

**NATIONAL COMPETITION POLICY
LEGISLATION REVIEW**

Veterinary Surgeons Act 1985

**Final Report
September 2000**

The views expressed in this Report are the views of the Review Panel and do not necessarily represent the views of the South Australian Government. Any action taken in anticipation of the outcomes of the review process is at the risk of persons taking such action.

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INTRODUCTION

The following report concerns a review of the *Veterinary Surgeons Act 1985*. The review is conducted in compliance with an obligation upon the South Australian Government under clause 5 of the Competition Principles Agreement. The Competition Principles Agreement is one of three agreements signed by the Commonwealth, State and Territory Governments in April 1995. These three agreements give effect to the National Competition Policy.

The obligation contained in clause 5 of the Competition Principles Agreement concerns the review, and where appropriate reform, of legislation which restricts competition. The guiding principle in undertaking this review is that the *Veterinary Surgeons Act* should not restrict competition unless:

- (a) the benefits of the restriction to the community as a whole outweigh the costs; and
- (b) the objectives of the legislation can only be achieved by restricting competition.

The Terms of Reference for this review reflect the requirements of the Competition Principles Agreement. In addition, the Review Panel has considered whether administrative procedures required by the *Veterinary Surgeons Act* are unnecessary or impose an unwarranted burden on any person.

To satisfy the requirements of clause 5 of the Competition Principles Agreement the following documents have been reviewed:

Veterinary Surgeons Act 1985

Veterinary Surgeons Regulations 1987.

This report is in five parts. The first part concerns the central issues of the review. The second part of the report contains the analysis of the restrictions contained in the Act. The third part examines the administrative burden imposed by requirements of the Act. The fourth part of the report lists the recommendations arising from the review. Finally, Part 5 of the report contains various appendices, including the Terms of Reference and consultation list.

References to sections are references to sections of the *Veterinary Surgeons Act*, unless otherwise indicated. References to regulations are references to the *Veterinary Surgeons Regulations*, unless otherwise indicated.

Glossary

For the purposes of this Consultation Paper the following terms have the meanings ascribed to them below:

"AEC" means Animal Ethics Committee;

"AQIS" means Australian Quarantine and Inspection Service;

"AVA" means Australian Veterinary Association;

"AVA (SA)" means Australian Veterinary Association (SA Division);

"the Board" means the Veterinary Surgeons Board established under the Act;

"Qualified Person" means a veterinary surgeon, a veterinary practitioner or a permit holder;

"RSPCA (SA)" means the Royal Society for the Prevention of Cruelty to Animals (South Australia) Incorporated;

"unprofessional conduct" includes:

- (a) improper or unethical conduct in relation to the practice of veterinary surgery;
- (b) incompetence or negligence in relation to the practice of veterinary surgery;
- (c) a contravention of, or failure to comply with:
 - (i) a provision of this Act; or
 - (ii) a condition imposed by or under this Act in relation to registration or the issue of a permit under this Act; and
- (d) conduct that constitutes a criminal offence punishable by imprisonment for one year or more;

"veterinary treatment" includes:

- (a) the diagnosis of disease in, injury to, or the condition of, an animal;
- (b) the administration of an anaesthetic to an animal; and
- (c) assistance of a prescribed kind to, or for the benefit of, an animal.

PART 1: CENTRAL ISSUES

1.1. Objectives of the Act

The objectives of the Act are to provide:

- a) for the registration of veterinary surgeons; and
- b) to regulate the provision of veterinary treatment for the purpose of maintaining high standards of competence and conduct by veterinary surgeons in South Australia.

This purpose is stated in the preamble to the *Veterinary Surgeons Act*. Submissions received considered that the regulatory regime in force pursuant to the *Veterinary Surgeons Act* met these objectives.¹

The Review Panel has identified that the underlying objective of the Act is the protection of the Public. The Review Panel deliberated on whether to alter the expressed objectives of the Act to include a statement that an object of the Act was the protection of the public. The Review Panel considered that such an amendment was not appropriate and accordingly no such recommendation has been made.

The mechanisms established by the Act to achieve these objectives include:

- (a) to establish the Veterinary Surgeons Board of South Australia (**the Board**);
- (b) to provide for the registration of veterinary surgeons and practitioners;
- (c) to provide for the issuing of permits to unqualified practitioners in areas with a deficit in veterinary services;
- (d) to prohibit 'holding out' by persons who are not deemed to be qualified under the Act; and
- (e) to provide for investigation, and if necessary disciplinary measures, in relation to *unprofessional conduct, competence and capacity of registered veterinary surgeons*.

The Review Panel has conducted the review of the *Veterinary Surgeons Act* from the perspective that the objective of the Act is to benefit the Community at large as compared to the protection of the Veterinary profession.

¹ Submissions received from the RSPCA (SA) and Dr L Doube, the submission received from the SA Farmers Federation stated that the original purpose of the Act was still relevant and provides confidence to the many users of veterinary services, at 1.

The review panel considered that the current name of the Act was too specific to the profession and did not include permit holders as veterinary treatment providers. It was therefore recommended that the name of the Act be changed to a more generic term.

1. Recommendations:
The name of the Act should be changed to the "Veterinary Practice Act".

1.2. Markets

The purpose of legislation review is to analyse the effect of legislative restrictions upon competition in markets. The identification of the relevant markets is imperative, therefore, for an accurate assessment of the impact of legislative restrictions upon competition. Markets can be defined according to their four elements:

- | | |
|--------------------------|---|
| Product: | What product is the subject of the market and what products are substitutable for that product? |
| Functional Level: | Is the market at the production, wholesale or retail level? |
| Geographic Area: | Is the market regional, Australian or global? |
| Temporal: | How will the passage of time be likely to affect the market? |

Competition within markets is competition in the broad sense of the ability to enter and participate in a market, not in the sense of an individual's rights to participate in a market. Competition policy is concerned with broad, competitive outcomes rather than marginal behaviour. The potential impact of legislated restrictions upon an individual's participation in a market, therefore, is only relevant to legislation review where the impact on the individual is symptomatic of broader anti-competitive outcomes caused by the legislated restriction. This distinction is important in the context of reviewing legislation which empowers a body to take disciplinary action against individuals in a profession. The ability to restrict or prevent an individual's participation in a profession is only relevant to legislation review if the criteria for imposing such restrictions distorts competitive conduct in a market.

1.2.1. The Market for the Provision of Veterinary Treatment

A market exists for the provision of veterinary treatment. The product of this market is the provision of four interrelated services:

- (a) the diagnosis of diseases, injuries and other medical conditions of animals, as well as, the certification of animal health;

- (b) the provision of advice with a view to addressing the problem diagnosed and to maintaining the health of the animal;
- (c) the provision of medical and surgical treatment to animals; and
- (d) the provision of professional advice on policy matters concerning the furtherance of animal welfare, primary industries and public health.

Competition within this market occurs at the time when a consumer responsible for the welfare of an animal seeks to engage a supplier of veterinary treatment. The geographical extent of the market is likely to be regional as most people seek the services of a veterinary surgeon in close proximity to where the animal is housed. Exceptions to this general proposition will occur where the owner of the animal seeks the services of a veterinary surgeon located outside of the region due to the type of animal or nature of the complaint. This, however, would be considered to be marginal behaviour for the purposes of undertaking market analysis.

The submission from the AVA(SA) included an overview of the veterinary treatment market in South Australia, this comprised a run down of the value in dollar terms of the separate treatments and functions undertaken by veterinary surgeons in South Australia. A copy of this overview is attached in Appendix 2.

1.2.2. Market for Veterinary Training

A market exists for the provision of training to individuals aspiring to become veterinary surgeons. The product of the market is the provision of the requisite training needed to achieve registration. Recognised training providers under the Act are situated in Victoria, New South Wales, Western Australia and Queensland, as well as in New Zealand and the United Kingdom.

1.3. Restrictions

Restrictions upon competition are of three types:

- (a) barriers to entering (or re-entering) markets;
- (b) restrictions on competition within markets; and
- (c) discrimination between market participants.

Each of the restrictions identified in the course of this review has been identified in terms of these theoretical types of restrictions. Such categorisation is useful for analysing the impact of each restriction upon competition in the relevant market.

For the purposes of this review, restrictive provisions have been assessed as "trivial", "intermediate" or "serious". There is no definitive means of determining the correct weighting to be ascribed to restrictions. The following, however, is the 'rule of thumb' utilised during the course of this review. A "trivial" restriction upon competition has only a minimal effect upon competition within a market. An "intermediate" restriction upon competition is a restriction which imposes a substantial cost upon competition. In this context "substantial" indicates an effect upon competition which is not minimal. By comparison, a "serious" restriction is a restriction which prohibits entry or re-entry into a market, or prohibits certain conduct within a market.

Under the *Veterinary Surgeons Act*, the provision of veterinary treatment is restricted to "qualified persons" which includes veterinary surgeons, incorporated veterinary surgeons and permit holders. A central issue in this review, therefore, is whether the requirement to be registered is justified in terms of the public benefits achieved by registration outweighing the costs generated by the requirement to be registered. A conclusion that registration was not justified would lead to a recommendation that the *Veterinary Surgeons Act* be repealed. A conclusion that registration is justified leads to an investigation of the other restrictions of the *Veterinary Surgeons Act* which implement and complement the requirement to be registered. This process of enquiry has been adopted by the Review Panel and, therefore, the first issue discussed in Part 2 of this Consultation Paper is whether the requirement to be registered is justified.

1.4. Alternatives

The Review Panel is required to consider alternative means to achieve the objectives of the Act.

Free Market

The initial alternative to the legislative system is to repeal the Act allowing for market forces to control veterinary treatment within the market. In such an environment, any person could provide veterinary treatment, this would result in the heightening of competition within the market and a likely reduction in the price of veterinary treatment.

The free market approach would both increase consumer choice as to which veterinary treatment they engaged, as well as, facilitate animals access to some form of treatment. It would become the consumers choice as to the level of service which they would employ to treat their animal. If comprehensive treatment is sought a consumer could pay the extra and go to a qualified veterinarian, with a reputation for quality treatment within the market. The consumer could also choose to employ a less qualified treatment provider at a more economical price. The consumer's choice would likely be based on the financial resources of the consumer, their perceived complexity of the treatment required and the economic and emotional value of the animal to the consumer.

A benefit of the free market approach is that it caters not only to the consumers who seek the services of a qualified veterinary surgeon but also caters to those who want a more economical alternative. For example a farmer who requires a simple procedure to be

undertaken on a large number of animal stock, may opt for an unqualified veterinary treatment provider who has experience in the specific procedure required as compared to a qualified veterinary surgeon. The farmer would then reduce the costs of production of the animals at, considering the relative monetary value of individual animals, a low risk to the overall profitability of the herd or flock.

The overall reduction in the cost of veterinary services may also provide greater access for animals to veterinary treatment where the higher prices associated with qualified veterinary care had previously discouraged animal owners from seeking treatment. Animal welfare in a general sense may improve in that whilst the overall quality of the care received by animals may decline the volume of animals which receive some form of treatment would be likely to increase as animal owners who formally could not afford treatment for their animals enter the budget end of the market.

A submission was received from the RSPCA (SA). The RSPCA (SA) submission agreed that deregulation would increase the number and type of persons who could provide veterinary services and that this may well have benefits for the community and for their animals. The RSPCA (SA) did, however, express concern that the competence of those providing veterinary treatment would not be assured. The RSPCA (SA) stated that it believed that the competence of veterinary treatment providers was best assured through the mechanisms of the current legislation.² A majority of the submissions also supported the Act in its current form and suggested that it should be retained.³

Consumer Protection Law

Another alternative is reliance on consumer protection laws to regulate the provision of veterinary services. Consumer protection laws would operate as an adjunct to a deregulation of the veterinary treatment market and, therefore, this alternative would enjoy the same benefits of choice associated with the free market system, whilst providing a safety net for consumers.

General consumer protection law is contained in the *Fair Trading Act* 1987 (SA) and the *Trade Practices Act* 1974 (Cth). Under both statutory regimes a consumer of veterinary treatment could pursue the provider for compensation if that provider misrepresented their level of expertise or skill, and or, provided sub-standard treatment to the consumer's animal. Consumer protection law, therefore, operates as an incentive for veterinary treatment providers to meet consumer's expectations and provides compensation, in the form of damages, to consumers who have received a sub-standard service or have been misled, for example if a lay provider claimed to hold veterinary qualifications upon which the consumer relied.⁴

² RSPCA (SA) at 4.

³ South Australia Cattle Advisory Group at 1, Australian Veterinary Association (SA Division), South Australian Farmer Federation, see Appendix 6 No 8

⁴ The submission received from Mr Edmonds supported the incentive aspect of the Consumer Protection law alternative, suggesting that the payment of compensation to consumers would motivate veterinarians to provide quality veterinary treatment, Chap 5 at 19.

The Review Panel considers that consumer protection law does not provide a perfect incentive for veterinary treatment providers to meet consumer expectations. Therefore, in the context of veterinary services, the risks of irreversible harm to the animal cannot be effectively addressed through reliance upon general consumer protection law.

In addition, under consumer protection law the owner of the animal faces a number of obstacles in accessing the legal system. The cost of instigating proceedings and the considerable time and inconvenience cost and the emotional stress involved in pursuing a person through the legal system all act to restrict an aggrieved consumer's access to the legal system.

Consumer protection law does not specifically aim to maintain professional standards within society. As a result consumer protection law would not legally prevent unfit individuals from providing veterinary treatment. Consumer protection law cannot, therefore, be relied upon solely to fulfil the objectives of the Act. A number of submissions were received concerning the suitability of consumer protection legislation as an alternative to the current *Veterinary Surgeons Act*.⁵

Preventative Legislation

Legislation such as the *Controlled Substances Act 1984* and the *Prevention of Cruelty to Animals Act 1985* operate to prevent the misuse of drugs and cruelty to animals. The *Controlled Substances Act* provides a measure of practice protection, as pursuant to section 13, the use of drugs is restricted to qualified veterinarians. This ensures that drugs are handled by qualified professionals and that the risk of misuse to both consumers and their animals is minimised. This protection only covers a single aspect of veterinary practice, it would however work in conjunction with consumer protection laws to provide further consumer and animal protection within the free market.

The *Prevention of Cruelty to Animals Act*, under section 13, makes it an offence for a person to deliberately or unreasonably ill treat an animal. The offence is punishable by either a \$10,000 fine or 12 months imprisonment. The difficulty lies in the enforcement of the *Prevention of Cruelty to Animals Act*. Except in clear cases of abuse, it would be difficult to prove that a veterinary treatment provider, deliberately or unreasonably caused an animal pain beyond that which was required as part of the animals treatment. Proving that a person has provided veterinary treatment who is not a "qualified person" under the Act, is relatively easy by comparison.

Submissions received from the Animal Welfare League of SA, the South Australian Animal Ethics Committee, the AVA (SA), the RSPCA (SA), and the Board, all expressed the view that the *Prevention of Cruelty to Animals Act* would be insufficient to regulate the provision of veterinary treatment, so as to ensure the quality of treatment provided and to protect the welfare of animal patients.⁶

⁵ See Appendix 6 No 9

⁶ Australian Veterinary Association (SA Division) at 13, RSPCA (SA) at 3 and Veterinary Surgeons Board of SA at 2, see Appendix 6 No 10

Self Regulation

Another alternative is self regulation. Self regulation is a system where the veterinary service industry acts to set up a voluntary set of standards for veterinary treatment providers. The industry would then accredit members as treatment providers who adopt the standards. The industry body could also provide community education, including promoting the use of certified veterinary treatment providers and ensure that skills and professional development are maintained amongst accredited service providers. Self regulation would act in concert with both consumer protection laws and preventative legislation.

Self regulation allows for a level of freedom within the market place that would foster greater competition, reduced prices and provide greater choice for consumers. Self regulation also provides a mechanism through which the standards of those wishing to participate in the industry body may be maintained.

The standards and codes employed by the industry could reflect the different levels of skills and qualifications of the different potential participants within the veterinary treatment market. The industry could provide standards or codes which allowed for unqualified individuals to perform low risk tasks with a possible referral system to qualified veterinary surgeons when required. The industry body could then monitor compliance with the standards and codes to maintain the standard of service provided to consumers.

As consumers became aware of industry accreditation, those veterinary treatment providers who were members of the industry body, in theory, would likely enjoy a competitive advantage over non accredited providers. Market forces are, therefore, likely to encourage an optimal level of the participants within the market to seek industry accreditation. The value of accreditation would also provide an incentive for market participants to abide by the standards and codes of the industry, including any codes of professional conduct, as any breach or complaint by a consumer could lead to the loss of accreditation.

The lack of legal enforcement is a risk associated with industry self regulation, the only sanction directly available to the industry body is to deny membership to the veterinary treatment provider who fails to comply with industry standards. Consumers should respond to the loss of the provider's membership or accreditation with reduced demand for that provider's services, there would however be a lag time which would likely lead to sub-standard treatment being provided. The Review notes that any detriment to animal welfare and any costs incurred during this period may be irreversible.

The industry body would also have a vested commercial interest in the enforcement of consumer protection legislation, the *Prevention of Cruelty to Animals Act* and the relevant provisions of the *Controlled Substances Act* against non members of the industry body. It is likely that the association would readily report any breaches of the respective legislation which was reported to it by the public and it could even facilitate the process in pursuing offenders.

Another risk associated with self regulation is that whilst, in theory, market forces will provide an incentive for professionals to become members, there will always be those who are not members and therefore whose competence is not subject to professional scrutiny other

than by the common law and the legislative means discussed above. Non-membership of the association would not preclude a person providing veterinary treatment. Even in the context of a widespread publicity campaign, some consumers may not recognise the differences between a person accredited by the industry association and a person who lacks such accreditation.

If the fact that the provider is not accredited also means that the provider can engage in cost cutting at the expense of the animal patient's suffering, whilst still meeting consumer expectations, then non membership of the industry body may be a competitive advantage to the treatment provider. If consumers do not recognise the "behind the doors" benefits of a more expensive certified practitioner then there may be little, to no advantage, in gaining industry membership as the restrictions imposed may make the member less competitive within the market. Self regulation would then fail as its membership would be unlikely to represent the majority of providers within the market.

Limited Practice Protection

Another option is to amend the Act so that restrictions on providing veterinary treatment are limited to those areas of veterinary practice which carry significant risk of information asymmetry and undue suffering to the animal patient. This option has the benefit of enabling unqualified practitioners to undertake some simple procedures. By increasing the number of service providers, treatment costs may decrease. This would increase the access for consumers to veterinary treatment. It may also promote the receipt of treatment for animals where cost had previously barred access.

With any procedure there is a risk that undue harm and suffering will be inflicted on the animal patient. There is also the potential for financial and emotional loss by the consumer. The problem with limited registration is that it may be difficult to identify procedures which carry a sufficiently low risk to warrant the exposure of consumers and animals to limited veterinary expertise. If we take the vaccination of animals as an example, the apparent skill involved in the administration of the vaccine may well seem limited, the veterinarian is, however, responsible for the health of the animal as a whole and not simply the implementation of a specific task.

The primary risk with confining practice protection to the more high risk procedures is that the provision of low risk treatment becomes unregulated with no means of assuring the quality of treatment received by consumers and their animals. Consumers and their animals face the same risks and uncertainties associated with no regulation when seeking supposedly "low risk" treatment.

Co-Regulation

The main concerns raised with respect to self-regulation were the consequences of the lack of enforcement and the lack of compulsory membership, and in the case of limited practice protection, the lack of quality control. These concerns may be remedied through a process of co-regulation. Under the co-regulation model those individuals or companies within the

market who wished to provide veterinary treatment would need to become licensed by a government body to provide those specific services.

The submission received from the AVA suggested that even if unqualified individuals were trained to provide specific veterinary tasks there would need to be in place some means of ensuring their continuing competency to perform such tasks.⁷ The submission from the South Australian Animal Ethics Committee proposed a framework of principles which could be used to assess the level of proficiency required to undertake veterinary procedures.⁸ In both submissions it was suggested that such providers would be subject to some form of regulation pursuant to legislation.

Providers would be subject to regulation, the granting of the licence would be contingent on the prospective treatment provider demonstrating that they comply with the relevant standards concerning the specific treatment they intend to supply. The government body could then audit the provider on a regular basis to determine whether they have continued to uphold the level of practice prescribed in the relevant standard or code. If the provider fails the audit then the government body could revoke the provider's licence halting the provision of substandard treatment within the market.

The benefits of this alternative include those directly associated with the freeing up of the market for veterinary treatment, including a reduction in the cost to the consumer of treatment, a greater variety of choice as to the level of treatment available and for animals, a possible increase in the access to some form of treatment. The licensing and audit process could also provide assurance to consumers, as to the relevant standard they should expect to receive, from a licensed provider of the specific treatment sought.

The co-regulation option does raise some concerns with respect to it fostering task orientated treatment and the administrative costs of running the program. Co-regulation would need to be orientated towards the licensing of the provision of specified treatments by lay persons so as to ensure the competency of individual providers and to define for the consumer what procedures the provider is licensed to undertake. Co-regulation, in many cases, excludes an holistic approach to the treatment of the animal patient. When an animal is presented to a lay provider for the specified licensed treatment, that lay provider will be unlikely to be able to assess the overall health of the animal and take account of the individual animal's needs. The potential exists for loss both to the consumer and the animal due to the lay provider being unable to diagnose any underlying illness in the animal.

Task orientated service also has the potential to encourage high volume, low cost treatment, where profits are generated through providing the minimal amount of service for the lowest cost to greatest number of consumers. This approach has the benefit of providing potentially cheap treatment, which may increase the access of both consumer and their animals to certain procedures. The need to maintain a high turn over, however, places pressure on the treatment provider to limit the time and to a certain extent the quality of service provided to each individual animal patient.

⁷ Australian Veterinary Association at 6.

⁸ Australian Veterinary Association at 6 and South Australian Animal Ethics Committee at 4.

Co-regulation may also incur greater administration costs than the current system. Co-regulation would require the employment of inspectors, the carrying out of regular auditing and both the creation and revision of professional codes and standards. The current system which relies on prescribed qualifications and registration is cost effective in that it requires only the maintenance of a professional board which is currently fully funded by the profession. It is also noted that there are currently no clearly defined codes, standards and procedures specifically created for application by lay treatment providers, accordingly costs would exist with respect to their creation and the lag time involved in their implementation.

Registration and Title Protection

The Victorian State Government has reformed the majority of the State's legislation which regulates professions, including Veterinarians. The *Veterinary Practice Act 1997* ("the **Victorian Act**") has replaced the *Veterinary Surgeons Act 1958*. Part 2 of the Victorian Act provides for the registration of veterinary surgeons and practitioners and includes provisions outlining the procedure, and the necessary requirements for, registration as a veterinary practitioner in Victoria. Pursuant to section 57 of the Victorian Act it is an offence in Victoria for an unregistered person to claim, or imply, that they are registered as a veterinary practitioner or specialist under the Victorian Act.

The Victorian Act does not include a specific provision which restricts the provision of veterinary treatment to those registered under the Act. The Victorian Act does however pursuant to sub-section 57(1)(b) state that a person who is not registered must not carry out an act that is required to be carried out by a registered veterinary practitioner by or under an Act. The application of sub-section 57(1)(b) in conjunction with sub-section 13(1) of the *Victorian Drugs, Poisons and Controlled Substances Act 1981* has resulted in Victorian registered veterinarians retaining their exclusive access to veterinary drugs.

The Victorian model provides for registration and title protection but does not grant specific practice protection to those individuals registered under the Victorian Act. In theory the removal of practice protection would open up the market to unqualified veterinary treatment providers increasing competition and possibly driving the price of treatment down, as well as, greater choice and access for consumers. The benefits of freeing up the market are discussed on page 14 of this report.

One of the main disadvantages of the free market approach is the information asymmetry between the consumer and the veterinary treatment provider. The retention of title protection sought to addresses this problem by ensuring that a consumer can rely on the representation of a veterinary treatment provider when they claim to be "registered" and to have the associated qualifications and expertise.

The Victorian model protects the status of a veterinary treatment provider once "registered" under the Act, it does not however protect the terms "veterinarian", "veterinary surgeon" or "veterinary treatment" all of which may imply qualified treatment to the consumer. It is arguable that the protection of the status of registration may be insufficient to guard against information asymmetry on the part of the consumer.

The Victorian model suffers from a number of possible disadvantages. The potential for unqualified individuals to provide treatment within the market could result in more animals receiving sub-standard, if not detrimental, treatment which may add to the animal's suffering and potentially the costs to the consumer. Unqualified treatment providers are likely to provide cheap, short term, acute treatment for animals. The entry of unqualified treatment providers into the market may, therefore, have a detrimental affect on the monitoring of disease within the State and in the long term may damage the quality of animal products produced in South Australia.

Under the current South Australian Act practice protection represents not only protection of animals and consumers but also an incentive for veterinary practitioners to gain registration and to maintain the requisite professional standards. The Victorian Act, in theory, only provides the market advantage of title protection to those who are registered.

As the consumer does not receive the actual treatment there is latitude for cost cutting at the expense of animal suffering whilst still meeting the consumers expectations. Title protection without practice protection, like self regulation, is only as effective in the protection of the consumer as the market advantage to be gained from registration. In the case of veterinary practice, where consumers are not privy to the actual treatment, there is the potential danger that a free market would render registration of limited value if not a hindrance to treatment providers.

The Victorian model has in practical terms arguably resulted in little to no opening up of the veterinary treatment market as the provision of drug therapy by registered veterinarians is still protected under the Act. The fact that no legislation review of the *Veterinary Practice Act* 1997 has been undertaken has made it difficult to assess the Victorian model in terms of its costs and benefits and NCP compliance.

2. Recommendations:

That the alternatives as outlined above do not meet the objectives of the Act.

LRC: It was the view of the Legislation Reference Committee ("LRC") members that there were no viable alternatives to the Veterinary Surgeons Act.

"The current model of practice protection should be maintained. The benefits of its removal do not outweigh the disadvantages associated with consumer issues and animal welfare"
(South Australian Farmers Federation)

1.5. Costs

Three types of cost arise from restrictions contained in the *Veterinary Surgeons Act*. First, restrictions upon entry, or re-entry, into the profession may lessen the numbers of veterinary

surgeons and, thereby, reduce competition among members of the profession. Restricting the number of veterinary surgeons may also result in the cost of veterinary services being artificially inflated due to limitation of supply. This is a cost to the community.⁹

An insufficient limited number of veterinary surgeons in the market may be unable to provide the requisite services to meet the demand for veterinary treatment. Each individual veterinarian is, therefore, placed under extra pressure to supply treatment which may detrimentally impact upon the quality of service provided to the consumer.

Secondly, prices may be inflated as the Act may impose a standard of quality and therefore price above that which the consumer requires. The result is that the consumer is forced to pay the extra for premium treatment where budget treatment would have met the consumers expectations.

Thirdly, restrictions in the *Veterinary Surgeons Act* which prescribe conduct to be followed by veterinary surgeons, generate compliance costs. Such compliance costs include the costs of registration, maintaining competence and of complying with professional standards. These costs impact upon competition if they are sufficient to dissuade participation in the market for veterinary treatment, or are substantial and passed on to consumers as an element of the price charged for veterinary services.

Fourthly, restrictions upon conduct may also affect competitive conduct within the market for veterinary treatment. For example, partnership restrictions contained in the *Veterinary Surgeons Act* restrict the ability of corporate veterinary surgeons to establish or participate in multi-disciplinary firms.

1.6. Public Benefits

The *Veterinary Surgeons Act* establishes a regime for the registration of veterinary surgeons and the regulation of the veterinary profession. Restrictions upon entry to, and participation in, the profession of veterinary surgery (practice protection and title reservation) ensure that a person claiming to be a veterinary surgeon possesses the requisite qualifications and experience. By restricting the provision of veterinary treatment to those individuals who have successfully undergone an objective assessment of their level of skill and expertise, the standard of care provided to animals within the community is maintained.

The benefits associated with requiring that qualified persons provide veterinary treatment include reducing the losses associated with the provision of incompetent treatment and the safeguarding of animal welfare.

The competent treatment of animals within South Australia minimises the financial and emotional costs associated with the provision of sub-standard treatment. Such costs include the costs of alternative veterinary treatment to rectify the damage done to misdiagnosed or mistreated animals, the cost of a replacement animal and the suffering caused to both the

⁹ The Office of Consumer and Business Affairs submitted that the supply of veterinarians within South Australia did not currently meet the demand for veterinary services, see Appendix 6 No 1

animal and its owner.¹⁰ Further detailed discussions of the identified public benefits derived from registration, practice protection and title protection are outlined below.

Consumer Protection

The provision of professional services is often done in an environment of "information asymmetry" between providers and consumers. Consumers of veterinary treatment include domestic pet owners, the agricultural sector when dealing with animal stock and to a smaller extent research institutions. The consumer may often lack the knowledge to assess the quality of the service being provided, or the knowledge or expertise of the veterinary surgeon. Consumers often will, therefore, judge a professional's ability to provide a service on the basis of their manner and presentation. In such an environment, there is an argument that Government has a legitimate role in ensuring that professionals meet minimum standards of competency. The public can then be confident that a person holding themselves out to possess certain qualifications and expertise, does in fact hold this level of qualifications and expertise. In the case of veterinary surgeons, the risks involved with information asymmetry will be exacerbated by the complexity of the service provided and the consumers limited ability to assess the quality of the work performed. Animals are unable to give an opinion to their owners on the level of suffering endured or the standard of treatment received.

Submissions received from the Animal Welfare League of SA, the AVA, the AVA (SA), the Royal Society for the Prevention of Cruelty to Animals (South Australia) Incorporated (RSPCA (SA)), Mr Edmonds and the Board all expressed the view that consumers were not in a position to effectively assess the quality of veterinary treatment received by their animals.¹¹

The consumer is only informed as to the price of the procedure as a result they have only a crude measure as to the quality of the service and will, in most cases, be unable to identify any long term implications of the treatment received.

The provision of information to consumers is, therefore, a significant factor in promoting competition. Deregulation of professions, without a concomitant increase in the knowledge of consumers to enable them to make informed choices regarding service providers, will expose consumers to risks of harm without providing them with the means of avoiding this harm. A system of registration provides a mechanism for providing a public record of the practitioners within a profession and any restrictions upon their ability to practice. The compilation of such information and its provision to consumers is a significant public benefit as it assists with animal welfare protection and the maintenance of a minimum standard of service.¹²

¹⁰ Australian Veterinary Association (SA Division) at 24, see Appendix 6, No 2

¹¹ Animal Welfare League of South Australia Inc, Australian Veterinary Association at 3, Australian Veterinary Association (SA Division) at 24, RSPCA (SA) at 4, Mr Edmonds, Covering letter at 4 and Chap 5 at 22 and Veterinary Surgeons Board of SA at 3, see Appendix 6 No 7 example of the possible price variation for desexing a cat.

¹² The Review Panel notes that the Board receives numerous requests for information from consumers throughout the calendar year.

Professional Standard

Another ancillary benefit is that restrictions upon conduct within a profession, through the use of 'Professional Standards' also preserve public confidence in the standards of professional care provided by members of the veterinary profession. Such Professional Standards reflect traditional rules of professional conduct. Whether these Professional Standards require legislative sanction depends upon the level of risk to the public, and in this case animals, if a member of a profession deviates from those Professional Standards.

A majority of the submissions received supported the view that the Act provides for the accountability of those within the veterinary profession.¹³ As the professional role of a veterinary surgeon includes both the provision of value for quality service and the protection of animal welfare, the maintenance of Professional Standards represents a benefit to the community. Breach of Professional Standards would carry both risks to the consumer and their animal patient. The Act assists in the maintenance of these professional standards by helping to identify the group of people within the community who are trained to provide veterinary treatment and by the enforcement of unprofessional conduct provisions against members of that group.

Animal Welfare

Guaranteeing a minimum level of competency also fulfils the public expectation that the suffering of animals in the community's care is to be kept to an absolute minimum. A number of the submissions received suggested that there was a public expectation that the well-being of animals in the community's care would be protected.¹⁴

Requiring persons delivering veterinary treatment to have a requisite level of experience and training minimises risks of misdiagnosis and mistreatment. Persons who do not have these qualifications may not take appropriate steps to either treat the animal or alleviate its suffering. The Review Panel notes that the 1997 -1998 Veterinary Surgeons Board of South Australia annual report, states that five complaints were brought to the Board of lay people engaging in providing veterinary treatment for service or reward. The Review Panel also notes the examples provided by the Veterinary Surgeons Board, on page 6 of the Board's submission, of the harm which can befall an animal patient treated by a lay practitioner.

Owners expect that persons treating their animals will treat or cure the complaint in a manner which minimises the suffering of the animal. Often treatment, however, may occur 'behind closed doors' and while the owner may be able to assess whether a complaint has been remedied, they will have no knowledge of the level of suffering of the animal during the treatment.¹⁵ Market forces may encourage some market participants within a deregulated veterinary treatment market to minimise or even abandon palliative techniques which add to their operating costs where the consumer is not in a position to evaluate which methods of

¹³ Animal Welfare League of South Australia Inc, Australian Veterinary Association, Australian Veterinary Association (SA Division), RSPCA (SA), SA Thoroughbred Racing, Veterinary Surgeons Board of SA, Port Road West Croydon Veterinary clinic.

¹⁴ Australian Veterinary Association, Australian Veterinary Association (SA Division), Veterinary Surgeons Board of SA, RSPCA (SA), Mr Edmond.

¹⁵ Please refer to the discussion of information asymmetry under the consumer protection heading above.

treatment have been employed. Those providers who did seek to minimise the animal's suffering would likely be undercut by their competitors.

The current registration and practice protection system ensures that those who practice veterinary treatment are aware of the appropriate techniques and through positive reinforcement, monitoring and the threat of deregistration, provides an incentive for veterinary surgeons to implement those techniques. Veterinary training would also encourage the long term care of animals beyond the provision of immediate and short term solutions to symptoms.

International Trade and Primary Industry

The Review Panel notes that the majority of Australia's trading partners require that the person who certifies animals and animal products for export from Australia must be a registered veterinarian. The system of registration prescribed under the Act provides for a level of consistency between the standard of veterinary care provided in South Australia and those in the rest of the world. Abandoning the current system runs the risk of devaluing, in an international context, the work done by those veterinarians practising within the State and could therefore threaten trade.

Submissions received from the AVA, the AVA (SA), the South Australian Farmers Federation (SAFF) and the Board all provided comprehensive discussions of the public benefits of the current legislative scheme with respect to the recognition of South Australian veterinarians and its positive impact on international trade.¹⁶ The Review Panel notes the submissions received and recognises that a major public benefit of the current Act is that it protects South Australia's animal products export industry by meeting the expectations of the State's international trading partners.¹⁷ Registration under the Act is a public benefit in that it helps to meet the entry requirements of overseas importers, as well as, helping to maintain the good reputation of South Australian veterinarians.

Responsible Administration of Controlled Substances

Another public benefit of the Act is that it provides a basis in terms of qualifications and training as to who within the community should be allowed to administer controlled drugs to animals. Under the *Controlled Substances Act 1984* only a veterinary surgeon may deal in controlled drugs. The provision of pharmaceutical treatment is restricted to veterinarians, as they are identified by, and required to have, the necessary qualifications under the Act to administer such drugs safely. Many of the submissions received supported this view.¹⁸

¹⁶ Australian Veterinary Association at 4, Australian Veterinary Association (SA Division) at 9, the South Australian Farmers Federation at 3 and the Veterinary Surgeons Board of SA at 3, see Appendix 6 No 3, No 4.

¹⁷ In reaching its determination that the protection of the animal export industry was a significant benefit of the Act the Review Panel also notes that in the majority of cases where animal products are imported into Australia from overseas the health or wholesomeness of the product must have been certified have been certified by a registered Veterinarian in the originating country.

¹⁸ AQIS, Australian Veterinary Association (SA Division) at 26, RSPCA (SA) at 4, Veterinary Surgeons Board of SA at 7, the South Australian Farmers Federation at 1.

Submissions received identified a number of public benefits associated with restricting the use of controlled substances to veterinary surgeons and practitioners. These benefits included:

- (a) a reduced risk of introducing toxic levels of pharmaceutical drugs into the food chain which could be both detrimental to animals and end human consumers;
- (b) a reduced risk of contaminating water with drugs over prescribed to animals within the catchment areas;¹⁹
- (c) a reduced risk of disrupting Australia's trade ties by offering livestock and meat products which have become contaminated with drugs;²⁰
- (d) a reduced risk of over prescription of antibiotics leading to the development of resistant strains of pathogens which cause animal or human diseases;
- (e) a reduced risk of inappropriate or contradicted drug usage, substance abuse, overselling of products; and
- (f) increased consumer protection due to the inability of consumers to assess the value of drug treatment received, all leading to higher levels of positive outcomes for the consumer and their animal.²¹

Protection of Public Health

The Act protects the South Australian community against threats to public health which may originate from the animal population located within the State. Submissions received from the AVA, the AVA (SA) and the Board all expressed the view that qualified, registered veterinarians had a role to play in the protection of public health within the State.²²

The Review Panel recognises that through the requisite training veterinarians are qualified to identify possible risks of cross infection from animals to humans and to take action to minimise these risks.

Protection of Animal Health

The Review Panel notes that a number of submissions received held the view that a reduction in the spread of animal diseases within the State was a public benefit derived from the operation of the Act.²³

The Review Panel recognises that the Act, through registration and practice protection, operates to inhibit the spread of disease within the State's animal population. Qualified veterinarians have been trained to provide holistic care to animals and are therefore equipped

¹⁹ Veterinary Surgeons Board of SA at 7.

²⁰ AQIS, Veterinary Surgeons Board of SA at 7.

²¹ Australian Veterinary Association (SA Division) at 26.

²² Australian Veterinary Association at 8, Australian Veterinary Association (SA Division) at 5, Veterinary Surgeons Board of SA at 10, see Appendix 6 No 5 & No 6.

²³ As above

to identify an underlying diseased state in an animal and quickly arrest the spread of that disease. Unqualified veterinary practitioners, however, may not be able to expeditiously identify and treat an underlying and progressive disease, especially if the disease is uncommon or only recently introduced into the State's animal population.

The Review Panel considers that the reduction in the spread of disease within the State's animal population reduces the level of animal suffering, as well as the potential financial losses which may result from the spread of disease within the State's production animal population.²⁴

²⁴ See Appendix 6 No 3 for estimate of the potential value of SA export industry.

PART 2: ANALYSIS OF RESTRICTIONS UPON COMPETITION

The following is an examination of the restrictions on competition in relevant markets contained in the *Veterinary Surgeons Act*. The restrictions contained in the *Veterinary Surgeons Act* can be divided into four categories :

- a) title and practice protection;
- b) restrictions on practice;
- c) restrictions on the training market; and
- d) actions of the Veterinary Surgeons Board.

Each of these categories of restriction are examined below and analysed to determine whether the public benefits achieved by the restriction outweigh the costs generated by the restriction.

2.1. Title and Practice Protection

The Act contains provisions which provide title and practice protection for veterinary surgeons. Title and practice protection restrict entry into the market for veterinary services. Title and practice protection relate to the qualifications and/or experience required to enter a profession and professional standards and requirements of persons returning to, or seeking reinstatement in, the profession. Where these requirements are enforced through an Act they become statutory restrictions upon competition. Practice protection may involve the reserving of an area of activity exclusively to a defined trade or occupation (a scope of practice). Title protection involves the reserving of a title or description exclusively to a group of people. The issues of registration and enrolment, scope of practice and title reservation are discussed below.

2.1.1. Registration - Natural Persons

The registration requirements of the Act are restrictions on competition. For a person to enter into the market for the provision of veterinary treatment they must be registered.

Requirement to be Registered

Under section 24 of the *Veterinary Surgeons Act* only "qualified persons" may provide veterinary treatment for fee or reward. A "qualified person" is defined in sub-section 24(5) as a "veterinary surgeon, a veterinary practitioner or a permit holder."²⁵ As section 21 of the *Veterinary Surgeons Act* prohibits a person claiming that they are a veterinary surgeon or

²⁵ The issue of practice protection is discussed in more detail at Part 2.2 of this Consultation Paper.

veterinary practitioner unless they are registered under the Act, a person wishing to provide veterinary treatment for fee or reward must be registered.

The public benefits of requiring persons to be registered under the Act are outlined above in Part 1.5 of the Consultation Paper. In summary these benefits are:

- a) consumer protection;
- b) professional standards;
- c) animal welfare;
- d) international trade and primary industry;
- e) responsible administration of controlled substances;
- f) protection of public health; and
- g) protection of animal health.

It has been noted by the Review Panel that completed legislation reviews of other Acts which regulate like health professions including the *Dentists Act 1984*, *Medical Practitioners Act 1983* and *Optometrists Act 1920* have all retained a system of registration based on the benefits of registration outweighing the costs. It is the Review Panels view that the costs created by the use of a system of registration are outweighed by the public benefits which are derived from its use.

If the public benefits outlined above can only be achieved through registration of persons to provide veterinary treatment,²⁶ consideration must be given to whether the public benefits outweigh any costs generated by the restriction. The costs of meeting the requirement to be registered are the costs incurred in meeting the criteria and other requirements to achieve registration. These are discussed in detail below.

3. Recommendations:

That the system of registration should be retained.

LRC: It was the view of the LRC that the benefits to the community, of the requirement to register veterinary treatment providers, outweighed the associated costs.

²⁶ See discussion of "Alternatives" at Part 1.6 of this Consultation Paper.

Criteria for Registration: Sections 25 and 27

A person may apply to be registered as a veterinary surgeon on the general register. An applicant will be registered if they meet the criteria for registration. Pursuant to section 25 the relevant criteria are:

- a) has prescribed qualifications and experience;
- b) fulfils all other prescribed requirements; and
- c) is a fit and proper person to be registered on the register of veterinary surgeons.

Qualifications and experience

The requirement under section 25 that the applicant has the prescribed qualifications and experience restricts entry into the veterinary profession. The requisite qualifications are prescribed by regulation 5 which refers to the second schedule of the regulations.

The second schedule prescribes three alternative forms of qualification:

- (a) completion of a listed university course; or
- (b) providing a certificate of membership of the Royal College of Veterinary Surgeons, awarded by examination; or
- (c) if the applicant holds a veterinary degree not prescribed under the regulations, they are required to support their application with a certificate issued by the National Veterinary Examination conducted by the Australian Panel of Veterinary Science.

Cost

The direct costs associated with satisfying these requirements are costs upon individuals aspiring to be veterinary surgeons. Additionally, there are costs to the community associated with the subsidising of training of veterinarians. Unnecessarily long periods of training also impose costs on the community, as persons who are otherwise competent to provide veterinary services are constrained by legislation from practising. Should the requirements for entry into the veterinary profession be so stringent that a shortage of practitioners results, then these restrictions may generate costs to the community due to reduced competition between veterinarians, resulting in higher fees for veterinary treatment.

A requirement to meet these qualifications is an "intermediate" restriction upon competition.

Despite the fact that section 25 refers to a requirement for an applicant to have the prescribed experience there is currently no requirement for applicants to have gained experience outside that which forms part of the curriculum of the prescribed courses.

Public Benefit

The public benefit associated with restrictions on entering the veterinary profession is that persons engaging a veterinary surgeon can be confident that the veterinarian, when entering the profession, had attained the specified qualification and level of experience. The attainment of this level of qualifications and experience is the foundation for a number of public benefits achieved by the *Veterinary Surgeons Act*. These benefits include the competent treatment of animals, minimisation of the harm done to animals, maintaining international trade relations and the responsible use of controlled substances.²⁷

A possible alternative to the current requirement for prescribed qualifications would be to remove these requirements and allow registration upon the mere completion of a form and the payment of an administration fee. The controlling body would then be granted the power to deregister the practitioner in instances of incompetence or unprofessional conduct. The Review Panel considered this option and concludes that it would provide insufficient protection to the public and animals within the South Australian community.

It is the opinion of the Review Panel that the public benefits to be derived from the prescribing of certain qualifications and experience as prerequisites for registration outweigh the associated anti-competitive costs the community. The Review Panel recommends that sub-section 25(a) of the Act should be retained.

All other prescribed requirements

It may be arguable that the Governor, under the operation of Section 61 of the Act, may make regulations which require attributes which do not relate to the competency of applicants. Such attributes may be unjustifiable restrictions on competition. Any regulations made by the Governor must relate to matters necessary or expedient for the purposes of the Act. This is a constraint upon the breadth of the regulation making power.

The Review Panel notes that the regulations do not currently prescribe any other requirements for registration. The Review Panel therefore need not to consider this restriction further.

Fit and proper person

The requirement to satisfy a "fit and proper" person test is a common provision in legislation regulating entry into a profession. The "fit and proper person" standard may constitute an unjustifiable restriction upon competition depending upon how this standard is interpreted and applied by the Board. To gain registration an applicant must answer a two page questionnaire which includes a question to provide the Board with details of any offence against the Act, or corresponding legislation, of which the applicant has been found guilty. The applicant is also required to provide proof of their qualifications and any name change.

The Board also relies on references to determine the fit and proper person requirement. For new registrations two letters are required, one must be from a registered veterinarian. In practice a letter from the new applicant's University professor is usually forthcoming and, if

²⁷ For a detailed discussion of these benefits please refer to the discussion of public benefits under Part 1 of this Paper.

accompanied with another general reference, is considered sufficient to fulfil the "fit and proper person" requirement. For applicants who have been previously registered in another jurisdiction the Board relies on a letter of good standing from the previous jurisdiction's Registrar of Veterinary Surgeons. As a matter of course, such references are provided to graduates of the relevant tertiary courses, as well as, those veterinary surgeons registered in other jurisdictions.²⁸

In both cases the letters received contain a declaration that the applicant is a suitable person to be registered in South Australia. The declaration is in a standard form and contains no extraneous subjective comments. An applicant would, therefore, only fail the fit and proper person requirement if they were unable to attain such a declaration as to their suitability for registration.

Cost

The costs incurred by the community are those associated with the reduction in supply of registered veterinary surgeons or practitioners, due to certain applicants being unable to attain a letter of good standing and therefore become registered. The Review Panel notes that it is unusual for an any applicant to fail the "fit and proper person" requirement.

The costs associated with establishing that an applicant is a "fit and proper person" are minimal. Meeting this requirement is a "trivial" restriction upon competition.

Public Benefit

There is public benefit in only permitting fit and proper persons to practise veterinary science. This benefit lies in the protection of the public from persons who have previously been guilty of certain behaviour or are likely to endanger public safety by, for example, not being medically fit to practise or under the influence of drugs or alcohol. The letter from the previous registrar is also used as the mechanism by which any conditions or special circumstances which impact on the applicants registration, in the other jurisdiction, are communicated to the South Australian Veterinary Surgeons Board.²⁹ This has the benefit of putting the Board on notice of the conditions and provides an opportunity for the Board to assess whether such conditions should be imposed in the South Australian jurisdiction.

Submissions received from the Australian Quarantine and Inspection Service (AQIS) and the Board both supported retaining the "fit and proper person" requirement for registration under the Act.³⁰

The Review Panel concludes that the benefits of the "fit and proper person" requirement outweigh this "trivial" restriction on competition and it is, therefore, recommended that subsection 25(c) of the Act should be retained.

²⁸ Information regarding the procedures of the Veterinary Surgeons Board provided by the Registrar, Ms Helen Ward, during an interview conducted on 3 September 1999.

²⁹ Information regarding the procedures of the Veterinary Surgeons board provided by the Registrar, Ms Helen Ward, during an interview conducted on 3 September 1999.

³⁰ AQIS at 1, Veterinary Surgeons Board of SA at 13 see Appendix 6 No 11

Process of Registration

Regulation 5 requires that a person seeking registration apply in the prescribed form. This form is set out in the first schedule to the regulations. A requirement to apply for registration in a prescribed form is a "trivial" restriction upon competition where the information required in the form is neither voluminous or difficult to compile. The application for registration form is prescribed in the first schedule to the regulations, the form is just under three pages long and is not unduly complicated, the form represents a "trivial" restriction on competition.

Under section 40 a person who has not paid the prescribed registration or reinstatement fee and the prescribed annual practice fee shall not be registered or reinstated on the register. The prescribed fees are outlined in regulation 10. In the case of a natural person, a registration fee of \$40.00 applies. In the case of a company a registration fee of \$300.00 applies. The base annual practice fee is \$150.00 for veterinary surgeons who are already registered. A regimen in regulation 10 reduces the annual fees of those persons who, are applying for registration or reinstatement or have worked interstate, relative to the time remaining in the registration period.

A fee constitutes a restriction upon entry into the veterinary profession. It is likely to be a "trivial" restriction unless it is sufficiently high to dissuade entry, or re-entry, into the profession. A comparison of the registration fee charged in different States is included at Appendix 4 of this Consultation Paper. The Review Panel is of the view that the fee charged by the board is insufficient to dissuade potential veterinary treatment providers from entering the market and is, therefore, a "trivial" restriction on the market.

As the restrictions identified in the process of registration have been assessed by the Review Panel as "trivial", the Review Panel recommends that they be retained.

Limited registration: Section 29

Section 29 enables persons to acquire limited registration for the specific purposes of either obtaining the experience and skill required for full registration, or to teach or undertake research or study in South Australia. Limited registration is granted where the applicant lacks the necessary qualifications or experience, or other prescribed requirements, for unrestricted registration. Pursuant to sub-section 29(1)(b) the Board may also grant limited registration if, in its opinion, that person's registration is in the public interest.

Under sub-section 29(3), the Board may impose conditions upon the registration.

Cost

This provision enables the Board to place restrictions upon a person's conduct within the veterinary profession. The costs of this restriction are minimised if the Board utilises criteria which accords with community views on whether a person should be entitled to unrestricted registration.

The most common condition imposed by the Board upon those who are granted limited registration is that they are required to work under supervision. Working under supervision entails a requirement that another registered veterinarian is present on the premises in which the person with limited registration intends to provide veterinary treatment.

The cost associated with limited registration, beyond that attributable to registration overall, is generated by placing conditions on those granted limited registration. If persons with limited registration could practice openly within the market this would increase competition and a resultant drop in the cost of veterinary treatment may occur.

An alternative argument can be put, however, that in the absence of a power to grant limited registration persons who can practice conditionally would be excluded from the market for the provision of veterinary treatment. This contention is supported in submissions received by the Review Panel.³¹ According to the Board's submission, limited registration is used three to four times per year and the restrictions vary from working in a specific industry under supervision to the imposition of time restrictions.³² Considering the infrequent use of section 29 and the fact that it only directly affects the individual provider granted limited registration, the operation of this section has been assessed as a "trivial" restriction on competition within the South Australian veterinary treatment market.³³

Public Benefit

There is a benefit to the public in limitations being placed upon the registration of persons where the skills or expertise of the person are insufficient for them to qualify for unrestricted registration. This provision enhances the involvement in the veterinary profession by enabling the Board to provide limited registration to a person who otherwise would not qualify for registration.

It is the view of the Review Panel that the benefits to be derived from the operation of section 29 of the Act outweigh any anti-competitive costs incurred by the community and the Review Panel concludes that the section should be retained.

Reinstatement of Person on a Register

Section 28(3) provides that where a person's registration has been cancelled for unprofessional conduct, that person may only apply to the Board for reinstatement of the person's name on the register or roll after a period of two years after the cancellation. Pursuant to section 28(4) the Board must reinstate the applicant if it is satisfied that:

- (a) the applicant has sufficient knowledge and experience of, and is able to exercise the necessary degree of skill required for, the practice of veterinary surgery pursuant to that registration; and

³¹ Veterinary Surgeons Board of SA at 14, Australian Veterinary Association (SA Division) at 41.

³² Veterinary Surgeons Board of SA at 14.

³³ Submissions received also stated that the provision of limited registration provided flexibility to the Act and allows for overseas veterinary experts to practice in Australia when they were required, see Appendix 6 No12.

(b) he or she is a "fit and proper person" to be registered under the Act.

Section 28(5) provides that the Board may require the applicant to obtain qualifications and experience specified by the Board and for that purpose may require the applicant to undertake a specified course of instruction and training.

Cost

The costs of this provision is a private cost to the individual whose registration is cancelled. These costs may be passed on to consumers as a component of the price charged by the individual veterinary surgeon for rendering veterinary treatment. In the context of the relevant market, however, such an impact is likely to be "trivial". More significant would be the costs generated where a failure by the Board to reinstate veterinary care providers results in a shortage of veterinary surgeons. Again, however, due to the small number of persons who would be in a position of seeking reinstatement the impact upon the relevant market is likely to be "trivial".

Public Benefit

There is a public benefit in restricting the re-entry of a person into a profession where that person's registration has been cancelled for unprofessional conduct. There is benefit in competency standards being applied when a person has not practised veterinary surgery for at least two years and has previously been found guilty of unprofessional conduct. Nevertheless, the period of two years is an arbitrary one and is not determined by any objective criteria for measuring competency. This period can therefore be seen as an arbitrary penalty imposed on the person whose registration has been cancelled. The purpose of the disciplinary procedures under the Act are to protect the public and not to punish the guilty party.³⁴

It has also been noted by the Review Panel that the completed legislation review of the *Dentists Act 1984*, which contains a similar 2 year period, recommended that the 2 year requirement be replaced with a requirement that the Board, upon cancelling a person's registration for unprofessional conduct, must specify a period of time that must elapse prior to that person applying for reinstatement. Such period should be no less than 12 months.

4. Recommendations:

The prohibition, under sub-section 28(3), on persons applying for reinstatement for 2 years after the cancellation of their registration should be replaced with a requirement that the Board, upon cancelling a person's registration for unprofessional conduct, must specify a period of time that must elapse prior to that person applying for reinstatement.

The period of prohibition on reinstatement is suggested to be of no less than 1 year and no more than two years.

³⁴ Australian Veterinary Association (SA Division) at 40, see Appendix 6 No 13

LRC: The members of the LRC agreed that section 28 should be retained. No firm resolution was made as to the maximum or minimum period of deregistration. The AVA suggested a minimum of 1 year and a maximum of 2 years and the SAFF suggested that the provision should be retained, unmodified.

Restrictions of movement between jurisdictions

A system of registration has the potential to restrict the movement of veterinary treatment providers between jurisdictions. This would occur where veterinary treatment providers registered in another jurisdiction were unable to register in South Australia.

Registration under the *Veterinary Surgeons Act* does not restrict movement of veterinary care providers between jurisdictions due to the operation of the system of mutual recognition established under the *Commonwealth Mutual Recognition Act 1992*. The object of the mutual recognition scheme is to allow a practitioner who is registered in another participating jurisdiction to be automatically registered in South Australia. The operation of the *Mutual Recognition Act* nullifies this potential restriction on competition.

Specialist Registration

Under section 27 of the Act, a natural person who is registered as a veterinary surgeon or practitioner may also become registered as a specialist in a prescribed field of veterinary practice. The criteria for specialist registration is similar to general registration, however, the Act does not restrict any practice to veterinary specialist, merely granting title protection, specialist registration therefore only represents a "trivial" restriction upon competition. The Board needs to be satisfied that the applicant for specialist registration has the prescribed qualifications and experience, fulfils all other requirements and is a "fit and proper person" to be registered as a veterinary specialist.

As with general registration, the above requirements represent an additional costs to the individual veterinarian aspiring to gain specialist registration. These requirements under the Act would only represent a cost to the community if they were so onerous as to restrict veterinarians from entering the specialist market and went beyond the level of training expected by the public.

The process by which a registered veterinary surgeon is registered as a specialist is not primarily handled by the Board. The applicant's documentation is sent to the Advisory Committee on the Registration of Veterinary Specialists (the ACRVS). The ACRVS then assesses the applicant's abilities and whether or not they should be registered as a specialist. Their recommendation is then sent to the Board, which in most cases has endorsed the view of the Committee.

There is no independent "fit and proper person" test for specialist's registration as this was already covered by the ACRVS application. Registration of a veterinary surgeon as a

specialist is a more stringent process than that required for normal registration. According to the *Specialist Registration Information Booklet*,³⁵ an applicant for specialist registration must:

- (a) hold a current registration certificate issued by their registering authority in Australia or New Zealand;
- (b) have been registered as a veterinarian for a minimum of five years;
- (c) have completed a suitable training programme as laid down in Section 5;
- (d) have successfully completed an examination at the conclusion of the training programme as laid down in Section 5.10; and
- (e) be currently working (including teaching) a minimum of twenty-five hours per week in the specialty.

Submissions received from the AVA (SA) and the Board both supported the inclusion of a provision for specialist registration.³⁶

It is the recommendation of the Review Panel that specialist registration under section 27 of the Act be retained.

5. Recommendations

The specific branches of veterinary speciality should not be prescribed under regulation 6 and that the Board should be given the discretion to determine the branches of veterinary specialities in accordance with ACRVS guidelines.

LRC: Both the Board and the AVA supported this recommendation stating that the current regulations were too prescriptive and lead to misleading specialist titles.

2.1.2. Registration - Companies

Under section 24 the provision of veterinary treatment is restricted to "qualified persons". "Qualified persons" includes veterinary surgeons, veterinary practitioners and permit holders. Under section 4 of the Act, veterinary surgeon and veterinary practitioner are defined as a person who registered, or is deemed to be registered on the register of veterinary surgeons. Companies may be registered as a veterinary surgeons. Practice protection under section 24 may therefore apply to a company.

Registration of a company under section 31 occurs where the Board is satisfied that a number of conditions in relation to directors, members and voting rights are met. In particular, section 31 restricts the ownership of corporate veterinary practices to veterinary surgeons and

³⁵ Australasian Veterinary Boards Conference, *Specialist Registration Information Booklet*.

³⁶ Australian Veterinary Association (SA Division) at 39 and Veterinary Surgeons Board of SA at 14, see Appendix 6 No 14.

certain prescribed relatives of veterinary surgeons. In addition, the Board must be satisfied that the memorandum and articles of association comply with these conditions and are "otherwise appropriate" to a company formed for the purpose of practising as a veterinary surgeon or practitioner.

Cost

Costs may be generated by these restrictions as the fees charged for veterinary services may be higher than in a situation where ownership is unrestricted. Where ownership is unrestricted, companies may establish economies of scale through the operation of many practices. If the ownership of corporate veterinary surgeons was unrestricted it would facilitate the creation of larger more commercially orientated practices which would be able to spread their costs across a larger group of practitioners, allowing for a reduction in the price of the veterinary treatment provided to individual customers. An additional cost to the public is the exclusion of unregistered persons with business and managerial skills from the corporate decision making process which may lead to inefficiencies in the provision of veterinary treatment, adding to the cost and the price of treatment.

The conditions which must be met for a company to be registered under the *Veterinary Surgeons Act* are "intermediate" restrictions upon competition.

Public Benefit

There may be public benefit in having appropriately qualified persons own and run a veterinary practice and in particular being responsible for the confidentiality, safety and public protection issues of the practice. If the Board is to discipline a company in relation to, for example, unprofessional conduct, it may be important for the Board to be able to also discipline the directors as veterinary surgeons registered under the Act.

There may also be a benefit to the public in preventing the over commercialisation of the veterinary profession. The restrictions prevent the establishment of large veterinary companies and "chain-stores". There is an argument that these types of practices will tend to focus on profit-margins ahead of their duty to their customers and the welfare of the animal patients.

A number of the submissions received suggested that the ownership restrictions stopped non veterinarian directors from placing undue pressure on veterinarian employees.³⁷ Non veterinarian employers could assert pressure to cut costs at the expense of competent and humane treatment of animals.

Concern was also expressed in a number of submissions that those who were in control of corporate veterinary practices would be less accountable if the ownership restrictions were removed.³⁸ The owner could engage in policies adverse to professional conduct and the Board could only pursue the veterinarian employee who was required to implement those policies,

³⁷ Australian Veterinary Association at 5, Australian Veterinary Association (SA Division) at 7, Office of Consumer and Business Affairs at 4, Veterinary Surgeons Board of SA at 15, see Appendix 6 No 15.

³⁸ Australian Veterinary Association at 5, Australian Veterinary Association (SA Division) at 22, RSPCA(SA) at 4, Veterinary Surgeons Board of SA at 15.

leaving the non veterinarian owner free to re-employ another veterinarian and continue to provide treatment.

The submission from the Office of Consumer and Business Affairs suggested that if persons other than registered veterinary surgeons become entitled to become appointed as directors of incorporated veterinary practices, then strict restrictions on the influence of those directors would need to be imposed to halt any undue influence they may exert on employees. The submission received for the Office for Business and Consumer Affairs also notes that many professional groups have no ownership restrictions on incorporated practices and that in general it was considered that the removal of such restrictions made for a more competitive market and may lead to innovative professional alliances.

The Review Panel agrees that if ownership restrictions were removed sufficient safeguards should be built into the regulatory system to minimise any negative consequences. One mechanism would be to provide that a company wishing to register under the *Veterinary Surgeons Act* must identify a registered veterinary surgeon (a natural person) who is responsible for the veterinary treatment which is provided by the company. The *Veterinary Surgeons Act* could incorporate an offence of detrimentally influencing veterinary surgeons in the course of their professional duties. This offence could apply to both the company and the company directors. The offence could be framed as both a summary offence and as a disciplinary action which could be enforced by the Board.

The Review Panel also notes that it has been recommended in the legislation reviews of other South Australian Acts which regulate health professionals³⁹ that any restrictions on the ownership of businesses should be removed. The reviews of the *Dentists Act 1984* and the *Medical Practitioners Act 1983* also recommend that it be made an offence to place undue influence on the respective health professional to provide service in an unsafe or unprofessional manner.

It is the view of the Review Panel that the costs incurred by the community due to the restriction on ownership inherent in the process for the registration of companies outweighs the benefits to the public which can be derived from these restrictions.

6. Recommendations:

The ownership restrictions prescribed in section 31 of the Act be removed.

That it be made an offence under the Act for an employer to unduly influence an employee to perform veterinary treatment in a manner detrimental to the welfare of the consumer, and or, the animal patient.

That all registered veterinary surgeons, practitioners and permit holders employed by, or in any form of business partnership with, unregistered persons be required to inform the Board of the names of those persons, and that the Board should maintain a register of those persons names.

³⁹ *Dentists Act 1984, Medical Practitioners Act 1983 and the Optometrists Act 1920.*

LRC; The members of the LRC agreed that the ownership restrictions prescribed in section 31 of the Act should be removed. The members also accepted the recommendations to make it an offence to unduly influence an employee and to maintain a register.

2.1.3. Restrictions on Employing "Qualified Persons"

Sub-section 24(1) states that no person other than a qualified person, shall provide veterinary treatment for a fee or reward. This section not only creates practice protection it also restricts who may employ a registered person. An unregistered individual cannot receive a fee or reward for the services provided by his or her registered "qualified person" employee. This means that an unqualified person is not permitted to employ a "qualified person" to provide veterinary services to a third party.

This restriction is intimately linked to the ownership restrictions with the effect that only companies which are controlled by veterinary surgeons may employ veterinary surgeons to provide veterinary treatment.

The costs generated and public benefits achieved by such a restriction are outlined above in relation to the registration of companies.⁴⁰ The Review Panel considers that the benefits of this restriction do not justify the costs, however, as sub-section 24(1) also provides for practice protection under the Act which does have numerous public benefits the section can, therefore, not be simply removed.

7. Recommendations:

A provision should be added into the Act which states that an employer may provide veterinary treatment for fee or reward through the services of their registered employee (including permit holders).

LRC; The LRC recognised that this recommendation was consistent with the removal of the ownership restriction within the Act and agreed that such a provision should be added to the legislation.

2.1.4. Practising Permits

Under section 38 of the Act, the Board may issue a permit to an applicant authorising the applicant to carry out veterinary treatment. Permit holders are included in the definition of "qualified persons" given in section 24 of the *Veterinary Surgeons Act*. As "qualified persons", permit holders gain practice protection pursuant to sub-section 24(1).⁴¹

The Board can only grant a permit pursuant to section 38, if it is of the opinion that:

⁴⁰ See Part 2.1.2 of this Consultation Paper.

⁴¹ Practice protection is discussed in detail Pt Part 2.2 of this Consultation Paper.

- a) the person has the necessary skill, knowledge and experience, and is a fit and proper person, to provide veterinary treatment; and
- b) the part of the State in which the applicant proposes to provide veterinary treatment is not adequately provided with the services of veterinary surgeons or veterinary practitioners.

The intention behind section 38 is to establish a system by which the Board can provide for regions which are not adequately serviced by veterinary surgeons or practitioners. Consistent with the objectives of the Act, section 38 permits have a number of criteria which must be met by the applicant to ensure that the quality of veterinary services provided is maintained.

The provision of permits under section 38 does not in of itself restrict competition, this is a power under the Act which can operate to allow a greater number treatment providers into the market. The operation of the criteria do, however, operate as a barrier to entering the market for the provision of veterinary treatment. These criteria are examined below.

Criteria for granting a permit under section 38

The Board may, on the payment of the prescribed fee, issue a permit under section 38 if the applicant meets a number of criteria. The applicant must have the necessary skill, knowledge and experience and be a "fit and proper person" to provide veterinary treatment. The applicant must also not propose to provide veterinary treatment in a part of the State which is already adequately provided with the services of veterinary surgeons or practitioners.

Necessary skill, knowledge and experience

A requirement to possess necessary skill, knowledge and experience should not operate to restrict competition as a person seeking to perform veterinary treatment would require a base level of skill, knowledge and experience. A competition issue may arise depending upon how the Board assesses the sufficiency of this skill, knowledge and experience.

The granting of a permit to unqualified individuals by the Board is a rare event, occurring only three times in the last five years. The Board considers whether the applicants have the necessary skill, knowledge and experience on a case by case basis. The Board conducts a stringent assessment of the applicant's ability with respect to the services they intend to provide. The conditions placed upon those who are granted a permit are directly related to the skills in which the applicant has been shown to be proficient. A permit holder may only provide veterinary treatment for which they have demonstrated sufficient skill.

Cost

A requirement to demonstrate a certain level of skill so as to gain entry into a market is a cost to the community, in that it may reduce the supply of treatment providers within the market. This is especially so if the level of skill required by the Board is above that which is expected by the average consumer. The requirement to demonstrate the necessary level of skill, knowledge and experience is an "intermediate" restriction on competition.

Public Benefit

The public benefit of this requirement is that it allows the Board to restrict access within the market, to those who are in their opinion, competent to provide defined veterinary treatment. This ensures that the objectives of the *Veterinary Surgeons Act* are not compromised by allowing unqualified persons to provide veterinary treatment. Consumers can rely on the Board's assessment as to the permit holder's ability to provide veterinary services. The level of this guarantee is dependent on the extent to which the permit holder's level of skill, knowledge and experience has been assessed and how stringent the Board is in that assessment.

The competition issues relating to the "fit and proper person" requirement are the same as discussed above with respect to the registration of qualified veterinary surgeons.⁴²

It is the opinion of the Review Panel that the requirement for applicants to have the necessary skills, knowledge and experience is necessary to protect the public and the Review Panel, therefore, recommends that subsection 38(1)(a) should be retained.

The Review Panel recognises that by retaining the power in the Board to assess whether an applicant has the skill, knowledge and experience necessary for the receipt of a permit, the Board also retains control over entry into the market for the provision of veterinary treatment by permit holders. The Review Panel has, however, also recommended that the configuration of the Board should be modified so as to better represent the market and that both the appeal processes be simplified and that written reasons be given for decisions. The Review Panel is therefore of the view that the newly formed Board would be unlikely to successfully use their discretion in an unjustified anti-competitive manner.

Region not Adequately Provided with the Services of a Veterinary Surgeon or Practitioner.

If an applicant for a permit intends to provide veterinary treatment within a region already adequately provided for by a registered veterinary surgeon or practitioner, the application would be rejected by the Board. An individual who may have the requisite skills, knowledge and experience to perform certain veterinary services is barred from doing so if they propose to provide those services in competition with a registered veterinary surgeon.

Cost

The costs associated with this restriction is the inflation of prices and the reduction in access to services, which may result from preventing otherwise competent persons from competing with registered veterinarians.⁴³ This requirement represents a "serious" restriction on competition within the market.

The rationale behind the requirement stems from the parliamentary intention to provide a mechanism by which regional shortages in veterinary services may be met, whilst still

⁴² See Part 2.1.1 of this consultation paper.

⁴³ Submissions received suggested that there was a shortage of veterinary services in rural regions, see Appendix 6 No 16.

maintaining practice protection for registered veterinary surgeons.⁴⁴ The distinction between a permit holder and a registered veterinary surgeon is that the latter has attained the qualifications required to be registered as a veterinary surgeon.

Public benefit

The public benefit must therefore be in terms of the improved and integrated service and consumer protection provided by a qualified registered veterinarian as compared to a permit holder. There are three identifiable public benefits associated with a preference for registered veterinary surgeons. First, veterinary surgeons have undergone university training and have passed objective assessments of their competence over the period of undertaking their degree. By comparison, the competence of permit holders has only been assessed by the Board. Secondly the more extensive training of registered veterinarians also suggests a greater reliability in the quality of treatment provided. Thirdly, veterinary surgeons or practitioners are required under section 54 of the Act to be indemnified against civil liabilities, which provides a safety net for consumers.

The Review Panel considers that the public benefit to be derived from this restriction on permit holder's ability to enter into the veterinary treatment market does not justify the associated anti-competitive costs imposed on the community.

8. Recommendations:

Sub-section 38(1)(b) of the Act, which states that an applicant for a permit must not propose to provide veterinary treatment in a part of the State already adequately provided with the services of a veterinary surgeon or practitioner, should be removed.

LRC, SAFF and the AVA agreed that this provision should be removed. The remaining members of the LRC stated that section 38(1)(b) should be retained.

Restrictions on the Permits Issued under Section 38

Under sub-section 38(2) the permits issued:

- (a) restrict the part of the State in which the holder may provide veterinary treatment; and
- (b) are subject to such conditions as the board thinks fit and may be varied or revoked by the Board at any time.

Contravention of these restrictions under section 38(3) may be punishable by either a \$2,000 fine or three months imprisonment.

⁴⁴ South Australian Parliament Second reading speech 23 October 1985 1452.

Cost

The general cost of these restrictions is that they impede the permit holders ability to compete in the veterinary treatment market outside of the specified region. This may have the affect of reducing supply of veterinary treatment providers and, thereby inflate costs to the consumer of such services. This is a "serious" restriction upon competition.

The geographical restriction ensures that the permit holder only practices in the designated region where the lack of an alternative qualified veterinary service provider justifies his or her registration and practice protection.

The conditions imposed by the Board act as a mechanism by which the individual characteristics, including areas of skill and expertise of the permit holder, are taken into account when setting the scope of the permit holder's right to practice. This is a significant restriction on the ability of the permit holder to practice.

Public Benefit

The public benefit is that permit holders are restricted from providing services beyond that which they can demonstrate the requisite skill and knowledge. The consumer can rely on the permit as a representation of competence in the specified procedures or animals designated under permit, the permit also puts the consumer on notice of the permit holders limitations as to their abilities. The quality of veterinary treatment provided in the community is also maintained with qualified veterinarians receiving preferential rights to practice.

It is the view of the Review Panel that a power to set conditions on permit holders by the Board is necessary to ensure that permit holders do not provide veterinary treatment beyond their demonstrated ability. The Review Panel, therefore, recommends that sub-section 38(2)(b) of the Act should be retained.

The Review Panel is not convinced that the public benefit derived from limiting the part of the State in which a permit holder may provide veterinary treatment justifies the potential costs incurred by the community due to this "serious" restriction on permit holders ability to enter into other regional markets within the State.

9. Recommendations:

Sub-section 38(2)(a) of the Act, which limits the part of the State in which the permit may provide veterinary treatment, should be removed.

LRC; As this sub-section is another arm of the geographical restrictions placed on permit holders the response by the LRC was the same as for the proposed removal of sub-section 38(1)(b), SAFF and the AVA supporting its removal, the rest of the LRC stating that it should be retained.

Variation or Revocation of Permits

Under sub-section 38(2)(c) of the *Veterinary Surgeons Act*, the Board has the ability to vary or revoke permits. A discretion to vary or revoke the permits is of itself not a restriction on competition. The manner in which the board exercises its discretion may, however, have an impact upon competition. Statutory safeguards against the Board utilising its powers for anti-competitive purposes are discussed below.⁴⁵

The Review Panel notes that at present the Board has the ability to prescribe any condition on the operation of the permit and it is the view of the Review Panel that this is sufficient for the purposes of ensuring the quality of treatment to be provided to consumers by permit holders. It was considered unreasonable for the Board to be able to vary or revoke a permit at will as this would lead to uncertainty on the part of the permit holder. It was also considered that if disciplinary action was necessary that a permit should not be summarily revoked and that the disciplinary procedures which are currently used for registered veterinary practitioners and surgeons should apply.

10. Recommendations:

Sub-section 38(2)(c) should be removed and that sub-section 47(1)(a) should be modified so as to include permit holders within the unprofessional conduct provisions.

LRC: LRC agreed with the recommendation

Fees for permit holders

Applicants for permits under section 39(1) are required to pay a prescribed fee of \$150 to be placed on the list of permit holders. If this fee was sufficiently high so as to dissuade persons from entering the market for the provision of veterinary treatment then the community may incur costs generated through there being insufficient providers of veterinary treatment. Considering the overall costs of providing veterinary treatment this is a "trivial" restriction on competition.

The public benefit is the recovery of the costs of administering the Act.

It is the view of the Review Panel that the prescribed application fee is justified and that it should be retained.

⁴⁵ See Part 2.4 of this Consultation Paper.

11. Recommendations:

That permit holders should be required to pay an annual permit fee to the Board.

LRC, SAFF and AVA agreed with this recommendation. The remaining members of the LRC supported retaining the current system which requires permit holders to yearly reapply for a permit and pay the prescribed fees.

2.1.5. Practice Protection

Section 24 provides that only qualified persons shall provide veterinary treatment for a fee or reward. "Qualified persons" are registered veterinary surgeons and permit holders. "Veterinary treatment" is defined in section 4 to include:

- a) the diagnosis of diseases in, injury to, or the condition of, an animal; and
- b) the administration of an anaesthetic to an animal; and
- c) assistance of a prescribed kind to, or for the benefit of, an animal.

The Review Panel notes that there are no prescribed forms of assistance. Regulation 4, however, specifically excludes certain classes of treatment from the operation of the section 24.⁴⁶

Cost

This section reserves the practice of veterinary treatment for fee or reward to qualified persons. A "qualified person" means under the Act, a veterinary surgeon, or a veterinary practitioner or permit holder. Only registered persons are able, therefore, to provide veterinary treatment. This is a "serious" restriction upon competition in the market for the provision of veterinary treatment. Registration restricts the entry of potential veterinary treatment providers into the market. The costs associated with restrictions to entry into a market are discussed in Part 1 of this Consultation Paper.

Public benefit

The reservation of an area of practice to qualified persons achieves varied public benefits. These public benefits relate to alleviating the risks inherent in allowing unqualified persons from providing certain services to the community. Where the risks are sufficient to warrant the reservation of an area of practice to only qualified persons then the reservation will be justifiable. The risks inherent in allowing unqualified persons to provide veterinary services are outlined in Part 1.5 of this Consultation Paper.

⁴⁶ See Appendix 4.

12. Recommendations:

It is suggested that practice protection under section 24 of the Act should be retained.

LRC: The LRC considered that the benefits to the community associated with practice protection outweighed the costs imposed through its application.

2.1.6. Reservation of Title

The *Veterinary Surgeons Act* reserves the use of certain titles as follows:

- a) section 21 prohibits a person holding themselves out to be a veterinary surgeon or veterinary practitioner unless registered as such under the Act;
- b) section 22 prohibits a person holding themselves out as a specialist unless registered as such under the Act; and
- c) section 23 prohibits a person holding themselves out to be a permit holder unless they in fact hold a permit pursuant to the Act.

The reservation of title provisions contained in sections 21 to 23 extend not only to the unqualified person who holds themselves out to be a veterinary surgeon, veterinary specialist or permit holders; penalties also apply to persons who describe an unqualified person as one of these veterinary treatment providers.

Cost

Title protection provides a competitive advantage to a group of treatment providers within the veterinary treatment market. The possible affect of this advantage is to distort the market in favour of registered veterinary surgeons and permit holders such that they are able to charge a premium for their services. Title protection represents an "intermediate" restriction upon competition.

Public Benefit

There are public benefits in reserving the use of titles of certain profession where there is a risk to the public caused by unqualified persons claiming to be part of the particular profession. The degree of risk will vary between professions. Where the actions of the person claiming to be a member of a profession have immediate consequences for a consumer then the risk may be more significant. Similarly, a person claiming to be a member of a profession which is not subject to oversighting or 'cross-checking' by other professions or occupations, may pose a more significant risk to the public than a person whose deceptive conduct is likely to be discovered by other professions or occupations prior to a consumer suffering any substantial harm.

In the context of the provision of veterinary treatment the loss which may be suffered by the consumer is immediate. Given the specialised nature of veterinary practice there is little opportunity for providers of veterinary treatment to be scrutinised by either other veterinarians, or members of other professions or occupations.

Title protection also assists to balance the information asymmetry between the veterinary treatment providers knowledge of the procedures undertaken and the inability of the consumer to assess the quality of the provider's work. The public benefit arising from title protection is that consumers can be confident that a person holding themselves out to be a veterinary care provider has the required qualifications and/or expertise and is competent to provide veterinary treatment. Please refer to the examination of the public benefits of the Act in Part 1 for a comprehensive discussion of information asymmetry.

The Review Panel considers that a prohibition against 'holding out' is integral to registering veterinary treatment providers. The process of registration is rendered meaningless unless there is a prohibition against persons who are not so registered from claiming that they are registered under the Act. While there is general legislation which prohibits misleading and deceptive conduct, the Review Panel suspects that the consumer protection objectives of the Act could not be fully achieved through reliance solely on such provisions. It is also likely that there are less costs generated through the Board monitoring the title protection provisions of the *Veterinary Surgeons Act*, rather than individuals taking action in the general legal system to enforce consumer protection legislation. A number of submissions supported retaining title protection.⁴⁷

Reliance on the title extends to the operation of other legislation, such as the *Controlled Substances Act 1984*, *Livestock Act 1997* and the *Prevention of Cruelty to Animals Act 1985*, which directly refers to registered persons. Removal of title protection would frustrate the operation of these associated pieces of legislation as reliance on the meaning of title could no longer occur, new criteria would have to be incorporated into the legislation at a cost to the community.

It is the view of the Review Panel that the public benefits derived from title protection outweigh the anti-competitive costs incurred by the community and the Review Panel, therefore, recommends that the provisions granting title protection within the Act should be retained.

Exclusive use of Certain drugs by Registered Veterinary Surgeons

Pursuant to section 18 of the *Controlled Substances Act 1984* a person must not sell by retail, supply or administer to another person or to an animal, or prescribe for a person or an animal, a prescription drug unless the person is a medical practitioner, dentist, or veterinary surgeon or nurse acting in the ordinary course of his or her profession, or is licensed to do so by the Health Commission.⁴⁸ A veterinary surgeon under section 4 of the *Controlled Substances Act* is a person who is registered as such under the *Veterinary Surgeons Act 1985*.

⁴⁷ See Appendix 6 at 17.

⁴⁸ Please note that section 13 of the *Controlled Substances Act 1984* also restricts that manufacture, production and packing of controlled substances to certain classes of persons including registered veterinarians.

The *Controlled Substances Act* via its reliance on the Act's definition of "veterinary surgeon", creates a practice protection for the profession in the form of an exclusive right to use veterinary chemicals.

The *Agricultural and Veterinary Chemicals (South Australia) Act 1994* through its adoption of the *Commonwealth Agricultural and Veterinary Chemicals Code 1994* also provides competitive advantages to veterinary surgeons when they deal in veterinary chemicals. For example veterinary chemical products, as regulated under the code, do not include those substances prepared by a pharmacist on a veterinarians instructions nor those prepared by veterinary surgeons themselves.

Cost

Exclusive dealing represents a restriction on competition and an added cost to the community as lay individuals and permit holders are unable to enter the market for the provision of veterinary drugs for the treatment of animals. If the use and supply of such drugs was deregulated then the cost of procuring veterinary chemicals and drug therapy for animals would be likely to decrease. The exclusive use of veterinary chemicals represents an "intermediate" restriction on competition.

Public Benefit

A number of public benefits associated with restricting the use of veterinary chemicals were considered by the Review Panel and are outlined in Part 1 of this Report under paragraph 1.6. The Review Panel recognises that permit holders, with approval of the Board, may have sufficient skill and experience to conditionally administer certain veterinary chemicals, however altering the application of the *Controlled Substances Act* is outside the purview of a NCP review of the *Veterinary Surgeons Act*.

The Review Panel concludes that in general terms the costs involved in the granting of the exclusive right to veterinarians to use veterinary chemicals is outweighed by the public benefits associated with the proficient use of those drugs.

As an issue for implementation of the recommendations, the Review Panel recognises that access to veterinary drugs should be made available to those permit holders who can demonstrate to the Board competence in their use. The Panel suggests that the Minister responsible for the *Controlled Substances Act 1984* could be approached and asked to utilise his or her power under section 62A of that Act to grant the Board the discretion to grant, pursuant to section 55, Permit holders a licence to use and prescribe veterinary drugs.

13. Recommendations:

That the reservation of title under sections 21, 22 and 23 of the Act should be retained.

2.2. Restrictions on Practice

2.2.1. Returns by companies

Section 32 requires that every company registered as a veterinary surgeon shall:

- a) notify the Board within one month of a person becoming, or ceasing to be, a director; and
- b) lodge an annual return, compiled in the prescribed form, with the Board.

These are not requirements which apply to veterinarians who practice as sole practitioners or in partnerships. The costs generated by this provision are compliance costs. These costs are likely to be minimal and, therefore, the Review Panel assesses the restriction as "trivial".

The information provided in such an annual return enables the Board to have on hand, up-to-date information relevant to the registration of a corporate veterinary surgeon. For example, details of the current directors of the corporation, the provision of information concerning the ownership of shares and the respective voting rights of those shares. This section provides a monitoring system as to who has effective control of the company. The information contained in the annual return is, therefore, important to allow the Board to monitor compliance with the restrictions upon registering a company as a veterinary practitioner. Should the restrictions on the registration of companies be assessed as unjustifiable restrictions upon competition, the requirement for information to be supplied to the Board would need to be reassessed.

14. Recommendations:

Section 32, which creates a requirement for companies to provide documentation to the Board, should be removed from the Act.

LRC: The LRC agreed that section 32 should be removed.

2.2.2. Restrictions on Companies Practising in Partnerships

Section 33 of the Act prohibits companies registered as veterinary surgeons from practising in partnership with any other person. The costs and benefits of this restriction are the same as the general ownership restrictions outlined above.

15. Recommendations:

Section 33, which places a prohibition on companies practising in partnerships, should be removed from the Act.

LRC; The LRC agreed that section 33 should be removed.

2.2.3. Employment of Registered Person by Registered Company

Under section 34, a company which is a veterinary surgeon shall not, for the purpose of its veterinary practice, employ a number of registered persons more than twice the number of directors. Given the practice protection provisions of the *Veterinary Surgeons Act*, limitations on the employment of registered persons effectively restrict the size of veterinary practices. This constitutes an "intermediate" restriction on competitive behaviour because of the inability of the company to employ a large number of registered veterinarians so as to enjoy economies of scale. Utilising economies of scale may reduce the costs of veterinary treatment.

16. Recommendations:

Section 34, dealing with the ratio of company directors to registered employees, should be removed from the Act.

LRC; The LRC agreed that section 34 should be removed.

2.2.4. Alteration to Memorandum or Articles of Association

Section 37 prohibits the amendment of the memorandum or articles of association of a company registered as a veterinary surgeon unless the proposed amendment has been submitted to, and approved by, the Board. The purpose of companies providing this information to the Board is so that the Board can ensure that the company continues to meet the criteria for registration under section 31 of the Act. Again, therefore, if it was determined to remove the restrictions upon companies providing veterinary treatment the need for section 37 would need to be assessed.

Section 37 imposes compliance costs on veterinarian companies, specifically the cost of submitting alterations to the Board for review. Considering that alterations to memoranda and articles of companies rarely occur, the cost passed on to the consumer, if at all, would be minimal. The restriction is "trivial".

17. Recommendations:

The requirement placed on registered companies under section 37 of the Act to inform, and seek approval for, any proposed alterations to the companies memorandum or articles, should be removed from the Act.

LRC; The LRC agreed that section 34 should be removed.

2.2.5. Restrictions on Permit Holder's Business

Under sub-section 24(2) a permit holder may not provide veterinary treatment for a fee or a reward through the instrumentality of another person. A permit holder may not instruct another to provide veterinary treatment. Sub-section 24(1) already stops unqualified individuals providing veterinary treatment for fee or reward. This would include those in the employ of a permit holder. Sub-section 24(2) would only take effect when a person provides veterinary treatment under the instruction of the permit holder for no fee or reward.

Cost

The costs to the community derives from the inability of the permit holder to take on a supervisory role with respect to the treatment of animals. A permit holder services may not be engaged to provide instruction to the owner of the animal or their employees so as to have them provide the treatment. Permit holders must provide the treatment themselves. Depending on the numbers of animals requiring treatment this may result in a significant increase in the cost of a permit holder's services. This is an "intermediate" restriction upon competition.

Public Benefit

The public benefit is that the actual treatment is delivered by the person who was assessed by the Board as competent to provide the veterinary treatment. This helps to ensure the quality of service provided and the minimisation of suffering to the animal patient.

It was noted by the Review Panel that currently under sub-section 38(2)(b) the Board has the power to grant permits subject to conditions, as it sees fit. These conditions could include a condition not to provide veterinary treatment through the instrumentality of another. The Board has the discretion to impose such a condition only when initially granting the permit, which adds to the permit holders certainty, and the discretion allows for cases where the condition is not required.

It was concluded by the Review Panel that as the public benefits of sub-section 24(2) could be reached through the operation of sub-section 38(2)(b), which offers greater flexibility and is less restrictive, that the public benefits to be gained from the operation of sub-section 24(2) did not outweigh the anti-competitive costs incurred by the community.

18. Recommendations:

Sub-section 24(2), which restricts permit holders from providing treatment through the instrumentality of another, should be removed from the Act.

LRC; the LRC approved of the removal of section 24(2) from the Act on the basis that under section 38(2)(b) the board may impose a condition on the permit holder that they may not provide veterinary treatment through the instrumentality of another person.

2.2.6. Rules of Conduct

The Rules of Conduct governing the provision of veterinary treatment is contained in the Fourth Schedule to the *Veterinary Surgeons Regulations*. Pursuant to regulation 12, any registered person who contravenes these rules of conduct is liable to a penalty of up to \$2000. The restrictions on the practice of veterinary surgeons contained within the Rules of Conduct are summarised below.

Restrictions on Advertising

Advertising of a veterinary practice is restricted under rules 2, 3 and 4 of the Rules of Conduct. The provision of the Rules of Conduct constitute an "intermediate" restriction upon competition.

Rule 2 of the Rules of Conduct prohibits advertisements which are misleading or false. A Veterinary Surgeon also may not adopt a name or description which purports that the veterinary surgeon holds a qualification or has experience which the veterinary surgeon does not possess. These restrictions, however, provide a clear public benefit in that they help to protect the public against misleading conduct and assist to provide information symmetry between the consumer and provider of veterinary treatment. Such a restriction reflects the general law against misleading or deceptive conduct.

The Review Panel notes that the protection of consumers from misleading and deceptive conduct is already covered by both State and Federal consumer protection law. The Review Panel, therefore, concludes that the public benefit to be derived from the operation of Rule 2 does not outweigh the anti-competitive costs incurred by the community.

Rule 3 restricts the content of speeches and publications by a registered person. The restrictions on content would extend to the content of advertisements. The restriction on advertising also prohibits veterinary surgeons from advertising in a manner which compares the competency of one registered practitioner with another. Advertisements must also not be vulgar or sensational or constitute bringing the practice of veterinary surgery into disrepute. The breadth of the restriction partly rests on the Boards interpretation of "vulgar and sensational" advertising and what actions constitute bringing the profession into disrepute. These restrictions represent restriction on competition within the market, because they impede the ability of veterinary surgeons to directly compete within the veterinary services market. Direct competition has the potential to drive down the end costs to the consumer down.

The Review Panel could not identify any benefits for the community to be derived from the operation of Rule 3 of the Rules of Conduct beyond those already provided for under both State and Federal consumer protection laws. The benefits of Rule 3 do not outweigh the anti-competitive costs imposed on the community by this Rule.

Lastly, Rule 4 restricts the ability of veterinary surgeons to endorse products. The Review Panel notes that presumably interstate veterinarians are already endorsing products on South Australian television and the Review Panel questions both the public benefit to be derived from, and the current relevance of, Rule 4.

Submissions received from the AVA (SA) and the Board both support the advertising restrictions under the Act suggesting that they provide consumer protection against misleading or false advertising.⁴⁹

19. Recommendations:

The restrictions on advertising in the Rules of Conduct should be removed.

LRC: The LRC agreed that Rules 3 and 4 should be removed from the Rules of Conduct, the LRC did not, however, agree that Rule 2 should be removed. The Review Panel disagreed with the LRC as it considered that the Board was not in a better position to determine what was misleading and deceptive than the Office of Business and Consumer Affairs.

Requirement with Respect to Unattended Premises

Rule 7 of the Rules of Conduct requires that a registered person must ensure that when the premises from which the person provides veterinary treatment are unattended that:

- a) telephone enquiries are redirected in a manner so that they may be received by a registered person; or
- b) answered by a recorded message specifying a telephone number by which a registered person may be contacted;

and

- c) an illuminated sign at the premises must indicate a number at which a registered person may be contacted.

These requirements generate compliance costs. These costs are likely to be minimal in the context of providing premises for the purposes of veterinary treatment. These are "trivial" restrictions upon competition.

The Review Panel considers that the public benefit to be derived from the operation of Rule 7 does outweigh the anti-competitive cost to the community.

20. Recommendations:

Rule 7, which requires the provision of out of hours emergency numbers to consumers, should be retained.

⁴⁹ Australian Veterinary Association (SA Division) at 48, Veterinary Surgeons Board of SA at 20.

LRC; The LRC considered that the current wording of Rule 7 ensured that adequate emergency services were provided to consumers of veterinary treatment. The AVA suggested that any lessening of the requirements could result in non compliance.

Restriction on the Name of Veterinary Practices

Under rule 8 of the rules of Conduct, a registered person must not practice veterinary surgery in a name other than the persons own name or a name approved by the Board.

Cost

Rule 8 stops veterinary practitioners from adopting business-attracting names and also stops individual veterinary practices acting under a communal name. This restriction would also have a detrimental effect on the entry of franchise agreements into the veterinary treatment market, as the individual franchisees would be unable to operate under the communal name of the franchise. The inability to use a communal name restricts practitioners from engaging in collective advertising which could also reduce costs. In these circumstances, it constitutes an "intermediate" restriction upon competition.

Public Benefit

The public benefit of this requirement is that it ensures that consumers are aware of the name under which practitioners are registered to practise. The provision is currently been used by the Board to monitor those practices wishing to set up a veterinary hospital or to stop practices from using names which take a commercial advantage from another organisation.⁵⁰

The Review Panel notes that the legislation review of the *Medical Practitioners Act* recommends that the *Medical Practitioners Act* continue to empower the Board to restrict the use of inappropriate company names, which may be false, misleading or deceptive. The Review Panel notes that this recommendation goes no further than consumer legislation which is currently in existence.

The Review Panel concludes that the public benefits to be derived from the operation of Rule 8 do not outweigh the anti-competitive costs imposed on the community. However, the Review Panel also recognises the potential for consumers to be misled by the misuse of the term "veterinary hospital" and accordingly recommends that this aspect of the operation of Rule should be retained.

⁵⁰ Veterinary Surgeons Board of SA at 17.

21. Recommendations:

Rule 8, concerning the approval of practice names, should be removed from the Rules of conduct.

The Review Panel notes that Rule 8 is currently being used to approve practices which have sought to use the name "veterinary hospital". The Review Panel recommends that the Board's role in respect of the approval of the name "veterinary hospital" be retained.

LRC: The LRC agreed with the recommendation.

Restriction on the Use of Premises

Rule 9 of the Rules of Conduct prohibit a registered person from practising veterinary surgery from premises that are used for another commercial purpose. This Rule restricts the ability of veterinary surgeons to reduce overheads by combining their practice with other commercial operations. Due to specialised nature of veterinary practice the impact of this provision on competition in the market for the provision of veterinary treatment may be more minimal than if there were allied professions which were prevented from providing services from the same premises. This is a "trivial" restriction upon competition.

Whilst this has been assessed as a "trivial" restriction upon competition, the Review Panel cannot identify any benefit to the community which can be derived from the operation of this Rule.

22. Recommendations:

Rule 9, which prohibits a registered person from practicing veterinary surgery from premises that are being used for another commercial purpose, should be removed from the Rules of Conduct.

LRC: The LRC agreed that Rule 9 should be removed.

2.2.7. Practitioners to be Indemnified Against Loss

Section 54 of the Act prohibits a veterinary surgeon or a veterinary practitioner from practising unless he or she is insured in a manner and to an extent approved by the Board against civil liabilities that might be incurred by that person in the course of his or her practice.

Cost

A requirement to obtain compulsory indemnity insurance creates a cost to the veterinary surgeon or practitioner. This cost is likely to be passed on to the community as a component of the fees charged for veterinary services. In both instances, it is unlikely that compulsory indemnity will result in a significant increase in the cost of veterinary treatment.

It is the current practice of the Board not to specify the extent of the insurance which veterinary surgeons are required to hold. It is the view of the Board that insurance brokers are better qualified to determine the extent to which veterinary surgeons should be indemnified. In practice, the obligation under section 54 is merely that the practitioners are insured. As it is arguable that holding indemnity insurance is a sound commercial practice, it is unlikely that this obligation adds any costs above that which would be prudent for a veterinary treatment provider to undertake. This is, therefore, a "trivial" restriction on competition within the South Australian veterinary treatment market.

Public Benefit

There is public benefit in ensuring registered persons are adequately insured to cover any liabilities incurred by them against a member of the public.⁵¹ The Review Panel considers that this public benefit outweighs the anti-competitive costs of the section and recommends that section 54 of the Act be retained.

2.2.8. Joint and Several Liability

Section 36 of the Act imposes joint and several liability on a company registered as a veterinary surgeon and against persons who were directors of the company at the time the liability was incurred. Such joint and several liability does not generally apply to corporations law entities. Generally, a person can, through incorporation, remove personal liability for acts of the corporation. Section 36 significantly increases the financial risk carried by directors of corporate veterinary practices. This is an "intermediate" restriction upon competition.

Costs associated with such risks, whether insured or uninsured, are additional costs placed upon director registered veterinarians that are not borne by other persons in the veterinary services market. These costs are passed on to consumers of corporate veterinary services. The public benefit of this provision is the additional consumer and creditor protection it achieves. As directors are jointly and severally liable potential plaintiffs have greater options for the recovery of damages for loss.

23. Recommendations:

Section 36, which imposes joint and several liability on directors of a veterinary company, should be replaced with a requirement that employers of registered practitioners or permit holders must be indemnified against loss that may be incurred through the actions of their employees.

LRC, LRC agreed with the recommendation.

2.3. Restriction on the Training Market

The requirement that registered veterinary treatment providers must comply with the prescribed qualifications requirements under regulation 5 is a restriction on competition within the veterinary training market. Regulation 5 provides that a person may apply to the Board to be registered on the register of veterinary surgeons, if they complete a prescribed form and have attained the prescribed qualifications as set out in the second schedule of the regulations.

Cost

The second schedule consists of a set of specified courses and refers directly to the Universities both within Australia and overseas which provide those courses. If a provider wanted to start a new course in veterinary training and accordingly it was not as yet listed under schedule 2, then graduates of the course may be disadvantaged as they would be required to get certification of completion of the National Veterinary Examination.

Public Benefit

Prescribing the courses is a mechanism by which the quality of the veterinary schools training may be assessed and enforced. A course which is not producing competent veterinarians may be removed from the list requiring its graduates to undertake the National Veterinary Exam. This helps to ensure that the quality of service provided to consumers is maintained. Similar protection, however, could be proved by prescribing the skills and experience which students must acquire through undertaking a University degree in veterinary science and permitting any student who had attained this level of skill to be registered as a veterinary surgeon. Such an approach would remove the need to prescribe institutions.

Similar to the *Veterinary Surgeons Act*, the *Optometrists Act 1920* prescribes the specific courses which constitute the required qualifications for registration. The Review Panel notes that the legislation review of the *Optometrists Act* recommended that the regulations which prescribed the courses and tertiary institutions be replaced by a section to the effect that the person must hold optometry or optical dispensing qualifications acceptable to the Board.

The Review Panel notes that at present there is no South Australian university listed to provide training for prospective veterinarians. It is the Review Panel's understanding that this is due to a lack of interest to provide such services and that it is not due to an exclusion of South Australia's tertiary institutions from the second schedule to the regulations.

⁵¹ The submission received from the AVA (SA) stated that insurance was a critical safety net for consumers and suggested that the added insurance cost was 0.25% to 1% of veterinary fees.

The Review Panel considered that it is not an extended process for the regulations of the Act to be altered so as to allow a new training provider to enter into the market. In accordance with this view, the Review Panel concludes that Regulation 5 only represents a "trivial" restriction upon competition and that it should be retained within the Act.

2.4. Actions of the Veterinary Surgeons Board

Section 5 establishes the Veterinary Surgeons Board to administer the Act.⁵² Section 10 outlines the powers and functions of the Board. These powers and functions are:

- a) to consult with appropriate authorities as to syllabuses and courses to enable persons wishing to apply for registration under this Act to acquire the necessary qualifications, experience and skill;
- b) to make recommendations to the Governor in relation to regulations prescribing the qualifications, experience and other requirements to be fulfilled by persons applying for registration under the Act;
- c) to make recommendations to the Governor in relation to the making of other regulations under the Act;
- d) to establish and maintain registers of persons qualified to practise veterinary surgery in accordance with the Act and of persons entitled to be registered as specialist under the Act
- e) to carry out other functions prescribed by the Act.

As an administrative and disciplinary body, it is possible for the Board to create and impose restrictions upon competition within the veterinary services market. The following analysis is hypothetical and is not intended to suggest that past or present Boards have in any manner acted inappropriately in any manner which restricts competition in the relevant market.

The most direct manner in which the Board may restrict competition is through the use of powers to withhold or remove rights to practice. As expressed above, competition policy is unconcerned with the impact of legislative restrictions upon individuals participants within a market. A decision by the Board to deregister a veterinary surgeon for unprofessional conduct, is not evidence of a restriction upon competition. Competition policy is concerned, however, when the impact upon individuals is symptomatic of a broader anti-competitive agenda. If, for example, the Board adopted a policy of deregistering all persons educated at a particular institution, this would constitute anti-competitive conduct.

The role of the Board in registering veterinary surgeons and conferring permits upon persons to provide veterinary treatment has been extensively examined above.⁵² Set out below is a description of the means by which the Board can remove a right to practise as veterinary surgeon:

⁵² See Part 2.1.1 and 2.1.4 of this Consultation Paper.

- a) as a result of disciplinary actions; and
- b) as a result of incompetence or incapacity.

Following this discussion, is an examination of the statutory safeguards which exist to minimise the risk that the Board will utilise its powers for anti-competitive purposes.

Disciplinary Actions

Under section 47, the Board is empowered by the Act to discipline registered persons guilty of "unprofessional" conduct. Where a complaint has been laid the Board will unless the complaint is considered to be frivolous or vexatious inquire into the subject matter of the complaint. Section 4 of the Act defines unprofessional conduct to include:

- a) improper or unethical conduct in relation to the practice of veterinary surgery;
- b) incompetence or negligence in relation to the practice of veterinary surgery;
- c) contravention of, or failure to comply, with:-
 - i) a provision of this Act; or
 - ii) a condition imposed by or under this Act in relation to registration or the issue of a permit under this Act; and
- d) conduct that constitutes a criminal offence punishable by imprisonment for one year or more."

If the Board finds that the registered person has engaged in unprofessional conduct then a number of disciplinary actions can be undertaken. The Board may:

- a) administer a reprimand;
- b) order the payment of a fine not exceeding \$2,000;
- c) impose restrictions on the practitioners right to practice veterinary surgery;
- d) suspend the persons registration for up to a year; or
- e) cancel their registration.

It is the Boards practice to initially undertake an informal process of mediation between the person who has lodged the complaint and the veterinary surgeon involved. In most cases complaints have been resolved prior to any formal investigation of the complaint. According to the 1998/1999 Veterinary Surgeons Board Annual Report, 33 new complaints were brought before the Board. These included:

- three veterinarians were called before the Board to explain their actions and receive counselling;
- two complaints regarding advertisements for cheap vaccinations and health checks;
- one veterinarian was reprimanded in writing for failing to identify a condition in a dog;
- three matters were referred to other jurisdictions;
- eleven matters were settled informally, these included an unfounded allegation of pethidine addiction on the part of a veterinarian, allegations of unprofessional treatment of clients and allegations of negligence by veterinary surgeons; and
- eleven instances where it was found that there was no case to answer;
- three complaints were considered vexatious and not dealt with.

In the majority of these cases, the complaints were made by consumers of veterinary treatment.

Cost

The Board's powers to discipline individual registered veterinary surgeons has the potential to seriously restrict an individual veterinary surgeon's participation in the veterinary treatment market. The power, however, has a limited ability to restrict competition within the market as a whole, the loss of a small number of veterinary treatment providers due to disciplinary action is unlikely to restrict the supply of veterinary treatment within the State wide market for veterinary treatment. This is a "trivial" restriction upon competition in the market for the provision of veterinary treatment.⁵³

Public Benefit

There is an obvious public benefit in including "improper and unethical conduct" and "incompetence and negligence" within a definition of unprofessional conduct. Public safety and confidence in the veterinary profession should be maintained.

Restrictions upon conduct, and hence upon competition, arising from the disciplinary structure of the Act only give rise to anti-competitive costs if inappropriate standards in relation to "unprofessional conduct" are applied. Provided that the criteria used to determine unprofessional conduct are standards which would be reasonably expected by the public and veterinary profession, then the exercise of the Board's powers to impose conditions, cancel or suspend registration are not unjustifiable restrictions upon competition.

⁵³ See Appendix 6 at 18

The majority of complaints lodged with the Board concerned the professional standards shown by veterinarians with respect to either their dealings with customers or the competent treatment of their animal patients; only two complaints were lodged by veterinary surgeons against their competitors. This suggests that the Board has been utilising its disciplinary role primarily to uphold professional conduct for the benefit of consumers.

The legislation reviews of the *Dentists Act* and the *Optometrists Act* dealt with the issue of the non-competitive use of the Boards discretion in disciplinary hearings by defining the term unprofessional conduct as a contravention of a specified code. In the Dentists legislation review the code was that which was approved by the Minister, which allows for flexibility in the application of the code and the Minister to consider the code with respect to restrictions on competition. The Dentist review further recommended that it should be legislated that no code of conduct would be approved by the Minister if it contained restrictions on advertising.

The Review Panel notes that in similar legislation reviews of other health professions, it has been recommended that the meaning of "unprofessional conduct" be defined by a declared Code of Conduct. The Review Panel considers that in the case of the Act the meaning of unprofessional conduct has been adequately defined in section 4 of the Act. The Review Panel also notes that if the recommendations made above are adopted the definition of unprofessional conduct will be confined in that it would no longer include the breach of the advertising restriction in the Rules of Conduct.

It is the view of the Review Panel that the anti-competitive costs of section 47 may be reduced through the proposed structural changes to the Act and that if these changes are adopted that the section should be retained.

24. Recommendations:

The Review Panel notes that the submission received from the Veterinary Surgeons Board suggested that at present the Board was unable to pursue registered practitioners who persist in engaging in sub-standard practices which, however, did not constitute "unprofessional conduct" under the Act.

The Review Panel also notes that under the *Legal Practitioners Act 1981* the Legal Practitioners Conduct Board may instigate it's own investigation where the Board has reasonable cause to suspect that a legal practitioner has been guilty of "unsatisfactory conduct". "Unsatisfactory conduct" is conduct that whilst not unprofessional is that which involves a failure to meet the standard of conduct observed by a competent practitioner.

On the basis of improved consumer protection the Review Panel recommends that the Board should be granted a limited discretion to pursue a registered practitioner or permit holder on an informal basis so as to require them to undergo special training, and or, counselling.

The practitioner would retain a right to appeal and the discretion could only be used on reasonable grounds.

LRC; The members of the LRC approved of the recommendations as outlined above.

Investigations of Incompetence and Incapacity

Part of the Board's functions under the Act are to deal with complaints in relation to the incompetence or incapacity of a registered person.

Section 44 empowers the Board to make inquiries into allegations that a registered person has practised in a branch of veterinary surgery without having or exercising sufficient knowledge, experience or skill. If the Board is satisfied that the allegations are established, it may impose conditions on the person's right to practise.

Section 45 empowers the Board to suspend a person's registration and impose conditions on a person's right to practise veterinary surgery if the Board is satisfied that the ability of a registered person is impaired to such an extent that it is desirable, in the public interest, that such an order be made.

As part of the evaluation process the Board, under section 46, may require that the registered person submit to an examination by a medical practitioner appointed by the Board. Failure to submit would be cause for the Board to suspend the practitioner's registration until an examination is made.

The ability to suspend registration and impose conditions is a restriction on a person's ability to practise veterinary surgery. This is a "trivial" restriction on competition in the market as a whole. It only affects a small number of individual veterinary treatment providers.

It is the conclusion of the Review Panel that the public benefits of the sections 44 and 45 outweigh any anti-competitive costs generated by the operation of the sections and that, therefore, the sections should be retained.

2.4.1. Statutory Safeguards

Membership of the Board

The composition of a Statutory Board may provide a legislative safeguard against the Board utilising its powers and functions to effect competition within the veterinary treatment market. The composition of the Board is set out in section 6 of the Act. The Board consists of six members. Five members are nominated by the Minister and one is nominated by the AVA (SA). Of the members appointed by the Minister:

- a) one is a special magistrate or a legal practitioner of not less than ten years standing;
- b) three are veterinary surgeons; and
- c) one is a person who is neither a veterinary surgeon nor a legal practitioner.

The effectiveness of the composition of the Board acting as a safe guard against the misuse of its powers, to restrict competition, relies partly on how balanced and representative of the market, is the Board. There is a clear public benefit in having members on the Board who

have a specialised knowledge of the profession. This, however, may need to be balanced by the inclusion of consumer representatives and impartial decision makers.

Given that the current membership is that four out of the six Board members are veterinary surgeons there may be some scope for anti-competitive conduct. There is no direct reference under section 6 for a representative of the consumers of veterinary treatment to be included on the Board. There is also no representative of permit holders on the Board. The current composition is balanced strongly in favour of the main veterinary treatment providers, veterinary surgeons. Pursuant to section 7 of the Act, only four members of the Board are required to form a quorum. At present a quorum could be established by the four veterinary surgeon members.⁵⁴

It has been noted by the Review Panel that the completed legislation reviews of the *Dentists Act*, *Medical Practitioners Act* and *Optometrists Act* have all recommended that the composition of the respective professional boards be altered to allow for greater consumer and impartial representation. The review of the *Medical Practitioners Act* has also recommended that the legislation be amended so that for the Medical Practitioners Board to reach a quorum it must have at least three members and one must be a non practitioner.

25. Recommendations:

The number of individuals on the Board should be increased from 6 to 7 so as to include an additional consumer representative.

Specifically it is proposed that the Australian Veterinary Association will appoint 1 person to the Board and the Minister will appoint:

- 1 lawyer;
- 1 consumer representative;
- 1 Animal Welfare representative;
- 1 veterinary surgeon representing the companion and recreational animal sectors;
- 1 veterinary surgeon representing production Animal sectors; and
- 1 Minister delegate.

A quorum should be of at least 4 and that to reach a quorum, 1 member must be a veterinarian and 1 must be a non-veterinarian.

The current requirements for the legal practitioner on the Board, that they are either a special magistrate or have not less than ten years standing, should be retained.

LRC; The LRC approved of the recommendations as outlined above.

⁵⁴A number of submissions were received concerning the current membership of the Board see Appendix 6 at 19.

Natural Justice

Legislative provisions which ensure "natural justice" to persons affected by the actions of the Board also form a barrier to the exercise of the Board's functions for anti-competitive purposes. Under section 7 of the Act the Board is required to abide by the majority decision of its members and record accurate minutes of business conducted by the Board. Under section 9 of the Act, a member who has a personal interest or a direct or indirect pecuniary interest in a matter under consideration by the Board is disqualified from hearing the matter.

The most important safeguard is section 49 which requires that aspects of natural justice be afforded to parties in proceedings before the Board. Specifically, the Board is required to give all parties to a matter at least fourteen days written notice of its intention to conduct the hearing of the matter and is required to afford the parties a reasonable opportunity to call and give evidence to examine and cross examine a witness and to give submissions. The Act also, under section 51, provides for an appeal to the Supreme Court of South Australia.

Under the Act, complaints of unprofessional conduct are laid before the Board by the Registrar, the Minister, the AVA (SA), a registered person or a person aggrieved by the conduct of the registered person, the Board does not itself bring complaints against veterinary surgeons. It is possible, however, for Board members involved in the investigation of a complaint to also be involved in the imposition of disciplinary measures in regard to the complaint.

There is no requirement under the Act for the Board to give reasons for its decisions and concurrently the common law does not recognise a "right to reasons" in tribunals.⁵⁵ A failure by the Board to provide reasons, therefore, does not breach the Act or contravene common law principles.

26. Recommendations:

A provision should be added to the Act to require the Board to give written reasons for their decisions and to provide instructions to appellants on the process of appeal.

LRC: The LRC supported the inclusion of a requirement on the Board to give written reasons for its decisions.

The Appeals Process

⁵⁵ J R S Forbes *Disciplinary Tribunals* 2Ed The Federation Press NSW 1996 at 191.

Section 51 of the Act enables appeals to the Supreme Court against decisions of the Board including, refusal to register or reinstate, the imposition of conditions on registration or a reprimand or order administered under part 4 of the Act.

An appeal to the Supreme Court may be a costly and time consuming exercise, therefore inaccessible to some prospective appellants and hence limiting the protection provided.

An alternative within the current system is an appeal to the District Court, Administrative and Disciplinary Division, whereby some cost and time benefit could be achieved.⁵⁶

27. Recommendations:

The current appeal process under the Act should be redrafted so as to direct appellants to the Administrative and Disciplinary Division of the District Court so as to reduce costs, formality and increase access to the appeals process.

LRC: The members of the LRC agreed with this recommendation.

2.4.2. Audit of the Board by the Auditor General

Section 19 of the Act requires that the accounts of the Board may at any time, and at least once every year, be audited by the Auditor-General. The direct reference to the Auditor-General restricts competition by reserving the auditing of the Boards accounts to the Auditor-General which therefore restricts other auditors within the market from offering to provide this service.

The cost to the community is the loss of the opportunity for competition to provide the auditing service, which in turn, could drive the price down resulting in cost savings for the Board. The reservation of potentially contestable work to arms of Government is inconsistent with the State Government's policy of competitive neutrality.

28. Recommendation:

The references made in section 19 of the Act to the Auditor-General should be removed.

⁵⁶ It is noted that the South Australian *Dentists Act 1984* and the *Medical Practitioners Act 1983* have recommended that the appeal process be transferred to the Administrative and Disciplinary Division of the District Court.

PART 3: ADMINISTRATIVE REQUIREMENTS

The Review Panel is required during the course of this review to examine the provisions of the Act which impose administrative obligations upon persons and determine whether these obligations are unnecessary or impose an unwarranted burden. The provisions of the Act which impose such administrative requirements are:

- Section 19 The Board must keep proper accounts of its financial affairs and these shall be audited at least once a year.
- Section 20 The Board must prepare and deliver to the Minister, on or before 30 September, an annual report detailing the administration of the Act and containing the audited accounts.
- Section 31 The requirement to obtain the Board's approval of a company's memorandum and articles of association.
- Section 32 Companies must lodge an annual return containing specified information with the Board. The required form is contained in the Second Schedule to the regulations.
- Section 37 The requirement to obtain the Board's approval to alter a company's memorandum or articles of association.
- Section 56 Where a registered person has been ordered to pay compensation or has agreed to pay a sum of money in relation to a negligence claim, that person must provide the Board with information in relation to the claim. The information is prescribed in regulation 11.

Sections 19 and 20 are common provisions and are necessary to ensure accountability of the Board. The burden on the Board is not significant, as it is usual business practice to keep accounts of financial affairs.

The first schedule of the regulations contains the prescribed application for registration form. The form is five pages long and considerably comprehensive but it is unlikely to be considered so onerous as to constitute a real disincentive to entering into the market or a substantial administrative cost.

Section 56 is necessary to assist the Board to investigate possible unprofessional conduct.

PART 4: RECOMMENDATIONS

1. The name of the Act should be changed to the "*Veterinary Practice Act*".
2. That the alternatives as described in 1.4 of the Report do not meet the objectives of the Act.
3. That the system of registration should be retained.
4. The prohibition, under sub-section 28(3), on persons applying for reinstatement for 2 years after the cancellation of their registration should be replaced with a requirement that the Board, upon cancelling a person's registration for unprofessional conduct, must specify a period of time that must elapse prior to that person applying for reinstatement.

The period of prohibition on reinstatement is suggested to be of no less than 1 year and no more than two years.

5. That the specific branches of veterinary speciality should not be prescribed under regulation 6 and that the Board should be given the discretion to determine the branches of veterinary specialities in accordance with ACRVS guidelines.
6. The ownership restrictions prescribed in section 31 of the Act should be removed;
 - 6.1 that it be made an offence under the Act for an employer to unduly influence an employee to perform veterinary treatment in a manner detrimental to the welfare of the consumer, and or, the animal patient; and
 - 6.2 that all registered veterinary surgeons, practitioners and permit holders employed by, or in any form of business partnership with, unregistered persons be required to inform the Board of the names of those persons, and that the Board should maintain a register of those persons names.
7. A provision should be added into the Act which states that an employer may provide veterinary treatment for fee or reward through the services of their registered employee (including permit holders).
8. Sub-section 38(1)(b) of the Act, which states that an applicant for a permit must not propose to provide veterinary treatment in a part of the State already adequately provided with the services of a veterinary surgeon or practitioner, should be removed.
9. Sub-section 38(2)(a) of the Act, which limits the part of the State in which the permit may provide veterinary treatment, should be removed.
10. Sub-section 38(2)(c) should be removed and that sub-section 47(1)(a) should be modified so as to include permit holders within the unprofessional conduct provisions.

11. That permit holders should be required to pay an annual permit fee to the Board.
12. That practice protection under section 24 of the Act should be retained.
13. That the reservation of title under sections 21, 22 and 23 of the Act should be retained.
14. Section 32, which creates a requirement for companies to provide documentation to the Board, should be removed from the Act.
15. Section 33, which places a prohibition on companies practising in partnerships, should be removed from the Act.
16. Section 34, dealing with the ratio of company directors to registered employees, should be removed from the Act.
17. The requirement placed on registered companies under section 37 of the Act to inform, and seek approval for, any proposed alterations to the companies memorandum or articles, should be removed from the Act.
18. Sub-section 24(2), which restricts permit holders from providing treatment through the instrumentality of another, should be removed from the Act.
19. The restrictions on advertising in the Rules of Conduct should be removed.
20. Rule 7, which requires the provision of out of hours emergency number to consumers, should be retained.
21. Rule 8, concerning the approval of practice names, should be removed from the Rules of conduct.

The Review Panel notes that Rule 8 is currently being used to approve practices which have sought to use the name "veterinary hospital". The Review Panel recommends that the Board's role in respect of the approval of the name "veterinary hospital" be retained.

22. Rule 9, which prohibits a registered person from practicing veterinary surgery from premises that are being used for another commercial purpose, should be removed from the Rules of Conduct.
23. Section 36, which imposes joint and several liability on directors of a veterinary company, should be replaced with a requirement that employers of registered practitioners or permit holders must be indemnified against loss that may be incurred through the actions of their employees.
24. On the basis of improved consumer protection the Review Panel recommends that the Board should be granted a limited discretion to pursue a registered practitioner or permit holder on an informal basis so as to require them to undergo special training, and or, counselling.

The practitioner would retain a right to appeal and the discretion could only be used on reasonable grounds.

25. The number of individuals on the Board should be increased from 6 to 7 so as to include an additional consumer representative.

Specifically it is proposed that the Australian Veterinary Association will appoint 1 person to the Board and the Minister will appoint:

- 1 lawyer;
- 1 consumer representative;
- 1 Animal Welfare representative;
- 1 veterinary surgeon representing the companion and recreational animal sectors;
- 1 veterinary surgeon representing production Animal sectors; and
- 1 Minister delegate.

A quorum should be of at least 4 and that to reach a quorum, 1 member must be a veterinarian and 1 must be a non-veterinarian.

The current requirements for the legal practitioner on the Board, that they are either a special magistrate or have not less than ten years standing, should be retained.

26. A provision should be added to the Act to require the Board to give written reasons for their decisions and to provide instructions to appellants on the process of appeal.
27. The current appeal process under the Act should be redrafted so as to direct appellants to the Administrative and Disciplinary Division of the District Court so as to reduce costs, formality and increase access to the appeals process.
28. The references made in section 19 of the Act to the Auditor-General should be removed.

Please refer to appendix 7 for a brief overview of where the other States and Territories are with respect to the Review of their Veterinary legislation.

Appendix 1: Terms of Reference

Preamble

Under the Competition Principles Agreement (“the Agreement”) the State is required to review and, where appropriate, reform legislation which restricts competition by the end of 2000. In accordance with the State’s legislation review timetable, the Veterinary Surgeons Act 1985 is to be reviewed.

The Act and regulations made under the Act will be examined during the legislation review in accordance with the obligation contained in clause 5 of the Agreement.

This agreement requires the Government of SA to demonstrate before legislating for anything that restricts competition that:

- the benefits of the restriction to the community as a whole outweigh the costs; and
- the objectives of the legislation can only be achieved by restricting competition.

Review Panel

The review of the Veterinary Surgeons Act will be undertaken by a panel consisting of:

Ms Katherine Dellit
Solicitor
Office of Consumer and Business Affairs

Ms Alexandra Maddern
Senior Solicitor, Competition
Crown Solicitor’s Office

Mr Robin Vandergraaff
Manager, Animal Health/Chief Veterinary Officer
Department of Primary Industries and Resources

Mr Paul Piovesan
Legal Officer, (Agricultural Industries/SARDI)
Department of Primary Industries and Resources

Mr Andrew Manson
Principal Economics Consultant
Department of Primary Industries and Resources

Mr Peter Jackson
Project Officer
Department of Primary Industries and Resources

Objectives of the Review

When considering the appropriate form of regulation the Review Panel will consider the following objectives:

1. Regulation should only be retained, if the benefits to the community as a whole outweigh the costs; and if the objectives of the regulation cannot be achieved more efficiently through other means, including non-legislative approaches.
2. Pursuant to clause 1(3) of the Agreement, in assessing the benefits of regulation regard shall be had, where relevant, to:
 - (a) effects on the environment;
 - (b) social welfare and equity;
 - (c) occupational health and safety;
 - (d) economic and regional development;
 - (e) stakeholder including consumer interests,
 - (f) the competitiveness of business, including small business; and
 - (g) efficient resource allocation.
3. Compliance costs and the paper work burden on small business should be reduced where feasible.
4. Whether the Act, regulations and administrative processes in their present form have achieved their objectives and whether the same or a different set of objectives now appropriate?

Issues to be addressed

1. Clarify the objectives of the Veterinary Surgeons Act, including the identification of the public benefits of the Act, and provide an assessment of the importance of these objectives to the community.

2. Identify the restrictions to competition contained in the Act and regulations made under the Act:
 - (a) describe the theoretical nature of each restriction (eg barrier to entry, restriction on conduct etc);
 - (b) identify the markets upon which each restriction impacts; and
 - (c) provide an initial categorisation of each restriction (ie trivial, intermediate or serious).
3. Analyse and describe the likely effects of the restrictions on competition in the relevant markets, and on the economy generally:
 - (a) what are the practical effects of each restriction on the market;
 - (b) assign a weighting to the effect of each restriction in the market; and
 - (c) assess what is the relative importance of each restriction in a particular market to the economy as a whole.
4. Assess and balance the costs and benefits of the restriction.
5. Consider whether there are practical alternative means for achieving the objectives of the Veterinary Surgeons Act, including non-legislative approaches.
6. Consider whether any licensing, reporting, or other administrative procedures, are unnecessary or impose an unwarranted burden on any person.

Consultation

A Consultation Panel is to be set up to help facilitate the Review. The Panel is proposed to be comprised of one person from each of the following groups:

- The Australian Veterinary Association (SA Division)
- The South Australian Farmers Federation; and
- The RSPCA (SA) (Representing consumers).

The Consultation Panel will provide input to the review process either directly through the Minister for Primary Industries, Natural Resources and Regional Development by comments on matters of fact in the draft Issues Paper prior to the undertaking of the NCP Review.

Reference Committee

Following the release of the Issues Paper for public comment, a Veterinary Surgeons Legislation Reference Committee will be established to provide comments on the draft Green

Paper containing the NCP Review. The Reference Committee will comprise persons on the Consultation Panel and others representing the interests of consumers, veterinarians, farming organisations and other interested parties. It will provide comment to the Review Working Group on the results of the National Competition Policy Review. In doing so it will take into consideration the limitations imposed by legal precedent, constitutional law, NCP policy and Government policy. In addition the Review Working Group will compile a list of interested groups and other affected persons, and will provide a copies of papers to groups and other persons for comment.

Report

The Review Working Group will submit a report to the Minister detailing a report detailing:

- (a) the Terms of Reference for the review;
- (b) the persons and groups consulted during the review;
- (c) the analysis of the Veterinary Surgeons Act in accordance with these Terms of Reference; and
- (d) the recommendations of the Review Working Group.

CONSUMER GROUPS

Pet owners
Production animal owners
Performance animal owners

GROSS FEES INTO VETERINARY PRACTICES \$63,700,000

TOTAL CAPITAL INVESTMENT IN EQUIPMENT, STOCK, GOODWILL etc (NOT INCLUDING REAL ESTATE) \$35,000,000

PROFIT TO VETERINARIANS IS 20.1% OF TURNOVER AFTER PAYMENT OF ALL COSTS
\$12,814,000

THIS IS AN AVERAGE SALARY OF \$46,093 PER VETERINARIAN
THIS SALARY VARIES FROM

- AVERAGE OF \$38,000 pa FOR EMPLOYED VETERINARIANS
- AVERAGE OF \$56,000 pa FOR OWNER VETERINARIANS

INCOME EARNED PER HOURS WORKED (NOT INCLUDING ON CALL TIME).

EMPLOYED VETS	2040 HOURS/YEAR	\$18.63 PER HOUR
OWNER VETS	2090 HOURS/YEAR	\$26.79 PER HOUR
AVERAGE HOURLY VETERINARY INCOME		\$22.30 PER HOUR

PETCARE MARKET IN SOUTH AUSTRALIA 1998

TOTAL NUMBER OF PETS

320,000 Dogs	21 DOGS / 100 PEOPLE
240,000 Cats	17 CATS / 100 PEOPLE
700 Birds	
1,000,000 Fish	
150,000 Other Pets	
64% of Households Have a Pet	

DOLLARS SPENT BY CONSUMERS ON PETCARE IN SA 1998 (Pet Care Advisory Service)

	Total Petcare	Spent as Vets	Spent on Restricted Vet Service/Product
Dogs	\$173,000,000	\$40,000,000	\$32,000,000
Cats	\$80,000,000	\$12,000,000	\$9,600,000
Other Pets	\$23,000,000	\$2,700,000	\$2,160,000
Total	\$276,000,000	\$54,700,000	\$43,760,000

VETERINARY SERVICE AND PRODUCT MARKET IN SOUTH AUSTRALIA

The following figures reflect the current dollar value of the Veterinary Service and Product Market in South Australia. The figures are based on a combination of research using FMRC, Petcare Advisory Service, Australian Bureau of Statistics, ABARE, P.I.R.S.A. and AVA sources.

TOTAL GROSS FEES SPENT BY SOUTH AUSTRALIAN CONSUMERS AT VETERINARY CLINICS IN 1998

SPECIES	CITY PRACTICE	MIXED RURAL PRACTICE	TOTAL
DOG	\$28,000,000	\$12,000,000	\$40,000,000
CATS	\$9,000,000	\$3,000,000	\$12,000,000
HORSES	\$2,500,000	\$1,500,000	\$4,000,000
CATTLE	0	\$4,000,000	\$4,000,000
SHEEP/PIGS etc	0	\$1,000,000	\$1,000,000
OTHER PETS	\$1,600,000	\$1,100,000	\$2,700,000
TOTAL	\$41,100,000	\$22,600,000	\$63,700,000

BREAKUP OF GROSS VETERINARY INCOME IN PRODUCT & SERVICE

Professional Service	64%	\$40,768,000
Professional Product Services	16%	\$10,192,000

Total Income Registered by Legislation	80%	\$50,960,000
Non Professional Product/Service (not restricted by legislation)	20%	\$12,740,000

STRUCTURE OF PRIVATE PRACTICE VETERINARY INDUSTRY IN SOUTH AUSTRALIA 1999 (FMRC & AVA SURVEYS)

	VETERINARY PRACTICES	VETERINARIANS (FTE)
CITY	80	164
RURAL	48	114
TOTAL	128	278

ESTIMATED VETERINARY NURSES (FTE) 424

Appendix 3: Comparison of State/Territory Boards

STATE	Registration Initial/ Annual	Specialist Registration Initial Fee	Specialist Registration Annual Renewal	Annual Fee Specialist Pays	Sec Registration	Restoration Fee	Registration of Premises	Pay for legal service	E-Mail	Sitting Fees (1/2 day)
QLD	\$33/76	\$66	\$76	\$76 as vet + \$76 as spec	50% of normal fee	\$58	\$175 Hospital \$88 Clinic	✓	vsbqld@dpi.qld.gov.au	Chair PS \$220 + travel
WA	\$50/210	100	20	\$50 + \$210	✓	X	\$150 initial \$100 annual	✓	vsbperth@w.t.com.au	\$130/\$87 no travel
SA	\$40/150	50	Nil	\$150	✓	\$40	Hos \$200 (4 yrly inspec \$150) \$50 Practice Name no inspec	✓	vsb@dove.net.au	\$144/\$121 + travel
VIC	\$120	240	To be introduced	\$120	X	\$37	Premises occas inspected - No charge	✓	To come	\$246/\$187 + travel
ACT	\$116/100	116	100	\$100 + \$100	X	X	Guidelines in place	X	jill.northy@dpa.act.gov.au	Inquiries only- Remuneration Tribunal Fees
NSW	\$30/100	50	Nil	\$100	To come	\$150	Inspect 5 yrly \$60 Init/\$60 annual	✓	✓	\$1400 p.a. + travel
NT	\$100/50	100	Nil	\$50	X	X	Cov by hlth legis	X	✓	Travel
TAS	\$100/60	\$140	Nil	\$60	X		N/a	X	igillham@dpi.tas.gov.au	\$150/day + travel

Appendix 4: Regulation 4

4. For the purposes of section 24 of the Act, the following classes of treatment are excluded from the operation of that section:

- (a) the deworming of an animal other than by intranasal oesophageal tube;
 - (b) the performance of the Mules operation on sheep;
 - (c) the dehorning of an animal less than 6 months of age;
 - (d) the castration or spraying of animals that are -
 - (i) less than 6 months of age;and
 - (ii) being kept in the course of primary production;
 - (e) the tailing of lambs that are less than six months of age;
 - (f) the treating of an animal for ectoparasites;
 - (g) the treatment of an animal by a registered medical or dental practitioner, physiotherapist or chiropractor under the supervision of a registered person;
 - (h) the administration of an anaesthetic, drug or vaccine to an animal by any person under the direct supervision of a registered person;
 - (i) the artificial insemination of an animal by a person approved for the purpose under the *Stock Diseases Act, 1934*;
 - (j) the vaccination of an animal in circumstances authorised by the *Stock Diseases Act, 1934*, or the *Stock Medicines Act, 1939*;
 - (k) the treatment of an animal for disease by an inspector appointed under the *Stock Diseases Act, 1980*, in the course of the inspector's duties;
 - (l) the treatment of a animal by a person in pursuance of a licence under the *Prevention of Cruelty to Animals Act, 1985*;
- and
- (m) the treatment of an animal, under the supervision of a registered person, by a person who is undertaking a course of instruction to obtain a qualification referred to in the second schedule.

Appendix 5: Materials Considered by the Review Panel

Submissions

NAME

Dr P Kubler
Veterinary Surgeon
170 Payneham Road
EVANDALE SA 5069

Mr John Cameron
Chief Executive
SA Thoroughbred Racing
GPO Box 2646
ADELAIDE SA 5001

Mr Tony Cooke
National Director
Petcare Information and Advisory Service Australia Pty Ltd
Level 13, Como
644 Chapel Street
SOUTH YARRA VIC 3141

Mr Tony Wigg
Area Technical Manager
AQIS
PO Box 63
PORT ADELAIDE SA 5015

Mr Tim Lawrie
AVA Representative
Australian Veterinary Association (SA Division)
PO Box 114
WALKERVILLE SA 5081

Dr Mark Peters
Executive Director
RSPCA (SA)
GPO Box 2122
ADELAIDE SA 5001

Mr/s N Pech
PO Box 28
LAURA SA 5480

NAME

Dr Bruce Lee
Gumeracha Veterinary Clinic
10 Albert Street
GUMERACHA SA 5233

Mr Walter Spehr
Acting Commissioner of Consumer Affairs
Office of Consumer and Business Affairs
Level 2, Chesser House
91-97 Grenfell Street
ADELAIDE SA 5000

Mr Dick Edmonds
PO Box 38
KADINA SA 5554

Mr Garth McGilvray
National President
Australian Veterinary Association
PO Box 371
ARTARMON NSW 2064

Dr Bernie Mason
Murray Bridge Veterinary Clinic
140 Swanport Road
MURRAY BRIDGE SA 5253

Ms Helen Ward
Registrar
Veterinary Surgeons Board of SA
PO Box 218
WALKERVILLE SA 5081

Dr Laurie Doube
Port Road West Croydon Veterinary Clinic
449 Port Road
WEST CROYDON SA 5008

Skye Badger
Executive Officer
SA Farmers Federation
PO Box 6014, Halifax Street
ADELAIDE SA 5000

NAME

John Andre
Chairman
South Australian Cattle Advisory Group
PO Box 6014, Halifax Street
ADELAIDE SA 5000

Greg Thomson
General Manager
Animal Welfare League of SA Inc

South Australian Animal Ethics Committee Submission

Members of Consultation Panel

Mr Chris Parker
South Australian Farmers Federation

Dr Tim Laurie
Australian Veterinary Association (South Australian Division)

Dr Mark Peters
RSPCA (SA)

Members of Legislation Reference Committee

Mr Chris Parker
South Australian Farmers Federation

Dr Tim Laurie
Australian Veterinary Association (SA Division)

Dr Mark Peters
RSPCA (SA) Inc

Mr John Burt (Interim)
South Australian Stud Merino Sheepbreeder's Association

Mr Doug McCarty
Horse SA

Mrs Cathie Harvey
South Australian Dairy Farmer's Association Incorporated

Michael Hollobone
South Australian Canine Association

Nell Evans (Interim), Governing Council of the cat Fancy of SA Inc.

Appendix 6: Extracts of Submissions received by the Review Panel

1.5 Costs

1. "One of the costs borne by consumers identified as arising from the restriction of competition through the Act is the creation of a small supply side in the market for veterinary services. As noted at point 3.6.2 of the issues paper, there are only 459 South Australian registered veterinary surgeons as of June 1998. The size of the supply side of market is not commensurate with the potential demand identified in the paper and hence prices are likely to be subjected to upwards pressure. This resultant cost of the restriction would need to be clearly justified."

1.6 Public Benefits

2. The submission by the AVA (SA) provides a good example of the extra costs and suffering which may be incurred by consumers and their animals if unqualified individuals are allowed to provide veterinary treatment. The example concerned a case which occurred in 1995 where a person chose a non-qualified person to desex their female dog. The dog was prevented from breeding and the sutures in the skin appeared professional, however, the procedure was incorrectly performed and a number of repercussions of the treatment occurred:
 - a) the dog developed a life threatening peritonitis due to poor sterility during the surgery;
 - b) the dog had to undergo a second operation and receive intensive care by a registered veterinarian to save the dog's life; and
 - c) the owner had a final cost of between four and five times that of a routine desexing operation.
3. The submission from the AVA suggested that most countries rely on the definition of a qualified and registered veterinarian in Australia as indicating an equivalence to veterinary surgeons in their own country. The AVA suggests that there should be no ambiguity in the meaning of "veterinarian" in South Australia, as such ambiguity may impede the export of animal products from Australia.

The submissions received from the AVA, the AVA (SA) and the Board also expresses the view that a public benefit of the current legislative scheme was that it ensured the quality of veterinary treatment in the State with respect to halting the spread of disease within the animal population. By ensuring that all veterinary treatment is undertaken by individuals who have the qualifications and training to identify and respond to

disease within the animal population the Act operates to impede or halt the spread of disease within South Australia's animal population.⁵⁷ The submission from the Board provides an overview of the South Australian livestock export industry to support its contention that significant economic harm could be sustained if the qualifications of veterinarian-trained inspectors could not be assured.⁵⁸ The Board stated that:

Australia exports livestock products worth \$10 billion annually. South Australian livestock exports contribute about 6% to these exports, and about 12% of the State's export income.⁵⁹

4. A specific issue identified by the AVA was that of certification by registered veterinarians of animal products exported overseas, as to the disease free status of the product.⁶⁰ The public benefit of the current regime is that it provides assurances to importers of Australian produce that the person who checked the imported animal product for disease was sufficiently trained to provide a diagnosis as to the wholesomeness of the product. The AVA submission also stressed that due to a number of recent incidents regarding animal health and food safety, foreign governments are placing a greater emphasis on veterinary certification and inspection and that the operation of the Act avoids many negative political and legal implications associated with the export of animal foodstuffs.⁶¹
5. The submission from the AVA (SA) suggested that the equine market was an example of an industry which is at real risk of an outbreak of exotic disease due to the constant movement of horses into, and out of, the State.⁶² The AVA (SA) stated that veterinarians were the only people with training in management and recognition of exotic diseases and, as part of their involvement in the industry, are responsible for the identification and control of such diseases. It was further suggested that a disease outbreak within the industry would have catastrophic repercussions for the industry, with recent outbreaks of influenza in South Africa and Hong Kong equine stocks costing several billions of dollars in lost revenue.⁶³
6. The submission from the AVA and the Board discussed two new diseases which have developed in Australia from animal sources: Hendra virus (bat paramyxovirus) and Bat lyssavirus (one of the rabies group). Both of these diseases have resulted in human fatalities.⁶⁴ The submission also highlighted:
 - (a) the outbreak meat borne illness caused by Salmonella and Escherichia coli bacteria which resulted in a significant number of people, including children, becoming severely ill; and

⁵⁷ Australian Veterinary Association (SA Division) at 26.

⁵⁸ Veterinary Surgeons Board of SA at 3.

⁵⁹ Veterinary Surgeons Board of SA at 3.

⁶⁰ Australian Veterinary Association at 4.

⁶¹ Australian Veterinary Association at 4.

⁶² Australian Veterinary Association (SA Division) at 26.

⁶³ Australian Veterinary Association (SA Division) at 26.

⁶⁴ Australian Veterinary Association at 8.

(b) the emergence of bovine spongiform encephalopathy (mad cow disease) in the UK and its link with Creutzfeldt Jakob disease in humans

as examples of the potential risks to public health associated with animals.

7. The submission from the Board included an example of the cost differences in the procedure for desexing a cat and the divergent quality of care received. Specifically the submission stated:

Take a specific example such as desexing a cat. The price can vary from, say, \$30 - \$100. This will depend on:-

- safety & choice of anaesthetic agent (in case of a male cat anything from mere sedation to true anaesthesia),
- the presence of support staff during the operation should there be any respiratory or cardiac arrest,
- the type of sutures used (could even be glue and no sutures),
- the degree of sterility (worst-case sterilization (if any) by soaking instruments in chemical wash, (which may not be changed over many operations) up to best-case scenario of autoclaving instruments; and/or surgical packs re-used),
- follow-up support (in worst case scenarios, wounds often break down, re-open and/or infect).

None of these are areas that the consumer is likely to have knowledge of prior to their choice.⁶⁵

1.4 Alternatives

8. The submission received from the AVA (SA) discussed in detail the possible negative impacts of total deregulation upon both the community and South Australia's primary industry. The Association suggested that a number of community benefits would be lost including the protection of the public as a consumer, protection of animal welfare,⁶⁶ protection of domestic and export animal production industries and protection of public health. It was also proposed that deregulation would result in a reduction in the number of qualified veterinarians practising within South Australia. It was further suggested that this reduction would result in an overall loss of veterinary services to the South Australian community, especially with respect to those in the rural regions.⁶⁷

The submission received from the SAFF suggested that the shortage of veterinary treatment in rural regions was acute and that this resulted in cost to the community. The SAFF, however, stated that deregulation would have a negative impact on rural areas, the SAFF cites a "recently completed Senate report on the impact of NCC policy" as support for this statement.⁶⁸

⁶⁵ Veterinary Surgeons Board of SA at 3.

⁶⁶ The submission from Mr Edmonds suggested that some regulation must exist so as to ensure the protection of animals, Chap 5 at 1.

⁶⁷ Australian Veterinary Association (SA Division) at 21. Mr Edmonds, in his submission, further suggested that deregulation of the veterinary profession would result in the increased suffering of animals, as consumers have insufficient knowledge of veterinary treatment to protect their animals from harm.

⁶⁸ South Australian Farmers Federation at 2.

9. Concerns raised, included:

- (a) That the consumer protection regime is necessarily limited by its reactive nature; that is it only accrues a right in the individual to take action once damage has been suffered. The *Veterinary Surgeons Act* by comparison seeks to ensure that those who have become registered as veterinary surgeons are competent and are unlikely to engage in unprofessional or negligent conduct.⁶⁹
- (b) It was also suggested that consumer protection legislation would not be as effective as the current legislation due to the lack of expertise in consumer groups to adequately assess matters relating to veterinary treatment. It was further suggested that the process may require consultants and experts to be employed when investigating a breach of consumer protection law. This would, therefore, be time consuming and would place an extra cost burden upon the process.⁷⁰
- (c) It was also suggested that the current system is superior to consumer protection law as the public can speak directly to the regulatory body and that any issues can be readily understood, discussed and explained to the consumer. It was also suggested that the Board was in the best position to initiate mediation and to gain a cost effective resolution of a complaint.⁷¹

10. The AVA (SA) suggested that the community's expectation of animal welfare included the imposition of positive obligations upon veterinary treatment providers to act in the best interests of animal's well being. The submission from the Animal Welfare League of South Australia Inc suggested that reliance on the *Prevention of Cruelty to Animals Act* would result in a lack of accountability of veterinary treatment providers and that the Act was necessary to:

- (a) maintain a regulated profession;
- (b) to protect the consumer and assist Animal Welfare;
- (c) ensure clear definitions for acts of veterinary science to maintain a strong element of animal welfare;
- (d) ensure that veterinarians remain professional and not allow the unqualified and painful treatment of animals; and
- (e) ensure disciplinary procedures exist in order to maintain accountability within the veterinary profession.

⁶⁹ Office of Consumer and Business Affairs at 3.

⁷⁰ Australian Veterinary Association (SA Division), AQIS, Mr/s N Pech and Veterinary Surgeons Board of SA at 10.

⁷¹ Veterinary Surgeons Board of SA at 10.

2.1.1 Registration - Natural Person

11. The submission from the Board suggested that the "fit and proper person" restriction was minor and had been useful in the past as a tool for maintaining professional standards.⁷² The Board provided allegations of drug addiction and alcoholism as examples. It was also stated that the "fit and proper person" requirement was not unreasonable in the context of the potential for abuse associated with the daily handling of drugs.⁷³ The Board further asserted that if consumers were required to wait for market forces to reveal that a person was not a "fit and proper person" to be registered as a veterinary surgeon, great harm could be done in the process to consumer confidence in the profession.
12. The Board in its submission further asserts that the provision allows for veterinarians to carry out work that they are adequately qualified to undertake. The submission cites meat inspection and the poultry industry as examples of where this has occurred.⁷⁴ In a similar vein, the AVA (SA) provides the example of Irish veterinarians in the seasonal equine stud market being able to practice in South Australia. The public benefit being the efficient use of veterinarians competent in a field, to increase competition and cope with the seasonal work load in the seasonal equine stud market.⁷⁵

The provision adds flexibility to the operation of the Act, the Board also suggest that the creation of a temporary registration would add further flexibility to the Act. This is, however, a policy question and beyond the terms of reference of this review.

13. The AVA (SA) provides a discussion in support of the reinstatement provision. The AVA (SA) asserts that "this provision is the mechanism of enforcement of the entire Act" and that accordingly, the public benefit of the provision is extremely high. It is suggested that the reinstatement provision empowers the community and provides accountability of the veterinary profession, protecting the public, the animals, primary industry and the public's health.⁷⁶

The AVA (SA) submission also proposes two reasons to justify the two year period associated with the cancellation of registration. These include:

- (a) that there is a range of lower penalties in the Act ranging from a defined course of action aimed at improving competency to a period of suspension of registration up to being struck off the register; and
- (b) that it gives the Board some real power to achieve the objectives of the Act.⁷⁷

⁷² Veterinary Surgeons Board of SA at 13.

⁷³ Veterinary Surgeons Board of SA at 13.

⁷⁴ Veterinary Surgeons Board of SA at 14.

⁷⁵ Australian Veterinary Association (SA Division) at 41.

⁷⁶ Australian Veterinary Association (SA Division) at 40.

⁷⁷ Australian Veterinary Association (SA Division) at 40.

14. The AVA (SA) submission suggested that the registration of specialists protects the consumer by giving the consumer a clear choice of a higher level veterinary treatment provider. The submission also states that the public gains the benefit of being able to identify a specialist by their clearly defined title. The public has the assurance that the specialist has a defined level of academic standards and possesses the attributes required to achieve the best outcome possible for the consumer's animal in the veterinarian's field of specialty.⁷⁸
15. The RSPCA (SA) submission suggested that if the restrictions on ownership were deregulated this would lead to veterinary services becoming profit driven instead of according to standards professional care.⁷⁹ The Board expressed the belief that the deregulation of business practices would result in the proliferation of franchises within the market, that the Board would have difficulty regulating such large concerns. The AVA (SA)'s and Board's submissions also suggested that eventually monopolies may be formed leading to an increase in prices for veterinary services.

2.1.4 Practicing Permits

16. The submission received from the SAFF suggested that many consumers in rural regions had very limited access to veterinary treatment.⁸⁰ Mr Edmonds also asserted that, as a person residing in a rural region, he was restricted as to the choice of veterinary treatment provider and, that as a consumer, he felt at a disadvantage.⁸¹

2.1.6 Reservation of Title

17. Submissions received from the AVA, the AVA (SA) and the Board all expressed support for retaining title protection. The submission from the AVA points out that restricting the use of the term veterinarian to a person who has attained the appropriate qualifications by legislation has occurred since the early part of this century. The AVA further asserts that such title protection legislation is common in most countries of the world, including Australia's major trading partners. It is further suggested that the protection of the title "veterinarian" is crucial for the maintaining of trade relations with overseas countries as they rely on the term to represent a certain level of expertise especially when dealing with the certification of animal products exported from Australia.⁸²

The submissions from the AVA (SA) and the Board supported the AVA comments. Additionally, the Board's submission illustrated that it is not only on an international basis that the term "veterinarian" is relied upon. The Board stated that insurance companies, breed societies and the South Australian Jockey Club were all examples of organisations within the South Australian community which rely on veterinary certification. The Board further asserted that often large sums of money were expended on reliance of a veterinary certificate and that such transactions would be at risk if the

⁷⁸ Australian Veterinary Association (SA Division) at 39.

⁷⁹ RSPCA(SA) at 4.

⁸⁰ South Australian Farmers Federation at 1.

⁸¹ Mr Edmonds, Chap at 15.

⁸² Australian Veterinary Association at 4.

credentials of the person signing a relevant veterinary certificate could not be readily recognisable by all parties to the transaction.⁸³

2.4 Actions of the Veterinary Surgeons Board

18. The submission received from the AVA (SA) stated that the Veterinary Surgeons Board was the most effective way of protecting the public against unprofessional conduct by veterinary surgeons.⁸⁴ The submission from the Office of Consumer and Business Affairs suggests that a purpose of the Act is the maintenance of high standards amongst veterinary surgeons and that a down stream effect of this purpose is the protection of the public.⁸⁵

2.4.1 Statutory Safeguards

19. Both the submissions received from the AVA (SA) and the Board suggest that the current composition of the Board represents a good balance of veterinary surgeons and non veterinary surgeons. The submissions also assert that the operations of the Board itself do not place restrictions on competition within the veterinary treatment market. The Board's submission suggests that the two non-veterinarians are, in effect, consumer representatives and that the Registrar sits in on every meeting and therefore acts as an additional consumer representative.⁸⁶

The submission from the RSPCA (SA) expresses the view that it is important for the Board to be seen by the community as an independent authority. The RSPCA (SA) questions the apparent high representation of veterinary surgeons on the Board and asserts that there should be further consumer representation on the Board.⁸⁷ The RSPCA (SA) submission also suggests that the quorum of the Board should include members from each of the separate categories of representation. That if a member is unable to attend, a deputy should be required to fill the vacancy.⁸⁸

Submissions received from the AVA (SA) and the Board both discussed the current operations of the Board. The AVA (SA) stated that it may be more balanced if at least one of the non veterinarian members was required to be present to form a quorum. The AVA (SA), however, did express concern that such a requirement might lead to practical problems and delays, which may not be in the interests of the public.⁸⁹ The submission from the Board supports the current procedures of the Board stating that they work efficiently and that the potential situation of a quorum comprised entirely of veterinary surgeons has yet to arise.⁹⁰

⁸³ Veterinary Surgeons Board of SA at 3.

⁸⁴ Australian Veterinary Association (SA Division) at 7.

⁸⁵ Office of Consumer and Business Affairs at 1.

⁸⁶ Australian Veterinary Association (SA Division) at 45 and Veterinary Surgeons Board of SA at 17.

⁸⁷ RSPCA(SA) at 6.

⁸⁸ RSPCA(SA) at 6.

⁸⁹ Australian Veterinary Association (SA Division) at 56.

⁹⁰ Veterinary Surgeons Board of SA at 17.

Appendix 7: Interstate Comparison of the Respective Legislation Reviews of Veterinary Surgeons Legislation

During mid May 2000 enquires were made as to the progress of the Legislation Reviews of Veterinary Surgeons Acts in the other States and Territories. Responses to these enquires were received from, the Australian Capital Territory, New South Wales, the Northern Territory and Queensland.

The Australian Capital Territory

The *Veterinary Surgeons Registration Act 1994* is administered by the Dept of Health. (This is because it is mirrored on ACT professionals legislation.) Due to these administrative arrangements the Act has been included in the health professionals review.

The status of the health professionals review is that it is underway with the review expected to be complete by July 2000. The review began in May 1999 and has been a public process. The recommendations flowing from the review concerning veterinarians will form a separate part of the review's recommendations.

New South Wales

The Legislation Review of the New South Wales *Veterinary Surgeon's Act 1986* has been completed and the final report is currently being considered by the responsible Minister. The specific recommendations made to the Minister remain confidential.

The Northern Territory

The final Report of the Legislation Review of the Northern Territory *Veterinarians Act* has been completed and the legislation has been modified in accordance with the Reports recommendations. The main recommendation made was the removal of the advertising restrictions identified in the original Act.

Queensland

The Legislation Review of the Queensland *Veterinary Surgeons Act 1936* has been completed and the recommendations have been approved by the responsible Minister. A cabinet submission is currently being drafted and accordingly the specific recommendations remain at this stage confidential.

Victoria

The Victorian government as part of its reform of the State's Legislation which regulates professions has replaced the *Veterinary Surgeons Act 1958* with the *Veterinary Practice Act 1997*. The Victorian model has retained both registration and title protection, however, it has removed practice protection from the operation of the relevant legislation. For a more detailed discussion of the Victorian approach please refer to alternatives discussed under paragraph 1.4 of this report.

In mid September 2000 further enquires were made as to the progress of the Legislation Reviews of the Veterinary Surgeons Acts in other States and Territories. Unfortunately due to the confidential nature of the information sought no new details of the other States or

Territories positions can be released in this Report. Please refer to Table A for a summary of the States and Territories Legislation Reviews into the veterinary profession.

Table A: Interstate Comparison of legislation to regulate the Veterinary profession

State, Territory	Pre - NCP Analysis			Post - NCP Analysis		
	<i>Practice protection</i>	<i>Title Protection</i>	<i>Ownership Restriction</i>	<i>Practice protection</i>	<i>Title Protection</i>	<i>Ownership Restriction</i>
<i>South Australia</i>	Included	Included	Included	Modified	Retained	Removed
<i>Western Australia</i>	Included	Included	Included	Confidential	Confidential	Confidential
<i>Northern Territory</i>	Included	Included	Included *	Retained	Retained	Included *
<i>Queensland</i>	Included	Included	Included	Confidential	Confidential	Confidential
<i>New South Wales</i>	Included	Included	Included *	Confidential	Confidential	Confidential
<i>ACT</i>	Included	Included	Included	Confidential	Confidential	Confidential
<i>Victoria #</i>	Included	Included	Included	Modified	Included	Included removed
<i>Tasmania</i>	Included	Included	Included	Confidential	Confidential	Confidential

* On the face of the relevant legislation no provision was made for the registration of Companies as veterinary surgeons, which suggests that such registration would not be permitted.

The Victorian Government undertook the amendment of their legislation to regulate veterinary surgeons just prior to the commencement of the implementation of Legislation Review under the NCP. The comparison represented in the Table is between the original *Veterinary Surgeons Act 1958* and the current *Veterinary Practice Act 1997*. The Victorian Legislation has not under gone a NCP review process.