



Queensland

Criminal Code (Animal Valuers) Regulation 2014

Subordinate Legislation 2014 No. 195

made under the

Criminal Code Act 1899

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Part 1 Preliminary

1 Short title

This regulation may be cited as the *Criminal Code (Animal Valuers) Regulation 2014*.

2 Dictionary

The dictionary in schedule 1 defines particular words used in this regulation.

Part 2 Animal valuers

3 Application for appointment

- (1) An eligible person may apply to the chief executive for appointment as an animal valuer.
- (2) The application must be made in the approved form.
- (3) For subsection (1), a person is an *eligible person* if the person—
 - (a) is an adult; and
 - (b) has not been convicted of an indictable offence or an offence involving dishonesty; and
 - (c) is not a bankrupt.

4 Suitability for appointment as animal valuer

- (1) Subject to subsection (2), a person is suitable for appointment as an animal valuer if the chief executive reasonably believes the person—

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- (a) is qualified for appointment as an animal valuer because the person has the necessary expertise or experience; and
 - (b) is competent to perform the functions of an animal valuer.
- (2) However, despite subsection (1), the chief executive may decide a person is not suitable for appointment as an animal valuer having regard to the following—
- (a) any applications for appointment as an animal valuer previously made by the person that have been refused;
 - (b) the person's criminal history;
 - (c) any other matter the chief executive reasonably considers relevant.

5 Enquiries about application

- (1) Before deciding an application for appointment as an animal valuer, the chief executive—
- (a) may make enquiries necessary to allow the chief executive to decide the application; and
 - (b) may, by written notice given to the applicant, require the applicant to give the chief executive within a stated reasonable period additional information the chief executive reasonably considers is needed to allow the chief executive to decide the application; and
 - (c) may require the additional information mentioned in paragraph (b) to be verified by statutory declaration.
- (2) The application is taken to be withdrawn if, within the stated reasonable period, the applicant does not comply with a requirement under subsection (1)(b).
- (3) The chief executive may ask the commissioner of the police service for a written report about the applicant's criminal history.
- (4) The commissioner must comply with the request.

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- (5) However, subsection (4) applies only to information in the commissioner's possession or to which the commissioner has access.

6 Deciding applications

- (1) The chief executive must consider the application and decide to—
- (a) approve the application and appoint the applicant as an animal valuer with or without conditions; or
 - (b) refuse to approve the application.
- (2) The chief executive may approve the application only if the chief executive is satisfied the applicant is both an eligible person and is suitable for appointment as an animal valuer.

Note—

For the suitability of a person for appointment as an animal valuer, see section 4.

- (3) The chief executive must promptly give written notice to the applicant of the decision.
- (4) Animal valuers are appointed under the Code, section 450F and not under the *Public Service Act 2008*.
- (5) In this section—
eligible person see section 3(3).

7 Appointment conditions

- (1) An animal valuer holds office on the following conditions—
- (a) the conditions stated in this regulation;
 - (b) the conditions decided by the chief executive, and stated in the written notice given to the valuer under section 6(3) or a signed notice given to the valuer, to the extent the conditions are not inconsistent with this regulation.

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- (2) It is a condition of appointment as an animal valuer that the valuer must give written notice to the chief executive if any of the following events happen—
 - (a) a change of the valuer’s name or address;
 - (b) the valuer is convicted of an indictable offence or an offence involving dishonesty;
 - (c) the valuer becomes a bankrupt.
- (3) If an event under subsection (2)(a) happens, the valuer must give the notice to the chief executive within 28 days after the event happens.
- (4) If an event under subsection (2)(b) or (c) happens, the valuer must give the notice to the chief executive as soon as possible after the event happens.
- (5) In this section—

signed notice means a notice signed by the chief executive.

8 When appointment as animal valuer ends

- (1) The office of a person as an animal valuer ends if—
 - (a) the person is convicted of an indictable offence or an offence involving dishonesty; or
 - (b) the person becomes a bankrupt; or
 - (c) the chief executive reasonably considers the person is no longer suitable to be an animal valuer; or

Note—

For the suitability of a person for appointment as an animal valuer, see section 4.

 - (d) the person has not complied with this regulation, or a condition of the person’s appointment as an animal valuer; or
 - (e) the person resigns by signed notice given to the chief executive.

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- (2) The chief executive must promptly give written notice to the person if the person's office as an animal valuer ends under subsection (1)(a) to (d).
 - (3) A person's resignation under subsection (1)(e) takes effect on the later of the following—
 - (a) 14 days after the chief executive receives the notice;
 - (b) the day for resignation stated in the notice.
 - (4) A person who resigns as an animal valuer must still attend proceedings, and do anything else, in relation to valuations for which the person has signed a certificate of valuation, as if the person were still an animal valuer.

Part 3 Valuation of animals for certain Code fines

Division 1 Formation of panel to value animal

9 Prosecutor may ask for panel

- (1) This section applies if a prosecutor for a proceeding decides it is necessary to decide the value of an animal for the proceeding under the Code, section 450F.

Note—

For the offences to which the Code, section 450F applies, see the following provisions of the Code—

- (a) section 398, punishment in special cases, item 2;
 - (b) chapter 44;
 - (c) section 468.
- (2) As soon as practicable after making the decision, the prosecutor must ask the chief executive to form a panel to value the animal for the proceeding.

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- (3) When making the request, the prosecutor must give the chief executive the following details for the proceeding (the *charge details*)—
- (a) details of the charge in relation to which the animal is connected;
 - (b) the name of—
 - (i) the accused person in the proceeding; and
 - (ii) the person claiming to be the owner of the animal;
 - (c) the date on which the offence, to which the charge relates, is alleged to have happened;
 - (d) a description of the animal, including any identifying information available for the animal;
 - (e) the present location of the animal or its remains;
 - (f) the location at which the valuation is proposed to be conducted;
 - (g) the prosecutor's name and contact details;
 - (h) the scheduled date and place, if known, of the hearing of the charge;
 - (i) any other information, available to the prosecutor, that may assist a panel in the identification of the animal.

10 Chief executive to form panel etc.

- (1) As soon as practicable after receiving a request under section 9(2), the chief executive must select 2 animal valuers to form a panel to value the animal for the proceeding.
- (2) An animal valuer selected to form the panel must participate in the panel under this regulation unless the animal valuer is unavailable to perform the valuer's functions.
- (3) The chief executive may form more than 1 panel for a proceeding, but only if the panels are formed to value different animals for the proceeding.

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- (4) For each panel formed for a proceeding, the chief executive must tell—
- (a) each animal valuer forming the panel of—
 - (i) the charge details; and
 - (ii) the name and contact details of the other valuer forming the panel; and
 - (iii) the contact details of a prosecutor for the proceeding; and
 - (iv) any other information available to the chief executive that may assist the panel in the valuation of the animal; and
 - (b) a prosecutor for the proceeding of the name and contact details of each animal valuer forming the panel.

11 Functions of animal valuers forming panel

- (1) An animal valuer selected to form a panel to value an animal for a proceeding has the following functions—
- (a) attend a place required by the chief executive at a reasonable time required by the chief executive;
 - (b) carry out a valuation of the animal;
 - (c) make a certificate of valuation for the animal;
 - (d) if required by the chief executive, immediately give—
 - (i) the certificate of valuation to a prosecutor for the proceeding; and
 - (ii) a copy of the certificate to the chief executive.
- (2) Also, if required by a prosecutor for the proceeding, the valuer must—
- (a) attend the proceeding; or
 - (b) appear as a witness for the prosecution in the proceeding.

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Note—

See also section 18.

(3) Subsection (2)—

- (a) does not apply if there are special or unusual circumstances preventing the valuer from carrying out the functions mentioned in that subsection; and
- (b) does not prevent the subpoena of an animal valuer.

12 Disclosure of conflicts of interest

- (1) This section applies if an animal valuer, who is selected to form a panel to value an animal for a proceeding, becomes aware that the valuer has an actual conflict of interest or potential conflict of interest about the proceeding (both a *conflict of interest*).
- (2) The valuer must immediately give notice to the following persons of the issue giving rise to the conflict of interest—
 - (a) if the valuer becomes aware of the conflict of interest before signing the certificate of valuation for the animal—the chief executive and a prosecutor for the proceeding;
 - (b) otherwise—a prosecutor for the proceeding.
- (3) If the chief executive receives a notice under subsection (2)(a), the chief executive must—
 - (a) replace the valuer on the panel; and
 - (b) tell a prosecutor for the proceeding, and the other valuer forming the panel, of the name and contact details of the replacement valuer.
- (4) If a prosecutor receives a notice under subsection (2)(b), the prosecutor must give notice of the issue giving rise to the valuer's conflict of interest to—
 - (a) the court hearing the proceeding; and
 - (b) the accused person in the proceeding or a lawyer acting for the accused person.

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- (5) If the valuer becomes aware of the conflict of interest after signing the certificate of valuation for the animal, the valuation of the animal, and the certificate of valuation, are of no effect unless—
- (a) all parties to the proceeding have been notified of the issue giving rise to the conflict of interest and consent to the tendering of the certificate of valuation; or
 - (b) if 1 or more parties to the proceeding do not consent—the court is satisfied that it is appropriate for the certificate to be tendered and to proceed with the proceeding with only 1 animal valuer forming the panel.
- (6) Also, if 1 or more parties do not consent under subsection (5), the court may grant an adjournment of the proceeding, on terms it considers appropriate, to allow—
- (a) the replacement of the animal valuer on the panel; and
 - (b) a new certificate of valuation to be tendered in the proceeding.
- (7) In this section—

actual conflict of interest, for an animal valuer about a proceeding, means the valuer has an interest, financial or otherwise, that conflicts with the proper performance of the valuer's functions for the proceeding.

potential conflict of interest, for an animal valuer about a proceeding, means the valuer has an interest, financial or otherwise, that could conflict with the proper performance of the valuer's functions for the proceeding.

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Division 2 Deciding animal's value

13 Deciding animal's value

- (1) The value of an animal for an offence provision is the animal's value as decided under this division.
- (2) The panel formed to value the animal must use a method of valuation (an *appropriate method*) that reflects a fair and reasonable estimate of the cost to the animal's owner of replacing the animal with a comparable animal—
 - (a) on the day of the offence; and
 - (b) at or near the place where, on the day of the offence, the animal was primarily kept by the owner.
- (3) If the animal valuers forming the panel do not agree on the animal's value, the value of the animal for the offence provision is the average of the values decided by each animal valuer forming the panel.
- (4) If, during the proceeding for the offence, the panel's valuation of the animal is challenged and a different value is proven to be the correct value using an appropriate method, the value of the animal for the offence provision is the value proven to be correct.

Note—

See section 16.

- (5) The valuation of the animal, and the certificate of valuation for the animal, is of no effect if 1 or both of the persons forming the panel were no longer animal valuers during part or all of the period from the panel's formation to its making of the certificate of valuation.
- (6) If the animal is not available for examination by the panel, the panel may use any of the following to decide the animal's value—
 - (a) hides, skins, ears or another part of the animal;
 - (b) an adequate prescribed record of the animal under the Code, section 450D;

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- (c) books, electronic records or other records about the animal;
 - (d) information about comparable prices for comparable animals.
- (7) In this section—

offence means the offence for an offence provision.

offence provision means a provision of the Code to which the Code, section 450F(1) applies.

14 Certificate of valuation

- (1) Immediately after deciding the value of the animal, the panel must make a certificate (a *certificate of valuation*) for the animal.
- (2) The certificate must be in the approved form.
- (3) The approved form must include provision for the panel to state—
 - (a) the name of each animal valuer forming the panel; and
 - (b) a description of the animal; and
 - (c) or attach, any identifying information for the animal used by the panel; and
 - (d) details of the appropriate method used by each animal valuer forming the panel; and
 - (e) the value of the animal, as at a date stated in the certificate, decided by the panel; and
 - (f) the value of the animal, as at the stated date, decided by each animal valuer forming the panel.
- (4) The certificate of valuation must—
 - (a) be signed by both animal valuers forming the panel; and
 - (b) include a statement by each person signing the certificate that the person's appointment as an animal valuer has not ended; and

must, if possible, give a prosecutor for the proceeding at least 14 days notice of the intention.

- (2) If the notice is not given within that time—
 - (a) the value may be challenged only with the leave of the court; and
 - (b) the court may allow the value to be challenged on terms the court considers appropriate.

17 Court may grant adjournment to obtain certificate

- (1) This section applies if—
 - (a) a prosecutor for a proceeding notifies a court that the prosecutor intends to tender a certificate of valuation for an animal during the proceeding; and
 - (b) the certificate of valuation has not been made in the approved form, or is otherwise not available, at the time the notification is made.
- (2) The court may grant an adjournment, on terms it considers appropriate, to allow the certificate to be tendered in the proceeding.

18 Court may order animal valuer to be called as witness

- (1) This section applies if in a proceeding a court is satisfied that either or both of the animal valuers forming a panel that made a certificate of valuation for an animal to which the proceeding relates should be called as a witness.
- (2) The court may—
 - (a) order that either or both of the valuers be called as a witness; and
 - (b) adjourn the proceeding for that purpose.
- (3) The order may be made—
 - (a) on the application of a party to the proceeding or on the court's own initiative; and

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- (b) in addition to, or instead of, the certificate of valuation being tendered in evidence.
- (4) Whether or not the order is made, the court must adopt the procedure it considers appropriate to enable an animal valuer to be called and examined by the parties to the proceeding, regardless of the stage reached in the proceeding.

Part 5 Offences

19 False or misleading information

- (1) A person must not, in relation to the administration of this regulation, give information, or a document containing information, to the chief executive that the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

- (2) Subsection (1) applies to information or a document given in relation to the administration of this regulation whether or not the information or document was given in response to a specific power under this regulation.
- (3) Subsection (1) does not apply to a person giving information or a document if, when giving the information or document, the person—
 - (a) tells the chief executive, to the best of the person's ability, how the information or document is false or misleading; and
 - (b) if the person has, or can reasonably obtain, the correct information or document—gives the chief executive the correct information or document.

Part 6 Miscellaneous

20 Replacement of animal valuer

The chief executive may replace an animal valuer forming a panel if—

- (a) a position on the panel becomes vacant; or
- (b) the valuer is unwilling to perform the valuer's functions; or
- (c) the chief executive considers the valuer is unavailable, because of illness or for another reason, to perform the valuer's functions.

Note—

An animal valuer may also be replaced under section 12.

21 Immunity of animal valuer

- (1) An animal valuer, in the performance of the valuer's relevant functions, has the same protection and immunity as a Supreme Court judge has in the performance of a judge's functions.
- (2) In this section—
relevant functions, of an animal valuer—
 - (a) means the functions of the valuer mentioned in section 11(1)(b) to (d); and
 - (b) does not include an act or omission of the valuer that is incidental to the carrying out of a function mentioned in paragraph (a).

22 Register of animal valuers

- (1) The chief executive must keep a register of animal valuers in a form the chief executive considers appropriate.
- (2) The register must contain the following information about each animal valuer—

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- (a) the valuer's name and contact details;
 - (b) the date of the valuer's appointment as an animal valuer.
- (3) If the chief executive receives written notice from an animal valuer of a change in the valuer's name or address, the chief executive must record the new name or address in the register.

23 Fees and allowances

- (1) This section states the fees and allowances payable to an animal valuer forming a panel for performing the functions of an animal valuer.
- (2) The fee payable to the valuer for each day or part of a day on which a valuation is carried out is \$200.
- (3) The allowances payable to the valuer for carrying out a valuation are—
 - (a) a travelling allowance that is—
 - (i) the amount actually and properly paid for fares for public transport; or
 - (ii) if a private vehicle is used—the amount calculated at the rate per kilometre payable under the *Public Service Act 2008* to a public service employee required to use the employee's private motor vehicle for official purposes, taken to the nearest whole cent; and
 - (b) an accommodation allowance payable in the same circumstances, and at the same rate, as that payable to a public service officer under the *Public Service Act 2008*; and
 - (c) a meal allowance payable in the same circumstances, and at the same rate, as that payable to a public service officer under the *Public Service Act 2008*.
- (4) The fees and allowances payable for attending at court (the *court allowances*) are the same court allowances payable under the court's rules to a professional witness attending to give evidence of a professional nature or, to the extent to

which the rules do not provide for those court allowances, the same court allowances as are payable to an expert witness.

- (5) For subsections (3) and (4), if part or all of an animal valuer's fees or allowances are common to more than 1 proceeding, the fees or allowances payable must be apportioned to reflect that fact.
- (6) The chief executive must pay an animal valuer's fees or allowances—
 - (a) for carrying out a valuation—after receiving—
 - (i) the certificate of valuation or a copy of the certificate of valuation; and
 - (ii) a claim for payment; and
 - (iii) proof of the claim, if any; or
 - (b) for attending at court—after receiving—
 - (i) a claim for payment; and
 - (ii) proof of the claim, if any.
- (7) If an amount payable under this section is for a supply on which GST is payable, the amount payable under this section is to be increased to take account of the GST.

24 Delegation

The chief executive may delegate the chief executive's powers under this regulation to an appropriately qualified officer of the department.

25 Approval of forms

The chief executive may approve forms for use under this regulation.

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Part 7 **Repeal and transitional provisions**

Division 1 **Repeal**

26 **Repeal of Criminal Code (Animal Valuers) Regulation 1999**

The Criminal Code (Animal Valuers) Regulation 1999, SL No. 136 is repealed.

Division 2 **Transitional provisions**

27 **Definitions for div 2**

In this division—

repealed regulation means the repealed *Criminal Code (Animal Valuers) Regulation 1999*.

28 **Applications for appointment as animal valuer**

- (1) This section applies to an application for appointment as an animal valuer—
 - (a) made under the repealed regulation; and
 - (b) not decided immediately before the commencement.
- (2) The application is taken to be an application for appointment as an animal valuer under section 3.

29 **Continuation of appointment as animal valuer**

- (1) The repeal of the repealed regulation does not affect the appointment of a person as an animal valuer made before the commencement.

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- (2) Also, if immediately before the commencement a person's appointment as an animal valuer was subject to a condition, the appointment continues to be subject to the condition under this regulation.

30 Tribunal selected under repealed regulation

- (1) This section applies if—
- (a) before the commencement, a tribunal was selected under the repealed regulation to value an animal for a proceeding; and
 - (b) immediately before the commencement, the charge involving the animal to which the proceeding relates was not finally dealt with.
- (2) The tribunal is taken to be a panel formed under this regulation to value the animal for the proceeding.
- (3) A certificate of valuation for the animal issued by the tribunal for the proceeding under the repealed regulation is taken to be a certificate of valuation made for the animal under section 14.

31 References to repealed regulation

- (1) In a document, if the context permits—
- (a) a reference to the repealed regulation may be taken to be a reference to this regulation; and
 - (b) a reference to a repealed provision may be taken to be a reference to a corresponding provision.
- (2) Subsection (1) does not limit the application of the *Acts Interpretation Act 1954*, section 14H.
- (3) In this section—
- corresponding provision***, to a repealed provision, means a provision of this regulation that is substantially the same as the repealed provision.

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repealed provision means a provision of the repealed regulation as in force immediately before the commencement.

Schedule 1 Dictionary

section 2

animal see the Code, section 450D.

animal valuer means a person appointed as an animal valuer under the Code, section 450F.

approved form means a form approved under section 25.

bankrupt means—

- (a) a person who is an undischarged bankrupt under a bankruptcy law; or
- (b) a person who has executed a deed of arrangement under a bankruptcy law, if the terms of the deed have not been fully complied with; or
- (c) a person whose creditors have accepted a composition under a bankruptcy law, and a final payment has not been made under that composition; or
- (d) a person for whom a debt agreement has been made under a bankruptcy law, if the debt agreement has not ended or has not been terminated.

bankruptcy law means the *Bankruptcy Act 1966* (Cwlth) or a corresponding law of another jurisdiction, including a jurisdiction outside Australia.

certificate of valuation, for an animal, see section 14.

charge details see section 9(3).

contact details, of a person, means the postal address, email address and telephone number of the person.

conviction means a finding of guilt, or an acceptance of a plea of guilty, by a court in Queensland or elsewhere.

criminal history, of a person, means every conviction of the person for an offence (whether or not the conviction is recorded), in Queensland or elsewhere, and whether before or

after the commencement of this regulation, including a conviction—

- (a) for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired under that Act; and
- (b) that is not revived as prescribed by section 11 of that Act.

identifying information, for an animal, includes the following—

- (a) an approved tag under the *Stock Identification Regulation 2005*, section 27;
- (b) brands, tags, ear notches, facial hair whorl or other identifying marks;
- (c) the animal's hide or skin;
- (d) the animal's colour or sex.

panel means a panel of animal valuers formed under section 10.

proceeding means a court proceeding for a charge of an offence involving an animal for which the value of the animal may be decided under a regulation made under the Code, section 450F to fix the minimum fine for the offence.

Note—

For the offences to which the Code, section 450F applies, see the following provisions of the Code—

- (a) section 398, punishment in special cases, item 2;
- (b) chapter 44;
- (c) section 468.

prosecutor, for a proceeding, means the person currently prosecuting in the proceeding and includes the following—

- (a) a police officer or Crown prosecutor;
- (b) the Attorney-General;
- (c) the director of public prosecutions.

the Code means the Criminal Code.

valuation, of an animal, means the animal's value decided under section 13.

ENDNOTES

- 1 Made by the Governor in Council on 28 August 2014.
- 2 Notified on the Queensland legislation website on 29 August 2014.
- 3 The administering agency is the Department of Justice and Attorney-General.

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Authorised by the Parliamentary Counsel