



12 November 2014

## **Comments by Animals Australia - Queensland Exhibited Animals Bill 2014**

### **Background**

Animals Australia is opposed to the keeping of animals in zoos/aquaria because these facilities are generally incapable of providing animals with proper behavioural and social stimulation and appropriate environmental enrichment. Notwithstanding this policy, Animals Australia has entered into this consultation process to facilitate urgently required regulation of the exhibited animals' industry in Australia.

It should be noted that Animals Australia recognises that some major zoos have made significant improvements for the animals they maintain over the last few decades. However, the quality of life of zoo/aquaria animals, irrespective of whether they have been taken from the wild or bred in captivity, is often extremely poor.

Small zoos, and larger zoos located in major cities, cannot provide adequate housing, range areas, and social stimulation for elephants and other megafauna, such as large primates. Further, small zoos and 'tourist' wildlife parks often provide sub-standard care. Animals Australia believes these smaller facilities should be phased out. All zoos should be regularly inspected by Government authorities and RSPCA inspectors.

Animals Australia believes that given the unnatural way most zoos/aquaria display animals, they have little educational value. On the contrary, they tend to perpetuate society's acceptance of animals in these inferior and unnatural captive conditions.

Despite industry claims that zoos/aquaria play a significant role in the conservation of endangered species, only a minimal number of exhibited species form part of endangered species' conservation programs. Breeding endangered animals is only one part of conservation. On-going habitat destruction must be stopped if captive-bred animals are to be reintroduced successfully back into the wild. Zoos have little or no control over such habitat destruction, either in Australia or overseas, and therefore Animals Australia questions the conservation claims and value of many zoos.

## Executive summary

Animals Australia supports more rigorous regulation of the exhibited animals' sector to achieve better lives and conditions for the animals. As such, the Bill is of interest to us and we commend the efforts being made by the Queensland government in this area.

While it is very clear that licensing in this sector requires urgent reform, as proposed by the one scheme to replace the current 6, it is not clear why the welfare of exhibited animals would be better protected under a separate Act. Animals Australia does not see any compelling argument to do this, and some very good reasons why such a move may be retrograde.

Firstly, the *Animal Care and Protection Act 2001* (ACPA) already has an inclusive definition of animal that covers exhibited animals of all types. The Explanatory Notes for the Bill state it '*will impose the general exhibition and dealing obligation on exhibitors to prevent or minimize risks to animal welfare, biosecurity and safety*'. While this sounds good, and may be needed in terms of the latter two considerations, duty of care towards animals is already covered in the ACPA, which also provides higher penalties including imprisonment. We acknowledge that there is not an intention to replace the ACPA with the Bill, but we are concerned that this may be the day-to-day regulatory effect of it.

The fact the Bill exempts many species of exhibited animals, and provides other exemptions including the use and welfare of animals for scientific purposes, reflect that the main thrust of this Bill is biosecurity, human safety and a reformed licensed system. These species exemptions are not found under the ACPA, which also regulates and protects all animals used for scientific purposes.

Animals Australia is concerned '*... the Bill provides for a greater range of species to be exhibited in Queensland, provided the risks can be minimised*', especially as the Government is planning to allow '*private assessments*' by '*accredited persons*' as part of the regulatory process. This is especially the case as there appear to be insufficient safeguards to ensure the integrity of the proposed system. As such, we are concerned by the Bill's push '*To encourage industry-self-regulation*', given its failure in other industry sectors.

As a general comment, the penalties proposed under the Bill are manifestly inadequate. It is also disappointing that no minimum penalties are provided for offences. Given the nature of the licensing system, the monetary worth of many exhibited animals, and that of many of the companies involved in this sector, the proposed penalties fail to serve as adequate deterrents.

Of the Options presented in the Explanatory Notes to the Bill, Animals Australia makes the following comments:

Option 1 Retain existing provisions and Option 2 No industry-specific legislation

These have some advantages as streamlined licensing provisions could, it seems, be quite easily achieved by Regulation under the new Biosecurity Act; and exhibited animals' mandatory provisions could be made under the *Animal Care and Protection Regulations 2012*, as have been done for pigs, domestic fowl, and the land transport of livestock.

This would have the advantage of ensuring that all exhibited animals, and not just those that pose a biosecurity risk, have and are seen to have protection under the ACPA.

#### Option 2A Minimal legislative intervention to allow industry self-regulation

This option is not favoured by the government and is strongly rejected as being unsuitable by Animals Australia.

#### Option 3 Develop new legislation

This is the option that '*best aligns with the government's policy objectives*'. Animals Australia is concerned that if this option is successful there will be an expectation that breaches of duty of care in the exhibited animals' sector will be dealt with under the Bill, and not under the ACPA, which has higher penalties including jail terms.

Having what amounts to a separate welfare Act for exhibited animals also runs the risk that penalties in this sector will not keep pace with those in the ACPA and its Regulations. If Option 3 is adopted then penalties need to be increased to match those provided in the ACPA for duty of care breaches and a concerted effort made to ensure that the Bill is not seen to replace the ACPA.

## **Comments provided in relation to the Explanatory Notes (EN) and to the Bill**

### **1.EN Policy objectives and reasons for them p1**

The EN state that '*The objective of the Bill is to provide for exhibiting and dealing with exhibited animals, while ensuring that animal welfare, biosecurity and safety risks are minimised*'. Amongst other things the EN describe how the 6 current licensing schemes under the *Land Protection (Pest and Stock Route Management) Act 2002* (LP Act); the *Fisheries Act 1994*, and the *Nature Conservation Act 1992* (NCA) will be replaced by one licensing scheme. The EN also refers to '*gaps between these Acts in the coverage of some animal welfare and safety risks*', but doesn't set out what these are.

Animals Australia's chief concern is the welfare of animals including those that are exhibited. We acknowledge that while licensing efficiencies are not part of our core business per se, there could be savings for both Government and licence holders that may then free up resources that would hopefully be used to improve animal welfare in this sector. Importantly, an efficient licensing system could assist enforcement of all relevant legislation, including the ACPA. As such, we support more efficient licensing schemes and the rationalization of what appear currently to be very cumbersome schemes.

It is not clear, however, why there is a need to include welfare issues in this Bill, given the ACPA already has an inclusive definition of animal (s11), and stated purposes (s3), and how these will be achieved (s4), which apply to exhibited animals.

The fact Schedule 1 of the Bill exempts many species of exhibited animals from the Bill, and clause 10 sets out several other examples of exemptions, reflect that the main thrust of this Bill is biosecurity, human safety and a reformed licensed system. These species exemptions are not found under the ACPA, which also regulates and protects animals used for scientific purposes, which the Bill does not.

Despite the rider, Animals Australia is concerned by the policy explanation that '*...the Bill provides for a greater range of species to be exhibited in Queensland, provided the risks can be minimised*'. We remain opposed to the exhibition of animals, chiefly on the basis that it is almost impossible to ensure the 5 Freedoms (ref needed) are met with many exotic and native animals. We are especially opposed to the exhibition of animals for the entertainment of people. As such, Animals Australia opposes any moves to increase the numbers and species of animals being exhibited in Queensland (QLD).

## **2.EN Achievement of policy objectives p2**

This section states '*The Bill will impose the general exhibition and dealing obligation on exhibitors to prevent or minimize risks to animal welfare, biosecurity and safety*'. While this sounds good, and may be needed in terms of the latter two considerations, duty of care towards animals is already covered in the ACPA, which also provides higher penalties than the Bill, and includes imprisonment. For example, under the ACPA a breach of a duty of care (s17) has a maximum penalty of 300 penalty units or 1 year's imprisonment; and being cruel to an animal (s18), including confining it (iii) 'in a way that is inappropriate for the animal's welfare' has a maximum penalty of 2000 penalty units or 3 years' imprisonment. This does not compare well to the Bill's proposed maximum penalty of 750 penalty units for breaching s19 'General exhibition and dealing with obligation offence'.

The Bill seeks to ensure that if a species can't be kept in QLD for private recreation, it would need to be exhibited. The stated rationale for this, at least in part, is to '*...deter private collectors operating under the guise of keeping for exhibition*' and '*...among other benefits, it would contain demand for animals that could trigger illegal take from the wild*'. Of course, we support moves to prevent this but it will not address the welfare impositions on individual animals that are legally wild caught for zoos and aquaria.

Likewise, Animals Australia supports '*...monitoring of exhibitors to promote further improvements in industry risk management*' but not at the expense of inspections under the ACPA that could be made a requirement of licensing. The Bill intends a user pays system for both '*official assessments*' to obtain, renew or significantly amend a licence, and for '*private assessments*' by '*accredited private sector providers*' for licence renewals. We remain skeptical of such schemes given the small size of the industry and the conflicts of interest that many '*accredited persons*' would have. As such, we are concerned by the Bill's push '*To encourage industry-self-regulation*', given its failure in so many other sectors.

## **3.EN Alternative ways of achieving policy objectives p3**

A number of options were considered during the development of the Bill to achieve the stated policy intent. These included:

- 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.

Animals Australia strongly agrees that Option 2A is not suitable and *‘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 wild’*.

Options 1 and 2 have some advantages as streamlined licensing provisions could, it seems, be quite easily achieved by Regulation under the Biosecurity Act, which will commence on or before 1 July 2016; and exhibited animals’ mandatory provisions could be made under the *Animal Care and Protection Regulations 2012*, as have been done for pigs, domestic fowl, and the land transport of livestock. This would have the advantage of ensuring that all exhibited animals, and not just those that pose a biosecurity risk, have and are seen to have protection under the ACPA.

Option 3 is given as the option that *‘best aligns with the government’s policy objectives’*. Animals Australia is concerned that if this option is successful there will be an expectation that breaches of duty of care in the exhibited animals’ sector will be dealt with under the Bill, and not under the ACPA, which has higher penalties including jail terms.

Having what amounts to a separate welfare Act for exhibited animals also runs the risk that penalties in this sector will not keep pace with those in the ACPA and its Regulations (see section 2 above). If Option 3 is adopted then penalties need to be increased to match those provided in the ACPA for duty of care breaches and a concerted effort made to ensure that the Bill is not seen to replace the ACPA.

#### **4.EN Division 2 Guidelines p27**

Animals Australia recognizes that guidelines made by the chief executive could be useful in explaining monitoring and enforcement policies to the exhibited animals’ sector, but is concerned by the suggestion to use guidelines to detail *‘ways in which animals may be exhibited or kept in enclosures, such as ensuring an enclosure allows an animal to display its normal behaviours’*. Our strong view is that such critical needs of the animals must be mandatory requirements under the Regulations.

## **Bill**

### **Clause 50**

This clause needs to ensure that the chief executive takes into consideration relevant facts and makes certain inquiries before deciding the suitability of an applicant to hold authority, instead of the current *‘may’* make enquiries and *‘may’* have regard to facts. This is especially the case in (4), which sets out matters to be considered including prior convictions, suspensions, and refusals.

## **Clause 52**

This clause gives the chief executive the power to decide if an '*official assessment*' (see clause 96) is required prior to granting an exhibition licence. Animals Australia's view is that all inaugural licence applications require an '*official assessment*'.

## **Clause 70**

This clause sets out other mandatory conditions for exhibition licences. It is important that when a licence is being sought to keep an animal in a residential dwelling (d) that inspectors can enter the premises at anytime , and not as is currently proposed '*at a reasonable time and on written or oral notice of at least 1 hour*'.

Likewise, (e) currently sets out that an '*animal must be kept under the licence for at least 1 month, unless the chief executive gives written approval for the earlier disposal of the animal*'. The EN states '*This requirement is to ensure that animals are kept primarily for exhibition, not wildlife trade*'. As such, Animals Australia urges that the minimum period be extended to 6 months, and that the chief executive only grants an exemption under unforeseen, extenuating circumstances.

## **Clause 75**

This clause provides for an obligation to notify the chief executive of '*serious incidents*' (see clause 74 for definitions). The maximum penalty of 100 penalty units is manifestly inadequate given the nature of the licensing system; the types of events defined as serious; the monetary worth of many exhibited animals, and also that of many of the companies involved in this sector, and fails to serve as an adequate deterrent. These comments relate to most criticisms of inadequate penalties under this Bill that are documented below.

## **Clause 76**

This clause deals with notifying the chief executive of a '*significant change*', as defined (see clause 74). Again, a maximum penalty of 50 penalty units is manifestly inadequate for this offence.

## **Clause 77**

This clause applies to a staff member of an '*authority holder*' who becomes aware of a '*serious incident*'. Again a maximum penalty of 100 penalty points is manifestly inadequate for this offence.

## **Clause 78**

A maximum penalty of 200 penalty units for contravening a condition of an authority without reasonable excuse is again manifestly inadequate. Further, the defence of having a written veterinary surgeon's certificate to say the contravention was necessary must stipulate that the veterinarian has to be independent (that is, not employed or regularly contracted by the zoo or aquarium). At the least, the veterinary surgeon should have to disclose any conflicts they might have in this situation.

## **Clause 79**

This clause relates to record keeping requirements by the authority holder. Again a maximum penalty of 200 penalty units for contravening this clause is manifestly inadequate. This is even more so for (3), which has the same maximum penalty relating to the provision of record information that is *'false, misleading or incomplete in a material particular, unless the holder has a reasonable excuse'*.

## **Clause 83**

This clause sets out that when an application for renewal or restoration of an authority is accompanied by a report by an *'accredited person'* then the applicant doesn't require an *'official assessment'* (see clause 52), unless certain factors apply. An *'accredited person'* is defined and dealt with under Chapter 4, Part 3, and basically who becomes one is decided by the chief executive. It appears that the applicant pays the *'accredited person'* directly. In Animals Australia's view this is unsuitable and leads to unmanageable conflicts of interest. While it is sensible for the applicant to pay, this fee should be paid to the chief executive, who is then responsible for the selection and payment of the *'accredited person'*.

## **Clause 93**

Any prescribed fee to obtain a copy of all or part of the publically available register of authorities must only cover the cost of providing this information.

## **Clause 97**

This clause sets out that *'Only one official assessment (follow up) may be carried out in relation to the giving of an exhibited animal direction, and only within 12 months'*. It is not clear why there should be any restrictions on this and indeed the deciding factor should be the achievement of compliance with the direction.

## **Clause 102**

Animals Australia is concerned that a manifestly inadequate maximum penalty of 200 penalty points is proposed for the offence in which an *'accredited person'* provides a report to the chief executive *'that they know or ought to reasonably know is false or misleading'*. Given the reliance on private assessments in this Bill, it is essential that there are strong deterrents to ensure reports are honest and objective.

## **Clause 103**

This clause is hard to understand. It says (2) *'The private assessment report is not admissible in evidence against the holder of the exhibition licence in civil or criminal proceedings'* but (3) proceeds to say subsection (2) doesn't apply where *'...the false or misleading nature of the report is relevant evidence'*. This is likely to be difficult in practice because the circumstances in which the false or misleading nature of anything in a report would be relevant in proceedings (other than those relating directly to that nature) is not defined. There would likely be disputes as to whether the general exclusion applied or had been displaced. The boundary between the rule and the exception is unclear and this may make both unworkable.

## **Clause 108**

This clause needs to ensure that the chief executive takes into consideration relevant facts and makes certain inquiries before deciding the suitability of a person to be accredited, instead of the current *'may have regard'* to facts. This is especially the case in (a-e), which set out matters to be considered including prior convictions, suspensions, and refusals.

## **Clause 113**

This clause *'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...'* that *'could conflict with the proper carrying out of a private assessment and preparing a private assessment report'*. It needs to be made clear that the onus is on the *'accredited person'* to update this information with the chief executive during the period of accreditation if necessary.

## **Clause 114**

A maximum penalty of 200 penalty units for failure by an *'accredited person'* to notify the chief executive of breaches of the Act (Bill) that pose an *'imminent and significant relevant risk'* that are found during a *'private assessment'* is manifestly inadequate.

## **Clause 115**

A maximum penalty of 200 penalty units for failure by an *'accredited person'* to comply with the conditions of their accreditation is also manifestly inadequate.

## **Clause 116**

A maximum penalty of 50 penalty units for failure by an *'accredited person'* to keep report records for at least 3 years is also inadequate.

## **Clause 122**

This clause requires the chief executive to keep a register of *'accredited persons'* that is published on the department's website. This register should also show the conflict of interest disclosures made by these persons.

## **Clause 125**

This clause needs to ensure that the chief executive must cancel or suspend a relevant authorization, instead of the current *'may'* cancel or suspend, in the instances provided under dot points in this clause. This is especially the case as these include obtaining an authorization by providing *'materially incorrect or misleading information...'*; the person *'is not, or is no longer, a suitable person to hold the authorisation'*, and *'the holder of the authorisation has contravened a condition of the authorisation...'*. As commented earlier, Animals Australia is not confident that self regulation works in any industry, and this is particularly the case when deterrents are low.



### **Clause 134**

This clause makes it an offence for a holder not to return a relevant authorization that has been cancelled, suspended or amended to the chief executive by the due date. While this offence is relatively low on the scale, a maximum penalty of 40 penalty units is inadequate.

### **Clause 138**

This clause is the same as 134 except it relates to temporary authorities. As such, our comments are the same as above.

### **Clause 147**

This clause is similar to both 134 and 138 but relates to the return of inspectors' identity cards. Again, the maximum penalty, this time of only 20 penalty units, is inadequate and may not even cover the administrative costs to the department of pursuing such matters.

### **Clause 172**

This clause 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 notice given under clause 170, unless the person has a reasonable excuse. This is manifestly inadequate and would fail to be a serious deterrent.

### **Clause 176**

This clause is the same as 172 except it relates to contravening a help requirement. As such, our comments are also the same.

### **Clause 181**

This clause is the same as 172 and 176 except it relates to failing to comply with an exhibited animal direction, and the maximum penalty is up to 200 penalty units. This is also manifestly inadequate and would fail to be a serious deterrent.

### **Clause 185**

This clause relates to seizure of an animal and includes in its grounds '*...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*'. This clause is more restrictive than is provided under the ACPA s142 -144.

### **Clause 189**

This clause makes it an offence with a maximum penalty of 100 penalty points for a person to contravene a requirement made of the person under clauses 187 and 188(2) (d) unless the person has a reasonable excuse. Given these clauses refer to powers to support seizure by an inspector, the penalty is currently manifestly inadequate and fails to act as a deterrent.

### **Clause 191**

This clause is the same as clause 189 except it relates to a person interfering with a seized animal or other thing if access has been restricted under clause 188. Again a maximum penalty of 100 penalty units is manifestly inadequate and fails to act as a deterrent.

### **Clause 203**

This clause makes it an offence for a person to fail to comply with a personal details' requirement unless the person has a reasonable excuse. Again a maximum penalty of 50 penalty units is manifestly inadequate and fails to act as a deterrent.

### **Clause 205**

This clause is the same as clause 203 except it relates to a person failing to comply with a requirement to produce a document under clause 204, unless the person has a reasonable excuse. Again a maximum penalty of 50 penalty units is manifestly inadequate and fails to act as a deterrent.

### **Clause 206**

This clause and the penalty is the same as for clause 205 except it relates to a person failing to comply with a document certification requirement. As such our comment is the same.

### **Clause 208**

This clause and the penalty is the same as for clause 206 except it relates to a person failing to comply with an information requirement, unless the person has a reasonable excuse. Here it is a reasonable excuse for a person not to give the information if doing so might tend to incriminate them. Again a maximum penalty of 50 penalty units is manifestly inadequate and fails to act as a deterrent.

### **Clause 212**

This clause makes it an offence for a person to give information to an inspector, including a document, which '*the person knows is false or misleading in a material particular*'. Again a maximum penalty of 200 penalty units is manifestly inadequate and fails to act as a deterrent.

### **Clause 213**

This clause provides that it is an offence to obstruct an inspector, or a person helping an inspector, unless the person has a reasonable excuse. Again a maximum penalty of 100 penalty units is manifestly inadequate and fails to act as a deterrent.

### **Clause 247**

This clause creates offences including making false representations about operating under an exhibited animal authority or accreditation. Again a maximum penalty of 100 penalty units is manifestly inadequate and fails to act as a deterrent.

### **Clause 248**

This clause makes it an offence for a person to give the chief executive information or a document that the person knows is false or misleading. The maximum penalty of 200 penalty units is inadequate and fails to act as a deterrent.

### **Clause 249**

This clause makes it an offence for a person administering or performing a function under the Act to improperly disclose confidential information. The maximum penalty of 50 penalty units is inadequate and fails to act as a deterrent.

### **Clause 254**

This clause restricts the penalties under Regulations to no more than 20 penalty units. Unless the Regulations will be restricted to very minor offences, this penalty is inadequate and will fail to act as a deterrent.

*Comments end.*

Further information or clarification can be provided by:

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