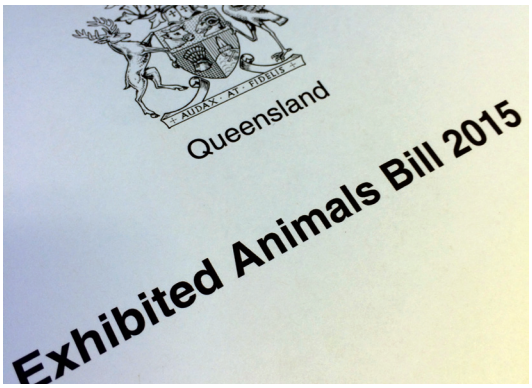
Parliamentary Committees



Exhibited Animals Bill 2015

Report No. 2
Agriculture and Environment Committee
May 2015

Parliamentary Committees

Exhibited Animals Bill 2015

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Agriculture and Environment Committee

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Acknowledgements

The committee thanks departmental officers who briefed the committee on the Bill, and the groups and individuals who provided submissions and gave evidence at hearings for the inquiry.

Contents

Abbreviations and definitions

ACPA or ACP Act	*Animal Care and Protection Act 2001*
AEC	Agriculture and Environment Committee of the 55th Parliament
AREC	Agriculture, Resources and Environment Committee of the 54th Parliament
DAF	Department of Agriculture and Fisheries (Queensland)
DAFF	Department of Agriculture, Fisheries and Forestry
DEEDI	Department of Employment, Economic Development and Innovation
DEHP or EHP	Department of Environment and Heritage Protection
IP Act	*Information Privacy Act 2009*
LP Act	*Land Protection (Pest and Stock Route Management) Act 2002*
NCA or NC Act	*Nature Conservation Act 1992*
OECD	Organisation for Economic Co-operation and Development
OQPC	Office of the Queensland Parliamentary Council
QCA	Queensland Competition Authority
QNFAG	Queensland Native Fauna Advisory Group
RIS	Regulatory Impact Statement
SLC	Former Scrutiny of Legislation Committee
WHS Act	*Work, Health and Safety Act 2011*

Chair's foreword

This report presents the findings from the committee's inquiry into the Exhibited Animals Bill 2015 introduced on 27 March 2015 by Hon Bill Byrne MP, Minister for Agriculture and Fisheries and Minister for Sport and Racing. The Bill is similar to the LNP Government's lapsed Exhibited Animals Bill 2014 considered briefly by the former Agriculture, Resources and Environment Committee, though with some notable refinements.

We are fortunate in Queensland to have a strong and vibrant exhibited animals industry worth some $100 million to the state's economy and at least a further $100 million in additional value to the tourism sector annually. There would be few locals or visitors to our state who have not experienced one of our iconic zoos, circuses or mobile animal exhibitions.

The provisions in this Bill will help to ensure this important industry continues to maintain its excellent animal welfare, biosecurity and work safety record, and that exhibitors and their staff will maintain their high standards of professionalism and care.

I want to thank the exhibitors and others who shared their views on the legislation with my committee and the former committee. I also acknowledge the effort of departmental staff who advised the committee on the provisions of the Bill.

And finally I would like to acknowledge the particularly constructive approach adopted by committee members to our inquiry.

I commend the report to the House.

Jennifer Howard MP
Chair

May 2015

Recommendations

Recommendation 1 **15**

The committee recommends that the Bill be passed with the amendments proposed in this report.

Recommendation 2 **21**

The committee recommends that the Bill be amended to specify that a 'regular enclosure' at a 'regular enclosure site' need not be open generally to the public: provided the exhibitor a) still meets the exhibitor's minimum exhibition requirements; and b) that the enclosure is assessed and meets required standards for the relevant authorised animal.

Recommendation 3 **24**

The committee recommends that the Bill be amended by removing clause 76 (4) in relation to the minimum three hour on each occasion restriction, and adopting in its place the same 'separate occasion' provision as at clause 75(6).

Recommendation 4 **24**

The committee recommends that the Bill be amended at clauses 76 (2) and (3) to reduce the minimum annual hours to 50 hours in each calendar month and 600 hours in the year.

Recommendation 5 **25**

The committee recommends that the Bill be amended to provide an exemption to clause 75 and 76 for reasonable circumstances where: an animal is temporarily not suitable for exhibit; where exhibit may impact on relevant risks and adverse effects; or where an animal is acquired for a limited number of defined circumstances relevant to, but not directly involved in, exhibition (e.g. breeding program, companionship for another exhibited animal, requires prolonged handling/training in preparation for exhibit).

Recommendation 6 **31**

The committee recommends that the department considers alternative licencing requirements such as the tiered 'proportionate to risk' application and approval process implemented under the *Environmental Protection Act 1994*, and considers amendment of the Bill to limit the regulatory impact on authority holders associated with the proposed requirement for a management plan for all species of exhibited animal.

Recommendation 7 **31**

The committee recommends that the department clarifies the use of 'significant relevant risks and adverse effects' and 'relevant risks and adverse effects' within the Bill to ensure a clear and precise interpretation of an authority holders' obligations and demonstration of compliance.

Further the committee recommends that the department develops application guidelines to assist authority holders undertake risk assessments of their activities, and develop appropriate management plans where necessary.

Points for clarification

Point for clarification A **8**

The committee invites the Minister to inform the House how his department will consult animal exhibitors, including mobile exhibitors not represented by a peak body, during the development of regulations, guidelines, codes and template documents related to the provisions of the Bill.

Point for clarification B **25**

The committee invites the Minister to clarify the intent and meaning of 'exhibit' and 'private event' in the Bill and to confirm whether the exhibit of an animal by a mobile demonstrator is considered an 'exhibit' that satisfies the minimum exhibition requirement.

Point for clarification C **49**

The committee invites the Minister to assure the House that the department will consult with animal exhibitors before prescribing any matters by regulation for clause 218.

1. Introduction

Role of the committee

The Agriculture and Environment Committee is a portfolio committee appointed by a resolution of the Legislative Assembly on 27 March 2015. The committee's primary areas of responsibility are: Agriculture, Fisheries, Sport and Racing; Environment and Heritage Protection; and National Parks and the Great Barrier Reef.[1]

In its work on Bills referred to it by the Legislative Assembly, the committee is responsible for considering the policy to be given effect and the application of fundamental legislative principles (FLPs).[2]

In relation to the policy aspects of Bills, the committee considers the policy intent, approaches taken by departments to consulting with stakeholders and the effectiveness of that consultation. The committee may also examine how departments propose to implement provisions in Bills that are enacted.

FLPs are defined in Section 4 of the *Legislative Standards Act 1992* as the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to the rights and liberties of individuals and the institution of Parliament.

The referral

On 27 March 2015, Hon Bill Byrne MP, Minister for Agriculture and Fisheries and Minister for Sport and Racing introduced the Exhibited Animals Bill 2015. The Legislative Assembly referred the Bill to the committee for examination, in accordance with Standing Order 131. The committee was given until 8 May 2015 to table its report to the Legislative Assembly, in accordance with Standing Order 136(1).

The Exhibited Animals Bill 2015 is similar to the Exhibited Animal Bill 2014 presented to the 54th Legislative Assembly on 14 October 2014 and referred to the former Agriculture, Resources and Environment Committee (AREC) for examination and report. That committee ended its work on the 2014 Bill when the Bill lapsed with the dissolution of the 54th Parliament on 6 January 2015.

The committee's processes

In its examination of the 2015 Bill, the AEC considered the submissions and other evidence taken by AREC in its unfinished examination of the Exhibited Animals Bill 2014. The committee also:

- notified stakeholders of the committee's examination of the 2015 Bill and requested written submissions
- Invited those groups and individuals who submitted their views to AREC on the 2014 Bill to review the 2015 Bill and provide a supplementary submission
- accepted ten supplementary submissions from previous submitters and four additional submissions. A list of these submissions together with the 19 written submissions received by AREC on the 2014 Bill is at **Appendix A**
- sought advice[3] from the Department of Agriculture and Fisheries (DAF) on the policy drivers for the Bill, issues raised in submissions received by the committee and a number of the provisions in the Bill

[1] Schedule 6 of the Standing Rules and Orders of the Legislative Assembly of Queensland.
[2] Section 93 of the *Parliament of Queensland Act 2001*.

- sought expert advice on possible FLP issues with the Bill and raised these issues with DAF for clarification. Chapter 6 of this report provides the department's advice and commentary from the committee on the advice, and
- convened a public hearing and departmental briefing by DAF officers on 27 April 2015. The briefing officers and hearing witnesses who assisted the committee, together with officers who appeared before AREC in 2014, are listed at **Appendix B**. The transcripts of the public meetings of both committees are available from the Parliament of Queensland website.

[3] The department's advice is published on the Queensland Parliament's website at: http://www.parliament.qld.gov.au/work-of-committees/committees/AEC/inquiries/current-inquiries/01-ExhibitedAnimals

2. Background to the Bill

Policy objective

According to the Explanatory Notes, 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.

The Bill also seeks to consolidate and streamline regulation of the exhibited animals industry which is currently spread across several Acts, and to address current gaps in the coverage of some animal, welfare and safety risks with a cohesive, comprehensive and consistent risk-based framework for exhibited animals.[4]

Key definitions for 'animal', 'exhibit' and 'dealing'

Clause 12 of the Bill defines 'animal' as any live member of the animal kingdom other than a human being. In relation to dealings with an exhibited animal, the Bill covers animals at any stage of their life cycle and the whole or any part of the their genetic or reproductive material (e.g. ova or semen).

Clause 10 read in conjunction with Schedule 1 of the Bill give the circumstances in which the Bill would not apply to 'exhibiting' or 'dealing' with an animal. For example, excluded for the purposes of the Bill are:

- domestic animals (common pets and farm animals) displayed at an agricultural show, or displayed for sale, and
- native species (for example, carpet pythons) that can be kept privately under a recreational wildlife licence under the *Nature Conservation Act 1992.*

Clause 13 of the Bill states that, generally, to 'exhibit' an animal means to display the animal to the public, including for commercial, cultural, educational, entertainment or scientific purposes.[5] Examples of exhibiting an animal include:

- displaying an animal in a zoo or wildlife park
- using an animal in a performance in a circus or magic show
- allowing public interaction with animals at a petting zoo
- showing an animal as part of an educational wildlife demonstration, and
- displaying an animal, including, for example, a bird in a cage, in a part of commercial premises accessible to the public.[6]

Clause 15 gives the meaning of 'dealing' with an exhibited animal. It means carrying out an activity involving or relating to the animal, other than exhibiting the animal, such as accepting, buying, importing or obtaining the animal. Dealing also includes breeding, raising, keeping, moving, giving and otherwise disposing of the animal.

Animal exhibitors

Animal exhibitors in Queensland include zoos, circuses and mobile animal demonstrators. Zoos and circuses have operated in Australia since the mid-nineteenth century,[7] and remain a popular form of

4 Exhibited Animals Bill 2015, Explanatory Notes, p.1.
5 Exhibited Animals Bill 2015, p.19.
6 Exhibited Animals Bill 2015, p.19.
7 Australian Government, 2014, *Zoos in Australia*. < http://www.australia.gov.au/about-australia/australian-story/zoos-in-australia. Accessed 17 December 2014>.

cultural entertainment. Proponents of circuses maintain that the inclusion of animal acts differentiates circuses from cabaret acts.[8]

As at August 2012, there were 135 exhibitors licensed to exhibit animals in Queensland including:

- 46 fixed exhibitors (zoos and aquariums) holding licences for native and exotic species
- 49 mobile demonstrators holding licenses for native and noxious fish species
- 40 licence holders that were circus, film or television and magic acts for exotic species only.[9]

The majority of those licence holders operating in Queensland were based in Queensland, with eight licence holders (four demonstrators and four circuses) from interstate.

In its regulatory impact statement for the exhibited animal legislation, The Department of Agriculture, Fisheries and Forestry (DAFF) noted that the exhibition of animals is considered to have a range of economic, social and other benefits. The Zoo and Aquarium Association which represents large fixed exhibitors estimated in 2009 that 5.2 million people visit its members in Queensland annually, and that more people visit zoos than visit museums.[10]

The committee heard at its public hearing that the exhibited animals industry contributes $100 million to the Queensland economy[11] annually, and that Queensland zoos account for five million of the 14 million visits each year to Australian zoos.[12] While the economic benefits are largely tourism-related, there are social and other non-economic benefits including cultural, recreational and educational benefits.

Circuses and mobile demonstrators provide access to animals for people in regional areas who might not visit a zoo.[13] A further benefit noted by the department is the contribution made to conservation, rehabilitation and research as a result of breeding, rescue and other programs operated by animal exhibitors.

Regulation of animal exhibitors across Australia

Laws applying to the management of exhibited animals vary between Australian jurisdictions – there is no consistent approach.

All jurisdictions require licences, permits or other forms of authority to exhibit many native and exotic species. New South Wales and Tasmania have consolidated into a single Act provisions that cover the management of risks to animal welfare, biosecurity and safety. Other Australian jurisdictions, including Queensland, regulate the industry under several pieces of legislation that deal separately with the potential risks associated with animal welfare, pest management and animal disease and wildlife conservation. All jurisdictions have a principle piece of legislation covering animal welfare.[14]

Work is underway to develop uniform national standards for exhibited animals, in response to:

- criticisms of the industry arising from publicised incidents of poor animal treatment, animal escapes, etc.
- difficulties experienced by jurisdictions to manage/prevent such undesirable situations, and

8 Australian Veterinary Association, 2011, *Circus animals*. < http://www.ava.com.au Accessed 28 April 2015>
9 DAFF, 2013, *Exhibited Animals Legislation Consultation Regulatory Impact Statement*, p. 45.
10 DAFF, 2013, p. 45.
11 Carter T., 2015, *Hearing transcript*, Brisbane, 27 April, p.17.
12 Mucci, A, 2015, *Hearing transcript*, Brisbane, 27 April, p.14.
13 Hasling J., 2015,*Hearing transcript* , Brisbane, 27 April, p.19; Joyes R., 2015, *Hearing transcript*, Brisbane, 27 April, p.6.
14 Exhibited Animals Bill 2015, Explanatory Notes, p.22.

- difficulties for the industry in dealing with separate jurisdictions having inconsistent standards.[15]

The Department of Agriculture and Fisheries anticipates that the provisions in the Bill will provide a legislative framework to enable adoption in future of national standards as codes of practice.

Current regulatory approaches in Queensland

In Queensland, the exhibition and dealing of native and exotic animals[16] is regulated under three Acts and associated regulations, and administered via six licensing schemes with varying preconditions, restrictions, application forms, and application and permit fees applying.[17]

Under the *Nature Conservation Act 1992* (NC Act) and the associated regulation, a wildlife exhibitor licence is required to display protected, international or prohibited wildlife at a fixed location with permanent enclosures for the animals, while a wildlife demonstrator licence is needed for a travelling or temporary display of these wildlife.

Under the *Land Protection (Pest and Stock Route Management) Act 2002* (LP Act), a declared pest permit is required to keep and exhibit animals in a zoo or other fixed exhibit, in a circus, and for the purpose of magic acts.

Under the *Fisheries Act 1994* (Fisheries Act), a general fisheries permit is required for keeping noxious or regulated fish.

The Bill's Explanatory Notes point out that exhibitors of native and exotic species of animals generally need at least two licences.[18]

A number of inconsistencies in the existing regulatory framework have acted as a driver for reform in Queensland. For example:

- the *Animal Care and Protection Act 2001* (ACP Act) addresses animal welfare risks and adopts some standards relevant to exhibited animals, but does not apply to activities licensed under the NC Act. And while some licensing decisions under the NC Act contemplate public safety and animal welfare, it has been suggested that these Acts , even in combination, do not provide comprehensive animal welfare standards for all species exhibited in Queensland, and
- the structure of the licensing framework under the LP Act precludes the exhibition of some exotic species that are allowed in other Australian jurisdictions, even if they can demonstrably manage any risks to animal welfare, biosecurity and public safety. [19]

The Explanatory Notes detail the relationship between the proposed legislation and the *Biosecurity Act 2014* (the Biosecurity Act), which is due to commence on 1 July 2016, and which will repeal certain provisions of the LP Act and the Fisheries Act. The Biosecurity Act will continue to prohibit dealings with some potential pest animals listed as 'prohibited matter' and with other pest animals listed as 'restricted matter'. These animals are generally declared pests under the LP Act or noxious fish under the Fisheries Act.[20]

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15 Harding, T and Rivers, G. 2014, *Australian Animal Welfare Standards and Guidelines. Exhibited Animals – Consultation Regulation Impact Statement*, NSW Department of Primary Industries, Orange, pp. iii-iv.

16 To 'exhibit' is to display the animal to the public, or a section of the public, including, for example, for commercial, cultural, educational, entertainment or scientific purposes (see clause 13 of the Bill). To be dealing with an exhibited animal means carrying out an activity involving or relating to the animal (other than exhibiting), including buying, breeding and raising, possessing, moving and disposing of the animal (see clause 15 of the Bill).

17 The reference to six licensing schemes refers to schemes under which DAFF grants permits. It excludes the declared pest permits for animals for an education program or exclusively for a film and television purpose under the LP Act.

18 Exhibited Animals Bill 2015, Explanatory Notes, p. 1.

19 DAFF, 2013, *Exhibited Animals Legislation Consultation Regulatory Impact Statement*, p. 6.

20 Exhibited Animals Bill 2015, Explanatory Notes, p. 2.

A permit class for authorising exhibitors to deal with species that are prohibited or restricted matter is not provided under the Biosecurity Act because biosecurity is only one of the risks that it would be appropriate to consider in authorising dealings with those animals. Instead, the Bill would authorise exhibitors to exhibit and deal with these species, which is directed at preventing or minimising all the relevant risks and relevant adverse effects. [21]

Development of the Exhibited Animals Bill

The Exhibited Animals Bill 2015 is based on the lapsed 2014 Exhibited Animals Bill, and is the culmination of work by departmental officers since 2007.

Service Delivery and Performance Commission review

The genesis of the Bill was a 2007 report[22] by the Service Delivery and Performance Commission (SDPC). The report covered the findings of the commission's review of the regulation of exhibited animals in Queensland, and identified the need for a single piece of legislation covering exhibited animals to be administered by a single agency.

The commission recommended that the responsibility for regulating the use of animals for exhibition or entertainment be vested in the primary industries portfolio, and that drafting Instructions be prepared for Cabinet's consideration to enact a single piece of legislation dealing with the keeping of animals (exotic and native) for exhibition or entertainment purposes. The commission also recommended that any staffing and other resources associated with this function be transferred from other departments to the primary industries department.

The Department of Primary Industries and Fisheries' Biosecurity Queensland was tasked with investigating the development of new legislation for exhibited animals to address the issues identified in the SDPC report.

Discussion paper (2008)

In 2008, the Department of Primary Industries and Fisheries released its *Exhibited Animals Discussion Paper* for public comment. The paper canvassed replacing the current legislation with a single industry-specific Act. According to DAF, a diverse range of stakeholders including fixed exhibitors, wildlife demonstration, animal welfare interest, conservation Interest, academics and agency individuals responded to the discussion paper. Overall, respondents supported a single piece of legislation for exhibited animals.[23]

Discussion workshops (2011 & 2012)

During 2011 and 2012, the Department of Employment, Economic Development and Innovation (DEEDI) invited key stakeholders to attend a series of workshops to discuss 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).[24] Those workshops were held in:

- March 2011: involving the RSPCA, Animals Australia and a university academic with interests in animal welfare and ethics; and

[21] Exhibited Animals Bill 2015, Explanatory Notes, p. 2.

[22] Service Delivery and Performance Commission, 2007, *Review of the Roles and Responsibilities of the Department of Natural Resources, Mines and Water Environmental Protection Agency and Department of Primary Industries and Fisheries*.<http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2007/5207T1077.pdf Accessed 30 April 2015>

[23] Explanatory Notes, p. 21.

[24] Explanatory Notes, p. 21.

- April 2011 - (Brisbane, the Gold Coast, the Sunshine Coast, Gladstone, Rockhampton and Cairns) and November and December 2012 (Brisbane and Cairns): involving licensed exhibitors (other than magic acts).

According to the Explanatory Notes, attendees at the workshops indicated general support for the key features of the proposed exhibited animals legislation.[25]

Consultation Regulatory Impact Statement

The Department of Agriculture, Fisheries and Forestry (DAFF) undertook public consultation between November 2013 and February 2014 through the release of the *Consultation Regulatory Impact Statement*. The statement invited comment on new legislation being developed to regulate the exhibition of live animals and the keeping of live animals for exhibition. The department received submissions from 25 respondents from a diverse range of different sectors of the industry and wider community. Feedback on the regulatory impact statement further confirmed support for the development of a single piece of legislation to regulate the exhibited animals industry. [26]

In July 2014, DAFF held a workshop attended by 17 industry participants to discuss a working draft of the Exhibited Animals Bill 2014. While participants were generally supportive of the draft, they identified the following issues: [27]

- the risk management planning requirements for animals that are currently kept by other Queenslanders under a recreational wildlife licence under the *Nature Conservation Act 1992*, and
- the requirement for animals that are prohibited matter to be based in a fixed exhibit.

Exhibited Animals Bill 2014

The former Minister for Agriculture, Fisheries and Forestry introduced the Exhibited Animals Bill 2014 in October 2014. The Bill was subsequently referred to the former Agriculture, Resources and Environment Committee (AREC) for examination and report. That Committee received 19 written submissions to its inquiry and held a public briefing and hearing on 26 November 2014. The Exhibited Animals Bill 2014 lapsed when the 54th Parliament was dissolved on 2 January 2015.

Exhibited Animals Bill 2015

According to DAF, the 2015 Bill incorporates feedback in response to the regulatory impact statement, industry suggestions made at the department's consultation workshop and other points raised in submissions to the AREC examination of the 2014 Bill.

Guidelines and regulations

Twelve clause of the Bill proposes to authorise the Chief Executive of the department (DAF) to make guidelines and regulations.

Clause 26 of the Bill provides that the chief executive may make guidelines about matters relating to the administration of the Act; or complying with other requirements imposed under the Act. Under clause 26(2) a guideline may be about:

- the operation of provisions of the Act about monitoring and enforcement of compliance with this Act;
- ways in which exhibited animals may be exhibited or dealt with, including, for example, acceptable ways of ensuring an animal's enclosure appropriately provides for the animal's need to display its normal behaviours; and

[25] Exhibited Animals Bill 2015, Explanatory Notes, p. 21.

[26] DAFF, 2014, *Brief to the Agriculture, Resources and Environment Committee on RIS (summary of consultation)*, 31 October.

[27] DAFF, 2014.

- the type of information the Chief Executive may consider relevant in a management plan for managing the relevant risks associated with exhibiting or dealing with an exhibited animal.

Australian Animal Welfare Standards and Guidelines for Exhibited Animals (the national standards) are being developed with the intent to create improved and nationally consistent rules for the care and management of animals kept for exhibition purposes at facilities such as zoos, fauna parks, wildlife parks, aquariums and museums with live animal exhibits.

The consultation regulatory impact statement proposed that the national standards would be reflected in codes of practice made under the Bill. However, codes of practice would be made by regulation and a decision on reflecting the national standards in codes of practice will not be made until they are finalised and the government considers the regulations.[28]

The Bill contains several other clauses which allow a regulation to establish certain matters and conditions. These include:

- Clause 20 provides that if a person fails to discharge their general exhibition and dealing obligation they contravene a provision in a regulation
- 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
- 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 is not part of, or attached to, the regulation, then the Minister must table the adopted provisions within 14 sitting days after the regulation is notified
- Clauses 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
- 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.

Drafts of the regulations and guidelines were not available for consideration with the Bill, and this has prevented animal exhibitors, other stakeholders and the committee from assessing the true impacts of the proposed regulatory regime in its entirety.

Point for clarification A

The committee invites the Minister to inform the House how his department will consult animal exhibitors, including mobile exhibitors not represented by a peak body, during the development of regulations, guidelines, codes and template documents related to the provisions of the Bill.

[28] DAFF, 2014, *Correspondence*, 29 October.

3. Policy justification for the Bill

The committee identified three key areas of concern that are fundamental to the viability of this legislation. These concerns relate to the:

- policy justification for the Bill
- regulatory burden and complexity, and
- implementation of the Bill.

This chapter discusses the policy justification for the Bill.

The Bill proposes to introduce a new regulatory framework to provide for exhibiting and dealing with exhibited animals whilst ensuring that the associated animal welfare, biosecurity and safety risks are managed.[29]

Clauses 3 and 4 of the Act outline the purpose of the Act and how the purpose will primarily be achieved:

> ***3 Purposes of Act***
>
> *(1) The main purpose of this Act is to provide for exhibiting and dealing with exhibited animals.*
>
> *(2) It is also a purpose of this Act to ensure the relevant risks and relevant adverse effects associated with exhibiting and dealing with exhibited animals are prevented or minimised.*
>
> ***4 How purposes are primarily achieved***
>
> *The purposes of this Act are to be achieved primarily by—*
>
> *(a) imposing a general obligation on persons exhibiting and dealing with exhibited animals to prevent or minimise the relevant risks and relevant adverse effects associated with exhibiting and dealing with exhibited animals; and*
>
> *(b) requiring that authorities be obtained to allow particular animals to be exhibited; and*
>
> *(c) imposing additional obligations on persons exhibiting or dealing with authorised animals under exhibited animal authorities; and*
>
> *(d) providing for monitoring and enforcement of compliance with this Act; and*
>
> *(e) providing for codes of practice relating to a person's obligations under this Act; and*
>
> *(f) providing for the chief executive to make guidelines about the application of this Act and how a person may comply with obligations imposed under this Act.*

Submitters indicated support for the general intent of the Bill, but questioned whether the Bill will achieve the stated objectives.

Risks associated with exhibited animals

The keeping and exhibiting of animals involves risk to the animals and/or from the animals to their handlers, the viewing public or to the community generally. While some risks may be minor and easily managed depending on the species or its life stage, there remains the potential for catastrophic events to occur. The committee has endeavoured to understand the levels of risk involved, the extent to which risks are currently being managed by exhibitors and whether remaining risks would justify the additional regulatory requirements proposed in the Bill.

[29] Exhibited Animals Bill 2015, Explanatory Notes, p. 1.

In its regulatory impact statement for the exhibited animals legislation, DAF listed three risks as good reasons for regulating the keeping of wild animals. These reasons are the potential for:

- animal welfare problems
- wild animals to establish as pests and to spread disease, and
- wild animals to cause human injury and death.

These risks could apply equally to the keeping of domestic animals.

The department's regulatory impact statement cited examples of risk events involving exotic animals in overseas zoos:

- *In 2006, a major Canadian zoo, the Greater Vancouver Zoo, was charged with animal cruelty for failing to provide adequate facilities for a baby hippopotamus that was confined in a small concrete pen for 19 months*[30]
- *In Europe, 82 non-indigenous terrestrial vertebrate species have been introduced as a consequence of escapes from zoological parks.*[31] *For example, in 1969 a single pair of Himalayan porcupines escaped from a wildlife park in England and the resultant population attacked crops and stripped bark from trees, and*
- *In December 2006, there were two separate attacks by a Siberian tiger named Tatiana at the San Francisco Zoo. In the first incident, the tiger clawed and bit the arm of a zookeeper during a public feeding. In the second incident, the tiger escaped from her open-air enclosure then killed one person and injured two others before being shot dead.*[32]

The department also suggested that the absence of regulation could increase the demand for animals, triggering illegal and unsustainable taking of animals from the wild.[33]

At the briefing on 26 November 2014, the former AREC questioned the department about risks:

> ***Mr COSTIGAN:*** *You did mention a lot about the risk of biosecurity breaches. I am interested to know what the likelihood of risk is. I am happy for the question to be taken on notice, but since the formation of Biosecurity Queensland in 2007 how many breaches have occurred in relation to exotic animals?*
>
> ***Dr Thompson:*** *It has been one of the concerns of the zoo industry. We have probably had fairly strict requirements about which animals can be kept, and so we have not had problems in Queensland in relation to escapes from zoos. So that is the answer to the question in that sense. Because we have had a fairly restrictive practice in Queensland, we probably think that has set it up to make sure that those sorts of things do not happen.*
>
> ***Mr COSTIGAN:*** *What about circuses?*
>
> ***Dr Thompson:*** *Circuses would be the same.*
>
> ***Ms Clarke:*** *There was a theft from a zoo, and I cannot remember the species—maybe one of the zoos could help me—that turned up on the private market. There is a private market for quite a few of these exotic animals, particularly for some of the attractive amphibians and reptiles.*

30 DAFF, 2013, *Exhibited Animals Legislation Consultation Regulatory Impact Statement*, p.5; Note: The charges were stayed in 2007 when a new habitat for hippopotamuses was opened.

31 DAFF, 2013, p.5; Fàbregas, M, Guillén-Salazar, F & Garcés-Narro, C 2010, 'The risk of zoological parks as potential pathways for the introduction of non-indigenous species', DOI: 10.1007/s10530-010-9755-2.

32 DAFF, 2013, *Exhibited Animals Legislation Consultation Regulatory Impact Statement*, p.5.

33 DAFF, 2013, p.5.

> ***Dr Thompson:*** *There have been many cases overseas where a range of animals have got out of zoo situations or kept situations. Certainly there are a lot of cases in the United States, and obviously they have a very different set of rules around the keeping of animals than we do. But it is something we have been mindful of for a long period of time, and I guess bringing biosecurity into this act is something that is quite unique in many ways about the types of things we have tried to cover in this act.*
>
> ***Ms Clarke:*** *I believe palm squirrels might have escaped from a zoo in a part of Perth, but that was a considerable length of time ago and you would not want to draw too much from that.*[34]

The committee's own research identified a small number of incidents reported in the media that involved Queensland zoos, some recently. They included an incident from 1888 in which a tiger in a zoo in George Street, Brisbane, mauled a handler causing severe injuries.[35]

During the committee's examination of the Bill, DAF did not initially detail past risk events involving exhibited animals in Queensland nor elsewhere in Australia. In response to the committee's request, DAF instead advised:

> *The department is wary about providing details of incidents involving mobile demonstrators or circuses that could damage the reputation of the exhibitors involved. It submits the following information as indicative that failures in risk mitigation do occur…*
>
> *It is difficult to verify failures in risk management by demonstrators given the department currently does not conduct regular compliance assessments and most of these failures occur out of public view. From time to time, however, demonstrators provide incriminating information.*

The department's advice then outlined two separate events in 2013 and 2015, and cited a published study of risks from animals released from zoos. The 2013 incident involved a primate kept under a declared pest (circus) permit and which had been left in an unattended vehicle in a rural Queensland town. The 2015 incident involve a freshwater crocodile found by a member of the public in Southport. The department speculated that the crocodile had been released by a wildlife demonstrator, though this was not proven. The department also referred the committee to Facebook posts suggesting some wildlife demonstrators in Queensland are providing inadequate supervision of exhibited animals, including crocodiles and other reptiles. The department advised that it has generally been unable to take enforcement action due to insufficient evidence.

The article[36] cited by the department in its advice for the committee attempts to quantify the native and exotic animal releases (generally due to escape or theft) from Australian zoos for the period 1870 – 2010. The department noted that there are significant limitations on the availability of data. The taxer found to have the greatest preponderance to escape and not be retrieved was birds. Reptiles were the most likely class to be stolen. The article concludes that the risks of pests becoming established as result of being released from zoos is low and substantially less than other 'backyard' and illegal sources of private species keeping and trade.

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34 Clark M., 2014, *Briefing transcript*, Brisbane 26 November, p.26.

35 The Sydney Morning Herald 1888*, Exciting incident in Brisbane, escape of a tiger from a menagerie, a man terribly injured*, 22 November, p.10. <http://trove.nla.gov.au/ndp/del/printArticleJpg/13704588/3?print=y accessed 30 April 2015>.

36 Cassey, P., Hogg, C.J., 2014, Escaping captivity: The biological invasion risk from vertebrate species in zoos. Biological Conservation 181 (2015) 18-26 <http://www.sciencedirect.com/science/article/pii/S0006320714004042 accessed 23 April 2015>.

At the public hearing on 27 April 2015, the committee asked the RSPCA about animal welfare cases, particularly cases involving circuses. The RSPCA advised:

> ***Dr Paterson:*** *Currently, as you know, there is a compulsory code of practice for circuses. That code has been in place for a long time, so when our inspectors go to a circus they can only judge that circus according to the law, which is that code of practice. If the circus is complying with that code of practice, of course they are not breaking the law. So I am not talking about that. I believe that that code of practice is well overdue to be reviewed. We believe that it does not protect the welfare of the animals well enough in this day and age and in the expectations that the public have. So, no, I cannot give you an example because they have not breached that code of practice.*[37]

The committee also asked exhibitors about risks in their industry. Mr Steve Robinson, Director of the Darling Downs Zoo told the committee:

> *In Australia, as you probably know, we have some animal activists who are very, very keen to score points against the exhibited animal industry, as well as animals in recreation, sport and everything else. They are very, very persistent in their observations. They have looked very closely at the circus for years and years and years, and they have not yet been able to even launch a prosecution, let alone bring a conviction against a circus. Our history, in terms of animal welfare, is excellent. It is 100 per cent.*
>
> *When it comes to biosecurity, one of the major areas of biosecurity risk that the government looks at is the risk of an escape of an exotic species into our environment, either accidentally or on purpose. That has never happened from a zoo or from a circus. The boa constrictor you were talking about before did not escape from a licensed premise. It did not escape from a zoo, it did not escape from a wildlife park and it did not escape from a circus. It was obviously here illegally, because those exotic animals cannot be kept by private people. The industry, both zoo and circus, has a faultless record when it comes to that.*
>
> *We also talk about human safety. The industry—and the circus industry particularly—also has an excellent record there. Where there have been negative interactions between humans and animals, in the circus industry they have always involved staff members. Never in my lifetime has there been an instance of an accident involving a member of the public and a circus animal. In all those areas that the Bill is designed to control, the circus industry already has the runs on the board.*[38]

The committee heard from the Zoo and Aquarium Association about its efforts to work with Biosecurity Australia (the Commonwealth Department of Agriculture, Fisheries and Forestry) to minimise biosecurity risks:

> *As far as biosecurity risk goes, the zoo and aquarium industry also works with Biosecurity Australia. We report wildlife disease aspects through all of our wildlife hospitals, so we are very proactive in presenting those aspects because our collections are our business. We certainly would not want to see any spread of any exotic diseases any more than the cattle industry or the poultry industry.*[39]

At the public hearing on the 2014 Bill, Mr Steve Robinson, Director of the Darling Downs Zoo, summarised for AREC the track record of the circus industry and his views on the department's legislative approach:

> *The traditional Australian circus industry has a long history of complying with every one of this Bill's criteria… So when we are looking at why the government has gone down this*

37 Patterson M., 2015, *Briefing transcript*, Brisbane, p.3.
38 Robinson S., 2015, *Hearing transcript*, Brisbane, 27 April, p.7.
39 Engle, K, 2015, *Hearing transcript*, Brisbane, 27 April, pp.15-6.

> *track, there is no history there to suggest why it should be doing this. Basically, it is taking a sledgehammer to crack a peanut and the peanut has not even been harvested yet.*[40]

Following the hearing and departmental briefing on 27 April 2015, the committee wrote to DAF inviting the department to provide statistics on actual animal welfare, biosecurity and workplace health and safety incidents involving exhibited animals that have occurred in Queensland.

The department advised:

> *The department does not keep statistics on animal welfare, biosecurity and workplace health and safety incidents. The information it does hold is incomplete. In part, this reflects the fragmented management of the industry up until recent times – Biosecurity Queensland, the relevant service division of the department, only became the administering agency for provisions of the Land Protection (Pest and Stock Route Management) Act 2002 relevant to management of exotic fauna in 2007 (from the former Department of Natural Resources, Mines and Water), and for provisions of the Nature Conservation Act 1992 regulating exhibition of native fauna in 2010 (from the former Environmental Protection Agency). The department's data is also incomplete because the reporting obligations under existing legislation are inconsistent and relevant incidents, if reported at all, may be advised to the RSPCA, the Department of Environment and Heritage Protection or Workplace Health and Safety Queensland.*
>
> *The department provided some information about incidents that are indicative of failures in risk mitigation in its written advice to the committee on 24 April 2015.*
>
> *…It should be noted, however, that the veracity of the information about incidents varies markedly. This reflects that the means by which the department became aware of them and the extent to which the information can be substantiated varies substantially.*
>
> *The department again highlights for the committee a recently published article about pest establishment risk from vertebrate species in zoos:*
>
> *Cassey, P., Hogg, C.J., 2014, Escaping captivity: The biological invasion risk from vertebrate species in zoos. Biological Conservation 181 (2015) 18-26 (viewed at http://www.sciencedirect.com/science/article/pii/S0006320714004042# on 23 April 2015)*

The department provided the committee with details of matters that occurred between July 2007 and May 2015. In total, the department detailed 24 matters that occurred over the eight years, twelve of which were categorised by the department as involving animal welfare risks, five biosecurity risks and 17 workplace health and safety risks. Seven of the matters involved more than one type of risk. More than half the incidents (14) could be identified as occurring at fixed exhibits,[41] seven incidents involved Category C exotic species, and ten incidents involved native species some of which may also be kept recreationally in Queensland.

Problems with current regulatory approaches

The committee sought to understand whether the welfare of exhibited animals, handlers and/or the public are being compromised under the current regulatory framework.

In its first brief for the examination of the 2014 Bill by AREC, the department identified for the committee what it perceived as gaps in the existing regulatory framework. The department did not identify any particular risk events that were attributable to the perceived gaps in the existing legislation.

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[40] Robinson S., 2014, *Hearing transcript*, Brisbane, 26 November, p.11.

[41] For the remaining 10 it could not be clearly established whether the exhibitor was a fixed or mobile exhibitor.

The department advised:

> *The most significant gap in risk coverage under the existing legislation[42] is that the general duty of care to animals and other obligations under the ACP Act do not apply to activities licenced under the NC Act. Specific obligations on licence holders address some animal welfare risks. For example, ss 132 and 145 of the NC (WM) Regulation protect animals held under those licences from being forced to display abnormal behaviours. However, there are important aspects of animal welfare that are not addressed by a specific requirement.*
>
> *Further, the penalties for breaching what specific requirements do exist are modest (80 penalty units) when compared with the penalties for serious animal welfare offences under the ACP Act (including a maximum of 300 penalty units or a year's imprisonment for a breach of the duty of care to 2000 penalty units or three year's imprisonment for an animal cruelty offence).*
>
> *The chief executive must be satisfied that certain animal welfare requirements will be met before granting a wildlife exhibitor licence -the exhibitor's facilities for housing or displaying the animal comply with the Code of practice of the Australasian Regional Association of Zoological Parks and Aquaria-Minimum standards for exhibiting wildlife in Queensland (the exhibition code). This code of practice is not comprehensive.*
>
> *The chief executive does not have to be satisfied that animal welfare requirements will be met before granting a wildlife demonstrator licence. However, if the chief executive reasonably believes the place where the animal is to be kept is not appropriate or does not have the appropriate facilities for keeping the animal (including by reference to relevant codes such as the exhibition code) the chief executive cannot grant the licence. Some aspects of the relevant codes are outdated and they are not comprehensive.*
>
> *There is no specific requirement for the chief executive to be satisfied that an animal's welfare requirements will be met before granting a permit under the LP Act or the Fisheries Act 1994. However, permit holders under these Acts have a duty of care to animals under the ACP Act and a breach of this duty after being granted a declared pest permit is a ground for cancellation of a declared pest permit (see s. 65 of the LP Act).*
>
> *Public safety is a consideration in the decision to licence an exhibitor under both the NC Act and the LP Act. However, there is no requirement that captures safety more broadly. Obligations under the WHS Act may apply to activities authorised under these Acts in some circumstances. Generally, there is no requirement for the chief executive to consider biosecurity risks when licensing exhibitors. However, biosecurity risks could be considered when considering an application to grant a wildlife demonstrator or wildlife exhibitor licence to the extent that they could impact on the conservation of nature. While pest potential would clearly be a relevant consideration for the chief executive when deciding an application under the LP Act there are no requirement to be satisfied about other biosecurity risks (for example, animal disease management).*
>
> *There is no ongoing requirement for exhibitors to manage biosecurity risks but when the Biosecurity Act 2014 commences it will impose a general obligation on persons whose activities may pose a biosecurity risk to prevent or minimise those risks.*[43]

[42] Note: There are also gaps in risk management under the current legislation for animals that can be lawfully exhibited without an authority, including some native birds, many native invertebrates and fish and most exotic birds, insects and invertebrates.

[43] DAFF, 2014, *Correspondence*, 29 October.

Committee comment

The committee acknowledges the potential for risky events involving animal exhibits, as identified by DAFF and DAF. The committee also accepts that it is appropriate for government to have legislated licensing and other requirements in place to ensure potential risks are anticipated and properly managed. Based on the limited evidence the department has provided to the committee, it appears that incidents involving animal exhibits are rare in Queensland.

Should the Bill be Passed?

Standing Order 132(1) requires the committee to recommend whether the Bill should be passed.

After examining the form and policy intent of the Bill, the committee believe the Bill should be passed with the amendments proposed in this report.

Recommendation 1

The committee recommends that the Bill be passed with the amendments proposed in this report.

4. Industry application and impacts

Mobile versus fixed exhibitors

The Explanatory Notes state that the Bill will address current gaps in the coverage of some animal welfare and safety risks with a cohesive, comprehensive and consistent risk-based framework for exhibited animals,[44] and that this approach will provide greater flexibility to exhibitors regarding the species they may keep:

> *Most requirements will apply consistently to the keeping of animals by different sectors of the industry….the Bill provides for a greater range of species to be exhibited in Queensland, provided the risks can be managed.*

In correspondence with AREC, the department further advised that:

> *The Bill generally applies requirements consistently across sectors.*[45]

In spite of the department's advice, there are differences in the restrictions imposed under the Bill for mobile and fixed exhibitors, and these differences are the basis for significant industry concern regarding the opportunities available to, and the sustainability of, the mobile exhibition industry.

Ms Jackie Hasling, a mobile demonstrator, gave context to the significance of the sub-sector of the industry and summarised the key concerns of mobile exhibitors at the hearing on the 2014 Bill:

> *Mobile exhibitors currently make up about half the permit holders in the exhibited animals industry. Our sector of the industry is made up of a diverse range of small businesses that operate throughout the state. Primarily mobile exhibitors provide educational programs to schools, day care centres, wildlife displays and countless community events, and we provide valuable wildlife awareness and training courses to the resource industry. We share the same goals and mission statements as zoos from around the world, dedicating ourselves to fostering an appreciation of and conserving our precious wildlife…*
>
> *We do differ in the fact that we bring our animals directly into classrooms, into day care centres and through remote and regional areas. By sharing wildlife in these unique settings we are able to engage with students and individuals in a much more personal way…We achieve our goal of conservation through education on the road while maintaining modern enclosures and using husbandry techniques that match the fixed operators here in Queensland, and that is not going to change under the new legislation…*
>
> *It is claimed that 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 many exotic animals regardless of their industry sector. The Bill as it is written fails to meet this claim, as one of the largest sectors in the industry—mobile exhibitors—is unfairly excluded from exhibiting exotic animals.*[46]

Submitters commented further on the adverse impact of these restrictions. The Queensland Native Fauna Advisory Group which represents mobile exhibitors in Queensland commented:

> *A main issue is that while the Exhibited Animals Bill states that all exhibitors will be "equal", in fact by the nature of Chapter 3 they are not equal…Basically as the Exhibited Animals Bill reads now, and as stated by the Exhibited Animals team only fixed exhibitors will be able to display category 2 species (i.e. Prohibited Matter). Our members are not asking for special*

[44] Exhibited Animals Bill 2015, Explanatory Notes, p.1.
[45] DAFF, 2014, *Correspondence*, 21 November, p. 9.
[46] Hasling J., 2014, *Hearing Transcript*, Brisbane, 26 November, p.8.

> *consideration, they instead are asking for equal consideration in exploring their own business opportunities.*[47]

Mobile exhibitors also pointed out that they would be prevented under the provisions in the Bill from keeping and exhibiting any taxa of exotic species, and that this would limit their business opportunities and place them at unfair market disadvantage compared to fixed exhibitors. This is principally a carry-over from historical and sometimes arbitrary restrictions on the exhibited animals industry, and is not based on any evaluation of risk or management capacity. In some instances, the restriction is due to long-standing controls on animals that are declared under the Land Protection Act.

Exotic animals restricted to fixed exhibits

The Bill proposes to restrict the exhibition of category C animals to predominantly fixed exhibits:

> *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.*[48]
>
> ***73 Exhibiting authorised animal (category C)***
>
> *It is a condition of an exhibition licence that an authorised animal (category C) may be exhibited only at—*
>
> *(a) a regular enclosure for the animal at a regular enclosure site under the licence; or*
>
> *(b) a place outside a regular enclosure site under the licence but within a controlled area including a regular enclosure for the animal at the site; or*
>
> *(c) another place, but only if the exhibition is authorised under a special exhibition approval included in the licence.*
>
> *Note— See sections 65(3) and 265.*

The Bill provides for the exhibiting of animals away from the fixed exhibit only by authorisation under a special exhibition approval. A special exhibition authority can only be granted for a period up to one year.

The Explanatory Notes explain:

> *Generally an authorised animal (category C) may only be exhibited in its regular enclosure at its regular enclosure site or a controlled area that 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.*[49]

The restriction of exotic animal exhibits to fixed-site enclosures is based on the presumption that mobile exhibitors are inherently more risky than fixed exhibitors. This seems at odds with the 'consistent risk-based framework' described in the Explanatory Notes.

47 QNFAG, *Submission No. 9*, pp. 1-2.
48 Exhibited Animals Bill 2015, Explanatory Notes, p. 3.
49 Explanatory Notes, p. 31.

It is difficult to accept that a well-managed mobile exhibit could never be at least as risk-responsible as a poorly managed zoo. This point was made by submitters to the committee:

> *The misconceived idea that mobile exhibitors cannot negate the risk the same as an exhibitor is short-sighted and antiquated and should have become extinct with the thylacine.*[50]

And:

> *As mobile operators in Queensland enjoy an impeccable biosecurity record, why are we deemed not suitable to hold category C animals?*[51]

Ms Jackie Hasling commented further at the committee's April hearing:

> *I do not understand why 'fixed exhibit' equals 'automatic good welfare'. I do not understand why being in one exhibit your whole life means that you are meeting absolutely every welfare need of that animal. All of my animals are kept in zoo sized enclosures at our house, at our home base. They have access to those enclosures. I am not really sure why public viewing in a fixed exhibit equals good animal welfare. When I can provide good animal welfare for my native animals, I cannot see why I cannot meet those same needs and same risk mitigation measures. I have asked time and time again and I cannot get a clear answer on why fixed exhibit equals welfare and compliance.*[52]

The committee asked the department to explain the potential biosecurity, animal welfare and workplace health and safety risks that are peculiar to mobile animal exhibits.

The department advised:

> *Exhibit in a fixed exhibit is widely recognised as the context within which risks associated with these animals can be most reliably mitigated. This reflects that it is possible to use engineering solutions to reduce risks to extremely low levels in a fixed regular enclosure (e.g. permanent fences). Other risks can be avoided entirely (e.g. risk of misadventure during travel and animals becoming agitated during extended periods of travel).*
>
> *In contrast, risk mitigation outside the regular enclosure is generally reliant on administrative controls and hence highly vulnerable to human factors (e.g. whether a person followed certain risk-minimisation procedures, employee expertise, information and warnings about risks being provided to an audience and whether the audience observed the information and warnings they were given).*
>
> *It is generally accepted that administrative controls are less reliable than engineering measures for controlling risks and that ensuring compliance with agreed administrative controls requires more regular monitoring. For example, it is relatively easy to visit a zoo and check if its fences and enclosures are sufficiently robust to reduce the risk of escape or theft of an animal. Once established, engineering control measures such as this generally remain in place unless deliberately removed or they are degraded by neglect. In contrast, it is much more difficult to check whether administrative controls are being maintained. Maintenance of administrative controls, such as procedures for ensuring the security of the animal while it is in a vehicle or at a site away from its regular enclosure, depends on the adherence of a person to the procedures on a daily basis.*[53]

50 Carter T., 2015, *Hearing transcript*, Brisbane, 27 April, p.17.
51 Carter T., 2015, p.18.
52 Hasling J., 2015, *Hearing transcript*, Brisbane, 27 April, p.20.
53 DAF, 2015, *Correspondence*, 24 April.

Ms Clarke of the department, in response to the concerns raised by submitters at the public hearing, further explained:

> *Circuses and some wildlife demonstrators are disappointed that the Bill includes this requirement, so I am going to spend a few minutes discussing it.*
>
> *I wish to acknowledge that there are some demonstrators who have the expertise to effectively mitigate the risks of keeping animals that are prohibited matter, but it would be costly and difficult to ensure demonstrators were meeting community expectations for risk management. Either costs or risks for the community, industry and government would rise if these animals were not required to be based in a fixed exhibit. Fixed exhibits are in regular public view, which promotes compliance. In contrast, there is very limited community oversight of demonstrators' activities. Demonstrators keep their animals out of public view and display them to select audiences. The higher barriers to establishing a fixed exhibit such as infrastructure development and planning approval requirements have the effect of stabilising the fixed exhibition sector of the industry and encouraging self-regulation to maintain public support and hence a return on investment.*[54]

Despite the department's advice, it is not clear to the committee why risks associated with exhibited animals '…can be most reliably mitigated in a fixed environment', and not in a mobile environment, or why engineering solutions are ineffective in mobile exhibits. Ironically, the only examples of risk events identified by the department in its regulatory impact statement involved animals that escaped from, or were injured in, fixed exhibits (zoos).

Clearly from the evidence presented to the committee, mobile exhibitors feel particularly aggrieved as they believe this restriction denies them the opportunity to show in management plans that they are capable of keeping category C exotic animals. At the committee's public hearing, Mr Joyes and Mr Robinson highlighted this as the single most restrictive aspect of the Bill impacting on the circus sector:

> *Another main concern is that the Bill seeks to effectively prohibit a circus from being Queensland-based in the future unless they have a fixed display for their animals. Circuses by definition are itinerant and this requirement is in stark contrast to the way circuses operate… Also, anyone in the future, regardless of their experience, wishing to start up a circus in this state would no longer be able to have those animals. I do not even see it as a slight disadvantage; it is prohibition.*[55]
>
> *It does not make any sense from the point of view that circuses with class C species—in other words, circuses with exotic animals—will still be allowed to be based, say, in New South Wales, and hop over the border and work here. But you will not be able to have a circus based in Queensland with those species. It defies belief. We still do not know what the real reason behind that is. There has been no real consultation in those areas with the department at any of those consultative meetings.*[56]

54 Clarke M., 2015, *Briefing transcript*, Brisbane, 27 April, p. 4.
55 Joyes R., 2015, *Hearing transcript*, Brisbane, 27 April, pp.4-6.
56 Robinson S., 2015, *Hearing transcript*, Brisbane, 27 April, p.11.

Committee Comment

The committee generally accepts that Category C animals, which include exotic species that are prohibited matter under the Biosecurity Act, present greater risks than other categories of animal and require stricter management and monitoring. However the committee does not accept that these risks can only be managed by fixed exhibitors.

The committee agrees that the Bill, as currently drafted, will prevent some exhibitors from exhibiting a 'greater range of exhibited animals' as asserted. The committee therefore recommends amendment of the Bill to allow mobile exhibitors an opportunity to assess risks and propose management actions for category C exotic animals. The committee's preferred approach is to clarify in the Bill that a mobile exhibitor's 'home base' satisfies the definition of regular enclosure and regular enclosure site, and that an enclosure need not be open to the public, provided the enclosure meets other requirements in the Bill and enclosure standards.

The committee believes that this removes impediments to mobile exhibitors without compromising protections for exhibited animals, exhibitors or the public. The committee notes that the Bill contains other provisions that:

- ensure only exhibitors, considered suitable and who can demonstrate appropriate risk management, will be granted an authority
- specify an obligation to comply with codes and guidelines, and to prevent animal welfare, biosecurity and safety risks, and
- provide for entry to private premises for the purposes of compliance monitoring with significant penalties in the event of misconduct or serious breaches.

The committee believes it may be necessary to review provisions relating to exhibited animal authorities in light of the committee's recommendation to provide for the Chief Executive to consider and approve an application, inclusive of its mobile component, as a single licence. This would negate the need in some instances for an exhibitor to prepare separate management plans and make separate applications.

Recommendation 2

The committee recommends that the Bill be amended to specify that a 'regular enclosure' at a 'regular enclosure site' need not be open generally to the public: provided the exhibitor a) still meets the exhibitor's minimum exhibition requirements; and b) that the enclosure is assessed and meets required standards for the relevant authorised animal.

Minimum exhibition requirement

The Bill proposes a minimum exhibition requirement for category B and C species (species other than category A animals that can be kept for private recreation). The Explanatory Notes state:

> *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.*[57]

[57] Exhibited Animals Bill 2015, Explanatory Notes, p. 3.

And:

> *The minimum exhibition requirement is directed at ensuring public benefits related to exhibition are realised when these species are kept under an exhibition licence.*[58]

Clause 13 defines 'exhibit' as follows:

> ***13 Meaning of exhibit an animal***
>
> *(1) Generally, exhibit an animal means display the animal to the public, including, for example, for commercial, cultural, educational, entertainment or scientific purposes.*
>
> *Examples of exhibiting an animal—*
>
> *• displaying an animal in a zoo or wildlife park*
>
> *• using an animal in a performance in a circus or magic show*
>
> *• allowing public interaction with animals at a petting farm*
>
> *• showing an animal as part of an educational wildlife demonstration*
>
> *• displaying an animal, including, for example, a bird in a cage, in a part of commercial premises accessible to the public*
>
> *Note— Section 10 states when the Act does not apply to exhibiting or dealing with an animal.*

For category B animals, the minimum exhibition obligation is once per month or at least 12 'separate occasions' in an annual period for the term of the exhibition licence.

Clause 75 (6) defines separate occasions:

> ***75 Minimum number of occasions for exhibiting authorised animal (category B)***
>
> *(6) In this section— separate occasion, for exhibiting an animal, means—*
>
> *(a) if the animal is exhibited more than once on a particular day to audiences not consisting substantially of the same people—each occasion the animal is exhibited on that day; or*
>
> *(b) otherwise—a particular day on which the animal is exhibited.*

For category C animals, the minimum exhibition obligation is a combined total of 75 hours in each calendar month or at least 900 hours in an annual period for the term of the exhibition licence. Further, clause 76 specifies that an hour may only be counted towards the minimum exhibition requirement if the animal is exhibited for at least three hours on that occasion. The Explanatory Notes explain the rationale behind the requirements for category C animals:

> *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.*[59]

And

> *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.*[60]

58 Explanatory Notes, p. 41.
59 Exhibited Animals Bill 2015, Explanatory Notes, p. 42.
60 Explanatory Notes, p. 42.

Clause 75 (4) and 76 (5) explain that a private event is not an exhibition of an animal for the purposes of the minimum exhibition requirement.

The Dictionary at Schedule 2 of the Bill defines 'private event' as follows:

> ***private event*** *means an event or occasion—*
>
> *(a) that is not publicly advertised or open to the general public or for casual attendance; or*
>
> *(b) at which attendance is restricted by the personal invitation of the person organising the event or occasion.*

Minimum exhibition requirements were a further area of concern for mobile exhibitors. They argued that this requirement effectively prevents their sector from exhibiting category C exotic animals.

Ms Hasling summarised the industry's concerns with regard to the minimum exhibition requirement in her supplementary submission to the committee:

> *As far as the minimum exhibition requirement goes, I think it was set so high in an effort to make it unachievable for mobile demonstrators, I understand it is based on the Land Care and Protection Act that a zoo be open 5 days a week.*
>
> *The goal of the minimum exhibition requirement is to reduce the risk of private keeping and ensure that the permit holders who have these animals are running genuine businesses and are using the animals that they have. So I understand the desire to have this requirement, but it will be difficult to record, monitor, and prove across all sectors.*
>
> *I have suggested in the past that there be a requirement for an operator to be in business for a minimum number of years before they can qualify to apply, this would help to ensure that they are operating a genuine business. Alternatively you could submit your annual turnover and your P/L insurance to prove that you are operating a viable business. But I am not sure if these are suitable.*
>
> *I also think it might be important to put exhibition requirement in regulation rather than legislation and that way it can be changed easily if it is not suiting the industry or the department.*
>
> *Further animal demonstrations/shows would be highly unlikely to display animals for a period of 3 hours or more, with a typical show typically being of a duration of up to 1 hour, and within the exhibit each animal species unlikely to be displayed individually for greater than 15 minutes at a time.*[61]

Representatives of the circus sector did not believe the minimum exhibition requirement posed a significant challenge as they understood their existing obligations exceeded the minimum hours.

Mr Joyes explained:

> *It is stated that a fixed facility as per the bill must have an annual minimum exhibition time of 900 hours and assumes that a circuit does not comply with this requirement. However, a circus not only conducts formal presentations but also exhibits their animals most days while the circus is set up at each location. This is confirmed by the circus code of practice in this state, which states—*
>
> *All animals must have access to a display cage with the size dimensions as outlined in this document, for a minimum of six hours each day during daylight hours.*[62]

[61] Hasling J., 2015, *Supplementary submission 6A*.

[62] Joyes R., 2015, *Hearing transcript*, Brisbane, 27 April, p.4.

And:

> *That is why I stressed the point about this minimum exhibition time and the assumption that circuses do not meet this requirement. I live it every day. I see kids come down from before school in the morning right through until after the conclusion of the night show. Sometimes our animals are on exhibition for 12 hours a day. To say that we do not fulfil a role of providing the exhibition of our animals as a bona fide reason to have them is completely false.*[63]

This highlights that the importance of what constitutes an 'exhibit', and what exhibits will be considered a 'private event' for the purposes of meeting the minimum exhibition requirement for those operating or intending to operate in the industry.

Committee comment

The committee appreciates the intent of the minimum exhibition requirements (clauses 74 to 76) to ensure the public benefits of exhibited animals are realised. The committee is however, concerned that the requirements will have unintended adverse consequences for mobile animal exhibitors (demonstrators). These exhibitors typically exhibit animals for shorter durations per viewing than other exhibitors (zoos and circuses), and for less time than the three hour threshold specified in clause 76(4). This means that their shorter exhibitions of animals would not count towards the minimum annual exhibition requirements for authorised animals (category C).

The committee recommends that the three hour threshold specified in clause 76(4) be replaced with the wording for separate occasions for exhibiting an animal used in clause 75(6). This would mean that any time an animal is exhibited would be counted as time the animal was 'exhibited'.

The committee is also concerned at the unintended impacts on mobile exhibitors of the minimum monthly and annual exhibited hours requirements specified in clause 76 for category C authorised animals. Clause 76 specifies a minimum of 75 hours of display time in any calendar month or at least 900 hours in the year for an animal of each species exhibited. The committee accepts that mobile exhibitors, because of the nature of their businesses, would have particular difficulties meeting these minimum exhibiting requirements. The committee believes that minimum exhibition times of 50 hours per month and 600 hours in the year would still ensure the public benefits are achieved whilst providing mobile exhibitors a more reasonable opportunity to comply for category C authorised animals.

And finally, the committee believes some flexibility is warranted in circumstances where exhibitors may be temporarily unable to meet the display requirements. The committee recommends the Bill be amended to provide an exemption to clause 75 and 76 for special circumstances.

Recommendation 3

The committee recommends that the Bill be amended by removing clause 76 (4) in relation to the minimum three hour on each occasion restriction, and adopting in its place the same 'separate occasion' provision as at clause 75(6).

Recommendation 4

The committee recommends that the Bill be amended at clauses 76 (2) and (3) to reduce the minimum annual hours to 50 hours in each calendar month and 600 hours in the year.

[63] Joyes R., 2015, p.8.

Recommendation 5

The committee recommends that the Bill be amended to provide an exemption to clause 75 and 76 for reasonable circumstances where: an animal is temporarily not suitable for exhibit; where exhibit may impact on relevant risks and adverse effects; or where an animal is acquired for a limited number of defined circumstances relevant to, but not directly involved in, exhibition (e.g. breeding program, companionship for another exhibited animal, requires prolonged handling/training in preparation for exhibit).

Point for clarification B

The committee invites the Minister to clarify the intent and meaning of 'exhibit' and 'private event' in the Bill and to confirm whether the exhibit of an animal by a mobile demonstrator is considered an 'exhibit' that satisfies the minimum exhibition requirement.

Regulatory burden and complexity

Fundamentally, the Bill proposes to create a consolidated Act to govern the licensing of the exhibited animals industry in Queensland, into which harmonised legislation from the three existing licensing Acts will be transferred. It is variously claimed that simplification, streamlining and regulatory efficiency will be beneficial outcomes associated with the proposed legislation:

> *The Bill will consolidate and streamline provisions currently spread across several Acts with a cohesive, comprehensive and consistent risk-based regulatory framework for exhibited animals.*[64]
>
> *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 many exotic animals regardless of their industry sector.*[65]
>
> *This bill will reform a small but significant area of Queensland regulation. It will streamline the licensing of exhibitors, better manage the risks of animal exhibition and address a number of business impediments faced by the industry.*[66]
>
> *So, consistent with the government's red-tape-reduction commitments, the bill will simplify the licensing of exhibitors.*[67]

The committee was not made aware of any concerns regarding the broad intent of the reform to harmonise the licensing process.

However, as noted elsewhere, the challenge is to deliver regulation that is both effective in addressing an identified problem and efficient in maximising benefits, taking account of the costs.[68] Concerns were raised by exhibitors about the inefficiency of the proposed new licensing system. The provisions in the Bill would impose significant administrative requirements on animal exhibitor businesses. Meeting compliance obligations will potentially distract exhibitors from the core activities of the business, including animal welfare. Exhibitors raised concerns with the committee about the requirements to prepare management plans, potential duplication with other legislation, application and renewal processes for authorities, and administrative requirements associated with reporting, notification and record keeping. As noted by one exhibitor:

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64 Explanatory Notes, p.1

65 Explanatory Notes, p.1

66 Thompson J., 2014,*Briefing Transcript*, Brisbane, 26 November, p.1.

67 Clarke M., 2014, *Briefing Transcript*, Brisbane, 26 November, p.3.

68 Australian Government, 2007, *Best Practice Regulation Handbook*, p. 1. <http://regulationbodyofknowledge.org/wp-content/uploads/2013/03/AustralianGovernment_Best_Practice_Regulation.pdf. Accessed 5 January 2015>

> *We do have a number of concerns in relation to the bill, and these concerns largely centre on compliance related red-tape costs. Both government and industry have limited resources, and the bill in its current form will impose substantial resource implications upon both which is clearly at odds with the government's stated intention to reduce red tape and to make doing business in Queensland easier.*[69]

Management plans

The Bill will require all classes of animal exhibitors to prepare management plans for each species or group of species they keep and exhibit. A management plan will explain how an applicant proposes to exhibit and deal with the subject animals, identify risks and state the ways in which the applicant intends to prevent or minimise the risks. A management plan will form the basis for assessment of an applicant's suitability to hold an exhibition licence.

The explicit intent of a management plan is to provide flexibility to exhibitors in how they manage risks, consistent with a risk-based approach to industry oversight. The Explanatory Notes explain:

> *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.*[70]
>
> *Risk based licensing decisions under the bill would 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 that risk could be appropriately managed under the plan. The approved plan would form part of the licence…*
>
> *Although it is difficult to quantify, the flexibility afforded by this approach to licensing is expected to more than outweigh the cost to exhibitors of documenting their proposed activities in a management plan. Different industry sectors would be treated more consistently under the bill, there would be only one licence type and the criteria for deciding licences would generally be the same.*[71]

A representative of the Zoo and Aquarium Association, Queensland Branch, advised:

> *I recognise that there will be fewer licences because it will all come under one licence. The actual act of renewing the licence every two years for a declared pest permit or every three years for an exhibitor licence is not a great deal of work and it appears to be significantly less work than what will be imposed by the management plans and some of the reporting requirements in the bill as it stand[s]* [72]

The impact can be particularly great for small businesses,[73] which comprise around half of all licensed exhibitors. One mobile exhibitor advised:

> *…there is a lot of uncertainty about [detail required in management plans] and how much administration that is going to take. It is my husband and I who run our business. So it could be quite time-consuming.*[74]

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69 O'Brien M., 2014, *Hearing Transcript*, 26 November, p. 19.

70 Exhibited Animals Bill 2015, Explanatory Notes, pp. 2-3.

71 Clarke M., 2014, *Hearing Transcript*, Brisbane, 26 November p. 4.

72 O'Brien M., 2014, *Hearing Transcript*, Brisbane, 26 November, p. 19.

73 Regulation Taskforce, 2006, *Rethinking Regulation: Report of the Taskforce on Reducing Regulatory Burdens on Business*, Report to the Prime Minister and the Treasurer, p. ii. <http://www.pc.gov.au/research/completed/regulation-taskforce/report/regulation-taskforce2.pdf. Accessed 5 January 2015>

The committee invited comment from witnesses at the public hearing as to the perceived benefit or increased opportunities arising from management plans. Exhibitors told the committee:

> *My interpretation is that the management plans will be good for the three years of your permit and you can apply to amend them. However, the cost of that amendment could be significant. It is going to come down to how broad you write your management plan. You can either write it very broadly and vaguely to kind of cover all of your bases or you can write it in such detail that it turns into a 200-page document. For example, we have about, I would say, 100 individual animals in our collection at the moment. … So there is a lot of uncertainty about that and how much administration that is going to take. It is my husband and I who run our business. So it could be quite time-consuming.*[75]

> *The Public Service, not necessarily the government, has drafted a bill that specifically precludes the possibility of a Queensland based circus holding exotic animals. Irrespective of whatever risk mitigation programs they can put in place, there is no opportunity for us to do that.*[76]

> *The management plans, in theory, are a great idea, but there are so many species existing already for which we have already done management plans. Every exotic species, for example, held in every circus or zoo in this state already has had to have a management plan done in order for us to get permission to hold it. The department tells us—and we have asked the specific question—'No, you are going to have to do new management plans for each of those.' It will be a nightmare in its present form.*[77]

> *Management plans—and we have heard discussion on that—for each species will have a major resource implication on both government and industry. Under the current system, management plans are required for declared pest species. Due to the fact that the exhibited animals industry has operated with a strong welfare, safety and security record for many years without costly management plans, it is not appropriate for government to impose this major red-tape impost on our businesses—that is, by all means maintain the status quo and require management plans for authorised animals category [c]; however, be cognisant that there is no real problem, so why are we throwing that into the mix?*[78]

> *I would definitely like to reiterate the aspects of the management plans, particularly if you consider that there would be a requirement for zoos and aquaria, who are quite professional facilities, to submit management plans not only for species that we have already been approved to hold but also for species that people can hold as pets. So you can go to a pet shop and buy some of these animals under a recreational licence and there is no requirement from government for any sort of management plan in the same respect. I guess for a business like Australia Zoo or perhaps Dreamworld, which hold hundreds of species, requiring a management plan for these very low-risk species—they are evidently so low risk that an individual private person can keep them as a pet with very little reporting—seems a little bit at odds… To have to apply for management plans for animals that we already hold is going to be a very big burden, particularly on larger facilities in the interim.*[79]

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74 Hasling J., 2014, *Hearing transcript*, Brisbane, 26 November, p. 9.
75 Hasling J., 2015, *Hearing Transcript*, Brisbane, 27 April, p. 8.
76 Robinson S., 2015, *Hearing Transcript*, Brisbane, 27 April, p. 7.
77 Robinson S., 2015, *Hearing Transcript*, Brisbane, 27 April, p. 8.
78 Mucci A., 2015, *Hearing Transcript*, Brisbane, 27 April, p. 14.
79 Engle K., 2015, *Hearing Transcript*, Brisbane, 27 April, pp. 14-15.

There was consensus from all industry stakeholders that requiring management plans only for higher risk, category C animals, as is the current requirement, would reduce the regulatory burden associated with the Bill:

> *If category A, for instance, did not require management plans, that would probably alleviate a lot of those issues. As I said, for all of the exotic species that are allowed in Queensland we already do management plans. So in essence we do not see that as an issue at all. But to require a management plan for blue-tongue lizards and carpet pythons and animals that people can keep at home as pets with no extensive reporting or planning required, that is where it becomes a little overburdened, I suppose, to that degree.*[80]

The department advised that the burden of management plans is limited for lower risk species:

> *Certainly the department recognises the concerns that the participants in the committee's hearing today have expressed around management plans. We have noticed a consistent theme around the potential red tape and certainly concerns around the imposition this would have on the industry.*
>
> *I confirm for the committee that a management plan really only needs to address the significant relevant risks and relevant adverse effects associated with exhibiting and dealing with an animal. This would mean that the management plan for some species, where there are few significant risks, such as the blue tongue lizard, which Mr Mucci mentioned this morning, could be extremely brief. However, a management plan for big cats, for example, would need to include quite substantial detail.*
>
> *I would also like to indicate that a plan could be written for a group of species. Several different species of native finches, for example, kept in an aviary could be covered under a single plan. Large macropods, such as red or grey kangaroos, could also be covered in a single plan.*[81]

The department further explained the intent and purpose of a management plan in relation to lower risk species, and suggested that it is reasonable to require management plans for all categories of animals because of variability of species and scale of business operations across the industry:

> *The Bill is structured in such a way that approval of a management plan is integral to deciding a licence application and to the licence itself. It is the principal basis for a deciding whether an applicant can adequately manage the relevant risks and relevant adverse effects (see clause 58) and the plan effectively conditions the licence (see clause 69(1)(d)).*
>
> *Also the management plan informs and supplements the licence. This is expressly contemplated in clause 64(2) and clause 65(2).*
>
> *<u>Category A animals likely to pose a significant relevant risk</u>*
>
> *Exhibition and dealing with a large number of category A animals would pose significant relevant risks. As previously explained to the committee, this includes venomous snakes such as the taipan.*
>
> *In the case of venomous snakes, even an applicant for a recreational wildlife licence must demonstrate their expertise and capacity to mitigate the risks. In this context, the department suggests it is reasonable for exhibitors to provide similar assurance in the form of a management plan. Indeed, the department suggests that there is a greater need to require exhibitors to demonstrate that they can manage the risks given that the public may be exposed to these risks during an exhibition.*

[80] Engle K., 2015, *Hearing Transcript*, Brisbane, 27 April, p. 15.
[81] Clarke M., 2015, *Briefing Transcript*, Brisbane, 25 April, p.1.

There are also some category A animals with complex animal welfare requirements. For example a Green tree python requires an environment with high humidity and a relatively constant temperature due to the particular environment in which it is found in the wild. Misting and heat sources must be provided to meet these needs. It is also arboreal in nature and needs to be provided with suitable branches and cage height to allow it to meet this purpose. The department suggests it is reasonable to require exhibitors to prepare management plans for category A animals with complex animal welfare needs.

Category A animals unlikely to pose a significant relevant risk

The department acknowledges that exhibition and dealing with some, but not all (see above), category A animals is likely to pose no significant relevant risks. As previously advised to the committee, if there were no significant risks associated with activities proposed to occur under the licence, the management plan for a species could be very short, consisting only of the details of the species, the proposed activities, the types of enclosures that would be used and the regular site for the regular enclosure. The minimalistic requirement for a management plan in these circumstances reflects that the general exhibition and dealing obligation (the general obligation) would generally provide proportional risk management for such species. However, the information contained in such a management plan would still be required for the operation of other provisions of the Bill as discussed later.

If clause 51 was amended to provide that a management plan was not required for these species and the general obligation alone was relied on to manage relevant risks, clause 58 would also require amendment such that clause 58(1)(b)(ii) did not apply to these animals. The effect would be that any applicant who was a suitable person would be granted an exhibition licence for these species. If such an exhibitor failed to comply with the general obligation, the department would not have grounds to amend, suspend or cancel the Licence. However, this could be overcome by making non-compliance with the general obligation a grounds for cancelling or suspending an authorisation under clause 132 and hence also for amending an authorisation under clause 133.

Information provided in a management plan for these species, such as the types of enclosures that will be used and the regular site for the regular enclosure, informs the contents of the licence – see, for example, clause 64(1)(e) and 65(1)(a). If a management plan was not required for some species, the department would need to require this information in the application form or some other document and transcribe it into the licence. It would be at least as onerous on an applicant to provide the information in the application form or another document rather than providing it in the management plan.

Alternatively, further provisions of the Bill could be amended so that information currently proposed to be provided through the management plan is not reflected in the licence. However, this would make additional provisions of the Bill inoperative. For example, the chief executive could not consider whether exhibition and dealing would occur in a residential premise under clause 59. Also, efficient and effective monitoring of compliance with the general obligation could be frustrated by lack of information such as the regular site for the regular enclosure.

Other considerations

The Bill is already complicated in its application because of the different animal categories and different requirements applying to the different categories – see, for example, types of enclosures in 64(1)(e) compared to enclosures in 64(1)(f). Currently the requirement to have a management plan applies uniformly to applicants for authorities (although the size of the plan will differ markedly for different animals as discussed above). The department suggests that further complicating the Bill by introducing a sub-category of animals (category A

> *animals for which no management plans will be required) which are subject to slightly different regulation is not justified by the limited benefits of this approach.*

The committee notes the department's assurances that less-detailed management plans will be acceptable for the exhibition of animals with low or no relevant risk, but has difficulty reconciling this with the above advice that plans will be used for determining: the suitability of an authority holder; granting approval to an authority holder; conditioning an authority holder; and monitoring compliance by an authority holder. There is also some inconsistency in the language used by the department and in provisions throughout the Bill in relation to the whether a management plan must address 'significant relevant risks and adverse effects' or all 'relevant risks and adverse effects'. It is important and also a matter of fundamental legislative principle that key provisions in the Bill are sufficiently clear and precise.[82]

Arising from this distinction between 'significant relevant risks and adverse effects' or all 'relevant risks and adverse effects' is the extent to which industry is sufficiently informed to reasonably determine for themselves what is significant in order to avoid costly time delays and negotiated amendments with the department during assessment and application stages.

Ms Clarke explained how the department intends to define 'significant' and support the industry with their risk assessments:

> *In the application process in the bill essentially the department can indicate to someone who has made an application that we feel that their application is lacking some information and we can suggest to them ways they could amend their management plan to address our concerns without having to refuse it. So if someone put in an application for a high-risk animal, such as a tiger, and we saw some quite significant risks that they had not addressed, we would go back to them and say, 'We think these are significant…' We would be able to point out to them significant risks that we felt needed to be addressed in the plan that had not been.*[83]

Departmental officers also commented that it was their intent to develop examples of management plans for some authorised animals in each category and compliance policy and guidelines for departmental officers as part of the implementation process. Further codes of practice made under regulation are intended to provide guidance to authority holders on addressing welfare, biosecurity and public safety risks:

> *The department will be consulting with the industry during the development of examples of management plans. As some of the participants today have indicated, some of that information is already at hand for their operations. Fixed exhibiters will have already prepared most of the information that would be required in a management plan when they submit an exhibit notice. Large demonstrators with employees are likely to have similar information because it is good practice to document those procedures. Some of the smaller exhibiters who are following existing codes of practice may be able to simply comply with the relevant codes of practice and cut and paste that information into their management plan. Others may wish to adopt part of the example plans that are developed by the department as we go forward.*[84]

82 *Legislative Standards Act 1992*, section 4(3)(k).

83 Clarke M., 2015, *Briefing Transcript*, Brisbane, 27 April, p. 5.

84 Bell P., 2015, *Briefing Transcript*, p.1.

Committee comment

The committee acknowledges the intent and potential value of management plans but are concerned that the scope of this requirement, extending to all exhibitors for all species of animals including lower risk species and those that may be kept by private citizens for recreational use, may reduce the benefit arising from the simplification and harmonisation reforms. The committee also notes that management plans are not currently required for animals other than declared pests under the Land Protection Act (which align with category C animals in the Bill). This is therefore an area where red tape and regulatory burden has in fact increased for industry.

The committee has reflected on other approaches to licencing adopted by government agencies and wishes to highlight the streamlined 'proportionate to risk' approach adopted by the Department of Environment and Heritage Protection for environmental authorities under the *Environmental Protection Act 1994*. Assessment of applicants based on a tiered approach, where applicants can elect (subject to eligibility criteria) to follow a standard, variation or site-specific assessment produces efficiencies for both the applicant and the regulator. This model may be a suitable alternative to requiring management plans for all species regardless of risk. It may also be transferable to the exhibited animal framework, where it is already proposed to develop codes of practice or standards.

The committee has not contemplated a specific amendment in relation to management plans but sees merit in limiting the scope and reach of the management plan requirements to reduce the regulatory impact and costs for animal exhibitors. A review of alternative approaches to licencing and the application of management plan requirements may be desirable in this case.

The committee notes the department's advice that the operation of other provisions of the Bill rely upon management plans for all species. The committee does not agree that this should of itself prevent the department reconsidering management plan requirements, especially if a more efficient approach can be identified that reduces regulatory burdens whilst delivering a similar outcome.

Further the committee notes concerns that a number of provisions relevant to management plans are not sufficiently clear and precise. This may contribute to unnecessary complexity and perceptions of excessive regulatory burden by industry. It may be necessary to review the consistency of provisions including clauses 37, 53, 58, 63-65, 69, 77, 80, 132-133 and in other clauses where relevant risk and adverse effect are relied upon to guide compliance.

Recommendation 6

The committee recommends that the department considers alternative licencing requirements such as the tiered 'proportionate to risk' application and approval process implemented under the *Environmental Protection Act 1994*, and considers amendment of the Bill to limit the regulatory impact on authority holders associated with the proposed requirement for a management plan for all species of exhibited animal.

Recommendation 7

The committee recommends that the department clarifies the use of 'significant relevant risks and adverse effects' and 'relevant risks and adverse effects' within the Bill to ensure a clear and precise interpretation of an authority holders' obligations and demonstration of compliance.

Further the committee recommends that the department develops application guidelines to assist authority holders undertake risk assessments of their activities, and develop appropriate management plans where necessary.

5. Implementation of the Bill

The committee's third area of concern relates to how the provisions of the Bill would be implemented, and how the department would ensure high levels of compliance.

The regulatory impact statement for the legislation provides the following information regarding implementation, compliance and evaluation:

> *On commencement of the legislation, exhibitors would continue to exhibit under their existing wildlife exhibitor licence, wildlife demonstrator licence or declared pest permit as if it was an exhibition licence.*
>
> *Before an exhibitor's licence or permit expires, the chief executive would invite the exhibitor to apply for an exhibition licence under the new legislation. This exhibition licence would have the same expiry date as their current licence or permit. The application would be assessed under the new legislation, but there would be no cost to apply.*
>
> *Also, Queensland-based circuses would be exempt from the minimum fixed exhibition requirements for up to 5 years to allow them to arrange fixed exhibitions between tours. Transitional arrangements for circuses would be discussed with those exhibitors during the development of drafting instructions for the legislation.*
>
> *Monitoring of compliance by unlicensed exhibitors would generally be reactive to complaints received from the public. Biosecurity Queensland would initially take an educational approach to informing exhibitors who do not require a licence (particularly those not involved in large commercial enterprises) about their obligations under the new legislation and the requirement to comply with standards. Except for gross breaches of obligations, enforcement action would be deferred until an exhibitor had been given reasonable opportunity to comply with the standards. Alternatively, these minor exhibitors could take their animals off display until they were able to comply with the standards.*
>
> *The proposed legislation would be reviewed within 10 years of its commencement. Performance indicators would be developed to evaluate the effectiveness of the legislation and may include the size of the exhibited animals industry, the number of compliance deficiencies identified and the recovery of regulatory costs. The size of the industry could be measured by the number of licences held. The number of compliance deficiencies identified could be measured by the number of follow-up site visits required. The recovery of costs could be measured by comparing licensing-related costs with licensing fee revenue and comparing monitoring-related costs with monitoring fee revenue.*[85]

The committee invited DAF to explain:

- the department's strategy for how it will ensure compliance with all of the provisions in this Bill, and
- the staffing and resources it will commit to monitoring compliance, investigating complaints and non-compliance allegations and prosecuting offenders, educating exhibitors and others about their obligations, the review of management plans and the processing of applications and other paperwork connected with the provisions of the Bill.

The department advised:

> *The department will take a holistic approach to ensuring compliance with the Bill, promoting voluntary compliance through awareness raising and education activities and proactive monitoring of licensed facilities (including official assessments associated with*

[85] DAFF, 2013, *Exhibited Animals Legislation Consultation Regulatory Impact Statement*, p. 44.

licensing applications), supported by effective reactive investigation and enforcement efforts.

Communication materials about the Bill will be developed prior to its commencement. These will raise awareness about the Bill and educate exhibitors about their obligations. The communication materials will be developed and delivered with materials to support the implementation of the Biosecurity Act 2014.

When making licensing decisions under the current legislation, the department has for the past several years routinely requested virtually all of the information that will (be) required in a management plan under the Bill (although whether there is a legal obligation for exhibitors to provide this information depends on the circumstances due to inconsistencies in the current legislation). Considerable interaction with the applicant is currently required to secure all the appropriate information. The amelioration of applications through the requirement for management plans is expected to see this information provided with less prompting from the departmental staff and in a form where it can be more easily assessed. Streamlining of the legislative requirements applying to the industry is also likely to reduce the demand on existing resources for dealing with inquiries and processing applications. This will provide the opportunity to re-allocate existing resources to compliance monitoring activities that support the Bill's risk-management objective. In the long term, savings in licence administration are expected to wholly offset the resource requirements for conducting official assessments.

When the Act commences, existing exhibitors will continue to operate under their current licence or permit until it expires at which point they will apply for a licence under the Act. This means that the need for departmental officers to assess management plans that bring together risk-management information (much of which has already been considered but not in this form) will be spread over a three year period. On this basis the department does not expect a large surge in the need for licencing services. The department will devote additional resources to meet service demand on an as needs basis.

When the Act commences there may be a small surge in applications for licensing of species not allowed to be kept under the current legislation. The department will devote additional resources to meet this service demand on an as needs basis.

Current resourcing of industry-related functions will continue under the Bill. Some aspects of licensing under the Bill will be administered in a specialised licensing administration unit within Biosecurity Queensland. Separately, there will be an officer dedicated to assessing license applications, including undertaking official assessments. More senior officers will be responsible for policy development and consider complex applications, such as where a species is being kept in Queensland for the first time or the risk-management proposed in a management plan is atypical. These officers will also assist the dedicated resource when there are surges in demand for licensing services. Biosecurity Queensland has a large inspectorate, supported by Senior Compliance Officers who regulate the performance of its legislative responsibilities. Some of the inspectorate will be trained and appointed under the Bill to undertake compliance and enforcement activities.

The administration of the Bill is subject to a detailed review to restore Queensland's biosecurity capability to world's best practice that was announced on 27 March 2015 by the Honourable Bill Byrne MP, Minister for Agriculture and Fisheries and Minister for Sport and Racing. The review will consider the full range of biosecurity capability requirements, including administration of exhibited animals legislation.[86]

[86] DAF, 2015, *Correspondence*, 4 May.

The committee also sought assurances from the department that the additional compliance obligations that the Bill would impose on the department will not interfere with the department's critical biosecurity and other compliance functions.

The department advised:

> *On 27 March 2015, the Honourable Bill Byrne MP, Minister for Agriculture and Fisheries and Minister for Sport and Racing, announced a detailed review to restore Queensland's biosecurity capability to world's best practice. The review will consider the full range of biosecurity capability requirements, including compliance and enforcement under the Bill and other legislation.*

The committee asked DAF to explain how it intends to monitor compliance with the general exhibition and dealing obligation by keepers of animals who are not required to hold an exhibition authority.

DAF advised:

> *Monitoring of compliance by unlicensed exhibitors would generally be reactive to complaints received from the public. Biosecurity Queensland would initially take an educational approach to informing exhibitors who do not require a licence (particularly those not involved in large commercial enterprises) about their obligations under the new legislation and the requirement to comply with codes of practice. Except for gross breaches of obligations, enforcement action would be deferred until an exhibitor had been given reasonable opportunity to comply with the codes of practice. Alternatively, these minor exhibitors could take their animals off display until they were able to comply with the codes of practice.*[87]

The committee asked the department to explain whether it could be confident that all stakeholders to which the general exhibition and dealing obligation applies will be sufficiently aware of their obligations; and whether public communication and education is planned to ensure all keepers of relevant animals are aware of their general obligations.

The department advised:

> *The department is confident that all licence holders will be sufficiently aware of the obligations - it is relatively easy for the department to communicate with licence holders.*
>
> *Some exhibitors, who are not required to hold a licence but would be subject to the general exhibition and dealing obligation, may not be sufficiently aware of their obligations. Monitoring of compliance by unlicensed exhibitors would generally be reactive to complaints received from the public. Biosecurity Queensland would initially take an educational approach to informing exhibitors who do not require a licence (particularly those not involved in large commercial enterprises) about their obligations under the new legislation and the requirement to comply with codes of practice. Except for gross breaches of obligations, enforcement action would be deferred until an exhibitor had been given reasonable opportunity to comply with the codes of practice. Alternatively, these minor exhibitors could take their animals off display until they were able to comply with the codes of practice.*
>
> *Commencement of the Bill is proposed to be coordinated with the commencement of the Biosecurity Act 2014. Broad communication to the general public about these Acts, which both include a general obligation that will impact keepers of animals, will occur in the lead up to their commencement which must occur before 1 July 2016. The communication strategy will include internal communication to ensure government officers are able to*

[87] DAF, 2015 *Correspondence*, 24 April.

engage and educate stakeholders on the changes, as well as wide-ranging external communication to reach a diverse audience demographic. Communication will evolve and be updated as industry needs are identified. Specific strategies to target exhibitors of relevant animals who will not require a licence are yet to be finalised, but will include information on social media.[88]

Committee comment

The committee notes the department's advice and is satisfied by the department's plans for the implementation of provisions contained in the Bill.

[88] DAF, 2015, *Correspondence*, 24 April.

6. Compliance with legislative principles

Role of the committee

Section 4 of the *Legislative Standards Act 1992* states that 'fundamental legislative principles' are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'.

The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of parliament.

The committee sought advice from the department in relation to a number of possible fundamental legislative principles issues. The following sections discuss the issues raised by the committee and the advice provided by the department.[89]

Rights and Liberties of Individuals

Section 4(2)(a) *Legislative Standards Act 1992*

Does the Bill have sufficient regard to the rights and liberties of individuals?

Clause 18

Clause 18 provides that a responsible person for an exhibited animal has an obligation (a general exhibition and dealing obligation) to take all reasonable and practical measures to prevent or minimise the relevant risks and relevant adverse effects associated with exhibiting or dealing with the animal.

Clause 18 provides an example of a strategy, provided it is done quickly, which may be deemed to be reasonable and practical to prevent or minimise the adverse effects of an exhibited animal escaping from its enclosure and includes:

- recapturing or destroying the animal, and
- warning persons about the dangers posed by the animal and advising them about appropriate action they should take for their safety.

Clause 19 provides that the maximum penalty for failing to discharge this obligation is 750 penalty units. Clause 20 provides that the general obligation can be set out in a regulation. 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.

Potential FLP issues

Clause 18 may potentially affect the rights and liberties of individuals in that it does not describe all that a person must do to discharge a general obligation and pursuant to clause 20 allows for regulation(s) to determine how the obligation can be met. It may be argued that this information should be set out in the Act in order for an individual to know how to fully discharge their obligations.

Section 4(1) of the *Legislative Standards Act 1992* (the LSA) provides that the FLPs are the principles relating to legislation that underlie a parliamentary democracy based on the rule of law. The former Scrutiny of Legislation Committee (SLC) considered the reasonableness and fairness of treatment of individuals as relevant in deciding whether legislation has sufficient regard to rights and liberties of individuals.

[89] DAF, 2015, *Correspondence*, 24 April.

Further, legislation should not ordinarily make a person responsible for actions or omissions over which the person may have no control. Unilateral imposition of responsibility on a person for a matter is an interference with the rights and liberties of the person and requires sufficient justification.[90] Without specifying the obligation in greater detail it is arguable that a person's rights and liberties may be affected by the general nature of the clause.

The Explanatory Notes provide the following justification for the clause:

> *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.*[91]

The Explanatory Notes further advise that the general exhibition and dealing obligation only applies to a limited class of persons.[92]

Request for advice:
The former Agriculture, Resources and Environment Committee wrote to the Department of Agriculture, Fisheries and Forestry (DAFF) on the 2014 Bill seeking further information on specific examples as to what may constitute a breach pursuant to clause 18, so as to consider the justification of the broad categories outlined in the Explanatory Notes.

The department's advice:

> *The Bill is intended to provide a comprehensive framework to manage the animal welfare, biosecurity and safety risks associated with exhibiting and dealing with exhibited animals. It is neither possible nor desirable to specifically identify every circumstance which could constitute a breach of clause 18 (the general exhibition and dealing obligation). The department offers the following as examples only:*
>
> - *Not providing food that is of sufficient quality and quantity to enable the animal to stay healthy, such as giving a carnivore a plant-based diet.*
> - *Not providing water that is of sufficient quality and quantity to enable the animal to stay healthy.*
> - *Not providing an appropriate enclosure or living conditions, for instance by keeping the animal in an enclosure that is causing it to slip and fall, or not having enough ventilation in the enclosure to prevent it becoming heat-stressed on a hot day.*

90 Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p.117.
91 Exhibited Animals Bill 2015, Explanatory Notes, p.6.
92 ExhibExplanatory Notes, p.6.

- *Not providing appropriate opportunities for the animal to display normal patterns of behaviour, such as by keeping a bird in a cage that is too small to allow it to flap its wings or not providing furniture for an arboreal animal to climb.*

- *Not minimising the risk of an animal escaping and establishing as a pest, causing injury, disease or death of humans, causing fear, being unable to survive in the wild or spreading disease to wild populations , for instance by failing to secure a cage door.*

- *Inappropriate handling of the animal, such as beating the animal to elicit certain behaviours*

- *Not obtaining appropriate treatment for disease or injury, for instance by failing to seek veterinary treatment for a major injury.*

- *Not minimising the risk of disease spread between animals, for instance by not appropriately quarantining sick animals.*

- *Not minimising the risk of human injury, illness and/or death caused by an animal, such as by allowing people who lack appropriate competency and do not follow risk-minimisation procedures to handle dangerous animals, or not minimising human contact with an animal that is carrying a zoonotic disease.*[93]

Committee comment

The committee notes the difficulty in identifying every circumstance which could constitute a breach of clause 18 and appreciates the list of specific examples provided. The committee considers the justification provided appropriate and is satisfied with the department's advice.

Clause 81

Clause 84 establishes an obligation for a person acting on behalf of the holder of an 'exhibited animal authority' to notify the 'authority holder' if they become aware of a serious incident.

Pursuant to section 84(2) notice of the serious incident 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. The failure to carry out the notification obligations is an offence with a maximum penalty of 100 penalty units.

Clause 80 provides that a 'serious incident' includes the following:

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

[93] DAFF, 2014, *Correspondence*, 18 November.

- an unexplained or abnormally high mortality rate or morbidity of authorised animals;
- the death of an authorised animal caused, or contributed to, by the act or omission of a person, other than euthanasia of the animal authorised by the authority holder;
- damage to an authorised enclosure or an adjacent structure that is not repaired immediately and is reasonably likely to:
    - adversely affect the suitability of the enclosure for accommodating an authorised animal; or
    - increase a relevant risk associated with exhibiting or dealing with an authorised animal;
- unauthorised entry to an authorised enclosure or controlled area.

Clause 81 provides that the authority holder must notify the Chief Executive of a serious incident by telephone or electronic communication relating to an authorised animal immediately after the holder becomes aware of the incident, unless the holder has a reasonable excuse. Failure to do so incurs a penalty of 100 units.

Potential FLP issue

Clause 84 potentially affects the rights and liberties of the agent acting on behalf of the holder of an exhibited animal authority in that they will be held liable should they fail to report a serious incident pursuant to clause 81.

The Explanatory Notes provide the following justification for the section:

> *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*.[94]

Request for advice:

The former Agriculture, Resources and Environment Committee wrote to DAFF on the 2014 Bill asking the department what it considers a 'reasonable excuse' pursuant to clause 77(2) of the 2014 Bill which is clause81(1) of the 2015 Bill.

The department's advice:

> *Generally speaking, reasonable excuse means an excuse that an ordinary and prudent member of the community would accept as reasonable in the circumstances.*
> *The department suggests it would be a reasonable excuse if:*
> - *the authority holder and/or chief executive had already been notified*
> - *the person had reasonable grounds for thinking the authority holder and/or chief executive had already been notified*
>   - *e.g. it would be a reasonable excuse not to notify if another employee told them the authority holder had already been notified, even if that was not the case*
> - *the person was prevented from notifying by circumstances that were unforeseeable or outside the person's control. This could include where:*
>   - *a serious injury or illness made them incapable of notifying e.g. if a lion escaped from its enclosure, the lion keeper would have a reasonable excuse for not*

[94] Exhibited Animals Bill 2015, Explanatory Notes, p.7.

notifying if they were being treated in hospital for serious injuries inflicted by the lion

- *a weather or other event hampered communications e.g. a cyclone causes significant damage to enclosures at a wildlife park but the on-site manager is unable to notify the authority holder or the chief executive because the cyclone also damaged communication infrastructure*

- *the person had reasonable grounds for thinking the incident was not one that they needed to notify*
    - *e.g. it would be a reasonable excuse for a new employee not to notify the authority holder of the unauthorised release of a giraffe from its enclosure by a senior keeper, if the senior keeper had told the new employee that the giraffe was allowed out when the park was closed, even if that was not the case*
- *if compliance would tend to incriminate them.*

The department suggests a person does not have a reasonable excuse for failing to notify if they are only concerned for the reputation, legal liability or financial status of the authority holder.

It would also not be a reasonable excuse if the person simply forgot or did not think the law should require the authority holder and/or chief executive to be notified about the incident.

Committee comment

The committee considers the list provided by the department to be sufficient as an illustration of what may constitute a reasonable excuse.

Clause 256

Clause 256(3) provides that confidential information may be disclosed under the following circumstances:

- 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 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 administers the Nature Conservation Act 1992 for the purpose of that Act;
- disclosure is with the consent of the person to whom the information relates; or
- the disclosure is otherwise required or permitted by law.

Pursuant to clause 256(4) confidential information means 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.

The section applies to the chief executive, an inspector or another person involved in administering the Act or a relevant repealed provision, including an officer or employee of the department.

Potential FLP Issue

Clause 256 potentially breaches the rights and liberties of an individual by allowing for the disclosure of information pertaining to an individual's personal affairs, reputation or commercial activities.

The OQPC Notebook states that the right to privacy, the disclosure of private or confidential information, and privacy and confidentiality issues have generally been identified by the former Scrutiny of Legislation Committee as a relevant consideration as to whether legislation has sufficient regard to individual's rights and liberties.[95]

Queensland's *Information Privacy Act 2009* (IP Act) sets out the rules about how and when personal information can be collected, stored, used and given out. This includes rules about who can view personal information, and where and how it must be stored. A key part of the IP Act is the Information Privacy Principles at schedule 3, which all areas of the Queensland Government (except Queensland Health) must follow.

The Explanatory Notes provide the following justification for the provision:

> *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.*[96]

The committee notes that clause 53 of the Bill allows the chief executive to make inquiries about the suitability of the applicant to hold an authority. This includes criminal history checks for applicants, insolvency checks for companies and 'any other matter the chief executive considers relevant' pursuant to clause 53(4)(d).

The provision allows for confidential information to be disclosed for the purposes set out at clause 256(3). The Explanatory Notes are silent as to the specific confidential information that may be disclosed and further, what documents may be relied upon in terms of a person's personal affairs, reputation or commercial activities.

Request for advice:
The former Agriculture, Resources and Environment Committee wrote to DAFF on the 2014 Bill asking the department what documents it envisaged will be accessed.

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95 Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p.113.

96 Exhibited Animals Bill 2015, Explanatory Notes, pp. 13-4.

The department's advice:

> *It is envisaged that information would most commonly be provided to the Department of Environment and Heritage Protection (EHP) under clause 256 of the 2015 Bill to enable the tracing of wildlife.*
>
> *For example, EHP might be assisted by information about exhibitors and their activities to facilitate investigation of whether native animals have been illegally taken from the wild or traded or otherwise used (e.g. products made from dead wildlife). The information the department might provide, on request, to assist EHP might include the details of holders of an authority to exhibit and deal with a particular species- this is not in the publicly available part of the register of authorities.*
>
> *Also the department might provide information that is in a record required under clause 86 of the 2015 Bill, such as details of how many specimens the exhibitor claimed to have kept, bred, obtained and disposed of, and the details of any transactions (e.g. buying or accepting and selling or giving away) with the animals. It might not always be the lawfulness of the dealings of the exhibitor that were in question. For example, EHP might be investigating whether a recreational wildlife licence holder obtained their animals from an exhibitor (as claimed).*
>
> *Information might also be shared with agencies involved in managing relevant risks. 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.*[97]

Committee comment

The committee notes and is satisfied by the department's advice.

Powers of inspectors

Clause 161

Pursuant to clause 161(2) an inspector may 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.

The Explanatory Notes provide the following justification for this power:

> *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.*[98]

[97] DAF, 2015, *Correspondence*, 24 April.
[98] Exhibited Animals Bill 2015, Explanatory Notes, p.17.

Clause 177

Clause 177 gives an inspector power to direct a vehicle to stop, stay or move in order to exercise their powers. The Explanatory Notes acknowledge that this could be considered an infringement of a persons' common law right to freedom of movement, however, consider the clause 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.*[99]

Clause 181

Pursuant to clause 181(1) an inspector who has entered a place may: 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.

The Explanatory Notes advise that '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'.[100]

Clause 184

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 Explanatory Notes address the clause as follows:

> *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.*[101]

[99] Exhibited Animals Bill 2015, Explanatory Notes, p.16.
[100] Explanatory Notes, p.16.
[101] Explanatory Notes, pp. 16-7.

Request for advice:
The former Agriculture, Resources and Environment Committee wrote to DAFF on the 2014 Bill asking about the training that will be afforded to inspectors, given the broad nature of entry and seizure powers afforded to inspectors should they 'reasonably believe' it appropriate in the circumstances.

The department's advice:

> *The powers afforded to inspectors appointed under the Bill are very similar to those available to authorised officers under the Biosecurity Act 2014 (Biosecurity Act). Commencement of the Bill is proposed to be coordinated with commencement of the Biosecurity Act.*
>
> *Several hundred authorised officers are proposed to be appointed under the Biosecurity Act and a comprehensive training package is being finalised to ensure they are appropriately qualified for appointment.*
>
> *The number of inspectors appointed under this Bill is likely to be small so it is not cost-effective to develop a comprehensive training package specifically for persons appointed under this Bill.*
>
> *However, the training package for the Biosecurity Act is highly relevant as it will address the appropriate use of equivalent powers such as powers of entry and powers of seizure. It is proposed that inspectors under this Bill would undertake the training being developed for the Biosecurity Act.*
>
> *Before being appointed as inspectors under the Bill they would need to demonstrate an acceptable knowledge of the powers available under the Biosecurity Act and of the differences between the powers available under the Biosecurity Act and the Bill.*

Committee comment

The committee notes that the powers afforded to inspectors are consistent with other legislation, and is satisfied with this response.

Protection against self-incrimination

Section 4(3)(f) *Legislative Standards Act 1992*

Does the Bill provide appropriate protection against self-incrimination?

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 if providing the help might tend to incriminate the person or expose them to a penalty. It is not a reasonable excuse if the document or information 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.

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. Pursuant to clause 212(2) it is not a reasonable excuse to fail to comply with a requirement because compliance may incriminate the person or expose the person to a penalty.

An inspector is required to inform the person that they must comply with the document production requirement and that there is a limited immunity against the future use of the information or documents given in compliance with the requirement. It is a defence to a charge of failing to comply with the requirement if the inspector has not informed the person that they are obliged to comply.

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. The fact that compliance with the requirement may incriminate the person or expose them to a penalty is not a reasonable excuse pursuant to clause 213(2).

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 to a charge of failing to comply with the requirement if the inspector has not informed the person that they are obliged to comply.

Potential FLP issues

Clauses 183, 212 & 213 remove self-incrimination as a reasonable excuse for persons who fail to provide information or a document relating to exhibited animals. Section 4(3)(f) of the *Legislative Standards Act 1992* provides that legislation should allow for appropriate protection against self-incrimination.

The OQPC Notebook states:

> *…this principle has as its source the long established and strong principle of common law that an individual accused of a criminal offence should not be obliged to incriminate himself or herself.*[102]

The former Scrutiny of legislation Committee commented that denial of the protection afforded by the self-incrimination rule is only potentially justifiable if –

> (a) The questions posed concern matters that are peculiarly within the knowledge of the persons to whom they are directed and that would be difficult or impossible to establish by any alternative evidential means; and
>
> (b) The legislation prohibits use of the information obtained in prosecutions against the person; and
>
> (c) In order to secure this restriction on the use of the information obtained, the person should not be required to fulfil any conditions (such as formally claiming a right).[103]

The SLC generally referred to Parliament for consideration, without express objection, provisions denying the privilege against self-incrimination if use immunity and derivative use immunity, was provided.[104]

Request for advice:

In relation to the removal of self-incrimination as a reasonable defence in clauses 183, 212 and 213, the committee sought the department's assurances that the three principles above (a), (b) and (c) provided by the former Scrutiny of Legislation Committee have been met.

The committee also asked the department to outline the circumstances where refusal on the grounds of self-incrimination could not be used as a reasonable defence and why the self-incrimination rule would not be suitable in those circumstances.

The department's advice:

The following clauses of the Bill:

- *183 (Offence to contravene help requirement)*
- *212 (Offence to contravene document production requirement) and*

[102] Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p.52.
[103] Alert Digest 2000/1, p. 7, para 57; Alert Digest 1999/31; and Alert Digest 1999/4, p.9, para. 1.60.
[104] Office of the Queensland Parliamentary Counsel, p.53.

- *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 fails to certify a document:

- *issued to the person or required to be kept under the Act or*
- *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.*

It is of note that the Scrutiny Committee considered that it may be easier to justify the abrogation of the privilege against self-incrimination where a person is required to produce documents required to be issued or kept under an Act[105]*. Similarly, the Queensland Law Reform Commission expressed the view that by participating in a statutory regime (through obtaining a licence or other form of registration) a person has, as a condition of participation, accepted the enforcement provisions and thus waived the benefit of the privilege against self-incrimination.*[106] *The three principles provided by the former Scrutiny of Legislation Committee have been met as follows:*

(a) The questions posed concern matters that are peculiarly within the knowledge of the persons to whom they are directed and that would be difficult or impossible to establish by any alternative evidential means

The documents that 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 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. These matters would be peculiarly within the knowledge of the exhibitor and would be difficult to establish by any alternative evidential means.

Clauses 183 and 212-213 (which related to the power to require production of a document in clause 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. Given the variety of means by which an exhibitor could obtain an animal, information about how it was obtained would be peculiarly within the knowledge of the occupier and would be difficult to establish by any alternative evidential means.

Clauses 183 and 212-213 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. Given the variety of means by which an exhibitor could obtain an animal, information about how it was obtained would be peculiarly within the knowledge of the occupier and would be difficult to establish by any alternative evidential means.

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. Given that the occupier of a place might be acting under any one of a number of authorities that allowed exhibition of the animal (or in some cases

[105] Office of the Queensland Parliamentary Counsel, *Principles of good legislation: OQPC guide to FLPs* - Self-incrimination, Version 1—19 June 2013, p.12, <www.legislation.qld.gov.au/Publications/OQPC/FLP_Self_incrimination.pdf viewed on 23 April 2015>

[106] Office of the Queensland Parliamentary Counsel, 2013, p.12.

could be lawfully dealt with under an authority granted under another Act), information about the authority under which they were acting would be peculiarly within the knowledge of the occupier and would be difficult to establish by any alternative evidential means.

(b) The legislation prohibits use of the information obtained in prosecutions against the person

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.

(c) In order to secure this restriction on the use of the information obtained, the person should not be required to fulfil any conditions (such as formally claiming a right}.

There is no requirement in clause 222 for the affected person to apply for the protection of self-incrimination. The protection is assumed and given automatically.[107]

Committee comment

The committee notes and is satisfied with the department's advice.

Compulsory acquisition of property

Section 4(3)(i) *Legislative Standards Act 1992*

Does the Bill provide for the compulsory acquisition of property only with fair compensation?

Clause 218 (clause 211(1) of the 2014 Bill) provides that a person may claim compensation from the State due to the exercise or purported exercise of a power by an inspector including for 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 (clause 218(2)).

Pursuant to clause 218(3) 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.

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.

Potential FLP issues

Legislation should provide for the compulsory acquisition of property only with fair compensation.[108] The OQPC states, "A legislatively authorised act of interference with a person's property must be accompanied by a right of compensation, unless there is a good reason".[109]

Request for advice:

On 18 November 2014, the former Agriculture, Resources and Environment Committee wrote to the department seeking advice as to the matters the department anticipated may be prescribed by regulation and, if so, when these regulations may be tabled.

[107] DAF, 2015, *Correspondence*, 24 April.
[108] *Legislative Standards Act 1992*, section 4(3)(i).
[109] Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p. 73.

The department's advice:

> *Allowing matters that a court may or must consider before granting compensation to be prescribed by regulation is common in Queensland legislation. It is found in the Animal Care and Protection Act 2001, Biosecurity Act 2014, Building Boost Grant Act 2011 , Education and Care Services Act 2013, Electoral Act 1992, Environmental Offsets Act 2014, Fair Trading Inspectors Act 2014, Further Education and Training Act 2014, Health Ombudsman Act 2013, Heavy Vehicle National Law Act 2012, Hospital and Health Boards Act 2011, Petroleum and Gas {Production and Safety) Act 2004,Waste Reduction and Recycling Act 2011 and Workers Compensation and Rehabilitation Act 2003. There are also similar provisions in the Land Valuation Act 2010, Transport Operations {Passenger Transport) Act 1994 but they relate to compensation payable in rather different circumstances.*
>
> *Of all the Acts mentioned above in which a similar provision is found, the power to prescribe additional matters by regulation has only been exercised under the Transport Operations (Passenger Transport) Act 1994 - section 48 of the Transport Operations (Passenger Transport) Regulations 2005 provides for matters that must and must not be considered in deciding the amount of compensation payable by the contract holder for a service to the entity who formerly held a contract to provide the service. This reflects that arbiters have been required to make decisions relatively frequently about compensation under the relevant provisions of that Act.*
>
> *The department suggests it would be appropriate to make a regulation for clause 218 about similar technical matters e.g. about how compensation appropriate to the industry could be calculated. However, it has not consulted with the industry about these matters and it is not proposing any matters would be prescribed by regulation for clause 218 at this stage.*[110]

Request for advice:

The committee asked the department to further advise whether it had consulted with the animal exhibition industry about prescribing in regulations how compensation could be calculated in respect of clause 218, and whether the department intends (and, if so, when) to introduce such regulations.

DAF response:

> *The department has not consulted with the industry about these matters and is not proposing any matters would be prescribed by regulation for clause 218 at this stage. Indeed, the department anticipates that matters would be prescribed by regulation only where a need has been clearly demonstrated.*[111]

Committee comment

The committee notes the department's advice. In particular, the committee notes that the department is not proposing to prescribe any matters by regulation for clause 218 at this stage. The potential remains, however, for the department to prescribe these matters by regulation in future.

Point for clarification C

The committee invites the Minister to assure the House that the department will consult with animal exhibitors before prescribing any matters by regulation for clause 218.

110 DAFF, 2014, *Correspondence*, 28 November.
111 DAF, 2015, *Correspondence*, 24 April.

Scrutiny of the Legislative Assembly

Section 4(4)(b) *Legislative Standards Act 1992*

Does the Bill sufficiently subject the exercise of a proposed delegated legislative power (instrument) to the scrutiny of the Legislative Assembly

Clause 26 provides that the chief executive may make guidelines about matters relating to the administration of the Act; or complying with other requirements imposed under the Act. Pursuant to section 26(2) a guideline may be about the following matters:

- the operation of provisions of the Act about monitoring and enforcement of compliance with this Act;
- ways in which exhibited animals may be exhibited or dealt with, including, for example, acceptable ways of ensuring an animal's enclosure appropriately provides for the animal's need to display its normal behaviours; and
- the type of information the chief executive may consider relevant in a management plan for managing the relevant risks associated with exhibiting or dealing with an exhibited animal.

Potential FLP issues

A Bill should sufficiently subject the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly.[112]

The OQPC Notebook states "For Parliament to confer on someone other than Parliament the power to legislate as the delegate of Parliament, without a mechanism being in place to monitor the use of the power, raises obvious issues about the safe and satisfactory nature of the delegation". [113]The matter involves consideration of whether the delegate may only make rules that are subordinate legislation, and thus subject to disallowance.

"The issue of whether delegated legislative power is sufficiently subjected to the scrutiny of the Legislative Assembly often arises when the power to regulate an activity is contained in a guideline or similar instrument that is not subordinate legislation and therefore is not subject to parliamentary scrutiny".[114] The SLC commented adversely on provisions allowing matters, which might reasonably be dealt with by regulation, to be processed through some alternative means that does not constitute subordinate legislation and therefore is not subject to parliamentary scrutiny. In considering the appropriateness of delegated matters being dealt with through an alternative process, the SLC considered:

- The importance of the subject dealt with;
- The practicality or otherwise of including those matters entirely in subordinate legislation;
- The commercial or technical nature of the subject matter;
- Whether the provisions were mandatory rules or merely to be had regard to.[115]

The SLC also considered that despite an instrument not being subordinate legislation, if there is a provision requiring tabling and providing for disallowance there is less need for concern.[116]

The SLC further determined that, if a document that was not subordinate legislation was intended to be incorporated into subordinate legislation, an express provision should require the tabling of that document at the same time as the subordinate legislation.[117] Similar considerations applied where a

[112] *Legislative Standards Act 1992*, section 4(4)(b).
[113] Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p.154.
[114] Office of the Queensland Parliamentary Counsel, p. 155.
[115] Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p. 155.
[116] Alert Digest 2004/3, pages 5-6, paras 30-40; Alert Digest 2000/9, pp.24-5. paras 47-56.
[117] Alert Digest 2001/8, page 16, para. 7; Alert Digest 1996/5., page 9, para 3.8.

non-legislative document was required to be approved by an instrument of subordinate legislation.[118]

In relation to clause 26 allowing the chief executive to make a guideline, the Explanatory Notes advise:

> *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.*[119]

Request for advice:

The committee invited the department to explain:

- why guidelines provided for in clause 26, and which may be used to determine compliance with the Act, were not included in the Bill
- with the guidelines not included in the Bill, why provisions to expressly require their tabling, at the same time as any regulations made in connection with the Act, were not included in the Bill
- whether the department proposes to include the guidelines provided for in clause 26 in future regulations that will be subject to parliamentary scrutiny, and
- if guidelines are not included in the Bill or regulations, what opportunities for parliamentary scrutiny of the guidelines will be provided.

The department's advice:

> *Guidelines under the Bill are neither exhaustive nor determinative. They would be a way to provide certainty for industry about what the department considers an acceptable solution to a general requirement or how the department intends to conduct itself in relation to a requirement.*
>
> *Clause 28 provides that guidelines could be taken into account when considering whether a person has or has not complied with the Act, but it must not be presumed that a person who has contravened a guideline has contravened the Act. In a court proceeding guidelines would likely be read to protect industry members who relied on them.*
>
> *Unlike a code of practice (see clause 21{3)), a guideline would not establish a minimum level against which the equivalence of other measures would be compared. In this way, making a guideline would, in effect, provide protection for those exhibitors who chose to follow it that they would be treated as complying with the relevant requirement of the Bill but without a significant impact on those exhibitors who chose not to follow it.*
>
> *Guidelines could also be made about other matters relating to the administration of the Act. For example, a person does not breach a mandatory condition of their licence if they have a reasonable excuse (see clause 85{1)). Ultimately it would be up to a court to determine what a reasonable excuse was. It is not possible or desirable to specify what might constitute a reasonable excuse in every circumstance in the Bill or even in a regulation. But the*

[118] Alert Digest 2003/11, page 23, paras 33-40.
[119] Exhibited Animals Bill 2015, Explanatory Notes, page 20.

department could create a more certain operating environment for exhibitors by clarifying that it would generally treat a particular circumstance as a reasonable excuse for not meeting the relevant licence condition.

Consideration could be given, for example, to being specific about how the department would consider requirements apply to animals that fall outside the definition of an animal under the Animal Care and Protection Act 2001 (which is an issue that was raised in several submissions to the committee). The department could clarify that it would not enforce specific requirements for specific species in certain life stages. By providing this clarification in the form of a guideline that may be taken into account when considering whether a person has complied with the Act, the department would provide some protection to persons who did not comply with requirements in these circumstances.

The department does not consider that guidelines are important to the operation of the legislation.

Indeed, the department anticipates that guidelines will be made infrequently and only where a need has been clearly demonstrated.

Guidelines will be made publicly available on the department's website. The guideline-making power is also safeguarded by a requirement for consultation with entities that may have an interest in the proposed guideline.

Allowing guidelines of this nature to be made by the chief executive without parliamentary scrutiny has precedence in Queensland legislation. It is found in the Biosecurity Act 2014, specifically section 109.

The department notes that the statute book is, however, far from consistent with respect to the nature of guidelines and extent of Parliamentary scrutiny of them. For example:

- *Illustrative of one extreme are guidelines that can be issued by the Parliamentary Crime and Corruption Committee to the Crime and Corruption Commission under section 296 of the Crime and Corruption Act 2001. Unlike guidelines under this Bill, compliance with such guidelines is mandatory so it appropriate that they must be tabled and can be disallowed.*
- *In contrast, section 63 of the Mining and Quarrying Safety and Health Act 1999 allows the Minister to make guidelines stating ways to achieve an acceptable level of risk to persons arising out of operations. The guidelines are not required to be tabled but they must be notified in the gazette. Nevertheless, section 34 provides that such guidelines establish a minimum level against which the equivalence of other ways of achieving an acceptable level of risk would be compared. In this way, guidelines under the Mining and Quarrying Safety and Health Act 1999 are similar to codes of practice under the Bill.*[120]

The former Agriculture Resources and Environment Committee also noted that clause 26 provides that the chief executive may make guidelines about matters relating to the administration of the Act or complying with other requirements imposed under the Act.

The former committee sought more specific information from the department as to the rationale for not including information pertaining to monitoring and enforcement compliance, and content of a management plan, within the Bill and instead providing for such matters to be the subject of guidelines (clause 26(2)).

120 DAF, 2015, *Correspondence*, 24 April.

The committee also asked the department for information on the likely circumstances and consequences in which a guideline may be taken into account when considering whether a person has complied with the Act.

The department's advice:

The Bill includes information about assessments of compliance at chapter four and investigation and enforcement at chapter six. It includes information about the content of a management plan in clause 37 of the 2015 Bill. The power of the chief executive to make guidelines about these matters is to enable further guidance to be provided on technical aspects of the operation of these provisions. For example, a guideline could (but is not currently proposed) be made about the extent of negotiations that would be appropriate between an inspector and an applicant about the conduct of an official assessment (application).

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. However, unlike a code of practice (see clause 23 of the 2015 Bill), a guideline would not establish a minimum level against which the equivalence of other measures would be compared. In this way, making a guideline would, in effect, provide reassurance for those exhibitors who chose to follow it that they were complying with the relevant requirement of the Bill but without a significant impact on those exhibitors who chose not to follow it. For example, a code of practice might require that crocodilians are provided with ponds and basking areas. A guideline could be used to provide details on the requirement but would not be binding. For example, a guideline could detail some designs and construction materials that were suitable. But the guideline would not prevent exhibitors proposing, in their management plan, the use of other designs and construction materials that could meet the animal's needs.

Committee comment

The committee notes and is satisfied by the department's comprehensive advice.

Amendment of an Act only by another Act

Section 4(4)(c) *Legislative Standards Act 1992*
Does the Bill allow or authorise the amendment of an Act only by another Act?

Clause 39

Clause 39 provides that the application of a provision at Part 3 in relation to an exhibited animal authority is subject to a condition of the authority provided for by Part 7. The Explanatory Notes acknowledge that 'the conditions in part 7 include conditions that may be imposed by a regulation or by the chief executive; hence, clause 36 may be considered a Henry VIII clause'.[121]

Clause 79

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 a temporary condition is inconsistent with a mandatory condition of an exhibition licence or an interstate exhibitor's permit, the temporary condition prevails to the extent of the inconsistency.

Potential FLP issues

In allowing the chief executive to make a decision overriding a mandatory condition as well as the use of several regulations for certain matters, the clauses discussed potentially breach section 4(4)(c) of the *Legislative Standards Act 1992* which provides that a Bill should only authorise the amendment of an Act by another Act.[122]

A clause in an Act, which enables the Act to be expressly or impliedly amended by subordinate legislation or executive action is defined as a Henry VIII clause. The SLC's approach to Henry VIII clauses was that if an Act was purported to be amended by a statutory instrument (other than an Act) in circumstances that were not justified, the SLC would voice its opposition by requesting that Parliament disallow the part of the instrument that breached the FLP requiring legislation to have sufficient regard for the institution of Parliament.[123] The SLC considered the possible use of Henry VIII clauses in the following limited circumstances:

- To facilitate immediate executive action;
- To facilitate the effective application of innovative legislation;
- To facilitate transitional arrangements;
- To facilitate the application of national scheme legislation.[124]

The OQPC Notebook explains that the existence of these circumstances does not automatically justify the use of Henry VIII clauses, and, if the Henry VIII clause does not fall within any of the above situations, the SLC classified the clause as 'generally objectionable'.[125]

In relation to clause 39 the Explanatory notes advise:

> *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*

121 Exhibited Animals Bill 2015, Explanatory Notes, p. 20.
122 *Legislative Standards Act 1992*, section 4(4)(c).
123 Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p.159.
124 Office of the Queensland Parliamentary Counsel, p. 159.
125 Office of the Queensland Parliamentary Counsel, p.159; Alert Digest 2006/10, p.6, paras 21-24; Alert Digest 2001/8, p.28, para 31.

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.[126]

The Explanatory Notes acknowledge that clause 79 may be considered a Henry VIII clause and provide the following justification:

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.[127]

Committee comment

The committee notes the department's advice on the use of Henry VIII clauses in the Bill, and considers that the justifications provided in terms of minimising risk are appropriate in the circumstances.

The Bill contains several clauses that allow a regulation to establish certain matters and conditions.

Request for advice:
The former Agriculture, Resources and Environment Committee wrote to the department seeking information about the likely timeframe that the regulations referred to in the Bill will be introduced.

Department advice:

The development of regulations to support the Bill is subject to passage of the Bill. However, they must be finalised for commencement of the Bill, which clause two provides will be no later than 1 July 2016.

The department intends to consult with industry during the development of regulations. Subject to the time constraints for finalising the regulations, the department intends to hold a workshop with industry nominees on a working draft of the regulations, just as it held a workshop on the Bill.

The department expects that regulations would largely consist of:

126 Exhibited Animals Bill 2015, Explanatory Notes, p.20.
127 Explanatory Notes, pp.18-19.

- *making a code of practice reflecting the national standards (subject to their finalisation and consideration of which aspects are relevant to all sectors compared and possibly with some streamlining)*
- *record keeping requirements under clause 86 of the 2015 Bill*
- *prescribing fees as provided under various clauses of the Bill.*

The Bill provides that authority conditions and a number of other matters may also be prescribed by regulation but the department's preliminary view it that there may not be a need to do so.

Amendments to regulations under the Nature Conservation Act 1992 will also be made when the Bill commences.[128]

Committee comment

The committee notes and is satisfied by the department's comprehensive advice.

[128] DAFF, 2014, *Correspondence*, 28 November.

Appendix A – List of submitters

1 – Mr Raymond Hoser *

2 - Janlin Circuses Pty Ltd *

2A - supplementary submission - Janlin Circuses Pty Ltd

3 - Zoo and Aquarium Association, Queensland Branch *

4 - RSPCA Qld *

4A - supplementary submission - RSPCA Qld

5 – Mr Raymond J. Deller *

6 - Hands on Wildlife *

6A - supplementary submission - Hands on Wildlife

7 - Darling Downs Zoo *

8 – Mr Steve Robinson *

8 - supplementary submission – Mr Steve Robinson

9 - Queensland Native Fauna Advisory Group Inc. *

9 - supplementary submission - Queensland Native Fauna Advisory Group Inc.

10 – Ms Donna Blaxter *

11 – Mr Damian Syred & Circus Royale *

11 - supplementary submission – Mr Damian Syred & Circus Royale

12 - Zoo and Aquarium Association, Queensland Branch *

12 - supplementary submission - Zoo and Aquarium Association

13 - Animal Liberation Queensland *

13 - supplementary submission - Animal Liberation Queensland

14 - Animals Australia *

15 – Mr Andrew Payne *

16 – Mr Barry Nixon *

16 - supplementary submission – Mr Barry Nixon

17 - Wildlife Kingdom *

17 - supplementary submission - Wildlife Kingdom

18 – Ms Lorraine Ashton Grant *

19 - Eden Bros' Good Time Circus *

20 – Mr Euan Edwards

21 – Ms Tania Carter

22 – Ms Jasmine Straga

23 –Mr Ben Bawden, Bawden's Cockatoo Chaos

24 – Mr Neil Charles

25 – Mr John Le Mare

***** denotes these submissions received by the Agriculture, Resources and Environment Committee in relation to the Exhibited Animals Bill 2014, and which the Agriculture and Environment Committee has agreed to consider as part of their report on the Exhibited Animals Bill 2015.

Appendix B – Briefing officers and hearing witnesses

Briefing and hearing on the Exhibited Animals Bill 2014 held on 26 November 2014

Department of Agriculture, Fisheries and Forestry

Dr Jim Thompson, Chief Biosecurity Officer

Ms Marguerite Clark, Manager, Biosecurity Legislation

Witnesses at a public hearing held on 26 November 2014

Ms Jackie Hasling, Hands on Wildlife

Mr Ben Bawden, Cockatoo Chaos

Mr Steve Robinson, Director, Darling Downs Zoo

Mr Rob Joyes, Wildlife Kingdom

Dr Mandy Paterson, Principal Scientist, RSPCA Queensland

Mr Al Mucci, General Manager, Life Sciences, Dreamworld and President, Zoo and Aquarium Association Queensland Branch

Mr Michael O'Brien, Manager Cairns Tropical Zoo and Vice-President, Zoo and Aquarium Association Queensland Branch

Briefing and hearing on the Exhibited Animals Bill 2015 held on 27 April 2015

Department of Agriculture and Fisheries

Mr Patrick Bell, General Manager, Strategy and Legislation

Ms Marguerite Clark, Acting Director, Regulatory Policy and Reform

Witnesses at a public hearing held on 26 November 2014

Dr Mandy Paterson, Principal Scientist, RSPCA Queensland

Mr Rob Joyes, Wildlife Kingdom

Mr Steve Robinson, Director, Darling Downs Zoo

Ms Jasmine Straga, Australian Circus Week

Ms Kelsey Engle, Curator, Australia Zoo; and Board member, Zoo and Aquarium Association, Queensland Branch

Mr Al Mucci, General Manager, Life Sciences, Dreamworld and President, Zoo and Aquarium Association, Queensland Branch

Mr Ben Bawden, Cockatoo Chaos

Ms Tania Carter, Cool Companions, representing the Queensland Native fauna Advisory Group

Ms Jackie Hasling, Hands on Wildlife