Ms Elizabeth Lee MLA

Chair

Standing Committee on Justice and Community Safety (Legislation Scrutiny Role)

ACT Legislative Assembly

GPO Box 1020

Canberra ACT 2601

Dear Ms Lee

I write in relation to comments made by the Standing Committee on Justice and Community Safety (Legislation Scrutiny Role) (the Committee) in its Scrutiny Report 18 in relation to the Veterinary Practice Bill 2018 (the Bill).

I thank the Committee for its comments relating to right to privacy and reputation, displacement of *Legislation Act 2001* (Legislation Act), Henry VIII clause and notification for the veterinary practice code of conduct instrument. Responses to the Committee’s comments are provided below.

**Right To Privacy and Reputation (Section 12 HRA)**

The Committee has requested the Bill’s Explanatory Statement (ES) address impacts to human rights relating to Clause 124 (information contained in the register of veterinary practitioners) and Division 5.3, which enables the Board to require persons to provide information and refer complaints to the Chief Police Officer. A Revised ES has been prepared for the Bill. The Revised ES now incorporates an assessment of impacts to human rights for Clause 124 and Division 5.3 of the Bill, which are summarised below.

Clause 124 – Information Contained in the Register of Veterinary Practitioners

The information listed for collection in the register at Clause 124 is important for the operation of the Bill and the registration of veterinary practitioners. The Bill may have the consequence of limiting privacy rights where information in the register is personal information. A veterinary practitioners registration address may potentially be a residential address or a residential address that is also the business address of a person. The Veterinary Practice Board (the Board) established under the bill requires residential information of veterinary practitioners to determine mutual recognition of veterinary registration. Under the Bill, veterinary practitioners are required to register with the regulatory board in the jurisdiction they reside in. In the ACT, once a veterinary practitioner has lived in the ACT for three months they are required to register with the Board.

It is also noted that the bill is not inconsistent with the situation under the current *Veterinary Surgeons Act 2015* where it asks for veterinary surgeons to provide their postal address, which is often the surgeons’ home addresses. There is no evidentiary basis for this having been an issue that needed to be dealt with in the new scheme. The Board is cognisant of privacy considerations and where personal information is contained in the register issues of consent will be addressed as a matter of policy as currently occurs. The Board will also continue to advise veterinary practitioners through the registration form that the Board’s Secretariat will only provide information relating to practitioners employment, which would ordinarily be publicly available. Should personal addresses, other than home business addresses, be requested the Board will request permission from practitioners.

However, the situation will be monitored by the Board to ensure that the Act does not unduly impact on a person’s personal information privacy. Should this be identified as an emerging issue under the new scheme then further consideration will be given to solutions.

Division 5.3 – Indication of Offence Committed

Clause 62 enables the Board to refer complaints to the Chief Police Officer (CPO). This clause relates to criminal law, which applies to all citizens including veterinary practitioners. It is acknowledged that veterinary practitioners have specific responsibilities to appropriately handle and use pharmaceutical products and abide by animal welfare laws. Clause 62 enables the Board to refer matters outside its scope that are indicative of a criminal offence to the CPO. Before referring matters to the CPO the Board must follow natural justice and procedural fairness. The Board will not publically discuss matters under investigation. Clause 62 is necessary to ensure the Board is able to respond appropriately to veterinary practitioners conduct and to ensure public safety and the welfare of animals is maintained.

Format of Explanatory Statement human rights assessments

I note the Committee advice that human right assessments in ES’ should be discussed entirely at one section and not at individual clauses. Transport Canberra and City Services will ensure future ES’ follow this structure.

**Creation of Offences by Regulation**

The Committee advises Clause 146 of the Bill will enable regulations to prescribe offences for contraventions of a regulation and prescribe maximum penalties of not more than 30 penalty units. The Committee is concerned that there is no justification provided for why offences, even where subject to maximum penalties of only 30 penalty units, can be created through regulations rather than provided for in the Act itself. The Act will not require offences to be established in regulations. I will present at the time of debate an amendment to the Bill that will remove Clause 146 (3).

**Henry VIII Clause**

Clause 211 provides for the creation of transitional arrangements. As explained in the Bill’s ES this Clause allows for a legislative solution to unforeseen consequences in transitioning to the new Act. The Committee advises this clause should be justified through more than just general references to the need to address unforeseen consequences. I provide the Committee with the following justification, which is also included in the Revised ES at Clause 211.

While the Bill is modelled on NSW veterinary legislation, parts of the Bill are not exact replications of NSW provisions. Parts 4 ‘Recognition of veterinary practitioners from other jurisdictions’, 5 ‘Complaints and disciplinary proceedings’, 6 ‘Registration of veterinary premises’ and 8 ‘Enforcement’ of the Bill have been adapted to reflect ACT requirements and practices. For example, NSW veterinary legislation only registers veterinary hospitals whereas the ACT Act will register all veterinary premises.

**Displacement of S 47(6) of the *Legislation Act 2001***

The Committee is concerned that the Veterinary Code of Conduct established at Clause 42 of the Bill will not require notification on the public register. Clause 42 (4) establishes the code as a notifiable instrument. Clause 42 (2) provides that the code may apply, adopt or incorporate an instrument as in force from time to time. For example, the code might include all or part of the NSW Veterinary Practitioners Code, by reference. The Legislation Act Section 47 (6) provides that, if the code applies, adopts or incorporates another instrument (for example, the NSW Veterinary Practitioners Code) in the code, the other instrument is a notifiable instrument. At times it isn’t possible to notify the incorporated instrument on the Legislation Register, for example, because of copyright.

The Bill has adopted all of the NSW veterinary code, and for that reason Section 47 (6) of the Legislation Act was disapplied. The Revised ES now explains why the incorporated instrument may not be notified on the Legislation Register. The Revised ES also advises the Board will make public on their website at all times the code of conduct.

I trust the above responses provide the Committee with clarification and address their concerns.

Yours sincerely

Meegan Fitzharris MLA

Minister for Transport and City Services