The Board must notify each interstate registration authority of—
 - (a) any disciplinary action taken against a veterinary surgeon under this Act; or
 - (b) any other action of a kind prescribed by the regulations for the purposes of this subsection.

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- (2) The Board is authorised to act under this section despite any law relating to confidentiality.
 - (3) This section does not affect any obligation or power to provide information under the *Mutual Recognition Act 1992* of the Commonwealth or the *Trans-Tasman Mutual Recognition Act 1997* of the Commonwealth.

33—Amendment of section 76—Evidentiary provision

Section 76(1)(b) and (c)—delete paragraphs (b) and (c) and substitute:

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- (b) that a person named in the complaint has or does not have, or had or did not have on a specified date, general or specialist registration, or registration in a specified specialty, under this Act;
 - (ba) that the registration under this Act of a person at a specified date was primary registration or deemed registration;
 - 15 (c) that the registration under this Act of a person named in the complaint is, or was on a specified date, subject to specified conditions;

34—Amendment of section 79—Regulations

Section 79(2)—after paragraph (a) insert:

- 20
- (ab) require the keeping of records or other information by veterinary surgeons or any other person or body prescribed by the regulations;
 - (ac) require the furnishing of receipts, returns or other information to the Board or any other person or body prescribed by the regulations;