



Queensland

# **Exhibited Animals Bill 2015**

**Includes amendments agreed during Consideration**





Queensland

# Exhibited Animals Bill 2015

## Contents

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		Page
<b>Chapter 1</b>	<b>Preliminary</b>	
<b>Part 1</b>	<b>Introduction</b>	
1	Short title . . . . .	14
2	Commencement . . . . .	14
<b>Part 2</b>	<b>Purposes of Act and achieving the purposes</b>	
3	Purposes of Act . . . . .	14
4	How purposes are primarily achieved . . . . .	15
<b>Part 3</b>	<b>Application and operation of Act</b>	
5	Act binds all persons . . . . .	15
6	Application of Act to State for protected or wild animal . . . . .	16
7	Relationship with particular Acts . . . . .	16
8	Contravention of this Act does not create civil cause of action . . . . .	16
9	Act does not affect other right or remedy . . . . .	16
10	Exhibiting or dealing with animal to which Act does not apply . . . . .	17
<b>Part 4</b>	<b>Interpretation</b>	
<b>Division 1</b>	<b>Dictionary</b>	
11	Definitions . . . . .	18
<b>Division 2</b>	<b>Key concepts and definitions</b>	
12	Meaning of animal . . . . .	19
13	Meaning of exhibit an animal . . . . .	19
14	Meaning of exhibited animal . . . . .	20
15	Meaning of dealing with an exhibited animal . . . . .	21
16	Meaning of responsible person for an exhibited animal . . . . .	21
17	Meaning of relevant risk and relevant adverse effects . . . . .	22
<b>Chapter 2</b>	<b>Exhibiting and dealing with exhibited animals generally</b>	
<b>Part 1</b>	<b>General exhibition and dealing obligation</b>	
18	Obligation of responsible person for exhibited animal . . . . .	23

Contents

---

19	General exhibition and dealing obligation offence provision. . . . .	24
20	Effect of regulation for discharge of general exhibition and dealing obligation . . . . .	24
21	Effect of code of practice for discharge of general exhibition and dealing obligation . . . . .	24
22	Defence of due diligence . . . . .	25
<b>Part 2</b>	<b>Codes of practice and guidelines</b>	
<b>Division 1</b>	<b>Codes of practice</b>	
23	Making codes of practice . . . . .	26
24	Consultation about codes of practice . . . . .	26
25	Tabling and inspection of documents adopted in codes of practice	27
<b>Division 2</b>	<b>Guidelines</b>	
26	Chief executive may make guidelines. . . . .	28
27	Availability of guidelines . . . . .	28
28	Obligation to have regard to guidelines . . . . .	29
<b>Chapter 3</b>	<b>Exhibited animal authorities</b>	
<b>Part 1</b>	<b>Preliminary</b>	
29	Meaning of exhibited animal authority and relevant references . .	29
30	Categories of exhibited animal authorities . . . . .	30
31	Meaning of special exhibition approval. . . . .	30
32	Meaning of authorised animal . . . . .	31
33	Meaning of authorised animal (category A) . . . . .	31
34	Meaning of authorised animal (category B) . . . . .	32
35	Meaning of authorised animal (category C), authorised animal (category C1) and authorised animal (category C2) . . . . .	32
36	Meaning of authorised enclosure . . . . .	34
37	Meaning of management plan . . . . .	34
<b>Part 2</b>	<b>Requirement for authority</b>	
38	Authority required to exhibit particular animals . . . . .	37
<b>Part 3</b>	<b>Authorisations</b>	
<b>Division 1</b>	<b>Preliminary</b>	
39	Purpose and application of pt 3 . . . . .	38
<b>Division 2</b>	<b>Exhibition licences</b>	
40	Exhibiting and keeping an animal under licence . . . . .	38
41	Buying or accepting an animal under licence. . . . .	38
42	Selling or giving an animal under licence. . . . .	39
43	Moving an animal under licence. . . . .	39

44	Other authorised dealing under licence . . . . .	40
<b>Division 3</b>	<b>Interstate exhibitors permits</b>	
45	Definitions for div 3 . . . . .	40
46	Exhibiting and keeping an animal under permit . . . . .	40
47	Moving an animal under permit . . . . .	40
<b>Division 4</b>	<b>Temporary authorities</b>	
48	Authorisation under temporary authority . . . . .	41
<b>Part 4</b>	<b>Applications for grant of particular authorities</b>	
<b>Division 1</b>	<b>Preliminary</b>	
49	Application of pt 4 . . . . .	41
<b>Division 2</b>	<b>Making application</b>	
50	Applying for exhibition licence or interstate exhibitors permit . . . . .	42
51	Requirements for application . . . . .	42
52	Withdrawal . . . . .	43
53	Suitability of applicant to hold authority . . . . .	43
54	Requirement for further information or document . . . . .	45
55	Request to consent to official assessment (application) . . . . .	45
56	Amendment of application . . . . .	46
<b>Division 3</b>	<b>Deciding application</b>	
57	Consideration of application . . . . .	46
58	General criteria for decision . . . . .	47
59	Particular criterion for exhibiting or dealing with animal in residential premises . . . . .	48
60	Particular criteria for exhibiting or dealing with animal at 2 or more premises . . . . .	48
61	Decision on application . . . . .	48
62	Failure to decide application . . . . .	49
<b>Part 5</b>	<b>Granting temporary authorities</b>	
63	Chief executive may grant temporary authority . . . . .	49
<b>Part 6</b>	<b>Authority provisions</b>	
<b>Division 1</b>	<b>Contents</b>	
64	Content of each exhibited animal authority . . . . .	50
65	Additional content for exhibition licence . . . . .	52
66	Additional content of interstate exhibitors permit . . . . .	53
67	Temporary authority may include other matters . . . . .	53

Contents

---

<b>Division 2</b>	<b>Term</b>	
68	Term of exhibited animal authority . . . . .	53
<b>Part 7</b>	<b>Authority conditions</b>	
<b>Division 1</b>	<b>Mandatory conditions—all authorities</b>	
69	Mandatory conditions of exhibited animal authority . . . . .	54
<b>Division 2</b>	<b>Mandatory conditions—exhibition licences</b>	
<b>Subdivision 1</b>	<b>Preliminary</b>	
70	Application of div 2 . . . . .	56
<b>Subdivision 2</b>	<b>Exhibiting and keeping authorised animals generally</b>	
71	Particular conditions about regular enclosures . . . . .	56
72	Keeping authorised animal . . . . .	57
73	Exhibiting authorised animal (category C2) . . . . .	57
<b>Subdivision 3</b>	<b>Minimum exhibition periods</b>	
74	Application of sdiv 3 . . . . .	57
75	Minimum number of occasions for exhibiting authorised animal (category B) . . . . .	58
76	Minimum exhibition period for authorised animal (category C) . . . . .	59
<b>Division 3</b>	<b>Other authority conditions and related matters</b>	
77	Conditions of authority decided by the chief executive . . . . .	60
78	Inconsistency between licence and approval conditions . . . . .	62
79	Inconsistency between temporary and mandatory conditions . . . . .	62
<b>Part 8</b>	<b>Obligations under exhibited animal authorities</b>	
<b>Division 1</b>	<b>Notification obligations</b>	
<b>Subdivision 1</b>	<b>Preliminary</b>	
80	Definitions for div 1 . . . . .	63
<b>Subdivision 2</b>	<b>Authority holders</b>	
81	Obligation to notify serious incidents . . . . .	64
82	Obligation to notify significant change . . . . .	65
83	Evidential immunity for notification . . . . .	66
<b>Subdivision 3</b>	<b>Persons acting under authorities</b>	
84	Obligation of person to notify authority holder . . . . .	67
<b>Division 2</b>	<b>Other obligations</b>	
85	Contravention of authority condition . . . . .	67
86	Record requirements . . . . .	68

<b>Part 9</b>	<b>Other applications relating to particular authorities</b>	
<b>Division 1</b>	<b>Renewal or restoration</b>	
87	Application for renewal or restoration of exhibition licence . . . . .	69
88	Application of relevant provisions to application . . . . .	70
89	Continuation of approved management plan . . . . .	70
90	Request for consent to official assessment (application) . . . . .	70
91	Deciding application . . . . .	71
92	Licence continues pending decision about renewal . . . . .	72
<b>Division 2</b>	<b>Amendment</b>	
93	Application of div 2 . . . . .	72
94	Application to amend authority . . . . .	73
95	Application of relevant provisions to amendment application . . . . .	73
96	Deciding application for special exhibition approval . . . . .	74
97	Deciding another amendment application . . . . .	75
<b>Division 3</b>	<b>Transfer of exhibition licence</b>	
98	Application to transfer exhibition licence . . . . .	75
99	Deciding application . . . . .	76
<b>Part 10</b>	<b>Other matters</b>	
<b>Division 1</b>	<b>Register of authorities</b>	
100	Register of exhibited animal authorities . . . . .	77
<b>Division 2</b>	<b>Death of authority holder</b>	
101	Effect on authority of authority holder's death . . . . .	78
102	Changeover to personal representative . . . . .	78
<b>Chapter 4</b>	<b>Assessment of compliance</b>	
<b>Part 1</b>	<b>Official assessments</b>	
103	Official assessment (application) . . . . .	79
104	Official assessment (follow-up) . . . . .	79
105	Assessment fees . . . . .	80
<b>Part 2</b>	<b>Private assessment</b>	
106	Definition for pt 2 . . . . .	80
107	What is a private assessment . . . . .	81
108	What is a private assessment report . . . . .	81
109	False or misleading report . . . . .	82
110	Admissibility of report against licence holder . . . . .	82

Contents

---

<b>Part 3</b>	<b>Accreditation for private assessment</b>	
<b>Division 1</b>	<b>Applications</b>	
111	Application for accreditation . . . . .	83
112	Consideration of application . . . . .	83
113	Criteria for granting accreditation . . . . .	84
114	Inquiry about application . . . . .	84
115	Suitability of person for accreditation . . . . .	84
116	Decision on application . . . . .	85
117	Failure to decide application . . . . .	85
<b>Division 2</b>	<b>Accreditation provisions</b>	
118	Content of accreditation . . . . .	86
119	Term of accreditation . . . . .	86
120	Accreditation conditions . . . . .	86
<b>Division 3</b>	<b>Obligations of accreditation holders</b>	
121	Obligation to inform chief executive of contraventions . . . . .	87
122	Compliance with accreditation condition . . . . .	88
123	Keeping copy of report . . . . .	88
<b>Division 4</b>	<b>Renewal</b>	
124	Application for renewal . . . . .	88
125	Deciding application . . . . .	89
126	Accreditation continues pending decision about renewal . . . . .	89
<b>Division 5</b>	<b>Amendment by application</b>	
127	Application to amend . . . . .	90
128	Deciding application . . . . .	90
<b>Division 6</b>	<b>Other matters</b>	
129	Register . . . . .	91
130	Accreditation not transferable . . . . .	91
<b>Chapter 5</b>	<b>Cancellation, suspension and amendment of authorisations</b>	
<b>Part 1</b>	<b>Relevant authorisations</b>	
131	Definition for pt 1 . . . . .	92
132	Grounds for cancelling or suspending relevant authorisation. . . . .	92
133	Grounds for amending relevant authorisation . . . . .	93
134	Cancellation, suspension or amendment by chief executive—show cause notice . . . . .	94
135	Representations about show cause notice . . . . .	95
136	Ending show cause process without further action . . . . .	95



137	Cancellation, suspension or amendment of relevant authorisation	95
138	Immediate suspension of licence or permit . . . . .	97
139	Amendment of relevant authorisation without show cause notice—minor amendment . . . . .	98
140	Cancellation of relevant authorisation without show cause notice	98
141	Return of cancelled, suspended or amended relevant authorisation	99
<b>Part 2</b>	<b>Temporary authorities</b>	
142	Definition for pt 2 . . . . .	99
143	Cancellation if previous authority renewed etc. . . . .	100
144	Suspension if relevant original decision stayed . . . . .	100
145	Cancellation or amendment by chief executive . . . . .	100
<b>Chapter 6</b>	<b>Investigations and enforcement</b>	
<b>Part 1</b>	<b>General provisions about inspectors</b>	
<b>Division 1</b>	<b>Appointment</b>	
146	Inspectors under ch 6. . . . .	101
147	Functions of inspectors . . . . .	101
148	Appointment and qualifications . . . . .	102
149	Appointment conditions and limit on powers . . . . .	102
150	When office ends . . . . .	103
151	Resignation . . . . .	103
<b>Division 2</b>	<b>Identity cards</b>	
152	Issue of identity card . . . . .	103
153	Production or display of identity card . . . . .	104
154	Return of identity card . . . . .	104
<b>Division 3</b>	<b>Miscellaneous provisions</b>	
155	References to exercise of powers . . . . .	104
156	Reference to document includes reference to reproductions from electronic document. . . . .	105
<b>Part 2</b>	<b>Entry to places by inspector</b>	
<b>Division 1</b>	<b>Powers to enter</b>	
<b>Subdivision 1</b>	<b>Powers to enter by consent or under warrant</b>	
157	Entry by consent. . . . .	105
158	Entry under warrant . . . . .	106
<b>Subdivision 2</b>	<b>Other powers of entry</b>	
159	Entry other than by consent or warrant . . . . .	106
160	Entry to check compliance with exhibited animal direction. . . . .	107

Contents

---

161	Entry to take action required under exhibited animal direction . . .	107
162	Emergency entry . . . . .	107
<b>Division 2</b>	<b>Entry by consent</b>	
163	Application of div 2 . . . . .	108
164	Incidental entry to ask for access . . . . .	108
165	Matters inspector must tell occupier . . . . .	108
166	Consent acknowledgement . . . . .	109
<b>Division 3</b>	<b>Entry under warrant</b>	
<b>Subdivision 1</b>	<b>Obtaining warrant</b>	
167	Application for warrant . . . . .	110
168	Issue of warrant . . . . .	110
169	Electronic application . . . . .	111
170	Additional procedure if electronic application . . . . .	112
171	Defect in relation to a warrant. . . . .	113
<b>Subdivision 2</b>	<b>Entry procedure</b>	
172	Entry procedure . . . . .	114
<b>Division 4</b>	<b>Entry, other than by consent or under warrant, for particular purposes</b>	
173	Application of div 4 . . . . .	114
174	Requirement to locate and inform occupier before entry . . . . .	115
175	Requirement to inform occupier after entry . . . . .	116
<b>Part 3</b>	<b>Other inspectors' powers and related matters</b>	
<b>Division 1</b>	<b>Stopping or moving vehicles</b>	
176	Application of div 1 . . . . .	116
177	Power to stop or move . . . . .	117
178	Identification requirements if vehicle moving . . . . .	117
179	Failure to comply with direction . . . . .	118
<b>Division 2</b>	<b>General powers after entry</b>	
180	Application of div 2 . . . . .	118
181	General powers . . . . .	119
182	Power to require reasonable help . . . . .	120
183	Offence to contravene help requirement . . . . .	121
<b>Division 3</b>	<b>Exhibited animal directions</b>	
184	Power to give exhibited animal direction. . . . .	121
185	Matters that must be included in direction . . . . .	121
186	Matters that may be included in direction . . . . .	123

187	Requirements for giving direction . . . . .	123
188	Compliance with direction . . . . .	123
<b>Division 4</b>	<b>Seizure</b>	
<b>Subdivision 1</b>	<b>Powers to seize</b>	
189	Seizure with consent . . . . .	124
190	Seizing evidence consistent with purpose of entry by consent . .	124
191	Seizing evidence for which warrant issued. . . . .	125
192	Other seizure powers . . . . .	125
193	Seizure of property subject to security . . . . .	126
<b>Subdivision 2</b>	<b>Powers to support seizure</b>	
194	Requirement of person in control of exhibited animal or other thing	126
195	Powers to secure seized exhibited animal or other thing . . . . .	127
196	Offence to contravene seizure requirements . . . . .	127
197	Particular powers for seized animals . . . . .	128
198	Offence to interfere. . . . .	128
<b>Subdivision 3</b>	<b>Safeguards for seized property</b>	
199	Receipt and information notice for seized property . . . . .	129
200	Access to seized property . . . . .	130
201	Return of seized animal . . . . .	131
202	Return of seized property other than an animal . . . . .	132
<b>Division 5</b>	<b>Urgent destruction of animals</b>	
203	Power to destroy an animal . . . . .	133
<b>Division 6</b>	<b>Forfeiture</b>	
204	Forfeiture decision of chief executive . . . . .	134
205	Information notice for forfeiture decision. . . . .	135
206	When exhibited animal or other thing becomes property of the State	136
207	How property may be dealt with . . . . .	136
208	Power of destruction for immediate biosecurity risk. . . . .	137
<b>Division 7</b>	<b>Other information-obtaining powers of inspectors</b>	
209	Power to require name and address. . . . .	137
210	Offence to contravene personal details requirement . . . . .	138
211	Power to require production of document. . . . .	138
212	Offence to contravene document production requirement . . . . .	139
213	Offence to contravene document certification requirement . . . . .	140
214	Power to require information. . . . .	141
215	Offence to contravene information requirement . . . . .	142

Contents

---

<b>Part 4</b>	<b>Miscellaneous provisions relating to inspectors</b>	
<b>Division 1</b>	<b>Damage</b>	
216	Duty to avoid inconvenience and minimise damage. . . . .	142
217	Notice of relevant event . . . . .	142
<b>Division 2</b>	<b>Compensation</b>	
218	Compensation . . . . .	144
<b>Division 3</b>	<b>Other offences relating to inspectors</b>	
219	Giving inspector false or misleading information . . . . .	145
220	Obstructing inspector . . . . .	146
221	Impersonating inspector . . . . .	146
<b>Division 4</b>	<b>Other provisions</b>	
222	Evidential immunity for complying with particular requirements. . . . .	146
<b>Chapter 7</b>	<b>Evidence and proceedings</b>	
<b>Part 1</b>	<b>Evidence</b>	
223	Application of pt 1 . . . . .	147
224	Appointment and authority . . . . .	147
225	Signature . . . . .	148
226	Evidentiary aids . . . . .	148
<b>Part 2</b>	<b>Proceedings generally</b>	
227	Offences against this Act . . . . .	149
228	Statement of complainant's knowledge . . . . .	150
229	Allegation of false or misleading information or document. . . . .	150
230	Responsibility for act or omission of representative . . . . .	150
<b>Part 3</b>	<b>Court orders</b>	
231	Disposal order . . . . .	151
232	Prohibition order . . . . .	152
233	Order against owner in particular case. . . . .	152
234	Criteria for making disposal or prohibition order. . . . .	153
235	Procedure and power for making disposal or prohibition order . . . . .	153
236	Review of prohibition order. . . . .	154
<b>Part 4</b>	<b>Remedies</b>	
237	Recovery of seizure, compliance or destruction costs . . . . .	155
238	Recovery of costs of investigation . . . . .	156
239	Compensation because of animal offence . . . . .	156

<b>Part 5</b>	<b>Reviews</b>	
<b>Division 1</b>	<b>Preliminary</b>	
240	Definitions for pt 5. . . . .	157
<b>Division 2</b>	<b>Internal reviews</b>	
241	External review or appeal process starts with internal review . . .	158
242	Who may apply for internal review . . . . .	158
243	Requirements for making application . . . . .	159
244	Stay of operation of original decision . . . . .	159
245	Internal review . . . . .	160
246	Notice of internal review decision . . . . .	161
247	Applicant may ask for QCAT or appeal information notice . . . . .	162
<b>Division 3</b>	<b>External reviews by QCAT</b>	
248	Who may apply for external review . . . . .	162
<b>Division 4</b>	<b>Appeals</b>	
249	Who may appeal. . . . .	163
250	Procedure for an appeal to the court . . . . .	163
251	Stay of operation of internal review decision . . . . .	163
252	Powers of court on appeal . . . . .	164
253	Effect of decision of court on appeal . . . . .	164
<b>Chapter 8</b>	<b>General provisions</b>	
254	False representations about authority or accreditation. . . . .	165
255	Giving chief executive false or misleading information . . . . .	166
256	Confidentiality of information . . . . .	166
257	Personal information on register under this Act . . . . .	168
258	Delegation by chief executive. . . . .	168
259	Civil liability of person for helping inspector . . . . .	168
260	Approval of forms . . . . .	169
261	Regulation-making power. . . . .	169
<b>Chapter 9</b>	<b>Transitional provisions</b>	
<b>Part 1</b>	<b>Preliminary</b>	
262	Definitions for ch 9 . . . . .	170
<b>Part 2</b>	<b>Declared pest permits</b>	
263	Undecided application for declared pest permit . . . . .	172
264	Fee for first exhibition licence application . . . . .	173
265	Exhibition of particular circus macaque . . . . .	173

Contents

---

<b>Part 3</b>	<b>Particular wildlife licences and fisheries permits</b>	
<b>Division 1</b>	<b>Existing licences and permits</b>	
266	Continuation of wildlife demonstrator or exhibitor licence . . . . .	175
267	Continuation of exhibition of noxious fish under fisheries permit . . . . .	176
<b>Division 2</b>	<b>Applications</b>	
268	Undecided application for wildlife demonstrator or exhibitor licence . . . . .	177
269	Undecided application for general fisheries permit for exhibition of noxious fisheries resources . . . . .	177
270	Fees for undecided application . . . . .	178
271	Further information for undecided application . . . . .	178
272	Fee for first exhibition licence application . . . . .	178
<b>Part 4</b>	<b>Co-existing permits and licences</b>	
273	Fee exemption for particular licence amendment applications . . . . .	179
<b>Chapter 10</b>	<b>Amendment of this Act and other legislation</b>	
<b>Part 1</b>	<b>Amendment of this Act</b>	
274	Act amended . . . . .	180
275	Amendment of long title . . . . .	180
<b>Part 2</b>	<b>Amendment of other legislation</b>	
<b>Division 1</b>	<b>Amendment of Biosecurity Act</b>	
276	Act amended . . . . .	181
277	Amendment of s 194 (Movement record requirement) . . . . .	181
<b>Division 2</b>	<b>Amendment of Nature Conservation Act</b>	
278	Act amended . . . . .	181
279	Amendment of s 88A (Restriction on keeping or use of lawfully taken protected animal) . . . . .	181
280	Amendment of s 91 (Restriction on release etc. of international and prohibited wildlife) . . . . .	182
281	Amendment of s 97 (Restriction on taking etc. of native wildlife in areas of major interest and critical habitats) . . . . .	182
<b>Division 3</b>	<b>Amendment of regulations</b>	
282	Regulations amended in sch 3 . . . . .	183
<b>Schedule 1</b>	<b>Exempted animals</b> . . . . .	184
<b>Schedule 2</b>	<b>Dictionary</b> . . . . .	185
<b>Schedule 3</b>	<b>Amendment of regulations</b> . . . . .	198
	Nature Conservation (Administration) Regulation 2006 . . . . .	198
	Nature Conservation (Wildlife Management) Regulation 2006 . . . . .	198

# 2015

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## A Bill

for

**An Act to provide for exhibiting and dealing with particular animals and to amend this Act, the *Biosecurity Act 2014*, the *Nature Conservation Act 1992* and the regulations mentioned in schedule 3 for particular purposes**

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## The Parliament of Queensland enacts

# Chapter 1 Preliminary

## Part 1 Introduction

### 1 Short title

This Act may be cited as the *Exhibited Animals Act 2015*.

### 2 Commencement

- (1) Subject to subsection (2), this Act commences on a day to be fixed by proclamation.
- (2) If a provision of this Act does not commence before 1 July 2016, it commences on that day.
- (3) The *Acts Interpretation Act 1954*, section 15DA does not apply to this Act.

## Part 2 Purposes of Act and achieving the purposes

### 3 Purposes of Act

- (1) The main purpose of this Act is to provide for exhibiting and dealing with exhibited animals.
- (2) It is also a purpose of this Act to ensure the relevant risks and relevant adverse effects associated with exhibiting and dealing with exhibited animals are prevented or minimised.



#### **4 How purposes are primarily achieved**

The purposes of this Act are to be achieved primarily by—

- (a) imposing a general obligation on persons exhibiting and dealing with exhibited animals to prevent or minimise the relevant risks and relevant adverse effects associated with exhibiting and dealing with exhibited animals; and
- (b) requiring that authorities be obtained to allow particular animals to be exhibited; and
- (c) imposing additional obligations on persons exhibiting or dealing with authorised animals under exhibited animal authorities; and
- (d) providing for monitoring and enforcement of compliance with this Act; and
- (e) providing for codes of practice relating to a person's obligations under this Act; and
- (f) providing for the chief executive to make guidelines about the application of this Act and how a person may comply with obligations imposed under this Act.

### **Part 3 Application and operation of Act**

#### **5 Act binds all persons**

- (1) This Act binds all persons, including the State and, so far as the legislative power of the Parliament permits, the Commonwealth and the other States.
- (2) Subsection (1) does not make the State, the Commonwealth or another State liable to be prosecuted for an offence.

[s 6]

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## **6 Application of Act to State for protected or wild animal**

This Act does not apply to the State for an animal only because it is—

- (a) a protected animal or an animal in the wild; and
- (b) the property of the State under the Nature Conservation Act, another Act or the common law.

*Note—*

See the Nature Conservation Act, section 83.

## **7 Relationship with particular Acts**

- (1) Unless this Act otherwise states, it does not affect the application of—
  - (a) the *Animal Care and Protection Act 2001*; or
  - (b) the Biosecurity Act; or
  - (c) the Nature Conservation Act; or
  - (d) the *Work Health and Safety Act 2011*.
- (2) However, this Act does apply to the NCA chief executive if the NCA chief executive is exhibiting or dealing with an exhibited animal only under the authority of the Nature Conservation Act, section 173P.

## **8 Contravention of this Act does not create civil cause of action**

No provision of this Act creates a civil cause of action based on a contravention of the provision.

## **9 Act does not affect other right or remedy**

- (1) This Act does not affect or limit a civil right or remedy that exists apart from this Act, whether at common law or otherwise.

- (2) Without limiting subsection (1), compliance with this Act does not necessarily show that a civil obligation that exists apart from this Act has been satisfied or has not been breached.

## **10 Exhibiting or dealing with animal to which Act does not apply**

- (1) This Act does not apply to exhibiting or dealing with an animal if—
- (a) the animal is of a species mentioned in schedule 1; or
  - (b) the animal is authorised or permitted to be exhibited under the Biosecurity Act or Nature Conservation Act; or
  - (c) the animal can be lawfully exhibited and dealt with (without an exhibited animal authority or a licence, permit or other authority under the Biosecurity Act or Nature Conservation Act) and any of the following apply—
    - (i) the animal is being used for scientific purposes;
    - (ii) the animal is displayed for the purpose of its sale;
    - (iii) the animal is displayed for no longer than 11 days at a time; or

*Examples for subparagraph (iii)—*

- displaying an animal at an agricultural show or community event
  - displaying Gouldian finches at a meeting of a bird fanciers' association
  - displaying an animal for 'show and tell' in a school classroom
- (d) the animal is a protected animal being rehabilitated for return to the wild and is displayed under the authority of the Nature Conservation Act, section 173P(1), for 1 or more of the following purposes—

[s 11]

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- (i) to give public information about the ecological role of that species of animal;
  - (ii) to promote education about, and the conservation of, that species of animal;
  - (iii) to promote an understanding of ecology and the conservation of that species of animal;
  - (iv) to raise funds to assist in providing care and treatment for animals being rehabilitated for return to the wild; or
- (e) the animal is international wildlife or a protected animal, other than an animal mentioned in paragraph (d), that is displayed under the authority of the Nature Conservation Act, section 173P(1), for no longer than 11 days at a time.
- (2) However, if an animal as mentioned in subsection (1)(c)(iii) or (e) is displayed for a commercial purpose, this Act does apply to exhibiting or dealing with the animal.
- (3) In this section—  
*scientific purposes* see the *Animal Care and Protection Act 2001*, section 48.

## **Part 4                      Interpretation**

### **Division 1                Dictionary**

#### **11            Definitions**

The dictionary in schedule 2 defines particular words used in this Act.

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## Division 2                      Key concepts and definitions

### 12        **Meaning of *animal***

- (1) Generally, an ***animal*** is any live member of the animal kingdom, other than a human being.
- (2) In relation to dealing with an exhibited animal, an ***animal*** includes—
  - (a) the animal at each stage of its life cycle; and

*Examples—*

- a pre-natal or pre-hatched creature
- larvae or pupae
- an embryo

- (b) the whole or any part of the genetic or reproductive material of the animal.

*Examples—*

an ovum, semen

### 13        **Meaning of *exhibit* an animal**

- (1) Generally, ***exhibit*** an animal means display the animal to the public, including, for example, for commercial, cultural, educational, entertainment or scientific purposes.

*Examples of exhibiting an animal—*

- displaying an animal in a zoo or wildlife park
- using an animal in a performance in a circus or magic show
- allowing public interaction with animals at a petting farm
- showing an animal as part of an educational wildlife demonstration
- displaying an animal, including, for example, a bird in a cage, in a part of commercial premises accessible to the public

*Note—*

Section 10 states when the Act does not apply to exhibiting or dealing with an animal.

[s 14]

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- (2) **Exhibit**, an animal, includes the following—
- (a) display the animal at a private event;
  - (b) arrange for the animal to be at a public place for a period that allows the public a reasonable opportunity to view the animal, whether or not the animal is so viewed;
  - (c) allow public interaction involving the animal.
- (3) Also, a person **exhibits** an animal if—
- (a) the person records the animal’s image for display to the public, whether the image is displayed when it is recorded or is intended to be displayed after it is recorded; and
- Examples of ways of recording an animal’s image—*
- photographing the animal, including using a digital camera
  - recording the animal’s image using a video or web camera
  - filming the animal for a film or television production
- (b) the person is a responsible person for the exhibited animal.
- (4) If an animal is in the wild, despite subsections (1) to (3), **exhibit** an animal does not include any of the following—
- (a) arranging to view the animal;
  - (b) allowing public interaction involving the animal;
  - (c) recording the animal’s image.

## 14 Meaning of **exhibited animal**

An animal is an **exhibited animal** if—

- (a) the animal is an authorised animal; or
- (b) the animal is not an authorised animal but the animal is exhibited and this Act applies to the exhibition of the animal.

*Note—*

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Section 10 states when the Act does not apply to exhibiting or dealing with an animal.

## 15 Meaning of *dealing with* an exhibited animal

*Dealing with*, an exhibited animal—

- (a) means carrying out an activity involving or relating to the animal, other than exhibiting the animal; and
- (b) includes all of the following—
  - (i) accepting, buying, importing or obtaining the animal;
  - (ii) breeding, culturing, growing or raising the animal;
  - (iii) keeping or possessing the animal;
  - (iv) moving the animal;
  - (v) giving, selling or otherwise disposing of, the animal.

## 16 Meaning of *responsible person* for an exhibited animal

- (1) A person is a *responsible person* for an exhibited animal if the person—
  - (a) exhibits or deals with the animal; or
  - (b) employs another person to exhibit or deal with the animal, if the other person exhibits or deals with the animal within the scope of the employment; or
  - (c) is the holder of an exhibited animal authority for the animal; or
  - (d) owns or has a lease, licence or other proprietary interest in the animal.

*Note*—

See, however, section 6 that states this Act does not apply to the State for particular animals only because they are the property of the State.

[s 17]

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- (2) Despite subsection (1)(a) and (b), a person is not a responsible person for an animal because the person records the animal's image or employs someone else to record the animal's image unless the person is otherwise a responsible person for the animal under this section.

*Example for subsection (2)—*

A person goes to a zoo as a member of the public and photographs an animal being displayed at the zoo. The person is not a responsible person for the animal only because the person photographs the animal.

- (3) If an exhibited animal is seized under chapter 6, part 3, division 4 and, immediately before the seizure, a person was a responsible person for the animal under subsection (1)(a) or (b), the person continues to be a responsible person for the animal.
- (4) Despite subsection (1)(d), a person who holds a mortgage or other security interest in an exhibited animal only becomes a responsible person for the animal if the person takes a step to enforce the mortgage or other security.
- (5) In this section—  
*employs* includes engages under a contract for services.

## 17 Meaning of *relevant risk* and *relevant adverse effects*

- (1) Each of the following is a *relevant risk* associated with exhibiting or dealing with an exhibited animal—
- (a) a risk to the welfare of any animal;
  - (b) a biosecurity risk;
  - (c) a risk to public safety, or of death, injury or illness to a person, caused directly by, or originating from, the exhibited animal.
- (2) The *relevant adverse effects*, associated with exhibiting or dealing with an exhibited animal, are the adverse effects of an event caused by exhibiting or dealing with the animal on each of the following—



- 
- (a) the welfare of any animal;
  - (b) the health, safety or wellbeing of a person;
  - (c) social amenity, the economy and the environment.

*Examples of an event—*

the escape or release of an exhibited animal

## Chapter 2 Exhibiting and dealing with exhibited animals generally

### Part 1 General exhibition and dealing obligation

#### 18 Obligation of responsible person for exhibited animal

- (1) A responsible person for an exhibited animal has an obligation (a *general exhibition and dealing obligation*) to take all reasonable and practical measures to prevent or minimise the relevant risks and relevant adverse effects associated with exhibiting or dealing with the animal.

*Example for subsection (1)—*

A measure that may be reasonable and practical to prevent or minimise the relevant adverse effects of the escape of an exhibited animal from its enclosure may include a strategy for that event that ensures the following happens quickly—

- recapturing or destroying the animal
  - warning persons about the dangers posed by the animal and advising them about appropriate action they should take for their safety.
- (2) Despite subsection (1), a responsible person for an exhibited animal has a general exhibition and dealing obligation to prevent or minimise a biosecurity risk associated with

[s 19]

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exhibiting or dealing with the animal only if the person knows or ought reasonably to know that exhibiting or dealing with the animal poses, or is likely to pose, the risk.

*Note—*

See the Biosecurity Act, section 23(1).

## **19 General exhibition and dealing obligation offence provision**

A person on whom a general exhibition and dealing obligation is imposed must discharge the obligation.

Maximum penalty—750 penalty units.

## **20 Effect of regulation for discharge of general exhibition and dealing obligation**

- (1) This section applies if a provision of a regulation (a *regulation provision*) is identified in the regulation as a provision that prescribes a way of discharging a person's general exhibition and dealing obligation.
- (2) Unless otherwise stated in the regulation, the regulation provision does not prescribe all the person must do, or must not do, to discharge the person's general exhibition and dealing obligation.
- (3) However, for applying section 19, the person fails to discharge the person's general exhibition and dealing obligation if the person contravenes the regulation provision.

## **21 Effect of code of practice for discharge of general exhibition and dealing obligation**

- (1) This section applies if a code of practice states a way of discharging a person's general exhibition and dealing obligation.
- (2) Unless otherwise stated in the code of practice, the code of practice does not state all the person must do, or must not do,

to discharge the person's general exhibition and dealing obligation.

- (3) However, for applying section 19, the person fails to discharge the general exhibition and dealing obligation if the person—
  - (a) contravenes the code of practice; and
  - (b) does not follow a way that is as effective as, or more effective than, the code of practice for discharging the general exhibition and dealing obligation.
- (4) Also, for applying section 19, if a regulation requires a person to comply with the whole or a stated part of a code of practice to discharge the person's general exhibition and dealing obligation, the person fails to discharge the obligation if the person contravenes the code of practice or stated part.

## **22 Defence of due diligence**

- (1) In a proceeding for an offence against section 19, it is a defence for a person to prove that the person took all reasonable precautions and exercised proper diligence to prevent the commission of the offence by the person or by another person under the person's control.
- (2) Without limiting the ways in which a person proves the matter stated in subsection (1), a person proves the matter if the person proves that—
  - (a) if a regulation prescribes a way in which a person's general exhibition and dealing obligation can be discharged—the person followed the prescribed way; or
  - (b) if a code of practice states a way in which a person's general exhibition and dealing obligation can be discharged—the person adopted and followed the stated way.
- (3) This section is not intended to exclude the operation of the Criminal Code, section 24.

## **Part 2**                      **Codes of practice and guidelines**

### **Division 1**                **Codes of practice**

#### **23**        **Making codes of practice**

- (1) The Governor in Council may, by regulation, make a code of practice about exhibiting and dealing with exhibited animals.
- (2) Without limiting subsection (1), a code of practice may be made about—
  - (a) preventing or minimising the relevant risks and relevant adverse effects associated with exhibiting or dealing with exhibited animals; or
  - (b) designing, constructing or maintaining enclosures for exhibiting or dealing with exhibited animals; or
  - (c) exhibiting or dealing with exhibited animals in enclosures, including, for example, the species and number of animals to be exhibited or kept in an enclosure or a particular type of enclosure.

#### **24**        **Consultation about codes of practice**

- (1) Before the making of a code of practice under this division is recommended to the Governor in Council, the chief executive must consult with relevant entities.
- (2) Subsection (1) does not apply to the adopted provisions of a code of practice.
- (3) A failure to consult under subsection (1) does not affect the validity of the code of practice.
- (4) In this section—

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*relevant entities* means entities the chief executive considers have an interest in matters relating to exhibiting and dealing with exhibited animals.

*Examples of types of entities—*

entities from community groups or professional and industry associations

## **25     Tabling and inspection of documents adopted in codes of practice**

- (1) This section applies if—
  - (a) a regulation under which a code of practice is made adopts, applies or incorporates the whole or a stated part of another document (the *adopted provisions*); and
  - (b) the adopted provisions are not part of, or attached to, the regulation.
- (2) The Minister must, within 14 sitting days after the regulation is notified, table a copy of the adopted provisions in the Legislative Assembly.
- (3) If the adopted provisions are amended, the Minister must, within 14 sitting days after the amendment is made, table a copy of the provisions as amended in the Legislative Assembly.
- (4) The chief executive must keep a copy of the adopted provisions, as in force from time to time, available for inspection, free of charge, by members of the public at—
  - (a) the department's head office; and
  - (b) other places the chief executive considers appropriate.
- (5) The adopted provisions may be made available for inspection in electronic or paper form.
- (6) A contravention of subsection (2), (3) or (4) does not invalidate or otherwise affect the regulation.

## **Division 2                      Guidelines**

### **26            Chief executive may make guidelines**

- (1) The chief executive may make guidelines about—
  - (a) matters relating to the administration of this Act; or
  - (b) complying with other requirements imposed under this Act.
- (2) Without limiting subsection (1), a guideline may be about the following matters—
  - (a) the operation of provisions of this Act about monitoring and enforcement of compliance with this Act;
  - (b) ways in which exhibited animals may be exhibited or dealt with, including, for example, acceptable ways of ensuring an animal’s enclosure appropriately provides for the animal’s normal behaviours;
  - (c) the type of information the chief executive may consider relevant in a management plan for managing the relevant risks and relevant adverse effects associated with exhibiting or dealing with an exhibited animal.
- (3) Before making a guideline, the chief executive must take reasonable steps to allow entities the chief executive considers may have an interest in the proposed guideline to give the chief executive written submissions about it.
- (4) A failure to take reasonable steps to allow an entity to give the chief executive written submissions about a proposed guideline under subsection (3) does not affect the validity of the guideline.

### **27            Availability of guidelines**

- (1) The chief executive must keep a copy of each guideline, as in force from time to time, available for inspection, free of charge, by members of the public at—

- (a) the department's head office; and
  - (b) other places the chief executive considers appropriate.
- (2) Also, the chief executive must publish each guideline, as in force from time to time, on the department's website.

## **28 Obligation to have regard to guidelines**

- (1) A guideline may be taken into account when considering whether a person has or has not discharged the person's general exhibition and dealing obligation or otherwise complied with this Act.
- (2) However, it must not be presumed that a person who has contravened a guideline has breached the person's general exhibition and dealing obligation or otherwise contravened this Act.

# **Chapter 3 Exhibited animal authorities**

## **Part 1 Preliminary**

### **29 Meaning of *exhibited animal authority* and relevant references**

- (1) An *exhibited animal authority* is an authority of a category mentioned in section 30 given under this chapter for exhibiting and dealing with an exhibited animal.
- (2) Unless otherwise provided, a reference to an exhibited animal authority or an authority in relation to an authorised animal is a reference to the exhibited animal authority under which the animal is authorised to be exhibited and dealt with.

[s 30]

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- (3) Unless otherwise provided, a reference to an exhibited animal authority or an authority in relation to an authorised enclosure is a reference to—
- (a) for an authorised enclosure for an authorised animal (category A)—the exhibited animal authority under which a type of enclosure is authorised for exhibiting or dealing with the animal; or
  - (b) for an authorised enclosure for an authorised animal (category B) or (category C)—the exhibited animal authority under which the enclosure is authorised for exhibiting or dealing with the animal.

### **30 Categories of exhibited animal authorities**

The chief executive may give exhibited animal authorities of the following categories—

- (a) a licence (an *exhibition licence*) to exhibit and deal with an animal;
- (b) a permit (an *interstate exhibitors permit*) to exhibit and deal with an animal in this State if the animal is the subject of an interstate authority;
- (c) an authority (a *temporary authority*) to deal with an animal for the purpose of—
  - (i) obtaining an exhibition licence for the animal; or
  - (ii) disposing of the animal.

### **31 Meaning of *special exhibition approval***

A *special exhibition approval* is an approval given by the chief executive to the holder of an exhibition licence to exhibit and deal with an authorised animal (category C2) at a place identified in the approval that is outside—

- (a) a regular enclosure for the animal at a regular enclosure site under the licence; and



- (b) a controlled area that includes a regular enclosure for the animal at a regular enclosure site under the licence.

*Note—*

See section 94(1).

### **32 Meaning of *authorised animal***

- (1) An *authorised animal* is an animal that is authorised to be exhibited and dealt with under an exhibited animal authority.

*Note—*

An exhibited animal authority may identify a particular animal or a species of animal as authorised to be exhibited and dealt with under the authority. See section 64(1)(b) and (c).

- (2) The authorised animal may be one of the following—
- (a) an authorised animal (category A);
  - (b) an authorised animal (category B);
  - (c) an authorised animal (category C).

### **33 Meaning of *authorised animal (category A)***

An *authorised animal (category A)* is an authorised animal that is—

- (a) international wildlife; or
- (b) any of the following under the Nature Conservation Act—
  - (i) a commercial animal;
  - (ii) a controlled animal;
  - (iii) a recreational animal;
  - (iv) a restricted animal.

*Note—*

See the *Nature Conservation (Wildlife Management) Regulation 2006*, schedule 4, parts 2 to 5, under which particular native

[s 34]

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birds, invertebrates, reptiles and amphibians are classified as controlled, commercial, recreational or restricted animals.

### **34 Meaning of *authorised animal (category B)***

An *authorised animal (category B)* is an authorised animal that is—

- (a) any of the following—
  - (i) dingo (*Canus lupus dingo*)
  - (ii) eastern grey kangaroo (*Macropus giganteus*)
  - (iii) echidna (*Tachyglossus aculeatus*)
  - (iv) estuarine crocodile (*Crocodylus porosus*)
  - (v) European rabbit (*Oryctolagus cuniculus*)
  - (vi) freshwater crocodile (*Crocodylus johnstoni*)
  - (vii) koala (*Phascolarctos cinereus*)
  - (viii) long-nosed potoroo (*Potorous tridactylus tridactylus*)
  - (ix) platypus (*Ornithorhynchus anatinus*)
  - (x) wombat (Family Vombatidae); or
- (b) another animal that is neither an authorised animal (category A) nor an authorised animal (category C).

### **35 Meaning of *authorised animal (category C)*, *authorised animal (category C1)* and *authorised animal (category C2)***

- (1) An *authorised animal (category C)* is an authorised animal that is prohibited matter, other than an animal that is international wildlife.
- (2) An *authorised animal (category C1)* is an authorised animal (category C) of a species prescribed by regulation.
- (3) An *authorised animal (category C2)* is an authorised animal (category C) other than an authorised animal (category C1).

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- (4) The Minister may recommend to the Governor in Council the making of a regulation under subsection (2) only if the Minister is satisfied—
- (a) the escape of animals of that species in Australia would pose no more than a low risk of the species becoming established—
    - (i) for a species the Minister believes is established in Australia but outside the State and whose eradication is not technically feasible—in the State; or
    - (ii) otherwise—anywhere in Australia; and
  - (b) the establishment of animals of that species in Australia poses or would pose no more than a moderate risk of an adverse effect on any of the following matters (the *relevant considerations*)—
    - (i) the health, safety or wellbeing of a person;
    - (ii) social amenity, the economy or the environment.
- (5) For subsection (4)(a) and (b), in assessing the extent of the risk of a species becoming established and the risk posed by the establishment of the species, the Minister—
- (a) must have regard to any relevant scientific assessment of—
    - (i) the risk of animals that are prohibited matter becoming established in the State or elsewhere in Australia if they were to escape; and
    - (ii) the risk of an adverse effect on the relevant considerations posed, or that would be posed, by the establishment in Australia of animals that are prohibited matter; and
  - (b) must consult with relevant entities.
- (6) However, a failure to consult under subsection (5)(b) does not affect the validity of a decision under subsection (4)(a) or (b).
- (7) In this section—

[s 36]

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*escape* includes release.

*relevant entities* means entities the Minister considers have an interest in—

- (a) preventing the establishment within Australia of animals that are prohibited matter; or
- (b) exhibiting animals that are prohibited matter.

### **36 Meaning of *authorised enclosure***

- (1) An *authorised enclosure*, for an authorised animal (category A), is an enclosure of a type in which the animal is authorised to be exhibited or dealt with under the exhibited animal authority.
- (2) An *authorised enclosure*, for an authorised animal (category B) or (category C), is an enclosure in which the animal is authorised to be exhibited or dealt with under the exhibited animal authority.

### **37 Meaning of *management plan***

- (1) A *management plan* is a plan, submitted by an applicant for an exhibition licence or interstate exhibitors permit, complying with subsections (2) to (4).
- (2) The plan must—
  - (a) for an animal proposed to be exhibited and dealt with under the exhibition licence or interstate exhibitors permit as a particular animal—identify the animal (the *subject animal*); and

*Example of identifying a particular animal—*

identifying a particular animal by referring to its species and a unique identifying number obtainable from a microchip inserted in the animal

- (b) for an animal proposed to be exhibited and dealt with under the licence or permit only as an animal of a

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species—identify the species (also, the *subject animal*);  
and

- (c) state how the applicant proposes to exhibit and deal with the subject animal; and
- (d) state the significant relevant risks and relevant adverse effects associated with exhibiting and dealing with the subject animal; and
- (e) state the ways in which the applicant intends to prevent or minimise the significant relevant risks and relevant adverse effects; and

*Examples for paragraph (e)—*

- how the subject animal is to be contained in an authorised enclosure or secured during an exhibition
  - if public interaction involving the subject animal is to be authorised, the restrictions to be applied
- (f) if the subject animal is not native wildlife, state the arrangements for managing reproduction of the animal, including, for example, arrangements for progeny of the animal.
- (3) If the plan is submitted by an applicant for an exhibition licence, the plan must also—
    - (a) for a subject animal proposed to be an authorised animal (category A), identify each type of enclosure that is proposed to be—
      - (i) a regular enclosure for the animal; and
      - (ii) another authorised enclosure for the animal, if any; and
    - (b) for a subject animal proposed to be an authorised animal (category B) or (category C), identify each enclosure that is proposed to be—
      - (i) a regular enclosure for the animal; and
      - (ii) another authorised enclosure for the animal, if any; and

[s 37]

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- (c) identify each regular enclosure site for a regular enclosure mentioned in paragraph (a)(i) or (b)(i); and
  - (d) without limiting subsection (2)(c), state—
    - (i) how the applicant proposes to exhibit and deal with the subject animal in each proposed regular enclosure for the animal; and
    - (ii) if different from a matter stated under subparagraph (i), how the applicant proposes to exhibit and deal with the subject animal in each other proposed authorised enclosure for the animal.
- (4) If the plan is submitted by an applicant for the amendment of an exhibition licence by the grant of a special exhibition approval for an authorised animal (category C2), the plan must also state each matter mentioned in subsection (2)(c) to (f) as it relates to exhibiting and dealing with the animal under the approval.
- (5) In this section—

***applicant*** means—

- (a) for an exhibition licence, an applicant for—
  - (i) the grant, renewal or restoration of the licence; or
  - (ii) the amendment of the licence by the grant of a special exhibition approval or otherwise; or
- (b) for an interstate exhibitors permit, an applicant for the grant or amendment of the permit.

***significant relevant risks and relevant adverse effects*** means the relevant risks and relevant adverse effects the applicant considers, or reasonably ought to consider, are significant.

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## Part 2 Requirement for authority

### 38 Authority required to exhibit particular animals

- (1) This section applies to exhibiting an animal that is—
- (a) native wildlife unless, under the Nature Conservation Act, the animal may be kept or used without an NCA authorisation; or
  - (b) international wildlife; or
  - (c) prohibited wildlife; or
  - (d) prohibited matter; or
  - (e) restricted matter.

*Notes—*

- 1 Under section 10, this Act does not apply to exhibiting or dealing with particular animals.
  - 2 Particular animals to which subsection (1) applies are designated animals under the Biosecurity Act for which a person keeping the animals may be required to apply for registration as a registered biosecurity entity. See the Biosecurity Act, chapter 7, parts 1 and 2.
- (2) A person must not exhibit the animal other than under an exhibited animal authority.

Maximum penalty—500 penalty units.

- (3) Despite subsection (1)(a), the NCA chief executive exhibiting an animal under the authority of the Nature Conservation Act, section 173P(1) is not excluded from the application of this section only because, under section 173P(2) of that Act, the NCA chief executive does not require an NCA authorisation to keep or use the animal.
- (4) In this section—

***NCA authorisation*** means a licence, permit or other authority under the Nature Conservation Act.

***prohibited wildlife*** see the Nature Conservation Act, schedule.

*Note—*

Under the Nature Conservation Act, schedule, prohibited wildlife is defined as wildlife prescribed under that Act as prohibited wildlife. Under the *Nature Conservation (Wildlife) Regulation 2006*, schedule 8, particular exotic birds and mammals are prescribed as prohibited wildlife.

## **Part 3 Authorisations**

### **Division 1 Preliminary**

#### **39 Purpose and application of pt 3**

- (1) This purpose of this part is to provide for exhibiting and dealing with an authorised animal.
- (2) However, the application of a provision of this part to an exhibited animal authority is subject to a condition of the authority provided for by part 7.

### **Division 2 Exhibition licences**

#### **40 Exhibiting and keeping an animal under licence**

An exhibition licence authorises the holder to exhibit and keep an authorised animal in the way stated in the licence.

#### **41 Buying or accepting an animal under licence**

An exhibition licence authorises the holder to buy or accept an authorised animal—

- (a) only from a person who is authorised to sell or give the animal under a law of the State, the Commonwealth or another State; or



- (b) for an animal that is imported into the State from a person in a foreign country—only if the importation is authorised under a law of the Commonwealth.

#### **42 Selling or giving an animal under licence**

An exhibition licence authorises the holder to sell or give an authorised animal—

- (a) only to a person who is authorised to buy or accept the animal under a law of the State, the Commonwealth or another State; or
- (b) for an animal that is exported from the State to a person in a foreign country—only if the exportation is authorised under a law of the Commonwealth.

#### **43 Moving an animal under licence**

An exhibition licence authorises the holder to move an authorised animal in any of the following ways—

- (a) from one authorised enclosure to another authorised enclosure;
- (b) from an authorised enclosure to the premises of a veterinary surgeon and return the animal to an authorised enclosure, for treatment or care of the animal;
- (c) to a place outside an authorised enclosure—
  - (i) for exhibiting or dealing with the animal in a way authorised under the licence; or
  - (ii) if the movement is necessary to prevent or minimise a relevant risk or relevant adverse effect associated with exhibiting or dealing with the animal;
- (d) from a place controlled by a person from whom the animal has been bought or accepted under section 41 to an authorised enclosure;

[s 44]

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- (e) from an authorised enclosure to a place controlled by a person to whom the animal has been sold or given under section 42;
- (f) as otherwise stated in the licence or prescribed by regulation.

#### **44 Other authorised dealing under licence**

An exhibition licence may authorise any other dealings with an authorised animal as stated in the licence.

### **Division 3 Interstate exhibitors permits**

#### **45 Definitions for div 3**

In this division—

*primarily authorised animal*, for an interstate exhibitors permit, means an animal to which the primary authority for the permit relates.

*primary authority*, for an interstate exhibitors permit, means the interstate authority, identified in the permit.

#### **46 Exhibiting and keeping an animal under permit**

An interstate exhibitors permit authorises the holder to exhibit and keep a primarily authorised animal in the way stated in the permit.

#### **47 Moving an animal under permit**

An interstate exhibitors permit authorises the holder to move a primarily authorised animal in any of the following ways—

- (a) from one authorised enclosure to another authorised enclosure;

- (b) from an authorised enclosure to the premises of a veterinary surgeon and return the animal to an authorised enclosure, for treatment or care of the animal;
- (c) to a place outside an authorised enclosure—
  - (i) for exhibiting or dealing with the animal in a way authorised under the permit; or
  - (ii) if the movement is necessary to prevent or minimise a relevant risk or relevant adverse effect associated with exhibiting or dealing with the animal;
- (d) as otherwise stated in the permit or prescribed by regulation.

## **Division 4                      Temporary authorities**

### **48                      Authorisation under temporary authority**

A temporary authority authorises the holder to deal with an authorised animal in the way stated in the authority.

## **Part 4                                      Applications for grant of particular authorities**

### **Division 1                      Preliminary**

#### **49                      Application of pt 4**

This part applies to an application for the grant of either of the following—

- (a) an exhibition licence;

[s 50]

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- (b) an interstate exhibitors permit.

*Note—*

Under sections 88 and 95, particular sections in this part also apply to an application to renew or restore an exhibition licence and an application to amend an exhibition licence or interstate exhibitors permit.

## **Division 2                    Making application**

### **50        Applying for exhibition licence or interstate exhibitors permit**

- (1) A person may apply to the chief executive for the grant of an exhibition licence.
- (2) The holder of an interstate authority may apply to the chief executive for the grant of an interstate exhibitors permit.

### **51        Requirements for application**

- (1) The application must—
  - (a) be in the approved form; and
  - (b) be accompanied by—
    - (i) a management plan for exhibiting and dealing with each particular animal or the animals of each species that are to be authorised animals under the exhibited animal authority applied for; and
    - (ii) the fee prescribed by regulation.
- (2) However, the chief executive may waive payment of the fee if satisfied—
  - (a) the application relates to exhibiting an animal that is prohibited or restricted matter; and
  - (b) the proposed exhibition of the animal is aimed at controlling or eradicating animals of that species; and

- (c) the applicant will not derive any financial benefit from exhibiting or dealing with the animal under the authority; and
- (d) the applicant undertakes in writing to advise the chief executive of the progress and outcomes of exhibiting and dealing with the animal.

## **52 Withdrawal**

- (1) The applicant may withdraw the application at any time before the application is decided.
- (2) The fee accompanying the application is not refundable if the applicant withdraws the application, or if the application is taken to be withdrawn, under this chapter.

## **53 Suitability of applicant to hold authority**

- (1) Before deciding the application, the chief executive may make inquiries about the suitability of the applicant to hold the exhibited animal authority applied for.
- (2) An individual is not a suitable person to hold an exhibited animal authority if the individual is an insolvent under administration.
- (3) A corporation is not a suitable person to hold an exhibited animal authority if—
  - (a) the corporation is placed in receivership or liquidation; or
  - (b) an executive officer of the corporation is an insolvent under administration.
- (4) In deciding whether the applicant is a suitable person to hold an exhibited animal authority, the chief executive may have regard to the following—
  - (a) whether the applicant, or an associate of the applicant, has been refused an exhibited animal authority or similar authority;

[s 53]

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- (b) whether the applicant, or an associate of the applicant, held an exhibited animal authority or similar authority and it was suspended or cancelled;
  - (c) whether the applicant, or an associate of the applicant, has a conviction for a relevant offence, other than a spent conviction;
  - (d) any other matter the chief executive considers relevant to the applicant's ability to exhibit or deal with an animal under the authority applied for, including the applicant's capacity to comply with conditions of the authority.
- (5) In this section—
- conviction** includes a finding of guilt, whether or not a conviction is recorded.
- similar authority** means—
- (a) a general fisheries permit under the *Fisheries Act 1994* for an activity involving noxious fisheries resources under that Act, as in force before the commencement of the Biosecurity Act, section 542; or
  - (b) a declared pest permit issued under the *Stock Route Management Act 2002*, chapter 2, part 7, division 1, as in force before the commencement of the Biosecurity Act, section 550; or
  - (c) a wildlife demonstrator licence or wildlife exhibitor licence under the *Nature Conservation (Administration) Regulation 2006*, as in force before the commencement of this section; or
  - (d) an authority under the Nature Conservation Act, other than a licence mentioned in paragraph (c), to use or keep an animal; or
  - (e) an authority (however described) under a corresponding law to this Act that is similar to an exhibition licence or interstate exhibitors permit; or

- (f) an authority (however described) under a law of the Commonwealth or another State that, before the commencement of this section, corresponded or substantially corresponded to a permit or licence mentioned in paragraph (a), (b) or (c).

#### **54 Requirement for further information or document**

- (1) Before deciding the application, the chief executive may, by notice given to the applicant, require the applicant to give the chief executive, within a reasonable stated period of at least 30 days, further information or a document the chief executive reasonably requires to decide the application.
- (2) The notice may require the further information or document to be included in the management plan or an amended management plan.
- (3) The applicant is taken to have withdrawn the application if, within the stated period, the applicant does not comply with the requirement under subsection (1).
- (4) A notice under subsection (1) may be given to the applicant only within 30 days after the chief executive receives the application.
- (5) The information or document must be verified by statutory declaration, if so required by the notice.

#### **55 Request to consent to official assessment (application)**

- (1) This section applies if—
  - (a) the application is for the grant of an exhibition licence; and
  - (b) the chief executive considers an official assessment (application) is reasonably required to decide the application.
- (2) Before deciding the application, the chief executive may, by notice given to the applicant, ask the applicant, within a

[s 56]

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reasonable stated period of at least 30 days, to give the chief executive written consent to an official assessment (application).

- (3) The applicant is taken to have withdrawn the application if, within the stated period, the applicant does not give the consent.
- (4) A notice under subsection (2) may be given to the applicant only within 30 days after the chief executive receives the application.

## **56 Amendment of application**

- (1) At any time before deciding the application, the chief executive may give a notice to the applicant—
  - (a) stating any changes the chief executive recommends to the application, including the management plan; and
  - (b) inviting the applicant to give the chief executive an amended application reflecting the changes within a reasonable stated period of at least 30 days.
- (2) To remove any doubt, it is declared that if the applicant gives the chief executive an amended application in response to the notice within the stated period, sections 52 to 55 apply to the amended application.

## **Division 3 Deciding application**

### **57 Consideration of application**

- (1) The chief executive must consider the application and decide to—
  - (a) grant the application; or
  - (b) grant the application on conditions; or
  - (c) refuse to grant the application.



- (2) Section 77(2) applies to conditions imposed under subsection (1)(b).

## 58 General criteria for decision

- (1) The chief executive may grant the application, with or without conditions, only if—
- (a) for an applicant who is an individual, the applicant is an adult; and
  - (b) the chief executive—
    - (i) is satisfied the applicant is a suitable person to hold the exhibited animal authority applied for; and
    - (ii) approves a management plan for exhibiting and dealing with each particular animal or the animals of each species that are to be authorised under the authority (the *proposed authorised animals*); and
  - (c) for an application relating to an activity that is assessable development, a development approval has been given for the development.
- (2) For subsection (1)(b)(ii), the chief executive may approve a management plan only if satisfied the proposed authorised animals will be exhibited and dealt with under the management plan in a way that prevents or minimises the relevant risks and relevant adverse effects associated with exhibiting or dealing with the animals.
- (3) In this section—
- assessable development* see the *Sustainable Planning Act 2009*, schedule 3.
- development approval* see the *Sustainable Planning Act 2009*, schedule 3.

[s 59]

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**59 Particular criterion for exhibiting or dealing with animal in residential premises**

If the application relates to exhibiting or dealing with an animal in premises or a part of premises used for residential purposes, the chief executive may grant the application only if the applicant—

- (a) is the occupier of the premises or part; and
- (b) has given the chief executive written consent for an inspector to enter the premises or part under section 69(1)(g).

**60 Particular criteria for exhibiting or dealing with animal at 2 or more premises**

If the application relates to exhibiting or dealing with 1 or more animals at 2 or more premises, the chief executive may grant the application only if satisfied—

- (a) exhibiting or dealing with the animals at each of the premises is operationally interrelated; and
- (b) the same individuals (the *designated carers*) will have the day-to-day care and control of the animals at each of the premises; and
- (c) the location of each of the premises allows the integrated day-to-day care and control of the animals by the designated carers to be feasible.

**61 Decision on application**

- (1) If the chief executive decides to grant the application, the chief executive must give the applicant the exhibited animal authority applied for.
- (2) If the chief executive refuses to grant the application, or decides to grant the application on conditions other than those applied for, the chief executive must give the applicant an information notice for the decision.

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## **62 Failure to decide application**

- (1) Subject to subsections (2) and (3), if the chief executive fails to decide the application within 40 days after its receipt, the failure is taken to be a decision by the chief executive to refuse to grant the application.
- (2) Subsection (3) applies if the chief executive has—
  - (a) required the applicant to give further information or a document under section 54(1); or
  - (b) asked the applicant to consent to an official assessment (application) under section 55(2).
- (3) The chief executive is taken to have refused to grant the application if the chief executive does not decide the application within 40 days after the chief executive receives the further information or document or the consent.
- (4) If the chief executive is taken to have refused to grant the application, the applicant is entitled to be given an information notice for the decision by the chief executive.

## **Part 5 Granting temporary authorities**

### **63 Chief executive may grant temporary authority**

- (1) This section applies if—
  - (a) any of the following happens—
    - (i) an exhibition licence is cancelled or suspended;
    - (ii) the holder of an exhibition licence does not apply for its renewal or restoration under section 87(1) or (2) and the licence expires;
    - (iii) an application for renewal or restoration of an exhibition licence is withdrawn or taken to have been withdrawn and the licence expires;

[s 64]

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- (iv) the chief executive decides to refuse, or is taken to have refused, to renew or restore an exhibition licence and the licence expires;
  - (v) an interstate exhibitors permit expires or is cancelled or suspended and an animal to which the permit related is in the State; and
- (b) the chief executive considers there may not be adequate arrangements in place for managing the relevant risks or relevant adverse effects associated with exhibiting and dealing with an animal that was an authorised animal under the exhibition licence or interstate exhibitors permit.
- (2) The chief executive may grant a temporary authority to the person who was the holder of the exhibition licence or interstate exhibitors permit.
- (3) If a temporary authority is granted, the exhibition licence or interstate exhibitors permit mentioned in subsection (2) is the *previous authority* for the temporary authority.
- (4) Subsections (1)(a)(ii) to (v) and (2) do not prevent the chief executive granting a temporary authority before the expiry of the previous authority for the temporary authority, but the temporary authority takes effect only when the previous authority expires.

## **Part 6                      Authority provisions**

### **Division 1                Contents**

#### **64            Content of each exhibited animal authority**

- (1) An exhibited animal authority must—

- (a) state the name and contact details of the authority holder; and
- (b) for an animal authorised to be exhibited and dealt with under the authority as a particular animal—identify the animal; and
- (c) for an animal authorised to be exhibited and dealt with under the authority only as an animal of a species—identify the species which may include, for example, referring to an identifiable grouping of animals of the species; and

*Example of identifying species of animal—*

identifying species of finches by referring to finches that are controlled animals mentioned in the *Nature Conservation (Wildlife Management) Regulation 2006*, schedule 4, part 2

- (d) state the dealings with an authorised animal that are authorised under the authority; and
- (e) for an authorised animal (category A)—identify each authorised type of enclosure in which the animal may be exhibited and dealt with under the authority; and
- (f) for an authorised animal (category B) or (category C)—identify each authorised enclosure for the animal; and
- (g) state the way in which an authorised animal is authorised to be exhibited, including, for example—
  - (i) allowing members of the public to enter an authorised enclosure and view the animal in a stated way; or

*Example—*

allowing members of the public to enter a safari park in motor vehicles and view an authorised animal from within the vehicles

- (ii) exhibiting the animal outside an authorised enclosure in a stated way; and

*Example of a stated way—*

[s 65]

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allowing members of the public to handle an animal under the direct supervision of a responsible person for the animal

- (h) state the special conditions of the authority; and
  - (i) state the term of the authority; and
  - (j) include the approved management plan for the authority.
- (2) For subsection (1)(b) to (g), an exhibited animal authority may identify or state a matter by reference to a matter identified or stated in the approved management plan for the authority.

## **65 Additional content for exhibition licence**

- (1) In addition to the matters mentioned in section 64, an exhibition licence must identify—
- (a) for an authorised animal (category A)—each authorised type of enclosure mentioned in section 64(1)(e) that is an authorised type of regular enclosure for the animal; and
  - (b) for an authorised animal (category B) or (category C)—each authorised enclosure mentioned in section 64(1)(f) that is a regular enclosure for the animal; and
  - (c) each regular enclosure site under the licence for a regular enclosure.

*Note—*

See sections 71 and 73 for particular mandatory conditions relating to regular enclosures and regular enclosure sites.

- (2) For subsection (1)(a) to (c), an exhibition licence may identify a matter by reference to a matter identified or stated in the approved management plan for the licence.
- (3) If the exhibition licence has been amended by granting a special exhibition approval for an authorised animal (category C2), the exhibition licence must include the special exhibition approval.

**66 Additional content of interstate exhibitors permit**

In addition to the matters mentioned in section 64, an interstate exhibitors permit must identify the primary authority for the permit.

**67 Temporary authority may include other matters**

- (1) A temporary authority may include any other provision of the previous authority for the temporary authority.
- (2) A temporary authority complies with section 64(1)(a) to (g) (each a *relevant paragraph*) if the temporary authority includes a provision of the previous authority complying with the relevant paragraph.

**Division 2 Term**

**68 Term of exhibited animal authority**

- (1) An exhibited animal authority remains in force, unless sooner suspended or cancelled, for the term decided by the chief executive and stated in the authority.
- (2) However, the term of an exhibition licence must not be more than 3 years.
- (3) Also, the term of an interstate exhibitors permit—
  - (a) must not be more than 1 year; and
  - (b) must not extend beyond the end of the term of the primary authority for the permit.

## **Part 7 Authority conditions**

### **Division 1 Mandatory conditions—all authorities**

#### **69 Mandatory conditions of exhibited animal authority**

- (1) Each of the following is a condition of an exhibited animal authority—
  - (a) each particular authorised animal or animal of each species of authorised animal must be supplied with an authorised enclosure suitable for the animal's use;
  - (b) no animal may be exhibited or dealt with in an authorised enclosure other than an animal authorised under the authority to be exhibited or dealt with in the enclosure;
  - (c) an authorised animal must, to the greatest extent practicable, have the use of the entire enclosure in which it is exhibited or kept;
  - (d) an authorised animal may be exhibited and dealt with only in a way authorised under the authority and consistent with the approved management plan for the authority;
  - (e) if an authorised animal is authorised to be exhibited outside an authorised enclosure, whether inside or outside a controlled area, the animal must be under the immediate control of a responsible person for the animal while it is so exhibited;
  - (f) if an authorised animal is authorised to be dealt with outside an authorised enclosure and a controlled area, the animal must be under the immediate control of a responsible person for the animal while it is so dealt with;



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- (g) if an animal is authorised to be exhibited or dealt with in premises or a part of premises used for residential purposes and occupied by the authority holder, the holder must consent to an inspector entering the premises or part (at any reasonable time but on written or oral notice of at least 1 hour) to inspect an authorised animal or enclosure to monitor compliance with this Act;
- (h) while an authorised animal is being exhibited, an exhibition notice must be displayed in a prominent position so it is easily visible to persons attending the place where the animal is exhibited;
- (i) an authorised animal with visible signs of serious illness or injury may be exhibited only if information about the nature and cause, or suspected nature and cause, of the illness or injury is made available to persons viewing the animal;

*Examples of making information available for paragraph (i)—*

- showing the information in a sign placed in a prominent position near the enclosure in which the animal is exhibited
  - arranging for a competent person to explain the nature and cause of the illness or injury to persons viewing the animal
- (j) an occurrence of serious aggressive behaviour of a particular authorised animal must not be disclosed to a member of the public for an advertising, marketing or promotional purpose;
- (k) the reproduction of an authorised animal that is not native wildlife must be managed in accordance with the approved management plan for the authority;
- (l) any other condition prescribed by regulation.
- (2) To remove any doubt, it is declared that subsection (1)(a) to (c) does not prevent more than 1 authorised animal being exhibited or dealt with in the same enclosure.
- (3) In this section—

[s 70]

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*exhibition notice*, for exhibiting an authorised animal, means a notice stating—

- (a) the name and contact details, other than a residential address, of the authority holder; and
- (b) the term of the authority.

*serious aggressive behaviour* means behaviour that has caused the death of, or serious injury or illness to or of, a person.

## **Division 2                      Mandatory conditions—exhibition licences**

### **Subdivision 1                  Preliminary**

#### **70                      Application of div 2**

This division states further conditions that apply to an exhibition licence.

### **Subdivision 2                  Exhibiting and keeping authorised animals generally**

#### **71                      Particular conditions about regular enclosures**

Each of the following is also a condition of an exhibition licence—

- (a) an authorised animal must remain in a regular enclosure for the animal, other than to the extent (if any) the licence authorises the animal to be exhibited or dealt with outside the enclosure;
- (b) each regular enclosure for an authorised animal must remain at a regular enclosure site under the licence,

other than to the extent (if any) the licence authorises the enclosure to be located elsewhere;

- (c) each regular enclosure site under the licence must be located at premises of which the licence holder is the occupier.

## **72 Keeping authorised animal**

It is a condition of an exhibition licence that an authorised animal must be kept under the licence for at least 1 month, unless the chief executive gives written approval for the earlier disposal of the animal.

## **73 Exhibiting authorised animal (category C2)**

It is a condition of an exhibition licence that an authorised animal (category C2) may be exhibited only at—

- (a) a regular enclosure for the animal at a regular enclosure site under the licence; or
- (b) a place outside a regular enclosure site under the licence but within a controlled area including a regular enclosure for the animal at the site; or
- (c) another place, but only if the exhibition is authorised under a special exhibition approval included in the licence.

*Note—*

See sections 65(3) and 265.

## **Subdivision 3 Minimum exhibition periods**

### **74 Application of sdiv 3**

This subdivision applies to an exhibition licence subject to any other condition of the licence about the way in which the animal is to be exhibited.

[s 75]

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**75 Minimum number of occasions for exhibiting authorised animal (category B)**

- (1) This section applies to exhibiting an authorised animal (category B) whether identified in an exhibition licence as a particular animal or only as an animal of a species.

*Note—*

See also section 265.

- (2) It is a condition of the licence that at least 1 authorised animal of the species must be exhibited in each calendar month (the ***relevant month***) during the term of the exhibition licence.
- (3) However, the condition is taken to have been complied with if at least 1 authorised animal of the species has been exhibited—
- (a) on a combined total of at least 12 separate occasions in the year (the ***preceding year***) ending immediately before the relevant month; or
  - (b) if animals of the species have been kept under the licence for only part of the preceding year (the ***interim period***)—on a combined total number of separate occasions at least equal to the number of whole calendar months in the interim period.

*Example for paragraph (b)—*

Authorised animals (category B) of a species have been kept under an exhibition licence for 6 months and 10 days in the preceding year and exhibited on 6 separate occasions in that period. The condition is taken to have been complied with.

- (4) Despite section 13(2)(a), the display of an animal at a private event is not an exhibition of the animal for subsection (2) or (3) if the animal is displayed at a regular enclosure site under the licence.
- (5) Also, despite section 13(3), a responsible person for an authorised animal recording the animal's image is not an exhibition of the animal for subsection (2) or (3) unless the recording is by way of filming for a film or television production in the form of a story, narrative or documentary.

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- (6) In this section—
- separate occasion*, for exhibiting an animal, means—
- (a) if the animal is exhibited more than once on a particular day to audiences not consisting substantially of the same people—each occasion the animal is exhibited on that day; or
  - (b) otherwise—a particular day on which the animal is exhibited.

## 76 Minimum exhibition period for authorised animal (category C)

- (1) This section applies to exhibiting an authorised animal (category C) whether identified in an exhibition licence as a particular animal or only as an animal of a species.

*Note—*

See, however, section 265.

- (2) It is a condition of the licence that at least 1 authorised animal of the species must be exhibited for a combined total of at least 50 hours in each calendar month (the *relevant month*) during the term of the exhibition licence.
- (3) However, the condition is taken to have been complied with if at least 1 authorised animal of the species has been exhibited—
- (a) for a combined total of at least 600 hours in the year (the *preceding year*) ending immediately before the relevant month; or
  - (b) if animals of the species have been kept under the licence for only part of the preceding year (the *interim period*)—for a combined total number of hours that corresponds to an average of at least 50 hours in each whole calendar month in the interim period.

[s 77]

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*Example for paragraph (b)—*

Authorised animals (category C) of a species have been kept under an exhibition licence for 6 months and 10 days in the preceding year. The animals are exhibited for a combined total of 300 hours averaging 50 hours for each whole month in the period. The condition is taken to have been complied with.

- (4) An authorised animal (category C2) is exhibited for subsection (2) or (3) only to the extent it is exhibited for at least 3 hours on each occasion it is exhibited.
- (5) Despite section 13(2)(a), the display of an animal at a private event is not an exhibition of the animal for subsection (2) or (3).
- (6) Also, despite section 13(3), a responsible person for an authorised animal recording the animal's image is not an exhibition of the animal for subsection (2) or (3) unless the recording is by way of filming for a film or television production in the form of a story, narrative or documentary.

## **Division 3                      Other authority conditions and related matters**

### **77                      Conditions of authority decided by the chief executive**

- (1) In addition to the mandatory conditions, an exhibited animal authority is subject to the conditions for the authority decided by the chief executive and stated in the authority (the *special conditions*).
- (2) The special conditions must be those the chief executive considers appropriate, having regard to the relevant risks and relevant adverse effects associated with exhibiting or dealing with an authorised animal under the exhibited animal authority.
- (3) Without limiting subsection (2), the special conditions may be about any of the following—

- (a) the maximum or minimum number of authorised animals that may be exhibited and dealt with under the exhibited animal authority;
  - (b) prohibiting or restricting the reproduction of an authorised animal;
  - (c) requiring the authority holder to maintain public risk insurance of a stated amount as the chief executive considers is reasonable having regard to the exhibitions and dealings authorised under the exhibited animal authority;
  - (d) a record requirement.
- (4) Also, without limiting subsection (2), a temporary authority may include a condition equivalent or similar to a mandatory condition of an exhibition licence.
- (5) A special condition of an exhibited animal authority may allow something to be done or omitted to be done that, other than for this subsection and section 79, would contravene a mandatory condition of the authority, but only if the special condition applies for a period, of no more than 1 year, stated in the authority.

*Examples for subsection (5)—*

- 1 An eastern grey kangaroo that is an authorised animal under an exhibition licence requires prolonged training to prepare it for filming for a television production. The licence is amended to include a condition allowing the holder to train the animal for 6 months without being required to comply with the mandatory condition under section 75.
- 2 An exhibition licence holder (the **new owner**) obtains an authorised animal (category C) at short notice from another holder of an exhibition licence who is having difficulties properly managing the animal. To allow adequate time to arrange to exhibit the animal, the new owner's licence is amended to include a condition allowing the new owner to keep the animal for 3 months without being required to comply with the mandatory condition under section 76.

[s 78]

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## **78 Inconsistency between licence and approval conditions**

- (1) This section applies if there is an inconsistency between—
  - (a) a mandatory condition or a special condition of an exhibition licence applying to an authorised animal; and
  - (b) a condition of a special exhibition approval, granted under section 96(1), applying to the authorised animal (the *approval condition*).
- (2) The approval condition prevails to the extent of the inconsistency while the authorised animal is exhibited or dealt with under the special exhibition approval.

## **79 Inconsistency between temporary and mandatory conditions**

- (1) This section applies to the following conditions (each a *temporary condition*)—
  - (a) a special condition of an exhibited animal authority to which section 77(5) applies;
  - (b) a condition of an exhibition licence or interstate exhibitors permit decided under section 137(5)(b) that is inconsistent with a mandatory condition of the licence or permit.
- (2) The temporary condition prevails to the extent of the inconsistency with the mandatory condition.



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## **Part 8                      Obligations under exhibited    animal authorities**

### **Division 1                Notification obligations**

#### **Subdivision 1        Preliminary**

##### **80        Definitions for div 1**

In this division—

*serious incident* means any of the following—

- (a) the death of, or serious injury or illness to or of, a person caused by or originating from an authorised animal;
- (b) the escape, or unauthorised release or removal, of a special risk animal from an authorised enclosure, whether into a controlled area or elsewhere;
- (c) the escape, or unauthorised release or removal, of any authorised animal from a controlled area;
- (d) a responsible person for an authorised animal not having immediate control of the animal while it is outside an authorised enclosure and a controlled area, unless paragraph (b) or (c) applies;
- (e) the death of an authorised animal if—
  - (i) animals of that species have been kept under the exhibited animal authority for less than 6 months and have an average life expectancy of at least 6 months; and
  - (ii) the animal lived for less than the average life expectancy;
- (f) the death of an authorised animal caused, or contributed to, by the act or omission of a person, other than

[s 81]

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ethanasia of the animal authorised by the authority holder;

- (g) an unexplained or abnormally high mortality rate or morbidity of authorised animals;
- (h) damage to an authorised enclosure or an adjacent structure that is not repaired immediately and is reasonably likely to—
  - (i) adversely affect the suitability of the enclosure for accommodating an authorised animal; or
  - (ii) increase a relevant risk or relevant adverse effect associated with exhibiting or dealing with an authorised animal;
- (i) unauthorised entry to an authorised enclosure or controlled area.

*significant change* see section 82(1).

*special risk animal* means—

- (a) an authorised animal (category C); or
- (b) another authorised animal that is any of the following—
  - (i) a venomous animal;
  - (ii) an estuarine crocodile (*Crocodylus porosus*);
  - (iii) a freshwater crocodile (*Crocodylus johnstoni*).

## **Subdivision 2 Authority holders**

### **81 Obligation to notify serious incidents**

- (1) The authority holder must notify the chief executive, as required under this section, of a serious incident relating to an authorised animal immediately after the holder becomes aware of the incident, unless the holder has a reasonable excuse.

Maximum penalty—100 penalty units.

*Note—*

An incident relating to an authorised animal may also be a notifiable incident of which advice must be given to an inspector under the Biosecurity Act. See the Biosecurity Act, section 47.

- (2) The authority holder must give the notification by the faster of the following ways—
- (a) by telephone, including giving the details of the serious incident requested by the chief executive;
  - (b) by notice.

*Example for paragraph (b)—*

giving the notice by email or another electronic communication

- (3) After the chief executive receives notification under subsection (2)(a) or (b), the chief executive must give the authority holder, in the same way the notification was received—
- (a) a direction to give notice of the incident in the approved form within 48 hours after giving the direction; or
  - (b) an acknowledgement of receiving the notification.
- (4) If the authority holder gives, or attempts to give, notification by telephone and does not receive a direction under subsection (3)(a) or an acknowledgement under subsection (3)(b), the holder must give the notification as required by subsection (2)(b).

## **82 Obligation to notify significant change**

- (1) This section applies to the authority holder if any of the following (each a *significant change*) happens—
- (a) a person moves an authorised animal outside of an authorised enclosure under section 43(c)(ii) or 47(c)(ii);
  - (b) a person deals with an authorised animal in a way—
    - (i) that is not authorised under the authority; and

[s 83]

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- (ii) that the person considers is necessary to prevent or minimise a relevant risk or relevant adverse effect associated with exhibiting or dealing with the animal;
  - (c) for an interstate exhibitors permit, the primary authority for the permit is—
    - (i) suspended, cancelled or surrendered; or
    - (ii) amended in a way that has the effect, in the State where the primary authority was issued, of ending the authorisation to exhibit or deal with an animal to which the permit applies.
- (2) The authority holder must give the chief executive notice of the significant change in the approved form within the following period—
  - (a) for a significant change mentioned in subsection (1)(a) or (b)—48 hours after the change happens;
  - (b) for a significant change mentioned in subsection (1)(c)—7 days after the change happens.

Maximum penalty—50 penalty units.

### **83      Evidential immunity for notification**

- (1) Subsection (2) applies if an individual holding an exhibited animal authority gives the chief executive any of the following (each a *notification*)—
  - (a) a notification of a serious incident as mentioned in section 81(1);
  - (b) a notice of a serious incident as mentioned in section 81(3)(a);
  - (c) a notice of a significant change as mentioned in section 82(2).
- (2) Evidence of the notification, and other evidence directly or indirectly derived from the notification, is not admissible against the individual in any proceeding to the extent it tends

to incriminate the individual, or expose the individual to a penalty, in the proceeding.

- (3) Subsection (2) does not apply to a proceeding about the false or misleading nature of the notification or anything in the notification or in which the false or misleading nature of the notification or anything in it is relevant evidence.

### **Subdivision 3      Persons acting under authorities**

#### **84      Obligation of person to notify authority holder**

- (1) This section applies if a person—
  - (a) is acting under an exhibited animal authority; and
  - (b) is not the authority holder; and
  - (c) becomes aware of a serious incident.
- (2) The person must, no later than 24 hours after becoming aware of the serious incident and unless the person has a reasonable excuse—
  - (a) notify the authority holder of the incident, its nature and the circumstances in which it happened; or
  - (b) if the person can not contact the authority holder—give the chief executive notice of the incident, its nature and the circumstances in which it happened.

Maximum penalty—100 penalty units.

### **Division 2              Other obligations**

#### **85      Contravention of authority condition**

- (1) The authority holder must not contravene a condition of the authority unless the holder has a reasonable excuse.

Maximum penalty—200 penalty units.

[s 86]

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- (2) It is a defence to a prosecution for an offence against subsection (1) relating to a contravention of a condition mentioned in section 69(1)(c) or (d), 75(2), 76(2) or 77(1) for the defendant to prove there is a signed veterinary surgeon's certificate stating the contravention was necessary to prevent or minimise a relevant risk or relevant adverse effect associated with exhibiting or dealing with an authorised animal.

## 86 Record requirements

- (1) A regulation, a condition of an exhibited animal authority, or the chief executive by notice given to the authority holder, may require (a *record requirement*) the holder to do any of the following—
- (a) record stated information (the *required information*) relating to exhibiting or dealing with an authorised animal in a stated way or at stated intervals or times;
  - (b) keep the required information in a stated way or at a stated place or for a stated period;
  - (c) give the chief executive or another stated person the required information in a stated way or at stated intervals or times.
- (2) The authority holder must comply with the requirement unless the holder has a reasonable excuse.

Maximum penalty—200 penalty units

- (3) An authority holder who is required to create a record under a record requirement must ensure the record does not contain information the holder knows or ought reasonably to know is false, misleading or incomplete in a material particular, unless the holder has a reasonable excuse.

Maximum penalty—200 penalty units

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## Part 9                      Other applications relating to    particular authorities

### Division 1                  Renewal or restoration

#### 87      Application for renewal or restoration of exhibition             licence

- (1) The holder of an exhibition licence may apply to the chief executive for renewal of the licence no earlier than 6 months and no later than 3 months before the term of the licence ends (the *renewal period*).
- (2) The holder or former holder of an exhibition licence may apply to the chief executive, after the end of the renewal period until 3 months after the term of the licence ends, for—
  - (a) renewal of the licence; or
  - (b) if the licence has expired—restoration of the licence.
- (3) An application for renewal or restoration of an exhibition licence must—
  - (a) be in the approved form; and
  - (b) be accompanied by the fee prescribed by regulation.
- (4) However, the chief executive may waive payment of the fee if the chief executive waived payment of the application fee for the grant of the exhibition licence under section 51(2).
- (5) The application may also be accompanied by either or both of the following—
  - (a) a new management plan;
  - (b) a private assessment report for exhibiting and dealing with an animal that is, or is to be, authorised under the exhibition licence.

*Note—*

See section 108.

[s 88]

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## **88 Application of relevant provisions to application**

- (1) Each of the relevant provisions applies to an application for renewal or restoration of an exhibition licence as if—
  - (a) a reference in a relevant provision to an application were a reference to the application for renewal or restoration of the licence; and
  - (b) a reference in a relevant provision to an applicant were a reference to the applicant for renewal or restoration of the licence.
- (2) This section is subject to sections 89 and 90.
- (3) In this section—

*relevant provisions* means sections 52 to 56, 58 to 60 and 62.

## **89 Continuation of approved management plan**

An approved management plan for an exhibition licence continues in force if—

- (a) the application for renewal or restoration of the licence is not accompanied by a new management plan; or
- (b) both of the following apply—
  - (i) the application is accompanied by a new management plan that the chief executive considers includes a material change from the approved management plan;
  - (ii) the chief executive asks the applicant to apply under division 2 to amend the licence to reflect the change.

## **90 Request for consent to official assessment (application)**

Section 55(2) does not apply to an application for renewal or restoration of an exhibition licence if the application is accompanied by a private assessment report unless—



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- (a) the report states that in the opinion of the accredited person preparing it—
    - (i) an authorised animal has not been, or is not being, exhibited or dealt with in compliance with this Act; or
    - (ii) an enclosure in which an authorised animal has been, is being, or is expected to be, exhibited or dealt with does not comply with this Act; or
  - (b) an accredited person gives the chief executive details under section 121(3) about an alleged contravention of this Act by the applicant; or
  - (c) the chief executive considers the application should not be decided on the basis of the report.

*Example for paragraph (c)—*

A private assessment report for an application for an exhibition licence states the facts and circumstances forming the basis for the accredited person's belief that activities are being carried out under the licence that the accredited person was not able to observe. The chief executive may consider the application should not be decided on the basis of the report.

## **91 Deciding application**

- (1) The chief executive must consider an application mentioned in section 87(1) and decide to renew, or refuse to renew, the exhibition licence.
- (2) The chief executive must consider an application mentioned in section 87(2) and decide to—
  - (a) renew, or refuse to renew, the exhibition licence; or
  - (b) for an exhibition licence that has expired—restore, or refuse to restore, the licence.
- (3) Without limiting subsection (1) or (2), the chief executive must have regard to any contravention of an exhibited animal direction by the applicant.

[s 92]

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- (4) If the chief executive decides under subsection (1) or (2) to refuse to renew or restore the exhibition licence, the chief executive must give the applicant an information notice for the decision.
- (5) An exhibition licence may be renewed or restored by the giving of another licence to replace it.

## **92 Licence continues pending decision about renewal**

- (1) This section applies only if the holder of an exhibition licence applies for renewal of the licence under section 87(1).
- (2) The licence is taken to continue in force from the day it would, apart from this section, have ended until the application is decided or is taken to have been decided or withdrawn.
- (3) Despite subsection (2), if the chief executive decides to refuse to renew the exhibition licence, or is taken to refuse to renew the licence, the licence continues in force until the information notice for the decision is given to the applicant.
- (4) Subsection (2) does not apply if the exhibition licence is earlier suspended or cancelled.

## **Division 2 Amendment**

### **93 Application of div 2**

This division applies to each of the following exhibited animal authorities—

- (a) an exhibition licence;
- (b) an interstate exhibitors permit.

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**94 Application to amend authority**

- (1) The holder of an exhibition licence may apply to the chief executive to amend the licence by granting a special exhibition approval for an authorised animal (category C2).
- (2) The authority holder may apply to the chief executive to amend the authority, otherwise than under subsection (1).
- (3) However, the authority holder may not apply to amend the term of the authority in a way that is not allowable under section 68.
- (4) The application must—
  - (a) be in the approved form; and
  - (b) be accompanied by—
    - (i) if the proposed amendment is relevant to a matter mentioned in section 37(2) to (4)—a new management plan; and
    - (ii) the fee prescribed by regulation.

**95 Application of relevant provisions to amendment application**

- (1) Subject to subsections (2) and (3), each of the relevant provisions applies to an application to amend an exhibited animal authority as if—
  - (a) a reference in a relevant provision to an application were a reference to an application to amend the authority; and
  - (b) a reference in a relevant provision to an applicant were a reference to an applicant for an application to amend the authority.
- (2) Section 55 applies only to an application to amend an exhibition licence.
- (3) Section 58(1)(b)(ii) and (2) does not apply to an application if the proposed amendment is not relevant to a matter mentioned in section 37(2) to (4).

[s 96]

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- (4) In this section—  
*relevant provisions* means sections 52 to 56, 58 to 60 and 62.

## **96 Deciding application for special exhibition approval**

- (1) If the application is made under section 94(1), the chief executive must consider the application and decide to—
- (a) grant the special exhibition approval; or
  - (b) grant the special exhibition approval on conditions; or
  - (c) refuse to grant the special exhibition approval.
- (2) Without limiting subsection (1), the chief executive must have regard to any contravention of an exhibited animal direction by the applicant.
- (3) The chief executive may grant the special exhibition approval only for a period ending no later than—
- (a) 1 year after the grant of the approval; or
  - (b) if the term of the exhibition licence to which the approval relates will sooner end—the day the term of the licence ends.
- (4) If the chief executive decides to grant the special exhibition approval—
- (a) the chief executive must give the applicant the approval; and
  - (b) the approval is taken to be part of the exhibition licence to which it relates while the approval is in force.
- (5) If the chief executive refuses to grant the special exhibition approval or decides to grant the approval on conditions other than those applied for, the chief executive must give the applicant an information notice for the decision.

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## **97 Deciding another amendment application**

- (1) If the application is made under section 94(2), the chief executive must consider the application and decide to—
  - (a) amend the exhibited animal authority; or
  - (b) amend the exhibited animal authority on conditions that are relevant to the amendment; or
  - (c) refuse to amend the exhibited animal authority.
- (2) Without limiting subsection (1), the chief executive must have regard to any contravention of an exhibited animal direction by the applicant.
- (3) The chief executive may amend the exhibited animal authority by giving the authority holder—
  - (a) notice of the amendment including any conditions relevant to the amendment; or
  - (b) another authority of the same category to replace it.
- (4) If the chief executive decides to refuse to amend the exhibited animal authority, or amend the authority on conditions other than those applied for, the chief executive must give the applicant an information notice for the decision.
- (5) Section 77(2) and (5) applies to conditions imposed under subsection (1)(b).

## **Division 3 Transfer of exhibition licence**

### **98 Application to transfer exhibition licence**

- (1) The holder of an exhibition licence and a proposed transferee of the licence may jointly apply to the chief executive for the transfer of the licence to the proposed transferee.
- (2) The application must—
  - (a) be in the approved form; and
  - (b) be accompanied by the fee prescribed by regulation.

## **99 Deciding application**

- (1) The chief executive must consider an application made under section 98 and decide to transfer or refuse to transfer an exhibition licence.
- (2) The chief executive may decide to transfer the exhibition licence only if satisfied—
  - (a) there will not, as a result of the transfer, be any substantial change in—
    - (i) the persons principally involved in exhibiting and dealing with authorised animals under the licence; or
    - (ii) the dealings authorised under the licence; and
  - (b) the transferee is a suitable person to hold the licence.
- (3) To decide if the transferee is a suitable person to hold the exhibition licence, the chief executive may have regard to the matters mentioned in section 53.
- (4) The chief executive may transfer the exhibition licence by giving the transferee a new exhibition licence.
- (5) The chief executive is taken to have refused to transfer the exhibition licence if the chief executive does not decide the application within 30 days after the chief executive receives the application.
- (6) If the chief executive decides to refuse to transfer the exhibition licence, the chief executive must give the applicants an information notice for the decision.
- (7) If the application is taken to be refused under subsection (5), the applicants are entitled to be given an information notice for the decision by the chief executive.

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## **Part 10                      Other matters**

### **Division 1                      Register of authorities**

#### **100      Register of exhibited animal authorities**

- (1) The chief executive must keep a register of exhibited animal authorities.
- (2) However, the register must contain the following particulars for each exhibited animal authority—
  - (a) the name and contact details of the authority holder;
  - (b) the category of the authority;
  - (c) the term of the authority and its expiry date;
  - (d) identification of either or both of the following—
    - (i) each particular authorised animal;
    - (ii) each species of authorised animal;
  - (e) the way in which an authorised animal is authorised to be exhibited;
  - (f) for an exhibition licence—each regular enclosure site under the licence;
  - (g) other information the chief executive considers appropriate.
- (3) The register may be kept in the form, including electronic form, the chief executive considers appropriate.
- (4) The chief executive must publish the publicly available part of the register on the department’s website.
- (5) On application by a person and payment of the fee prescribed by regulation, the person may buy a copy of all or part of the information held in the publicly available part of the register.
- (6) In this section—

[s 101]

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***publicly available part***, of the register, means the part of the register containing the following—

- (a) the information mentioned in subsection (2)(a), but not including the address of premises where an authorised enclosure is located if the premises are used entirely or mainly as a residence;
- (b) the information mentioned in subsection (2)(b) and (c).

## **Division 2                      Death of authority holder**

### **101      Effect on authority of authority holder's death**

- (1) If an individual, who is an authority holder, dies, the individual ceases to be the authority holder.
- (2) If, immediately before the death, the individual was the only holder of the exhibited animal authority—
  - (a) the authority continues in force, subject to this Act; and
  - (b) the individual's personal representative becomes the authority holder.
- (3) If, immediately before the death, there was more than 1 holder of the exhibited animal authority—
  - (a) the individual's personal representative becomes a holder of the authority; and
  - (b) the other holders of the authority continue to be holders of the authority, unaffected by the individual's death.

### **102      Changeover to personal representative**

- (1) This section applies if, under section 101, a personal representative (the ***new holder***) becomes an authority holder.
- (2) The new holder must give the chief executive notice in the approved form of the deceased holder's death within 21 days after becoming the new holder.



- (3) Until the change is recorded in the register, a notice under this Act from the chief executive to the new holder may be given at the address of the deceased holder that is last known to the chief executive.

## Chapter 4      **Assessment of compliance**

### Part 1              **Official assessments**

#### **103      Official assessment (application)**

- (1) This section applies if a person applies, or intends to apply, for—
- (a) the grant, renewal or restoration of an exhibition licence; or
  - (b) the amendment of an exhibition licence, including by the grant of a special exhibition approval for an authorised animal (category C).
- (2) If the person has given consent as mentioned in section 55(2), an inspector may carry out an inspection (an *official assessment (application)*) of an animal, enclosure or place to which the application, or prospective application, relates, or is expected to relate, to assess—
- (a) for the grant of an exhibition licence—the likelihood of the person complying with this Act; or
  - (b) otherwise—the compliance of the person with this Act.

#### **104      Official assessment (follow-up)**

- (1) This section applies if the authority holder is given an exhibited animal direction.

[s 105]

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- (2) An inspector may carry out an inspection (an *official assessment (follow-up)*) of an authorised animal, or an enclosure or place where an authorised animal is, or is expected to be, exhibited or dealt with, to assess the compliance of the holder with this Act.
- (3) However, the inspector may carry out the official assessment (follow-up) only once within 1 year after the exhibited animal direction is given.
- (4) This section does not limit other powers of an inspector under this Act.

*Notes—*

- 1 Under section 160(2), an inspector may enter a place to check whether an exhibited animal direction has been complied with.
- 2 Under section 161(2), an inspector may enter a place to take action required under an exhibited animal direction.

## 105 Assessment fees

- (1) This section applies if an official assessment (application) or official assessment (follow-up) is carried out to assess a person's compliance, or likely compliance, with this Act.
- (2) The person must pay the chief executive the fee prescribed by regulation for the official assessment that must not be more than the reasonable cost of carrying out the assessment.
- (3) The chief executive may recover the fee from the person as a debt payable by the person to the State.

## Part 2 Private assessment

### 106 Definition for pt 2

In this part—

*holder*, of an exhibition licence, includes a former holder of an exhibition licence.

**107 What is a *private assessment***

A *private assessment* is an inspection of an animal, an enclosure or place, that is carried out by an accredited person at the request of the holder of an exhibition licence to assess the holder's compliance with this Act.

**108 What is a *private assessment report***

- (1) A *private assessment report* is a report about a private assessment, complying with subsection (2), prepared by an accredited person for the holder of an exhibition licence to help the chief executive decide an application to renew or restore the licence.
- (2) The private assessment report must state each of the following—
  - (a) the accredited person's name and contact details;
  - (b) the name and contact details of the holder of the exhibition licence;
  - (c) a description, including the location, of each premises to which the private assessment relates;
  - (d) when the private assessment was carried out;
  - (e) a description of—
    - (i) the activities the accredited person observed being carried out under the licence; and
    - (ii) any activities the accredited person reasonably believes were being carried out under the licence that the person was not able to observe when carrying out the private assessment; and
    - (iii) the facts and circumstances forming the basis for the belief;
  - (f) whether, in the opinion of the accredited person—

[s 109]

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- (i) each particular authorised animal or animal of each species of authorised animal is being exhibited and dealt with in compliance with this Act; and
  - (ii) each enclosure in which an authorised animal is, or is expected to be, exhibited or kept is an authorised enclosure and otherwise complies with this Act;
- (g) if, in the opinion of the accredited person, an animal is not being exhibited or dealt with in compliance with this Act or an enclosure does not comply with this Act—
- (i) the reasons for the opinion; and
  - (ii) the facts and circumstances forming the basis for the reasons.

### **109 False or misleading report**

- (1) This section applies to each of the following persons—
- (a) an accredited person who prepares a private assessment report for the holder of an exhibition licence;
  - (b) the holder of an exhibition licence who gives the chief executive a private assessment report that has been prepared for the holder.
- (2) The person must ensure the report does not contain information the person knows or ought reasonably to know is false or misleading in a material particular, unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

### **110 Admissibility of report against licence holder**

- (1) This section applies to a private assessment report about an authorised animal or an enclosure under an exhibition licence that is given to the chief executive.

- (2) The private assessment report is not admissible in evidence against the holder of the exhibition licence in civil or criminal proceedings.
- (3) Subsection (2) does not apply to a proceeding about the false or misleading nature of anything in the private assessment report or in which the false or misleading nature of the report is relevant evidence.

## **Part 3                      Accreditation for private assessment**

### **Division 1                Applications**

#### **111      Application for accreditation**

- (1) An individual may apply to the chief executive for the grant of an accreditation.
- (2) The application for the accreditation must—
  - (a) be made in the approved form; and
  - (b) be accompanied by the fee prescribed by regulation.

#### **112      Consideration of application**

- (1) The chief executive must consider the application and decide to—
  - (a) grant the accreditation applied for; or
  - (b) grant the accreditation on conditions; or
  - (c) refuse to grant the accreditation.
- (2) Section 120(2) applies to conditions imposed under subsection (1)(b).

[s 113]

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### **113 Criteria for granting accreditation**

The chief executive may grant the accreditation only if satisfied the applicant—

- (a) has the necessary expertise or experience to carry out private assessments and prepare private assessment reports; and
- (b) is a suitable person to hold the accreditation.

### **114 Inquiry about application**

- (1) Before deciding the application, the chief executive—
  - (a) may make inquiries to decide the suitability of the applicant to hold the accreditation; and
  - (b) may, by notice given to the applicant, require the applicant to give the chief executive, within a reasonable period of at least 30 days as stated in the notice, further information or a document the chief executive reasonably requires to decide the application.
- (2) The applicant is taken to have withdrawn the application if, within the stated period, the applicant does not comply with a requirement under subsection (1)(b).
- (3) A notice under subsection (1)(b) must be given to the applicant within 30 days after the chief executive receives the application.
- (4) The information or document under subsection (1)(b) must, if the notice requires, be verified by statutory declaration.

### **115 Suitability of person for accreditation**

- (1) In deciding whether the applicant is a suitable person to hold the accreditation, the chief executive may have regard to the following—

- (a) whether the applicant has been refused an accreditation under this Act or a similar accreditation under a corresponding law to this Act;
  - (b) whether the applicant held an accreditation under this Act or a similar accreditation under a corresponding law to this Act, that was suspended or cancelled;
  - (c) whether the applicant has a conviction for a relevant offence, other than a spent conviction;
  - (d) whether the applicant would be a suitable person to hold an exhibited animal authority under section 53(2);
  - (e) any other matter the chief executive considers relevant to the applicant's ability to carry out private assessments or prepare private assessment reports.
- (2) In this section—  
*conviction* includes a finding of guilt, whether or not a conviction is recorded.

## **116 Decision on application**

- (1) If the chief executive decides to grant the accreditation, the chief executive must give the accreditation to the applicant.
- (2) If the chief executive decides to refuse to grant the accreditation, or impose conditions on the accreditation other than those applied for, the chief executive must give the applicant an information notice for the decision.

## **117 Failure to decide application**

- (1) Subject to subsections (2) and (3), if the chief executive fails to decide the application for the accreditation within 30 days after its receipt, the failure is taken to be a decision by the chief executive to refuse to grant the application.
- (2) Subsection (3) applies if—

[s 118]

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- (a) a person has made an application for an accreditation;  
and
  - (b) the chief executive has, under section 114(1)(b),  
required the applicant to give the chief executive further  
information or a document.
- (3) The chief executive is taken to have refused to grant the accreditation if the chief executive does not decide the application within 30 days after the chief executive receives the further information or document.
- (4) If the application is taken to be refused under this section, the applicant is entitled to be given an information notice for the decision by the chief executive.

## **Division 2                      Accreditation provisions**

### **118      Content of accreditation**

An accreditation must state each of the following—

- (a) the accredited person's name and contact details;
- (b) the term of the accreditation;
- (c) the conditions of the accreditation.

### **119      Term of accreditation**

Unless sooner cancelled or suspended, an accreditation remains in force for the period, of not more than 3 years, decided by the chief executive and stated in the accreditation.

### **120      Accreditation conditions**

- (1) It is a condition of each accreditation that the accredited person must give the chief executive notice of any direct or indirect financial or other interest the accredited person has or obtains in the business of a responsible person for an authorised animal that could conflict with the proper carrying



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out of a private assessment and preparation of a private assessment report.

- (2) An accreditation is also subject to other reasonable conditions the chief executive considers appropriate for the proper carrying out of private assessments and preparation of private assessment reports.
- (3) Without limiting subsection (2), the conditions may include a restriction on the species of authorised animals the accredited person is authorised to inspect.

### **Division 3                      Obligations of accreditation holders**

#### **121      Obligation to inform chief executive of contraventions**

- (1) This section applies if, in conducting a private assessment for the holder of an exhibition licence, an accredited person forms a reasonable belief that—
  - (a) a person has contravened, or is contravening, this Act; and
  - (b) either—
    - (i) the contravention poses an imminent significant relevant risk; or
    - (ii) the contravention is directly related to an event that has had, or is about to have, a significant relevant adverse effect.
- (2) The accredited person must give details of the facts and circumstances giving rise to the belief to the chief executive.
- (3) The accredited person must give the details to the chief executive as soon as practicable, and in any case not more than 24 hours, after forming the belief.

Maximum penalty—200 penalty units.

- (4) If the accredited person complies with subsection (3) by giving the chief executive the details orally, the person must,

[s 122]

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within 24 hours after giving the details orally, give the chief executive notice of the details.

Maximum penalty—200 penalty units.

### **122 Compliance with accreditation condition**

An accredited person must comply with the conditions of the person's accreditation unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

### **123 Keeping copy of report**

If an accredited person prepares a private assessment report, the person must keep a copy of the report for at least 3 years after it is prepared.

Maximum penalty—50 penalty units.

## **Division 4                      Renewal**

### **124 Application for renewal**

- (1) An accredited person may apply to the chief executive for renewal of the person's accreditation.
- (2) The application must—
  - (a) be made within 60 days before the term of the accreditation ends; and
  - (b) be made in the approved form; and
  - (c) be accompanied by the fee prescribed by regulation.

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## 125 Deciding application

- (1) The chief executive must consider the application (the *renewal application*) and decide to renew, or refuse to renew, the accreditation.
- (2) Sections 113, 114, 115 and 117 (each a *relevant provision*) apply to the renewal application as if—
  - (a) a reference in a relevant provision to granting the accreditation were a reference to renewing the accreditation; and
  - (b) a reference in a relevant provision to an application were a reference to the renewal application; and
  - (c) a reference in a relevant provision to an applicant were a reference to the applicant for the renewal application.
- (3) If the chief executive decides to refuse to renew the accreditation, the chief executive must give the applicant an information notice for the decision.
- (4) An accreditation may be renewed by giving another accreditation to replace it.

## 126 Accreditation continues pending decision about renewal

- (1) If an accredited person applies for renewal of an accreditation under section 124, the accreditation is taken to continue in force from the day it would, apart from this section, have ended until the application is decided or, under this part, is taken to have been decided or withdrawn.
- (2) However, if the chief executive decides to refuse to renew the accreditation, or is taken to refuse to renew the accreditation, the accreditation continues in force until the information notice for the decision is given to the applicant.
- (3) Subsection (1) does not apply if the accreditation is earlier suspended or cancelled.

[s 127]

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## **Division 5                      Amendment by application**

### **127      Application to amend**

- (1) The holder of an accreditation may apply to the chief executive for an amendment of the accreditation.
- (2) However, the holder must not apply for an amendment to extend the term of the accreditation to more than 3 years.
- (3) The application must—
  - (a) be in the approved form; and
  - (b) be accompanied by the fee prescribed by regulation.

### **128      Deciding application**

- (1) The chief executive must consider the application (the *amendment application*) and decide to—
  - (a) amend the accreditation; or
  - (b) amend the accreditation on conditions that are relevant to the amendment; or
  - (c) refuse to amend the accreditation.
- (2) The chief executive may amend the accreditation only if satisfied the applicant has the necessary expertise or experience to carry out private assessments and prepare private assessment reports relevant to the accreditation as amended.
- (3) Sections 114, 115 and 117 (each a *relevant provision*) apply to the amendment application as if—
  - (a) a reference in a relevant provision to an application were a reference to the amendment application; and
  - (b) a reference in a relevant provision to an applicant were a reference to the applicant for the amendment application.

- (4) If the chief executive decides to refuse to amend the accreditation, or amend the accreditation on conditions other than those applied for, the chief executive must give the applicant an information notice for the decision.
- (5) The chief executive may amend an accreditation by—
  - (a) giving the accredited person a notice of the amendment; or
  - (b) giving another accreditation to replace it.
- (6) Section 120(2) applies to conditions imposed under subsection (1)(b).

## **Division 6                      Other matters**

### **129      Register**

- (1) The chief executive must keep a register of accredited persons.
- (2) The register must contain the following particulars for each accredited person—
  - (a) the accredited person's name and contact details;
  - (b) the conditions imposed on the accredited person's accreditation under section 120;
  - (c) the term of the accreditation.
- (3) The register may be kept in the form, including electronic form, the chief executive considers appropriate.
- (4) The chief executive must publish the register on the department's website.

### **130      Accreditation not transferable**

An accreditation may not be transferred.

[s 131]

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## **Chapter 5            Cancellation, suspension                                  and amendment of                                  authorisations**

### **Part 1                    Relevant authorisations**

#### **131    Definition for pt 1**

In this part—

*relevant authorisation* means any of the following—

- (a) an exhibition licence, whether or not a special exhibition approval for an authorised animal (category C2) under the licence is in force;
- (b) an interstate exhibitors permit;
- (c) an accreditation.

#### **132    Grounds for cancelling or suspending relevant                                  authorisation**

Each of the following is a ground for cancelling or suspending a relevant authorisation—

- (a) the holder of the authorisation is not, or is no longer, a suitable person to hold the authorisation;
- (b) the authorisation was obtained by materially incorrect or misleading information or documents or by a mistake;
- (c) the holder of the authorisation has not paid a fee or other amount payable to the chief executive in relation to the authorisation;
- (d) the holder of the authorisation has contravened a condition of the authorisation, whether the condition is included in the authorisation or is otherwise imposed under this Act;

- (e) for a relevant authorisation that is an exhibition licence or interstate exhibitors permit—
  - (i) the holder of the authorisation has contravened an exhibited animal direction; or
  - (ii) within the 2 years preceding the date a show cause notice for cancelling or suspending the authorisation is given, the holder held a similar authorisation, however called, in another jurisdiction, and it was cancelled;
- (f) for a relevant authorisation that is an accreditation—
  - (i) the accredited person does not have the necessary expertise or experience to carry out private assessments or prepare private assessment reports; or
  - (ii) a private assessment conducted, or private assessment report prepared, by the accredited person has not been conducted or prepared honestly, fairly or diligently.

### **133 Grounds for amending relevant authorisation**

Each of the following is a ground for amending a relevant authorisation—

- (a) a matter mentioned in section 53(4)(a) to (d) or 115(1)(a) to (c) or (e) relevant to the suitability of the holder to hold the authorisation, other than a matter the chief executive believes is a ground for cancelling or suspending the authorisation;
- (b) a matter mentioned in section 132(b) to (f);
- (c) for a relevant authorisation that is an exhibition licence or interstate exhibitors permit—the chief executive considers the approved management plan needs to be changed because it does not make, or no longer makes, adequate provision for—

[s 134]

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- (i) identifying or preventing or minimising a significant relevant risk or significant relevant adverse effect associated with exhibiting or dealing with an authorised animal; or
- (ii) managing reproduction of an authorised animal that is not native wildlife.

**134 Cancellation, suspension or amendment by chief executive—show cause notice**

- (1) If the chief executive believes a ground exists to cancel, suspend or amend a relevant authorisation (the *proposed action*), the chief executive must give the holder of the authorisation notice under this section (a *show cause notice*).
- (2) The show cause notice must state each of the following—
  - (a) the proposed action;
  - (b) the ground for the proposed action;
  - (c) an outline of the facts and circumstances forming the basis for the ground;
  - (d) if the proposed action is to suspend the relevant authorisation—the proposed suspension period;
  - (e) if the proposed action is to amend the relevant authorisation—the proposed amendment;
  - (f) that the holder may, within a stated period (the *show cause period*), make written representations to the chief executive to show why the proposed action should not be taken.
- (3) The show cause period must end at least 28 days after the holder is given the show cause notice.



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**135 Representations about show cause notice**

- (1) The holder of the relevant authorisation may make written representations about the show cause notice to the chief executive in the show cause period.
- (2) The chief executive must consider all representations (the *accepted representations*) made under subsection (1).

**136 Ending show cause process without further action**

If, after considering the accepted representations, the chief executive no longer believes a ground exists to take the proposed action, the chief executive—

- (a) must take no further action about the show cause notice; and
- (b) must give the holder of the relevant authorisation notice that no further action is to be taken about the show cause notice.

**137 Cancellation, suspension or amendment of relevant authorisation**

- (1) This section applies if—
  - (a) there are no accepted representations for the show cause notice; or
  - (b) after considering the accepted representations for the show cause notice, the chief executive—
    - (i) still believes a ground exists to cancel, suspend or amend the relevant authorisation; and
    - (ii) believes a cancellation, suspension or amendment of the relevant authorisation is warranted.
- (2) If the proposed action is to cancel the relevant authorisation, the chief executive may—
  - (a) cancel the authorisation; or
  - (b) suspend the authorisation for a period; or

[s 137]

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- (c) amend the authorisation.
- (3) If the proposed action is to suspend the relevant authorisation, the chief executive may—
    - (a) suspend the relevant authorisation for no longer than the proposed suspension period; or
    - (b) amend the authorisation.
  - (4) If the proposed action is to amend the relevant authorisation, the chief executive may amend the authorisation, including by imposing a condition on the authorisation.
  - (5) Without limiting subsection (4), the chief executive may—
    - (a) amend an exhibition licence or interstate exhibitors permit to prohibit or restrict the exhibition of, or a dealing with, an authorised animal; and
    - (b) impose a condition on the licence or permit for a limited period to authorise the animal to be dealt with for the purpose of arranging for—
      - (i) the removal of the prohibition or restriction by further amendment of the licence or permit; or
      - (ii) the proper disposal of the animal.
  - (6) If the chief executive acts under subsections (2) to (5), the chief executive must give the holder of the relevant authorisation an information notice for the decision.
  - (7) The decision takes effect on the later of the following—
    - (a) the day the information notice is given to the holder;
    - (b) the day stated in the information notice for that purpose.
  - (8) If an exhibition licence or interstate exhibitors permit is amended by imposing a condition on the licence or permit, section 77(2) and (5) applies to the condition.

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**138 Immediate suspension of licence or permit**

- (1) The chief executive may immediately suspend an exhibition licence or interstate exhibitors permit if the chief executive believes—
  - (a) a ground exists to cancel or suspend the licence or permit; and
  - (b) it is necessary to suspend the licence or permit immediately because there would be an immediate and significant relevant risk associated with exhibiting or dealing with an exhibited animal if the holder of the licence or permit were to continue to exhibit or deal with the animal.
- (2) The suspension—
  - (a) may be made only by the chief executive giving the holder an information notice for the decision, together with a show cause notice; and
  - (b) operates immediately the notices are given to the holder; and
  - (c) continues to operate until the earliest of the following happens—
    - (i) the chief executive cancels the remaining period of suspension;
    - (ii) the show cause notice is finally dealt with;
    - (iii) 56 days have passed since the notices were given to the holder.
- (3) Subsection (4) applies if—
  - (a) the holder of an exhibition licence or interstate exhibitors permit has returned the licence or permit to the chief executive as required under section 141; and
  - (b) a suspension under this section stops because—
    - (i) the chief executive cancels the remaining period of suspension; or

[s 139]

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- (ii) the show cause notice is finally dealt with by a decision being made not to cancel or suspend the licence or permit; or
  - (iii) 56 days have passed since the notices mentioned in subsection (2)(a) were given to the holder.
- (4) The chief executive must give the exhibition licence or interstate exhibitors permit to the holder.

**139 Amendment of relevant authorisation without show cause notice—minor amendment**

- (1) The procedures otherwise required to be followed under this chapter for the amendment of a relevant authorisation are not required to be followed if—
  - (a) the chief executive proposes to amend the relevant authorisation only—
    - (i) for a formal or clerical reason; or
    - (ii) in another way that does not adversely affect the interests of the holder of the authorisation; or
  - (b) the holder of the relevant authorisation asks the chief executive to amend the authorisation other than by formal application under chapter 3, part 9, division 2 or chapter 4, part 3, division 5 and the chief executive proposes to give effect to the request.
- (2) The chief executive may amend the relevant authorisation by notice given to the holder.

**140 Cancellation of relevant authorisation without show cause notice**

- (1) The procedures otherwise required to be followed under this chapter for the cancellation of a relevant authorisation are not required to be followed if the holder of the relevant authorisation asks the chief executive to cancel it and the chief executive proposes to give effect to the request.

- (2) The chief executive may cancel the relevant authorisation by notice given to the holder.

#### **141 Return of cancelled, suspended or amended relevant authorisation**

- (1) This section applies if the chief executive cancels, suspends or amends a relevant authorisation under this chapter.
- (2) The chief executive may, by notice given to the holder of the relevant authorisation, require the holder to return the authorisation to the chief executive within 14 days, or a later stated time.
- (3) The holder must comply with the notice, unless the holder has a reasonable excuse for not complying with it.

Maximum penalty—40 penalty units.

- (4) If a suspended relevant authorisation has been returned to the chief executive, the chief executive must return the authorisation to the holder of the relevant authorisation at the end of the suspension period.
- (5) If an amended relevant authorisation has been returned to the chief executive, the chief executive must return the authorisation to the holder of the relevant authorisation after amending it.
- (6) However, the amendment of a relevant authorisation does not depend on the authorisation being returned to the chief executive by the holder of the authorisation or by the chief executive to the holder of the authorisation.

## **Part 2 Temporary authorities**

#### **142 Definition for pt 2**

In this part—

[s 143]

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*relevant original decision*, for a previous authority for a temporary authority, means any of the following decisions—

- (a) a refusal or deemed refusal to renew or restore the previous authority;
- (b) cancellation or suspension of the previous authority.

### **143 Cancellation if previous authority renewed etc.**

- (1) This section applies to a temporary authority if—
  - (a) a relevant original decision is made for a previous authority for the temporary authority; and
  - (b) on review of, or appeal against, the decision—
    - (i) the previous authority is renewed or restored; or
    - (ii) the cancellation or suspension of the previous authority is set aside or otherwise revoked.
- (2) The temporary authority is cancelled.

*Note—*

The temporary authority is cancelled because it is not needed if the previous authority is in force.

### **144 Suspension if relevant original decision stayed**

- (1) This section applies to a temporary authority if a relevant original decision for the previous authority for the temporary authority is stayed by QCAT or the court.
- (2) The temporary authority is suspended for the period of the stay.

### **145 Cancellation or amendment by chief executive**

- (1) The chief executive may by notice given to the holder of a temporary authority, cancel or amend the authority.
- (2) If the chief executive cancels a temporary authority under subsection (1), the chief executive may, by notice given to the

holder of the authority, require the holder to return the authority to the chief executive within 14 days, or a later stated time.

- (3) The holder must comply with the notice, unless the holder has a reasonable excuse for not complying with it.

Maximum penalty for subsection (3)—40 penalty units.

## **Chapter 6      Investigations and enforcement**

### **Part 1            General provisions about inspectors**

#### **Division 1        Appointment**

##### **146      Inspectors under ch 6**

This chapter includes provision for the appointment of inspectors, and gives inspectors particular powers.

##### **147      Functions of inspectors**

An inspector has the following functions—

- (a) to investigate, monitor and enforce compliance with this Act;
- (b) to investigate or monitor whether an occasion has arisen for the exercise of powers under this Act;
- (c) to facilitate the exercise of powers under this Act;

[s 148]

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- (d) to carry out official assessments and report to the chief executive about the assessments;
- (e) to help achieve the purposes of this Act by providing advice and information on how the purposes may be achieved.

#### **148 Appointment and qualifications**

- (1) The chief executive may, by instrument in writing, appoint any of the following persons as inspectors—
  - (a) an inspector under the *Animal Care and Protection Act 2001*;
  - (b) an authorised officer under the Biosecurity Act;
  - (c) a public service employee;
  - (d) other persons prescribed by regulation.
- (2) However, the chief executive may appoint a person as an inspector only if the chief executive is satisfied the person is appropriately qualified for the appointment.

#### **149 Appointment conditions and limit on powers**

- (1) An inspector holds office on any conditions stated in—
  - (a) the inspector’s instrument of appointment; or
  - (b) a signed notice given to the inspector; or
  - (c) a regulation.
- (2) The instrument of appointment, a signed notice given to the inspector or a regulation may limit the inspector’s powers.
- (3) In this section—  
***signed notice*** means a notice signed by the chief executive.



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## 150 When office ends

- (1) The office of a person as an inspector ends if any of the following happens—
  - (a) the term of office stated in a condition of office ends;
  - (b) under another condition of office, the office ends;
  - (c) the inspector's resignation under section 151 takes effect.
- (2) Subsection (1) does not limit the ways the office of a person as an inspector ends.
- (3) In this section—

*condition of office* means a condition under which the inspector holds office.

## 151 Resignation

- (1) An inspector may resign by signed notice given to the chief executive.
- (2) However, if holding office as an inspector is a condition of the inspector holding another office, the inspector may not resign as an inspector without resigning from the other office.

## Division 2 Identity cards

### 152 Issue of identity card

- (1) The chief executive must issue an identity card to each inspector.
- (2) The identity card must—
  - (a) contain a recent photo of the inspector; and
  - (b) contain a copy of the inspector's signature; and
  - (c) identify the person as an inspector under this Act; and
  - (d) state an expiry date for the card.

[s 153]

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- (3) This section does not prevent the issue of a single identity card to a person for this Act and other purposes.

### **153 Production or display of identity card**

- (1) In exercising a power in relation to a person in the person's presence, an inspector must—
- (a) produce the inspector's identity card for the person's inspection before exercising the power; or
  - (b) have the identity card displayed so it is clearly visible to the person when exercising the power.
- (2) However, if it is not practicable to comply with subsection (1), the inspector must produce the identity card for the person's inspection at the first reasonable opportunity.
- (3) For subsection (1), an inspector does not exercise a power in relation to a person only because the inspector has entered a place as mentioned in section 159(1)(a) or (b).

### **154 Return of identity card**

If the office of a person as an inspector ends, the person must return the person's identity card to the chief executive within 21 days after the office ends unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

## **Division 3 Miscellaneous provisions**

### **155 References to exercise of powers**

If—

- (a) a provision of this Act refers to the exercise of a power by an inspector; and
- (b) there is no reference to a specific power;

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the reference is to the exercise of all or any inspectors' powers under this Act or a warrant, to the extent the powers are relevant.

**156 Reference to document includes reference to reproductions from electronic document**

A reference in this Act to a document includes a reference to an image or writing—

- (a) produced from an electronic document; or
- (b) not yet produced, but reasonably capable of being produced, from an electronic document, with or without the aid of another article or device.

**Part 2 Entry to places by inspector**

**Division 1 Powers to enter**

**Subdivision 1 Powers to enter by consent or under warrant**

**157 Entry by consent**

- (1) An inspector may enter a place if—
  - (a) the entry is made to carry out an official assessment (application) at the place; or
  - (b) the entry is made under section 69(1)(g); or
  - (c) an occupier at the place otherwise consents under division 2 to the entry and section 165 has been complied with for the occupier.
- (2) The power under subsection (1) to enter by consent—

[s 158]

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- (a) is subject to any conditions of the consent; and
- (b) ceases if the consent is withdrawn.

### **158 Entry under warrant**

- (1) An inspector may enter a place if the entry is authorised under a warrant and, if there is an occupier of the place, section 172 has been complied with for the occupier.
- (2) The power under subsection (1) to enter under a warrant is subject to the terms of the warrant.

## **Subdivision 2 Other powers of entry**

### **159 Entry other than by consent or warrant**

- (1) An inspector may enter a place without the consent of the occupier of the place or a warrant if—
  - (a) it is a public place and the entry is made when the place is open to the public; or
  - (b) it is a place of business mentioned in an exhibited animal authority and is—
    - (i) open for carrying on the business; or
    - (ii) otherwise open for entry; or
    - (iii) required to be open for inspection under a condition of the authority; or
  - (c) the entry is made to carry out an official assessment (follow-up) at the place at a reasonable time and on reasonable written or oral notice of at least 48 hours; or
  - (d) the entry is authorised under section 160, 161 or 162.
- (2) However, a power to enter a place under this subdivision does not include entry to a part of the place where a person resides without the person's consent or a warrant.

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**160 Entry to check compliance with exhibited animal direction**

- (1) This section applies if a person has been given an exhibited animal direction for ensuring the person discharges the person's general exhibition and dealing obligation for exhibiting or dealing with an animal at a place.
- (2) An inspector may at reasonable times enter the place to check whether the exhibited animal direction has been complied with.

*Notes—*

- 1 See, however, the restrictions on entry under section 159(2).
- 2 See division 4 for the procedure for entry under this section.

**161 Entry to take action required under exhibited animal direction**

- (1) This section applies if—
  - (a) an inspector gives a person an exhibited animal direction; and
  - (b) the person does not comply with the direction.
- (2) An inspector may at reasonable times enter the place the subject of the exhibited animal direction and take the action at the place that is required under the direction.

*Notes—*

- 1 See, however, the restrictions on entry under section 159(2).
- 2 See division 4 for the procedure for entry under this section.

**162 Emergency entry**

An inspector may enter a place if the inspector is satisfied on reasonable grounds—

- (a) an exhibited animal is being exhibited or dealt with at the place; and

[s 163]

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- (b) it is necessary to exercise powers under this chapter to avoid an imminent significant relevant risk or significant relevant adverse effect associated with exhibiting or dealing with the animal.

*Examples for paragraph (b)—*

- an exhibited animal causing significant harm to another exhibited animal
- an exhibited animal being neglected

*Notes—*

- 1 See, however, the restrictions on entry under section 159(2).
- 2 See division 4 for the procedure for entry under this section.

## **Division 2                      Entry by consent**

### **163      Application of div 2**

This division applies if an inspector intends to ask an occupier of a place to consent to the inspector or another inspector entering the place under section 157(1)(c).

### **164      Incidental entry to ask for access**

For the purpose of asking the occupier for the consent, an inspector may, without the occupier's consent or a warrant—

- (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
- (b) enter part of the place the inspector reasonably considers members of the public ordinarily are allowed to enter when they wish to contact an occupier of the place.

### **165      Matters inspector must tell occupier**

Before asking for the consent, the inspector must give a reasonable explanation to the occupier—

- (a) about the purpose of the entry, including the powers intended to be exercised; and
- (b) that the occupier is not required to consent; and
- (c) that the consent may be given subject to conditions and may be withdrawn at any time.

### **166 Consent acknowledgement**

- (1) If the consent is given, the inspector may ask the occupier to sign an acknowledgement of the consent.
- (2) The acknowledgement must state—
  - (a) the purpose of the entry, including the powers to be exercised; and
  - (b) the following has been explained to the occupier—
    - (i) the purpose of the entry, including the powers intended to be exercised;
    - (ii) that the occupier is not required to consent;
    - (iii) that the consent may be given subject to conditions and may be withdrawn at any time; and
  - (c) the occupier gives the inspector or another inspector consent to enter the place and exercise the powers; and
  - (d) the time and day the consent was given; and
  - (e) any conditions of the consent.
- (3) If the occupier signs the acknowledgement, the inspector must immediately give a copy to the occupier.
- (4) If—
  - (a) an issue arises in a proceeding about whether the occupier consented to the entry; and
  - (b) an acknowledgement complying with subsection (2) for the entry is not produced in evidence;

[s 167]

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the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

## **Division 3            Entry under warrant**

### **Subdivision 1        Obtaining warrant**

#### **167    Application for warrant**

- (1) An inspector may apply to a magistrate for a warrant for a place.
- (2) The inspector must prepare a written application that states the grounds on which the warrant is sought.
- (3) The written application must be sworn.
- (4) The magistrate may refuse to consider the application until the inspector gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Example—*

The magistrate may require additional information supporting the written application to be given by statutory declaration.

#### **168    Issue of warrant**

- (1) The magistrate may issue the warrant for the place only if the magistrate is satisfied there are reasonable grounds for suspecting that there is at the place, or will be at the place within the next 7 days, a particular thing or activity that may provide evidence of an offence against this Act.
- (2) The warrant must state—
  - (a) the place to which the warrant applies; and
  - (b) that a stated inspector or any inspector may with necessary and reasonable help and force—



- (i) enter the place and any other place necessary for entry to the place; and
- (ii) exercise the inspector's powers; and
- (c) particulars of the offence that the magistrate considers appropriate; and
- (d) the name of the person suspected of having committed the offence unless the name is unknown or the magistrate considers it inappropriate to state the name; and
- (e) the evidence that may be seized under the warrant; and
- (f) the hours of the day or night when the place may be entered; and
- (g) the magistrate's name; and
- (h) the day and time of the warrant's issue; and
- (i) the day, within 14 days after the warrant's issue, the warrant ends.

## **169 Electronic application**

- (1) An application under section 167 may be made by phone, fax, email, radio, videoconferencing or another form of electronic communication if the inspector reasonably considers it necessary because of—
  - (a) urgent circumstances; or
  - (b) other special circumstances, including, for example, the inspector's remote location.
- (2) The application—
  - (a) may not be made before the inspector prepares the written application under section 167(2); but
  - (b) may be made before the written application is sworn.

[s 170]

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## **170 Additional procedure if electronic application**

- (1) For an application made under section 169, the magistrate may issue the warrant (the *original warrant*) only if the magistrate is satisfied—
  - (a) it was necessary to make the application under section 169; and
  - (b) the way the application was made under section 169 was appropriate.
- (2) After the magistrate issues the original warrant—
  - (a) if there is a reasonably practicable way of immediately giving a copy of the warrant to the inspector, including, for example, by sending a copy by fax or email, the magistrate must immediately give a copy of the warrant to the inspector; or
  - (b) otherwise—
    - (i) the magistrate must tell the inspector the information mentioned in section 168(2); and
    - (ii) the inspector must complete a form of warrant, including by writing on it the information mentioned in section 168(2) provided by the magistrate.
- (3) The copy of the warrant mentioned in subsection (2)(a), or the form of warrant completed under subsection (2)(b) (in either case the *duplicate warrant*), is a duplicate of, and as effectual as, the original warrant.
- (4) The inspector must, at the first reasonable opportunity, send to the magistrate—
  - (a) the written application complying with section 167(2) and (3); and
  - (b) if the inspector completed a form of warrant under subsection (2)(b), the completed form of warrant.
- (5) The magistrate must keep the original warrant and, on receiving the documents under subsection (4)—

- (a) attach the documents to the original warrant; and
  - (b) give the original warrant and documents to the clerk of the court of the relevant magistrates court.
- (6) Despite subsection (3), if—
- (a) an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued under this section; and
  - (b) the original warrant is not produced in evidence;
- the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a warrant authorised the exercise of the power.
- (7) This section does not limit section 167.
- (8) In this section—
- relevant magistrates court*, in relation to a magistrate, means the Magistrates Court that the magistrate constitutes under the *Magistrates Act 1991*.

## **171 Defect in relation to a warrant**

- (1) A warrant is not invalidated by a defect in—
- (a) the warrant; or
  - (b) compliance with this subdivision;
- unless the defect affects the substance of the warrant in a material particular.
- (2) In this section—
- warrant* includes a duplicate warrant mentioned in section 170(3).

[s 172]

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## **Subdivision 2      Entry procedure**

### **172      Entry procedure**

- (1) This section applies if an inspector is intending to enter a place under a warrant issued under this division.
- (2) Before entering the place, the inspector must do or make a reasonable attempt to do the following things—
  - (a) identify himself or herself to a person who is an occupier of the place and is present by producing the inspector's identity card or another document evidencing the inspector's appointment;
  - (b) give the person a copy of the warrant;
  - (c) tell the person the inspector is permitted by the warrant to enter the place;
  - (d) give the person an opportunity to allow the inspector immediate entry to the place without using force.
- (3) However, the inspector need not comply with subsection (2) if the inspector reasonably believes that entry to the place without compliance is required to ensure the execution of the warrant is not frustrated.
- (4) In this section—

*warrant* includes a duplicate warrant mentioned in section 170(3).

## **Division 4                      Entry, other than by consent or under warrant, for particular purposes**

### **173      Application of div 4**

This division applies to an inspector intending to enter a place under section 159(1)(c), 160, 161 or 162.

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**174 Requirement to locate and inform occupier before entry**

- (1) The inspector must, before entering the place, make a reasonable attempt to—
  - (a) locate an occupier; and
  - (b) if the occupier is located—
    - (i) comply with section 153; and
    - (ii) inform the occupier—
      - (A) of the reason for entering the place; and
      - (B) that the inspector is authorised under this Act to enter the place without the permission of the occupier.

*Note—*

See, however, the restrictions on entry under section 159(2).

- (2) For the purpose of locating an occupier, the inspector may, without the occupier's consent or a warrant—
  - (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
  - (b) enter part of the place the inspector reasonably considers members of the public ordinarily are allowed to enter when they wish to contact an occupier of the place.
- (3) If the inspector is unable to locate an occupier after making a reasonable attempt to do so, the inspector may enter the place.
- (4) For an entry under section 162, the inspector may enter the place without complying with subsection (1) if the inspector reasonably believes that immediate entry to the place is required to avoid an imminent significant relevant risk or significant relevant adverse effect.

[s 175]

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### **175 Requirement to inform occupier after entry**

- (1) This section applies if the inspector enters the place under section 174.
- (2) If the inspector finds an occupier present at the place, the inspector must comply, or make a reasonable attempt to comply, with section 174(1)(b)(i) and (ii).
- (3) If the inspector does not find an occupier present at the place, the inspector must leave a notice in a conspicuous position and in a reasonably secure way stating the date, time and purpose of the entry.
- (4) For an entry under section 162, as soon as practicable after exercising, or attempting to exercise, the powers under this division, the inspector must give the chief executive notice of the fact.

## **Part 3 Other inspectors' powers and related matters**

### **Division 1 Stopping or moving vehicles**

#### **176 Application of div 1**

This division applies if an inspector reasonably suspects, or is aware, that an exhibited animal or other thing in or on a vehicle may—

- (a) provide evidence of the commission of an offence against this Act; or
- (b) pose a relevant risk.

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## **177 Power to stop or move**

- (1) If the vehicle is moving, the inspector may, to exercise the inspector's powers, signal or otherwise direct the person in control of the vehicle to stop the vehicle and to bring the vehicle to, and keep it at, a convenient place within a reasonable distance to allow the inspector to exercise the powers.
- (2) If the vehicle is stopped, the inspector may direct the person in control of the vehicle—
  - (a) not to move it until the inspector has exercised the inspector's powers; or
  - (b) to move the vehicle to, and keep it at, a stated reasonable place to allow the inspector to exercise the powers.
- (3) When giving the direction under subsection (2), the inspector must give the person in control an offence warning for the direction.

## **178 Identification requirements if vehicle moving**

- (1) This section applies if the inspector proposes to give a direction under section 177(1) and the vehicle is moving.
- (2) The inspector must clearly identify himself or herself as an inspector exercising the inspector's powers.

*Examples—*

- 1 If the inspector is in a moving vehicle, the inspector may use a loudhailer to state that the inspector is an inspector exercising powers under this Act.
  - 2 If the inspector is standing at the side of the road, the inspector may use a sign to state that the inspector is an inspector exercising powers under this Act.
- (3) When the vehicle stops, the inspector must—
    - (a) have the inspector's identity card; and
    - (b) immediately produce the identity card for the inspection of the person in control of the vehicle.

[s 179]

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- (4) Subsection (3) applies despite section 153.

### **179 Failure to comply with direction**

- (1) The person in control of the vehicle must comply with a direction under section 177 unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) It is a reasonable excuse for the person not to comply with a direction if—
- (a) the vehicle was moving and the inspector did not comply with section 178; or
  - (b) to comply immediately would have endangered someone else or caused loss or damage to property, and the person complies as soon as it is practicable to do so.
- (3) Subsection (2) does not limit subsection (1).
- (4) A person does not commit an offence against subsection (1) if—
- (a) the direction the person fails to comply with is given under section 177(2); and
  - (b) the person is not given an offence warning for the direction.

## **Division 2                    General powers after entry**

### **180 Application of div 2**

- (1) The powers under this division may be exercised if an inspector enters a place under—
- (a) section 157(1) or 158(1); or
  - (b) part 2, division 1, subdivision 2, other than section 159(1)(a).



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- (2) However, if the inspector enters under section 157(1) or 158(1), the powers under this division are subject to any conditions of the consent or terms of the warrant on which the entry is based.

## 181 General powers

- (1) The inspector may do any of the following (each a *general power*)—
- (a) search any part of the place;
  - (b) open, using reasonable force, an enclosure or other thing, to examine the enclosure or other thing, or an animal in the enclosure or other thing;
  - (c) take reasonable measures to relieve the pain of an animal at the place;

*Examples of measures—*

feeding, untethering and watering the animal

- (d) inspect, examine or film any part of the place or an animal or other thing, at the place;
- (e) take for examination, a thing, or a sample of or from an animal or other thing;
- (f) place an identifying mark on an animal or other thing at the place;

*Examples of placing an identifying mark on an animal—*

- tagging an animal
  - inserting a microchip in an animal
- (g) take an extract from, or copy, a document at the place, or take the document to another place to copy;
  - (h) produce an image or writing at the place from an electronic document or, to the extent it is not practicable, take a thing containing an electronic document to another place to produce an image or writing;

[s 182]

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- (i) take to, into or onto the place and use any person, equipment and materials the inspector reasonably requires for exercising the inspector's powers under this division;
    - (j) remain at the place for the time necessary to achieve the purpose of the entry.
  - (2) The inspector may take a necessary step to allow the exercise of a general power.
  - (3) If the inspector takes a document from the place to copy it, the inspector must copy the document and return it to the place as soon as practicable.
  - (4) If the inspector takes from the place an article or device reasonably capable of producing a document from an electronic document to produce the document, the inspector must produce the document and return the article or device to the place as soon as practicable.
  - (5) In this section—  
*examine* includes analyse, test, account, measure, weigh, grade, gauge and identify.  
*film* includes photograph, videotape and record an image in another way.  
*inspect*, a thing, includes open the thing and examine its contents.

## **182 Power to require reasonable help**

- (1) The inspector may make a requirement (a *help requirement*) of an occupier of the place or a person at the place to give the inspector reasonable help to exercise a general power, including, for example, to examine an animal, produce a document or give information.
- (2) When making the help requirement, the inspector must give the person an offence warning for the requirement.

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### 183 Offence to contravene help requirement

- (1) A person of whom a help requirement has been made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) It is a reasonable excuse for an individual not to comply with a help requirement if complying might tend to incriminate the individual or expose the individual to a penalty.
- (3) However, subsection (2) does not apply if a document or information the subject of the help requirement is required to be held or kept by the defendant under—
- (a) this Act; or
  - (b) another Act or a law of the Commonwealth or another State if the document relates to exhibiting or dealing with exhibited animals.

*Note—*

See, however, section 222.

## Division 3 Exhibited animal directions

### 184 Power to give exhibited animal direction

- (1) This section applies if an inspector reasonably believes a responsible person for an exhibited animal has failed, or may fail, to discharge the person's general exhibition and dealing obligation for exhibiting or dealing with the animal at a place.
- (2) The inspector may give the responsible person (the *recipient*) a direction (an *exhibited animal direction*) for ensuring the recipient discharges the obligation at the place.

### 185 Matters that must be included in direction

- (1) The exhibited animal direction must state each of the following—

[s 185]

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- (a) the name and address of the recipient, or any other identifying information about the recipient the inspector can reasonably obtain;
- (b) if the inspector reasonably believes the recipient has failed to discharge the recipient's general exhibition and dealing obligation—the way in which the recipient has failed to discharge the obligation;
- (c) the place where the recipient failed, or may fail, to discharge the obligation;
- (d) the action the recipient must take at the place to prevent or minimise the relevant risks or relevant adverse effects arising from the recipient's failure, or possible failure, to discharge the obligation;
- (e) the period within which the action must be taken;
- (f) the action, if any, the recipient must take to show the recipient is complying with the direction and the period within which the action must be taken;

*Example—*

providing photographs of an enclosure before and after the action

- (g) the name of the inspector giving the direction;
  - (h) an offence warning for the direction.
- (2) The direction must also include an information notice for the decision to give the direction.
  - (3) The period stated under subsection (1)(e) must be reasonable having regard to the relevant risks or relevant adverse effects arising from the recipient's failure, or possible failure, to discharge the obligation.
  - (4) The direction must also set out, or state the effect of, sections 104, 160 and 161.

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**186 Matters that may be included in direction**

(1) The exhibited animal direction may state that an inspector proposes, at a stated time or at stated intervals, to enter any of the following where the animal or enclosure, the subject of the direction, is situated to check compliance with the direction—

- (a) the place;
- (b) a vehicle of which the recipient is the person in control.

*Note—*

See part 2, division 4 for the procedure for entry to check compliance with an exhibited animal direction.

(2) The direction may state how the recipient may show the stated action has been taken.

**187 Requirements for giving direction**

- (1) An exhibited animal direction must be in the approved form.
- (2) However, an exhibited animal direction may be given orally if—
  - (a) for any reason it is not practicable to immediately give the direction in the approved form; and
  - (b) the inspector giving the direction gives the recipient an offence warning for the direction.
- (3) If the direction is given orally, the inspector must confirm the direction by also giving it in the approved form as soon as practicable after giving it orally.

**188 Compliance with direction**

The recipient of an exhibited animal direction must comply with the direction unless the recipient has a reasonable excuse.

Maximum penalty—200 penalty units.

[s 189]

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*Notes—*

- 1 If the exhibited animal direction relates to an authorised animal under an exhibition licence or interstate exhibitors permit, the contravention may be a ground for cancelling, suspending or amending the licence or permit. See sections 132(e)(i) and 133(b).
- 2 If a recipient fails to comply with an exhibited animal direction, an inspector may take action. See section 161.

## **Division 4                    Seizure**

### **Subdivision 1            Powers to seize**

#### **189    Seizure with consent**

An inspector who has, under this Act, entered a place may—

- (a) seize an exhibited animal at the place with the written consent of—
  - (i) a responsible person for the animal; or
  - (ii) a person the inspector reasonably believes is a responsible person for the animal; or
- (b) seize another thing at the place with the written consent of—
  - (i) the owner or person in possession of the thing; or
  - (ii) a person the inspector reasonably believes is the owner or person in possession of the thing.

#### **190    Seizing evidence consistent with purpose of entry by consent**

- (1) This section applies if an inspector—
  - (a) is authorised to enter a place with the consent of an occupier of the place; and
  - (b) enters the place after obtaining the consent.

- (2) The inspector may seize an exhibited animal or other thing at the place if—
  - (a) the inspector reasonably believes it is evidence of an offence against this Act; and
  - (b) the seizure is consistent with the purpose of entry as explained to the occupier when asking for the occupier's consent.

### **191 Seizing evidence for which warrant issued**

- (1) This section applies if an inspector—
  - (a) is authorised to enter a place under a warrant; and
  - (b) enters the place under the warrant.
- (2) The inspector may seize the evidence for which the warrant was issued.

### **192 Other seizure powers**

- (1) This section applies if an inspector—
  - (a) is authorised to enter a place under this Act, whether by consent, or under a warrant, or otherwise; and
  - (b) enters the place.
- (2) The inspector may seize an exhibited animal or other thing at the place if—
  - (a) the inspector reasonably believes—
    - (i) it is evidence of an offence against this Act; and
    - (ii) the seizure is necessary to prevent it being hidden, lost or destroyed; or
  - (b) the inspector reasonably believes it has just been used in, or is relevant to, the commission of an offence against this Act; or

[s 193]

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- (c) for an exhibited animal—a responsible person for the animal has contravened, or is contravening, an exhibited animal direction or a court order about the animal; or
- (d) for an exhibited animal or another animal, the inspector reasonably believes—
  - (i) the animal—
    - (A) is under an imminent risk of death or injury;  
or
    - (B) requires veterinary treatment; or
    - (C) is experiencing undue pain; and
  - (ii) the interests of the welfare of the animal require its immediate seizure.

### **193 Seizure of property subject to security**

- (1) An inspector may seize an exhibited animal or other thing, and exercise powers relating to it, despite a lien or other security over it claimed by another person.
- (2) However, the seizure does not affect the other person's claim to the lien or other security against a person other than the inspector or a person acting for the inspector.

## **Subdivision 2 Powers to support seizure**

### **194 Requirement of person in control of exhibited animal or other thing**

- (1) To enable an exhibited animal or other thing to be seized, an inspector may require the person in control of it—
  - (a) to take it to a stated reasonable place by a stated reasonable time; and
  - (b) if necessary, to remain in control of it at the stated place for a stated reasonable time.



- (2) The requirement—
  - (a) must be made by notice given to the person; or
  - (b) if for any reason it is not practicable to give a notice, may be made orally and confirmed by notice as soon as practicable.

### **195 Powers to secure seized exhibited animal or other thing**

- (1) Having seized an exhibited animal or other thing under this division, an inspector may—
  - (a) leave it at the place where it was seized (the *place of seizure*) and take reasonable action to restrict access to it; or
  - (b) move it from the place of seizure.
- (2) For subsection (1)(a), the inspector may, for example—
  - (a) mark, tag, or otherwise identify an animal or other thing to show access to it is restricted; or
  - (b) seal the entrance to the place of seizure and mark the place to show access to the place is restricted; or
  - (c) for equipment—make it inoperable; or

*Example—*

make it inoperable by dismantling it or removing a component without which the equipment can not be used

- (d) require a person the inspector reasonably believes is a responsible person for an exhibited animal, or a person in control of another thing or a place of seizure, to do an act mentioned in paragraph (a), (b) or (c) or anything else an inspector could do under subsection (1)(a).

### **196 Offence to contravene seizure requirements**

A person must comply with a requirement made of the person under section 194 or 195(2)(d) unless the person has a reasonable excuse.

[s 197]

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Maximum penalty—100 penalty units.

### **197 Particular powers for seized animals**

- (1) Without limiting section 195, having seized an animal under this division, an inspector may—
  - (a) take it to a place the inspector considers appropriate; or
  - (b) provide accommodation, food, rest, water or other living conditions; or
  - (c) if the inspector reasonably believes that, in the interests of its welfare, the animal requires veterinary treatment—arrange for the treatment; or
  - (d) if an exhibited animal direction has been given in relation to the animal and the direction has not been complied with—take other action to ensure the direction is complied with.
- (2) While an animal seized under this division is at the place of seizure, an inspector may enter the place only to—
  - (a) provide the animal with food, water or veterinary treatment if the inspector reasonably believes the animal needs the food, water or treatment; or
  - (b) take the animal to another place the inspector considers appropriate.

### **198 Offence to interfere**

- (1) If access to a seized exhibited animal or other thing is restricted under section 195, a person must not tamper with the animal or thing or with anything used to restrict access to the animal or thing without—
  - (a) an inspector's approval; or
  - (b) a reasonable excuse.

Maximum penalty—100 penalty units.

- (2) If access to a place is restricted under section 195, a person must not enter the place in contravention of the restriction or tamper with anything used to restrict access to the place without—
- (a) an inspector's approval; or
  - (b) a reasonable excuse.
- Maximum penalty—100 penalty units.

### **Subdivision 3      Safeguards for seized property**

#### **199      Receipt and information notice for seized property**

- (1) This section applies if, under this division or a warrant, an inspector seizes an exhibited animal or other thing, unless—
- (a) the seizure was with the written consent of a person under section 189; or
  - (b) the inspector reasonably believes there was no-one apparently in possession of the animal or thing, or the animal or thing had been abandoned, before it was seized; or
  - (c) for a seized thing other than an animal, it would be impracticable or unreasonable to expect the inspector to account for the thing given its condition, nature and value.
- (2) The inspector must, as soon as practicable after the seizure, give a responsible person for the exhibited animal or the owner or person who was in possession of the other thing before it was seized—
- (a) a receipt for the animal or thing that generally describes it and its condition; and
  - (b) an information notice for the decision to seize it.
- (3) However, if a following person is not present at the place of seizure, the receipt and information notice may be given by

[s 200]

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leaving them at the place in a conspicuous position and in a reasonably secure way—

- (a) for an exhibited animal—a responsible person for the animal;
  - (b) for another thing—the owner or person in possession of the thing.
- (4) The receipt and information notice may—
- (a) be given in the same document; and
  - (b) relate to more than 1 seized animal or other thing.
- (5) The inspector may delay giving the receipt and information notice if the inspector reasonably suspects doing so may frustrate or otherwise hinder an investigation by the inspector under this Act.
- (6) However, the delay may be only for so long as the inspector continues to have the reasonable suspicion and remains in the vicinity of the place of seizure to keep it under observation.

## **200 Access to seized property**

- (1) This section applies to an inspector who has, under this division or a warrant, seized an exhibited animal or other thing until it is forfeited under division 6 or returned under section 201 or 202.
- (2) The inspector must allow a responsible person for the exhibited animal or the owner of the other thing—
  - (a) to inspect it at any reasonable time and from time to time; and
  - (b) if it is a document—to copy it.
- (3) Subsection (2) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.
- (4) The inspection or copying must be allowed free of charge.

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## **201 Return of seized animal**

- (1) This section applies if an inspector has, under this division or a warrant, seized an exhibited animal or another animal.
- (2) The inspector must, within 28 days after the seizure, return the animal to the appropriate person unless—
  - (a) the owner of the animal agrees in writing to transfer ownership of it to the State; or
  - (b) the animal is forfeited to the State under division 6; or
  - (c) an application has been made for a disposal order or prohibition order for the animal; or
  - (d) continued retention of the animal is needed as evidence for a proceeding or proposed proceeding for an offence involving the animal; or
  - (e) for an exhibited animal—an exhibited animal direction given in relation to the animal has not been complied with and the inspector is taking, or proposes to take, action to ensure the direction is complied with; or
  - (f) the inspector reasonably believes the animal's condition may require its destruction under section 203.
- (3) If subsection (2)(c) applies, the inspector must promptly return the animal to the appropriate person if the application for the disposal order or prohibition order—
  - (a) is withdrawn; or
  - (b) has been finally decided or otherwise ended and a disposal order or prohibition order has not been made for the animal.
- (4) If subsection (2)(d) applies, the inspector must promptly return the animal to the appropriate person if its continued retention as evidence is no longer required.
- (5) If subsection (2)(e) applies, the inspector must promptly return the animal to the appropriate person if—
  - (a) the exhibited animal direction is complied with; or

[s 202]

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- (b) the inspector ceases to take, or propose to take, action to ensure the direction is complied with.
- (6) If subsection (2)(f) applies, the inspector must promptly return the animal to the appropriate person if the inspector no longer believes the animal's condition may require its destruction under section 203.
- (7) Nothing in this section affects a lien or other security over the animal.
- (8) In this section—  
*appropriate person* means—
  - (a) for an exhibited animal—a responsible person for the animal; or
  - (b) for another animal—its owner.

## **202 Return of seized property other than an animal**

- (1) This section applies if—
  - (a) an inspector has, under this division or a warrant, seized a thing other than an animal; and
  - (b) the thing has some intrinsic value; and
  - (c) the owner of the thing has not agreed in writing to transfer ownership of it to the State; and
  - (d) the thing has not been forfeited under division 6; and
  - (e) a disposal order has not been made in relation to the thing.
- (2) The inspector must return the thing to its owner—
  - (a) generally—at the end of 6 months after the seizure; or
  - (b) if a proceeding for an offence involving the thing is started within the 6 months—at the end of the proceeding and any appeal from the proceeding.

- (3) Despite subsection (2), the inspector must promptly return a thing seized as evidence to its owner if the inspector is satisfied—
  - (a) its continued retention as evidence is no longer required; and
  - (b) its continued retention is not necessary to prevent the thing being used to continue, or repeat, the offence; and
  - (c) it is lawful for the person to possess the thing.
- (4) If, at the time mentioned in subsection (2), an application has been made for a disposal order in relation to the thing, the inspector must promptly return the thing to its owner if the application—
  - (a) is withdrawn; or
  - (b) has been finally decided or otherwise ended and a disposal order has not been made in relation to the thing.
- (5) Nothing in this section affects a lien or other security over the thing.

## **Division 5                      Urgent destruction of animals**

### **203      Power to destroy an animal**

- (1) An inspector may destroy an animal, or cause it to be destroyed, if—
  - (a) the animal has been seized under division 4 or an appropriate person for the animal has given written consent to its destruction; and
  - (b) the inspector reasonably believes the animal is in pain to the extent that it is cruel to keep it alive.
- (2) In this section—

*appropriate person* means—

[s 204]

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- (a) for an exhibited animal—a responsible person for the animal; or
- (b) for another animal—its owner.

## **Division 6                      Forfeiture**

### **204      Forfeiture decision of chief executive**

- (1) This section applies if an exhibited animal or other thing is seized under division 4.
- (2) The chief executive may decide the animal or other thing is forfeited to the State if—
  - (a) an inspector—
    - (i) after making reasonable inquiries, can not find a responsible person for the exhibited animal or the owner of the other thing; or
    - (ii) after making reasonable efforts, can not return the animal or other thing to the responsible person or owner mentioned in subparagraph (i); or
  - (b) for an exhibited animal or other thing seized in relation to an alleged offence against section 19, an inspector reasonably believes it is necessary to keep the animal or thing to prevent it being used to commit the offence; or
  - (c) for an exhibited animal seized in relation to an alleged offence against section 85(1), an inspector reasonably believes the animal is the progeny of an authorised animal being exhibited or kept in contravention of the mandatory condition under section 69(1)(k).
- (3) For subsection (2)(a)—
  - (a) the period over which the inquiries or efforts are made must be at least 4 days; and
  - (b) the inspector is not required to—



- (i) make inquiries if it would be unreasonable to make inquiries to find a responsible person for the exhibited animal or the owner of the other thing; or
- (ii) make efforts if it would be unreasonable to make efforts to return the exhibited animal to the responsible person or other thing to its owner.

*Example for subparagraph (ii)—*

The owner of the thing has migrated to another country.

- (4) Also, regard must be had to an exhibited animal or other thing's condition, nature and value in deciding—
  - (a) whether it is reasonable to make inquiries or efforts; and
  - (b) if inquiries or efforts are made—what inquiries or efforts, including the period over which they are made, are reasonable.

## **205 Information notice for forfeiture decision**

- (1) This section applies if the chief executive decides under section 204(2) that an exhibited animal or other thing, other than a seized thing mentioned in section 199(1)(c), is forfeited.
- (2) The chief executive must give the former owner of the animal or other thing an information notice for the decision.
- (3) However, subsection (2) does not apply if—
  - (a) the decision was made under section 204(2)(a)(i) or (ii); and
  - (b) the place where the animal or other thing was seized is—
    - (i) a public place; or
    - (ii) a place where the notice is unlikely to be read by the former owner.
- (4) If the decision was made under section 204(2)(a)(i) or (ii), the information notice may be given by leaving it at the place

[s 206]

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where the animal or other thing was seized, in a conspicuous position and in a reasonably secure way.

## **206 When exhibited animal or other thing becomes property of the State**

An exhibited animal or other thing becomes the property of the State if—

- (a) it is forfeited to the State under section 204(2); or
- (b) the owner of the animal or thing and the State agree, in writing, to transfer ownership of it to the State.

## **207 How property may be dealt with**

- (1) This section applies if, under section 206, an exhibited animal or other thing becomes the property of the State.
- (2) The chief executive may deal with the exhibited animal or other thing as the chief executive considers appropriate, including, for example, by destroying it or giving it away.
- (3) The chief executive must not deal with the exhibited animal or other thing in a way that could prejudice the outcome of an appeal against the forfeiture of which the chief executive is aware.
- (4) Subsection (3) does not limit an inspector's power under section 203 to destroy an animal.
- (5) If the State sells the exhibited animal or other thing, it may, after deducting the following, return the proceeds of the sale to the former owner of the animal or thing—
  - (a) the costs of the sale;
  - (b) any costs it recovers from the former owner under section 237.
- (6) The chief executive may deal with the exhibited animal or other thing for the State.

- (7) This section is subject to a decision, direction or order under chapter 7, part 3 or 4 about the exhibited animal or other thing.

## **208 Power of destruction for immediate biosecurity risk**

Without limiting section 207(2), an inspector may destroy an exhibited animal or other thing seized under division 4 and forfeited under this division if the inspector reasonably believes the animal or thing poses an immediate biosecurity risk.

## **Division 7 Other information-obtaining powers of inspectors**

### **209 Power to require name and address**

- (1) This section applies if an inspector—
- (a) finds a person committing an offence against this Act; or
  - (b) finds a person in circumstances that lead the inspector to reasonably suspect the person has just committed an offence against this Act; or
  - (c) has information that leads the inspector to reasonably suspect a person has just committed an offence against this Act; or
  - (d) reasonably believes the person is a responsible person for an exhibited animal and proposes to give the person an exhibited animal direction.
- (2) The inspector may require the person to state the person's name and residential address.
- (3) The inspector may also require the person to give evidence of the correctness of the stated name or address if, in the circumstances, it would be reasonable to expect the person to—

[s 210]

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- (a) be in possession of evidence of the correctness of the stated name or address; or
  - (b) otherwise be able to give the evidence.
- (4) When making a personal details requirement, the inspector must give the person an offence warning for the requirement.
- (5) A requirement under this section is a *personal details requirement*.

## **210 Offence to contravene personal details requirement**

- (1) A person of whom a personal details requirement has been made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) A person may not be convicted of an offence under subsection (1) unless—
- (a) for a personal details requirement given in relation to an exhibited animal direction—the direction is given to the person and the person is found guilty of an offence against section 188 of not complying with the direction; or
  - (b) otherwise—the person is found guilty of the offence in relation to which the personal details requirement was made.

## **211 Power to require production of document**

- (1) An inspector may require a person to make available for inspection by an inspector, or to produce to the inspector for inspection, at a reasonable time and place nominated by the inspector—
- (a) a document issued to the person under this Act; or
  - (b) a document required to be kept by the person under—
    - (i) this Act; or

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- (ii) another Act or a law of the Commonwealth or another State, if the document relates to dealing with exhibited animals; or
  - (c) if a document or information to which paragraph (b) applies is stored or recorded by means of a device—a document that is a clear written reproduction of the stored or recorded document or information.
- (2) A requirement under subsection (1) is a *document production requirement*.
  - (3) For an electronic document, compliance with the document production requirement requires the making available or production of a clear written reproduction of the electronic document.
  - (4) The inspector may keep the document to copy it.
  - (5) If the inspector copies the document, or an entry in the document, the inspector may require the person responsible for keeping the document to certify the copy as a true copy of the document or entry.
  - (6) A requirement under subsection (5) is a *document certification requirement*.
  - (7) The inspector must return the document to the person as soon as practicable after copying it.
  - (8) However, if a document certification requirement is made of a person, the inspector may keep the document until the person complies with the requirement.

## **212 Offence to contravene document production requirement**

- (1) A person of whom a document production requirement has been made must comply with the requirement unless the person has a reasonable excuse.  
Maximum penalty—50 penalty units.
- (2) It is not a reasonable excuse for a person to fail to comply with a document production requirement on the basis that

[s 213]

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complying with the requirement might tend to incriminate the person or expose the person to a penalty.

*Note—*

See, however, section 222.

- (3) The inspector must inform the person, in a way that is reasonable in the circumstances—
  - (a) that the person must comply with the document production requirement even though complying might tend to incriminate the person or expose the person to a penalty; and
  - (b) that, under section 222, there is a limited immunity against the future use of the information or document given in compliance with the requirement.
- (4) If the person fails to comply with the document production requirement when the inspector has failed to comply with subsection (3), the person can not be convicted of the offence against subsection (1).
- (5) If a court convicts a person of an offence against subsection (1), the court may, as well as imposing a penalty for the offence, order the person to comply with the document production requirement.

### **213 Offence to contravene document certification requirement**

- (1) A person of whom a document certification requirement has been made must comply with the requirement unless the person has a reasonable excuse.  
Maximum penalty—50 penalty units.
- (2) It is not a reasonable excuse for a person to fail to comply with a document certification requirement on the basis that complying with the requirement might tend to incriminate the person or expose the person to a penalty.

*Note—*

See, however, section 222.

- (3) The inspector must inform the person, in a way that is reasonable in the circumstances—
  - (a) that the person must comply with the document certification requirement even though complying might tend to incriminate the person or expose the person to a penalty; and
  - (b) that, under section 222, there is a limited immunity against the future use of the information or document given in compliance with the requirement.
- (4) If the person fails to comply with the document certification requirement when the inspector has failed to comply with subsection (3), the person can not be convicted of the offence against subsection (1).

## **214 Power to require information**

- (1) This section applies if an inspector reasonably believes—
  - (a) an offence against this Act has been committed; and
  - (b) a person may be able to give information about the offence.
- (2) The inspector may, by notice given to the person, require the person to give the inspector information related to the offence at a stated reasonable time and place.
- (3) A requirement under subsection (2) is an *information requirement*.
- (4) For information that is an electronic document, compliance with the information requirement requires the giving of a clear image or written version of the electronic document.
- (5) In this section—

*information* includes a document.

[s 215]

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## **215 Offence to contravene information requirement**

- (1) A person of whom an information requirement is made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) It is a reasonable excuse for an individual not to give the information if giving the information might tend to incriminate the individual or expose the individual to a penalty.

# **Part 4 Miscellaneous provisions relating to inspectors**

## **Division 1 Damage**

### **216 Duty to avoid inconvenience and minimise damage**

In exercising a power, an inspector must take all reasonable steps to cause as little inconvenience, and do as little damage, as possible.

*Note—*

See also section 218.

### **217 Notice of relevant event**

- (1) This section applies if—
- (a) an inspector is exercising, or purporting to exercise, a power; and
  - (b) either of the following (each a *relevant event*) happens—



- (i) the inspector kills or injures an animal or damages another thing;
  - (ii) a person (the *directed person*) acting under the direction or authority of the inspector kills or injures an animal or damages another thing.
- (2) However, this section does not apply to injury or damage the inspector reasonably considers is trivial.
- (3) Also, this section does not apply if the inspector reasonably believes—
  - (a) there is no-one apparently in possession of the animal or other thing; or
  - (b) the animal or other thing has been abandoned.
- (4) The inspector must give notice of the relevant event to the person who appears to the inspector to be an owner, or person in control, of the animal or other thing.
- (5) However, if for any reason it is not practicable to comply with subsection (4), the inspector must—
  - (a) leave the notice at the place where the relevant event happened; and
  - (b) ensure it is left in a conspicuous position and in a reasonably secure way.
- (6) The inspector may delay complying with subsection (4) or (5) if the inspector reasonably suspects complying with the subsection may frustrate or otherwise hinder an investigation by the inspector.
- (7) The delay may be only for so long as the inspector continues to have the reasonable suspicion and remains in the vicinity of the place.
- (8) If the inspector believes the animal was killed or injured or the other thing was damaged because of circumstances beyond the control of the inspector or the directed person, the inspector may state the belief in the notice.

[s 218]

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*Example of circumstances for subsection (8)—*

a latent defect in a thing

- (9) The notice must state—
- (a) particulars of the relevant event; and
  - (b) that a person who has suffered loss or damage because of the relevant event may claim compensation under section 218.

## **Division 2                      Compensation**

### **218      Compensation**

- (1) A person may claim compensation from the State if the person incurs loss because of the exercise, or purported exercise, of a power by or for an inspector including a loss arising from compliance with a requirement made of the person under this Act.
- (2) However, subsection (1) does not include loss arising from a lawful seizure or lawful forfeiture.
- (3) The compensation may be claimed and ordered in a proceeding—
  - (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or
  - (b) for an alleged offence against this Act the investigation of which gave rise to the claim for compensation.
- (4) A court may order the payment of compensation only if it is satisfied it is just to make the order in the circumstances of the particular case.
- (5) In considering whether it is just to order compensation, the court must have regard to any relevant offence committed by the claimant.

- (6) A regulation may prescribe other matters that may, or must, be taken into account by the court when considering whether it is just to order compensation.
- (7) Section 216 does not provide for a statutory right of compensation other than is provided by this section.
- (8) In this section—  
*loss* includes costs and damage.

### **Division 3                    Other offences relating to inspectors**

#### **219    Giving inspector false or misleading information**

- (1) A person must not, in relation to the administration of this Act, give an inspector information that the person knows is false or misleading in a material particular.  
Maximum penalty—200 penalty units.
- (2) Subsection (1) applies to information given in relation to the administration of this Act whether or not the information was given in response to a specific power under this Act.
- (3) However, subsection (1) does not apply to a person if the person, when giving the information—
  - (a) tells the inspector, to the best of the person's ability, how it is false or misleading; and
  - (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.
- (4) In this section—  
*information* includes a document containing information.

[s 220]

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## **220 Obstructing inspector**

- (1) A person must not obstruct an inspector exercising a power, or someone helping an inspector exercising a power, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (2) If a person has obstructed an inspector, or someone helping an inspector, and the inspector decides to proceed with the exercise of the power, the inspector must warn the person that—
- (a) it is an offence to cause an obstruction unless the person has a reasonable excuse; and
- (b) the inspector considers the person's conduct an obstruction.
- (3) In this section—

*obstruct* includes assault, hinder, resist, attempt to obstruct and threaten to obstruct.

## **221 Impersonating inspector**

A person must not impersonate an inspector.

Maximum penalty—100 penalty units.

## **Division 4 Other provisions**

### **222 Evidential immunity for complying with particular requirements**

- (1) Subsection (2) applies if an individual—
- (a) gives or produces information or a document to an inspector under section 182(1); or
- (b) makes available for inspection by, or produces to, an inspector a document under section 211(1); or

- (c) certifies a copy of a document or an entry in a document under section 211(5).
- (2) Evidence of the information or document, and other evidence directly or indirectly derived from the information or document, is not admissible against the individual in any proceeding to the extent it tends to incriminate the individual, or expose the individual to a penalty, in the proceeding.
- (3) Subsection (2) does not apply to a proceeding about the false or misleading nature of the information or anything in the document or in which the false or misleading nature of the information or document is relevant evidence.

## **Chapter 7 Evidence and proceedings**

### **Part 1 Evidence**

#### **223 Application of pt 1**

This part applies to a proceeding under or in relation to this Act.

#### **224 Appointment and authority**

The following must be presumed unless a party to the proceeding, by reasonable notice, requires proof of it—

- (a) the chief executive's appointment;
- (b) an inspector's appointment;
- (c) the authority of the chief executive or an inspector to do anything under this Act.

## **225 Signature**

A signature purporting to be the signature of the chief executive or an inspector is evidence of the signature it purports to be.

## **226 Evidentiary aids**

- (1) A certificate purporting to be signed by the chief executive stating any of the following matters is evidence of the matter—
  - (a) a stated document is 1 of the following things made, given, issued or kept under this Act—
    - (i) an appointment, approval or decision;
    - (ii) a notice, direction or requirement;
    - (iii) an exhibited animal authority;
    - (iv) a special exhibition approval;
    - (v) a record or an extract from a record;
    - (vi) a code of practice;
    - (vii) a guideline;
    - (viii) a register;
  - (b) a stated document is another document kept under this Act;
  - (c) a stated document is a copy of, or an extract from or part of, a thing mentioned in paragraph (a) or (b);
  - (d) on a stated day, or during a stated period, a stated person was or was not the authority holder;
  - (e) on a stated day, or during a stated period, an exhibited animal authority—
    - (i) was or was not in force; or
    - (ii) was or was not subject to a stated condition;

- (f) on a stated day an exhibition licence was amended by the grant of a special exhibition approval;
  - (g) on a stated day an exhibited animal authority was suspended for a stated period or cancelled;
  - (h) on a stated day, or during a stated period, a stated appointment, including a person's appointment as an inspector, was or was not in force for a stated person or thing;
  - (i) on a stated day—
    - (i) a stated person was given a stated notice or direction under this Act; or
    - (ii) a stated requirement under this Act was made of a stated person; or
    - (iii) a stated amount was payable under this Act by a stated person.
- (2) In a proceeding in which the State applies under section 238 to recover costs incurred by the State, a certificate by the chief executive stating that stated costs were incurred and the way in which, and purpose for which, they were incurred is evidence of the matters stated.

## **Part 2 Proceedings generally**

### **227 Offences against this Act**

- (1) An offence against this Act is a summary offence.
- (2) A proceeding for the offence must start within—
  - (a) 1 year after the commission of the offence; or
  - (b) 6 months after the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.

[s 228]

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## **228 Statement of complainant's knowledge**

In a complaint starting a proceeding for an offence against this Act, a statement that the matter of the complaint came to the complainant's knowledge on a stated day is evidence the matter came to the complainant's knowledge on that day.

## **229 Allegation of false or misleading information or document**

In any proceeding for an offence against this Act involving false or misleading information, or a false or misleading document, it is enough for a charge to state that the information or document was 'false or misleading' to the person's knowledge, without specifying which.

## **230 Responsibility for act or omission of representative**

- (1) This section applies in a proceeding for an offence against this Act.
- (2) If it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show—
  - (a) the act was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.
- (3) An act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.
- (4) In this section—

*representative* means—

  - (a) for a corporation—an executive officer, employee or agent of the corporation; or



- (b) for an individual—an employee or agent of the individual.

*state of mind*, of a person, includes—

- (a) the person's knowledge, intention, opinion, belief or purpose; and
- (b) the person's reasons for the intention, opinion, belief or purpose.

## **Part 3                      Court orders**

### **231      Disposal order**

- (1) If a person is convicted of an offence against this Act, the court may make an order for the disposal of any of the following things the person owns—
  - (a) the animal or anything else that was the subject of, or used to commit, the offence;
  - (b) another animal;
  - (c) another thing the court considers is likely to be used by the person or another person in committing a further offence against this Act.
- (2) The court may make a disposal order for an animal or other thing—
  - (a) whether or not it has been seized under chapter 6, part 3, division 4; and
  - (b) if the animal or thing has been seized—whether or not it has been returned to its former owner.
- (3) If a disposal order authorises the sale of an animal, the order may direct—
  - (a) the way in which the sale is to take place; or

[s 232]

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- (b) how the proceeds of the sale are to be distributed.
- (4) The court may make any other order to enforce the disposal order that it considers appropriate.
- (5) This section does not limit the court's powers under another law.

### **232 Prohibition order**

- (1) If a person is convicted of an animal offence, the court may make an order that the person must not buy or otherwise acquire or take possession of—
  - (a) any animal; or
  - (b) a stated species of animal; or
  - (c) any animal, or a stated species of animal, for trade or commerce or another stated purpose.
- (2) A prohibition order may be made permanently or for a stated period.

*Note—*

See section 236.

### **233 Order against owner in particular case**

- (1) This section applies if—
  - (a) a person is convicted of an animal offence; and
  - (b) someone else (the *owner*) owns the animal the subject of the offence; and
  - (c) the court considers—
    - (i) an act done, or omission made, by the owner contributed to, or allowed, the commission of the offence; and
    - (ii) the owner is, and will continue to be, incapable of discharging the owner's general exhibition and

dealing obligation for exhibiting or dealing with the animal.

- (2) The court may make an order of the type mentioned in section 231 or 232 against the owner as if the owner had been convicted of the animal offence.
- (3) An order under subsection (2) must state whether it is a disposal order or a prohibition order.

### **234 Criteria for making disposal or prohibition order**

- (1) The court may make a disposal order or prohibition order against a person only if satisfied, on the balance of probabilities, it is just to make the order in the circumstances.
- (2) In considering whether it is just to make the order, the court must consider the following—
  - (a) the nature of the offence to which the hearing relates;
  - (b) the effect of the offence on the relevant risks and relevant adverse effects associated with exhibiting or dealing with an animal the subject of, or used to commit, the offence;
  - (c) the welfare of the animal and any other animal owned by the person;
  - (d) the likelihood of the person committing another offence against this Act.
- (3) Subsection (2) does not limit the matters the court may consider.

### **235 Procedure and power for making disposal or prohibition order**

- (1) A disposal order or prohibition order may be made only—
  - (a) on the court's initiative; or
  - (b) on an application by the prosecution, which may be made at any time.

[s 236]

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- (2) The court must not make an order under section 233(2) unless the owner under that section has been given an opportunity to be heard about whether the order should be made.
- (3) In deciding whether to make a disposal order or prohibition order, the court—
  - (a) may require notice to be given to anyone the court considers appropriate, including, for example, the animal's owner if the person against whom the order is sought is not the owner; and
  - (b) must not refuse to hear a person to whom a notice under paragraph (a) is given.
- (4) The court may make a disposal order and a prohibition order against the same person in relation to the same offence.

### **236 Review of prohibition order**

- (1) This section applies if a prohibition order is made against a person permanently or for a stated period of 5 years or more.
- (2) The court that made the prohibition order (whether or not constituted by the same judicial officer) may, on the application of the person, amend or cancel the order (a *review order*).
- (3) However—
  - (a) the person can not apply for a review order if the person has within 12 months before the date of the application applied for a review order in relation to the prohibition order; and
  - (b) the court must not make a review order within 5 years after the prohibition order was made.
- (4) The applicant must give the chief executive notice of the application.
- (5) In deciding the application, the court must—
  - (a) give the chief executive, and anyone else it considers appropriate, an opportunity to be heard; and

- (b) consider the matters mentioned in section 234(2) in relation to the prohibition order and any change relevant to the matters since the order was made.

## Part 4 Remedies

### 237 Recovery of seizure, compliance or destruction costs

- (1) This section applies if the State incurs a cost for an inspector to do 1 or more of the following acts in relation to an animal—
  - (a) if the animal is seized under chapter 6, part 3, division 4—
    - (i) taking possession of, or moving, it; or
    - (ii) taking action to restrict access to it; or
    - (iii) providing it with accommodation, food, rest, water or other living conditions; or
    - (iv) arranging for it to receive veterinary or other treatment;
  - (b) if an exhibited animal direction given in relation to the animal has not been complied with—taking action to ensure the direction is complied with;
  - (c) if the animal is destroyed under section 203—destroying it.
- (2) The State may recover the cost from the animal's owner or former owner if incurring the cost was necessary and reasonable—
  - (a) to prevent or minimise a relevant risk or relevant adverse effect associated with exhibiting or dealing with the animal; or

[s 238]

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- (b) if the animal is destroyed under section 203—for the destruction.
- (3) However, if a cost mentioned in subsection (1)(a)(iii) or (iv) is for a period during which the animal was retained under section 201(2)(d), it may be recovered only if the animal's retention was reasonably required as evidence.

### **238 Recovery of costs of investigation**

- (1) This section applies if—
  - (a) a person is convicted of an offence against this Act; and
  - (b) the State applies to a court for an order against the person for the payment of costs the State has incurred during the investigation of the offence; and
  - (c) the court finds the State reasonably incurred the costs.
- (2) The court may order the person to pay the State an amount equal to the costs if satisfied it would be just to make the order in the circumstances of the particular case.
- (3) This section does not limit the court's powers under the *Penalties and Sentences Act 1992* or another law.
- (4) An application to a court under this section, and any order made by the court on the application, is a judgment in the court's civil jurisdiction.
- (5) Any issue is to be decided on the balance of probabilities.

### **239 Compensation because of animal offence**

- (1) A court may order a person convicted of an animal offence to pay—
  - (a) compensation to a person who, because of the commission of the offence, has—
    - (i) suffered damage or loss to property; or

- (ii) incurred costs in avoiding or minimising, or attempting to avoid or minimise, damage or loss to property; or
  - (b) an amount to a person for costs incurred by the person in—
    - (i) taking possession of, or moving, the animal to which the offence relates; or
    - (ii) providing the animal with accommodation, food, rest, water or other living conditions; or
    - (iii) arranging for the animal to receive veterinary or other treatment.
- (2) However, an order under subsection (1) must not be made in favour of the State.

## Part 5                      Reviews

### Division 1                Preliminary

#### 240    Definitions for pt 5

In this part—

*appeal information notice* see section 246(3).

*decision* includes a failure to make a decision if the failure is taken to be a decision to refuse an application for—

- (a) the grant, renewal or restoration of an exhibition licence; or
- (b) the amendment of an exhibition licence, including by the grant of a special exhibition approval; or
- (c) the grant or amendment of an interstate exhibitors permit; or

[s 241]

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(d) the grant, renewal or amendment of an accreditation.

*forfeiture decision* means an original decision under section 204(2).

*internal review* see section 242(1).

*internal review application* see section 242(1).

*internal review decision* see section 245(1)(b).

*original decision* see section 242(1).

*QCAT notice* means a notice complying with the QCAT Act, section 157(2).

*seizure decision* means an original decision for the seizure of an exhibited animal, other thing or evidence, if the decision was made under section 190(2), 191(2) or 192(2) or a warrant.

## Division 2 Internal reviews

### 241 External review or appeal process starts with internal review

A person may not apply to QCAT for review of a decision or appeal against a decision to the court unless the person has applied for an internal review of the decision under this division.

### 242 Who may apply for internal review

- (1) A person who has been given, or is entitled to be given, an information notice for a decision made under this Act (an *original decision*) may apply (an *internal review application*) to the chief executive for a review (an *internal review*) of the decision under this division.
- (2) A person who has not been given, but is entitled to be given, an information notice for an original decision may ask the chief executive for an information notice for the decision.



- (3) The failure by the chief executive to give a person an information notice for an original decision does not limit or otherwise affect the person's right to apply for an internal review of the decision under subsection (1).

### **243 Requirements for making application**

- (1) An internal review application must—
  - (a) be in the approved form; and
  - (b) if the applicant is given an information notice for the original decision to which the application relates—
    - (i) be supported by enough information to enable the chief executive to decide the application; and
    - (ii) be made within 14 days after the applicant is given the information notice.
- (2) However, the chief executive may, at any time, extend the time for making an internal review application.

### **244 Stay of operation of original decision**

- (1) An internal review application does not stay the original decision to which it relates.
- (2) However, the applicant may apply to the relevant body for a stay of the original decision.
- (3) The relevant body may stay the original decision to secure the effectiveness of the internal review and a later appeal to the court or an external review by QCAT.
- (4) The stay—
  - (a) may be given on conditions the relevant body considers appropriate; and
  - (b) operates for the period fixed by the relevant body; and
  - (c) may be amended or revoked by the relevant body.

[s 245]

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- (5) The period of the stay must not extend past the time when the chief executive makes an internal review decision about the original decision and any later period the relevant body allows the applicant to enable the applicant to appeal against, or apply for an external review of, the internal review decision.
- (6) An internal review application affects the original decision, or carrying out of the decision, only if the decision is stayed.
- (7) In this section—  
*relevant body* means—
  - (a) for a seizure or forfeiture decision—the court; or
  - (b) for another original decision—QCAT.

## **245 Internal review**

- (1) The chief executive must, within 20 days after receiving an internal review application made under section 243 (the *decision period*)—
  - (a) conduct an internal review of the original decision; and
  - (b) make a decision (the *internal review decision*) to—
    - (i) confirm the original decision; or
    - (ii) amend the original decision; or
    - (iii) substitute another decision for the original decision.
- (2) The application may be dealt with only by a person who—
  - (a) did not make the original decision; and
  - (b) is in a more senior office than the person who made the original decision.
- (3) Subsection (2)—
  - (a) applies despite the *Acts Interpretation Act 1954*, section 27A; and

- (b) does not apply to an original decision made by the chief executive personally.
- (4) If the chief executive does not make a decision under subsection (1)(b) within the decision period, the chief executive is taken to have made an internal review decision confirming the original decision.
- (5) If the internal review decision confirms, or under subsection (4) or section 246(4), is taken to confirm, the original decision, for the purpose of an appeal or external review, the original decision is taken to be the internal review decision.
- (6) If the internal review decision amends the original decision, for the purpose of an appeal or external review, the original decision as amended is taken to be the internal review decision.

## **246 Notice of internal review decision**

- (1) Within 10 days after making an internal review decision, the chief executive must give the applicant notice of the decision (the *decision notice*).
- (2) If the internal review decision relates to an original decision other than a seizure or forfeiture decision and is not the decision sought by the applicant, the decision notice must be accompanied by a QCAT notice for the internal review decision.
- (3) If the internal review decision relates to a seizure or forfeiture decision and is not the decision sought by the applicant, the decision notice must include a notice (an *appeal information notice*) stating the following—
  - (a) the day the notice is given to the applicant;
  - (b) the reasons for the internal review decision;
  - (c) that the applicant may, within 28 days after the notice is given, appeal against the internal review decision to the court;
  - (d) how to appeal;

[s 247]

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- (e) that the applicant may apply to the court for a stay of the decision.
- (4) If the chief executive does not give the decision notice within the 10 days, the chief executive is taken to have made an internal review decision confirming the original decision.
- (5) If the chief executive is taken, under subsection (4) or section 245(4), to have made an internal review decision confirming the original decision, the applicant is entitled to be given—
  - (a) if the original decision was a seizure or forfeiture decision—an appeal information notice; or
  - (b) if the original decision was another decision—a QCAT notice.

#### **247 Applicant may ask for QCAT or appeal information notice**

- (1) A person who has not been given, but is entitled to be given, a QCAT notice or an appeal information notice for an internal review decision may ask the chief executive for a QCAT notice or appeal information notice for the decision.
- (2) The failure by the chief executive to give a person a QCAT notice for an internal review decision does not limit or otherwise affect the person's right to apply for an external review of the decision under section 248.
- (3) The failure by the chief executive to give a person an appeal information notice for an internal review decision does not limit or otherwise affect the person's right to appeal, under section 249, against the decision.

### **Division 3 External reviews by QCAT**

#### **248 Who may apply for external review**

A person given, or entitled to be given, a QCAT notice under section 246(2) or (5)(b) for an internal review decision may

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apply, as provided under the QCAT Act, to QCAT for an external review of the decision.

*Note—*

The QCAT Act, section 22(3) provides that QCAT may stay the operation of a reviewable decision under that Act, either on application by a person or on its own initiative.

## **Division 4                      Appeals**

### **249      Who may appeal**

A person given, or entitled to be given, an appeal information notice under section 246(3) or (5)(a) and who is dissatisfied with the internal review decision may appeal to the court against the internal review decision.

### **250      Procedure for an appeal to the court**

- (1) An appeal is started by filing a notice of appeal with the clerk of the court.
- (2) A copy of the notice must be served on the chief executive.
- (3) The notice of appeal must be filed within 28 days after the appellant receives notice of the internal review decision appealed against.
- (4) However, at any time, the court may extend the time for filing the notice of appeal.
- (5) The notice of appeal must state fully the grounds of the appeal.

### **251      Stay of operation of internal review decision**

- (1) The court may grant a stay of the operation of an internal review decision appealed against to secure the effectiveness of the appeal.
- (2) A stay—

[s 252]

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- (a) may be granted on conditions the court considers appropriate; and
  - (b) operates for the period fixed by the court; and
  - (c) may be amended or revoked by the court.
- (3) The period of a stay stated by the court must not extend past the time when the court decides the appeal.
- (4) An appeal against a decision affects the decision, or the carrying out of the decision, only if the decision is stayed.

## **252 Powers of court on appeal**

- (1) In deciding an appeal, the court—
- (a) has the same powers as the chief executive in making the internal review decision appealed against; and
  - (b) is not bound by the rules of evidence; and
  - (c) must comply with natural justice.
- (2) An appeal is by way of rehearing.
- (3) The court may—
- (a) confirm the internal review decision; or
  - (b) set aside the internal review decision and substitute another decision; or
  - (c) set aside the internal review decision and return the matter to the chief executive with directions the court considers appropriate.

## **253 Effect of decision of court on appeal**

- (1) If the court sets aside the internal review decision and returns the matter to the chief executive with directions the court considers appropriate, and the chief executive makes a new decision in accordance with the directions, the new decision is not subject to a review or appeal under this part.

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- (2) If the court sets aside the internal review decision and substitutes another decision—
- (a) the substituted decision is taken to be the decision of the chief executive; and
  - (b) the chief executive must give effect to the decision as if it were the original decision of the chief executive and no application for review or appeal had been made.

## **Chapter 8      General provisions**

### **254    False representations about authority or accreditation**

- (1) A person must not represent any of the following—
- (a) the person has been granted an exhibited animal authority, special exhibition approval or accreditation unless the person has been granted the authority, approval or accreditation;
  - (b) the person is operating under an exhibited animal authority, special exhibition approval or accreditation if the person is not authorised to operate under the authority, approval or accreditation;
  - (c) the person is operating under an exhibited animal authority, special exhibition approval or accreditation if the authority, approval or accreditation is no longer in force.

Maximum penalty—100 penalty units.

- (2) A person must not possess a document that falsely purports to be—
- (a) an exhibited animal authority; or
  - (b) a special exhibition approval; or
  - (c) an accreditation; or

[s 255]

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- (d) a copy of a document mentioned in paragraph (a), (b) or (c).

Maximum penalty—100 penalty units.

## **255 Giving chief executive false or misleading information**

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

Maximum penalty—200 penalty units.

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

*information* includes a document containing information.

## **256 Confidentiality of information**

- (1) This section applies to a person who is or was—
  - (a) the chief executive; or
  - (b) an inspector; or
  - (c) another person involved in administering this Act or a relevant repealed provision, including, for example, an officer or employee of the department.
- (2) The person must not disclose confidential information gained by the person in administering or performing a function under this Act or the relevant repealed provision.



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Maximum penalty—50 penalty units.

- (3) However, the person may disclose confidential information if—
- (a) the disclosure is for a purpose under this Act or the relevant repealed provision; or
  - (b) the disclosure is for the purpose of minimising relevant risks or relevant adverse effects in the State or another State and the disclosure is to any of the following—
    - (i) the State;
    - (ii) a department;
    - (iii) an entity, established under an Act, that deals with matters relating to relevant risks or relevant adverse effects;
    - (iv) a local government;
    - (v) the Commonwealth or another State, or an entity of the Commonwealth or another State; or
  - (c) the information is about dealing with an exhibited animal and the disclosure is—
    - (i) to the department in which the Nature Conservation Act is administered; and
    - (ii) for a purpose under that Act; or
  - (d) the disclosure is with the consent of the person to whom the information relates; or
  - (e) the disclosure is otherwise required or permitted by law.

- (4) In this section—

***confidential information*** means information, other than information that is publicly available—

- (a) about a person's personal affairs or reputation; or
- (b) that would be likely to damage the commercial activities of a person to whom the information relates.

[s 257]

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## **257 Personal information on register under this Act**

- (1) This section applies to each of the following—
  - (a) the register of exhibited animal authorities required to be kept under section 100;
  - (b) the register of accredited persons required to be kept under section 129.
- (2) If the chief executive is satisfied the inclusion of a person's address on a register would place the personal safety of the person or another person at risk, the person's address must not be set out in a part of the register that is available to the public or in a copy of information from a part of the register that is available to the public.

## **258 Delegation by chief executive**

The chief executive may delegate the chief executive's powers under this Act to an appropriately qualified public service employee or inspector.

## **259 Civil liability of person for helping inspector**

- (1) This section applies if—
  - (a) a person is acting under the direction of an inspector; or
  - (b) an inspector asks a person to help the inspector to exercise a power under this Act and the person is giving the inspector the help.
- (2) The person does not incur civil liability for engaging, or for the result of engaging, in conduct in connection with acting under the direction or giving the help.
- (3) If subsection (2) prevents liability attaching to a person, the liability attaches instead to the State.
- (4) If liability attaches to the State under subsection (3), the State may recover contribution from the person but only if the conduct was engaged in—
  - (a) other than in good faith; and

(b) with gross negligence.

- (5) This section does not apply to a person who is a State employee under the *Public Service Act 2008*, section 26B(4) engaging in conduct in an official capacity under section 26C of that Act.

*Note—*

For protection from civil liability in relation to State employees, see the *Public Service Act 2008*, section 26C.

- (6) In this section—

***civil liability*** includes liability for the payment of costs ordered to be paid in a proceeding for an offence against this Act.

***conduct*** means an act or an omission to perform an act.

## **260 Approval of forms**

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

## **261 Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may be made about the following—
- (a) identifying exhibited animals;
  - (b) qualifications, training or experience required by persons acting under exhibited animal authorities;
  - (c) fees payable under this Act;
  - (d) imposing a penalty of no more than 20 penalty units for contravention of a provision of a regulation.

## Chapter 9 Transitional provisions

### Part 1 Preliminary

#### 262 Definitions for ch 9

In this chapter—

***Administration Regulation*** means the *Nature Conservation (Administration) Regulation 2006*.

***declared pest animal*** means an animal that was a declared pest under the Stock Route Management Act immediately before the commencement of the Biosecurity Act, section 550.

***declared pest permit*** means a declared pest permit under the Stock Route Management Act, previous chapter 2, part 7.

*Notes—*

- 1 For transitional provisions relating to the continuation of declared pest permits, see the Biosecurity Act, chapter 19, part 2 and schedule 3, section 60.
- 2 Immediately before the commencement of the Biosecurity Act, section 545, the short title of the *Stock Route Management Act 2002* was the *Land Protection (Pest and Stock Route Management Act) 2002*.

***general fisheries permit*** means the permit of that name under the *Fisheries Act 1994*.

***noxious fisheries resources*** means noxious fisheries resources under the *Fisheries Act 1994* as in force immediately before the commencement of the Biosecurity Act, section 542.

***Pest Management Regulation*** means the *Land Protection (Pest and Stock Route Management) Regulation 2003*.

***pre-amended***, in relation to a provision of the Administration Regulation or Wildlife Management Regulation, means the provision as in force immediately before the commencement.

***previous*** means—

- (a) in relation to a provision of the Stock Route Management Act, the provision as in force immediately before the commencement of the Biosecurity Act, section 550; or
- (b) in relation to a provision of the Pest Management Regulation, the provision as in force—
  - (i) immediately before the commencement of the Biosecurity Act, section 550; or
  - (ii) if the regulation has sooner expired or been repealed—immediately before the expiry or repeal.

***relevant entity*** means an entity prescribed for the Stock Route Management Act, previous section 60(2) and, at any time, was an entity mentioned in the Pest Management Regulation, previous section 8B, 8C, 8D or 8G.

***relevant purpose*** means a purpose prescribed for the Stock Route Management Act, previous section 60(2), and at any time was a purpose mentioned in the Pest Management Regulation, previous section 8B, 8C, 8D or 8G.

*Editor's note—*

Pest Management Regulation—

- section 8B (Circus entertainment)
- section 8C (Prescribed education program)
- section 8D (Magic act)
- section 8G (Display in zoo or filming for prescribed film or television production)

***Stock Route Management Act*** means the *Stock Route Management Act 2002*.

***wildlife demonstrator licence*** means the licence of that name mentioned in the Administration Regulation, pre-amended section 11(g).

[s 263]

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*wildlife exhibitor licence* means the licence of that name mentioned in the Administration Regulation, pre-amended section 11(h).

*Wildlife Management Regulation* means the *Nature Conservation (Wildlife Management) Regulation 2006*.

## Part 2 Declared pest permits

### 263 Undecided application for declared pest permit

- (1) This section applies if—
  - (a) before the commencement, an application (the *original application*) was made under the Stock Route Management Act, previous section 58 for or to renew a declared pest permit for a relevant entity to introduce or keep a declared pest animal for a relevant purpose; and
  - (b) the original application was not decided by the commencement.
- (2) Subject to subsections (3) and (4), the original application is taken to be an application under section 50(1) for the grant of an exhibition licence for the relevant entity to exhibit and deal with the animal for the relevant purpose.
- (3) The application is not required to be accompanied by the fee mentioned in section 51(1)(b)(ii).
- (4) Also, if—
  - (a) the applicant held a declared pest permit of the type applied for at the time of making the original application; and
  - (b) an official assessment (application) is carried out for deciding the application under this Act;the applicant is not required to pay the prescribed fee mentioned in section 105(2).

- (5) To remove any doubt, it is declared that section 54 applies to the application even if the applicant has given further information or documents under the Stock Route Management Act, previous section 59.
- (6) This section applies despite anything to the contrary in the Biosecurity Act, section 507 or schedule 3, sections 19 and 59.

## **264 Fee for first exhibition licence application**

- (1) This section applies if—
  - (a) immediately before the commencement, a relevant entity held a declared pest permit for introducing or keeping a declared pest animal for a relevant purpose; and
  - (b) the relevant entity applies under this Act for the first time for the grant of an exhibition licence to exhibit and deal with the animal for the relevant purpose.
- (2) Section 51(1)(b)(ii) applies to the application as if the amount of the fee prescribed by regulation under that provision were equivalent to the amount of the fee prescribed by regulation under section 87(3)(b) for an application to renew an exhibition licence.

## **265 Exhibition of particular circus macaque**

- (1) Subsections (2) and (3) apply if—
  - (a) immediately before the commencement, a relevant entity—
    - (i) held a declared pest permit for introducing or keeping declared pest animals for circus entertainment; and
    - (ii) kept a macaque under the permit, whether or not the macaque was identified as a particular animal in the permit; and

[s 265]

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- (b) the relevant entity is granted an exhibition licence to exhibit and deal with the macaque; and
  - (c) the macaque is identified in the licence as a particular animal; and
  - (d) either—
    - (i) the permit, as held by the relevant entity, had continued in force under the Biosecurity Act, schedule 3, section 60 until the licence was granted; or
    - (ii) the relevant entity had, before the commencement, made an application to renew the permit that was taken under section 263(2) to be an application under section 50(1) for which the licence was granted.
- (2) Sections 73 and 76 do not apply in relation to the macaque.
- (3) However, section 75 applies in relation to the macaque as if it were an authorised animal (category B).
- (4) Subsections (2) and (3) apply in relation to the macaque only while it is—
- (a) an authorised animal under an exhibition licence held by the relevant entity; and
  - (b) identified as a particular animal in the licence.
- (5) In this section—
- circus entertainment*** means the relevant purpose of a circus providing entertainment to the public.
- macaque*** means an animal of either of the following species—
- (a) crab-eating macaque (*Macaca fascicularis*);
  - (b) rhesus macaque (*Macaca mulatta*).



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## Part 3 Particular wildlife licences and fisheries permits

### Division 1 Existing licences and permits

#### 266 Continuation of wildlife demonstrator or exhibitor licence

- (1) This section applies if, immediately before the commencement, a wildlife demonstrator licence or wildlife exhibitor licence (each of which is a *continuing licence*) was in force.
- (2) The continuing licence continues in force until the term of the licence ends or the licence is sooner cancelled.
- (3) For subsection (2), the relevant pre-amended provisions continue to apply to the continuing licence as if the pre-amended licence provision had not been amended by this Act.
- (4) Also, for subsection (2), a pre-amended provision of the Administration Regulation or Wildlife Management Regulation that, immediately before the commencement, applied to the continuing licence continues to apply even if the provision is repealed.
- (5) Section 38 does not apply to exhibiting an animal to which the continuing licence relates while the licence continues in force under subsection (2).
- (6) In this section—  
*pre-amended licence provision*—
  - (a) for a wildlife demonstrator licence—means the Administration Regulation, pre-amended section 11(g);  
or
  - (b) for a wildlife exhibitor licence—means the Administration Regulation, pre-amended section 11(h).

*relevant pre-amended provisions*—

[s 267]

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- (a) for a wildlife demonstrator licence, means the following—
  - (i) the Administration Regulation, pre-amended sections 11(g) and 20(1)(g) and schedule 7, definition *prescribed period*;
  - (ii) the Wildlife Management Regulation, pre-amended sections 27(1)(a) and 113 and chapter 3, part 3, division 7; or
- (b) for a wildlife exhibitor licence, means the following—
  - (i) the Administration Regulation, pre-amended sections 11(h), 20(1)(h) and 126 and schedule 7, definition *prescribed period*;
  - (ii) the Wildlife Management Regulation, pre-amended sections 27(1)(b) and 113, chapter 3, part 3, division 8 and sections 195(d) and 199;
  - (iii) the *Nature Conservation (Estuarine Crocodile) Conservation Plan 2007*, schedule, definition *Queensland crocodile licence*, as in force immediately before the commencement.

## **267 Continuation of exhibition of noxious fish under fisheries permit**

- (1) This section applies if, immediately before the commencement of the Biosecurity Act, section 542—
  - (a) a general fisheries permit for an activity involving fish that were noxious fisheries resources was in force; and
  - (b) the fish were allowed to be exhibited under the permit.
- (2) The exhibition of the fish continues to be allowed under the general fisheries permit until the term of the permit ends or the permit is sooner cancelled.
- (3) Subsection (2) does not limit the *Fisheries Act 1994*, section 63.

- (4) Section 38 does not apply to exhibiting the fish while the exhibition of the fish is allowed under the general fisheries permit as mentioned in subsection (2).

## **Division 2                      Applications**

### **268      Undecided application for wildlife demonstrator or exhibitor licence**

- (1) This section applies if—
- (a) before the commencement, an application was made under the Administration Regulation, section 23 for the grant of a wildlife demonstrator licence or wildlife exhibitor licence for an animal; and
  - (b) the application was not decided by the commencement.
- (2) The application is taken to be an application under section 50(1) for the grant of an exhibition licence to exhibit and deal with the animal.

### **269      Undecided application for general fisheries permit for exhibition of noxious fisheries resources**

- (1) This section applies if—
- (a) before the commencement, an application was made under the *Fisheries Act 1994*, section 54 for the issue of a general fisheries permit under which the exhibition of fish that were noxious fisheries resources was to be allowed; and
  - (b) the application was not decided by the commencement.
- (2) The application is taken to be an application under section 50(1) for the grant of an exhibition licence to exhibit and deal with the fish.

[s 270]

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## **270 Fees for undecided application**

- (1) An application to which section 268(1) or 269(1) applies is not required to be accompanied by the fee mentioned in section 51(1)(b)(ii).
- (2) Also, if—
  - (a) the applicant held a permit or licence of the type applied for at the time of making the application; and
  - (b) an official assessment (application) is carried out for deciding the application under this Act;the applicant is not required to pay the prescribed fee mentioned in section 105(2).
- (3) This section applies despite sections 268(2) and 269(2).

## **271 Further information for undecided application**

To remove any doubt, it is declared that section 54 applies to an application for a permit or licence mentioned in section 268 or 269 even if the applicant has given—

- (a) further information or documents under the Administration Regulation, section 26; or
- (b) further information or evidence under the *Fisheries Act 1994*, section 54(2).

## **272 Fee for first exhibition licence application**

- (1) This section applies if—
  - (a) immediately before the commencement, a person held any of the following (each an *existing authorisation*)—
    - (i) a wildlife demonstrator licence for an animal;
    - (ii) a wildlife exhibitor licence for an animal;
    - (iii) a general fisheries permit for an activity involving fish that were noxious fisheries resources under which the fish were allowed to be exhibited; and

- (b) the person applies under this Act for the first time for the grant of an exhibition licence to exhibit and deal with the animal or fish in a way that is the same as, or similar to, the way the animal or fish was authorised to be exhibited and dealt with under the existing authorisation.
- (2) Section 51(1)(b)(ii) applies to the application as if the amount of the fee prescribed by regulation under that provision were equivalent to the amount of the fee prescribed by regulation under section 87(3)(b) for an application to renew an exhibition licence.

## Part 4                      Co-existing permits and licences

### 273      Fee exemption for particular licence amendment applications

- (1) This section applies if—
- (a) immediately before the commencement, an entity held at least 2 of the following (each an *existing authorisation*)—
    - (i) a declared pest permit for introducing or keeping a declared pest animal for a relevant purpose;
    - (ii) a wildlife exhibitor licence for an animal;
    - (iii) a general fisheries permit for an activity involving fish that were noxious fisheries resources under which the fish were allowed to be exhibited; and
  - (b) the entity is granted an exhibition licence to exhibit and deal with the animal or fish to which 1 of the existing authorisations applied immediately before the licence was granted; and

[s 274]

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- (c) the entity applies to amend the exhibition licence to authorise exhibiting and dealing with the animal or fish to which another existing authorisation applies.
- (2) The application is not required to be accompanied by the fee mentioned in section 94(4)(b)(ii).
- (3) This section stops applying to an entity for amending an exhibition licence when all the existing authorisations held by the entity have expired, or have been cancelled, or have otherwise ceased to have effect.

## **Chapter 10      Amendment of this Act and                          other legislation**

### **Part 1                      Amendment of this Act**

#### **274      Act amended**

This part amends the *Exhibited Animals Act 2015*.

#### **275      Amendment of long title**

Long title, from ‘and to amend’ —  
*omit.*

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## **Part 2                      Amendment of other legislation**

### **Division 1                Amendment of Biosecurity Act**

#### **276    Act amended**

This division amends the Biosecurity Act.

#### **277    Amendment of s 194 (Movement record requirement)**

(1) Section 194—

*insert—*

(3A) Also, the relevant person is not required to comply with subsection (2) if the animal is kept under an exhibited animal authority and the movement is allowed under the authority.

(2) Section 194—

*insert—*

(8) In this section—

*exhibited animal authority* see the *Exhibited Animals Act 2015*, section 29.

### **Division 2                Amendment of Nature Conservation Act**

#### **278    Act amended**

This division amends the Nature Conservation Act.

#### **279    Amendment of s 88A (Restriction on keeping or use of lawfully taken protected animal)**

Section 88A(1), after ‘Act’, first mention—

[s 280]

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*insert—*

or the *Exhibited Animals Act 2015*

**280 Amendment of s 91 (Restriction on release etc. of international and prohibited wildlife)**

Section 91(2)(c), after ‘Act’—

*insert—*

or the *Exhibited Animals Act 2015*

**281 Amendment of s 97 (Restriction on taking etc. of native wildlife in areas of major interest and critical habitats)**

(1) Section 97(2), ‘take, use, keep’—

*omit, insert—*

take

(2) Section 97—

*insert—*

(2A) A person, other than an authorised person, must not use or keep the wildlife, other than under—

(a) the regulation or conservation plan; or

(b) a licence, permit or other authority issued or given under a regulation or the *Exhibited Animals Act 2015*.

Maximum penalty—3000 penalty units or 2 years imprisonment.

(3) Section 97(4), ‘Subsection (3)’—

*omit, insert—*

Subsection (4)

(4) Section 97(2A) to (4)—

*renumber* as section 97(3) to (5).



## **Division 3                      Amendment of regulations**

### **282      Regulations amended in sch 3**

Schedule 3 amends the regulations mentioned in it.

## **Schedule 1      Exempted animals**

section 10(1)(a)

alpaca (*Lama pacos*)  
black rat (*Rattus rattus*)  
cat (*Felis catus* and *Prionailurus bengalensis x Felis catus*)  
cattle (*Bos taurus* and *Bos indicus*)  
chicken (*Gallus gallus*)  
dog (*Canis lupus familiaris*)  
donkey (*Equus asinus*)  
duck (domestic breeds of *Anas platyrhynchos*)  
fish that are aquaculture fisheries resources under the *Fisheries Act 1994*  
goat (*Capra hircus*)  
goose (*Anser spp.*)  
guinea pig (*Cavia porcellus*)  
horse (*Equus caballus*)  
house mouse (*Mus musculus*)  
llama (*Lama glama*)  
mule (*Equus caballus x Equus asinus*)  
pig (*Sus scrofa*)  
sewer rat (*Rattus norvegicus*)  
sheep (*Ovis aries*)  
turkey (*Meleagris gallopavo*)

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## Schedule 2      Dictionary

### section 11

***accepted representation***, for chapter 5, see section 135(2).

***accreditation*** means an accreditation given under chapter 4, part 3.

***accredited person*** means a person who holds an accreditation under chapter 4, part 3 to carry out private assessments and prepare private assessment reports.

***adopted provisions***, of a code of practice, see section 25(1)(a).

***animal*** see section 12.

***animal offence*** means an offence against this Act involving an animal.

***appeal information notice***, for chapter 7, part 5, see section 246(3).

***approved form*** means a form approved by the chief executive under section 260.

***approved management plan***, for an exhibited animal authority, means the latest management plan for the authority as approved by the chief executive.

***associate***, of a person, means—

- (a) if the person is an individual—
  - (i) the individual's spouse or de facto partner; or
  - (ii) a relative of the individual, whether by blood, spousal relationship or adoption; or
  - (iii) an employee of the individual; or
  - (iv) an employee of a corporation of which the individual is an executive officer; or
  - (v) a partner of the individual; or

- (vi) a corporation of which the individual is an executive officer; or
  - (vii) a corporation in which the individual holds a controlling interest; or
  - (viii) a person who is a trustee of a trust of which the individual is a trustee or beneficiary; or
  - (ix) a person who is a beneficiary of a trust of which the individual is a trustee or beneficiary; or
  - (x) a person who is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the individual; or
  - (xi) a person who is an associate of someone who is an associate of the individual; or
- (b) if the person is a corporation—
- (i) an executive officer of the corporation; or
  - (ii) an associate of an executive officer of the corporation; or
  - (iii) an employee of the corporation; or
  - (iv) a person who holds a controlling interest in the corporation; or
  - (v) a related body corporate, within the meaning of the Corporations Act, of the corporation; or
  - (vi) a person who is an associate of someone who is an associate of the corporation; or
- (c) if the person is an incorporated association—a member of the association’s management committee.

*at*, a place, includes in or on the place.

*authorised animal* see section 32(1).

*authorised animal (category A)* see section 33.

*authorised animal (category B)* see section 34.

*authorised animal (category C)* see section 35(1).

**authorised animal (category C1)** see section 35(2).

**authorised animal (category C2)** see section 35(3).

**authorised enclosure**—

- (a) for an authorised animal (category A)—see section 36(1); or
- (b) for an authorised animal (category B) or (category C)—see section 36(2).

**authority holder**, for an exhibited animal authority, means the person who holds the authority.

**Biosecurity Act** means the *Biosecurity Act 2014*.

**biosecurity risk** see the Biosecurity Act, section 16.

**buy** includes—

- (a) agree or offer to buy; and
- (b) receive or accept under an agreement; and
- (c) agree to receive or accept under an agreement; and
- (d) offer or attempt to receive or accept under an agreement; and
- (e) cause or permit to be received or accepted under an agreement; and
- (f) acquire by exchange.

**code of practice** means a code of practice made under a regulation under chapter 2, part 2, division 1.

**contact details**, of a person, means the person's—

- (a) postal address; and
- (b) telephone number or email address.

**controlled area** means an area—

- (a) bounded by a barrier designed and constructed to deter the unauthorised entry of persons to the area; and
- (b) to which access by persons is controlled by the occupier of the area.

*Example of a controlled area—*

An elephant at a zoo is escorted by its handler from its regular enclosure to a securely fenced area to which access is restricted to limited numbers of the public for public interaction with the elephant.

***corresponding law***, to this Act or to a provision of this Act, means a law of the Commonwealth or another State that corresponds, or substantially corresponds, to this Act or to the provision.

***court***—

- (a) generally—means a Magistrates Court; and
- (b) for section 218 or 238—includes the Supreme Court and the District Court.

***dealing with***, an exhibited animal, see section 15.

***decision***, for chapter 7, part 5, see section 240.

***disposal***, of an animal, includes—

- (a) the sale, giving away or destruction, of the animal; and
- (b) for an animal that is, or was, authorised under an interstate exhibitors permit—the return of the animal to the State where the primary authority for the permit was issued.

***disposal order*** means—

- (a) an order made under section 231(1); or
- (b) an order made under section 233(2) if the order states it is a disposal order.

***document certification requirement*** see section 211(6).

***document production requirement*** see section 211(2).

***electronic document*** means a document of a type mentioned in the *Acts Interpretation Act 1954*, schedule 1, definition *document*, paragraph (c).

***enclosure***—

- 1 An *enclosure* is a space in which an animal can be accommodated that is completely bounded by a barrier designed and constructed to contain the animal.

2 An *enclosure* may be fixed in position or moveable.

*Examples of fixed enclosures—*

- a building or other fixed structure
- an area of land surrounded by a fence, embankment, moat or other fixed barrier
- an area of water contained by an embankment or other fixed barrier

*Examples of moveable enclosures—*

- a moveable cage
- a moveable water tank

***executive officer***, of a corporation, means a person who is concerned with or takes part in its management, whether or not the person is a director or the person's position is given the name of executive officer.

***exhibit***, an animal, see section 13.

***exhibited animal*** see section 14.

***exhibited animal authority*** see section 29.

***exhibited animal direction*** see section 184(2).

***exhibition licence*** see section 30(a).

***external review***, for a decision, means a review of the decision by QCAT under the QCAT Act.

***fish*** means a living animal that is a fish under the *Fisheries Act 1994*, section 5.

***forfeiture decision*** see section 240.

***former owner***, of an exhibited animal or other thing that has been seized or forfeited under chapter 6, part 3, division 4 or 6 or transferred under section 206(b), means the person who owned the animal or thing immediately before the seizure, forfeiture or transfer.

***general exhibition and dealing obligation*** see section 18.

***general power***, for chapter 6, see section 181(1).

***guideline*** means a guideline made by the chief executive under section 26.

**help requirement** see section 182(1).

**holder**, of an exhibition licence, for chapter 4, part 2, see section 106.

**identity card**, for a provision about inspectors, means an identity card issued under section 152(1).

**information notice**, for a decision, means a notice stating each of the following—

- (a) the decision and the reasons for it;
- (b) the right to apply for an internal review of the decision under chapter 7, part 5, division 2;
- (c) the period in which the internal review must be started;
- (d) how rights of the internal review are to be exercised;
- (e) that a stay of a decision the subject of the internal review may be applied for under section 244.

**information requirement** see section 214(3).

**insolvent under administration** means a person who is insolvent under administration under the Corporations Act, section 9.

**inspector** means a person who holds office under chapter 6, part 1 as an inspector.

**internal review** see section 242(1).

**internal review application** see section 242(1).

**internal review decision** see section 245(1)(b).

**international wildlife** see the Nature Conservation Act, schedule.

*Note—*

See also the *Nature Conservation (Wildlife) Regulation 2006*, schedule 7, under which the eclectus parrot, other than the Australian subspecies, and the green python, other than the Australian population, are prescribed as international wildlife.

**interstate authority** means a licence, permit or other authority that is issued under a corresponding law to this Act and is equivalent to an exhibition licence.



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***interstate exhibitors permit*** see section 30(b).

***in the wild*** means in an independent state of natural liberty.

***keep***, an animal, includes keeping the animal while it is being moved.

***management plan*** see section 37.

***mandatory conditions***, of an exhibited animal authority, means the conditions that apply to the authority under chapter 3, part 7, division 1 or 2.

***native wildlife*** see the Nature Conservation Act, schedule.

***Nature Conservation Act*** means the *Nature Conservation Act 1992*.

***NCA chief executive*** means the chief executive of the department in which the Nature Conservation Act is administered.

***notice*** means a written notice.

***occupier***, of a place—

- (a) for chapter 3—means the person who, whether or not the owner of the place, is the person who is effectively in day-to-day control of the place, whether or not that control is exercised through an agent or employee; or
- (b) otherwise, includes the following—
  - (i) if there is more than 1 person who apparently occupies the place—any 1 of the persons;
  - (ii) any person at the place who is apparently acting with the authority of a person who apparently occupies the place;
  - (iii) if no-one apparently occupies the place—any person who is an owner of the place.

***of***, a place, includes at, in or on the place.

***offence warning***, for a direction or requirement by an inspector, means a warning that, without a reasonable excuse, it is an offence for the person to whom the direction or requirement is made not to comply with it.

**official assessment** means an official assessment (application) or official assessment (follow-up).

**official assessment (application)** see section 103(2).

**official assessment (follow-up)** see section 104(2).

**original decision** see section 242(1).

**other thing**, in relation to an exhibited animal, includes an animal that is not an exhibited animal.

**owner**, of an exhibited animal or other thing that has been seized under chapter 6, part 3, division 4 includes a person who would be entitled to possession of the animal or thing had it not been seized.

**personal details requirement** see section 209(5).

**person in control**—

- (a) of a vehicle, includes—
  - (i) the vehicle's driver or rider; and
  - (ii) any person who reasonably appears to be, claims to be, or acts as if, the person is the vehicle's driver or rider or in control of the vehicle; or
- (b) of an exhibited animal or other thing, other than a vehicle, includes any person who reasonably appears to be, claims to be, or acts as if, the person is in possession or control of the animal or thing.

**place** includes the following—

- (a) premises;
- (b) vacant land;
- (c) a place in Queensland waters;
- (d) a place held under more than 1 title or by more than 1 owner;
- (e) the land or water where a building or structure, or a group of buildings or structures, is situated.

**place of seizure**, for chapter 6, part 3, division 4, see section 195(1)(a).

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***premises*** includes—

- (a) a building or other structure; and
- (b) a part of a building or other structure; and
- (c) a caravan, mobile home or vehicle; and
- (d) a cave or tent; and
- (e) premises held under more than 1 title or by more than 1 owner.

***previous authority***, for a temporary authority, see section 63(3).

***primarily authorised animal***, for chapter 3, part 3, division 3, see section 45.

***primary authority***, for an interstate exhibitors permit, see section 45.

***private assessment*** see section 107.

***private assessment report*** see section 108.

***private event*** means an event or occasion—

- (a) that is not publicly advertised or open to the general public or for casual attendance; or
- (b) at which attendance is restricted by the personal invitation of the person organising the event or occasion.

***prohibited matter*** see the Biosecurity Act, section 19.

*Note—*

Under the Biosecurity Act, particular invertebrates, marine animals, noxious fish, and non-indigenous amphibians, mammals and reptiles may be prohibited matter. See section 29 of that Act.

***prohibition order*** means—

- (a) an order made under section 232(1); or
- (b) an order made under section 233(2) if the order states it is a prohibition order.

***proposed action***, for chapter 5, see section 134(1).

***protected animal*** see the Nature Conservation Act, schedule.

**public** includes a section of the public.

**public interaction** means an activity involving an exhibited animal that is carried out by a person, other than a responsible person for the animal, who is in close proximity to the animal and not separated from the animal by a barrier.

*Examples of activities—*

- handling, touching or feeding an exhibited animal
- swimming near an aquatic exhibited animal
- viewing, filming or photographing an exhibited animal in close proximity to the animal

**public place** means—

- (a) a place, or part of the place—
- (i) the public is entitled to use, is open to the public or is used by the public, whether or not on payment of money; or

*Examples of a place that may be a public place under subparagraph (i)—*

a beach, a park, a road

- (ii) the occupier of which allows, whether or not on payment of money, the public to enter; or

*Examples of a place that may be a public place under subparagraph (ii)—*

a saleyard, a showground

- (b) a place that is a public place under another Act.

**QCAT notice**, for chapter 7, part 5, see section 240.

**reasonably believes** means believes on grounds that are reasonable in the circumstances.

**reasonably suspects** means suspects on grounds that are reasonable in the circumstances.

**recipient**, for chapter 6, part 3, division 3, see section 184(2).

**record**, an animal's image, includes arrange for or allow the animal's image to be recorded.

**record requirement** see section 86(1).

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**register**, for chapter 3, means the register of exhibited animal authorities required to be kept under section 100.

**regular enclosure** means—

- (a) for an authorised animal (category A)—an authorised enclosure of a type identified in an exhibition licence as a type of regular enclosure for the animal; or
- (b) for an authorised animal (category B) or (category C)—an authorised enclosure identified in an exhibition licence as a regular enclosure for the animal.

**regular enclosure site**, under an exhibition licence, means—

- (a) for a regular enclosure or regular enclosure of a type that is, or is about to be, permanently fixed in position—the location for the enclosure identified in the licence; or
- (b) for a regular enclosure or regular enclosure of a type to which paragraph (a) does not apply—each location for the enclosure identified in the licence.

**relevant adverse effects**, associated with exhibiting or dealing with an exhibited animal, see section 17(2).

**relevant authorisation**, for chapter 5, part 1, see section 131.

**relevant offence** means—

- (a) an offence against—
  - (i) this Act; or
  - (ii) a relevant repealed provision; or
  - (iii) a law that is a corresponding law to a provision of this Act; or
- (b) an offence involving an animal against any of the following Acts—
  - (i) the *Animal Care and Protection Act 2001*;
  - (ii) the Biosecurity Act;
  - (iii) the Nature Conservation Act.

**relevant original decision**, for chapter 5, part 2, see section 142.

***relevant repealed provision*** means—

- (a) the *Fisheries Act 1994*, section 89, as in force before the commencement of the Biosecurity Act, section 534; or
- (b) the *Stock Route Management Act 2002*, chapter 2, as in force before the commencement of the Biosecurity Act, section 550.

***relevant risk***, associated with exhibiting or dealing with an exhibited animal, see section 17(1).

***responsible person***, for an exhibited animal, see section 16.

***restricted matter*** see the Biosecurity Act, section 21.

*Note—*

Under the Biosecurity Act, particular invertebrates, noxious fish and invasive animals may be restricted matter. See section 38 of that Act.

***seizure decision***, for chapter 7, part 5, see section 240.

***serious incident***, for chapter 3, part 8, division 1, see section 80.

***serious injury or illness***, to or of a person, means an injury or illness requiring the person to have—

- (a) immediate treatment as an in-patient in a hospital; or
- (b) immediate treatment for—
  - (i) the amputation of any part of the person's body; or
  - (ii) a serious head or eye injury; or
  - (iii) the separation of the person's skin from an underlying tissue (for example, degloving or scalping); or
  - (iv) a spinal injury; or
  - (v) the loss of a bodily function; or
  - (vi) serious laceration; or
- (c) treatment by a doctor within 48 hours of exposure to a substance that has been transmitted from an animal, other than treatment consisting of the administration of a tetanus injection or antibiotic.

***show cause notice***, for chapter 5, see section 134(1).

***show cause period***, for chapter 5, see section 134(2)(f).

***significant relevant adverse effect***, other than for section 37, in relation to a person who under this Act is authorised or required to form a belief about, be satisfied of, or consider, a thing, means a relevant adverse effect the person reasonably believes is significant.

***significant change***, for chapter 3, part 8, division 1, see section 82(1).

***significant relevant risk***, other than for section 37, in relation to a person who under this Act is authorised or required to form a belief about, be satisfied of, or consider, a thing, means a relevant risk the person reasonably believes is significant.

***special conditions***, of an exhibited animal authority, see section 77(1).

***special exhibition approval*** see section 31.

***special risk animal***, for chapter 3, part 8, division 1, see section 80.

***species*** includes another taxonomic grouping.

***spent conviction*** means a conviction—

- (a) to 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.

***temporary authority*** see section 30(c).

***vehicle***—

- (a) means a vehicle under the *Transport Operations (Road Use Management) Act 1995*; and
- (b) includes a vessel under that Act.

***welfare***, of an animal, means the health, safety or wellbeing of the animal.

## **Schedule 3      Amendment of regulations**

section 282

### **Nature Conservation (Administration) Regulation 2006**

- 1      Section 11(g) and (h)—**  
*omit.*
  
- 2      Section 20(1)(g) and (h)—**  
*omit.*
  
- 3      Section 126—**  
*omit.*
  
- 4      Schedule 3, part 2, division 1, items 8 and 9—**  
*omit.*
  
- 5      Schedule 7, definition *prescribed period*, paragraph (b),  
from 'wildlife demonstrator' to 'exhibitor licence,'—**  
*omit.*

### **Nature Conservation (Wildlife Management) Regulation 2006**

- 6      Section 13(b), note—**  
*omit.*



- 7 Section 27(1)(a) and (b)—**  
*omit.*
- 8 Section 113, from ‘a wildlife demonstrator’—**  
*omit, insert—*  
an exhibited animal authority under the *Exhibited Animals Act 2015*.
- 9 Chapter 3, part 3, divisions 7 and 8—**  
*omit.*
- 10 Sections 195(d) and 199(1), ‘wildlife exhibitor licence,’—**  
*omit.*
- 11 Schedule 5, definition *exhibit notice*—**  
*omit.*