



## Veterinary Surgeons' Board

7 November 2013



Committee Clerk  
Standing Committee on Uniform Legislation and Statutes Review Committee  
Legislative Council  
GPO Box A11  
PERTH WA 6837

Dear Sir

### **Inquiry into Medicines, Poisons and Therapeutic Goods Bill 2013**

The Veterinary Surgeons Board (Board) is established and operates under the provisions of the *Veterinary Surgeons Act 1960*. The primary aim of the *Veterinary Surgeons Act 1960* is to regulate in the public interest, the practice of veterinary surgery in Western Australia.

As an integral part of their businesses, the majority of veterinary surgeons in private practice prescribe, dispense or supply poisons to their clients for use on their animals. The circumstances under which poisons can be prescribed by veterinary surgeons are prescribed in Regulations 29 to 31 of the *Veterinary Surgeons Regulations 1979*. Under Regulation 28(2) (iv), a veterinary surgeon engages in unprofessional conduct if they contravene the *Poisons Act 1964*. The Board has not prosecuted a veterinary surgeon for a breach of Regulation 28(2) (iv) but has prosecuted veterinary surgeons for breaches of Regulation 30 and for unprofessional conduct regarding the supply of poisons under Regulation 28(2) (c).

The Board welcomes the opportunity to provide a written submission on matters of interpretation of the Medicines, Poisons and Therapeutic Goods Bill 2013 (Bill) as drafted, or the likely or possible extent and application of its provisions. However, due to the short time frame for comment the Board has been unable to seek legal advice on the comments.

As the Bill will have a considerable impact on the usage of poisons by veterinary surgeons, the way they practice and the regulation of veterinary surgery, the Board requests that it has the opportunity to appear before the Standing Committee on Uniform Legislation and Statutes Review.

The Board is concerned that 27(1) will allow unqualified employees to administer prescription medications to animals at the direction of a health professional employer. The *Veterinary Surgeons Act 1960* only allows properly qualified and authorised persons to do this and the Board considers it is important for the health, welfare and safety of persons and animals.

The Board suggests consideration be given to including the *Veterinary Surgeons Act 1960* to the list of legislation in 28(1) (a)

As veterinary surgeons may order prescription medications from veterinary drug wholesalers the Board suggests that veterinary drug wholesalers be added to 99(1) (iv).

In its Medicines, Poisons and Therapeutic Goods Bill 2011 exposure draft feedback submission dated 11 October 2011, the Board commented a number of issues that don't appear to have been addressed in the current draft of the Bill. The Board reiterates the issues below for the Committee's consideration:

### **Overview**

The Board's main concern relates to the powers prescribed for the CEO. Under s111 of the Bill the CEO has the functions of an investigator. While the Board observes that many of the decision making processes identified in the Bill are subject to review by the State Administrative Tribunal (SAT), the Board considers that the Bill potentially denies applicants natural justice due to the CEO possessing investigative and determinative authority.

The Board considers that the investigative and decision making powers currently prescribed to the CEO should be separated throughout the Bill. This can be achieved by:

- (i) excluding the CEO from acting as an investigator and appointing other persons to fulfil this function (as is the case in the current draft). The CEO could have determinative powers (as is the case in the current draft) with the SAT undertaking final reviews if needed; or
- (ii) the CEO being an investigator and decisions, particularly review decisions, being performed by a standing committee, again with the SAT undertaking final reviews if needed. This option is less preferred.

### **Specific issues**

**S7 (a) (ii)** "*administered to an animal described...*" is too restrictive for veterinary surgeons. Particularly in rural practice veterinary surgeons frequently prescribe and dispense medications for a group of animals (such as a mob, herd or flock).

It is proposed that s7 (a) (ii) be amended to be "animal or animals.."

**S7(1)** states that a drug is prescribed for therapeutic purposes. Prescriptions for animals are not always for therapeutic purposes - they may be for prophylaxis, sedation or euthanasia in the absence of any known disease in the animal or animals. See also s13(3)(b).

**S7(3)(II)** As per s7(a)(ii) needs to address multiple animals.

**S13(3)(a)** As per s7(a)(ii) needs to address multiple animals.

**S13(3)** and elsewhere, use of the term 'patient' can be in relation to an animal or human. Suggest that a definition be inserted into S3 rather than within the Bill.

**S29 (5)**, or a similar section should also take into account animal welfare as grounds for summary action.

**S31** It is proposed that the CEO MUST notify regulatory authorities under this section rather than "may" notify the authorities.

**S34 (5)** It is proposed that it should be a defence if the licensee could not have known or anticipated the actions of their agent or employee.

**S60 (1)(b)(ii)** It is proposed that this clause be amended or an additional clause added to address threats to the health, safety or welfare of animals.

**S61(4)** It is proposed that this clause be amended or an additional clause added to address threats to the health, safety or welfare of animals.

**S69** It is proposed that the clause should reflect the investigator as appointed under s112 or s113

**S71(1)** It is proposed that this clause be amended or an additional clause added to address threats to the health, safety or welfare of animals.

#### **Part 6 Application of commonwealth therapeutic goods laws to Western Australia**

The Board raises its concern that Part 6 is difficult to understand, and as such health providers will experience difficulty complying with the requirements. The Board urges that this section be written in such a manner that health providers can understand it without the need of legal interpretation.

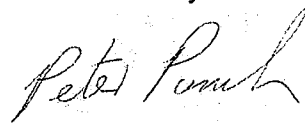
**S120(2)** Requires clarification as to whether the section will also apply to veterinary premises.

**S143** It was not clear to the Board what the intent of this section is. Some explanation would be of benefit as currently this section states that an allegation is taken to be proved which seems to negate the presumption of innocence.

**S147(2)** While the Board condemns the practice, it is aware that in the past containers have been used to rebottle poisons. The Board raises its concern at the presumption that a container will contain the poison that the label states.

Thank you for the opportunity to comment on this important legislation.

Yours sincerely



Dr Peter Punch  
Chair