

VETERINARY SURGEONS.

No. 8 of 1984

AN ACT to amend the Veterinary Surgeons Act
1960-1977.

[Assented to 17 May 1984.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the *Veterinary Surgeons Amendment Act 1984*.

Short title
and citation.

(2) In this Act the Veterinary Surgeons Act 1960-1977 is referred to as the principal Act.

Reprinted as
approved
7 January
1980.

(3) The principal Act as amended by this Act may be cited as the Veterinary Surgeons Act 1960-1984.

Commence-
ment.

2. The provisions of this Act shall come into operation on such day or days as is or are respectively fixed by proclamation.

Section 2
amended.

3. Section 2 of the principal Act is amended—

(a) by deleting the definition “member” and substituting the definition following—

“ “member” means—

(a) in relation to the Board, a member of the Board; and

(b) in relation to a body corporate, a shareholder or a director or a person in accordance with whose directions or instructions the affairs of the body corporate are customarily conducted; ”;

(b) by deleting the definition “registered veterinary surgeon” and substituting the definition following—

“ “registered veterinary surgeon” means—

(a) a person, not being a body corporate, who is—

(i) the holder of a certificate of provisional registration under section twenty B of this Act, and is deemed to be registered under this Act;

or

(ii) registered under this Act;

or

(b) a body corporate which is registered under this Act,

as a veterinary surgeon; ”; and

(c) in the definition “veterinary nurse” by deleting “has been approved by the Board” and substituting the following—

“ is authorized ”.

4. Section 5 of the principal Act is amended— Section 5
amended.

(a) in subsection (1) at paragraph (b), by deleting “by the persons who are so registered” and substituting the following—

“ by and from amongst the persons, other than bodies corporate, who are so registered ”;

and

(b) by adding the subsection following—

“ (6) Notwithstanding that a body corporate may be or become a registered veterinary surgeon, a body corporate is not—

(a) eligible to be appointed as, or to hold office as; or

(b) entitled to nominate, or to vote for, a person to be elected as,

a member of the Board. ”.

Section 13
amended.

5. Section 13 of the principal Act is amended by inserting after "Registrar" the following—

" , inspectors "

Section 16
amended.

6. Section 16 of the principal Act is amended, in subsection (2), by inserting after "Registrar" the following—

" , inspectors "

Sections 16A
and 16B
inserted.

7. The principal Act is amended by inserting immediately after section 16 the heading and sections following—

" PART IIA.—POWERS OF INVESTIGATION.

Investiga-
tion and
inquiry by
Registrar
and
inspectors.

16A. The Registrar may, of his own motion, and shall at the direction of the Board, and an inspector shall, at the direction of the Board or Registrar, make any investigation or inquiry that the Registrar or the Board considers necessary or expedient for the purpose of—

- (a) determining any application or any other matter before the Board;
- (b) determining whether or not persons are acting in conformity with any conditions as to registration or restrictions in the practice of veterinary surgery imposed under this Act;
- (c) determining whether or not registered veterinary surgeons, veterinary nurses or other persons subject to this Act are complying with the requirements of this Act; or
- (d) detecting offences against this Act.

16B. (1) For the purposes of carrying out any investigation or inquiry in the course of carrying out his duties under this Act, the Registrar or an inspector may—

Power to
require and
obtain
information.

(a) require any person—

(i) to give him such information as he requires; and

(ii) to answer any question put to him,

in relation to any matter the subject of such investigation or inquiry;

(b) require any person to produce any document relating to any such investigation or inquiry;

(c) enter at all reasonable times and search any premises and inspect any documents that he finds thereon;

and

(d) make a copy or abstract of any document produced to, or inspected by, him in pursuance of this section, or of any entry made therein and in the absence of proof to the contrary any such copy certified as correct by the Registrar or an inspector shall be received in all courts as evidence of, and of equal validity as, the original.

(2) A requirement made under paragraph (a) of subsection (1)—

(a) may be made orally or by notice in writing served on the person required to give information or answer a question, as the case may be;

- (b) shall specify the time at or within which the information is to be given or the question is to be answered, as the case may be; and
- (c) may, by its terms, require that the information or answer required—
 - (i) be given orally or in writing;
 - (ii) be given at or sent or delivered to any place specified in the requirement;
 - (iii) in the case of written information or answers, be sent or delivered by any means specified in the requirement; and
 - (iv) be given on oath or affirmation or by statutory declaration for which purpose the Registrar or an inspector may administer an oath or affirmation and have the authority of a commissioner for declarations.

(3) A requirement made under paragraph (b) of subsection (1)—

- (a) shall be made by notice in writing served on the person required to produce a document;
- (b) shall specify the time at or within which the document is to be produced; and
- (c) may, by its terms, require that the document be produced—
 - (i) at any place specified in the requirement; and
 - (ii) by any means specified in the requirement.

(4) Where, under paragraph (a) of subsection (1) the Registrar or an inspector orally requires a person to give any information or answer any question, the Registrar or the inspector shall inform that person that he is required under this Act to give the information or answer the question, as the case may be.

(5) Where under paragraph (a) or (b) of subsection (1) a person is required by notice in writing to give any information, answer any question, or produce any document, the notice shall state that he is required under this Act to give the information, answer the question, or produce the document, as the case may be.

(6) Before entering any premises pursuant to this section the Registrar or an inspector—

(a) shall obtain a warrant to do so from a Magistrate or Justice of the Peace which warrant the Magistrate or Justice of the Peace is authorized to issue upon being satisfied that the entry is sought in good faith for the purpose of carrying out any investigation or inquiry under this Act; and

(b) shall display to the person, if any, affording him entry—

(i) in the case of the Registrar, a document signed by the Minister and certifying that he is the Registrar; and

(ii) in the case of an inspector, a document signed by the Registrar and certifying that he is an inspector.

(7) Without prejudice to the provisions of section 11 of the Evidence Act 1906, where under this section a person is required to—

- (a) give any information;
- (b) answer any question; or
- (c) produce any document,

he shall not refuse to comply with that requirement on the ground that the information, answer, or document may tend to incriminate him or render him liable to any penalty, but the information or answer given, or document produced, by him shall not be admissible in evidence in any proceedings against him other than proceedings in respect of an offence against paragraph (b) of subsection (8) of this section.

(8) Where under this section a person is required by the Registrar or an inspector to give any information, answer any question, or produce any document and that person, without reasonable excuse (proof of which shall lie on him)—

- (a) fails to give that information or answer that question at or within the time specified in the requirement;
- (b) gives any information or answer that is false in any particular; or
- (c) fails to produce that document at or within the time specified in the requirement,

the person commits an offence.

Penalty: \$300.

(9) It is a defence in any proceeding for an offence under paragraph (a) or (c) of subsection (8) of this section for the defendant to show—

- (a) that, in the case of an alleged offence arising out of a requirement made orally under this section, the Registrar or the inspector did not, when making the requirement, inform him that he was required under this Act to give the information or answer the question, as the case may be;
- (b) that, in the case of an alleged offence arising out of a requirement made by notice in writing under this section, the notice did not state that he was required under this Act to give the information, answer the question, or produce the document, as the case may be;
- (c) that the time specified in the requirement did not afford him sufficient notice to enable him to comply with the requirement; or
- (d) that, in any case, the Registrar or the inspector did not, before making the requirement, have reasonable grounds to believe that compliance with the requirement would materially assist in the investigation or inquiry being carried out.

(10) A person shall not prevent or attempt to prevent the Registrar or an inspector from entering premises or otherwise obstruct or impede the Registrar or an inspector in the exercise of his powers under this section. ”.

Section 17
amended.

8. Section 17 of the principal Act is amended—

- (a) by repealing subsection (2) and re-enacting the subsection with amendments as follows—

“ (2) The Registrar shall, at the direction of the Board, and on payment of the prescribed fee—

(a) where a person, not being a body corporate, has the necessary qualifications under this Act register that person by entering his name together with the other particulars referred to in subsection (3) of this section; and

(b) where, in relation to a body corporate, the Board approves the application pursuant to subsection (3) of section twenty of this Act, register that body corporate by entering the name by which it is incorporated and any other name by reference to which it carries on business, together with such other particulars as may be prescribed,

in the Register. ”;

(b) in subsection (3)—

(i) by deleting “On payment of the prescribed fee, the” and substituting the following—

“ The ”; and

(ii) at paragraph (a), by deleting “this Act” and substituting the following—

“ paragraph (a) of subsection (2) of this section ”;

(c) in subsection (5)—

(i) by deleting “in the month of July” and substituting the following—

“ as soon as practicable ”; and

(ii) by deleting “April” and substituting the following—

“ March ”; and

(d) in subsection (6), at paragraph (a)—

(i) by deleting “, other than a person referred to in subsection (3) of section twenty of this Act,”; and

(ii) by deleting “under this Act and possess” and substituting the following—

“ pursuant to subsection (2) of this section and that in the case of a person who is registered under paragraph (a) of that subsection the person possesses ”.

9. Section 18 of the principal Act is amended— Section 18 amended.

(a) by deleting “who is”; and

(b) by deleting “he”, in both places where it occurs, and substituting the following—

“ that person ”.

10. Section 19 of the principal Act is amended— Section 19 amended.

(a) in subsection (2), by deleting “him at his address as” and substituting the following—

“ that person at the address ”; and

(b) in subsection (3)—

(i) by deleting “his name” and substituting the following—

“ the name ”;

(ii) by deleting “his certificate” and substituting the following—

“ a relevant current certificate ”;

and

(iii) by deleting “his former” and substituting the following—

“ the former ”.

Section 20
amended.

11. Section 20 of the principal Act is amended—

(a) in subsection (1) and subsection (2), by inserting after “a person” the following—

“ , not being a body corporate, ”; and

(b) by adding the subsections following—

“ (3) A person, being a body corporate, may at the discretion and direction of the Board be registered under this Act if it is proved to the satisfaction of the Board that the body—

(a) is comprised entirely of members, not being bodies corporate, who are entitled to be and are registered under this Act; or

(b) comprises 2 members, neither of whom is a body corporate, of whom one is entitled to be

and is registered under this Act and the other is a person of good fame and character,

and the Board is satisfied as to the terms of the constituent documents by reference to which the body is incorporated and approves the application for registration.

(4) The Board shall not approve the application for registration of a body corporate where the Board is of the opinion that—

- (a) the control of the affairs of the body corporate is vested in a person who is not a registered veterinary surgeon or that the power of persons to exercise, or to control the exercise of, the rights to vote attached to shares in the body corporate, or to dispose of, or to exercise control over the disposal of, such shares is such that the personal supervision and management of the affairs of the body corporate might become vested in a person who is not a registered veterinary surgeon;
- (b) full personal professional responsibility for the conduct of the affairs of the body corporate in relation to veterinary activities does not remain an obligation of each member who is a registered veterinary surgeon, or if any person not having appropriate professional qualifications has authority over professional matters;

- (c) proper and adequate provision is not made for disclosure to the Board of the affairs of the body corporate, on request in writing by the Board to any member who is a registered veterinary surgeon, or that an undertaking to that effect will not be satisfactory to the Board;
- (d) the members are not properly and adequately covered by professional indemnity insurance, or capital or other security is not maintained, in amounts thought by the Board to be sufficient to offer adequate protection to the public, for acts or omission on the part of the members, the body corporate or any employees giving rise to a claim for compensation or damages; or
- (e) that there are other grounds upon which the application ought to be refused.

(5) Any civil liability in connection with veterinary science or the practice of veterinary surgery incurred by a body corporate that is a registered veterinary surgeon under this Act is enforceable jointly and severally against the body corporate and any person who, at the time the liability was incurred, was as a registered veterinary surgeon a member of that body corporate.

(6) In relation to a body corporate, the Board may impose conditions as to the registration or restrictions on

the practice of veterinary surgery, and a failure to comply with any such condition or restriction may be taken to constitute unprofessional conduct as a veterinary surgeon. ”.

12. Section 20A of the principal Act is amended by deleting “that a person may” and substituting the following—

Section 20A
amended.

“ that a person to whom subsection (1) or subsection (2) of section twenty applies may ”.

13. Section 20B of the principal Act is amended by deleting “a person applies” and substituting the following—

Section 20B
amended.

“ a person, pursuant to subsection (1) or subsection (2) of section twenty of this Act, applies ”.

14. Section 21 of the principal Act is amended—

Section 21
amended.

(a) in subsection (1), by deleting paragraph (b) and substituting the paragraph following—

“ (b) should be supported by such evidence with respect to the application as the Board may require including—

(i) in the case of an applicant who is not a body corporate, a statutory declaration verifying the fact that the applicant has not been refused registration or that his name has not been removed from the Register or other similar public document in any other place outside the State, or if such is the case, the reason; and

- (ii) in the case of an applicant that is a body corporate, particulars as to any person who is a member; and ”;

and

- (b) in subsection (3), by inserting after “surgeon” the following—

“ , not being a body corporate, ”.

Section 22
amended.

15. Section 22 of the principal Act is amended by deleting “he” and substituting the following—

“ that person, not being a body corporate, ”.

Section 23
amended.

16. Section 23 of the principal Act is amended—

- (a) in subsection (1)—

- (i) by inserting after “who” the following—

“ , not being a body corporate ”;

- (ii) in paragraph (c), by deleting “surgeon;” and substituting the following—

“ surgeon, ”; and

- (iii) by deleting paragraph (d) and paragraph (e) and substituting the following—

“ or if, being a body corporate, the person would by reason of the circumstances then prevailing not have been approved for registration had an application been made at that time, or if the Board is requested in writing by that person to remove the name from the Register or if the person

fails to pay any prescribed fee payable under section eighteen of this Act. ”;

(b) in subsection (2)—

(i) by inserting after “surgeon” the following—

“ or, where that person is a body corporate, a person who is a member of that body corporate ”;

(ii) by deleting “his name” and substituting the following—

“ the name of that veterinary surgeon ”; and

(iii) by deleting “his registration” and substituting the following—

“ the registration of that veterinary surgeon ”;

(c) in subsection (2a)—

(i) in subparagraphs (i), (ii), (iii) and (vi), by deleting “him” and substituting in each place the following—

“ the veterinary surgeon ”;

(ii) in subparagraph (iv), by deleting “his registration” and substituting the following—

“ the registration of that veterinary surgeon ”; and

(iii) in subparagraph (v), by deleting “his name” and substituting the following—

“ the name of that veterinary surgeon ”;

- (d) in subsection (2b), by deleting “his name” and substituting the following—

“ the name of that person ”;

- (e) in subsection (4)—

- (i) by deleting “who” and substituting the following—

“ if that person ”;

- (ii) in paragraph (d), by deleting “his profession as” and substituting the following—

“ the profession of ”; and

- (iii) in paragraph (f), by deleting “his registration” and substituting the following—

“ the registration of that person ”;

- (f) in subsection (5), by deleting “his registration” and substituting the following—

“ the registration of that person ”;

- (g) in subsection (11), by deleting “at his own request or by reason of his death” and substituting the following—

“ at the request, or by reason of the death, of that person ”; and

- (h) in subsection (12), by deleting “him”, in both places where it appears, and substituting the following—

“ that person ”.

17. Section 24 of the principal Act is amended, in subsection (4), by deleting "his name", in both places where it appears, and substituting the following—

Section 24
amended.

" the name of that person ".

18. Section 25 of the principal Act is amended by deleting "by him", in both places where it appears, and substituting the following—

Section 25
amended.

" by that person ".

19. Section 26A of the principal Act is amended—

Section 26A
amended.

(a) in subsection (2), by deleting "his own name" and substituting the following—

" a name registered in respect of that person under this Act ";

(b) by repealing subsection (3) and re-enacting it with amendments as follows—

" (3) A person, being a registered veterinary surgeon, shall not make known the place or places where, or the fact that, the person is practising veterinary science, except in accordance with the regulations. ";

(c) in subsection (4), by deleting "he", in each place where it appears, and substituting the following—

" that person ";

(d) in subsection (5), by deleting "he" and substituting the following—

" the person ".

Section 26C
amended.

20. Section 26C of the principal Act is amended by deleting "he", in both places where it appears, and substituting the following—

" that person ".

Section 26D
amended.

21. Section 26D of the principal Act is amended by inserting after "other than" the following—

" a person who, not being a body corporate, is ".

Section 26E
amended.

22. Section 26E of the principal Act is amended by adding the subsections following—

" (5) Where an application by any person to be approved by the Board to carry out the duties of a veterinary nurse is refused by the Board, upon any ground other than the ground that the person has not completed to the satisfaction of the Board an approved course of study and veterinary practice and training, that person has the right of appeal against refusal to the District Court, which shall have jurisdiction to, and may, determine the matter.

(6) An appeal under subsection (5) of this section shall be in the nature of a rehearing, and the Board shall give effect to a decision of the court made on the appeal. ".

Section 29
amended.

23. Section 29 of the principal Act is amended by deleting "he", in both places where it appears, and substituting the following—

" that person ".

24. Section 31 of the principal Act is amended— Section 31
amended.

(a) in subsection (1), by repealing paragraph (i) and re-enacting it with amendments as follows—

“ (i) for regulating or prohibiting the method or manner in which a person, being a registered veterinary surgeon, may make known the place or places where, or the fact that, the person is practising veterinary science; ”;

and

(b) in subsection (2), by inserting after “circumstance” the following—

“ and may make different provision as between persons who are a body corporate and persons who are not a body corporate ”.
