

# **Exhibited Animals Bill 2015**

## **Explanatory Notes**

### **FOR**

## **Amendments To Be Moved During Consideration In Detail By The Honourable Bill Byrne MP**

### **Title of the Bill**

Exhibited Animals Bill 2015

### **Objectives of the Amendments**

The objectives of the amendments are to—

- reduce the impact on exhibitors of restrictions under the Bill that relate to pest potential animals ('authorised animal (category C)') to the extent this will not significantly compromise biosecurity in the State;
- to clarify certain matters and correct minor errors in the Bill; and
- ensure exhibitors are not required to notify the chief executive simply because minor and uncontroversial health care is provided following contact with an exhibited animal.

### **Achievement of the Objectives**

The objectives will be achieved by:

- allowing certain species of authorised animals (category C), which pose a low risk of establishment and a low-moderate risk of having adverse impacts if they did become established, to be excluded by prescription in regulation from the licence condition that effectively requires them to be based in a fixed exhibit;
- allowing any length of exhibit to be counted against the minimum exhibition requirement for such species;

- reducing the minimum requirement for exhibition of an authorised animal (category C) by one third;
- clarifying that a management plan must state the ways in which the applicant intends to prevent or minimise the significant relevant risks and significant relevant adverse effects;
- correcting an error in the categorisation of the red-tailed black cockatoo;
- providing an additional example of when a special condition could be imposed;
- clarifying the appropriate court for certain matters; and
- narrowing the definition of ‘serious illness or injury’.

## **Alternative Ways of Achieving Policy Objectives**

In its report on the Bill tabled on 8 May 2015, the Agriculture and Environment Committee (the committee) recommended, in effect, that an authorised animal (category C) should not need to be based in a fixed exhibit and that any length of exhibition should be counted against the minimum exhibition requirement for such species. The committee’s intent was to enable display of these species, which have potential to become pests if they established in Queensland, by wildlife demonstrators who keep their animals privately and display them elsewhere at public and private events.

However, the Government believes the additional risk posed by having these animals based outside a fixed exhibit, and the potential consequences for the environment and Queensland’s agricultural and tourism industries if the species established and became pests, is not justified for all authorised animals (category C).

All category C species have pest potential, but category C comprises thousands of species and the severity of the risk posed by these species varies. The Government proposes amendments that meet the committee’s intent only for those category C species that pose a low risk of establishing as pests and a low-moderate risk of having adverse impacts if they did become established.

The committee recommended a one third reduction in the minimum requirement for exhibition of a species of authorised animal (category C), from the equivalent of 900 hours to 600 hours per year. The intent of the minimum exhibition requirement is to ensure sufficient exhibition to justify keeping these high pest potential animals. A 600 hours requirement is still significantly more than the 12 occasions per year minimum exhibition requirement for most other animals (category B) kept under a licence.

Amendment of the Bill is required to give effect to the policy for lower pest establishment species of authorised animal (category C), to reduce the minimum requirement for exhibit of an authorised animal (category C), to make appropriate clarifications and correct minor errors.

## **Estimated Cost for Government Implementation**

The Department of Agriculture and Fisheries proposes to undertake some assessments in late 2015 to inform decisions about which species should be prescribed as an authorised animal (category C1) when regulations are initially made under the Act. The total cost of these assessments is estimated to be \$10,000-\$20,000.

The ongoing incremental costs associated with assessments to inform prescription of species as an authorised animal (subcategory C1) will be negligible. The Department of Agriculture and Fisheries is already involved in a national forum that is consulted on pest establishment assessments used to inform decisions under Commonwealth and State laws. Generally, those who will benefit arrange for the assessment. Similarly, it is proposed that a person seeking prescription of a species as an authorised animal (category C1) by regulation would be responsible for arranging an assessment.

Other amendments will not incur any additional costs.

## **Consistency with Fundamental Legislative Principles**

The amendments are consistent with fundamental legislative principles.

Delegation to the executive government of the power to prescribe species of authorised animal (subcategory C1) is appropriate because pest risk assessments will be completed over time. The circumstances in which the power can be exercised are clearly defined. The possibility of disallowance of a regulation potentially exposes the Minister's decision on the risk establishment potential of a species to Parliamentary scrutiny.

## **Consultation**

The amendments are consistent with the Government's response to the committee's report on the Bill.

The erroneous listing of the red-tailed black cockatoo was highlighted by an industry member in their submission to the committee.

Industry members of the Exhibited Animals Industry Liaison Group first raised concerns about the definition of 'significant illness or injury' and were consulted to ensure their support for the proposed amendment.

In its written responses to the committee, the department indicated that it would suggest amendments to address the erroneous listing of the red-tailed black cockatoo and adjust the definition of 'significant illness or injury' at an appropriate time.

The Deputy Chief Magistrate suggested some changes to the Bill were desirable in relation to the definition of ‘court’.

## NOTES ON PROVISIONS

*Amendment 1* replaces ‘category C’ with ‘category C2’ in the meaning of ‘special exhibition approval’ at clause 31. This reflects that a special exhibition approval will not be required for an authorised animal (category C1) as a consequence of amendment 10.

*Amendment 2* omits subclause 34(a)(x) which lists the red-tailed black cockatoo (*Calyptorhynchus banksia*) as an authorised animal (category B) and replaces it with the wombat (Family Vombatidae) which was formerly 34(a)(xi).

As indicated in the Explanatory Notes for the Bill, the intent is that a species that can be kept under a recreational wildlife licence granted under the *Nature Conservation Act 1992* is an authorised animal (category A). The red-tailed black cockatoo is a restricted animal under the *Nature Conservation Act 1992* (see schedule 4, part 5 of the *Nature Conservation (Wildlife Management) Regulation 2006*) and hence can be kept under a recreational wildlife licence (see section 98 of the *Nature Conservation (Wildlife Management) Regulation 2006*). It was listed in clause 34 in error. Amendment 2 would correct that error. Clause 33 of the Bill already provides that a restricted animal is an authorised animal (category A).

*Amendment 3* amends the heading of clause 35 to reflect the substantive changes made by amendment 5 – the inclusion in the clause of the meaning of ‘authorised animal (category C1)’ and ‘authorised animal (category C2)’.

*Amendment 4* adds a subclause number to the beginning of the existing provision in clause 35 to prepare for the addition of further subclauses by amendment 5.

*Amendment 5* inserts additional subclauses in clause 35.

New subclause (2) creates a new subcategory (‘C1’) of authorised animals that are authorised animals (category C) of a species prescribed by regulation. However, the Minister may recommend the making of such a regulation only if the criteria in subclause (4) are satisfied.

For animals that are not already established in any place in Australia, the Minister must consider the risk of establishment in any place in Australia. It is in Queensland’s interest to encourage each Australian jurisdiction to make decisions about the regulation and management of pest potential species that consider not only the risks in their own jurisdiction but also the risks in other jurisdictions. Animals of a species kept in one jurisdiction where they do not pose a significant risk of establishment could, by means

including theft or trade, be moved to another part of Australia where they pose a significant risk of establishment.

For animals that are already established in Australia and not technically eradicable, the Minister need only consider the risk of establishment in the State. This reflects that once the species has become established somewhere in Australia, there would be pathways other than movement from Queensland by which they might spread.

New subclause (3) creates a second new subcategory ('C2') of authorised animals that comprises authorised animals (category C) that are not authorised animals (category C1).

New subclause (4) provides that a species can only be prescribed if the Minister is satisfied that if animals of the species escaped or were released in Australia they would pose no more than a low risk of establishment. Also, a species can only be prescribed if the Minister is satisfied that if the species became established in Australia it would pose no more than a moderate risk of an adverse effect on: the health, safety or wellbeing of a person; or social amenity, the economy and the environment.

New subclause (5) requires the Minister to have regard to a scientific assessment when deciding the risk of establishment and adverse effects for subclause (4). Also subclause (5) also requires the Minister to consult with relevant entities before deciding the risk of establishment and adverse effects for subclause (4). However, new subclause (6) provides that failure to consult does not affect the validity of the decision. This is to ensure that the categorisation of a species is not in doubt due to a possible technical deficiency in the consultation undertaken.

New subclause (7) inserts definitions relevant to the amendment.

*Amendment 6* replaces 'risks' with 'significant relevant risks and relevant adverse effects' in subclause 37(2)(e). The intent is to clarify in subclause 37(2)(e) that a management plan must state the ways in which the applicant intends to prevent or minimise both any significant relevant risks and any significant relevant adverse effects identified in the plan under 37(2)(d).

*Amendment 7* replaces 'category C' with 'category C2' in the description of what must be included in a management plan if an application relates to the grant of a special exhibition approval in subclause 37(5). This reflects that a special exhibition approval will not be required for an authorised animal (category C1) as a consequence of amendment 10.

*Amendment 8* replaces 'C' with 'C2' in relation to the grant of a special exhibition approval in subclause 65(3). This reflects that a special exhibition approval will not be required for an authorised animal (category C1) as a consequence of amendment 10.

*Amendments 9-10* replace ‘category C’ with ‘category C2’ in the heading and body respectively of clause 73. The intent is that clause 73, which imposes a condition on exhibition under an exhibition licence, would not apply to an authorised animal (category C1). This means, in effect, that an authorised animal (category C1) is not required to be based in a fixed exhibit.

*Amendment 11* amends subclause 76(2) to reduce, from 75 to 50, the combined total number of hours that at least 1 authorised animal of a species (of authorised animal (category C)) must be exhibited in each calendar month.

*Amendment 12* amends subclause 76(3)(a) to reduce, from 900 to 600, the combined total number of hours that at least 1 authorised animal of a species (of authorised animal (category C)) must have been exhibited in the preceding year before the condition in subclause 76(2) is taken to have been met.

*Amendment 13* amends subclause 76(3)(b). Subclause 76(3)(b) pro-ratas the requirement for exhibition in the preceding year that is taken to meet the condition in subclause 76(2) if the species was not held under the licence for all of the preceding year. The amendment reduces, from 75 to 50, the average number of hours an animal must have been exhibited in the preceding year for each whole calendar month that the species was held under the licence.

*Amendment 14* makes changes to the example for subclause 76(3)(b) that corresponds to the pro-rata requirement for exhibition under that provision as amended by amendment 13.

*Amendment 15* replaces ‘animal’ with ‘authorised animal (category C2)’ in subclause 76(4). This means, in effect, that any length of eligible exhibit can be counted against the minimum exhibition requirement for an authorised animal (category C1).

*Amendments 16-18* insert an additional example for subclause 77(5) that relates to the imposition of a special condition that allows the holder of an exhibition licence to train an animal for exhibition for a period without being required to comply with the relevant mandatory minimum exhibition requirements for the period.

*Amendment 19* replaces ‘category C’ with ‘category C2’ in clause 94 in relation to an application to amend an exhibition licence by the grant of a special exhibition approval. This reflects that a special exhibition approval will not be required for an authorised animal (category C1) as a consequence of amendment 10.

*Amendment 20* replaces ‘category C’ with ‘category C2’ in relation to the definition of ‘relevant authorisation’ in clause 131. This reflects that a special exhibition approval will not be required for an authorised animal (category C1) as a consequence of amendment 10.

*Amendments 21-22* amend clause 238. Their combined effect is to ensure that an application for an order for the payment of costs incurred by the State during the investigation of an offence, can be made to a court that did not order the conviction for the offence. This ensures the application can be made to a court with the appropriate monetary jurisdiction for the value of the order rather than only to the Magistrates Court that ordered the conviction.

*Amendment 23* amends the definition of ‘authorised animal (category C)’ in schedule 2 to reflect the changes to clause 35 made by amendment 4 – the insertion of a subclause number.

*Amendment 24* inserts new definitions for ‘authorised animal (category C1)’ and ‘authorised animal (category C2)’ that refer to the meanings of these terms added to clause 35 by amendment 5.

*Amendment 25* amends the definition of ‘court’ in schedule 2 to ensure that for clause 231 and a proceeding relating to a forfeiture decision, ‘court’ means only the Magistrates Court.

Clause 231 provides that a court can make a disposal order for certain property of a convicted person. It would only be a Magistrates Court in which a person could be prosecuted for an offence and therefore only a Magistrates Court that could order a conviction. Consequently, it is appropriate that clause 231 apply only to a Magistrates Court.

Review of an internal review decision to forfeit something is by way of an appeal to the relevant court (see clause 249). The proceedings are by way of a re-hearing against the chief executive’s original forfeiture decision (as opposed to new civil proceedings involving valuing the property for the purpose of forfeiture). This allows all reviews of forfeiture decisions to be conducted by the Magistrates Court as it is unnecessary for the court that considers the forfeiture to have the appropriate monetary jurisdiction for the value of the forfeited property.

*Amendment 26* replaces (c) in the definition of ‘serious injury or illness’ in schedule 2. This will ensure that a serious injury or illness to, or of, a person that is not captured by (a) and (b), is only an injury or illness requiring the person to have treatment by a doctor within 48 hours of exposure to a substance that has been transmitted by an animal, other than treatment consisting of the administration of a tetanus injection or antibiotic. The intent is that the term should capture circumstances where someone is envenomed by a snake but not include precautionary treatment following a small scratch or bite. Excluding medical treatment consisting of the administration of a tetanus injection or antibiotic is consistent with section 64(1) of the *Guardianship and Administration Act 2000* which gives these as examples of minor and uncontroversial health care.