

Criminal Code (Animal Valuers) Regulation 2014

Explanatory notes for SL 2014 No. 195

made under the

Criminal Code

General Outline

Short title

Criminal Code (Animal Valuers) Regulation 2014

Authorising law

Section 450F of the Criminal Code.

Policy objectives and the reasons for them

Section 450F of the Criminal Code provides that the chief executive may appoint a person as an animal valuer and provides that the Governor in Council may make regulations as to the constitution and operation of tribunals of animal valuers.

The *Criminal Code (Animal Valuers) Regulation 1999* (the 1999 Regulation) currently provides for animal valuer tribunals. The 1999 Regulation will automatically expire at midnight on 31 August 2014 in accordance with section 54 of the *Statutory Instruments Act 1992*. The *Criminal Code (Animal Valuers) Regulation 2014* (the Regulation) will replace the 1999 Regulation.

The Regulation will make continued provision for animal valuations. The Regulation is generally consistent with the 1999 Regulation and updated to reflect current drafting practices. 'Animal valuer tribunals' are renamed 'animal valuer panels' to better reflect the non-judicial nature of their functions.

A panel is composed of two animal valuers and is convened if the prosecutor for a charge of an offence involving stock decides a panel is needed to inspect or value the animal. Its primary function is to provide independent expert evidence to the court as to the value of the animal. This value is relevant to the amount of a fine which may be imposed upon a convicted offender under stock-related offence provisions of the Criminal Code.

Other key changes in the Regulation are noted below.

Part 1 of the Regulation is introductory.

Part 2 of the Regulation makes provision for the appointment of animal valuers including:

- how an eligible person applies to be appointed as an animal valuer;
- suitability for appointment as an animal valuer;
- appointment by the chief executive of animal valuers;
- conditions of appointment;
- termination of appointment; and
- the requirement for an animal valuer to notify the chief executive of certain matters relating to their continued eligibility for appointment and any change in their name or address.

Part 3 of the Regulation makes provision for the valuation of animals by animal valuers including:

- the selection of two animal valuers to form a panel for the purpose of valuing an animal;
- the duties of an animal valuer;
- a new requirement for an animal valuer to disclose any conflict of interest; and
- how a valuation is to be conducted.

The new conflict of interest provision (section 12) requires disclosure by a valuer to the chief executive or the prosecutor of any actual or potential conflict of interest between the valuer and a valuation to which he or she has been allocated. A conflict of interest is an interest, financial or otherwise, that conflicts or could conflict with the proper performance of the animal valuer's functions for the proceedings.

Part 4 of the Regulation contains evidentiary provisions concerning the certificate of valuation made by an animal valuer panel including:

- the evidentiary effect of the certificate;
- notice by a party to the criminal proceedings of an intention to challenge the certificate; and
- the calling of an animal valuer as a witness to a proceeding.

Part 5 of the Regulation contains a new offence of providing false or misleading information to the chief executive in relation to the administration of the Regulation, punishable by a maximum fine of 100 penalty units.

Part 6 of the Regulation contains miscellaneous provisions including:

- providing for replacement of an animal valuer on a panel;
- a new immunity provision for animal valuers;
- requiring the chief executive to keep a register of appointed animal valuers;
- the fees expenses and allowances payable to an animal valuer for performing their functions;

- providing for the delegation of the chief executive's powers under the Regulation; and
- an approved forms provision.

A new accommodation and meal allowance has been inserted to cater for instances where a valuation takes more than one day (section 23(3)(b) and (c)). The accommodation and meal allowance amounts will be at the same rate payable to a public service officer under the *Public Service Act 2008*. The allowances will be in addition to an existing travel allowance under the 1999 Regulation and will be more convenient and economical where an overnight stay is required close to the valuation site, rather than travelling to and from the site each day.

The Regulation repeals the 1999 Regulation and makes transitional provision for the continuation of applications, appointments, and tribunals (proposed to be panels) already constituted.

The schedule to the Regulation contains the dictionary.

Achievement of policy objectives

The policy objective is achieved by the Regulation which makes provision for animal valuer panels.

Consistency with policy objectives of authorising law

The Regulation is consistent with the policy objectives of the authorising law.

Inconsistency with policy objectives of other legislation

The Regulation is not inconsistent with any policy objective of any other legislation.

Benefits and costs of implementation

Costs of implementing the Regulation will be met by individual government departments.

Consistency with fundamental legislative principles

The 1999 Regulation provides for criminal history screening of applicants for appointment as animal valuers and the Regulation maintains this process. A person is only eligible to be considered for appointment as a valuer if they have not been convicted of an indictable offence or an offence involving dishonesty. In determining suitability all aspects of an applicant's criminal history may be considered. Criminal history is defined in the Regulation to include both recorded and unrecorded convictions and includes convictions that have become spent under the *Criminal Law (Rehabilitation of Offenders) Act 1986*

This definition may be inconsistent with the fundamental legislative principle that established statute law rights and liberties should not be abrogated.

A departure from the fundamental legislative principle is warranted because of the important role animal valuers play in the sentencing process. Animal valuers provide information to the court that directly influences the minimum mandatory penalty imposed. To protect both the integrity of the courts and the rights of an offender it is important that dishonest applicants are deterred from applying and that the chief executive can give sufficient scrutiny to applicants to ensure they are a proper person for appointment as an animal valuer.

The proposed new offence in section 19 will similarly affect the rights and liberties of some individuals. The offence is intended to capture the conduct of a person who provides false or misleading information in their application for appointment as an animal valuer. The creation of the offence is warranted in the public interest because of the important role of animal valuers in forming the basis of a penalty imposed by a court. It is important that dishonest applicants are deterred. The penalty is consistent with analogous provisions in other Acts on the statute book.

The proposed immunity provision in section 21 gives an animal valuer, in performing their valuation duties, the same immunity a Supreme Court judge has in performing their functions. Section 21 may be inconsistent with the fundamental legislative principle that persons who commit a wrong when acting without authority should not be granted immunity. The immunity is strictly limited to valuing an animal, completing and signing the certificate of valuation and providing the certificate to the prosecutor and chief executive and does not extend to any incidental acts. Liability does not attach to the State. This is the highest form of immunity which is reserved for those with judicial or similar functions. The basis of the immunity is to ensure that a valuer carrying out their functions can do so without fear of litigation or prosecution. This protection is considered warranted because of the important role animal valuers play in informing the sentencing process.

Consultation

Consultation on the Regulation was undertaken with the Director of Public Prosecutions, the Queensland Police Service, Queensland Treasury and Trade, the Department of the Premier and Cabinet and the Public Safety Business Agency.

The Regulation is supported.