Exhibited Animals Bill 2015

Explanatory Notes

Short title

The short title of the Bill is the Exhibited Animals Bill 2015.

Policy objectives and reasons for them

The objective of the Bill is to provide for exhibiting and dealing with exhibited animals, while ensuring that the associated animal welfare, biosecurity and safety risks and relevant adverse effects are prevented or minimised. The Bill will consolidate and streamline regulation of the exhibited animals industry which is currently spread across several Acts and it will address current gaps in the coverage of some animal welfare and safety risks with a cohesive, comprehensive and consistent risk-based regulatory framework for exhibited animals.

The current legislation regulating the exhibited animals industry in Queensland is fragmented and has many deficiencies. Relevant provisions are spread across four Acts: the *Land Protection (Pest and Stock Route Management) Act 2002* (LP Act), the *Fisheries Act 1994* (Fisheries Act), the *Nature Conservation Act 1992* (NCA) and the *Animal Care and Protection Act 2001*. Each of these Acts provides for the industry and addresses the associated risks in a different way, creating complexity, inconsistencies and leaving some gaps in risk management.

The current fragmented legislation frustrates innovation in the industry. It does not take a risk-based approach to regulating the industry. Some exotic species cannot be exhibited at all in Queensland, even if the risks associated with their exhibition can be avoided or minimised. Other species can be kept for exhibition by one industry sector but not others for historical reasons. In contrast, the Bill provides for a greater range of species to be exhibited in Queensland, provided the risks can be minimised.

There are six different licensing schemes under the LP Act, Fisheries Act and NCA. These have inconsistent licensing requirements, fees and procedures which cause confusion, impose additional compliance burdens on the industry and impede exhibitors wishing to modify their operations. Those who exhibit both native and exotic species of animals generally need at least two licences. Additionally, different licensing requirements apply to different industry sectors under the current legislation. The Bill will simplify how Queensland legislation authorises the exhibition of animals that generally cannot be kept without a licence.

The Bill will implement a holistic, risk-based approach to regulating the exhibited animals industry. The use of a general statutory obligation to minimise animal welfare, biosecurity (pest establishment and disease spread) and safety risks (public safety and human death, injury or illness due to an animal) and relevant adverse effects will address gaps in the current scheme without the need to expand the existing scope of licensing requirements. Most

requirements will apply consistently to the keeping of animals by different sectors of the industry.

The Bill will reduce the regulatory burden on exhibitors by introducing a single licensing scheme under which exhibitors can be authorised to keep and exhibit both native and some exotic animals regardless of their industry sector.

A further reason for the Bill is that the *Biosecurity Act 2014* (the Biosecurity Act), which will commence on 1 July 2016 if it has not commenced earlier on a date to be proclaimed, will repeal the relevant provisions of the LP Act and Fisheries Act. It will continue to prohibit dealings with some potential pest animals that are listed as 'prohibited matter' and restrict dealings with other pest animals that are listed as 'restricted matter'. (The animals that will be prohibited matter and restricted matter under the Biosecurity Act are generally declared pests under the LP Act or noxious fish under the Fisheries Act.) Other dealings with prohibited and restricted matter will be lawful if they are authorised by a permit issued under the Biosecurity Act or authorised under another Queensland or Commonwealth law.

A permit class for authorising exhibitors to deal with species that are prohibited or restricted matter is not provided under the Biosecurity Act (although it could be prescribed by regulations made under that Act) because biosecurity is only one of the risks that it would be appropriate to consider in authorising dealings with those animals. Instead it is proposed that exhibitors would be authorised to exhibit and deal with these species under this Bill, which is directed at preventing or minimising all the relevant risks and relevant adverse effects.

Achievement of policy objectives

The Bill will ensure more comprehensive and consistent management of animal welfare, biosecurity and safety risks posed by the industry in Queensland principally by introducing the general exhibition and dealing obligation. All those involved in exhibiting or dealing with an exhibited animal will be required to take reasonable and practical steps to prevent or minimise the risks to animal welfare, biosecurity and safety, and the relevant adverse effects on the welfare of any animal, the health, safety or wellbeing of a person or social amenity, the economy and the environment, associated with exhibiting and dealing with the animal. This obligation will apply consistently to all animal exhibits including those that do not need a licence. This will address gaps in risk coverage without imposing unjustified licensing requirements on all exhibitors.

The Bill will replace the current fragmented licensing schemes with a single licensing framework under a single Act. Only those exhibitors who currently require a licence will require a licence under the new legislation (i.e. those who exhibit animals that generally cannot be kept by the public in Queensland due to the operation of the Biosecurity Act or NCA, such as many pest species and native species respectively). Licences will be granted for up to three years.

Under the Bill, animal exhibits will be licensed in response to a management plan prepared by the applicant explaining how they would minimise the relevant risks and relevant adverse effects. Developing a management plan represents an opportunity for exhibitors to use their expert knowledge to address risks relevant to their specific circumstances.

Risk-based licensing decisions under the Bill will allow a greater range of species to be exhibited in Queensland. An exhibition licence could be granted for any species if the chief executive was satisfied relevant risks and relevant adverse effects would be appropriately managed under the plan. The approved plan will form part of the licence.

The Bill includes some specific restrictions on, and requirements for, exhibiting and dealing with the highest pest potential exotic animals – those that are prohibited matter under the Biosecurity Act. These animals will need to be based in a fixed exhibit open to viewing by the general public (such as a zoo). Exhibit away from this site could only be authorised on a temporary basis under a special exhibition approval valid for up to one year. This will help protect Queensland's environment and valuable agricultural and tourism industries from the establishment of new pests while ensuring that the government does not bear significantly increased risk mitigation costs.

If a species cannot be kept by other Queenslanders for private recreation, then under the Bill it will need to be exhibited. This will deter private collectors operating under the guise of keeping for exhibition. Hence, among other benefits, it will contain demand for animals that could trigger illegal take from the wild. The minimum exhibition requirement will be highest for animals that are prohibited matter under the Biosecurity Act. Most other species will need to be exhibited on at least one occasion each month. However, it will not apply at all to animals if private keeping of that species is permitted under other legislation.

In addition to exhibition licences, the Bill will provide for two other types of authority: an interstate exhibitors permit and a temporary authority. Interstate-licenced exhibitors could be granted an interstate exhibitors permit for up to one year to bring their animals into Queensland. A temporary authority will be used as a stopgap measure to allow the minimum necessary dealings with the exhibited animals while an exceptional situation was resolved.

The Bill provides for monitoring of exhibitors to promote further improvements in industry risk management. An 'official assessment', charged to the exhibitor, will generally be required to provide the chief executive with sufficient evidence to decide an application for the grant, renewal or the significant amendment of a licence.

To encourage industry to take more responsibility for further improvements in risk management, a report by an accredited private assessor could generally be relied on for deciding renewal applications. Safeguards within the Bill, such as the requirement to disclose conflicts of interest, will maintain the integrity of the private assessment scheme.

A further official assessment, charged to the licence holder, could be conducted within one year of the issuing of an exhibited animals direction (where a person has or may fail to discharge their general exhibition and dealing obligation) thereby creating an economic incentive for best practice.

Separate to the assessment monitoring scheme, an inspector will have powers to enter a place in certain circumstances to monitor compliance with the legislation.

The Bill amends parts of the Biosecurity Act and NCA.

The licensing schemes for native wildlife that are being replaced by authorisations under the Bill sit in regulations under the NCA. Accordingly, the Bill also amends relevant regulations under the NCA.

Alternative ways of achieving policy objectives

A number of options for achieving the policy intent were considered during development of the Bill, including:

- Option 1: retain existing provisions
- Option 2: no industry-specific legislation
- Option 2A: minimal legislative intervention to allow industry self-regulation
- Option 3: develop new legislation.

Although Option 1 would generally address risks to animal welfare, biosecurity and safety consistent with the policy objective, the existing gaps in coverage of some risks would remain. Relevant existing provisions in the LP Act and Fisheries Act will be repealed when the Biosecurity Act commences on or before 1 July 2016. However, the status quo could largely be maintained by making a regulation under the Biosecurity Act to enable the issuing of permits to exhibit animals that are prohibited or restricted matter under that Act. This option would not simplify how exhibition of animals is authorised, or meet industry and community expectations for a cohesive, comprehensive and consistent framework to consolidate and streamline how risks to animal welfare, biosecurity and safety are addressed.

Option 2, having no industry-specific legislation, is not considered feasible. Keeping of declared pests (restricted or prohibited matter under the Biosecurity Act), most protected wildlife and noxious fish without an authority is prohibited under Queensland legislation. A large proportion of exhibitors currently exhibit declared pests, protected wildlife or noxious fish. If there was no industry-specific legislative intervention providing authority for keeping of these species by exhibitors, the activities of a large proportion of exhibitors would be severely impacted.

Option 2A would simplify how exhibition of animals is authorised and, like the Bill, would allow a greater range of species to be exhibited in Queensland. Under minimal regulation, it would be more difficult to enforce the current prohibitions on private keeping of the vast majority of exotic and native animals (particularly vertebrates) and some exotic fish. Further, it is unlikely that all exhibitors would participate in an industry self-regulation scheme if regulation of the industry was minimised. The result of patchy self-regulation and increased incidence of private keeping would likely be an increase in risks to animal welfare, biosecurity and safety as well as an increase in black market demand for animals illegally taken from the wild. Even low levels of unmitigated risk under self-regulation could have very serious consequences not just for visitors to exhibitions but also for the broader community. Consequently, this option would be unlikely to meet community expectations for how animal welfare, biosecurity and safety risks should be managed.

This Bill represents option 3 which best aligns with the government's policy objectives.

Estimated cost for government implementation

Overall government staffing and administration costs for regulating the industry under the new Bill are not expected to increase. Administration costs would be reduced under the Bill via a more efficient and more effective regulatory scheme, but this would be offset by increased monitoring costs.

The extent to which the government would be able to recover the full cost of providing these services would depend on the fees set by regulation. The Consultation Regulatory Impact Statement for the new legislation proposed that fees would be set to achieve full cost recovery.

The same obligations, standards and licensing requirements would apply to government wildlife parks as to the rest of the industry. The Consultation Regulatory Impact Statement for the new legislation estimated that if fees were set to achieve full cost recovery then approximately $38,000 would be payable over the first 10 years of the new legislation in licensing and official assessment fees for the three government parks currently operated—David Fleay Wildlife Park, Daisy Hill Koala Centre and Walkabout Creek.

The government would incur some costs for developing regulations under the Bill.

National standards and guidelines for keeping some exhibited animals are currently being finalised. Consultation on and regulatory impact assessment of the proposed national standards has occurred separately from the development of the Bill. Subject to government consideration of the final version, the national standards are likely to be the basis for codes of practice made by regulation under the Bill.

Training and policies for decision-makers would need to be developed to support the risk-based decision making under the Bill. The government would also incur some one-off costs for development of information technology systems to support the new licence structure and for keeping the industry and public informed about the legislative changes. However, these costs are already budgeted – similar costs would otherwise be incurred to support implementation of permits for exhibitors under the Biosecurity Act.

Consistency with fundamental legislative principles

The Bill potentially departs from fundamental legislative principles (FLPs) as outlined in section 4 of the *Legislative Standards Act 1992* (LSA). Any such departure occurs in the context of balancing FLPs with a competing policy objective of preventing or minimising animal welfare, biosecurity and safety risks.

Sufficient regard to the rights and liberties of individuals – LSA, section 4(2)(a)

The Bill contains a number of offence provisions which carry significant penalties.

Clause 18 imposes a general exhibition and dealing obligation on a responsible person for an animal. It is an offence for a responsible person to fail to discharge that obligation. Clause 19 provides that the maximum penalty for failing to discharge this obligation is 750 penalty units.

Imposing a general exhibition and dealing obligation encourages all those involved in exhibiting and dealing with an exhibited animal to take responsibility for preventing and minimising the risks associated with their activities and the adverse effects their activities may cause. It reflects the principle that those who are responsible for posing the risk should manage the risk.

Clause 22 provides that it is a defence, in a proceeding for the offence, to prove that the person took all reasonable precautions and exercised proper diligence. This ensures that where a breach of the general exhibition and dealing obligation occurs that is beyond the control of a responsible person, the responsible person has recourse for defence. If a person proves they complied with a regulation or code of practice that prescribes a way the general exhibition and dealing obligation can be discharged, a person is taken to have demonstrated due diligence if they followed that way. Further, the general obligation, where it applies to biosecurity risks, only requires the person to prevent or minimise those biosecurity risks that they know or ought reasonably to know are posed by exhibiting or dealing with the animal.

It is considered the penalty is proportionate to the seriousness of the offence. Failing to meet a duty of care under the *Animal Care and Protection Act 2001* carries a penalty of 3000 penalty units or one year's imprisonment. Failing to meet the general biosecurity obligation under the *Biosecurity Act 2014* carries a maximum penalty, where the offence was not an aggravated offence, of 1000 penalty units or one year's imprisonment for an offence in relation to prohibited matter or 750 penalty units or six months imprisonment for an offence in relation to restricted matter. The maximum penalty for failing to comply with a health and safety duty under the *Work Health and Safety Act 2011* varies depending on the circumstances and the seriousness of the risk to which the failure exposed others. For an individual who was not reckless as to the risk of death or serious injury or illness caused, the maximum penalty can be as high as 3000 penalty units.

The broad nature of the general exhibition and dealing obligation is justified because of the difficulty specifying all risks to animal welfare, biosecurity and safety and adverse effects on the welfare of any animal, the health, safety or wellbeing of a person or social amenity, the economy and the environment, associated with exhibiting and dealing with exhibited animals. It is neither possible nor desirable to specifically identify every circumstance in which the obligation may apply. Doing so could frustrate the purpose of the Bill by limiting the relevant risks and relevant adverse effects that will be prevented or minimised.

While the Bill provides that regulations and codes of practice under the Act may state a way of meeting the general obligation, they do not describe all that a person must do to discharge the general obligation. To do so may undermine the risk responsibility-sharing approach underpinning the Bill by precluding a responsible person from having to take all steps that were reasonable and practical in the circumstances to address relevant risks and relevant adverse effects.

The general exhibition and dealing obligation only applies to a limited class of persons. A person is only a 'responsible person' for an exhibited animal and hence subject to the obligation if they:

- exhibit or deal with the animal;
- employ 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;
- are the holder of an exhibited animal authority for the animal;

- own or have a lease, licence or other proprietary interest in the animal (but not including a person whose only interest is a mortgage or security interest and they have taken no step to enforce the mortgage or other security).

Further, a person does not become a responsible person for an animal only because they record the animal's image. Consistent with the example provided in clause 16, the intent is to exclude from the definition of responsible person those who it would not be reasonable to expect would have responsibility for an animal. However, a member of the public would become a responsible person, if, for example, they consented to and participated in work as an unpaid volunteer dealing with exhibited animals at a zoo.

Clause 38 requires a person to hold an exhibited animal authority to exhibit certain animals. The relevant animals are those that cannot be kept in Queensland without an authority given under this or another Act for a particular purpose that justifies allowing them to be kept. The maximum penalty for this offence is 500 penalty units. It is considered the penalty is proportionate to the seriousness of the offence because the relevant risks and relevant adverse effects associated with exhibition would not have been considered when an authority was granted under another Act to keep the animal for a different purpose. Hence there could be serious risks associated with the exhibition which may lead to serious impacts on animal welfare, human health, safety or wellbeing, or social amenity, the economy and the environment. Further, the person exploiting the privilege of keeping these animals, by unlawfully exhibiting them, would be in competition with legitimate exhibitors who had invested in appropriate risk mitigation and whose activities were overseen under this Act.

Clause 84 obliges a person who is acting under an exhibited animal authority and becomes aware of a serious incident to notify the authority holder of the incident or, if they cannot contact the authority holder, to notify the chief executive. The imposition of liability on an employee or other agent of the authority holder is justified by the serious nature of the incidents which include the escape of an animal that has high pest establishment potential or is highly dangerous (e.g. a venomous snake) from its enclosure and the death of a person caused by an exhibited animal. It is a defence to prosecution to have a reasonable excuse. For example, it might be a reasonable excuse if the person was prevented from notifying by circumstances that were unforeseeable or outside the person's control.

Sufficient regard to the rights and liberties of individuals – makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review – LSA, section 4(3)(a)

Criteria for making administrative decisions under the Bill are appropriately defined.

The criteria for grant of an exhibited animal licence or interstate exhibitors permit are stated in clause 58. The decision to grant the authority includes approval of a management plan on the grounds provided in clause 58(2). The chief executive must also be satisfied of the suitability of the applicant and can only grant the application to an individual if they are an adult and, for an application relating to an activity that is an assessable development, if a development approval has been given for it.

Clause 53 provides the relevant criteria for suitability for an exhibited animal authority.

Clause 54 provides for the chief executive to request further information only if it is reasonably required to decide the application.

Clause 55 allows the chief executive to request the applicant provide the chief executive with written consent to an official assessment. Such a request may only be made where an application is for an exhibition licence, and the chief executive believes an official assessment is reasonably required to decide the application.

The criteria in clause 53, 54, 55 and 58 also apply to a decision to renew or restore an exhibited animal licence.

The criteria in clause 53, 54, 55 and 58 also apply to a decision to amend an exhibition licence, including by the grant of a special exhibition approval. The criteria in clause 54 and 58 also apply to a decision to amend an interstate exhibitors permit. However, the criteria in clause 58(2) only apply to amendments if they are relevant to the management plan.

Clause 63 provides that a temporary authority may only be granted to a person who previously held an exhibition licence or an interstate exhibitors permit in certain circumstances and only if the chief executive considers there may not be adequate arrangements in place for managing the relevant risks or relevant adverse effects.

The criteria for deciding to transfer an exhibition licence are stated in clause 99. The chief executive must be satisfied of the suitability of the applicant and can only grant the application if, as a result of the transfer, there will not be any substantial change in the persons principally involved in exhibiting and dealing with exhibited animals under the licence, or in the dealings authorised under the licence.

Under clause 137, the chief executive may, at the chief executive's initiative, cancel or suspend an exhibition licence, an interstate exhibitors permit or an accreditation only if satisfied that any of the grounds stated in clause 132 have been met, after considering representations for a show cause notice, and if the chief executive believes the action is warranted.

Under clause 137, the chief executive may also, at the chief executive's own initiative, generally amend an exhibition licence, an interstate exhibitors permit or an accreditation only on any of the grounds stated in clause 133, after considering representations for a show cause notice. In limited circumstances provided in clause 139, the chief executive can otherwise make an amendment.

Clause 113 provides that the chief executive can only grant an accreditation under the Bill, if satisfied that the applicant has the necessary expertise or experience to carry out private assessments and prepare private assessment reports, and is a suitable person to hold accreditation.

Clause 114 provides for the chief executive to request further information only if it is reasonably required to decide the application.

Clause 115 provides the relevant criteria for suitability for an accreditation.

The criteria in clauses 114 and 115 also apply to a decision for the amendment or renewal of an accreditation. The criteria in clause 113 also applies to the renewal of an accreditation and the chief executive must be satisfied the applicant has the necessary expertise or experience before amending an accreditation.

The criteria for immediate suspension of an exhibition licence or an interstate exhibitors permit are provided in clause 138 and include there being grounds for cancellation and suspension under clause 132.

The criteria for exercise of an inspector's powers under chapter 6, including the powers of seizure and forfeiture, are highlighted where these powers are discussed below.

Generally administrative decisions under the Bill are reviewable, including for the grant, amendment and renewal of exhibited animal authorities and accreditation, as well as for property seized by an inspector and property forfeited to the State. In the first instance review will be at no cost by the chief executive or a delegate who is more senior than the original decision maker. An aggrieved person may then appeal a seizure or forfeiture decision to the courts or seek review or another decision by the Queensland Civil and Administrative Tribunal (QCAT).

The decision to request consent to an official assessment (application) is not reviewable. However, the power is limited to when the chief executive believes the information or assessment is reasonably required to decide the application.

The power to undertake an official assessment (follow-up) is also not reviewable, but it is contingent upon a reviewable decision. Clause 104 provides that an inspector may undertake an official assessment (follow-up) within one year of the issue of an exhibited animal direction. The decision to issue a direction is reviewable (see clause 185(2)).

Sufficient regard to the rights and liberties of individuals – is consistent with principles of natural justice – LSA, section 4(3)(b)

Clause 138 allows the chief executive to immediately suspend an exhibited animal authority without affording the authority holder a right to be heard. This power will only be available where its exercise is necessary to avoid an immediate and significant animal welfare, biosecurity or safety risk.

Appropriate safeguards will ensure that the process as a whole affords natural justice. The suspension would take effect when the authority holder is given an information notice for the decision and a notice inviting them to show cause as to why action should not be taken to cancel or suspend more permanently or amend the authority. As they have received an information notice, the person could immediately apply to the courts (for a seizure or forfeiture decision) or QCAT (for another original decision) to stay the decision. Also, the suspension ceases if the decision is not affirmed by the chief executive within 56 days – sufficient time to allow the chief executive to consider any representations made by the aggrieved person about more permanent action.

Sufficient regard to the rights and liberties of individuals – allows the delegation of administrative power only in appropriate cases and to appropriate persons – LSA, section 4(3)(c)

Under clause 148, the chief executive may appoint a person as an inspector if they are an inspector under the *Animal Care and Protection Act 2001*, an authorised officer under the *Biosecurity Act 2014*, a public service employee or another person prescribed by regulation. However, the chief executive may only appoint a person if satisfied they are appropriately qualified. Further, clause 149 provides that conditions may be placed on the appointment of an inspector by the instrument of appointment, a signed notice or a regulation. Also the instrument, notice or a regulation may limit the powers of an inspector.

Under clause 258, the chief executive may delegate powers to a public service employee or inspector. However, the chief executive may only delegate the powers to the person if satisfied they are appropriately qualified.

Sufficient regard to the rights and liberties of individuals – confers power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer – LSA, section 4(3)(e)

Clause 157 provides for an inspector to enter a place with consent. The entry is subject to any conditions of the consent, and ceases if the consent is withdrawn.

Given other entry powers are limited for a part of a place where a person resides, clause 59 restricts the grant of an exhibition licence or interstate exhibitors permit to exhibit or keep an animal in premises or a part of premises used for residential purposes to where the licence applicant is the occupier and has given the chief executive written consent for an inspector to enter the premises or part under clause 69(1)(g). This restriction balances the convenience of an exhibitor who may wish to keep animals in their own home with the public interest in effective compliance monitoring and enforcement of the Act. A prospective applicant for an exhibition licence or interstate exhibitors permit to exhibit and deal with an exhibited animal in the applicant's home is effectively put on notice of the requirement to give the consent. The applicant therefore has the choice to apply for the licence or permit on that basis or apply to exhibit and deal with the animal at other premises.

Clause 69(1)(g) requires that the licence holder must give consent to the entry at a reasonable time and on written or oral notice of at least one hour, to enable inspection of an authorised animal or enclosure to monitor compliance with the Act if the regular enclosure site for a regular enclosure for an animal is in a premises or a part of premises used for residential purposes. Notice of at least one hour is sufficient to enable a licence holder, who has previously given a standing consent to entry, the time to make any more immediate preparation that might be required to protect their privacy. Substantially more notice might frustrate the purpose of entry by allowing the licence holder time to modify the circumstances of the animal or the enclosure so it does not reflect how the animal is normally kept or dealt with. Being able to exhibit or deal with an authorised animal in a residence in relevant circumstances is essentially conditional on acceptance of the limited notice.

In limited circumstances the Bill provides for the power of entry to places without a warrant or the consent of the occupier. A place includes a premise. A premise includes a building, caravan or vehicle. Some investigative and enforcement powers without consent or a warrant are necessary to achieve the risk minimisation object of the Bill.

Clause 159 allows an inspector to enter a place without the consent of the occupier or a warrant if:

- the place is a public place that is currently open to the public; or
- it is a place of business mentioned in an exhibited animal authority that is open for entry or required to be open for inspection as a condition of the authority.

Clause 159 also allows an inspector to enter a place without the consent of the occupier or a warrant to:

- undertake an official assessment (follow-up) at a reasonable time and on reasonable written or oral notice of at least 48 hours;
- check whether an exhibited animal direction has been complied with (under clause 160); or
- take action required to be taken under an exhibited animal direction that has not been complied with (under clause 161).
- exercise powers to avoid an imminent and significant relevant risk or significant relevant adverse effect associated with exhibiting or dealing with an animal (under clause 162).

Clause 104 provides that an official assessment (follow-up) can be carried out only once within one year after an exhibited animal direction is given. A fee for the assessment is payable by the authority holder (clause 105). While the issue of an exhibited animal direction is a pre-requisite for the official assessment (follow-up), the power is not intended to be specifically directed towards enforcing compliance with the direction. Instead, it is intended that the official assessment (follow up) reflects that more frequent and careful monitoring of activities may be warranted where a direction has been given and that the cost of the extra monitoring should be borne by the exhibitor. The link between a direction and the requirement to pay a fee for an official assessment (follow up) will create an economic incentive for compliance. Entry without consent or warrant is justified to ensure that the intent of the official assessment (follow up) is not frustrated by failure of the occupier to consent to the entry. The power of entry is qualified by the requirement for notice of at least 48 hours and the requirement that the entry must be at a reasonable time.

In the case of entry for clause 160 or 161, the availability of the powers is contingent upon the giving of an exhibited animal direction which can only occur where an inspector reasonably believes a responsible person for an animal has failed or may fail to discharge their general exhibition and dealing obligation. Hence, the entry powers are justified by the prevailing public interest in ensuring that the relevant risks and relevant adverse effects are now being or likely to be prevented or minimised.

Clause 159 also allows an inspector to enter a place without the consent of the occupier or a warrant if it is necessary to avoid an imminent and significant relevant risk or significant relevant adverse effect (under clause 162). Requiring that the exercise of the powers is necessary to avoid an imminent and significant relevant risk would preclude this power being exercised if normal entry powers under this chapter are sufficient in the circumstances. The requirement that the exercise of powers is necessary limits the action taken after entry to what is necessary.

Clause 197 allows an inspector to enter a place without the consent of the occupier or a warrant to give food, water or veterinary treatment to an animal that has been seized in situ, or move the animal to another place. The entry power is justified by the obligation to provide appropriate care for seized animals.

Appropriate safeguards, including procedures that must be followed, qualify powers of entry without consent or a warrant. Entry to a part of a place where a person resides is limited to where there is consent of the occupier or a warrant. Clause 174 obliges an inspector to make a reasonable attempt to locate the occupier, produce their identity card and give them notice of the reason for entering the place and that they can enter the place without consent before entering under clauses 160 – 162. The inspector may also enter the place if they are unable to find the occupier. If they later find the occupier at the place, clause 175 requires that they produce their identity card and give the notice. If the inspector does not find the occupier, they must leave a notice in a conspicuous position and in a reasonably secure way stating the date, time and purpose of entry.

Sufficient regard to the rights and liberties of individuals – provides appropriate protection against self-incrimination – LSA, section 4(3)(f)

Clauses 183 (Offence to contravene help requirement), 212 (Offence to contravene document production requirement) and 213 (Offence to contravene document certification requirement) remove self-incrimination as a reasonable excuse for a person who fails to provide information or a document or certify a document required to be kept under the Act or that is required to be kept under another Act or a law of the Commonwealth or another State, if the document relates to dealing with exhibited animals.

The abrogation of the privilege against self-incrimination is necessary because the information would generally be peculiarly within the knowledge of the person and would otherwise be difficult to establish. As a safeguard, clause 222 provides that the information or document, and other evidence directly or indirectly derived from the information or document, is not admissible in a proceeding unless it pertains to the falsity or misleading nature of the information or document.

The documents that it is likely would most often be required to be produced without protection from self-incrimination are records kept under clause 86. For example, an inspector, investigating a complaint that many animals were dying at a facility, might request, under clause 211, the exhibitor to produce records (if any) required to be kept under clause 86 about dealings with animals under the licence, make a copy and require the exhibitor to certify them as a true copy. Alternatively, if the inspector was at the place where the document was kept and there was a photocopier at the place, the inspector might request the exhibitor under clause 182 to help them make a copy of the record. In some circumstances a copy of the authority under which exhibition and dealings with an exhibited animal were being conducted might be required to be produced under clause 182 or 211 without protection from self-incrimination.

Clauses 183 and 211 also provide that there would be no protection from self-incrimination if the document is required to be kept under a law of the Commonwealth or another State if the document relates to dealing with exhibited animals. This would allow, for example, the inspector to require production of records relating to the importation of an animal from another country or movement of animals to or from interstate.

Clauses 183 and 211 also provide that there would be no protection from self-incrimination if the document is required to be kept under another Act if the document relates to dealing with exhibited animals. This would allow, for example, the inspector to require the exhibitor to produce a document that is required to be kept under the *Nature Conservation Act 1992* about the purchase or sale of a protected animal.

Clause 81 (Obligation to notify serious incidents) requires an authority holder to give notice of a range of serious incidents (see clause 80). These include the death or serious injury or illness to or of a person caused by or originating from an authorised animal and the escape or unauthorised release or removal of any authorised animal from a controlled area. Similarly, clause 82 (Obligation to notify significant change) requires an authority holder to give notice if they moved an authorised animal outside of its authorised enclosure or had to deal with it in an unauthorised way to prevent or minimise a relevant risk or relevant adverse effect associated with exhibiting or dealing with the animal. The public interest in protecting against serious animal welfare, biosecurity and safety risks is best served by ensuring the full and frank disclosure of information about the circumstances in which a serious incident or significant change occurs so that, if necessary, amendments can be made to the licence to prevent or minimise the risk of a reoccurrence. Similarly, clause 82 requires that the holder of an interstate authority corresponding to an exhibition licence who is granted an interstate exhibitors permit to enter Queensland with animals kept under the interstate authority, must give notice if the interstate authority is suspended, cancelled, surrendered or amended in a way that has the effect, in their home State, of ending the authorisation to exhibit or deal with an animal to which the interstate exhibitors permit relates. As a safeguard, clause 83 provides that a notice given under clauses 81 or 82, and other evidence directly or indirectly derived from the notice, is not admissible against the individual in a proceeding unless it pertains to the falsity or misleading nature of the notice.

If a licence holder engages an accredited person to undertake a private assessment and prepare a private assessment report, clause 121 requires the accredited person to inform the chief executive within 24 hours if they believe a person has or is contravening the Act and it poses an imminent and significant relevant risk or significant relevant adverse effect and clause 123 requires the accredited person to keep a copy of the report.

Clause 109 requires the accredited person preparing a private assessment report and the licence holder who provides it to the chief executive to ensure that the report does not contain false or misleading information. The provision is limited by only requiring the person to ensure the report does not contain information that they know or ought reasonably to know is false or, misleading. Also, clause 110 provides that a private assessment report is not admissible in evidence against the holder of the exhibition licence in civil or criminal proceedings.

These requirements require information to be provided by the accredited person that could incriminate the holder who has requested the report be prepared are justified by the public interest in protecting against serious animal welfare, biosecurity and safety risks.
Clause 256(3)(c) allows confidential information about dealing with an exhibited animal gained by a person administering or performing a function under the Act to be disclosed to the department in which the *Nature Conservation Act 1992* is administered for a purpose under that Act. As a result a person required to give information for the purpose of this Act could expose themselves to a penalty under the *Nature Conservation Act 1992*. The extent of

the potential breach of an FLP is limited by the definition of 'confidential information' which is restricted to information, other than information that is publicly available, about a person's personal affairs or reputation or that would be likely to damage the commercial activities of a person to whom the information relates. It is justified by the public interest in ensuring information is available to the department administering the *Nature Conservation Act 1992* that would enable them to effectively investigate potential unlawful keeping and use of wildlife, including, potentially, unlawful taking of wildlife from the wild.

Information might also be shared with agencies involved in managing relevant risks or relevant adverse effects. For example, if the department was notified of a serious incident which involved a zoonotic disease, it might need to share information about the incident with Queensland Health to ensure that they could trace forward any potential exposure to the disease by contact between humans.

This information might also need to be shared with interstate or Federal agencies if there was potential for the spread of the zoonotic disease across state or national borders. Similarly, information may need to be shared with interstate agencies about the potential for disease spread where infected animals were being moved across state borders. Also information might be shared with interstate agencies about concerns the department had about the care provided to animals kept in Queensland under an interstate exhibitors permit by an exhibitor who was licensed interstate.

Sufficient regard to the rights and liberties of individuals – does not confer immunity from proceeding or prosecution without adequate justification – LSA, section 4(3)(h)

Clause 5 provides that although the Commonwealth (to the extent the legislative power of the Parliament permits) or a State is bound by the Act, it will not be liable to prosecution. It would not be appropriate for the state to invest resources and effort to prosecute itself. For example, a fine imposed would be paid by the State to the State, when the funds would be better spent to achieve the outcomes of the Act. Such provisions are therefore common in similar legislation including in legislation that more broadly regulates some of the relevant risks for this Bill - animal welfare risks (the *Animal Care and Protection Act 2001*) and biosecurity risks (the *Biosecurity Act 2014*). Where it is appropriate given the gravity of an offence, the State may be liable to prosecution under the *Work Health and Safety Act 2011* in relation to a work-related health and safety matter.

Nevertheless, the intention is to make it clear that the State and, to the extent the legislative power of the Parliament permits, the Commonwealth and other States, are bound by and subject to the same obligations under the Act as other persons, even if they cannot be prosecuted. The express provision is necessary because there is a long-established common law principle that a statute does not bind the Crown (which in Australia is the Commonwealth and State and Territory governments) unless expressly mentioned.

Clause 259 protects from liability a person acting at the direction of, or helping at the request of, an inspector. The protection is justified given that the person is compelled to act. The conferral of immunity is balanced by the fact that where any civil liability would otherwise be attached to the person it instead attaches to the State and the State may then recover a contribution from the person if the conduct was not undertaken in good faith or was grossly negligent.

Sufficient regard to the rights and liberties of individuals – provides for the compulsory acquisition of property only with fair compensation - LSA, section 4(3)(i)

Clause 218 provides that a person may claim compensation from the State for loss due to the exercise of powers by an inspector. A court's discretion to order compensation is qualified by the requirement that it must be satisfied that it is just to make the order in the circumstances.

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. This may be used to prescribe technical matters, such as how compensation appropriate to the industry could be calculated.

Clause 203 provides that an inspector may destroy a seized animal without the consent of its owner if it is in pain to the extent that it is cruel to keep it alive. The power is justified by the public interest in preventing cruelty to animals and is qualified by the requirement for an inspector to form a reasonable belief. A similar provision exists under section 162 of the *Animal Care and Protection Act 2001* – an inspector may destroy a seized animal or cause it to be destroyed if the inspector reasonably believes that the animal is in pain to the extent that it would be cruel to keep it alive.

Clause 218 does not apply to loss arising from a lawful seizure or a lawful forfeiture. Clause 204 provides that the chief executive may forfeit a seized animal or thing if the owner cannot be found or it cannot be returned to its owner. The power is qualified by the requirement for an inspector to make reasonable enquiries to find its owner or make reasonable efforts to return it respectively.

Clause 204 also provides that the chief executive may forfeit a seized animal or thing if forfeiture is necessary to prevent its use in committing the offence of contravening the general exhibition and dealing obligation (clause 19). Also, the animal may be forfeited if it is progeny obtained by allowing reproduction in contravention of a condition of an exhibited animal authority. The forfeiture power is qualified by the need for an inspector to form a reasonable belief. Non-payment of compensation is appropriate because the person has not used or will not use the animal or thing in a lawful way consistent with preventing or minimising the relevant risks and relevant adverse effects associated with the exhibition of animals. However, clause 207 provides that if the chief executive sells the animal or thing, they have discretion to return the proceeds of the sale to the former owner after deducting the cost of the sale and other recoverable compliance or seizure costs.

Other procedural safeguards qualify these forfeiture powers. Clause 205 requires the chief executive to give the former owner an information notice about the decision to forfeit the animal or thing, advising them that they may apply for a stay of the decision. Clause 207 provides that the thing must not be dealt with in a way that could prejudice the outcome of a review of or subsequent appeal against the decision.
Clause 231 provides that a court may order the disposal of an animal or other thing owned by a person convicted of an offence against the Act if the animal or other thing was used in or was the subject of the offence or of another animal or of another thing that is likely to be used in committing a further offence against the Act. A court's discretion to make a disposal order is qualified by the requirement in clause 234 that it must only make a disposal order if satisfied that it is just to make the order in the circumstances. The court is not required to order compensation but has discretion, for example, to order the distribution of the proceeds

of the sale as it sees fit. A disposal order is subject to the normal appeal process under the *Justices Act 1886*.

Is the legislation unambiguous and drafted in a sufficiently clear and precise way - LSA, section 4(3)(k)

Clause 86 places an obligation on the holder of an exhibited animal authority to ensure that a record does not contain false, misleading or incomplete information, if the holder is aware, or ought to be aware of the information in question. The extension of the obligation to cover incomplete information is justified because the type of information a regulation is likely to require to be recorded under this clause is objective information, such as information about when and where exhibition occurred, the number of animals kept and how they were moved.

Sufficient regard to the rights and liberties of individuals – other – LSA, section 4(2)(a)

Clause 177 gives an inspector power to direct a vehicle to stop, stay or move in order to exercise their powers. This could be considered as infringing upon the common law right of individuals to freedom of movement. However, the power is justified because an enclosure that is mounted on or in a vehicle is just as likely to be used in activities regulated by the Act as an enclosure that is fixed at a place, particularly by exhibitors undertaking mobile exhibition activities. The power can only be exercised if an animal or other thing in or on a vehicle may provide evidence of the commission of an offence against the Act, or a vehicle, or an animal or other thing in or on the vehicle, may pose a relevant risk.

Clause 181 allows an inspector who has entered a place to: search any part of the place; open an enclosure or other thing using reasonable force; take steps to relieve the pain of an animal; inspect, examine or film; take things or samples for analysis; place an identifying mark on an animal or other thing; take extracts from, copy or take a document for copying; produce an image or writing from an electronic document; take into the place persons, equipment and materials they need to exercise their powers; and take a necessary step to enable a power to be exercised. These post-entry powers are the usual powers available to inspectors under comparable legislation. They are justified because the circumstances in which they can be exercised involve animal welfare, biosecurity or safety risks.

Appropriate safeguards in clause 180 qualify the exercise of these powers: if the inspector entered the place pursuant to the occupier's consent or a warrant, the availability of these powers is subject to the conditions of the consent or warrant; and the powers are not available if the entry was made using the power to enter a public place.

Clause 184 provides that an inspector may give a responsible person for an animal an exhibited animal direction. The direction provides a mechanism whereby the responsible person may be guided as to how they may discharge their obligation. This guidance can, however, only be provided in the form of a direction if the inspector reasonably believes the responsible person has failed, or may fail, to discharge their general exhibition and dealing obligation for exhibiting or dealing with the animal. The timeframe for compliance stated in the direction must be reasonable having regard to the relevant risk or relevant adverse effect. Similar provisions are provided in sections 158 – 160 of the *Animal Care and Protection Act 2001* which provide for the giving of an animal welfare direction where a person has committed, is committing or is about to commit an animal welfare offence. An animal welfare direction may also be given if an animal is not being cared for properly, is

experiencing undue pain, requires veterinary treatment or should not be used for work. Similar provisions are also provided in sections 373 – 377 of the *Biosecurity Act 2014* which provide that an authorised officer may give a person a biosecurity order if they reasonably believe that the person has or may fail to discharge their general biosecurity obligation. Similar provisions are also provided in sections 191 – 192 of the *Work Health and Safety Act 2011* which provide for the giving of an improvement notice if an inspector reasonably believes that a person is contravening or has contravened the *Work Health and Safety Act 2011*.

Clause 161 provides that an inspector may also take action required to be taken under an exhibited animal direction where the person to whom the direction was issued had not complied with the direction within the timeframe stated in the direction. This power is justified given that a direction can only be given if an inspector reasonably believes a responsible person for an exhibited animal has failed, or may fail, to discharge their general exhibition and dealing obligation. The inspector will be limited to taking the action that the direction required to be taken.

An inspector will have the power to require reasonable help (clause 182); require a person to state their name and address (clause 209); produce a document issued under the Act or required to be kept under this or another Act or law of the Commonwealth or another State if it relates to dealing with exhibited animals (clause 211); and issue a notice requiring a person to give the inspector information within their knowledge relevant to an offence (clause 214). Without these provisions, inspectors would be unable to gain access to information that is essential to enable them to make an informed judgment of whether the risks associated with exhibiting and dealing with exhibited animals are being minimised in a particular case.

An inspector may seize an animal or another thing where:

- they have obtained consent (clause 189)
- a warrant has been issued for the seizure (clause 191)
- the inspector entered the place with consent and the seizure is consistent with the purpose of entry explained to the occupier when gaining consent (clause 190)
- the inspector reasonably believes it is evidence of, has just been used in, or is relevant to, the commission of an offence against this Act (clause 190 and 192)
- for an exhibited animal - a responsible person for an exhibited animal has contravened, or is contravening, an exhibited animal direction or a court order about an animal (clause 192)
- the inspector reasonably believes the interests of the welfare of an animal require its immediate seizure and the animal is under an imminent risk of death or injury, requires veterinary treatment or is experiencing undue pain (clause 192).

The seizure power in relation to animal welfare is justified on the basis there is a community expectation that immediate and decisive action needs to be taken to relieve animal suffering. It is qualified by the need for the inspector to form a reasonable belief.
The seizure powers in relation to an offence or contravention of a direction or order are justified because the person has not used or will not use the animal or thing in a lawful way consistent with preventing or minimising the risks associated with the exhibition of animals.

The power in relation to an offence is qualified by the need for the inspector to form a reasonable belief. Although it will enable the seizure of evidence of an offence unrelated to the grounds for entry, the powers reflect the established common law power referred to as the

'chance discovery' principle which is also currently reflected in other Queensland laws. A thing seized under the Act could also be used in evidence in a proceeding under another Act. However, an inspector would generally not have the power to bring a proceeding to court under another Act and whether the evidence seized was admissible in another proceeding would be a matter for the relevant court to determine.

Appropriate safeguards will ensure that property is dealt with fairly after it has been seized. Clause 199 provides that an inspector must give a receipt for seized property and clause 200 requires that they allow the owner to access the seized property. Clause 201 provides that seized property must be returned unless there are reasonable grounds for its forfeiture. Clause 199 provides that an information notice must be given for the seizure which ensures a person may apply for a stay of the decision and its internal review and, eventually may appeal the seizure to the courts.

The Bill also contains other safeguards usual in similar legislation. For example, clause 152 provides for the issue of an identity card to an inspector and clause 153 provides that the cards must be produced or displayed before or when exercising a power. Various provisions require an inspector to give appropriate warnings and/or notice before exercising a power. All the powers of an inspector are qualified by the requirement, in clause 216, to cause as little inconvenience and damage as is practicable in the circumstances. Clause 217 requires an inspector to give notice of any damage to the owner of the property. Clause 218 provides that a person may claim compensation from the State for loss due to the exercise of powers by an inspector.

In deciding the suitability of an applicant for the grant of an exhibited animal licence or interstate exhibitors permit, suitability considerations (clause 53) include the criminal history of the applicant or an associate of the applicant, if they are insolvent and if the applicant or an associate of the applicant has been refused or had cancelled an exhibition licence or interstate exhibitors permit or similar authority.

The wide scope of the disclosure requirements around suitability are considered justified because the financial viability of a possible exhibitor, their criminal history, or that of an associate, and previous refusal or cancellation of a similar authority or accreditation, are indicators of the suitability of the applicant to hold an exhibited animal authority. For example, there would be a strong public interest in a disclosure that an applicant who previously held an exhibition licence in another State had that licence revoked on animal welfare grounds. Similarly, it may be reckless to allow a person who had a history of illegal trade in endangered wildlife to obtain animals that are endangered wildlife under an exhibited animal authority.

The extension of disclosure requirements to associates of an applicant is necessary to ensure that all relevant considerations are taken into account by the chief executive before an authority or accreditation is granted. For example, if a close relative of an applicant has a conviction for animal cruelty and was proposed to act under the authority, there may be increased risks associated with the granting of an exhibition licence to the applicant.

The legislation has sufficient regard to the institution of Parliament – allows the delegation of legislative power only in appropriate cases and to appropriate persons; and sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly - LSA, section 4(4)(a)-(b)

The following provisions of the Bill allow regulations to be made.

- Clause 23 provides that the Governor in Council may, by regulation, make a code of practice about exhibiting or dealing with exhibited animals. If the regulation adopts, applies or incorporates all or part of another document that are not part of, or attached to, the regulation, clause 25 requires the Minister to table the adopted provisions within 14 sitting days after the regulation is notified.
- Clause 261 provides for the Governor in Council to make regulations about: identifying exhibited animals; qualifications, training or experience required by persons acting under exhibited animal authorities; and fees payable under this Act. It also limits the penalty that may be imposed for contravention of a provision of a regulation to no more than 20 penalty units.
- Clause 43 and 47 provide that the way an authorised animal may be moved under an exhibition licence and interstate exhibitors permit respectively may be prescribed by regulation.
- Clause 69(1)(l) provides that an exhibited animal authority is subject to any conditions prescribed by regulation.
- Clause 86 provides that a regulation may require the holder of an exhibited animal authority to record, keep or give information.
- Clause 148(1)(d) provides that a regulation may prescribe persons who can be appointed as inspectors under the Act.
- Clause 149 provides that an inspector holds office subject to any conditions stated in a regulation.
- Clause 218(6) provides that a regulation may prescribe matters that may, or must, be taken into account by the court when considering whether it is just to order compensation.

Given the technical and procedural nature of these matters, it is considered they are appropriate for inclusion in regulation. Further, the *Statutory Instruments Act 1992* provides that regulations are subordinate legislation that must be tabled in the Legislative Assembly and may be disallowed.

The Bill includes a number of provisions that effectively allow a regulation to establish when a person has failed to discharge the general exhibition and dealing obligation.

- Clause 20 provides that a person fails to discharge their general exhibition and dealing obligation if they contravene a provision in a regulation that states it is a way of discharging the general exhibition and dealing obligation.
- Similarly clause 21 provides that if a regulation requires a person to comply with all or part of a code of practice to discharge their general exhibition and dealing obligation, then the person fails to discharge the obligation if the person contravenes the code of practice or stated part.

Given the technical and procedural nature of the ways of discharging the general exhibition and dealing obligation, it is considered these requirements are more appropriate for inclusion in regulation or a code of practice made by regulation. Further, the *Statutory Instruments Act*

1992 provides that regulations are subordinate legislation that must be tabled in the Legislative Assembly and may be disallowed.

Clause 26 provides that the chief executive may make guidelines about matters relating to the administration of the Act or complying with requirements imposed under the Act. For example a guideline could be made about the type of information the chief executive may consider relevant in a management plan. Non-compliance with a guideline would not constitute a breach of an obligation under the Act, but the guideline may be taken into account when considering whether a person has complied with the Act. A guideline could be used to clarify for exhibitors what the chief executive considers would meet the requirements of the Bill in a particular circumstance. Unlike a code of practice, a guideline would not establish a minimum level against which the equivalence of other measures would be compared. The chief executive is required to publish the guidelines on the department's website and make a copy available for inspection.

Clause 260 provides that the chief executive may approve forms for use under the Act.

The legislation has sufficient regard to the institution of Parliament – authorises the amendment of an Act only by another Act – LSA, section 4(4)(c)

Clause 72 provides that an authorised animal must be kept under an exhibition licence for at least one month unless the chief executive gives written approval for the earlier disposal of the animal. The intent of this clause is to ensure that animals are kept primarily for exhibition, not wildlife trade. Generally, requiring animals to be kept for one month would not inconvenience bona fide exhibitors. However, given the extraordinary complexity and diversity of the industry not all circumstances are reasonably foreseeable. Allowing the chief executive to give written approval for the earlier disposal of an animal is unlikely to frustrate the intent of the provision and is justified by the need for flexibility in these circumstances.

Clause 39 provides that the provisions in chapter 3, part 3 are subject to the conditions of the authority provided for by part 7. The conditions in part 7 include conditions that may be imposed by a regulation or by the chief executive; hence, clause 39 may be considered a Henry VIII clause. It is justified because the nature of the authorisations provided in part 3 are broad and it may sometimes be necessary to restrict how they are exercised to ensure relevant risks and relevant adverse effects are managed. Given the nature of the risks, and hence the appropriate conditions that may need to be imposed, may be quite specific to the particular activities proposed to be undertaken under the authority, it is appropriate that the restrictions may be imposed by a regulation or administrative action. It should also be noted that it is chapter 3, part 7 of the Bill itself that applies, and in some cases, restricts the relevant authority conditions.

Clause 79 provides that if a condition decided by the chief executive is inconsistent with a mandatory condition of an exhibition licence or interstate exhibitors permit (comprising those imposed by the Act and regulations), the temporary condition prevails to the extent of the inconsistency. This may be considered a Henry VIII clause. Its extent is limited by the requirement in clause 77(5) that the condition decided by the chief executive must apply for no more than one year.

The provision is justified because short term flexibility may make a significant contribution to preventing or minimising relevant risks and relevant adverse effects. Financial difficulties,

for example, might sometimes result in a licence holder being unable to retain sufficient staff to ensure the appropriate management of risks and placement of their animals with other exhibition licence holders able to do so would become urgent to ensure serious animal welfare, biosecurity and safety risks are not realised.

Hence the example given in clause 77(5) where the condition of an exhibition licence imposed by the Act (clause 76) for minimum exhibition of an authorised animal (category C) is ousted for a limited period by a condition imposed by the chief executive to allow the animal to be kept by a new licence holder who is not immediately able to arrange for its exhibit.

The provision will also assist in averting unintended consequences of mandatory conditions in the diverse industry. For example, the minimum exhibition requirements are intended to ensure that animals are exhibited, given that the relevant species to which they apply cannot be kept for private recreation in Queensland. There might be a circumstance where a species needed to be kept away from the public for a limited time to prepare for an intense period of exhibition to follow (for example to learn certain tricks for a major film production). Clauses 77 and 79 would allow the chief executive to oust the minimum exhibition requirement during the preparation period.

Clause 78 provides that a condition of a special exhibition approval granted by the chief executive takes precedence over another condition of the exhibition licence for the animal. A special exhibition approval may be granted to authorise, for a limited period of no more than one year, an exhibition licence holder to exhibit or deal with an authorised animal (category C) in a way that otherwise is not authorised under the licence. Thus there may be mandatory conditions imposed by the Act on an exhibition licence that would not be appropriate in the circumstances. Importantly the licence conditions are overridden only while the authorised animal is being exhibited or dealt with under the special exhibition approval.

Consultation

A discussion paper, *Exhibited animals*, that canvassed replacing the current legislation with a single industry-specific Act, was released for public consultation in 2008. Overall, respondents supported a single piece of legislation for exhibited animals.

In March 2011 the then Department of Employment, Economic Development and Innovation discussed the key principles proposed to underpin the legislation with the RSPCA, Animals Australia and a university academic with interests in animal welfare and ethics. These stakeholders were supportive of the key principles.

Licensed exhibitors (other than magic acts) were invited to attend workshops in April 2011 (Brisbane, the Gold Coast, the Sunshine Coast, Gladstone, Rockhampton and Cairns) and again in November and December 2012 (Brisbane and Cairns). The workshops tested industry support for the key principles proposed to underpin the legislation including the scope of the legislation, the general obligation and standards (although specific standards were not discussed) and the proposed fee structure for licensing applications and site visits (although the proposed amount of the fees had not been decided and was not discussed). Industry attendees at both the 2011 and 2012 workshops indicated general support for the key features of the proposed exhibited animals legislation.

A Consultation Regulatory Impact Statement for new legislation was released for public comment in November 2013, with consultation closing in February 2014. 25 submissions were received from a diverse range of respondents from different sectors of the industry and wider community. Feedback on the Consultation Regulatory Impact Statement again confirmed support for the development of a single piece of legislation to regulate the exhibited animals industry.

In July 2014, the (then) Department of Agriculture, Fisheries and Forestry held a workshop with industry participants to discuss a working draft of the *Exhibited Animals Bill 2014*. 17 industry participants attended and commented on the working draft. They were generally supportive of the draft.

In October 2014, the *Exhibited Animals Bill 2014* was introduced to Parliament and subsequently referred to the relevant Parliamentary Committee for inquiry. The Parliamentary Committee invited written submissions to its inquiry and held a public briefing and public hearing. 19 parties made written submissions to the committee. The *Exhibited Animals Bill 2014* lapsed when Parliament was dissolved for the 2015 State election.

Feedback received in response to the Consultation Regulatory Impact Statement, industry suggestions made at the workshop and submissions to the Parliamentary Committee inquiry informed the finalisation of the Bill.

Consistency with legislation of other jurisdictions

Approaches to regulating the exhibition of animals vary across Australian jurisdictions. However, in all Australian jurisdictions, a licence, permit or some other kind of authority is required to exhibit many exotic animals and native animals.

No jurisdiction has consolidated management in a single Act of the risks to animal welfare, biosecurity and safety that are associated with the exhibition of exotic and native animals. However, both New South Wales and Tasmania have consolidated licensing of the exhibition of exotic and native animals under a single Act. Otherwise, the legislative approach in other Australian jurisdictions is somewhat similar to the current regulatory approach in Queensland — the exhibited animals industry is generally regulated by several pieces of legislation that deal separately with pest management and animal disease, wildlife conservation and risks to animal welfare. There are some variations - legislation in some other jurisdictions, including New South Wales, does not preclude licensing of mobile exotic animal collections, including circuses that have animals not based in a fixed exhibit.

In contrast to other States, Queensland is in the enviable position of having a substantially private and profitable animal exhibition industry that makes a significant direct contribution to its economy and to its reputation as a tourist destination. This compares, for example, with New South Wales, Victoria and Western Australia, where legislation provides for state ownership and operation of zoos.

National standards for the exhibition of animals in Australia are currently under development. The Bill will provide a legislative framework that will enable adoption of the national standards as codes of practice, which will improve consistency across Australian jurisdictions.

Reasons for non-inclusion of information

Feedback received on the Consultation Regulatory Impact Statement, at the workshop to discuss a working draft of the *Exhibited Animals Bill 2014* and submissions to the Parliamentary Committee inquiry informed the development of a Decision Regulatory Impact Statement for the new legislation. The public release of the Decision Regulatory Impact Statement is not proposed until a decision has been made on all the included matters, including fees, which would be prescribed by regulations under the Bill. Consequently, this document is generally consistent with, but does not reference, the Decision Regulatory Impact Statement.

Notes on provisions

Chapter 1 Preliminary

Chapter 1 outlines the purpose of the legislation, the means to achieve the purpose, key definitions including what are exhibited animals, relevant risks, relevant adverse effects, and key concepts used throughout the Bill.

Part 1 Introduction

Clause 1 provides that, when the Bill is enacted, the Act may be cited as the *Exhibited Animals Act 2015*.

Clause 2 provides that the Act will commence on a date to be fixed by proclamation. However, any provision that has not commenced already will commence on 1 July 2016. The clause further provides that section 15DA of the *Acts Interpretation Act 1954* does not apply to the Act, which means that a regulation cannot be made to extend the commencement date.

Provision for commencement has been made in this way because commencement of the Bill is intended to be coordinated with commencement of the *Biosecurity Act 2014* which commences on a date to be fixed by proclamation, or if no date has been fixed by 1 July 2016, then on that day. A permit class for authorising exhibitors to deal with species that are prohibited or restricted matter is not provided under the *Biosecurity Act 2014* (although it could be prescribed by regulations made under that Act) in anticipation that this Bill will provide such authorisation.

Part 2 Purposes of Act and achieving the purposes

Clause 3 provides that the main purpose of the Act is to provide for exhibiting and dealing with exhibited animals whilst ensuring that associated relevant risks and relevant adverse effects are prevented or minimised.

Clause 4 establishes how the purposes of the Act are to be achieved. The Act introduces a general obligation on persons exhibiting and dealing with exhibited animals to prevent or minimise relevant risks and relevant adverse effects associated with such exhibition. Furthermore, authorities must be obtained in order to exhibit particular animals, and these authorities may be subject to additional obligations. The Act also provides for powers to support monitoring and enforcement of compliance with the Act, codes of practice relating to a person's obligations under the Act, and for the chief executive to make guidelines about the Act's application and how a person may comply with obligations under the Act.

Part 3 Application and operation of Act

Clause 5 specifies that the Act binds all persons including the State, the Commonwealth and other States so far as the legislative power of the Parliament permits. This reflects the intent for the risk management and licensing requirements under the Act to apply to all persons exhibiting and dealing with exhibited animals, including the Crown. However, neither a State nor the Commonwealth can be prosecuted for an offence against the Act.

Clause 6 provides that the Act does not apply to the State in respect of an animal only because the animals is a protected animal or an animal in the wild and under statute or common law such an animal is property of the State.

Clause 7 provides that the Act will not interfere with the operation of other relevant Acts. For instance, a responsible person for an animal will have an obligation to manage the relevant risks and the relevant adverse effects associated with the exhibition of an animal, which include risks to the welfare of any animal and adverse effects on the welfare of any animal. However, the Act does not negate the operation of the *Animal Care and Protection Act 2001* which imposes obligations relating to animal welfare, including a duty of care.

Clause 7 further clarifies that this Act applies to the NCA chief executive if the NCA chief executive is exhibiting or dealing with an exhibited animal only under section 173P of the *Nature Conservation Act 1992*. As a result, the chief executive under the *Nature Conservation Act 1992* will generally require authorisation under this Act to exhibit and deal with native animals in circumstances where a private individual would require authorisation. However, section 10 provides that this Act does not apply to an animal that is displayed under the authority of section 173P of the *Nature Conservation Act 1992* if it is a protected animal being rehabilitated for return to the wild in some circumstances or an animal which is a protected animal or international wildlife being displayed for no longer than 11 days at a time.

Clause 8 provides that a contravention of the Act does not, of its own, create a civil cause of action.

Clause 9 provides that a civil right or remedy available to a person is not affected or limited by the Act, and that compliance with the Act does not necessarily show that a civil obligation, which exists outside of the Act, has been satisfied or has not been breached.

Clause 10 details instances of exhibition or dealings with animals to which the Act does not apply. Specifically, the Act will not apply to animals of a species listed in schedule 1 of the Act, which reflects the need to exclude certain common or domestic animals that are appropriately regulated under other legislation. Nor is it the intent of legislation to require an authority for an animal that is allowed to be exhibited under the *Nature Conservation Act 1992* or the *Biosecurity Act 2014*.

In addition, the Act will not apply if an exhibited animal authority is not required to exhibit the animal and a licence, permit or other authority under the *Nature Conservation Act 1992* or the *Biosecurity Act 2014* is not required to deal with the animal and either:

- the animal is displayed for 11 days or less, unless the display is for a commercial purpose;
- the animal is displayed only for the purpose of its sale; or
- the animal is being used for scientific purposes.

Also, the Act will not apply if the animal is a protected animal exhibited under section 173P(1) of the *Nature Conservation Act 1992*, and the animal is being rehabilitated for return to the wild either:

- to provide information about its ecological role;
- to promote education about, and the conservation of, the species;
- to promote an understanding of ecology and the conservation of the species; or

- to raise funds for the care and treatment of animals being rehabilitated for return to the wild.

This approximates the circumstances in which the holder of a rehabilitation permit under the *Nature Conservation Act 1992* is authorised to display an animal.

Additionally, the Act will not apply if the animal is a protected animal or international wildlife not being rehabilitated for return to the wild that is displayed for 11 days or less under the authority of section 173P(1) of the *Nature Conservation Act 1992*, unless the display is for a commercial purpose.

Part 4 Interpretation

Division 1 Dictionary

Clause 11 provides that the dictionary in schedule 2 defines particular words used in the Act.

Division 2 Key concepts and definitions

Clause 12 defines an 'animal' to be any live member of the animal kingdom, other than a human being.

Clause 12 further specifies that 'animal' in the context of dealing with an exhibited animal includes an animal at each stage of its life cycle, for example, a pre-natal or pre-hatched creature, as well as the whole or part of the genetic or reproductive material of an animal, for example, semen. This is to ensure that a person who is authorised to deal with an exhibited animal is able to deal with the genetic or reproductive material of an animal, for example, for the purpose of impregnating an animal with semen from an animal of the same species held in another State without having to physically co-locate the animals.

Clause 13 defines 'exhibit' to mean the display of the animal to the public (including a section of the public). For example the display could be for commercial, cultural, educational, entertainment or scientific purposes.

Clause 13 further clarifies that 'exhibit' extends to displaying an animal at a private event, arranging for the animal to be at a public place that allows members of the public to view the animal, regardless of whether it is viewed or not, and allowing public interaction involving the animal.

A responsible person for an animal also exhibits an animal if they record 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.

'Exhibit' does not, however, extend to allowing a public interaction with an animal, arranging to view an animal or recording an animal's image, if the animal is in the wild. These activities are not intended to be captured by this Act.

Clause 14 defines an 'exhibited animal' to be an authorised animal, or another animal (not an authorised animal) that is exhibited if the exhibition is regulated under this Act. Some animal exhibits are excluded from regulation under the Act by section 10 and hence the animals involved are not exhibited animals. The inclusion of an authorised animal ensures that an animal kept under an exhibited animal authority is still an exhibited animal even if it has never been exhibited.

Clause 15 defines what 'dealing with' an exhibited animal means: the carrying out of an activity involving or relating to the animal, other than exhibiting the animal. 'Dealing with' specifically includes:

- accepting, buying, importing or obtaining the animal;
- breeding, culturing, growing or raising the animal;
- keeping or possessing the animal;
- moving the animal;
- giving, selling or otherwise disposing of, the animal.

Clause 16 defines who, under the Act, is a 'responsible person' for an exhibited animal. A 'responsible person' is a person who exhibits or deals with the animal, employs another person to exhibit or deal with the animal (if the other person exhibits or deals with the animal within the scope of their employment), holds an exhibited animal authority for the animal, or owns, or holds a proprietary interest in the animal. However, 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 steps to enforce the mortgage or security.

Clause 16 further clarifies that a person is not a 'responsible person' only because they record the animal's image, or employ someone else to record the animal's image, unless the person is otherwise a responsible person for the animal. This is to ensure that a member of the public who has no other involvement with the animal is not a 'responsible person' for an exhibited animal simply because they record its image, for example, in a photograph taken during a visit to a zoo.

Also a person continues to be a 'responsible person' for a seized animal if they satisfied the definition of 'responsible person' immediately before the exhibited animal was seized under the Act.

Clause 17 defines a 'relevant risk' to be any of the following risks associated with exhibiting or dealing with an exhibited animal:

- a risk to the welfare of any animal,
- a biosecurity risk,
- a risk to public safety or of death, injury or illness to a person caused directly by, or originating from the exhibited animal.

Clause 17 also defines 'relevant adverse effects' as the adverse effects of an event caused by exhibiting or dealing with an exhibited animal on each of the following:

- the welfare of any animal,
- the health, safety or wellbeing of a person,
- social amenity, the economy and the environment.

Chapter 2 Exhibiting and dealing with exhibited animals generally

Chapter 2 establishes the obligations that will apply to responsible persons exhibiting and dealing with exhibited animals. It establishes the general exhibition and dealing obligation applying to responsible persons for exhibited animals and outlines the means by which they may discharge their obligation.

Part 1 General exhibition and dealing obligation

Clause 18 provides for a 'general exhibition and dealing obligation' which applies to a responsible person for an exhibited animal. This obligation requires such persons 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.

Clause 18 further clarifies that a responsible person has a general exhibition and dealing obligation to prevent or minimise a biosecurity risk associated with 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.

Clause 19 creates an offence for failing to discharge a general exhibition and dealing obligation. The maximum penalty for the offence is 750 penalty units.

Clause 20 details the effect of a regulation in relation to a person discharging their general exhibition and dealing obligation. A regulation may explicitly prescribe a way of discharging the general exhibition and dealing obligation. If a person contravenes such a regulatory provision, then that person is taken to have failed to discharge their obligation and thereby triggered the general exhibition and dealing offence provision.

However, unless stated in the regulation, the regulation does not prescribe all that a person must or must not do to satisfy their obligation. That is, a person may be required to go beyond the regulatory provisions to satisfy their obligation. This reflects that it is not possible for a regulation to be comprehensive in every circumstance in which it applies and it is not intended a responsible person should be excused from taking any other steps that are reasonable and practical in their particular circumstances.

Clause 21 details the effect of a code of practice in relation to a person discharging their general exhibition and dealing obligation.

Codes of practice can be made under the Act to assist a person meet their general exhibition and dealing obligation. Codes of practice may, for example, contain technical details or best practice measures for animal exhibition, or be of a general nature about risk management in animal display and exhibition.

However, unless explicitly stated, a code of practice does not provide all that a person has to do to discharge their obligation. That is, a person may be required to go beyond the regulatory provisions to satisfy their obligation. It is not a defence for failing to discharge their general exhibiting and dealing obligation that the relevant code of practice did not require particular action to be taken.

A person fails to discharge their obligation by contravening a code, and not following another way that is at least as effective as the way stated in the code.

If a regulation requires compliance with the whole or stated part of a code of practice in order to discharge the general exhibition and dealing obligation, any contravention of the code or stated part is taken to be a failure to discharge the obligation.

Clause 22 provides that in a proceeding against the general exhibition and dealing obligation offence provision, 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.

The intent of this clause is to ensure that where a breach of the general exhibition and dealing obligation occurs due to the actions of a person outside the control of a responsible person, the responsible person has recourse for defence.

Specifically, if a person proves they complied with a regulation or code of practice that prescribes how the general exhibition and dealing obligation can be discharged, a person is taken to have demonstrated due diligence if they followed that way. They could, for example, assume the prescribed way was an appropriate way to prevent or minimise the risks. However, this clause does not exclude the operation of section 24 of the Criminal Code.

Part 2 Codes of practice and guidelines

Part 2 provides for the making of codes of practice and guidelines about exhibiting and dealing with exhibited animals.

Division 1 Codes of practice

Clause 23 provides that codes of practice may be made by the Governor in Council by regulation. The scope of such codes of practice is not limited by the provision. Codes of practice may be made about, but are not limited to:

- preventing or minimising relevant risks and relevant adverse effects associated with exhibiting or dealing with exhibited animals;
- designing, constructing or maintaining enclosures for exhibiting or dealing with exhibited animals; or
- 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.

The purpose of codes of practice made under a regulation is to assist individuals to discharge their general exhibition and dealing obligation under chapter 2, part 1 of the Act.

Clause 24 requires that the chief executive consult with entities that have in interest in matters relating to exhibiting and dealing with exhibited animals. These may include community groups and professional and industry associations. This consultation must be done before the code of practice is recommended to the Governor in Council. However, the

code of practice is not invalid if this consultation did not occur. Also this obligation does not extend to code of practice provisions that are adopted.

Clause 25 requires the Minister to table in the Legislative Assembly a copy of adopted provisions of codes of practice if they are not part of or attached to the regulation under which they are made. These adopted provisions must be tabled within 14 sitting days of the regulation being notified. If any amendments are made to the adopted provisions these must also be tabled in the Legislative Assembly within 14 sitting days of the amendments being made. The chief executive must also keep a copy of the adopted provisions available for inspection by the public. A failure to table the adopted provisions or keep a copy available for inspection does not invalidate or otherwise affect the regulation.

Division 2 Guidelines

Clause 26 enables the chief executive to make guidelines about matters relating to the administration of the Act or complying with other requirements imposed under the Act. Guidelines are intended to provide guidance to exhibitors and the general public about matters relating to the administration of the Act.

Without limiting the scope of such guidelines, the following matters may be the subject of a guideline:

- how the monitoring and enforcement of compliance provisions of the Act will operate;
- ways in which animals may be exhibited or dealt with in enclosures, such as ensuring an enclosure allows an animal to display its normal behaviours;
- information the chief executive may consider relevant in a management plan for managing the relevant risks and relevant adverse effects associated with exhibiting and dealing with an exhibited animals.

Before making a guideline, the chief executive must take reasonable steps to provide interested entities with the opportunity to make submissions on the proposed guideline. However, the guideline is not invalid if this consultation did not occur.

Clause 27 requires the chief executive to publish guidelines on the department's website and make them available to the public for inspection free of charge.

Clause 28 provides that in deciding whether a person has discharged their general exhibition and dealing obligation, or has otherwise complied with the Act, a guideline may be taken into account. However, it must not be presumed that because a person has failed to follow a guideline that the person has failed to discharge their general exhibition and dealing obligation or otherwise contravened the Act. For example, a person does not follow a guideline about procedures for dealing with an animal while its cage is cleaned. If someone was seriously injured while handling the animal when its cage was being cleaned, the fact that the person did not follow the guidelines will not, of its own, be suggestive that the person has breached their general exhibition and dealing obligation under the Act.

Chapter 3 Exhibited animal authorities

Chapter 3 provides for the issuing of authorities to enable the exhibition of and dealings with exhibited animals.

Part 1 Preliminary

Clause 29 defines an 'exhibited animal authority' to be an authority that is specified in section 30 for exhibiting and dealing with an exhibited animal. 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. That is, the exhibited animal authority is the authority that enables the holder to exhibit and deal with the animal.

Clause 29 further provides that, unless otherwise provided, a reference to an exhibited animal authority or an authority in relation to an authorised enclosure is a reference to the exhibited animal authority under which a type of enclosure (for an authorised animal (category A)) or a particular enclosure (for an authorised animal (category B) or (category C)) is authorised for the exhibition or dealing with that animal.

Clause 30 provides for three types of exhibited animal authorities that may be issued by the chief executive. They are an 'exhibition licence', an 'interstate exhibitors permit' and a 'temporary authority'. An exhibition licence authorises exhibiting and dealing with an animal. An interstate exhibitors permit authorises exhibiting and dealing with an animal in Queensland that is authorised to be exhibited and dealt with elsewhere under an interstate authority. A temporary authority may be given to deal with an animal for the purpose of obtaining an exhibition licence for the animal or for disposing of an animal that was previously kept under an exhibition licence or interstate exhibitors permit.

Clause 31 defines a 'special exhibition approval' as an approval given to the holder of an exhibition licence to exhibit and deal with an authorised animal (category C) at a place identified in the approval that is outside its regular enclosure located at its regular enclosure site under the licence and outside a controlled area that includes its regular enclosure located at its regular enclosure site under the licence. An authorised animal (category C) is defined in section 35. These animals are more tightly regulated under this Act given their high pest potential.

Generally an authorised animal (category C) may only be exhibited in its regular enclosure at its regular enclosure site or a controlled area that it includes its regular enclosure at its regular enclosure site (see section 73). The intent of a special exhibition approval is to enable, for a limited period or on specific occasions, exhibition of an authorised animal (category C) at another place.

Clause 32 provides that an 'authorised animal' is an animal that is authorised to be exhibited and dealt with under an exhibited animal authority. An authorised animal may be an authorised animal (category A) consistent with section 33, an authorised animal (category B) consistent with section 34, or an authorised animal (category C) consistent with section 35.

Clause 33 defines an 'authorised animal (category A)' as an authorised animal which is international wildlife, or a commercial animal, controlled animal, recreational animal or restricted animal under the *Nature Conservation Act 1992*.

Clause 34 lists some common authorised animals that would be an 'authorised animal (category B)' and provides that any other authorised animal that is neither an authorised animal (category A) or (category C) is an authorised animal (category B).

Clause 35 defines an 'authorised animal (category C)' as an authorised animal that is prohibited matter under the *Biosecurity Act 2014*, other than an animal that is international wildlife under the *Nature Conservation Act 1992*. Some species of green python and some species of eclectus parrot are both international wildlife and prohibited matter and hence would not be an authorised animal (category C).

Clause 36 provides definitions for an 'authorised enclosure' specific to the category of authorised animal.

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. Given that private keeping of these animals is allowed under a recreational wildlife licence under the *Nature Conservation Act 1992*, there are lesser regulatory requirements relating to these animals when kept under an exhibited animal authority under this Act. Specifically, a type of enclosure rather than a particular enclosure is authorised.

In contrast, an authorised enclosure for an authorised animal (category B) or (category C) is a (particular) enclosure in which the animal is authorised to be exhibited or dealt with under the exhibited animal authority.

Clause 37 defines the term 'management plan.' A management plan is to be submitted by an applicant for the grant, renewal or restoration of an exhibition licence or the amendment of such a licence by the grant of a special exhibition approval or otherwise. A plan is also required for an application for the grant or amendment of an interstate exhibitors permit.

Management plans must identify the particular animals or each species of animals that are proposed to be an authorised animal (each a 'subject animal') and state how the applicant proposes to exhibit and deal with the subject animal. The management plan must identify the significant relevant risks and relevant adverse effects associated with exhibiting and dealing with the subject animal, and how those risks will be prevented or minimised. Where the application is for a subject animal that is not native wildlife, the plan must state the arrangements for managing the reproduction of the animal, including for example, arrangements for managing any associated progeny.

A management plan submitted for an exhibition licence will contain further information. For a subject animal proposed to be an authorised animal (category A), the plan must identify each type of enclosure proposed to be a regular enclosure for the animal and any other authorised enclosures proposed for the animal. For a subject animal proposed to be an authorised animal (category B) or (category C), the plan must identify each (particular) enclosure proposed to be a regular enclosure for the animal and any other authorised enclosures proposed for the animal. The plan must also identify each regular enclosure site for each regular enclosure proposed in the plan.

If the application and management plan relates to the amendment of an exhibition licence by the grant of a special exhibition approval for an authorised animal (category C) it must

include all of the above elements as it relates to the exhibiting and dealing with each animal under the approval.

Part 2 Requirement for authority

Clause 38 provides that it is an offence to exhibit an animal without an exhibited animal authority that is:

- native wildlife unless, under the *Nature Conservation Act 1992*, it can be kept or used without an authorisation under the *Nature Conservation Act 1992*;
- international wildlife under the *Nature Conservation Act 1992*;
- prohibited wildlife under the *Nature Conservation Act 1992*;
- prohibited matter under the *Biosecurity Act 2014*; or
- restricted matter under the *Biosecurity Act 2014*.

The maximum penalty for exhibiting an animal without an exhibited animal authority is 500 penalty units.

Clause 38 further clarifies that despite section 173P(1) of the *Nature Conservation Act 1992*, the chief executive under that Act is not exempt from the requirement to have an exhibited animal authority only by virtue of section 173P(2) of that Act. The intent is to subject government exhibitions, other than those excluded from the application of the Act under section 10, to the requirement for an authority under the Act.

Part 3 Authorisations

Division 1 Preliminary

Clause 39 provides that the purpose of part 3 is to provide for exhibiting and dealing with an authorised animal.

Clause 39 also clarifies that provisions in part 3 relating to exhibited animal authorities are subject to a condition of authority under part 7.

Division 2 Exhibition licences

Clause 40 provides that an exhibition licence authorises the holder to exhibit and keep an authorised animal in the way stated in the licence.

Clause 41 provides that the holder of an exhibition licence is authorised to buy or accept an authorised animal only from a person who is authorised to sell or give it under Queensland law, the law of another State, or that of the Commonwealth. Alternatively, where the animal is imported into the State from a person in a foreign country, the exhibition licence holder can only buy or accept the animal if the importation was authorised under a law of the Commonwealth.

Clause 42 provides that the holder of an exhibition licence may sell or give an authorised animal to a person who is authorised to buy or accept it under Queensland law, the law of another State, or the Commonwealth, or, where an animal is to be exported from the State to another country, only if the exportation is authorised under Commonwealth law.

Clause 43 provides the circumstances in which an exhibition licence authorises the holder to move an authorised animal. An animal may be moved:

- from one authorised enclosure to another authorised enclosure;
- from an authorised enclosure to the premises of a veterinary surgeon for treatment or care, and return to an authorised enclosure;
- to a place outside an authorised enclosure, if for exhibition or dealing authorised under the licence;
- to a place outside an authorised enclosure, if necessary to prevent or minimise a relevant risk or relevant adverse effect associated with exhibiting or dealing with the animal;
- from a place controlled by a person from whom the animal has been bought or accepted under section 41, to an authorised enclosure;
- from an authorised enclosure to a place controlled by a person to whom the animal has been sold or given under section 42;
- as otherwise stated in the licence or prescribed by regulation.

Clause 44 provides that an exhibition licence can authorise other dealings with an authorised animal.

Division 3 Interstate exhibitors permits

Clause 45 defines a 'primarily authorised animal' for an interstate exhibitors permit, as an animal to which the primary authority for the permit relates.

Clause 45 also defines a 'primary authority' as the interstate authority identified in the permit.

Clause 46 provides that an interstate exhibitors permit authorises the holder to exhibit and keep a primarily authorised animal in the way stated in the permit.

Clause 47 provides the circumstances in which an interstate exhibitors permit authorises the holder to move a primarily authorised animal. An animal may be moved under an interstate exhibitors permit:

- from one authorised enclosure to another authorised enclosure;
- from an authorised enclosure to the premises of a veterinary surgeon for treatment or care, and return to an authorised enclosure;
- to a place outside an authorised enclosure, for exhibition or dealing authorised under the permit;
- to a place outside an authorised enclosure, if necessary to prevent or minimise a relevant risk or relevant adverse effect associated with exhibiting or dealing with the animal;
- as otherwise stated in the permit or prescribed by regulation.

Division 4 Temporary authorities

Clause 48 provides that a temporary authority authorises the holder to deal with an animal in the way stated in the authority. It is intended that a temporary authority could provide for dealings with an animal that are directed at lawfully resolving how it will be kept in the longer term. For example, where an individual commits a relevant offence and their licence is

cancelled, a temporary authority could be granted to enable them to lawfully sell or otherwise dispose of their animals.

Part 4 Applications for grant of particular authorities

Division 1 Preliminary

Clause 49 specifies that part 4 applies to applications for the granting of either an exhibition licence or an interstate exhibitors permit. Part 4 is not relevant to temporary authorities.

Division 2 Making application

Clause 50 provides that a person may apply to the chief executive for an exhibition licence. Similarly, the holder of an interstate authority may apply to the chief executive for a grant of an interstate exhibitors permit.

Clause 51 provides that an application for an exhibition licence or interstate exhibitors permit must be in the approved form and be accompanied by a management plan and the prescribed fee. The management plan must be 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.

The chief executive may waive the application fee if the application relates to exhibiting an animal that is prohibited or restricted matter, and the proposed exhibition is aimed at controlling or eradicating animals of that species, and the applicant will not derive any financial benefit from exhibiting or dealing with the animal, and the applicant undertakes in writing to advise the chief executive of the progress and outcomes of exhibiting and dealing with the animal.

Clause 52 provides that an applicant may withdraw their application at any point before the application is decided. Any fee accompanying the application is not refundable if the application is withdrawn or taken to be withdrawn.

Clause 53 sets out the matters that the chief executive may or must consider when deciding whether a person is suitable to hold an exhibited animal authority, and provides that the chief executive may make inquiries to determine the suitability of an applicant. An individual is not suitable to hold an authority if they are insolvent under administration. Nor is a corporation suitable to hold an authority if the corporation is placed in receivership or liquidation, or its executive officer is insolvent under administration.

There are other considerations that are relevant in informing the chief executive's decision regarding suitability of the applicant to hold the authority. They are not however definitive in directing the chief executive's ultimate decision. These other matters which may be considered in deciding suitability are:

- whether the applicant, or an associate of the applicant, has previously been refused an exhibition licence, interstate exhibitors permit or similar authority;
- whether the applicant, or an associate of the applicant, has held an exhibition licence, interstate exhibitors permit or similar authority that was suspended or cancelled;

- whether the applicant, or an associate of the applicant, has a conviction for a relevant offence, other than a spent conviction. The term 'relevant offence' is defined in schedule 2; and
- 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 capacity to comply with the conditions of an authority.

Clause 54 provides that the chief executive, when deciding an application, may require the applicant, by notice, to provide a document or further information. Such information or documents may be required to be included in the management plan. Any document or further information submitted must be verified by a statutory declaration, if the notice requires.

The notice requiring further information or documents must be given to the applicant within 30 days after the application is received. The applicant must provide the information or document within a stated period of at least 30 days. If the applicant does not supply the requested document or information within the stated timeframe, the applicant is taken to have withdrawn the application.

Clause 55 provides for the chief executive to request, by notice, consent to an official assessment where the chief executive considers that an official assessment is reasonably required to decide an application for the grant of an exhibition licence.

The notice requesting consent must be given within 30 days after the application is received. The applicant must consent in writing to an official assessment within a reasonable stated period of at least 30 days. If the applicant does not provide written consent within the stated period, the applicant is taken to have withdrawn the application.

Clause 56 provides that at any time before an application is decided, the chief executive may, by notice, recommend changes to the application, including to the management plan. The notice may invite the applicant to give the chief executive an amended application reflecting the changes within a reasonable stated period of at least 30 days. The intent is to allow an opportunity for the applicant to address a deficiency in their application that might otherwise result in it being refused or granted with conditions. Where an applicant gives the chief executive an amended application in response to the notice within the stated period, then the application will be dealt with as if it was a new application.

Division 3 Deciding application

Clause 57 provides that the chief executive must consider the application and either grant, grant with appropriate conditions, or refuse to grant the application.

Clause 58 provides the general criteria that must be met in order for the chief executive to grant the application. Where an application has been made by an individual, it may only be granted where the applicant is an adult. In addition, before an application may be granted, the chief executive must be satisfied that the applicant is a suitable person to hold the authority, must approve the management plan for the animals to be authorised under the authority, and, where the application relates to an activity that is an assessable development under the *Sustainable Planning Act 2009*, must be satisfied that development approval has been granted.

Clause 58 further provides that the chief executive can only approve a management plan if satisfied that each animal proposed to be authorised under the authority can be exhibited and dealt with under the plan in a way that prevents or minimises the relevant risks and relevant adverse effects associated with exhibiting or dealing with the animals.

Clause 59 provides that where the application relates to exhibiting or dealing with an animal in a premises or part of a premises used for residential purposes, the chief executive may only grant the application if the applicant is the occupier of the premises or part and written consent has been given for an inspector to enter the premises or part of the premises.

Clause 60 provides for the circumstances in which an applicant seeks to exhibit or deal with animals at two or more premises under an authority. The chief executive may only grant the application if satisfied exhibiting or dealing with the animals at each premise is operationally interrelated, that the same individuals ('designated carers') will have the day-to-day care and control of the animals at each premise, and the location of each premise allows the integrated day-to-day care and control of the animals by the designated carers to be feasible.

Clause 60 is intended to allow exhibition and dealing across two sites under a single exhibition licence where the sites are reasonably proximal such as where an exhibitor has expanded their operations to a site next door or immediately across the road. However, clause 60 is intended to prevent an entity holding a single exhibition licence for exhibits managed separately in different regions of the State. This is largely because an official assessment to monitor compliance with the Act at all the sites would not be feasible on a single visit by an inspector in these circumstances.

Clause 61 requires the chief executive to issue the authority if the application is granted. However, if the application is refused, or granted with conditions other than those applied for, the chief executive must give the applicant an information notice for the decision.

Clause 62 provides that an application is taken to be refused if the chief executive fails to decide the application within 40 days of its receipt. However, if the chief executive has requested further information or a document under section 54(1) or consent to an official assessment (application) under section 55(2), the application is taken to be refused if the chief executive fails to decide the application within 40 days of receipt of the required information or document or the consent. An information notice for the decision must be given to the applicant if the application is taken to be refused under this provision. The entitlement to an information notice triggers the review provisions under chapter 7, part 5. This will enable the applicant to escalate consideration of their application if they do not receive a timely decision.

Part 5 Granting temporary authorities

Clause 63 sets out the circumstances in which the chief executive may grant a temporary authority. The provision applies where 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 an exhibition licence or interstate exhibitors permit, and any of the following apply:

- an exhibition licence is cancelled or suspended;
- the holder of an exhibition licence does not apply for its renewal or restoration and the licence expires;

- an application for renewal or restoration of an exhibition licence is withdrawn or taken to have been withdrawn and the licence has expired;
- the chief executive decides to refuse, or is taken to have refused, to renew or restore an exhibition licence and the licence expires; or
- an interstate exhibitors permit expires or is cancelled or suspended and an animal to which a permit is related is in Queensland.

In such circumstances, the chief executive may grant a temporary authority to the person who previously held the exhibition licence or interstate exhibitors permit. When this occurs, the exhibition licence or interstate exhibitors permit becomes the 'previous authority' for the temporary authority.

It is further clarified that the chief executive may grant a temporary authority before the expiry of the previous authority, although it will only take effect when the previous authority expires.

Part 6 Authority provisions

Division 1 Contents

Clause 64 prescribes that an exhibited animal authority must:

- state the name and contact details of the authority holder;
- identify each animal authorised to be exhibited and dealt with under the authority as a particular animal;
- identify each species (or group of species) for each animal authorised to be exhibited and dealt with under the authority by species (or group of species);
- state the dealings with authorised animals that are authorised under the authority - dealings authorised with particular animals and/or dealings authorised with any animal of the species;
- for an authorised animal (category A), identify each authorised type of enclosure in which the animal may be exhibited and dealt with;
- for an authorised animal (category B) or (category C), identify each authorised enclosure for the animal;
- state the way in which each authorised animal is authorised to be exhibited. This may include allowing the public to enter an authorised enclosure in a stated way or exhibiting the animal outside an authorised enclosure in a stated way;
- state the special conditions of the authority (see section 77);
- state the term of the authority; and
- include the approved management plan for the authority.

A matter, other than the name and contact details of the authority holder, may be identified or stated by reference to a matter in the approved management plan.

Clause 65 requires additional contents for an exhibition licence. For an authorised animal (category A), an exhibition licence must identify each authorised type of enclosure that is an authorised type of regular enclosure for the animal. For an authorised animal (category B) or (category C), an exhibition licence must identify each authorised enclosure that is a regular enclosure for the animal. For any authorised animal, it must identify each regular enclosure site for a regular enclosure.

An exhibition licence may identify these matters by reference to a matter identified or stated in the approved management plan for the licence.

If an exhibition licence has been amended by granting a special exhibition approval for an authorised animal (category C), the exhibition licence must include the special exhibition approval.

Clause 66 requires that in addition to the required contents of any exhibited animal authority in section 64, an interstate exhibitors permit must identify the primary authority for the permit.

Clause 67 provides that a temporary authority complies with the required contents of an exhibited animal authority in section 64(1)(a) – (g), if it includes a provision of the previous authority for the temporary authority (an exhibition licence or interstate exhibitors permit).

Division 2 Term

Clause 68 provides that an exhibited animal authority remains in force for the term decided by the chief executive and stated in the authority, unless sooner suspended or cancelled. However, an exhibition licence cannot have a term of more than three years and an interstate exhibitors permit cannot have a term of more than one year, and 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

Clause 69 sets out the mandatory conditions for all exhibited animal authorities comprising:

- an authorised enclosure suitable for the animal's use must be supplied for each authorised animal;
- 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;
- an authorised animal must, to the greatest extent practicable, have the use of the entire enclosure in which it is exhibited or kept;
- an authorised animal may only be exhibited and dealt with in a way that is authorised under the authority and consistent with the approved management plan for the authority;
- if an authorised animal is authorised to be exhibited outside an authorised enclosure, it must be under the immediate control of a responsible person for the animal;
- if an authorised animal is authorised to be dealt with outside an authorised enclosure and a controlled area, it must be under the immediate control of a responsible person for the animal;
- if an animal is authorised to be exhibited or dealt with in premises or part of premises used for residential purposes and occupied by the authority holder, the authority 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;
- while an authorised animal is exhibited, an exhibition notice must be displayed so as to be easily visible to persons attending the place where the animal is exhibited;

- an authorised animal that has 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;
- aggressive behaviour of a particular authorised animal that caused a human death or serious injury or illness must not be disclosed to a member of the public for an advertising, marketing or promotional purpose;
- the reproduction of an authorised animal that is not native wildlife, must be managed in accordance with the approved management plan; and
- any other conditions prescribed by regulation.

It is further clarified that the condition that an authorised animal must be provided with an authorised enclosure does not prohibit multiple authorised animals from sharing an enclosure.

An 'exhibition notice' must contain the name and contact details of the holder of the authority, other than a residential address, and the term of the authority.

Division 2 Mandatory conditions – exhibition licences

Subdivision 1 Preliminary

Clause 70 provides that division 2 states further conditions that apply to an exhibition licence.

Subdivision 2 Exhibiting and keeping authorised animals generally

Clause 71 places the following additional conditions on an exhibition licence:

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

Clause 72 makes it a condition of an exhibition licence that an authorised animal must be kept under the licence for at least one month, unless the chief executive gives written approval for the earlier disposal of the animal.

Clause 73 makes it a condition of an exhibition licence that an authorised animal (category C) may only be exhibited at a regular enclosure for the animal located at a regular enclosure site under the licence, or in a controlled area that includes a regular enclosure for the animal at the regular enclosure site under the licence. An authorised animal (category C) may only be exhibited at another place if the exhibition is authorised under a special exhibition approval included in the licence.

Subdivision 3 Minimum exhibition periods

Clause 74 states that subdivision 3 applies to an exhibition licence, subject to other conditions of the licence.

Clause 75 applies to an authorised animal (category B) and those particular animals covered by section 265. It is a condition of an exhibition licence that at least one authorised animal of the species of animal is exhibited in each calendar month (the relevant month) during the term of the exhibition licence.

However, the clause recognises that meeting this requirement may prove challenging for some exhibitors given seasonal demand. As such, it provides that the minimum exhibition condition is met where an authorised animal of the species has been exhibited on at least twelve separate occasions in the year ending immediately before the relevant month (the preceding year). 'Separate occasion' is defined as each day on which the animal is exhibited or each occasion that the animal is exhibited more than once on a particular day, provided the audiences do not consist substantially of the same people. Where animals of the species have been kept under the licence for only part of the preceding year, the minimum exhibition requirement would instead be met if an authorised animal of the species was exhibited on at least the number of separate occasions equal to the number of whole calendar months in the preceding year the animal was kept. For example, if the animal was only kept for six months and ten days in the year leading up to that month, the condition would be met if it had been displayed on six separate occasions.

The minimum exhibition requirement is directed at ensuring public benefits related to exhibition are realised when these species are kept under an exhibition licence.

Display at a private event held at a regular enclosure site under the licence is generally an 'exhibit' for the Act under section 13(2)(a), However, it is not an exhibition of the animal for the purposes of the minimum exhibition period in clause 75. This is because verifying these exhibition activities would be particularly problematic and could make the minimum exhibition requirement unenforceable.

Similarly, a responsible person for an authorised animal recording the animal's image to be recorded is generally an 'exhibit' for the Act under section 13(3). However, it is not an exhibition of the animal for the purposes of the minimum exhibition requirement in clause 75, unless the recording is by way of filming for a film or television production in the form of a story, narrative or documentary.

Clause 76 applies to an authorised animal (category C) other than those particular animals covered by section 265. It is a condition of an exhibition licence that at least 1 authorised animal of the species of animal is exhibited for a combined total of 75 hours in each calendar month (the relevant month) during the term of the exhibition licence.

However, the clause recognises that meeting this requirement may prove challenging for some exhibitors given seasonal demand. As such, it provides that the minimum exhibition condition is met where an authorised animal of the species has been exhibited for a combined total of at least 900 hours in the year ending immediately before the relevant month (the preceding year). Where animals of the species have been kept under the licence for only part of the preceding year, the minimum exhibition requirement would instead be met if an

authorised animal of the species was exhibited for at least the combined total of hours that corresponds to an average of at least 75 hours in each whole calendar month in the preceding year the animal was kept. For example, if the animal was only kept for six months and ten days in the year leading up to that month, the condition would be met if it had been displayed for a combined total of 450 hours.

An hour may only be counted toward the minimum exhibition requirement in clause 76 if the animal is exhibited for at least three hours on that occasion. The intent of having a minimum period of three hours is to simplify enforcement by making it easier to verify hours of exhibition that may be counted against the requirement.

Display at a private event is generally an 'exhibit' for the Act under section 13(2)(a). However, it is not exhibition of the animal for the purposes of the minimum exhibition requirement in clause 76.

The minimum exhibition requirement is directed at ensuring public benefits related to exhibition are realised when these species are kept under an exhibition licence. The requirement is higher for the high pest-potential animals that are an authorised animal (category C) than for an authorised animal (category B). This reflects that the public benefit that needs to be realised to balance the pest establishment risks involved in allowing them to be kept is more significant than for other wildlife.

Similarly, a responsible person for an authorised animal recording the animal's image is generally an 'exhibit' for the Act under section 13(3). However, recording the animal's image is not an exhibition counted towards the minimum exhibition requirement in clause 76, 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

Clause 77 provides that the chief executive may decide additional conditions for an exhibited animal authority, each a special condition. The special conditions are those considered appropriate by the chief executive, giving consideration to the relevant risks and relevant adverse effects associated with exhibiting or dealing with an animal under the exhibited animal authority. Special conditions are not limited to, but may include:

- the maximum or minimum number of authorised animals that may be exhibited and dealt with under the exhibited animal authority;
- prohibiting or restricting the reproduction of the authorised animal;
- requiring the authority holder to maintain public risk insurance of a stated amount that the chief executive considers reasonable; and
- a record requirement

Furthermore, a temporary authority may include similar or equivalent conditions to a mandatory condition of an exhibition licence.

Clause 77 further clarifies that a special condition of an exhibited animal authority may allow something to be done or omitted to be done that would contravene a mandatory condition of the authority, unless permitted by this clause or section 79, but only if the special condition applies for a period of no more than 1 year stated in the authority.

Clause 78 provides that where there is an inconsistency between a condition of an exhibition licence for an authorised animal, whether it is a mandatory condition or a special condition and a condition of a special exhibition approval for the animal, then the approval condition prevails to the extent of the inconsistency while the animal is exhibited or dealt with under the approval.

Clause 79 provides for circumstances where a 'temporary condition' is inconsistent with a mandatory condition. A temporary condition is a special condition of an exhibition licence or interstate exhibitors permit to which section 77(5) applies, or a condition of an exhibition licence or interstate exhibitors permit decided under section 137(5)(b). Where such a temporary condition is inconsistent with a mandatory condition of an exhibition licence or an interstate exhibitors permit, the temporary condition prevails to the extent of the inconsistency.

Part 8 Obligations under exhibited animal authorities

Division 1 Notification obligations

Subdivision 1 Preliminary

Clause 80 provides for the definitions for chapter 3, part 8, division 1. In particular, it defines what constitutes a 'serious incident' which must be reported under section 81.

Subdivision 2 Authority holders

Clause 81 creates an obligation on the authority holder to immediately notify the chief executive of a serious incident relating to an authorised animal, unless the holder has a reasonable excuse. The maximum penalty for failing to do so is 100 penalty units.

The notice must be given by the faster option of written notice (including emails) or by telephone. The chief executive must respond, by the same means, acknowledge the notification or give a direction to give notice of the incident in the approved form within 48 hours.

Clause 81 further specifies that if the authority holder attempts to notify the chief executive by telephone, but does not receive a direction or acknowledgement, then they must give written notice of the serious incident.

Clause 82 places an obligation on the authority holder to notify the chief executive, in the approved form, of a significant change within:

- 48 hours, if the significant change is mentioned in subclause (1)(a) or (b);
- 7 days, if the significant change is mentioned in subclause (1)(c).

Failure to provide notice in either case is an offence with a maximum penalty of 50 penalty units.

Clause 83 makes certain evidence inadmissible as evidence in a proceeding in some circumstances. If the authority holder is an individual and notifies the chief executive of a serious incident mentioned in section 81(1), a serious incident mentioned in section 81(3)(a)

or a significant change mentioned in section 82(2), evidence of the notification or indirectly derived from the notification is inadmissible in a proceeding against the individual to the extent that the notification would incriminate them, or expose them to penalty in legal proceedings. This protection does not however apply to a proceeding about the false or misleading nature of the notice.

This protection is provided because it is more important that the chief executive becomes aware that there was an serious incident or that there were movements of the animal outside its authorised enclosure that were not foreseen, risks that could not be prevented or minimised under the authority, or that the primary authority no longer allows dealings with the animals and can consult with the authority holder about amending the plan for dealing with the risks or granting a temporary approval if appropriate.

Subdivision 3 Persons acting under authorities

Clause 84 establishes an obligation for a person acting on behalf of the authority holder to notify the authority holder if they become aware of a serious incident. This notice must be provided no later than 24 hours after becoming aware of the incident, unless the person has a reasonable excuse. If the authority holder cannot be notified, the chief executive must be notified. Failure to fulfil these notification obligations is an offence with a maximum penalty of 100 penalty units.

Division 2 Other obligations

Clause 85 creates an offence for the authority holder to contravene a condition of an exhibited animal authority, unless the holder has a reasonable excuse. The maximum penalty for contravening a condition of the authority is 200 penalty units.

However, it is a defence to a prosecution for this offence, where the contravention relates to specific conditions of the authority stated in clause 85(2), if the defendant proves there was a signed veterinary surgeon's certificate stating that the contravention was necessary to prevent or minimise a relevant risk or relevant adverse effect associated with exhibiting or dealing with an authorised animal.

Clause 86 provides that a regulation, condition of an exhibited animal authority or notice from the chief executive may require (a 'record requirement') the authority holder to do any of the following:

- record specific information relating to exhibiting or dealing with an animal in a stated way or at stated intervals or times;
- keep specific information in a stated way, or at a stated place or for a stated period; and/or
- provide the chief executive or another stated person specific information in a stated way or at stated times or intervals.

It is an offence for an authority holder not comply with a record requirement without reasonable excuse. The maximum penalty for non-compliance is 200 penalty units.

Furthermore, it is an offence for an authority holder who is required to create a record under a record requirement, to allow the record to contain information that the holder knows, or ought to know is false, misleading or incomplete. The maximum penalty for non-compliance is 200 penalty units.

Part 9 Other applications relating to particular authorities

Division 1 Renewal or restoration

Clause 87 provides that the holder of an exhibition licence may apply for renewal of registration no earlier than six months and no later than three months before the end of the term of the licence (the 'renewal period'). The holder or former holder of an exhibition licence may also apply to the chief executive from the end of the renewal period until 3 months after the term of the licence ends, for the renewal or restoration of the licence.

An application for renewal or restoration must be in the approved form, and accompanied by a fee prescribed by regulation. The chief executive may waive the fee, if the chief executive waived the application fee under section 51(2).

The renewal or restoration application may be accompanied by a new management plan or a private assessment report for exhibiting and dealing with an animal that is, or is to be, authorised under a licence.

Clause 88 provides that sections 52 to 56, 58 to 60 and 62 ('relevant provisions') apply to an application for renewal or restoration of an exhibition licence. That is, those provisions relevant to an application for an exhibition licence generally apply to the renewal or restoration application, subject to the operation of sections 89 and 90.

Clause 89 ensures that the approved management plan for an exhibition licence continues if the application for renewal or restoration of the licence is not accompanied by a revised management plan. Alternatively, the approved management plan continues in force if the application is accompanied by a new management plan that the chief executive considers is materially changed from the approved management plan and the chief executive asks the applicant to apply under division 2 to amend the licence to affect the change.

Clause 90 specifies that if an application for renewal or restoration is accompanied by a private assessment report prepared by an accredited person then an applicant does not require an official assessment. However, if:

- the private assessment report states that in the opinion of the accredited person an authorised animal has not been, or is not being exhibited or dealt with in compliance with the legislation or an enclosure does not comply with the legislation;
- the accredited person gives the chief executive notice about an alleged contravention of the legislation by the applicant; or
- the chief executive considers the application cannot properly be decided on the basis of the report,

then an official assessment may still be requested.

Clause 91 provides that the chief executive must consider an application for renewal or restoration of the exhibition licence, and decide to renew or restore the licence, or refuse to renew or restore the licence. In making this decision the chief executive must consider any contravention of an exhibited animal direction by the applicant. The chief executive must give the applicant an information notice about a decision to refuse to renew or restore the licence.

Clause 91 further clarifies that an exhibition licence may be renewed or restored by issuing a new licence to replace it.

Clause 92 provides that an exhibition licence will continue in force until a renewal application has been decided or taken to have been decided or is taken to have been withdrawn. This applies only where the holder of an exhibition licence applies for renewal of the licence during the renewal period and the licence is not suspended or cancelled before it was due to expire. If the renewal application is refused or taken to be refused, the licence will continue in force until the licence holder has been given an information notice for the decision.

Where the holder of an exhibition licence applies for renewal or restoration of the licence after the renewal period has ended it is intended that the licence not continue until the application is decided. In these circumstances the chief executive may decide to grant a temporary approval to authorise limited dealings with the formerly authorised animals.

Division 2 Amendment

Clause 93 provides that division 2 applies to exhibition licences and interstate exhibitors permits.

Clause 94 provides that 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 C).

An authority holder may also apply to the chief executive to otherwise amend the authority. However, applications cannot be made to extend the maximum term of the authority.

Applications must be made in the approved form and accompanied by the prescribed fee. If the amendment relates to matters mentioned in section 37(2) to (4) (that relate to a management plan), the application must also be accompanied by a revised management plan.

Clause 95 provides that sections 52 to 56, 58 to 60 and 62 (‘relevant provisions’) apply to an application to amend the authority. That is, those provisions that applied to the application for the authority generally apply to its amendment.

However, section 55 only applies to an application to amend an exhibition licence, and section 58(1)(b)(ii) and (2) do not apply to an application if the proposed amendment if it is not relevant to a matter mentioned in section 37(2 to (4) (that relate to a management plan).

Clause 96 provides for the chief executives consideration of an application to amend an exhibition licence in the form of a special exhibition approval. The chief executive must grant the special exhibition approval, grant the approval with conditions, or refuse to grant the approval. The chief executive must consider any contravention of an exhibited animal direction by the applicant when deciding the application.

However, the chief executive can only grant the special exhibition approval for a maximum of one year, or, if it is sooner, until the term the exhibition licence ends.

If the chief executive grants the special exhibition approval, the chief executive must give the applicant the approval. The approval, while it remains in force, is taken to be part of the exhibition licence to which the approval relates. If however, the chief executive refuses to grant the special exhibition approval or decides to grant the approval on conditions other than those applied for, the applicant must be given an information notice for the decision.

Clause 97 provides that where an application is made for an amendment to an exhibited animal authority, other than for a special exhibition approval, the chief executive must consider the application and either amend the authority, amend the authority with conditions, or refuse the application. The chief executive must consider any contravention of an exhibited animal direction by the applicant when deciding the application.

The chief executive may amend the exhibited animal authority by giving the authority holder notice of the amendment, or by issuing another authority of the same category to replace it. If, however, the chief executive refuses to amend an exhibited animal authority, or decides to amend the authority on conditions other than those applied for, then the applicant must be given an information notice for the decision.

Division 3 Transfer of exhibition licence

Clause 98 provides for the transfer of an exhibition licence where the holder and the proposed transferee make a joint application to the chief executive for the transfer of the licence. The application for transfer must be in the approved form and accompanied by the prescribed fee.

Clause 99 provides that the chief executive may decide to transfer the exhibition licence only if satisfied that there will not be substantial change in the persons principally involved in exhibiting or dealing with the authorised animals under the licence or the dealings authorised under the licence, and that the transferee is a suitable person to hold the licence. Otherwise the chief executive must refuse the application.

In determining whether the proposed transferee is a suitable person to hold the licence, the chief executive may have regard to the criteria under section 53.

The chief executive may transfer the exhibition licence by issuing a new exhibition licence to the transferee.

The transfer application is taken to have been refused by the chief executive if the application is not decided within 30 days after the chief executive receives the application. In this instance, the applicants are entitled to be given an information notice by the chief executive for the decision. Similarly, if the chief executive refuses to transfer the exhibition licence, the applicants must be given an information notice for the decision.

Part 10 Other matters

Division 1 Register of authorities

Clause 100 provides that the chief executive must keep a register of exhibited animal authorities. Parts of the register must be made publically available. These include information

such as the name and contact details of the authority holder. These parts must be published on the department's website. Also a person may pay the prescribed fee to purchase a copy of all or part of the publically available part of the register.

Division 2 Death of authority holder

Clause 101 provides certainty to authority holders and their families through an express provision that clearly set out the effect of a holder's death on an exhibited animal authority. Upon death, the authority holder ceases to be the authority holder.

If the holder was the only holder of the exhibited animal authority, then the authority continues in force, and the individual's personal representative becomes the authority holder.

Where there is more than one authority holder, the individual's personal representative becomes the authority holder, and the other holders continue to be authority holders.

Clause 102 provides for the administrative matters necessary to reflect the change in authority holder to a personal representative in the instance of an authority holder's death. In this circumstance, the personal representative, as the new holder of the authority, must give the chief executive notice in the approved form within 21 days of becoming the new holder. Also, until the change is recorded, notices issued by the chief executive to the new holder may be given at the last known address of the deceased holder.

Chapter 4 Assessment of compliance

Chapter 4 provides for assessments of compliance that may be used to decide applications for the grant, renewal or amendment of an authority or that may be undertaken where an exhibitor has a been given an exhibited animals direction. Private assessments by accredited persons may provide sufficient evidence to decide a licence renewal application.

Part 1 Official assessments

Clause 103 applies if a person applies, or intends to apply for the grant, renewal or restoration of an exhibition licence or the amendment of an exhibition licence, including by the grant of a special exhibition approval for an authorised animal (category C). The clause provides that an inspector may with the person's consent, 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 the likelihood of the person complying or the compliance of the person with the Act.

Clause 104 applies where the authority holder is given an exhibited animal direction. The clause empowers an inspector to 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.

Only one official assessment (follow up) may be carried out in relation to the giving of an exhibited animal direction, and only within 1 year.

Clause 104 further clarifies that the clause does not limit other powers of inspectors under the Act.

Clause 105 provides that a person must pay the fee prescribed by legislation if an official assessment (application) or (follow-up) is carried out to assess a person's compliance with the Act. The chief executive may recover the fee from the person as a debt payable to the State.

Part 2 Private assessment

Clause 106 provides that under part 2 a holder of an exhibition licence includes a former holder of an exhibition license.

Clause 107 defines a private assessment as 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 the Act.

Clause 108 defines a private assessment report as a report of a private assessment 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. The report must state each item in subclause (2).

Clause 109 makes it an offence for an accredited person, who prepares a private assessment report or the holder of an exhibition licence who provides the report to the chief executive, to provide information that they know or ought to reasonably know is false or misleading. The maximum penalty is 200 penalty units.

Clause 110 provides that a private assessment report is not admissible in evidence against the holder of an exhibition licence in civil or criminal proceedings. However, it may be admissible in 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

Clause 111 provides that a person may apply to the chief executive for the grant of accreditation. The application must be in the approved form and accompanied by the fee prescribed by regulation.

Clause 112 provides that the chief executive must consider the application and decide to grant the accreditation applied for, grant the accreditation on conditions or refuse to grant the accreditation.

Clause 113 provides that the chief executive may grant the accreditation only if satisfied the applicant has the necessary expertise or experience to carry out private assessments and prepare private assessment reports and is a suitable person to hold the accreditation.

Clause 114 enables the chief executive, when considering the application for a grant of accreditation, to make further inquiries to decide the suitability of the applicant. The chief executive may also require the applicant, by notice, to give further information or a document reasonably required to decide the application.

Clause 114 provides that the chief executive must give the notice within 30 days after having received the application and allow at least 30 days for the applicant to respond. If the notice requires, the information or document must be verified by statutory declaration. If the applicant fails to provide the required further information or documents within the stated timeframe, the application is taken to have been withdrawn.

Clause 115 sets out the criteria the chief executive may consider when deciding whether a person is suitable to hold the accreditation. The matters include, but are not limited to: whether the applicant has been refused an accreditation under this Act or another similar Act, whether the applicant has had a previous accreditation suspended or cancelled or whether the applicant has been previously convicted of a relevant offence, and whether the applicant is an insolvent under administration.

Clause 116 provides that if the chief executive decides to grant the accreditation, the chief executive must give the accreditation to the applicant. If the chief executive decides to refuse to grant the accreditation or grants the accreditation with conditions other than those applied for, the chief executive must give the applicant an information notice for the decision.

Clause 117 provides that if the chief executive fails to decide the application for the accreditation within 30 days after receiving it, the chief executive is taken to have refused to grant the application.

Where the chief executive has required the applicant to furnish further information or a document, 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 receiving the further information or document.

If the application is taken to be refused, the applicant is entitled to an information notice by the chief executive for the decision. This triggers the review provisions under chapter 7, part 5.

Division 2 Accreditation provisions

Clause 118 provides that an accreditation must state the accredited person's name and contact details, the term of the accreditation and the conditions of the accreditation.

Clause 119 provides that an accreditation remains in force for a period of no longer than three years stated in the accreditation, unless it is sooner cancelled or suspended.

Clause 120 provides that an accreditation is subject to conditions including that an accredited person must give the chief executive notice of any direct or indirect financial or other interest the accredited person has, in the business of a responsible person for an authorised animal that could conflict with the proper carrying out of a private assessment and preparing a private assessment report. The clause provides the chief executive may impose other reasonable conditions the chief executive considers appropriate for the proper carrying out of

private assessments and preparation of private assessment reports. The conditions may include restrictions on the species of authorised animals the accredited person is authorised to inspect.

Division 3 Obligations of accreditation holders

Clause 121 places an obligation on an accredited person who conducts a private assessment for the holder of an exhibited animal licence to give to the chief executive details of the facts and circumstances which give rise to a reasonable belief that a person has contravened or is contravening the Act and either, the contravention poses an imminent and significant relevant risk or the contravention is directly related to an event that has had, or is about to have, a significant relevant adverse effect.

The clause obliges the accredited person to provide the details to the chief executive as soon as practicable and in any case not more than 24 hours after forming the belief. The clause provides that if the accredited person gives the details to the chief executive orally, then they must give the chief executive written notice within 24 hours of giving the details orally. It is an offence for an accredited person to fail to comply with this requirement with a maximum penalty of 200 penalty units.

Clause 122 makes non-compliance by an accredited person with the conditions of their accreditation, without a reasonable excuse, an offence with a maximum penalty of 200 penalty units.

Clause 123 requires an accredited person who prepares a private assessment report to keep a record of that report for a minimum of three years after it is prepared. It is an offence, with a maximum penalty of 50 penalty units, for an accredited person to fail to comply with this requirement.

Division 4 Renewal

Clause 124 provides that an accredited person may apply to the chief executive for renewal of their accreditation. The application for renewal of an accreditation must be made in the approved form within 60 days of their current accreditation expiring and be accompanied by the fee that is prescribed under a regulation.

Clause 125 requires the chief executive to consider the application and either renew or refuse to renew the accreditation. Sections 113, 114, 115 and 117 (‘relevant provisions’) apply to the renewal application. The chief executive must give the applicant an information notice if the chief executive decides to refuse to renew the accreditation. The accreditation may be renewed by giving another accreditation to replace it.

Clause 126 provides that if a person has applied to renew their accreditation then it continues until a decision has been made, or is taken to have been decided or withdrawn, unless the accreditation is earlier suspended or cancelled. A refusal to renew an accreditation does not affect the accreditation until an information notice for the refusal for renewal is given to the applicant.

Division 5 Amendment by application

Clause 127 provides that a holder of an accreditation may apply for an amendment of the accreditation. The application must be in the approved form and be accompanied by the prescribed fee. However, the holder of the accreditation cannot apply to extend the term of the accreditation to more than three years.

Clause 128 requires the chief executive to consider the application and either decide to amend, amend on conditions relevant to the amendment, or refuse to amend the accreditation. Sections 114, 115 and 117 ('relevant provisions') apply to the amendment application. The chief executive must also be satisfied the applicant has the necessary expertise or experience to carry out private assessments and prepare private assessment reports under the accreditation as amended.

An information notice must be given to the applicant if the chief executive decides to amend the accreditation on conditions other than those applied for or refuses to amend the accreditation. The chief executive may amend an accreditation by giving the accredited person a notice of the amendment or giving another accreditation to replace it.

Division 6 Other matters

Clause 129 requires the chief executive to keep a register of accredited persons. The register must contain each accredited person's name and contact details, the conditions imposed on the accreditation and the term of the accreditation. The register may be kept in the form, including in electronic form, that the chief executive considers appropriate. The chief executive must publish the register on the department's website.

Clause 130 provides that an accreditation cannot be transferred.

Chapter 5 Cancellation, suspension and amendment of authorisations

Chapter 5 provides for cancellation, suspension and amendment of an exhibited animal licence, interstate exhibitors permit or accreditation.

Part 1 Relevant authorisations

Clause 131 provides that in part one a relevant authorisation can mean an exhibition licence (whether or not a special exhibition approval for an authorised animal (category C) under the licence is in force), an interstate exhibitors permit or an accreditation.

Clause 132 sets out the grounds on which the chief executive may cancel or suspend a relevant authorisation. The grounds are:

- the holder of the authorisation is not, or is no longer a suitable person to hold the authorisation;
- the authorisation was obtained by materially incorrect or misleading information or documents or by a mistake;

- the holder of the authorisation has not paid a fee or other amount payable to the chief executive in relation to the authorisation;
- the holder of the authorisation has contravened a condition of the authorisation;
- for an exhibition licence or interstate exhibitors permit, if the holder has contravened an exhibited animal direction or had a similar authority in another jurisdiction was cancelled within two years preceding the date a show cause notice for cancelling or suspending the authorisation was given;
- for an accreditation, if the accredited person does not have the necessary expertise or experience to carry out private assessments or private assessment reports or if a private assessment conducted or private assessment report prepared by the accredited person has not been conducted or prepared honestly, fairly or diligently.

Clause 133 empowers the chief executive to amend a relevant authorisation if grounds exist to amend the authorisation. The grounds are:

- a matter pertaining to the suitability of the holder that is not grounds for cancellation or suspension;
- a matter (other than pertaining to the suitability of the holder) that is grounds for cancellation or suspension;
- for an exhibition licence or interstate exhibitors permit - if the chief executive considers the approved management plan for the licence or permit needs to be changed because it does not make, or no longer makes, adequate provision for identifying, preventing or minimising a significant relevant risk or relevant adverse effect associated with dealing with an authorised animal, or managing the reproduction of an authorised animal that is not native wildlife.

Clause 134 requires the chief executive to give a show cause notice to a holder of a relevant authorisation if the chief executive believes a ground exists to cancel, suspend or amend the relevant authorisation. The show cause notice must state the proposed action and the grounds for it as well as the facts and circumstances that the grounds were based on. If the proposed action will suspend or amend the relevant authorisation, then the show cause notice must also include the proposed suspension period or the proposed amendment. The show cause notice must invite the holder to make written representation within a stated period (the 'show cause period') to show why the proposed action should not be taken. The show cause period must end at least 28 days after the authority holder is given the show cause notice.

Clause 135 provides that the holder of a relevant authorisation may make written representations about the show cause notice to the chief executive and the chief executive must consider all the representations.

Clause 136 provides that if, after considering the representations made by the holder of a relevant authorisation during the show cause period, the chief executive believes that the proposed action should no longer be taken, the chief executive must give a notice to the holder advising of the decision to take no further action about the show cause notice.

Clause 137 provides that the chief executive may suspend, cancel or amend a relevant authorisation if, after considering representations made by the holder of a relevant authorisation during the show cause period, the chief executive still believes there is a ground to proceed with the cancelation, suspension or amendment and it is warranted. The chief executive may also suspend, cancel or amend a relevant authorisation if there were no representations made by the holder of the authorisation during the show cause period.

The chief executive may amend a relevant authorisation by imposing a condition on the authorisation, or amend an exhibition licence or interstate exhibitors permit in a way that has the effect of prohibiting or restricting the exhibition of, or dealing with, an authorised animal. Where an amendment to an exhibition licence or interstate exhibitors permit prohibits or restricts dealings with an authorised animal, the chief executive may impose a time-limited condition on the licence or permit to allow the animal to be dealt with for the purpose of allowing the removal of the prohibition or restriction by further amendment, or to allow the proper disposal of the animal. The intent is to provide for lawful dealings with the animal while the amendment decision is reviewed or to allow for the lawful disposal of the animal.

If the chief executive decides to cancel, suspend or amend the relevant authorisation, the chief executive must give an information notice for the decision to the holder of the relevant authorisation. A decision to cancel, suspend or amend a relevant authorisation comes into effect either on the day the information notice is given to the holder, or the day stated in the notice for that purpose, whichever is later.

Clause 138 provides the chief executive with the power to immediately suspend or cancel an exhibition licence or interstate exhibitors permit if the chief executive believes a ground exists to cancel or suspend the licence or permit and 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 it.

Clause 138 also provides that the chief executive may only suspend a licence or permit if the chief executive gives the exhibition licence or interstate exhibitors permit holder an information notice for the decision along with a show cause notice. The suspension operates immediately the notice is given and continues until the chief executive cancels the remaining period of the suspension, the show cause notice is finally dealt with, or 56 days has passed since the notice was given to the holder, whichever is the earliest.

Where the holder of an exhibition licence or interstate exhibitors permit has returned the licence or permit to the chief executive under section 141 and the suspension has stopped because the chief executive cancels the remaining period of the suspension or the show cause notice is finally dealt by a decision not to cancel or suspend the relevant authorisation or 56 days have passed since the notice was given to the holder, the chief executive must return the licence or permit to the holder.

Clause 139 exempts the chief executive from the requirements of the chapter for particular types of amendments of a relevant authorisation. The provision only applies to clerical amendments, amendments that will not adversely affect the interests of the holder and amendments proposed by the holder and accepted by the chief executive without requiring a formal application to be made. In these cases, the chief executive may make the amendment to the authority by way of a notice to the holder.

Clause 140 exempts the chief executive from the requirements of the chapter where the holder of the relevant authorisation asks the chief executive to cancel it and the chief executive proposes to give effect to the request. The chief executive may cancel the relevant authorisation by way of notice to the holder.

Clause 141 makes it an offence, with a maximum penalty of 40 penalty units, for a holder not to return a relevant authorisation that has been cancelled, suspended or amended to the chief executive within 14 days, or a later stated time, after receiving a notice from the chief executive requiring the return of the authorisation. The chief executive must return the authorisation to the holder at the end of a suspension period or following an amendment to the authorisation.

Clause 141 further clarifies that an amendment to a relevant authorisation is not dependent on the authorisation being returned to the chief executive or by the chief executive to the holder of the authorisation.

Part 2 Temporary authorities

Clause 142 provides that a 'relevant original decision' in part 2 refers to either a refusal, or deemed refusal, to renew or restore a previous authority, or the cancellation or suspension of a previous authority.

Clause 143 provides that a temporary authority is cancelled where a relevant original decision is made for a previous authority for the temporary authority, and on review of, or appeal against, the decision, the previous authority is renewed or restored or the cancellation or suspension of the previous authority is set aside or otherwise revoked.

Clause 144 provides that where the Queensland Civil and Administrative Tribunal or a court stays a relevant original decision, then a temporary authority issued on the basis of the relevant original decision is suspended for the period of the stay.

Clause 145 provides that the chief executive may, by notice to the holder, cancel or amend a temporary authority. The clause makes it an offence, with a maximum penalty of 40 penalty units, if the holder of a temporary authority does not return the authority within 14 days or a later stated time after receiving notice from the chief executive requiring the return of the authority because it has been cancelled or amended.

Chapter 6 Investigations and enforcement

Chapter 6 provides for investigation and enforcement of the Act.

Part 1 General provisions about inspectors

Division 1 Appointment

Clause 146 provides that the chapter includes provisions for the appointment of inspectors, and gives particular powers to those inspectors.

Clause 147 identifies the functions of inspectors. These include investigation and enforcement.

Clause 148 empowers the chief executive to appoint inspectors by written instrument. The classes of persons that are to be eligible for appointment as inspectors are: inspectors under the *Animal Care and Protection Act 2001*, authorised officers under the *Biosecurity Act 2014*,

public service employees and other persons prescribed under a regulation. Inspectors may only be appointed if the chief executive is satisfied the person is appropriately qualified for the appointment.

Clause 149 provides for the conditions of appointment of inspectors and allows for the imposition of limitations on their powers. The conditions, and any limitation on the inspector's powers, must be stated in the inspector's instrument of appointment or a notice given to the inspector and signed by the chief executive, or in a regulation.

Clause 150 provides that, although not limited to the following, an inspector ceases to hold office if:

- the term of office stated in a condition of office ends;
- under another condition of office, the office ends; or
- the inspector resigns.

Clause 151 provides that an inspector may resign by giving a signed notice to the chief executive. 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 as well.

Division 2 Identity cards

Clause 152 provides that the chief executive must issue each inspector with an identity card. The card must include a recent photograph of the inspector, their signature, an expiry date and identify that they are an inspector appointed under the Act.

Clause 153 requires inspectors to produce their identity card or have it clearly visible when exercising a power in the presence of a person. However, if this is not practicable, the inspector must produce their identity card to a person for their inspection at the first reasonable opportunity.

Clause 153 further clarifies that an inspector does not exercise a power in relation to a person only because the inspector has entered a public place or place of business mentioned in an exhibited animal authority in the circumstances described in section 159 (1)(a) or (b) respectively.

Clause 154 makes it an offence, with a maximum penalty of 20 penalty units, for a person not to return their identity card to the chief executive within 21 days after their office as an inspector ends, unless the person has a reasonable excuse.

Division 3 Miscellaneous provisions

Clause 155 provides that wherever there is a reference under this chapter to the exercise of a power by an inspector and there is no reference to a specific power, the reference is to the exercise of all or any of the inspector's powers under this chapter or a warrant to the extent that the powers are relevant.

Clause 156 provides that a reference in this chapter to a document includes a reference to an image or writing produced from an electronic document, or 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

Clause 157 provides that an inspector to enter a place by consent. An inspector may enter a place subject to any conditions of consent where—

- the entry is made to carry out an official assessment (application) at the place; or
- the entry is made under section 69(1)(g); or
- an occupier at the place otherwise consents provided they comply with section 165 (Matters inspector must tell occupier).

The power to enter with consent is subject to any conditions of the consent and ceases if the consent is withdrawn.

Clause 158 provides that an inspector may enter a place where entry is authorised by a warrant if provided they comply with section 172 (Entry procedure) if there is an occupier at the place. If entry is authorised under a warrant, the entry is subject to the terms of the warrant.

Subdivision 2 Other powers of entry

Clause 159 provides that an inspector may enter a place without consent or a warrant if:

- the place is a public place and the entry is made when the place is open to the public;
- it is a place of business mentioned in an exhibited animal authority and is—
  - open for carrying on the business; or
  - otherwise open for entry; or
  - required to be open for inspection under a condition of the authority;
- 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
- the entry is authorised under section 160 (to check compliance with an exhibited animal direction), section 161 (to take action required to be taken under an exhibited animal direction) or section 162 (to avoid an imminent and significant relevant risk or significant relevant adverse effect).

Clause 159 further clarifies that an inspector cannot enter a part of the place where a person resides in these circumstances without the person's consent or a warrant.

Clause 160 empowers an inspector to enter a place, at reasonable times, to check whether an exhibited animal direction has been complied with.

Clause 161 empowers an inspector to enter a place, at a reasonable time, to take action that was required under an exhibited animal direction that has not been complied with.

Clause 162 empowers an inspector to enter a place if the inspector is satisfied on reasonable grounds that an exhibited animal is being exhibited or dealt with at the place and it is necessary to exercise powers under the chapter to avoid an imminent and significant relevant

risk or a significant relevant adverse effect associated with exhibiting or dealing with the exhibited animal.

Division 2 Entry by consent

Clause 163 provides that division 2 applies where an inspector intends to seek consent for entry to a place.

Clause 164 provides that an inspector may, without consent or a warrant, enter land around the premises to contact the occupier to the extent it is reasonable, or 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.

Clause 165 provides that an inspector must give a reasonable explanation to the occupier about the purpose of the entry, including the powers intended to be exercised. The occupier is to be advised that they are not required to consent and that the consent may be subject to conditions and may be withdrawn at any time.

Clause 166 provides that an inspector, who has received consent from an occupier to enter their premises, may ask the occupier to sign an acknowledgement of their consent. The acknowledgement must state the purpose of entry including the powers intended to be exercised. It must also state that the inspector has explained these matters to the occupier, that they are not required to consent and that the consent may be subject to conditions and may be withdrawn at any time. In addition the acknowledgement is required to detail the time and date the consent was given and any conditions of consent. The inspector must give the occupier a copy of the signed acknowledgement immediately.

Clause 166 further clarifies that in any proceeding in which it is questioned whether consent was given, the onus is on the inspector to prove the occupier consented to entry if a signed acknowledgement from the occupier is not produced in evidence.

Division 3 Entry under warrant

Subdivision 1 Obtaining warrant

Clause 167 enables an inspector to make a sworn written application to a magistrate for a warrant to enter a place. The application must state the grounds on which the warrant is sought. A 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, for example, by statutory declaration.

Clause 168 provides that a magistrate may issue a warrant for a place 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 seven days, a particular thing or activity that may provide evidence of an offence against the Act. The clause also provides the matters a warrant must include.

Clause 169 provides an application for a warrant may be made by electronic means in urgent or other special circumstances such as an inspector's remote location. The clause provides that the written application under section 167(2) must be prepared, but need not be sworn, before the inspector applies for the warrant electronically.

Clause 170 provides for additional procedures for an application made by electronic communication. A magistrate may only issue a warrant only if satisfied it was necessary to make the application under section 169 and the way the application was made under section 169 was appropriate. The magistrate after issuing the warrant must attempt to give the warrant immediately to the inspector or if this is not practical, then convey the information contained on the warrant to the inspector. The inspector must at the first reasonable opportunity, send the written application to the magistrate and if applicable a completed form of warrant.

In any proceeding in which it is questioned whether an exercise of power was authorised, the onus is on the person operating under the warrant to prove the warrant authorised the exercise of the power if the original warrant is not produced in evidence.

Clause 171 provides that a defect in a warrant (or duplicate warrant) or in compliance with subdivision 1 does not invalidate the warrant unless the defect affects the substance of the warrant in a material particular.

Subdivision 2 Entry procedure

Clause 172 sets out the procedure for an inspector entering a place under a warrant. The inspector must, before entering the place, make a reasonable attempt to identify themselves to the occupier of the place. The inspector must present their identity card or another document evidencing their appointment, give the occupier a copy of the warrant and tell the occupier that they are authorised by the warrant to enter the place. The inspector must give the occupier an appropriate opportunity to allow immediate entry to the place without using force.

However, an inspector may enter a place without attempting to identify themselves and giving the occupier an opportunity to allow entry, if the inspector believes on reasonable grounds that attempts to identify themselves and give the person opportunity to allow entry without force would compromise the execution of the warrant.

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

Clause 173 provides that division 4 applies to entry under sections 159(1)(c), 160, 161 and 162.

Clause 174 places an obligation on an inspector to make a reasonable attempt to locate and inform the occupier of a place of the reason for the entry and that the inspector is authorised under the Act to enter the place without the permission of the occupier. The inspector may, without consent or a warrant, enter land around the premises to contact the occupier to the extent it is reasonable and 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.

Where an inspector is unable to locate an occupier after a reasonable attempt to do so, they may enter the place.

For entry to the place under section 162, the inspector may enter the place without attempting to locate the owner of the place 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.

Clause 175 provides that where an inspector enters the place under section 174 and later finds the occupier, the inspector must inform the occupier of a place of the reason for the entry and that the inspector is authorised under the Act to enter the place without the permission of the occupier. However, if the inspector does not find an occupier, they must leave a notice in a conspicuous position and in a reasonable secure way stating the date, time and purpose of entry.

Clause 175 further requires that if an inspector enters a place under section 162, they must give the chief executive notice as soon as practicable after exercising or attempting to exercise their powers.

Part 3 Other inspectors' powers and related matters

Division 1 Stopping or moving vehicles

Clause 176 provides that division 1 applies if an inspector reasonably suspects or is aware that an exhibited animal or other thing in or on a vehicle may provide evidence of the commission of an offence against the Act or pose a relevant risk.

Clause 177 empowers an inspector to signal or otherwise direct a person in control of a moving vehicle to stop the vehicle and bring the vehicle to, and keep it at, a convenient place to allow the inspector to exercise powers.

An inspector may direct the person in control of a stopped vehicle not to move it until the inspector has exercised their powers, or move the vehicle to a stated reasonable place to allow them to exercise their powers. When giving a direction of this nature, an inspector must warn the person in control of the vehicle that non-compliance without a reasonable excuse is an offence.

Clause 178 outlines the procedural requirements for an inspector intending to stop a moving vehicle under section 177. The inspector must clearly identify themselves as an inspector exercising their powers. When the vehicle stops, the inspector must immediately produce their identity card for inspection by the person in control of the vehicle. Subclause 178(3) provides this requirement applies despite section 153 (the more general requirement to produce or display an identity card).

Clause 179 provides that it is an offence, with a maximum penalty of 50 penalty units, for a person in control of a vehicle not to comply with a direction given under section 177, unless that person has a reasonable excuse. Reasonable excuses for non-compliance with the direction would include if the vehicle was moving and the inspector did not comply with section 178, or if immediate compliance would have endangered someone else, or caused loss or damage to property, and the person complies as soon as is practicable to do so. There may be other reasonable excuses. Also a person does not commit the offence if the person is not given an offence warning for the direction.

Division 2 General powers after entry

Clause 180 provides that the powers under division 2 may be exercised if an inspector enters a place under section 157(1) or 158(1) or part 2, division 1, subdivision 2, other than section 159(1)(a).

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

Clause 181 details the general powers an inspector may exercise after entering a place which includes to search any part of the place; open using reasonable force an enclosure or other thing to examine the enclosure or other thing or an animal in the enclosure or thing; take reasonable measures to relieve the pain of an animal at the place; inspect, examine or film any part of the place or an animal or other thing at the place; take for examination a thing or a sample of or from an animal or thing; place an identifying mark on an animal or other thing at the place; take an extract from or copy a document at the place or take the document to another place to copy; 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; take to, into or onto the place and use any person equipment and material the inspector reasonably requires for exercising the inspectors powers under this division, and remain at the place for the time necessary to achieve the purpose of the entry.

The inspector may take the necessary steps to allow the exercise of a general power. 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.

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.

Clause 182 empowers an inspector to require (a 'help requirement') an occupier of the place, or a person at the place, to provide the inspector with reasonable help to enable the exercise of a general power including, for example, to produce a document or to give information, or to examine an animal.

When making a help requirement, the inspector must warn the person that non-compliance without a reasonable excuse is an offence.

Clause 183 makes it an offence, with a maximum penalty of 50 penalty units, to contravene a help requirement, unless the person has a reasonable excuse. It is generally a reasonable excuse that providing the help might tend to incriminate the person or expose them to a penalty. However, it is not a reasonable excuse if the document or information required is required to be held or kept under the Act, or another Act or law of the Commonwealth or another State and it relates to exhibiting or dealing with exhibited animals.

Division 3 Exhibited animal directions

Clause 184 empowers an inspector to give an exhibited animal direction if the inspector reasonably believes that a responsible person for an exhibited animal has failed, or may fail,

to discharge their general exhibition and dealing obligation for exhibiting or dealing with the animal at a place. The direction must be directed at ensuring the person discharges the obligation.

Clause 185 provides that an exhibited animal direction must include:

- the name and address of the recipient, or any other identifying information about the recipient the inspector can reasonably obtain;
- 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;
- the place where the recipient failed or may fail to discharge the obligation;
- the action the recipient must take at the place to prevent or minimise the relevant risks or relevant adverse effects arising from the recipients failure, or possible failure to discharge the obligation;
- the period within which the action must be taken;
- 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;
- the name of the inspector giving the direction; and
- a warning that non-compliance with the direction, without reasonable excuse is an offence.

The direction must also include an information notice about the decision to give the direction.

The period within which the action must be taken 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.

The direction must also explain the effect of sections 104 (Official assessment (follow-up)) 160 (Entry to check compliance with exhibited animal direction) and 161 (Entry to take action required under exhibited animal direction) as they relate to an inspector's power to enter the place to check compliance with the direction and to take the action required under the direction if the responsible person fails to comply with the direction.

Clause 186 provides that an exhibited animal direction may state the times or interval when the inspector proposes to enter the place, or a vehicle of which the recipient is the person in control, to check compliance with the direction.

Clause 187 requires that an exhibited animal direction must be in the approved form. If an exhibited animal direction is given orally because it is not practicable to immediately give it in writing, the inspector must warn the recipient that non-compliance with the direction, without reasonable excuse, is an offence and give the direction in the approved form as soon as practicable.

Clause 188 makes it an offence, with a maximum penalty of 200 penalty units, for a person to fail to comply with an exhibited animal direction, unless the person has a reasonable excuse.

Division 4 Seizure

Subdivision 1 Powers to seize

Clause 189 empowers an inspector who has entered a place to seize an animal at the place with the written consent of a responsible person for the animal or a person the inspector reasonably believes is a responsible person for the animal. An inspector may also seize another thing at the place with the written consent of the owner or person in possession of the thing or a person the inspector reasonable believes is the owner or person in possession of the thing.

Clause 190 authorises an inspector who has entered a place with an occupier's consent to seize an exhibited animal or other thing at the place. However, the inspector may only seize an exhibited animal or other thing if the inspector reasonably believes it is evidence of an offence against the Act and its seizure is consistent with the purpose of entry as explained to the occupier when seeking the occupier's consent to enter.

Clause 191 provides that if an inspector is authorised and enters a place under a warrant, the inspector may seize the evidence for which the warrant was issued.

Clause 192 provides other seizure powers where an inspector is authorised to enter a place under the Act, whether by consent, under a warrant or otherwise, and the inspector enters the place. The inspector may seize an exhibited animal or other thing at the place if:

- the inspector reasonably believes it is evidence of an offence against the Act and the seizure is necessary to prevent it being hidden, lost or destroyed;
- the inspector reasonably believes it has just been used in, or is relevant to the commission of an offence against the Act;
- for an exhibited animal, a responsible person has contravened or is contravening an exhibited animal direction or a court order about the animal; or
- for an animal, if the inspector reasonably believes the animal is under an imminent risk of death or injury or requires veterinary treatment or is experiencing undue pain, and the interests of the welfare of the animal require its immediate seizure.

Clause 193 empowers an inspector to seize a thing and exercise powers in relation to the thing despite a lien or security over the thing. However the seizure does not affect the other person's lien or security against a person other than the inspector or a person acting for the inspector.

Subdivision 2 Powers to support seizure

Clause 194 empowers an inspector to require a person in control of an exhibited animal or other thing to be seized, to take it to a stated reasonable place by a stated reasonable time and, if necessary, to remain in control of it at the stated place for a reasonable time. The requirement must be made by notice. If it is not practicable to give the notice, the inspector may give the requirement verbally but confirm it by written notice as soon as practicable.

Clause 195 empowers an inspector to secure a seized animal or other thing at the place it was seized, and take reasonable action to restrict access to it or move it from the place of seizure.

For example an inspector may confine an animal or other thing to a specific place and seal and mark the entrance to show access to the place is restricted.

Clause 196 makes it an offence, with a maximum penalty of 100 penalty units, for a person to contravene a requirement made of the person under section 194 or section 195(2)(d) unless the person has a reasonable excuse.

Clause 197 provides additional powers for an inspector who has seized an animal. An inspector may take a seized animal to a place the inspector considers appropriate, provide it food, water, accommodation or other living conditions, and if the inspector reasonably believes that in the interests of its welfare the animal requires veterinary treatment, arrange for veterinary treatment. Where an exhibited animal direction has been given and has not been complied with, an inspector may take the action required to ensure the direction is complied with.

While an animal seized under division 4 is at the place it was seized, an inspector may enter the place to give the animal food, water or veterinary treatment, provided the inspector reasonably believes that the animal requires it, or to take the animal to another place the inspector considers appropriate.

Clause 198 creates an offence, with a maximum penalty of 100 penalty units, relevant to animals or things secured at the place where they were seized if access to them has been restricted under section 195. A person must not tamper with the animal or other thing or with anything used to restrict access to the animal or other thing without an inspector's approval or a reasonable excuse.

If access to a place is restricted under section 195, it is also an offence, with a maximum penalty of 100 penalty units, for a person to enter the place in contravention of the restriction or tamper with anything used to restrict access to the place without an inspector's approval or a reasonable excuse.

Subdivision 3 Safeguards for seized property

Clause 199 obliges an inspector, as soon as practicable after seizing an exhibited animal under division 4 or a warrant, to give the owner, responsible person for an exhibited animal, or another person from whom property was seized, a receipt for the animal or thing that generally describes it and its condition, and an information notice about the decision to seize it. However, this obligation does not apply if:

- the seizure was with the written consent of a person under section 189;
- the inspector reasonably believes there is no-one apparently in possession of the animal or thing or the animal or thing had been abandoned before it was seized; or
- 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.

If a responsible person for an exhibited animal or the owner or person in possession of the thing at the time of the seizure is not present when it is seized, the receipt and information notice may be given by leaving them in a conspicuous position and in a reasonably secure way at the place at which the property is seized.

The inspector may delay giving the receipt and information notice if the officer reasonably suspects giving them may frustrate or otherwise hinder an investigation by the inspector under the Act. However, the delay may only be for so long as the inspector continues to have the reasonable suspicion and remains in the vicinity of the place to keep it under observation.

Clause 200 obligates an inspector to allow a responsible person for an exhibited animal or an owner of a thing, which has been seized under division 4 or a warrant, to inspect the animal or thing at any reasonable time and from time to time and, if it is a document, to copy it. This obligation remains until the exhibited animal or other thing is forfeited under division 6 or returned under sections 201 or 202.

Clause 200 further clarifies that the requirement does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.

Clause 201 obligates an inspector to return an animal seized under division 4 or a warrant to the appropriate person within 28 days after seizure. However, an inspector is not obligated to return the animal within the 28 days if:

- the owner of the animal agrees in writing to transfer ownership of it to the State;
- the animal is forfeited to the State under division 6;
- an application has been made for a disposal order or prohibition order for the animal;
- continued retention of the animal is needed as evidence for a proceeding or proposed proceeding for an offence involving the animal;
- 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
- the inspector reasonably believes the animal's condition may require its destruction under section 203.

If the animal was retained due to an application for a disposal order or prohibition order, the inspector must return the animal to the appropriate person if the application is withdrawn or has finally been decided or otherwise ended and a disposal order or prohibition order has not been made.

If the animal was retained as evidence for a proceeding or proposed proceeding and it is no longer required as evidence, the inspector must promptly return the animal to the appropriate person.

If the animal was retained due to an exhibited animal direction given in relation to the animal, the inspector must promptly return the animal to the appropriate person if the direction has been complied with, or if the inspector ceases to take, or no longer proposes to take, action ensuring the direction is complied with.

If the inspector no longer believes the animal's condition requires its destruction under section 203, the inspector must promptly return the animal to the appropriate person.

Nothing in the clause affects a security interest in the seized animal.

Clause 202 obligates an inspector to return things other than animals, which were seized under division 4 or a warrant, to their owner. This obligation applies if the thing has some intrinsic value and the owner of the thing has not agreed in writing to transfer ownership of it

to the State and the thing has not been forfeited under division 6 and a disposal order has not been made in relation to the thing.

An inspector must return the thing to its owner at the end of six months after the seizure, or if a proceeding for an offence involving the thing is started within the six months, at the end of the proceeding and any appeal from the proceeding.

If 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 is withdrawn or has finally been decided or otherwise ended and a disposal order has not been made in relation to the thing.

If the thing was seized as evidence, the inspector must return the seized thing to the owner as soon as practicable after the inspector is satisfied that its continued retention as evidence is no longer required and it is not necessary to prevent the thing being used to continue or repeat the offence and it is lawful for the person to possess the thing.

Nothing in the clause affects a security interest in the seized thing.

Division 5 Urgent destruction of animals

Clause 203 empowers inspectors to destroy an animal or cause it to be destroyed if the animal has been seized under division 4 or with written consent to its destruction, if the inspector reasonably believes that the animal is in pain to such an extent that it would be cruel to keep it alive.

Division 6 Forfeiture

Clause 204 empowers the chief executive to decide to forfeit an animal or other thing to the State and outlines the circumstances in which the chief executive may exercise the power.

Clause 205 provides that if the chief executive decides to forfeit an exhibited animal or other thing, other than a seized thing under section 199(1)(c), the chief executive must promptly give its owner an information notice.

The requirement to supply an information notice does not apply where the decision was made under section 204(2)(a)(i) or (ii)(where the inspector could not find a responsible person for an animal or owner of another thing or could not return it to them) and the animal or other thing was seized in a public place or other place where the notice is unlikely to be read by the person who owned the property before forfeiture.

Where a decision was made under section 204(2)(a)(i) or (ii), the information notice may be provided by leaving it at the place where an animal or other thing was seized, in a conspicuous position and in a reasonably secure way.

Clause 206 provides that an animal or other thing becomes the property of the State if it is forfeited to the State under section 204(2). The animal or other thing also becomes the property of the State if the owner transfers the ownership of the property to the State by way of a written agreement.

Clause 207 provides that the chief executive may deal with an animal or other thing that has become property of the State under section 206, as the chief executive considers appropriate. However, the chief executive must not deal with an animal or other thing in a way that could prejudice the outcome of an appeal against the forfeiture under the Act. An inspector's powers to destroy an animal are not limited by the requirement not to prejudice the outcome of an appeal.

If the State sells an exhibited animal or other thing, it may return the proceeds of the sale to the former owner of the animal or thing. The State may deduct the costs of the sale and outstanding costs under section 237. Clause 207 is subject to a decision, direction or order made under chapter 7, part 3 or 4 about the exhibited animal or other thing.

Clause 208 empowers an inspector to destroy an exhibited animal or other thing seized under division 4 and forfeited to the State if the inspector reasonably believes it poses an immediate biosecurity risk.

Division 7 Other information-obtaining powers of inspectors

Clause 209 provides that an inspector may require a person to state their name and address and provide proof of this, if reasonable. The power may be exercised if an inspector finds a person committing an offence or reasonably suspects the person has just committed an offence against the Act or has information that leads the inspector to reasonably suspect a person has just committed an offence against the Act. The power may also be exercised if an inspector reasonably believes a person is a responsible person for an exhibited animal and proposes to give the person an exhibited animal direction.

A requirement under this clause is a 'personal details requirement'. When making a personal details requirement, the inspector must warn the person that non-compliance without a reasonable excuse is an offence.

Clause 210 makes it an offence, with a maximum penalty of 50 penalty units, for a person to fail to comply with a personal details requirement unless the person has a reasonable excuse.

However, if the personal details requirement was made for an exhibited animal direction, a person may not be convicted of an offence under this clause unless the person is found guilty of not complying with the direction. Also if the personal details requirement was made in relation to an offence, a person may not be convicted of an offence under this clause unless the person is found guilty of the offence.

Clause 211 empowers an inspector to require a person to produce a document about a matter issued to the person under the Act, or a document required to be kept by the person under the Act or under another Act or a law of the Commonwealth or another State, if the document relates to dealing with exhibited animals. Where a document is stored or recorded by means of a device, the person may produce a clear written reproduction of the stored or recorded document or information.

The inspector may keep the document to copy it or an entry in the document, and have the person certify it as a true copy. The inspector must return the original document as soon as practicable. If a person fails to comply with the certification request the inspector may keep the document until the person complies.

Clause 212 makes it an offence, with a maximum penalty of 50 penalty units, for a person to fail to comply with a requirement to produce a document under section 211 unless the person has a reasonable excuse. That complying with the requirement might tend to incriminate the person or expose the person to a penalty is not a reasonable excuse.

The inspector must inform the person that the person must comply with the document production requirement and that there is a limited immunity against the future use of the information or document given in compliance with the requirement.

It is a defence for failing to comply with the requirement if the inspector has not informed the person of their obligations to comply.

The clause provides that where a court convicts a person of an offence against this clause, the court may also order the person to comply with the document production requirement.

Clause 213 provides that it is an offence, with a maximum penalty of 50 penalty units, for a person to fail to comply with a document certification requirement made under section 211 unless the person has a reasonable excuse. That the requirement might tend to incriminate the person or expose the person to a penalty is not a reasonable excuse.

The inspector must inform the person that they must comply with the document certification requirement and that there is a limited immunity against the future use of the information or document given in compliance with the requirement.

It is a defence for failing to comply with the requirement if the inspector has not informed the person of their obligations to comply.

Clause 214 empowers an inspector to require a person to provide information (an 'information requirement') where the inspector reasonably believes an offence against the Act has been committed and the person may be able to give information about the offence. The inspector may, by notice, require the information be provided at a stated reasonable time and place. For information that is contained in an electronic medium, a clear image or written version of the electronic document must be provided.

Clause 215 makes it an offence, with a maximum penalty of 50 penalty units, for a person to fail to comply with an information requirement unless the person has a reasonable excuse. It is a reasonable excuse for an individual not to give the information if doing so might tend to incriminate the individual or expose the individual to a penalty.

Part 4 Miscellaneous provisions relating to inspectors

Division 1 Damage

Clause 216 provides that in exercising a power, an inspector must take all reasonable steps to cause as little inconvenience, and do as little damage, as possible.

Clause 217 requires an inspector to give a notice if they, or a person acting under their authority or direction, kills or injures an animal or damages another thing, when exercising a power under the Act. However, this does not relate to damage considered trivial by the

inspector or if the inspector reasonably believes that there is no one apparently in possession of the animal or thing, or it had been abandoned.

The inspector must give notice of the death, injury or damage to the owner, or person in control, of the damaged property. If it is not practicable to give the notice in person, the inspector must leave the notice at the place where the death, injury or damage happened and ensure it is left in a conspicuous position and in a reasonably secure way.

The inspector may delay complying with providing the notice if they reasonably suspect that complying with the requirement may frustrate or otherwise hinder the performance of the inspector's functions. 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.

The notice of damage must state the particulars of the death, injury or damage and that the person who suffered the loss may claim compensation under section 218. If the inspector believes that the death, injury or damage was caused by circumstances beyond the control of the inspector or person helping the inspector, they may state that belief in the notice.

Division 2 Compensation

Clause 218 makes provision for compensation because of an inspector's exercise of a power under this Act. A person may claim compensation from the State where the person has incurred loss because of the exercise or purported exercise of a power by an inspector including a loss arising from compliance with a requirement made of the person. However, compensation cannot be claimed for loss arising from a lawful seizure or forfeiture.

The compensation may be claimed in a court of appropriate jurisdiction or in a proceeding for an alleged offence against the Act the investigation of which gave rise to the claim for compensation. The court may order the payment of compensation only if satisfied it is just to make the order in the circumstances of the particular case. However, in considering whether to order compensation, the court must have regard to any relevant offence committed by the claimant. 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.

Clause 218 further clarifies that statutory compensation for loss under section 216 can only be claimed under this clause.

Division 3 Other offences relating to inspectors

Clause 219 makes it an offence, with a maximum penalty of 200 penalty units, for a person to give information, including a document containing information, to an inspector, that the person knows is false or misleading in a material particular. This offence 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 the Act. The clause further provides the circumstances in which the offence would not apply to a person giving the information that is false or misleading.

Clause 220 provides that it is an offence, with a maximum penalty of 100 penalty units, to obstruct an inspector, or a person helping the inspector, unless the person has a reasonable excuse. If the inspector decides to proceed exercising a power after considering the person's

conduct as an obstruction, the inspector must warn the person that it is an offence to cause an obstruction unless the person has a reasonable excuse.

Clause 221 makes it an offence, with a maximum penalty of 100 penalty units, for a person to impersonate an inspector.

Division 4 Other provisions

Clause 222 makes provision for limited evidential immunity for an individual giving or producing information or a document under sections 182(1), 211(1) or (5). Evidence of the information or document, or indirectly derived from the information or document, is inadmissible in a proceeding against the individual to the extent it would incriminate them, or expose them to penalty in legal proceedings. This protection does not however apply to a proceeding about the false or misleading nature of the information.

Chapter 7 Evidence and proceedings

Chapter 7 provides for evidentiary matters and legal proceedings under the Act.

Part 1 Evidence

Clause 223 establishes that part 1 applies to a proceeding under or in relation to the Act.

Clause 224 provides that the appointment of the chief executive or an inspector, and their authority to do anything under the Act, is to be presumed unless a party to a proceeding requires proof.

Clause 225 provides that a signature purporting to be the signature of the chief executive or an inspector is evidence of that signature.

Clause 226 provides that a certificate purporting to be signed by the chief executive is evidence of the fact. The clause lists a range of matters that are stated in documents that are evidentiary aids including an appointment, approval or decision; a notice, direction or requirement; an exhibited animal authority; a record or an extract from a record; a code of practice, a guideline, a register or another document kept under the Act or an extract thereof.

In a proceeding in which the State applies under section 238 (Recovery of costs of investigation), a certificate by the chief executive stating that the costs were incurred and the way in which, and the purpose for which, they were incurred is evidence of the matters stated.

Part 2 Proceedings generally

Clause 227 provides that an offence against this Act is a summary offence and details the time limits for commencement of proceedings for offences.

Clause 228 provides that in a complaint starting a proceeding for an offence under the 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.

Clause 229 states that where a proceeding for an offence against the Act involves false or misleading information or documents, a charge may simply state that the information or document was 'false or misleading' without specifying which.

Clause 230 provides that if it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show the act was done or omitted to be done by a representative acting within the scope of their actual or apparent authority and the representative had the state of mind. In these circumstances, the person is also to be taken to have committed the relevant offence unless the person can prove that the person could not, by the exercise of reasonable diligence, have prevented the act or omission.

Part 3 Court orders

Clause 231 empowers a court to make a disposal order for an animal or other thing upon the conviction of a person for an offence against the Act. It may be made for anything the subject of, or used to commit, the offence, any animal or another thing the court considers likely to be used to commit a further offence against the Act. A court is not limited in the making of disposal orders to animals or other things which have been seized.

Clause 231 also provides that, without limiting the court's power under another law, the court may make any order to enforce the disposal order it considers appropriate, including for the sale of an animal and how the proceeds of the sale are to be distributed.

Clause 232 empowers the court to order that a person convicted of an offence involving an animal against this Act must not, for a stated period or permanently, purchase or otherwise acquire or take possession of:

- any animal;
- a stated species of animal; or
- any animal or stated species of animal for trade or commerce or other stated purpose.

Clause 233 empowers the court to make a disposal order or prohibition order against the owner of an animal where another person has been convicted for an animal offence in relation to the animal. Such an order may be made in cases where the court considers an act done or omission made by the owner contributed to or allowed the commission of the offence and the owner is and will continue to be incapable of exercising the owner's general exhibition and dealing obligation for exhibiting or dealing with the animal.

Clause 234 provides that the standard of proof for making a disposal order or prohibition order is on the balance of probabilities and sets out criteria the court must consider when deciding in the circumstances whether it is just to make the order. The matters which the court may consider are not limited by the criteria set out in the clause.

Clause 235 provides a disposal order or prohibition order may only be made on the court's initiative or on an application by the prosecution which may be made at any time. However, a court must not make an order unless the owner has been given an opportunity to be heard about whether the order should be made. Also the court may require notice to be given to anyone the court considers appropriate and must not refuse to hear a person to whom a notice is given. The court may make both a disposal order and a prohibition order against the same person in relation to the same offence.

Clause 236 provides that if a prohibition order is made against a person permanently or for more than five years, the court that made the order may, on an application made by the person, cancel or amend the order. An application cannot be made within five years of the prohibition order being made or within 12 months of a previous application for a review order about the prohibition order.

Part 4 Remedies

Clause 237 sets out the circumstances in which the State can recover a cost incurred by an inspector for stated acts in relation to an animal. The costs which may be recovered are those relating to seizure under chapter 6, part 3, division 4; any action taken to ensure an exhibited animal direction is complied with; and if an animal is destroyed under section 203.

The State may recover the cost from the animal's owner or former owner if incurring the cost was necessary and reasonable to prevent or minimise a relevant risk or relevant adverse effect associated with exhibiting or dealing with the animal or for the destruction of the animal.

Costs incurred where an animal was provided with accommodation, food, water or other living conditions or veterinary treatment received while it was retained for evidentiary purposes may only be recovered if the animal's retention was reasonably required as evidence.

Clause 238 empowers the State to apply to a court for reasonable costs which were incurred by the State in relation to an investigation of an offence, if the court convicts a person of an offence against the Act. A court may order the person to pay an amount to the State equal to the costs if satisfied it would be just to make the order in the circumstances of the particular case. An application for the recovery of costs of an investigation of an offence against the Act is to be in the court's civil jurisdiction. The standard of proof on any issues to be decided is on the balance of probabilities. This clause does not limit the court's powers under the *Penalties and Sentences Act 1992* or another law.

Clause 239 empowers a court to order a person convicted of an offence involving an animal under the Act to pay compensation to a person who has suffered damage or loss to property or incurred costs in avoiding or minimising or attempting to avoid or minimise damage or loss to property because of the commission of the offence. A court may also order the convicted person to pay a person an amount for costs incurred by the person in taking possession of, or moving, the animal to which the offence relates, providing the animal with accommodation, food, rest, water or other living conditions, or arranging for the animal to receive veterinary or other treatment. An order must not be made in favour of the State.

Part 5 Reviews

Division 1 Preliminary

Clause 240 defines terms for part 5.

Division 2 Internal reviews

Clause 241 provides that every external review of, or appeal against, a decision must be preceded by an application for internal review.

Clause 242 provides that a person who is given or is entitled to be given an information notice for a decision may apply to the chief executive for an internal review of the decision.

A person who is entitled to be given an information notice for the original decision, but has not been given it, may ask for the information notice to be given. Their entitlement to apply for an internal review is unaffected by them not having been given the information notice.

Clause 243 sets out the requirements and timeframes for making an application for the internal review of an original decision.

Clause 244 provides that an internal review does not stay the original decision to which it relates. However, the applicant may apply to the 'relevant body' (the magistrates court for a decision about a seizure or forfeiture or QCAT for another decision) for a stay of the decision. 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.

Clause 245 requires the chief executive to conduct an internal review of the original decision, and make a judgment to confirm the original decision, amend it, or make a new decision, within 20 days of receiving the application for internal review.

The application may only be dealt with by the person who did not make the original decision and who is in a more senior office than the original decision-maker.

For the purpose of an appeal or external review, if the original decision is confirmed by an internal review decision, or is taken to be confirmed (where the chief executive does not make a decision within the decision period) the original decision is taken to be the internal review decision. For the purpose of an appeal or external review, if any amendments to the original decision were made on an internal review, the amended original decision is taken to be the internal review decision.

Clause 246 requires the chief executive, within ten days after making an internal review decision, to give the applicant written notice of the decision.

If the internal review decision relates to an original decision other than a seizure or forfeiture and is not the decision sought by the applicant, the notice must be accompanied by a QCAT notice (complying with section 157(2) of the *Queensland Civil and Administrative Tribunal Act 2009*) for the internal review decision.

If the decision relates to a seizure or forfeiture decision and is not the decision sought by the applicant, the notice must include a notice (an 'appeal information notice') detailing the day the notice is given, the reasons for the decision, that the applicant may appeal within 28 days to the court, how to appeal and that the applicant may apply to the court for a stay of decision.

If the chief executive does not issue a notice within ten days, then the chief executive is taken to have confirmed the original decision. The applicant is then entitled to receive a QCAT notice or an appeal information notice as appropriate (triggering the right to apply for a review of, or appeal against, the decision under sections 248 and 249 respectively). This will enable the applicant to escalate consideration of their application to QCAT or the court as appropriate if they do not receive a timely decision.

Clause 247 provides that a person who is entitled to be given a QCAT notice or an appeal information notice for an internal review decision, but has not been given one, may ask the chief executive for a notice. Failure to receive the appropriate notice does not affect the person's right to apply for an external review of, or appeal against, the decision, under sections 248 and 249 respectively.

Division 3 External reviews by QCAT

Clause 248 provides that a person who is given, or is entitled to be given, a QCAT notice under section 246 (Notice of internal review decision), subsections (2) or (5)(b), may apply to QCAT for an external review of the decision. QCAT may, by application or on its own initiative, stay the operation of the internal review decision.

Division 4 Appeals

Clause 249 provides that a person, who has been given, or is entitled to be given an appeal information notice under section 246, subsections (3) or (5)(a), and is dissatisfied with the internal review decision, may appeal to the court against the internal review decision.

Clause 250 provides that an appeal is started by filing a notice of appeal with the clerk of the court and a copy of the notice must be served on the chief executive. The notice must be filed within 28 days after the appellant receives notice of the internal review decision appealed against. The notice must state fully the grounds of the appeal. The clause provides the court with the power to extend the time period for filing a notice of appeal.

Clause 251 provides that the court may grant a stay of the operation of an internal review decision appealed against in order to secure the effectiveness of the appeal. A stay may be granted on conditions the court considers appropriate. The stay operates for a period fixed by the court and may be amended or revoked by the court. The clause provides the stay must not extend past the time when the court decides the appeal and that an appeal against a decision only affects the decision if the decision is stayed.

Clause 252 provides that in deciding an appeal, the court has the same powers as the chief executive in making the internal review decision appealed against. The court is not bound by the rules of evidence but must comply with natural justice. The appeal is by way of rehearing. In deciding an appeal, the court may confirm, or set aside the review decision and substitute another decision, or set aside the internal review decision and return the matter to the chief executive with directions the court considers appropriate.

Clause 253 provides that if the court sets aside the internal review decision and returns the matter to the chief executive with directions, and the chief executive makes a new decision in accordance with the direction, then the new decision is not subject to review or appeal under this part.

If the court substitutes another decision, the substituted decision is taken to be the decision of the chief executive. 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

Chapter 8 provides for general matters covered under the Act.

Clause 254 creates offences, with a maximum penalty of 100 penalty units, for making false representations about operating under an exhibited animal authority or accreditation issued and possessing a document which falsely purports to be an exhibited animal authority, or an accreditation or a copy of any such document.

Clause 255 makes it an offence, with a maximum penalty of 200 penalty units, for a person in relation to the administration of this Act to give the chief executive information, including a document containing information, that the person knows is false or misleading. This provision applies regardless of whether the information was provided in response to a specific power under the Act. The clause further provides the circumstances in which the offence would not apply to a person giving the information that is false or misleading.

Clause 256 makes it an offence, with a maximum penalty of 50 penalty units, for a person to disclose specified confidential information obtained as a result of the person administering or performing a function under the Act or a relevant repealed provision. However, disclosure may be made if:

- the information is disclosed for a purpose under the Act or a relevant repealed provision;
- the information is disclosed for the purpose of minimising relevant risks or relevant adverse effects in the State or another State and the disclosure is to entities listed in the clause;
- the information is about dealing with an exhibited animal and is disclosed to the department that administer the *Nature Conservation Act 1992* for the purpose of that Act;
- the disclosure is with the consent of the person to whom the information relates; or
- the disclosure is otherwise required or permitted by law.

Confidential information does not include information that is publicly available but does include information about a person's personal affairs or reputation or something that could damage the commercial activities of a person.

Clause 257 obligates the chief executive to exclude a person's address on a public register if the chief executive is satisfied including it would place at risk the personal safety of the person or another person at risk.

Clause 258 enables the chief executive to delegate powers to an appropriate public service employee or inspector.

Clause 259 provides that a person acting under the direction or at the request of an inspector does not incur civil liability for an act done, or omission made, honestly and without negligence under the Act. If a liability exists then it attaches instead to the State but the State

can recover a contribution from the person if they acted other than in good faith or were grossly negligent. The protection against liability does not apply to a State employee protected from liability under section 26C of the *Public Service Act 2008*.

Clause 260 authorises the chief executive to approve forms for use under the Act.

Clause 261 provides that the Governor in Council may make regulations under the Act about: identifying exhibited animals; qualifications, training or experience required by persons acting under exhibited animal authorities; fees payable under the Act; and may impose a maximum penalty for contravening a regulation of no more than 20 penalty units.

Chapter 9 Transitional provisions

Chapter 9 provides for transitional matters for the Act.

Part 1 Preliminary

Clause 262 defines terms for chapter 9.

Part 2 Declared pest permits

Clause 263 provides for how an application for a declared pest permit under the *Stock Route Management Act 2002* (before the relevant provisions were repealed by the *Biosecurity Act 2014*) can be dealt with under the Act.

Clause 264 provides for the fee payable when a relevant entity applies for the first time for the grant of an exhibition licence to exhibit and deal with an animal that they were authorised to introduce or keep for a relevant purpose under a declared pest permit immediately before commencement of this Act. The application fee in these circumstances is an amount equivalent to the application fee for renewal or restoration of an exhibition licence.

Clause 265 provides that a particular rhesus macaque (*Macaca mulatta*) or crab-eating macaque (*Macaca fascicularis*) that was kept under a declared pest permit under the *Stock Route Management Act 2002* (titled the *Land Protection (Pest and Stock Route Management) Act 2002* before the commencement of the *Biosecurity Act 2014*) for the purpose of circus entertainment before commencement of this Act and is now kept by the same entity under an exhibited animal licence is not subject to section 71 or section 76. Instead, these particular animals will be subject to section 75 (as if they were an authorised animal (category B)). The effect is that the particular macaques held by Queensland circuses on commencement of this Act (that are prohibited matter under the *Biosecurity Act 2014*) will not be subject to certain provisions of this Act that will apply to other animals that are prohibited matter provided the particular animals continue to be held under an exhibition licence by the current circus entity. In other words, these macaques will be ‘grandfathered’.

Part 3 Particular wildlife licences and fisheries permits

Division 1 Existing licences and permits

Division 1 ensures the ongoing effect of authorities permitting exhibition of animals under the *Nature Conservation Act 1992* and the *Fisheries Act 1994*.

Division 2 Applications

Clauses 268 – 271 provide for how undecided applications are to be dealt with on commencement of this Act.

Clause 272 provides for the fee payable when a person applies for the first time for the grant of an exhibition licence to exhibit and deal with an animal in the same or a similar way to the way they were authorised to exhibit or deal with the animal under a wildlife demonstrator licence, wildlife exhibitor licence, or a general fisheries permit (allowing the exhibition of fish that were noxious fisheries resources) immediately before commencement of this Act. The application fee in these circumstances is an amount equivalent to the application fee for renewal or restoration of an exhibition licence.

Part 4 Co-existing permits and licences

Clause 273 provides that an application fee does not need to accompany an exhibition licence amendment application if the proposed amendment will:

- be made to an exhibition licence that was granted to authorise the entity to exhibit and deal with an animal or fish which, immediately before commencement of this Act, they were authorised to exhibit and deal with under a declared pest permit, a wildlife exhibitor licence or a general fisheries permit; and
- authorise the entity to exhibit and deal with an animal or fish which they were authorised to exhibit and deal with under a different declared pest permit, wildlife exhibitor licence or general fisheries permit they also held immediately before commencement of this Act.

The intent is to facilitate the consolidation in a single exhibition licence of authorisations to exhibit and deal with animals that are the same or similar to those authorisations under permits and licences held by that entity immediately before commencement. The only cost to the entity of replacing the co-existing authorisations held immediately before commencement would be the cost of the initial application for an exhibition licence which would be reduced by section 264 or 272.

Chapter 10 Amendment of this Act and other legislation

Chapter 10 provides for amendments to Acts and regulations on commencement of the Act.

Part 1 Amendment of this Act

Part 1 amends this Act.

Part 2 Amendment of other legislation

Part 2 provides for amendments to other legislation.

Division 1 Amendment of Biosecurity Act

Division 1 outlines the amendments made to the *Biosecurity Act 2014*

Division 2 Amendment of Nature Conservation Act

Division 2 provides for amendments to the *Nature Conservation Act 1992.*

Division 3 Amendment of regulations

Division 3 provides for amendments to regulations.

Schedule 1 Exempted animals

Schedule 1 lists animals which are exempted by section 10(1)(a) of this Act.

Schedule 2 Dictionary

Schedule 2 defines terms that are used in the Act.

Schedule 3 Amendment of regulations

Schedule 3 makes amendments (under section 282 of this Act) to the *Nature Conservation (Administration) Regulation 2006* and *Nature Conservation (Wildlife Management) Regulation 2006*. In particular it omits the provisions of the *Nature Conservation (Wildlife Management) Regulation 2006* that provide for the grant of a wildlife exhibitor licence and a wildlife demonstrator licence.