

Hon Colin De Grussa; Hon Alannah MacTiernan; Hon Dr Steve Thomas; Hon Steve Martin; Hon Brad Pettitt;
Hon Brian Walker

VETERINARY PRACTICE BILL 2021

Committee

The Deputy Chair of Committees (Hon Peter Foster) in the chair; Hon Alannah MacTiernan (Minister for Agriculture and Food) in charge of the bill.

The DEPUTY CHAIR: Members, before we commence, I bring members' attention to supplementary notice paper 11, issue 2.

Clause 1: Short title —

Hon COLIN de GRUSSA: The 132nd report of the Standing Committee on Uniform Legislation and Statutes Review helpfully sets out 11 findings and two recommendations. Does the minister have a document that identifies the government's response to that, and could it be tabled?

Hon ALANNAH MacTIERNAN: We produced a document that I asked to be circulated, and I think it may have been circulated last week, but perhaps not. There were a number of references and I have a document here, but one was a question around authorised persons. The standing committee considered the prescribing provision of this clause to be justified. As I outlined in the second reading speech, that is when a person who is not a veterinary practitioner but is engaging in an act of veterinary medicine might be authorised to do so. We will set out in regulations the sorts of things that they can be regulated to do and who is defined as such a person will be authorised under the regulations, because it will change from time to time. When this act was made, there were not people running around the state with ultrasound equipment to test cattle and sheep with, but we now have that, so it is important that legislation like this is going to be longstanding. Where there is continual change in practice and in who is an appropriate person to do that, that will change. The standing committee considered that to be justified.

Then there was an issue around veterinary medicine itself and the range of issues that were going to be included in that. I understand that the finding was that the committee considered that clause to be justified. Then there was a clause around the transitional regulations to address any deficiencies in the transitional provisions of the bill. When we are exiting out of legislation and exiting out a board—although we have sought to make comprehensive transitional arrangements and enshrine in the legislation how exactly we are going to move from the current board to the new act—there is always the possibility that there may be some things that we have not thought of. My understanding is that the standing committee considered this clause to be justified. I am happy to table that document. I apologise if it was not circulated before.

[See paper [477](#).]

Hon COLIN de GRUSSA: Have any amendments been made as a consequence of this report or does the document address the findings and no amendments were necessary?

Hon ALANNAH MacTIERNAN: No changes have been made from this, bearing in mind it was sent to the uniform legislation committee, so no issues of policy were addressed. Those amendments that we have developed have come out of both engagement with the industry and from our feedback from members of the opposition and crossbench during the briefing sessions.

Hon Dr STEVE THOMAS: Minister, there are probably a few things that we should range over before we get into the individual clauses of the bill. I start by asking whether the minister has any information on the number of veterinarians and the trends in the industry. Given my interest in the demographics and changes over time, is the minister in a position to give us any kind of indication of the situation of the industry? Just to give the minister a minute, the veterinary profession is a bit like the mining industry; it is a bit of a boom and bust industry. One year there are not enough vets around and everybody is desperate, and the next year there are too many and graduates are not getting jobs. That was the case when Patrick Wight wrote *All Creatures Great and Small*, and I think that was some time in the 1940s. This trend is not new. If we have any demographic trends —

Hon Matthew Swinbourn interjected.

Hon Dr STEVE THOMAS: It was James Herriot. That was his pen name. Patrick Wight was his real name, for the information of members.

Hon Alannah MacTiernan: You're not saying the Patrick White?

Hon Dr STEVE THOMAS: No, not the painter.

Hon Alannah MacTiernan: No, not the painter; the author.

Hon Dr STEVE THOMAS: No, not that one.

Hon ALANNAH MacTIERNAN: I have some statistics. There are 1 731 veterinarians, 67 veterinary specialists, 1 839 veterinary nurses, 476 trainee veterinary nurses, 317 veterinary premises and 61 authorised persons. The breakdown of employment is 55 per cent work in companion animals, 22 per cent work in large animals or mixed

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practice, five per cent are in equine-only practice, 11 per cent are in government or teaching research roles and around seven per cent are in other employment. I set out in the second reading speech that the number of veterinarians has been steadily increasing in recent years and from 2012 to today there has been a 34 per cent increase. The number of vet schools across Australia has gone from four to seven in the last decade.

Hon Dr STEVE THOMAS: That raises a very good point, minister. It is probably worth the comment that the older version of the veterinary profession always had some grave concerns about the increased number of vet schools and graduates because we had this intermittent flooding of the workplace followed by absolute shortages, which always seemed bizarre and a little hard to understand. It is worth noting there are three more vet schools in Australia. The number of graduates has significantly risen since my time in the 1980s. It has changed dramatically.

Regarding the registration and particularly the initial recognition component, most universities have a certain standard to keep up. I know that the University of Queensland struggled with that standard a decade ago, from memory, or it might have been a bit earlier. In terms of the mutual recognition component, is the minister able to give a bit of an outline of the standards we would expect to see upheld in the registration process?

Hon ALANNAH MacTIERNAN: I am advised that all seven veterinary schools are considered to have complied with the Australian national standards. The accreditation of veterinary schools is undertaken by a group called the Australasian Veterinary Boards Council and my understanding is—I have no knowledge of the specific struggles that Queensland might have—that it accredits the veterinary school; it does not have the power to impose any decisions.

I will double-check how the standard for each state is set. I am sure the member is aware of this, but one of the criteria that is required to be satisfied in the registration process in each state is that someone has done their training at an accredited veterinary school. All seven veterinary schools have achieved that qualification under the Australasian Veterinary Boards Council.

Hon Dr STEVE THOMAS: I would not necessarily like to give my old alma mater a bad rep. I understand there were questions about its registration, but they were remedied with some action by the university, and I am aware that none of the schools are unregistered or have been unregistered. The standard of education in veterinary circles in Australia is pretty high. I thank the minister for that confirmation.

Historically speaking, new graduates generally would have been afforded almost an automatic registration. I am going back a few decades now, but there was generally a conversation with the registrar to ensure that the degree was appropriately obtained. It was not an onerous process, and that is important given that the bestowing of a degree, like many industries, is only partway through the learning process and they do not graduate out there ready to go. In many fields, a fair bit of training occurs after someone has graduated. I did not have time to talk about this during the second reading debate. Does that same system exist? Is there a more onerous process for new graduates now? Is that likely to change under the proposed legislation before us? Will there be a more onerous process for registration than that which was, to be honest, pretty much an automatic tick and flick, as long as someone could demonstrate they had received the degree?

Hon ALANNAH MacTIERNAN: There is no change. I do not know whether we are conflating two different issues. I am not sure whether the member is talking about mutual recognition.

Hon Dr Steve Thomas: Not entirely, but the registration process itself.

Hon ALANNAH MacTIERNAN: Previously, it was fairly easy to be registered in another state, but vets still had to go through a process. In WA, the situation is not changing. Following graduation, all vet students will be registered unless there are circumstances to prevent this. Generally speaking, there is a presumption a graduate will be registered unless reasons come to the attention of the board about some possible impairment or whatever. That may impact on that, but it is not different from the procedure at the moment.

Visitors — Chrysalis Montessori School

The DEPUTY CHAIR (Hon Peter Foster): Before I give the call to the Leader of the Opposition. I acknowledge students from Chrysalis Montessori School who are here with us in the President's gallery. I hope you enjoy your time in Parliament.

Committee Resumed

Hon Dr STEVE THOMAS: I will make a comment and then I will allow someone else to have a go. I think it is important because, as I said, the new graduate veterinarian is very much in an embryonic form and a lot of work needs to be done generally. Obviously, people have a range of capacities as they graduate, but it takes a couple of years to develop that real sense of broad competency that means we would then leave veterinarians in the situation. I am pleased to see that same system is in place. We probably need to continue to do more to support that first level of a graduates, and that is not just an issue for this government or any other jurisdiction. I know of plenty of examples of young vets who graduated and were put in isolated situations and not supported, and that did enormous damage

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to young people in the industry. We would think it is a big cohort in Western Australia, but there are not many vets out there. The cattle vets who regularly did that all knew each other. We tended to try to support each other. We had all the graduates who came through with that area of interest, and most of the time we tried to look after those graduates because we wanted them coming into the industry to support our work. But not all practices operate that way and not all vets who have been around for a while like to invest too much in the next generation. I cannot tell the minister how many times I have had vets of my generation and older complaining about the next generation. It is always the same. They say that the new vets are not as good as they were and are not as focused on the industry. If that is the case, it is because they often did not support vets in the early days. I am happy to say that as a comment. There is no need for the minister to reply necessarily. I will give someone else a turn.

Hon ALANNAH MacTIERNAN: I want to make a few comments on that. It is interesting to look at that in parallel with the legal profession; law graduates are required to do a year of articles and then a year of a restricted practice when they have to work with someone else. Medicine graduates are required to do time in a hospital. I think this is a very interesting point, one we are probably not going to deal with today, but maybe we should look at some of those models. I think that making sure that there are lots of practical experience in vet students' final years is really important. One of the projects I really like is our wild dog action program, which we fund. We have doubled the funding and have told Murdoch University that we would give it as much as it needed to the maximum of its capacity to take final year students out into remote Aboriginal communities and sterilise dogs. At any one time, four or five dogs are operated on with various members of the community sitting around and watching the students, under the supervision of a vet, do the work. It performs so many good functions. It is a very practical hands-on experience; it gives veterinary students exposure to a community that they would not normally see; it gives Aboriginal people, and students in particular, an insight into this is a possible career; and, of course, it reduces, hopefully, the wild dog population and the incidence of scabies et cetera. It is a good program all around. The Australian Veterinary Association has a mentoring scheme for graduates, but from comparing it with medicine and with law, it strikes me that we unleash these young people without that period of supervised practice.

Hon Dr STEVE THOMAS: I thank the minister; her awareness of the issue is good and important. I do not think there is an easy answer. We have articulated clerks in law and internship years in medicine, but the problem is that until the veterinary profession becomes as lucrative as the legal and medical professions, I do not think that will be the case, unfortunately.

Hon Alannah MacTiernan: Medicare for dogs.

Hon Dr STEVE THOMAS: People can get pet insurance now.

Hon STEVE MARTIN: I did not mean to interrupt!

I thank the minister for her second reading speech, in which she mentioned a number of issues that have been raised, some of the amendments that she has considered and, in particular, additional information in response to the report of the Standing Committee on Uniform Legislation and Statutes Review. I take the minister back to that report. The Henry VIII issue has intrigued me. I note that the review document states —

A Senate committee has recently reported that Henry VIII clauses:

limit parliamentary oversight and subvert the appropriate relationship between the Parliament and the executive.

In the second reading speech, the minister mentioned a 1992 High Court case that had a different view of the world. Would she be able to outline that case and some of the details for me, as a new member of the chamber, so that I can get a clearer picture of that?

Hon ALANNAH MacTIERNAN: I do not have a great deal of detail on the High Court case, but it was called *Capital Duplicators Pty Ltd v Australian Capital Territory* (1992) 177 CLR 248. Basically, it held that clauses that allow the executive arm of government to make regulations that can modify the primary statute are not outside the constitutional provenance of a Parliament and that the law itself does not constitute a constitutional abrogation of responsibility, provided that at any time the Parliament is free to change that law, which of course Parliaments are. The fundamental definition of a Henry VIII clause is that it is one that enables primary legislation to be amended by secondary legislation. Really, they have become quite unexceptional.

As we move into an era in which there is exponential change in technologies and practices and into an age of accelerated information, we need to be able to respond to new circumstances. I know that we had this discussion about the financial legislation. The number of financial and physical products that are coming onto the market and the number of medical techniques that are becoming available is changing. All of this is happening in an accelerated time frame. Unless we were prepared to sit in this place 24/7, it would be extremely difficult to respond to each of those circumstances. It is the job of the Parliament to see whether or not, in any particular instance, this thing—it is not that this thing in itself is bad—gives too much power that can be delegated and then make a determination

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on whether that is okay. We must bear in mind that the vast majority of things that we are dealing with in this case will be subject to regulations, which of course are disallowable instruments. It is a different level of scrutiny; nevertheless, it is some scrutiny.

I thought that one area in which we were maybe being a bit excessive was when we had prescribed circumstances in the definition of “investigative purposes”, so we took that one out. We had kept it in for investigative power purposes, but because we did not know what might be prescribed, we felt that it was inappropriate to attach the direct powers of entry to something if we did not know what it would look like, so we have taken that out.

Hon STEVE MARTIN: Thank you, minister; I am certainly better educated on that now.

The additional information that the minister tabled a little while ago indicates that the definition of “veterinary medicine” will include a list of activities, including administering anaesthetic agents. She also mentioned pregnancy scanning in her second reading speech. I would be interested to know what level of consultation she has had with the sector and any feedback she has had from it. She mentioned that that will occur as the regulations are drawn up, but could she let me know whether that has occurred so far?

Hon Alannah MacTiernan: What has occurred?

Hon STEVE MARTIN: The consultation with livestock farmers around preg scanning. The minister mentioned cattle scanning. Sheep pregnancy scanning is probably a more broad task. I assume that they will not be authorised people. How far down the track are we with that consultation with the livestock sector?

Hon ALANNAH MacTIERNAN: I had better get that report because I may have slightly misled the member. In the report, the committee expressed some concern about one of these regulations, but I think I said that it did not, so I will just clarify that.

This is a matter about which there have been general discussions, but there have not been any in any formal sense. It is standard practice to wait until a bill is approved before we start working on the regulations, because in organising the efficient use of time, we do not want to go down the path of preparing regulations until we know what heads of power have been approved. Obviously, we currently have authorised persons doing preg testing on cattle. The question is whether that needs to be taken out of the responsibility of the authorised person, so I will seek a little more advice on that bit.

Hon Steve Martin: Cattle and sheep?

Hon ALANNAH MacTIERNAN: We do not have a problem with sheep. I have a list that I can table, as long as I get it back. It contains the sorts of things that we think will be included. It includes—where is the member; he is still not here?—pregnancy testing of any animal by rectal examination. It lists all the things that we think are an act of veterinary medicine and those that are not an act of veterinary medicine. I am happy to table this list as a bit of a guide. It reflects probably current practice, but we are absolutely open to discussion.

[See paper [478](#).]

Hon STEVE MARTIN: In that vein, and I am not sure that this is answerable, the additional information to clause 3 refers to the definitions of included activities. It talks about anaesthetic agents and the mulesing practice that is relatively common on farms. Is that something that has been considered by anyone in drafting the bill?

Hon ALANNAH MacTIERNAN: Perhaps some of these very detailed things might be discussed on specific clauses, but any restrictions on mulesing will be developed in the context of animal welfare. As I explained during the second reading speech, there are certain things that at one stage would have been dealt with under this legislation—including or excluding. As part of the national standards and guidelines, these things have become part of the animal welfare legislation that fundamentally provides who can do various things. I do not know whether we have a copy of the animal welfare rules. For example, the new *Australian animal welfare standards and guidelines for cattle*, which Western Australia can now properly be part of, states —

A person spaying a cow must be a veterinarian or, if permitted in the jurisdiction, be accredited or be under the direct supervision of a veterinarian or a person who is accredited.

Hon Dr STEVE THOMAS: I might just jump in before I pass on to somebody else. The old law was effectively that if it involved internal activity of any sort, whether that was by tube, surgery or any of those things, it was effectively an act of veterinary surgery. From my reading of the list, that is largely unchanged. There are a couple of variations on that, such as dental procedures using a power tool. We can go through descriptions of that if required, but we might just take that as rote for the time being. It has always been that if it is an internal procedure—which we seem to be a bit fixated on in the chamber today—that is what makes it an act of veterinary surgery. If it is generally an external procedure, and there are probably a couple of exemptions in terms of injections, it is not. That was always the rule. To educate members, the reason sheep scanning was never included is because it was an external

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procedure. An ultrasound can get across the distance required to find the foetus or foetal development in a sheep, but cattle are just too big. I imagine that anything larger, like elephants, would require a rectal ultrasound as well.

Hon ALANNAH MacTIERNAN: I think removing teeth would require placing one's hand inside the mouth of an animal. It is the other end, not the one that has been generally discussed today! Removing loose deciduous teeth is a non-veterinary procedure, so arguably —

Hon Dr Steve Thomas: You don't really go inside very far.

Hon ALANNAH MacTIERNAN: So inside or outside depends on how close to the perimeter of the animal you are. I think that principle might interplay. I should also clarify that these things will probably still be determined in terms of veterinary practice; this is a better way of saying that the animal welfare legislation will overlay it. Theoretically, there might be something that someone is able to do, but a higher standard will be set for that activity through animal welfare legislation.

Hon Dr BRAD PETTITT: Correct me if this is not right, but my understanding is that through this legislation, the Veterinary Surgeons' Board will be renamed the Veterinary Practice Board. From my consultation with the sector, the question arose: what mechanism will externally review the performance of the Veterinary Practice Board of WA annually?

Hon ALANNAH MacTIERNAN: The member is correct about the way in which the board will be renamed. There will be a different structure and composition to the board. Like any board, it will be required to lodge an annual report that sets out its financial position; complaints, including the number the number of prosecutions; significant matters impacting on the board; occupational health and safety matters; future strategy and direction; and development of guidelines. Of course, various board decisions are reviewable. If people feel that the board acted outside the law, there will be the capacity to seek judicial review. I guess a large part of the accountability, of course, will be through a minister, with issues being raised with a minister and the board called to account in that way. Obviously, board members can be removed in the event of misconduct.

Hon Dr BRAD PETTITT: I have a follow-up question. Will it be only the minister who will have responsibility for the investigation of complaints about the conduct of the Veterinary Practice Board of WA or is there any other process for that?

Hon ALANNAH MacTIERNAN: None is enshrined specifically in the legislation. Presumably, complaints can be made to the Ombudsman at any time. The Ombudsman has the ability to investigate. It is pretty much like the case with most boards we have. Theoretically, if it is considered to be a big issue, the opposition or crossbenchers could nominate the board as an organisation that it seeks to examine as part of an estimates committee hearing. I understand that with the vet board, and I presume probably some of the other regulatory boards—we heard Hon Dr Brian Walker raise some concerns about the medical board—there are difficulties. We have tried with this new board composition to have a more diverse range of people. It is my intention to have a very senior legal person involved on the board so that there can be more attention taken of due process.

Hon COLIN de GRUSSA: I want to go back in time a little. I understand that this bill is ostensibly the same as the bill introduced last year—the Veterinary Practice Bill 2020—save for the amendments on the supplementary notice paper. Presumably, there was no new submission process—just that undertaken for the 2020 bill. In terms of that process, how many submissions in total were received? Were submissions sought specifically from any particular organisations or was it just a general request for submissions?

Hon ALANNAH MacTIERNAN: I just want to again go over the time line on this thing. This has gone back to 2003 and there has been paralysis. I do not think the member was here during the term of the previous government, but it got up to draft 13 of the previous bill before it was discontinued. We could go out and consult endlessly, and we would still be here for another 18 years because we have more than 1 700 vets in Western Australia. Although they are probably not quite as disparate in their views as taxidriver, there is nevertheless a full range of views.

Every person on the register was personally emailed twice, including veterinarians, veterinary nurses, authorised persons and the managers of veterinary premises. There was an online engagement platform with all relevant documentation, and online submissions were received; there were advertisements in *The West Australian*; there was direct engagement with the Australian Veterinary Association, the Veterinary Surgeons' Board, the Veterinary Nurses Council of Australia, education facilities, government agencies, livestock producer groups, animal welfare groups and recreational and sporting groups; and two webinars were produced.

Hon COLIN de GRUSSA: I do not intend to ask too many more questions on clause 1; I have no intention of holding this up. I just have a couple of questions around the submissions, in general terms. The amendments go some way towards addressing many of the concerns raised about the broad powers of entry and the make-up of the board, but in respect of confidentiality, there were particular concerns about situations in which a veterinarian may be in possession of information of a highly confidential nature. For example, they may be involved in investigating an incident that has occurred on a farm—in a shearing shed, for example—and as a result of being involved in that

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investigation they may be in possession of an individual's medical records. There are concerns that inspectors may have powers to seize the confidential documents or personal medical records of people not involved in whatever is being investigated at the premises. I just want to confirm whether that is correct or not.

Hon ALANNAH MacTIERNAN: I think we are getting into some very detailed aspects of the legislation, and certainly I would prefer to deal with those aspects under the relevant clauses, because I can see that we are probably not going to make much progress at this rate. That is a very unusual and extreme circumstance, but I will see if I can take some advice on it.

It is a highly unlikely circumstance. Theoretically it might happen, but it is important to understand that the inspectors are not just any people wandering in off the street. They are subject to considerable constraints, and any activities they engage in are subject to confidentiality provisions. Some pretty hefty penalties apply if people in their position abuse that confidentiality. In theory, I suppose a situation like that could arise, but it would be highly unlikely for an inspector to be interested in the medical records of what I presume would be an injured shearer in this scenario. I think it is important to understand that these people are constrained by confidentiality.

Hon STEVE MARTIN: The minister made reference to the consultation process that took place, and it sounded relatively rigorous. I made some remarks in my contribution to the second reading debate, as did the minister in her reply, about the make-up of the board and the assessment of impairment process. I bring the minister's attention to the concerns raised by the Australian Veterinary Association in its June 2020 submission to the Standing Committee on Uniform Legislation and Statutes Review's inquiry into what was then the Veterinary Practice Bill 2020. The AVA was concerned about the assessment of impairment by a board composed of various people with various skills, none of whom is a medical practitioner, and how that process would take place. One of its recommendations was for a committee to consider and determine whether a health assessment is required, and for that committee to have a medical practitioner as a member. That committee would somehow sit below the board. If I could just have a response on that, please.

Hon ALANNAH MacTIERNAN: I really do think we are getting into some incredible detail and that these issues really should be dealt with under the relevant clauses. I will say, however, that putting a general practitioner on the board to deal with what would be a relatively small part of the activities of the board would, I think, be highly inappropriate. That GP would not be able to be consulted on a particular circumstance; as a board member, they would be able to provide general advice, but they would not be able to carry out an assessment of the individual. Proper medical advice would need to be brought in to do that. My understanding is that, generally speaking, there is support for the idea of separating the process of assessment of impairment from the complaints mechanism. One of the things we did in response to the concerns raised by the AVA was to make it extremely clear that it is only impairment insofar as it relates to the practice of medicine. Whether there was a GP on the board or not, any health assessment would have to be carried out by an appropriately qualified medical expert. It would not be just some GP who is on the panel. I also think it would distort the balance of the work that the board is doing, and I certainly do not think it is an appropriate suggestion. We want to make sure that the board develops a culture that is respectful and is founded upon good and strong procedures.

Hon STEVE MARTIN: As the minister has suggested, I will pursue that issue when we get to the relevant clause. I will quickly follow up by making the point that once the assessment process is triggered it could, of course, affect the renewal of registration or the initial registration. The way I read it, it would call for an assessment to take place without seeking medical advice, and then the medical advice would rule on the assessment. As I said, I will raise the issue during detailed discussion of the relevant clause, but I think the industry has raised a relevant concern.

Hon Alannah MacTiernan: The other thing is to deal with it as a complaint and take it to SAT. I mean, that would be a fabulous outcome.

Hon Dr STEVE THOMAS: I would like to take the minister to a couple of issues that are not related to specific clauses in the bill and therefore can be dealt with only in debate on clause 1. I would like to get an update on some of these much longer term contentious issues. The first is the requirement for the provision of after-hours services in the registration of a veterinary practice. Many years ago, there was a requirement that there be a provision for after-hours services. I believe this has been removed in more recent years. What is the proposal? Will this bill change the existing position? What is the existing position on the need to provide access to emergency after-hours care in order to register a practice or provide a service?

Hon ALANNAH MacTIERNAN: As I understand it at the moment, in the current act there is a distinction between veterinary clinics and veterinary hospitals. That will no longer be in the act. There will be a requirement for veterinary premises to be registered and there will be a determination made in the regulations about whether to have a distinction between clinics and hospitals. The legislation does not specify that; it now only talks about veterinary premises. There will be regulations made by this Parliament about what is required for the registration of those premises. The intent is that if a vet premises, whether it is a clinic or hospital, is open, there must be a veterinarian present at all

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times. The view is to allow premises to be open at a variety of times, but the fundamental rule will be if the premises are open, there must be a veterinarian onsite.

Hon Dr STEVE THOMAS: That is interesting. It was not obvious in the bill. The problem is going to be that if there is a relatively small practice that does a range of things, including grooming et cetera, the premises might be open and, there might be the grooming of, for example, a Chihuahua or a poodle, which I know is a breed that the minister has mentioned over the years. Veterinary staff might be grooming a poodle, for example. The veterinary practice is open because there is not necessarily a separate door to the grooming centre, particularly in country towns, where there is generally not a dog grooming centre and a veterinary clinic separately. People often find that the veterinary nurse or one of the staff members has become —

Hon Alannah MacTiernan: Yes, I get the idea of what you are saying.

Hon Dr STEVE THOMAS: The member gets the point. This is important.

Hon ALANNAH MacTIERNAN: This is why we have been working on this for 18 years; this is how it never comes to a conclusion. Some exceptions may be able to be made. For example, maybe there will be a regulation that says when only Chihuahuas are being groomed onsite, the practice can remain open without a veterinarian, but there must be clear signage or something so people are not deceived about the nature of the opening. Maybe there will need to be a vet practice at one door and Chihuahua grooming at another door. There will be ways to manage this. We do not want people bringing their animals to a practice that has advertised itself as open only to find that the only thing that can be done for their dying horse is that he gets a wash and a groom. That sort of detail will be a matter for detailed engagement with the industry and the development of regulations. Bear in mind that an element of this is consumer protection and proper, credible practices. We are going down a path, which the member supported, of non-veterinarians being able to own practices, so we want to make sure that this is done in an ethical way, which is why the current intention, albeit not enshrined in the legislation, is if a veterinary practice is declared open, a vet must be there, particularly once we are allowing, as I said, third parties to own a vet practice. That will be particularly important.

Hon Dr STEVE THOMAS: I am going to make a suggestion, because I think this is a bigger issue than has been suggested. We are here to help, so I am trying to improve this bill. Can I suggest that the government look at the possibility of having a veterinarian present when an act of veterinary surgery is being done? Most practices are sensible, so they will say that consulting hours with a veterinarian are such and such. If the practice is big enough and someone is there all the time, that is fantastic, but that does not happen at a lot of places, particularly at one-vet and two-vet practices, and it could not. If a vet at a one-vet practice in a country town is called out to attend to an animal on-farm, obviously, the practice needs to be open so people can come in and out to pay bills, but it is completely impractical to suggest the vet would have to be there for that period. This will need to be looked at carefully and properly. It has always been the case that when an animal is showing a response post-surgery, in particular a gag reflex, the vet nurse will generally monitor the animal after that and leave the vet free to attend to the next case, whatever that is. If that is outside the practice, if it is a small practice, the vet is inadvertently breaking the law by not being present. This is a much bigger deal than it might first appear, because this will be absolutely essential for the continuity of smaller vet practices.

I suggest that the government takes a good look at the requirement for a vet to be present for an act of veterinary surgery, and not necessarily all the time. People will absolutely turn up at odd spots. In my vet practice we tried to train people to bring animals in for consultation first thing in the morning and last thing in the afternoon, because from a surgery perspective, particularly simple ones like desexing, the animals are off food overnight and they are admitted in the morning, surgery conducted, and they are looking well enough to be cleaned up ready to go home later in the afternoon, so there would be vets at each end of the day. I urge the government, particularly if this is put into regulation, not to get this wrong. It will absolutely decimate small, particularly regional, veterinary practices as well as metropolitan practices if there is a requirement for a vet to be there when there is no act of veterinary surgery occurring. It may not need a response but I can guarantee the minister that if regulations require veterinary surgeons to be present at any point when the surgery or clinic is open, there will be hell to pay and I will lead the charge because it will close down veterinary practices across regional Western Australia. I do not necessarily need a reply to that. I have, hopefully, made that point and made it clear.

One of the other issues that has been around as long as I have been involved, which, as I say, is a long time now—it is not obvious in the bill and that is why I am referring to it during the clause 1 debate—relates to the dispensing of drugs, in particular schedule 4s, antibiotics and some of the steroidal and non-steroidal anti-inflammatory drugs. Practices have a varied view on this. Traditionally, some practices have been prepared to leave some drugs in preparation for use. We are talking particularly about on farms. It is unusual to see this occur in a significant way in small-animal practice. A small-animal practice will often dispense a month's worth of long-term drugs. The classic is the old flea itch allergy. Dermatology is a wonderful part of the profession. Generally speaking, it never

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goes away so vets have a patient for life. With the old flea allergy, animals will be on prednisolone or one of the anti-inflammatories. However, in regional areas in particular, for most of my veterinary career, it was not unusual to have an amount of s4 drug left, effectively as an emergency kit, and we could trust the owner to make a diagnosis and treat the animal. It should always have been the case that vets did this for only clients they knew well and understood were able to make a diagnosis. The classic example is a lame cow or a lame sheep. Traditionally, there has been the capacity to leave a bottle of long-acting penicillin, some prednisolone or some of those types of drugs with a farmer who we knew could make that diagnosis and knew the treatment required. Some practices do it and some do not. For the education of members, a member of this house who is long gone had a business bypassing that process and earned the ire and hatred of the veterinary profession for many years. If any of the advisers are veterinarians, they probably know who I am talking about. It was in the area of Hon Colin de Grussa, who probably knows exactly who I am talking about. That process should not be misused as it was in that case, but be appropriately used. This comes back to the issue also of financial viability. Where are we with that practice right now and what will this bill do to the capacity to provide that service?

Hon ALANNAH MacTIERNAN: Effectively, there is no change in this regard. As in the existing legislation, there is the power to make regulations for the possession, use, supply or sale by a veterinarian of any medicine or poison. Fundamentally, I will not go down the rabbit hole of looking at what is happening with particular drug use, because, effectively, we are not proposing a change in the debate today. There will still be a head of power to make those rules. On exactly how those rules will pan out, it is not anticipated at this point that there will be great change from the current rules, but there may well be detailed discussions. The member might want to take part in the consultation if he wants change. However, it is not the purpose today to debate the details of how the different drugs are in the schedules. The schema proposed is almost identical to the current one and there will be very specific consultation on whether it is necessary to change those regulations going forward. I want to say on this one more time: in relation to a vet being part of the practice, I understand it is accepted that if a vet is on duty but they are called out, it does not constitute a breach of the requirement that there be a vet onsite. The fact that a vet turns up for work, gets a call, “My cow is sick”, and races out to the farm, does not constitute a breach of that rule.

All this detail will be negotiated. I urge the member to really think this through. With third-party ownership now becoming possible, I think the member will be getting some very active representations from the Australian Veterinary Association if there is no provision that requires them to have vets. As I think when we moved on pharmacies, it became possible for third parties to own pharmacies, but there is a requirement that a pharmacist be onsite. We take the member’s point about those country practices, but I think the last thing we want to see is people setting up shop as veterinary practices and not employing veterinarians. We take the member’s point; we have to make sure veterinarians earn decent wages. We do not want people setting up veterinary practices that do not have veterinarians involved in them.

Hon Dr STEVE THOMAS: I accept that. The problem is that we are being asked to accept on trust that all this will be sorted out in the future.

Hon Alannah MacTiernan: We are not proposing a change to the way drugs are controlled. This is not about a change. That is the situation and that will transpose into the new legislation. If we were fundamentally changing it, I could understand this debate, but we are not. It will be the same system. In fact, if anything, this is an opportunity because those regulations will be consulted on so there will be an opportunity to have that input. I make a commitment to you that there will be a special consultation with you on this.

Hon Dr STEVE THOMAS: I will try to put this in as simple terms as possible. In terms of the dispensing debate, will a veterinarian be able to prescribe a drug to be held by a business or a farmer for the future use in his stock?

Hon ALANNAH MacTIERNAN: I cannot answer that level of detail. At the moment, we are not proposing any change to that regime. This legislation will not change the power of veterinarians to prescribe medicine. It will not change the constraints upon them. However, there will be an opportunity to have input into that when we form the regulations. As we form the new regulations, the intention is to base them on the current ones, but the degree to which we get powerful arguments that tell us that the current regime is not acceptable, we will change them.

Hon Dr STEVE THOMAS: Accepting that, ultimately, the bill will be as the government has written it. We know that anyway and will support that. The regulations will be critical. Unfortunately, for us, in the previous Parliament we might have had a chance of disallowing them, but that will ultimately be as the government, if the regulations are done in the next year to —

Hon Alannah MacTiernan: We want them to be right. We will consult with you and we will entertain your concerns.

Hon Dr STEVE THOMAS: We will take the minister at her word on that one and look forward to those conversations over the next year or two.

Clause put and passed.

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Clause 2: Commencement —

Hon COLIN de GRUSSA: The Standing Committee on Uniform Legislation and Statutes Review in its 132nd report identified in this clause that part 1 of the act will come into operation on the day on which this act receives royal assent, and the rest on a day fixed by proclamation, as the minister would be aware. This is something that was identified a number of times in the previous Parliament as a bone of contention. I want to get clear in my head the need for that. Is it about the development of regulations related to the act? Are there any particular parts of the act that may never come into operation?

Hon ALANNAH MacTIERNAN: As we have explained in the past, there is a lot of complexity in commencing legislation. The member's question is: why is the clause drafted with both royal assent and proclamation? It is drafted so that the short title and commencement sections, including the definition and the express provision that the legislation intends the Crown to be bound by the act, all come into effect as soon as the Governor has ticked it off. A stage commencement is then necessary to allow sufficient time for the drafting of supporting subsidiary legislation. As we have discussed in clause 1 of the bill, there is a very considerable number of subsidiary legislation that needs to be prepared. That requires internal and external stakeholder consultation and various changes to the current administrative provisions. The new board does not come into effect until the regulations are in place, but it allows us to bring regulations in sequentially. That is the reason. The royal assent will get the fundamental empowerment part of the bill up, and then all those other provisions that require regulations will be worked upon.

I am not sure what mischief the opposition thinks will happen by having these, shall we say, structural elements of the bill come into effect before the proclamation of each section. I have never been able to understand what the mischief is that the opposition is trying to stop. This has been a standard procedure in legislation for many decades. I am not entirely sure why it keeps coming up.

Hon COLIN de GRUSSA: The minister can take this as a statement, if she likes. There is no evil intent in my questioning on that particular part of the bill, I just sought an explanation about why that would happen, to get it on the record. I understand fully that that is in preparation for that subsidiary legislation to be made. To me that makes perfect sense.

Clause put and passed.

Clause 3: Terms used —

Hon COLIN de GRUSSA: Clause 3 helpfully sets out the terms used in the proposed act. In particular, I am interested in clause 3(b) and the question around the necessity for a person to be of a prescribed class and who might those persons of a prescribed class be who are authorised by regulations to carry out an act of veterinary medicine or an act of veterinary medicine of a prescribed class.

Hon ALANNAH MacTIERNAN: To use the case that we have referred to in the past, under the existing legislation some practices are routinely carried out by non-veterinarians at the moment, such as the operation of ultrasounds. The people who currently do this under the existing legislation are authorised to do this. That is the sort of circumstance that we are looking at. It is similar to the existing legislation. When some people are given authority to do acts of veterinary medicine but are generally limited to a particular thing, be it a pregnancy test and sometimes veterinary nurses, for example, there are a suite of activities that constitute veterinary medicine that they are able to do. For example, persons with the appropriate skill in pregnancy testing in cattle can be authorised to undertake this activity—the notes say it here, Hon Dan Caddy—either by rectal palpation or ultrasound using a rectal probe under the direction of a registered veterinarian. Wildlife carers who are attending injured wildlife can be authorised to administer scheduled drugs. The member would know many people who operate those rescue places. They can be authorised to sedate kangaroos for treatment and other animals for treatment and relocation. Perhaps in the sorts of circumstances I was talking about in Aboriginal communities, veterinary students may be authorised to perform certain acts, such as the sterilisation of dogs. It is allowing people with either particular qualifications like being a vet student or a vet nurse, being able to carry out particular activities, or, in other cases people with not necessarily a particular qualification but who are in a particular context where it makes sense to allow them, for that limited purpose, to undertake an act of veterinary medicine.

Hon STEVE MARTIN: I apologise if this is a silly question, but the definition of “premises” on page 6 mentions —

- (a) land;
- (b) the whole or part of a building or structure ...
- (c) a vehicle;

I refer to all the other clauses that deal with right of entry et cetera. Can the minister outline how that will work if the vehicle is mobile or on a highway? What does that mean?

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Hon ALANNAH MacTIERNAN: I understand that there is a growing incidence of people who are operating on a purely mobile basis. If a vet does not have a bricks-and-mortar premises, we will still require them to maintain records and to hold drugs in a safe way. This is an enabling provision so that if someone's premises happens to be entirely mobile, it gives us the opportunity to provide appropriate regulations about how they keep their records and secure their drugs.

Hon STEVE MARTIN: If the premises is a vehicle, how does that reflect on the discussion the minister had with Hon Colin de Grussa about keeping the business open and its hours?

Hon ALANNAH MacTIERNAN: We have said that we will make detailed regulations about this. I do not really see this as the sort of thing that could even be a concern. The concern would be if a bricks-and-mortar service advertises itself as a vet practice but there is no vet there. This is just a definition of "premises". It is not a definition of "veterinarian premises". This will not be caught up in that arrangement, but it allows us to make rules, as I said, about, for example, the storage of drugs.

Clause put and passed.

Clauses 4 to 7 put and passed.

Clause 8: Refusal of application —

Hon COLIN de GRUSSA: This is in the context of the board being able to refuse an application. My question also relates to clause 9, so we will kill two birds with one stone. What recourse will be available if an application is refused; and will a person avail themselves of the ability to contest a refusal of application?

Hon ALANNAH MacTIERNAN: It is a two-stage process. Obviously, if the board intends to refuse a registration or renewal, it will be required to issue a show-cause notice. The applicant will have an opportunity to write a submission about the proposed decision. The proposed decision will have to be shared with the applicant and the applicant given natural justice with an opportunity to respond, and then the board must have regard to any submission when deciding whether to reject the registration application. If an application is rejected and the applicant is unhappy with that, the matter can be reviewed by SAT. The review of the decision will be dealt with as a hearing de novo by the State Administrative Tribunal, which means that the tribunal will not look just at whether an error was made by the board, but will consider the application in its entirety. It is not a question of just finding a technical fault or an error of law; the whole case will then be considered by SAT.

Clause put and passed.

Clauses 9 to 13 put and passed.

Clause 14: Registration as veterinary nurse —

Hon STEVE MARTIN: The clause reads, in part —

The requirements for registration as a veterinary nurse are as follows —

(a) the person holds a qualification in veterinary nursing recognised by the Board;

Will that be a qualification only from Western Australia?

Hon ALANNAH MacTIERNAN: No, it is not limited to Western Australia.

Hon STEVE MARTIN: We have sorted out the issue of vets from the Northern Territory going back and forth to the Kimberley, because we will recognise other jurisdictions for registration. Could a vet nurse who is not registered in Western Australia do the same?

Hon ALANNAH MacTIERNAN: This is a different issue. The issue that we were dealing with about veterinarians was one of mutual recognition and about a vet having their qualification recognised across the board. For veterinary nurses there is no equivalent of that board that we referred to before, so the board has to make a decision about the range of qualifications that it will look at. Whether it is a certificate IV in one state or a diploma from another state, it will have to make that decision, but that is just for the registration here. It is not a case of mutual recognition because we are dealing with a fundamentally different situation from the one with veterinarians, because no other jurisdiction registers veterinary nurses. We will be the first to do that. It is not a mutual recognition issue in that sense, but the board will determine which qualifications it will accept.

Hon Dr STEVE THOMAS: I want to check what a veterinary nurse will be able to do versus what a kennel assistant will be able to do. I assume that the regulations will define those things that are acts of veterinary surgery that a veterinary nurse will be able to do under supervision versus what somebody else will be able to do, because there will be vets who do not want graduate veterinary nurses; they will want to be able to employ somebody from

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their local town, for example, to watch the animals as they recover while they go off and do something else. I presume that the minister is asking us to wait for the regulations to work out what veterinary nurses will be able to do.

Hon ALANNAH MacTIERNAN: No; that is not fundamentally changing. Veterinary nurses are already recognised under the legislation. The regulations set out the things that veterinary nurses are allowed to do. There was a real groundswell and, I understood, strong support across the board for the registration of veterinary nurses. It is quite possible that over time with this registration, the suite of things that people feel confident for them to do will increase. Vets are not required to employ a veterinary nurse, but what these nurses are entitled to do is already set out in the regulations. The default position will be that they will be able to do the same range of things that they can do now, but once they go through the registration process, that no doubt will elevate their profile and may in time lead to new competencies that they are allowed.

Clause put and passed.

Clauses 15 to 17 put and passed.

Clause 18: Fit and proper person —

Hon COLIN de GRUSSA: My colleague is not very keen to speak on this clause—perhaps for good reason. I have a pretty simple question. Clause 18 deals with who is a fit and proper person to hold registration. A number of requirements are set out in the various subclauses. Most of them are quite clear—for example, criminal history, decisions under the legislation and misconduct. However, paragraph (d) interests me in that it says —

any behaviour of the person that shows that the person is not of good fame and character;

Is that a standard provision? Does it already exist in the current legislation? What would be an example of that and who would determine that?

Hon ALANNAH MacTIERNAN: It is a very common provision and it is in the current legislation. It might, for example, be a person who is a prominent anti-vaxxer on Twitter, a COVID denier or someone who has developed a reputation of providing misleading information or engaging in antisocial behaviour. I do not know whether there are any examples of anyone who has been knocked back on this basis. These things tend to be fairly broad. A decision by a board that a person is not of good fame or character of course is able to be reviewed by the State Administrative Tribunal.

Hon Dr BRIAN WALKER: I again come back to good fame and character. Hon Colin de Grussa passed over clause 18(c) and a person's criminal history. As I understand it, a fit and proper person to be a veterinary surgeon registered with the board ought to be someone whose focus is on providing excellent care for animals. Why would the presence of a criminal conviction make that invalid?

Hon ALANNAH MacTIERNAN: Clause 18(c) makes it clear that it is only “to the extent that it is relevant to the person's suitability to practise as veterinarian or a veterinary nurse”. If someone, for example, had convictions for fraud, that might lead one to conclude that that person was not trustworthy and could not be considered as being a reliable person for the care of animals or to deal with people fairly and honestly. Some convictions go to questions of character. I am sure that if a person had a cannabis smoking conviction, in this enlightened day and age, that would go to relevance. But if someone had a history of dealing in methamphetamine, for example, and was given access to some pretty powerful drugs, a conviction for dealing in methamphetamine might be considered relevant to whether they should be registered to practise as a veterinarian.

I am told that a couple of years ago there was a conviction on an indictable offence to pervert the course of justice. It would have come under paragraph (c) as well, but the board was led to find that that person was not of good fame or character and that was also relevant to the consideration of suitability.

Hon Dr BRIAN WALKER: Thank you, minister; that is very clear. I do, however, have a very jaded opinion when it comes to matters of authority and bureaucrats, assuming, of course, that they are all of good fame and character themselves, which at times is open to debate. Take someone, for example, who in their earlier years has been involved in, say, a car accident in which they caused death—manslaughter, if you like—and they received a criminal conviction for that. It is a terrible thing to happen, of course. I could take it even further—a deliberate murder or something heinous like that. But how can we leave the judgement of someone who has served their time and who recognises that their earlier ways were not appropriate to a board of people whose own reputation may not be entirely pure?

Hon ALANNAH MacTIERNAN: There is always that complexity; we do not have non-humans who can somehow or other fill those roles. It is quite interesting that it has been made very clear here. The legal practice legislation is even stricter than this. This makes it very clear. It is “to the extent that it is relevant to the person's suitability to practise”. If someone was involved in a car accident and convicted of manslaughter some time ago, a case could absolutely be mounted that that is not relevant. I think that the very way that this is worded makes it clear that

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a criminal offence per se should not disbar someone, but, rather, that it needs to be relevant. It also provides, too, that it is something to have regard to. It is not a strict refusal. It is not saying, “You must refuse if there is a criminal history.” It is saying, “This is part of the panoply of things that you need to take into account.” It is making it very clear that it is not a criminal conviction per se; it is only a criminal conviction to the extent that it is relevant to the person’s suitability to practise.

I understand the concerns here. I understand that we can have some imperfect humans who get into these positions and that sometimes people lack wisdom, shall we say, at applying this. I am very keen to make sure that we have on this panel, to the extent that I can effect that, people who have a culture of inclusiveness, but of course not recklessness. As I said, if it turns out that we had allowed someone with multiple convictions for methamphetamine dealing to become a veterinarian and got access to these drugs and was injecting young people or whatever, there would be great anger. It is complex but I think the legislation is drafted as best as it can be. In any event, there is another tribunal that people can go to if they are unhappy with that decision. It will not ever be just the decision of one group of people.

Clause put and passed.

Clauses 19 to 55 put and passed.

Clause 56: Carrying out acts of veterinary medicine —

Hon COLIN de GRUSSA: This question relates to part 5 in general rather than just clause 56. Again, it is a fairly simple question. A number of different penalties are specified within the various subsections of clause 56 and the following clauses. Why are they specified as a monetary value and we are not using penalty units? Has that been considered or is it not appropriate?

Hon ALANNAH MacTIERNAN: It is a valid question. In Western Australia we have not generally moved to penalty units and this is the way that the Parliamentary Counsel’s Office drafts legislation. I personally would not be opposed to moving towards penalty units, but we are not there. Perhaps one of our committees—maybe the legislation committee—could inquire into whether we should move to penalty units, because there is certainly a very good argument in favour of doing that: keeping penalties contemporary. Unfortunately, that has not been the practice of this state to date but perhaps the member could lead the charge on it.

Hon Dr STEVE THOMAS: Clause 56(4) states that it is a defence to a charge for an accused to carrying out an act of veterinary medicine in an emergency situation for administering first aid to save the life of an animal or relieve pain and suffering. I assume particularly in relation to the relief of suffering, a person in a remote area—I imagine that the Animal Welfare Act will be relied on to determine whether it was appropriate use of whatever it was to relieve suffering. I make the point, deputy chair, that there was a case not long ago of a gentleman in an eastern suburbs hotel who broke the neck of the bird —

Hon Alannah MacTiernan: Kevin the kookaburra.

Hon Dr STEVE THOMAS: Yes, it was Kevin. It might interest members to know that when I was trained back in the 1980s, we were trained to euthanise birds by breaking their necks. It was not necessarily by using the same method, but we were certainly taught that if you did it right, that was a humane way of doing it. Rather than debate what is the right or wrong way to wring the neck of a bird potentially—wringing was not actually what we were taught to do—I assume that we would use the Animal Welfare Act to determine the appropriateness of euthanasia. I will give a classic example. A person driving along a road hits a kangaroo. The kangaroo is obviously suffering and in pain. The person has no firearm and no capacity to euthanise the animal apart from using blunt-force trauma, which is probably the politest way to say it. I assume that the Animal Welfare Act would be used to assess whether, in that circumstance, blunt force trauma would be the most appropriate action. I recommend that people do not record themselves doing it and stick it on YouTube. I assume that that is the way it is going to work.

Hon ALANNAH MacTIERNAN: I do not think that the Animal Welfare Act would be taken into account, or, even more than the act, the standards. The member has possibly seen some of the controversial footage of the way in which one of the stations up north treated its animals. What is an accepted standard within the animal welfare suite of legislation could be taken into account, but it is not limited to that. This provision basically outlines a defence that could be made.

Hon Dr Steve Thomas: That is actually a good provision and it should be retained.

Hon ALANNAH MacTIERNAN: The Animal Welfare Act can be induced by either the prosecution or the defence, if it came to that, but it also would be something that the board would want to take into account. If a practice was specifically allowed, for example, under one of the standards, a person would not want to prosecute someone for complying, but it is not limited to that. Animal welfare legislation and regulations can inform what that might look like, but it will not be limited to that.

Clause put and passed.

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Clause 57: Employing or engaging persons to carry out acts of veterinary medicine —

Hon Dr STEVE THOMAS: I am not sure whether this question should be answered under clause 57 or 58—they are related. In this circumstance, another person is employed to carry out the act of veterinary medicine. The minister has raised a couple of times that this is particularly important when the management model of veterinary science has been corporatised. I understand that although doctors might work in a corporatised system, under the legislation for doctors there is a prohibition on a corporate manager issuing clinical instructions to a doctor—I am sure that the other medico in the house can confirm that, or not. I am interested to know whether there is a provision to prevent corporate managers from issuing clinical instructions to employee veterinarians. This can happen when a person has a veterinarian employer, but it is particularly important when they do not. I can provide a few good examples of things that I have seen go horribly astray when this is not covered. Regardless of whether this comes under clause 57 or 58, can we assume that an employer who is a non-veterinarian will be prevented from issuing clinical instructions to an employee who is a veterinarian on the treatment of an animal?

Hon ALANNAH MacTIERNAN: We believe that that is probably covered under clause 58(3), which states —

A person must not direct, cause, induce or knowingly permit a veterinarian or veterinary nurse to do anything that would constitute unprofessional conduct or professional misconduct.

That is what we believe covers that set of circumstances.

Hon Dr STEVE THOMAS: To be honest, I am not convinced that that is necessarily going to be the case, and that is why I said it might be clause 57 or 58.

Hon Alannah MacTiernan: That's what I'm saying.

Hon Dr STEVE THOMAS: I get that; it is under clause 58(3). The question is not necessarily whether it will constitute unprofessional conduct or professional misconduct. The question is whether a non-veterinarian can instruct a veterinarian to conduct a treatment that is less effective than that which the veterinarian is proposing. I experienced this in my early days. I was employed by a veterinarian whose wife had started the vet course and failed, and had an enormous chip on her shoulder. She would take great delight in instructing employee veterinarians on what they should and should not do and in some circumstances, if a person complied, the outcomes were poor. We are talking about the old days, and even in the old days it was illegal for a practice manager to instruct, but it absolutely happened. I would be keen to see some form of prevention of that being enshrined in legislation. It may have to be in the regulations, but I think it is critical that a practice manager cannot start dictating outcomes, particularly if their expertise is in accountancy, for example, rather than medicine.

Hon ALANNAH MacTIERNAN: We think this is broad enough to capture that. Clause 78 defines “unprofessional conduct” and states —

For the purposes of this Act, *unprofessional conduct* includes —

- (a) doing, or omitting to do, something in connection with the practice of veterinary medicine in a manner, or to an extent, that falls short of the standard of competence, diligence and safety that a member of the public is entitled to expect of a reasonably competent veterinarian or veterinary nurse; and
- (b) conduct that is prescribed to be unprofessional conduct.

It might not be worded in the express way that the member says, and perhaps that is something that could be contemplated in the regulations if it emerges. Vets will also be required to comply with a prescribed code of conduct, so that is something that could also be included in the code of conduct. I accept that there is the potential for mischief here, but we believe that this clause will give us the capability to deal with it. If a veterinarian decided to do something that was suboptimal for the animal he is treating, or for the owner of the animal, because he has been instructed to do so, it would quite clearly fall within the definition of unprofessional conduct. I go back to this clause, which states —

A person must not direct, cause, induce or knowingly permit a veterinarian or veterinary nurse to do anything that would constitute unprofessional conduct or professional misconduct.

It is quite clear that we could quite properly say that treating an animal in a suboptimal way is unprofessional conduct.

Hon Dr STEVE THOMAS: I think it is perhaps not as clear as I would have preferred, but, obviously, I am not going to oppose the bill. I have raised the issue with the minister, and the minister is, I think, across what the concerns are. I am hoping that there might be an opportunity in the near future when we get to the regulatory or perhaps even the code of conduct stage to hone this down a little more so it is a little more obvious, because I absolutely think that there is a danger in having direct control over clinical decisions by somebody who is not a clinician. I do not

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think the medical profession would accept it, and I do not think the veterinary profession would accept that either. But I think that the minister has taken on board what those concerns are, so I am happy to proceed.

Clause put and passed.

Clauses 58 to 69 put and passed.

Clause 70: Board may make immediate action order —

Hon STEVE MARTIN: We will come back to the issue of “impairment” in later parts of the bill, but I just wanted to raise the issue here wherein the bill refers to immediate action orders and what the board may or may not do. Clause 70(1) states the board —

may make an immediate action order in relation to a veterinarian or veterinary nurse if the Board is satisfied that ...

A number of things happen. The clause refers to an imminent risk of an impairment of the veterinarian or veterinary nurse. Can I ask: is that before the health assessment has taken place? I cannot see anything about that in the rest of the clause?

Hon ALANNAH MacTIERNAN: I am advised that this impairment, as it is being referred to here, does not necessarily mean to be an impairment that needs to follow a formal assessment of an impairment. It says here that the board may make this order even if the conduct is being dealt with as a complaint or as it relates to a notification of impairment. It is understood that there may be certain circumstances in which even though the complaint or the notification of impairment has not been concluded, there is sufficient risk and immediate action should be taken to avert a risk to a person or an animal. It says that this is a decision, of course, that can be reviewed by the State Administrative Tribunal. It says that an immediate action order aims to protect people and animals if a veterinarian or veterinary nurse places them at risk of imminent injury or harm because of the conduct they engage in or because they have an impairment, even while they are assessing the impairment. It also says that an immediate action order can be made at any time, including during the complaint inquiry.

Hon STEVE MARTIN: Again, that comes to my point about the board’s ability to make that assessment of an impairment. The minister has just said that the immediate action can take place even though the health assessment has not. Perhaps the minister could give me an example of what that board-assessed impairment that would necessitate taking immediate action might look like.

Hon ALANNAH MacTIERNAN: It is important to understand that the focus of this clause is when it is judged that there is an imminent risk. It is regardless of whether there is impairment or not; it is when there is an imminent risk of someone being harmed. That is regardless of whether or not there is an ongoing complaint or impairment process going on. An example is if a vet has unsuccessfully attempted suicide by injecting the drugs they have access to. A reasonable response by the board would be to impose an immediate action order to preclude the vet from holding those drugs on their premises. It is not about an impairment. An impairment process might not have been started, but there might have been notification that there had been attempted suicide and the drugs used were drugs that the vet had access to by virtue of their role, so an order would be issued to prevent them holding those drugs for a 28-day period until there was time to make a proper assessment.

Hon STEVE MARTIN: Does the vet or vet nurse have any role in this process? Do they get contacted? Is there some process that affords them some natural justice?

Hon ALANNAH MacTIERNAN: As with all of the other provisions that we spoke of, there is a show-cause notice and, of course, the decision is reversible. The board must give written notice of its proposed decision to the affected person as soon as practicable. The written notice must invite the affected person to make a written submission about the decision and the board must have regard to that submission. Although it is titled “an immediate action order” it nevertheless has built into it a show-cause process.

Clause put and passed.

Clauses 71 to 77 put and passed.

Clause 78: Unprofessional conduct —

Hon Dr BRIAN WALKER: I assure the minister that I support this bill. I am simply hoping to get some clarity about some things. Clause 78 is about unprofessional conduct and clause 78(b) states —

conduct that is prescribed to be unprofessional conduct.

Clause 3 states that the definition of “unprofessional conduct” is found in clause 78. The reason I am asking this question is that the depths to which humanity can sink know no bounds. On two occasions I was personally

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accused of being unprofessional. In one case, it was by a nurse who was found to be falsifying medical records on the near death of a patient and was walked off the premises. She then proceeded to put a claim against me for unprofessional conduct for having had her walked off the premises. Another case involved a nurse manager who had parachuted an incompetent friend into a position of authority and sought to do it again. When confronted, we had a bit of a screaming match. When this became public knowledge, she sought an apology for having had it exposed. One of the assistant directors, although she suggested it was not necessary, asked whether I could be so kind as to give an apology to her and her friend who had witnessed it. When I did, I was put in front of the medical board for unprofessional conduct because the apology to the second person was too similar to that of the first. Anyone here would recognise that this is absolutely ludicrous, but it begs the question: Can we prescribe what is unprofessional conduct in clear words? Is it necessary, or can we assume that veterinarians are going to be less obtuse than medics?

Hon ALANNAH MacTIERNAN: I thank the member. I heard the member set out those very unfortunate cases that he experienced. There is certainly a lot of irresponsible behaviour that then causes other people harm. Unfortunately, that is an alarmingly frequent occurrence. As I said, the difficulty is that human beings administer these things, and the best way to deal with this is to have reasonable people making the decisions. We are very clear that we want a very capable lawyer on board. We want a person from the community. We will have three veterinarians.

Committee interrupted, pursuant to standing orders.

[Continued on page 3111.]

Sitting suspended from 4.16 to 4.30 pm