

Exhibited Animals Regulation 2016

Explanatory notes for SL 2016 No. 69

made under the

Exhibited Animals Act 2015

General Outline

Short title

Exhibited Animals Regulation 2016

Authorising law

Section 261 of the *Exhibited Animals Act 2015*

Policy objectives and the reasons for them

The *Exhibited Animals Act 2015* (the Act) was assented to on 11 June 2015 and will commence on 1 July 2016.

As the *Exhibited Animals Regulation 2016* (the Regulation) is subordinate to the Act, its overarching objective is in keeping with that of the Act as it is also designed to reasonably enable animal exhibition in Queensland while minimising risks to animal welfare, biosecurity and safety.

The Act establishes a framework that fundamentally changes the relationship persons intending to exhibit animals will have with government when making applications for authorities. It is designed to encourage those in the industry to manage risks and consequently be less reliant on government.

Persons wishing to exhibit animals under the Act will be required to demonstrate that they have considered the risks to animal welfare, biosecurity and public safety and can sufficiently mitigate those risks in order to be granted an authority. An authority will not be required to exhibit some species of animals under the new exhibited animals legislation (for example, exhibiting a Sulphur-crested cockatoo at a petrol station). However, those persons who can exhibit without an authority will also have a general obligation to minimise the risks to animal welfare, biosecurity and safety relevant to the exhibited animal.

Identification of animals

Section 261 of the Act provides that the Governor in Council may make a regulation about identifying exhibited animals.

One purpose of the Regulation is to ensure that some particular individual authorised animals and each species of authorised animal can be identified. It is essential that some individual animals are identified (where possible) as this will facilitate their return if they escape from their enclosure and will also assist in management of their welfare. Identification will assist an inspector to determine whether an animal being used for a public interaction or display, is in fact the particular animal which is authorised for that purpose.

Category C1 animals

Chapter 3 of the Act establishes a licensing structure which will apply across industry sectors for the exhibition of some native and some exotic animals. An exotic animal that can be kept under an authority which is 'prohibited matter' under the *Biosecurity Act 2014* is generally defined as an 'authorised animal (category C)'. Section 35(2) of the Act provides that category C animals can be prescribed by regulation as category C1 animals, or otherwise are C2 animals.

Another purpose of this Regulation is to prescribe category C1 animals. This will reduce the regulation of the prescribed species compared to category C2 to reflect they pose a low risk of pest establishment and would pose no more than a moderate risk to the health, safety or wellbeing of persons, social amenity, the economy or the environment, should they become established.

Record requirements

Section 86 of the Act provides for record requirements to be made either by regulation, a condition of an exhibited animal authority or by notice from the chief executive to the holder of an authority. Record requirements may provide an obligation on persons to record stated information in relation to exhibiting or dealing with authorised animals in a stated way or at stated times. Requirements may also impose obligations to keep information in a particular way, at a stated place or for a stated period and may also oblige persons to give such information to the chief executive in a stated way or at stated times.

Another purpose of this Regulation is to require the making, keeping and giving of records to underpin an effective compliance and enforcement program for the Act.

Fees

Section 261 of the Act provides that the Governor in Council may, by regulation, prescribe fees payable under the Act.

Another purpose of this Regulation is to provide for fees that take into account the full cost of providing services; are equitable across industry sectors; and reflect the resources required to authorise and monitor exhibitors of different scale and complexity.

Consistent application of other miscellaneous matters relating to exhibited animal authorities is also required in order to ensure equity across industry and assist in enforcement.

Achievement of policy objectives

Identification of animals

The Regulation achieves the objectives with regard to identifying authorised animals by prescribing, in Part 3, Division 2, animal identification requirements as mandatory conditions for exhibited animal authorities.

Mandatory conditions of authorities will require enclosures to identify the common name and scientific name of the species of animal they contain. Marking of the enclosure serves a dual purpose whereby an inspector will know the animal the enclosure contains even if the animal cannot be seen such that the inspector may avoid injury by knowing if the animal is dangerous or an aggressive species. Identification of the enclosure will also assist an inspector to locate an animal at a regular enclosure site when conducting compliance monitoring and confirm whether an animal is being kept in an appropriate enclosure for the species.

Category B and C authorised animals will also be required to be identified individually. However, animals that are too immature or too small or for other reasons would be difficult to identify individually will not be subject to the identification requirement - these animals are defined as 'group animals'.

The authority conditions will prevent the exhibit of most category B and C authorised animals outside their regular enclosure or regular enclosure site if they are not identified in a prescribed way. All rabbits and dingoes will also need to be identified in the prescribed way. The prescribed way for identifying particular animals will be a microchip, a tattoo, an ear tag or leg band showing a unique identifying code for the animal.

However, persons who exhibit category B rodents, frogs and gliders, will have the option of identifying these animals either in the prescribed way or in another way that effectively identifies the animal as a particular animal. This may include a photograph showing unique, readily distinguishable, permanent markings or colourations of the animal. This alternative way recognises the inherent difficulties with identifying some of these animals in the prescribed way due to their size, morphology or behaviour.

The identification of category B and C authorised animals when in their regular enclosure at the regular enclosure site is also flexibly managed by allowing them to be identified either in the prescribed or another way that effectively identifies the animal as a particular animal.

Category C1 animals

The Regulation achieves the objective of distinguishing different category C animals to recognise their different risk potential through the prescription of three species of C1 animal (blue poison arrow frog, cotton top tamarin and radiated tortoise) in Schedule 1. The blue poison arrow frog cannot currently be kept for exhibition in Queensland. The cotton top tamarin and radiated tortoise are listed for zoo and prescribed film and television purposes which means they can only be kept for those purposes and not by wildlife demonstrators or circuses. Listing these species as a category C1 species means exhibitors will not be required to base them in a fixed exhibit, reflecting their comparatively lower risk status.

Record requirements

The Regulation achieves the objectives of imposing obligations on persons for the making, keeping and giving of records in Part 4 which sets out record requirements.

Specifically, section 15 prescribes, for the purposes of section 86 of the Act, that the record requirements for exhibiting or dealing with an authorised animal are set out in Schedule 2 of the Regulation:

- Schedule 2, Part 1 prescribes information which must be recorded for group animals within a species. This information will, in part, assist the tracing of animals to determine if they have been acquired lawfully.
- Schedule 2, Part 2, Division 1 prescribes the information required to be recorded for individual authorised animals. The prescription of specific dates, times and places of animal exhibitions is essential to the determination of minimum exhibition periods for exhibited animals provided for in Chapter 3 of the Act. It is also relevant to the welfare of animals, especially where they are involved in public interaction.
- Schedule 2, Part 2, Divisions 2, 3 and 4 prescribe the exhibition, health and quarantine information, respectively, which is required to be recorded for authorised animals.

Section 16 of the Regulation prescribes that the authority holder must make a written record, of the information listed in schedule 2 in respect of each authorised animal or species of authorised animal. The record of the required information must be made as soon as practical but no later than seven days after the holder becomes aware of the information.

Section 17 of the Regulation prescribes that the holder of an exhibition licence must keep the record at each premises where a regular enclosure site for the animal is located. It also prescribes the periods of time that records of the required information must be kept in relation to whether the animal has died or stops being an authorised animal, the authority ends or the authority holder ceases to hold the authority.

Section 18 requires that a copy of information must be provided to the person taking possession of the animal when an animal is sold or given away.

Fees

The Regulation achieves its objectives in relation to fees in Part 5 which provides that the fees are set out in Schedule 3.

Schedule 3 prescribes varying fee levels for applications for a licence or renewal of a licence depending on the number of full-time equivalent employees the applicant employs. The fees are scaled such that applicants who employ more than 15 full-time equivalent employees pay the most, whereas applicants who employ no more than three full-time equivalent employees pay the least. The variation in application fees therefore recognises the complexity that assessment of applications relevant to exhibition licences usually entails. The objective of providing fee equity will be achieved by less subsidisation of large exhibitors by small exhibitors and generally fees will better reflect the cost of assessing an application.

Schedule 3 of the Regulation prescribes in item 6, fees required for amending an exhibited animal authority to grant a special exhibition approval for a category C2 authorised animal.

Schedule 3 also prescribes that where amendments are required to an exhibited animal authority an amendment fee is payable for assessing the application in relation to each species for which the authority is proposed to be amended. In effect, where an authority holder has one management plan for each taxonomic grouping of animals that has similar risks that will all be managed in the same way, the holder will be required to pay a fee for each management plan amended. This structure is reflective of the time and resources taken to assess multiple and disparate amendments.

Schedule 3 item 9 prescribes fees for conducting an official assessment to assess a person's compliance. The official assessment fee includes a fee for an inspector to travel to and from the site where the assessment is carried out. The fee for travel may vary depending upon whether a person requests an inspector to travel to an assessment site in order to conduct an urgent assessment where the person must pay the greater of \$207 or the actual cost incurred by the inspector for the travel, otherwise the fee is \$207. Aside from the fee for travel, the Regulation prescribes fees payable for inspectors to carry out assessments. Where assessments take no longer than one hour, the fee of \$179 is payable, however where an assessment extends beyond one hour, the fee of \$179 is payable for each full hour and for each period less than one full hour, the fee of \$44.75 is payable for each period of 15 minutes. In this way the regulation provides for the reasonable costs of assessment to be paid.

Consistent application of miscellaneous provisions is achieved by prescribing mandatory conditions for exhibited animal authorities detailing notification requirements on the loss of a required record and desexing requirements for adult rabbits. It is also achieved by omitting two codes of practice under the *Animal Care and Protection Act 2001* which currently apply only to some sectors of the industry.

Consistency with policy objectives of authorising law

The Regulation is consistent with the main purposes outlined in section 3 of the Act, which are to provide for exhibiting and dealing with exhibited animals and to ensure the relevant risks and relevant adverse effects associated with exhibiting and dealing with exhibited animals are prevented or minimised.

Inconsistency with policy objectives of other legislation

There is no inconsistency with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

The majority of the considerations on alternative ways of achieving the policy objectives were undertaken during the development of the Act and, in particular, in the context of a Regulatory Impact Statement (RIS) for the proposed new legislative scheme. This includes alternative approaches to fees and recasting existing animal welfare codes of practice (under the *Animal Care and Protection Act 1992*) as codes of practice under the Exhibited Animals Act.

Reflecting draft national animal welfare standards as codes of practice in the Regulation was considered. However, noting that these standards have not yet been nationally agreed and in order to provide industry more time to consider the implications of the draft national standards, it was decided to progress the Regulation without including the draft national standards as codes of practice at this stage.

Benefits and costs of implementation

Overall the Regulation will not alter who must obtain a licence to exhibit authorised animals. It will, however, distribute the fee burden more equitably across the industry with some exhibitors paying less and others more than they do currently depending on the structure and characteristics of their business.

The change to the total annual fee impost on industry would represent a very small proportion of the Queensland industry's total annual expenditure. At present the Queensland industry pays approximately 0.12 per cent of its expenditure on licence fees and is projected to pay approximately 0.18 per cent under the Regulation.

There will be benefits to government as a result of the increased cost recovery for services.

Some government costs will be incurred as the State Government currently operates three wildlife parks in the State. The same obligations and fees will apply to these government owned parks as they do to privately operated businesses.

Consistency with fundamental legislative principles

The legislation is consistent with fundamental legislative principles as defined in section 4 of the *Legislative Standards Act 1992*.

Consultation

Fees and the new legislation generally

The Queensland Government released a Consultation RIS on the proposed Exhibited Animals legislation to the public from 25 November 2013 to 10 February 2014. The Consultation RIS explored options for Queensland Government intervention in the exhibited animals industry, enabling animal exhibition while minimising risks to animal welfare, biosecurity and public safety. It canvassed matters to be addressed in both a new Act and its subordinate legislation.

The Consultation RIS considered a number of options for the regulation of the exhibited industry with the majority of respondents to an online survey favouring developing new legislation. Twenty-five interested parties submitted detailed comments, including zoos and other fixed exhibitors, wildlife demonstrators, Queensland and interstate circuses and interested members of the public.

The Consultation RIS highlighted that consultation on the draft national standards would occur separately. A Consultation Regulation Impact Statement was released by New South Wales under the Australian Animal Welfare Strategy for the draft Australian Animal Welfare

Standards and Guidelines for Exhibited Animals from 24 March 2014 to 6 June 2014. However, these have not been reflected in the Regulation at this stage.

C1 authorised animals

On 29 October 2015, Biosecurity Queensland, a service division of the Department of Agriculture and Fisheries, held a webinar with the exhibited animals industry to discuss the proposal for listing of C1 species. The webinar was attended predominantly by licence holders who undertake mobile exhibits. The webinar explained to participants the requirements for prescribing a C1 species, the process of assessment and the species that might have the best chance of meeting the criteria. Biosecurity Queensland recommended five non-indigenous species for assessment and possible listing. However, Queensland Wildlife Educators Network (an informal network formed in 2013 consisting mostly of mobile wildlife demonstrators), acting on behalf of the wildlife demonstrator license holders, subsequently made alternative recommendations on 18 November 2015.

On 25 January 2016, Biosecurity Queensland consulted with stakeholders, such as the National Plants and Animals Invasive Committee, the Exhibited Animals Industry Liaison Working Group (comprising three fixed exhibitors and one mobile exhibitor representing the Queensland Wildlife Educators Network which was established by Biosecurity Queensland in 2013 to provide a forum for detailed discussion of issues affecting the industry) and agencies in other jurisdictions which may be potentially impacted by the listing of C1 species. Feedback on the proposed industry list was requested. Feedback from the non-industry stakeholders consulted recommended caution when permitting exotic species to be used for mobile display and recommended a thorough assessment of all proposed species using a well-established pest risk assessment process.

Biosecurity Queensland consulted further with the Queensland Wildlife Educators Network, acting as the industry contact for the proposed C1 species list, between 25 January and 11 March 2016 when settling on the final list of five species to be assessed for possible listing as a C1 species. The species were independently assessed, by scientists at The University of Queensland, as agreed with the industry. Of the five species assessed, three species (Radiated Tortoise, Cotton Top Tamarin and Blue Poison Arrow Frog) met the criteria of posing a low risk of pest establishment and posing no more than a moderate risk to the health, safety or wellbeing of persons, social amenity, the economy or the environment, should they become established and are therefore prescribed as authorised animals (category C1) in the Regulation.

Industry workshop on working draft of the Regulation

A workshop on a working draft of the Regulation was held on 29 March 2016 with representatives from the fixed exhibitor, wildlife demonstrator and circus sectors of the industry as well as the RSPCA. Participants suggested some changes to the mandatory conditions of licences and record keeping requirements which have generally been incorporated in the proposed Regulation.

Some demonstrators suggested that the record keeping requirements would place a significant burden on their business. However, others indicated they felt the requirements were reasonable and appropriate given the type of business being conducted.

Most concerns expressed by participants at the workshop related to reflecting the draft national standards (General standards and five taxon species standards – crocodilian, macropod, koala, ratite and wombat) as codes of practice in the Regulation. Consequently, it was decided to delay making the codes of practice to allow time for these to be finalised and more time to consult with industry and address any industry concerns.

A concern was raised at the workshop about interstate exhibitors coming into Queensland to operate being only required to pay a relatively low fee for 12 months compared to the licence renewal fee industry members based in Queensland would have to pay. A proposal was discussed to have a split fee arrangement for interstate exhibitors that related to the number of times they would be entering the State. However, this is not reflected in the proposed Regulation because a fee that depends on the number of entries to the State may impede interstate trade and hence be inconsistent with the Australian Constitution.