



23D018

17 February 2023

The Hon Clare Scriven MLC
Minister for Primary Industries and Regional Development
Per email: Minister.Scriven@sa.gov.au
cc/: pirsa.veterinaryservicesbill@sa.gov.au

Dear Minister,

Re: Proposed Veterinary Services Bill

We are writing to you to take this opportunity to communicate with you regarding the proposed Veterinarian Bill, which is currently under consideration.

As a starting position the current Act and proposed Bill are about the governance and regulation of the veterinary industry.

Generally stated SADA's position is that is a matter for Australian veterinary associations to deal with and SADA refrains from telling the industry what to do and how to govern itself. So long as there are still veterinary services that are qualified, competent and sufficiently regulated available to our members we won't intrude into the governance issues for the industry and we will leave it for them to comment.

For example, the proposed section 62 creates a criminal offence to contravene the conditions of registration. This is rolled over from Section 38 of the current Act. SADA doesn't seek to intrude with its opinions into this space because the crime isn't one that impacts SADA members, however, from your perspective is it time to ask whether non-compliance with registration should be a crime, or should be subject of some other remedy, such as suspension of the registration.

These are matters for the SA Veterinary Association to comment on, and of course are within your domain from a public policy position.

Nevertheless, there is an issue that SADA does seek to raise which is outlined below.

The proposed section 72 creates an offence of Undue Influence

This new law appears to try and replace the current provisions of section 51 of the Current Veterinary Practices Act (please see last paragraphs on page 3 of this letter on this point) which provides:

51—Improper directions etc to veterinary surgeon by veterinary services provider

(1) If a person who provides veterinary treatment through the instrumentality of a veterinary surgeon directs or pressures the veterinary surgeon to act unlawfully, improperly, negligently or unfairly in relation to the provision of veterinary treatment, the person is guilty of an offence.

Maximum penalty: \$20 000.



(2) If a person who occupies a position of authority in a trust or corporate entity that provides veterinary treatment through the instrumentality of a veterinary surgeon directs or pressures the veterinary surgeon to act unlawfully, improperly, negligently or unfairly in relation to the provision of veterinary treatment, the person and the entity are each guilty of an offence.

Maximum penalty: \$20 000

A veterinary services provider is defined in section 3 of the current Act as:

“... a person (not being a veterinary surgeon) who provides veterinary treatment through the instrumentality of a veterinary surgeon”

This is an appropriately specific offence, and the offence is targeted at managing the relationship between operators within the industry and properly comes within the public policy orbit of regulation of the industry, however, the proposed new offence in the bill provides:

“72—Undue influence

A person must not unduly influence, or attempt to unduly influence, a veterinarian in relation to the provision of veterinary services.

Maximum penalty: \$20 000.”

This proposed clause is problematic for two reasons, firstly, it steps outside of the public policy ambition of regulating the industry but rather creates an offence that applies to the world at large. The offence will no longer be restrained to a “*veterinary service provider*” as it will now apply to any being who qualifies as a “*person*”.

Secondly, the concept of *undue influence* is generally drawn from the Common Law as an equitable doctrine.

The current law restricts the concept to “*unlawfully, improperly, negligently or unfairly*”, which is a higher standard, however, undue influence is a different kettle of interpretive fish, swimming in a much shallower rock pool.

The seminal case relating to this matter in Australia would certainly be *Commercial Bank of Australia v Amadio* 1983 HCA 14. While this case deals with a contract between the CBA and the Amadios ranging across a number of concepts such as unconscionable conduct, fraud and coercion, it also comprehensively unpacks and considers the nature of undue influence.

The legal proposition of the equitable doctrine of Undue Influence is about the relationship between the two parties and specifically the impact of conduct on a weaker party. Deane J at 13 states:

“The equitable principles relating to relief against unconscionable dealing and the principles relating to undue influence are closely related. The two doctrines are, however, distinct. Undue influence, like common law duress, looks to the quality of the consent or assent of the weaker party ... Unconscionable dealing looks to the conduct of the stronger party in attempting to enforce, or retain the benefit of, a dealing with a person under a special disability in circumstances where it is not consistent with equity or good conscience that he should do so.”



Expressed in those terms it is difficult to understand how the doctrine should be used in the way proposed by the bill. This is an unusual way to describe such an offence considering it is a criminal proposition.

The criminal law deals with criminal influence in terms of bribery (*section 150 of the Criminal Law Consolidation Act*) or duress as a criminal defence (*section 15D of the Criminal Law Consolidation Act*) as they are higher thresholds which are much more strictly described.

Mere undue influence may be read down by a court simply as an attempt to apply pressure. For example, if a farmer insists that they want to be pushed to the front of the queue and they're prepared to pay double the normal fee, is that undue influence? Does that make the vet an accessory to the offence if the vet agrees? Asked alternatively, if a farmer refuses to pay an outstanding bill unless a vet comes to the farmer's farm, does that amount to a crime?

If that's the case SADA will not support the bill because it will have the effect of criminalising conduct which while short of fully ethical should not amount to criminality, and the offence as described is too unclear and uncertain to warrant support.

Furthermore, the relationship between the intended repeal of the section 51 offences and the introduction of the section 72 appears to be what is being attempted. Because the offences are so different in their scope and character it was not immediately apparent to SADA that such a switch was what was being intended.

SADA would not have made the connection but for the Explanatory Guide (at paragraph 72 of the guide) issued by the SA Government which discusses the two offences in the same paragraph and expressly links them.

They are so different they are genuinely difficult to reconcile.

If the proposed offence is maintained in its current form SADA will publicly oppose the bill and encourage other organisations to do the same.

Your Sincerely,

Andrew Curtis
CEO