

1994—No. 534

## NON-INDIGENOUS ANIMALS ACT 1987—REGULATION

(Relating to the classification and the keeping of non-indigenous animals)

NEW SOUTH WALES



*[Published in Gazette No. 136 of 7 October 1994]*

HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Non-Indigenous Animals Act 1987, has been pleased to make the Regulation set forth hereunder.

IAN R. CAUSLEY, M.P.,  
Minister for Agriculture and Fisheries.

### Commencement

1. This Regulation commences on 7 October 1994.

### Amendments

2. The Non-Indigenous Animals Regulation 1988 is amended:

(a) by omitting clause 2 and by inserting instead the following clause:

#### Definitions

2. (1) In this Regulation:

“**category 1**” means the category of animals referred to in section 6 (1) (a) of the Act;

“**category 2**” means the category of animals referred to in section 6 (1) (b) of the Act;

“**category 2a**” means the subcategory of animals referred to in clause 6 (1) (a);

“**category 2b**” means the subcategory of animals referred to in clause 6 (1) (b);

“**category 3**” means the category of animals referred to in section 6 (1) (c) of the Act;

**“category 3a”** means the subcategory of animals referred to in clause 6 (2) (a);

**“category 3b”** means the subcategory of animals referred to in clause 6 (2) (b);

**“category 3c”** means the subcategory of animals referred to in clause 6 (2) (c);

**“Chief, Division of Animal Industries”** means the Chief, Division of Animal Industries in the Department of Agriculture;

**“Director-General”** means the Director-General of the Department of Agriculture;

**“drive-through area”** means an area in which animals are enclosed and which may be driven through;

**“exhibit”** has the same meaning as in the Exhibited Animals Protection Act 1986;

**“temporary establishment”** means premises occupied by temporary or movable structures used for the purposes of a circus, fun-fair, amusement park or travelling animal display of any kind;

**“the Act”** means the Non-Indigenous Animals Act 1987;

**“zoo”** means a zoological park within the meaning of the Zoological Parks Board Act 1973.

(2) In this Regulation, a reference to a form is a reference to a form set out in Schedule 1.

(b) by inserting after clause 3 (c) the following paragraph:

(d) Australian Avicultural Protection Association.

(c) by inserting after clause 5 the following Parts and Schedule:

### **PART 3—CLASSIFICATION OF ANIMALS**

#### **Subcategories of animals**

6. (1) For the purposes of Parts 3,4 and 5 of the Act, animals in category 2 may be classified in the following subcategories:

(a) category 2a (animals posing a threat to the health or safety of persons, domestic animals or native fauna which are, as a condition of a licence under the Act, required to be kept in zoos or other high security premises approved by the Director-General);

(b) category 2b (animals posing a threat to the health or safety of persons, domestic animals or native fauna which, as a condition of a licence under the Act, are required to be kept in premises approved by the Director-General or the exhibit of which is required to be authorised under an authority issued under the Exhibited Animals Protection Act 1986).

(2) For the purposes of Parts 3, 4 and 5 of the Act, animals in category 3 may be classified in the following subcategories:

- (a) category 3a (animals that, if they escaped in the wild, would have the potential to establish a population that would present a threat or greatly worsen an existing threat of pestilence);
- (b) category 3b (animals that, if they escaped in the wild, would have a lesser potential to establish a population that would present a threat or greatly worsen an existing threat of pestilence);
- (c) category 3c (animals that, if they escaped in the wild, are unlikely to establish a population that would present a threat or greatly worsen an existing threat of pestilence).

**Matters to be considered by Minister in granting or renewing licence**

7. In considering whether to grant or renew a licence under section 15 (1) of the Act, the Minister must have regard to the following matters:

- (a) the security and care required for the animals that are proposed to be kept; and
- (b) in the case of an animal in category 2a or 2b that is proposed to be kept by an agent of a zoo—whether there is a written agreement between the institution and the agent containing a requirement that the agent must return the animal to the institution on demand.

**Exemptions under section 5 of the Act**

8. (1) The following persons are exempted from the requirement in section 10 of the Act not to import animals otherwise than under the authority of a permit:

- (a) any person authorised by an authority issued under the Exhibited Animals Protection Act 1986 to exhibit an animal (being an animal in category 2b, 3a or 3b);

- (b) any person authorised under the Exhibited Animals Protection Act 1986 to exhibit an animal (being an animal in category 1 or 2a) if a licence (other than a renewed licence) is granted to that person under section 15 of the Act to keep that animal;
- (c) any person importing an animal in category 3;
- (d) any tertiary educational institution importing the amphibian, *Bufo marinus* (cane toad);
- (e) any person importing the bird, *Struthio camelus* (ostrich) or any mammal in category 3 other than the *Lepus cupensis* (brown hare) or *Vulpes vulpes* (European red fox).

(2) The following persons are exempted from the requirement in section 11 of the Act not to keep an animal otherwise than under the authority of a licence:

- (a) any person authorised by an authority issued under the Exhibited Animals Protection Act 1986 to exhibit an animal (being an animal in category 2b, 3a or 3b);
- (b) any person authorised by an authority issued under the Exhibited Animals Protection Act 1986 to exhibit an animal (being an animal in categories 1 or 2a species) if:
  - (i) the application for that authority was made before 1 February 1990; and
  - (ii) the species of the animal was detailed in that application;
- (c) any person authorised by an authority issued under the Exhibited Animals Protection Act 1986 to exhibit an animal (being an animal in category 1 or 2a) if a licence (other than a renewed licence) is granted to that person under section 15 of the Act to keep that animal;
- (d) any person keeping an animal in category 3c;
- (e) any person keeping only one *Lepus cupensis* (brown hare) or one *Vulpes vulpes* (European red fox);
- (f) any tertiary educational institution keeping the amphibian, *Bufo marinus* (cane toad);
- (g) any person keeping the mammal, *Faunambulus pennanti* (northern palm squirrel) if the animal is numerically identified by an ear tattoo or microchip and is certified as sterilised by a registered veterinarian.

(3) The following persons are exempted from the requirement in section 12 of the Act not to move animals otherwise than under the authority of a permit:

- (a) any person authorised by an authority issued under the Exhibited Animals Protection Act 1986 to exhibit particular animals (being animals in category 2b, 3a or 3b);
- (b) any person authorised by an authority issued under the Exhibited Animals Protection Act 1986 to exhibit an animal (being an animal in category 1 or 2a) if a licence (other than a renewed licence) is granted to that person under section 15 of the Act to keep that animal;
- (c) any person moving an animal in category 3;
- (d) any person moving only one *Lepus capensis* (brown hare) or one *Vulpes vulpes* (European red fox);
- (e) any tertiary educational institution moving the amphibian, *Bufo marinus* (cane toad);
- (f) any person moving the bird, *Struthio camelus* (ostrich) or any mammal in category 3 other than the *Lepus capensis* (brown hare) or *Vulpes vulpes* (European red fox);
- (g) any person moving the mammal, *Faunambulus pennanti* (northern palm squirrel) if it is numerically identified by an ear tattoo or microchip and is certified as sterilised by a registered veterinarian.

(4) A person is exempted from the requirement in section 13 of the Act not to release or allow the escape of an animal if that person releases, and has the ability to recover:

- (a) ferrets used in hunting; or
- (b) homing pigeons for the purpose of racing, training or exercising the pigeons.

(5) The following institutions are exempted from any requirement under the Act to pay fees for permits and licences:

- (a) the Zoological Parks Board;
- (b) any higher or tertiary educational institution obtaining or holding animals for research purposes.

(6) A person is exempted from the requirements of section 19 (1) (b) of the Act:

- (a) if that person has been granted an approval under the Exhibited Animals Protection Act 1986 (but only in relation to the species of animal for which the approval was granted); or
- (b) if the subject of the permit application is an animal in category 3.

**PART 4—LICENCES AND PERMITS****Applications for issue or renewal of licences**

9. An application under section 14 of the Act for the issue or renewal of a licence to keep an animal:

- (a) must be in writing in the form approved by the Chief, Division of Animal Industries for the purposes of this clause; and
- (b) must be accompanied by any supporting document required by the Chief, Division of Animal Industries; and
- (c) must be accompanied by the appropriate application fee (including any late fee) specified in clause 11.

**Applications for issue of permits**

10. An application under section 19 of the Act for a permit to import or move an animal:

- (a) must be in writing in the form approved by the Chief, Division of Animal Industries for the purposes of this clause; and
- (b) must be accompanied by the application fee of \$50 and by any supporting documents referred to in the approved form.

**Fees for applications**

11. (1) In this clause, the application fee applicable for each premises in which an animal is to be kept is to be calculated by reference to the animal in the highest security category held at the premises. For this purpose, the highest security category is, in descending order, category 1, 2, 2a, 2b, 3, 3a, 3b or 3c.

(2) The fee for an application under section 14 of the Act for a licence or the renewal of a licence is:

- (a) in the case of animals in category 1 or 2—\$250 for each premises in which an animal is to be kept; and
- (b) in the case of animals in category 3a or 3b—\$30 for each premises in which an animal is to be kept.

(3) If a licence is granted after 1 January (but before 30 June) in any financial year, the relevant application fee is to be reduced by 50%.

(4) For the purposes of section 14 (3) of the Act, the late fee payable by the applicant for the issue or renewal of a licence is:

- (a) in the case of animals in category 1 or 2—\$100; and
- (b) in the case of animals in category 3a or 3b—\$50.

(5) The Minister may, on the recommendation of the advisory committee, vary the application fee applicable for particular premises in which animals in category 1 or 2 are to be kept.

(6) An application fee is not payable in respect of any premises which are the subject of a license issued under the Exhibited Animals Protection Act 1986.

#### **Prescribed period for licences**

12. (1) For the purposes of section 16 of the Act, the prescribed period is:

- (a) 12 months; or
- (b) in the case of a licence granted after 1 July in any financial year, the period ending 30 June in that year.

(2) In the case of a licence authorising the holder to keep only one bird in category 1, 2 or 3, the period prescribed under section 16 of the Act is the period of the life of the bird.

#### **Acquisition of birds by unlicensed persons**

13. (1) A person who does not hold a licence authorising the person to keep an animal in category 1, 2 or 3 may acquire a bird from such a category if an application is duly made at the time the bird is acquired for a licence authorising the person to keep the bird.

(2) Until such time as the application is determined by the Minister, the person who acquired the bird is taken to be authorised to keep the bird.

### **PART STANDARDS FOR KEEPING ANIMALS**

#### **Standards for enclosures**

14. (1) Animals in category 1, 2, 3a or 3b must be kept in an enclosure that is constructed in such a manner that:

- (a) ensures the safety of visitors and animal attendants exercising due care while in the enclosure; and
- (b) an animal in the enclosure can escape only in circumstances that cannot be reasonably foreseen and guarded against; and
- (c) the risk of injury to an animal in the enclosure is minimised.

(2) Vegetation or other material in or near an enclosure must be removed or repositioned if it would assist an animal to escape.

(3) The enclosure in which a digging or burrowing animal is kept must be constructed:

- (a) with a floor consisting entirely of concrete; or
- (b) with an enclosing fence of galvanised metal mesh or concrete extending below the ground level to a depth of at least 1 metre and then extending horizontally within the enclosure for at least 1 metre; or
- (c) as approved by the Director-General.

#### **Standards for outer fences**

15. Except to the extent otherwise approved by the Director-General, the owner of any premises where animals in category 1, 2 or 3a are kept must take all reasonable precautions to ensure that the premises are sufficiently secure to discourage unauthorised entry to the establishment.

#### **Standards for gates, doors and slides**

16. (1) A gate or door on the perimeter of an enclosure in which animals (other than birds) in category 1, 2 or 3 are kept must open inwards to the enclosure.

(2) If an entrance to an enclosure (other than the entrance to a drive-through area) is a safety entrance through successive gates or doors, those gates or doors must open inwards to the enclosure.

(3) A gate or door on the perimeter of an enclosure in which birds in category 1, 2 or 3a are kept must be fitted with a return spring.

(4) A gate, door or slide giving entrance to an enclosure in which animals in category 1, 2, 3a or 3b are kept must be so designed that an animal in the enclosure cannot:

- (a) lift the gate or door off its hinges or a slide off its tracks; or
- (b) unfasten the security device.

(5) The entrance to an enclosure (other than a reptile pit) in which an animal in category 2 is kept must be by means of a safety entrance through successive gates or doors all of which, unless a person is within the enclosure, are kept locked by key or combination.

(6) If the doors or gates through which an enclosure referred to in this clause is entered are electrically operated, there must be alternative means provided by which they may be manually operated without risk to the operator.

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(7) The operating position for gates, doors, slides or other means of access must provide for:

- (a) a safe means of access; and
- (b) a clear view of the gates, doors, slides and other means of access and the immediately surrounding area.

**Stand-off barriers**

17. (1) If direct contact between a dangerous animal and the public would be possible, the animal must be separated from the public by a barrier so designed that:

- (a) direct contact with the animal is avoided; and
- (b) evasion of the barrier by the public (especially children) is made as difficult as is reasonably practicable.

(2) A pit containing dangerous snakes must be of sufficient depth to eliminate the possibility of physical contact between the public and the snakes.

(3) Subclause (1) does not apply in relation to a drive-through area.

**Warning signs**

18. (1) An adequate number of clearly visible and legible signs giving proper warning, by means of words or symbols, or both, of the danger concerned must be provided at any enclosure that:

- (a) contains an animal that is known to be dangerous, or may reasonably be suspected of being dangerous; or
- (b) is dangerous because it includes an electrified fence.

(2) The signs in a drive-through area must warn visitors to the area:

- (a) not to leave the motor vehicle; and
- (b) to keep all the doors of the motor vehicle locked; and
- (c) to keep closed all the windows, and any sun-roof, of the motor vehicle; and
- (d) if the motor vehicle breaks down to sound the horn, or flash the headlamps and warning lamps, and await the arrival of a rescue vehicle.

**Exit signs**

19. (1) The means of egress from an animal display establishment must be clearly marked.

(2) An animal display establishment must be provided with an adequate number of signs that clearly indicate the direction to be followed to locate the means of egress from the establishment.

**Safety of structures**

20. If entry to a structure, or part of a structure, would present a threat to the health or safety of the public:

- (a) access to the structure or part must be kept locked against access by the public; and
- (b) there must be placed, so that they are readily seen and comprehended by the public, notices warning that entry to the structure or part is unsafe and that entry by the public is prohibited.

**Entry to, and departure from, drive-through area**

21. A drive-through area must be so constructed that entry to, and departure from, the area is available to the public only through a corridor that:

- (a) commences at the perimeter fence of the area and extends within the area for a distance of at least 25 metres; and
- (b) is formed by fences of the same construction, and of at least the same height, as the perimeter fence; and
- (c) has at each end a gate of a height and construction approved by the Director-General and so devised that, unless one of them is securely closed, the other cannot be opened; and
- (d) is continuously monitored or operated by a suitably trained person while members of the public are inside the enclosure.

**Access points between separate enclosures**

22. If there are access points between separate enclosures within a drive-through area, they must be so controlled as to prevent an animal in one enclosure from entering of its own accord into another.

**One-way traffic only**

23. The road system within a drive-through area must, when used by the public, provide for one-way traffic only.

**Special standards**

24. (1) Persons keeping animals in any of the categories specified in section 6 (1) of the Act or subcategories specified in clause 6 (other than category 3c) must conform to any special security standards that the Director-General may approve and publish in the Gazette for individual species or larger taxonomic groups.

(2) Doorways and entrances in the enclosure boundaries of all birds of the genus Euplectes or the order Psittaciformes classified as being in category 1,2or3a must not provide direct access from the enclosure to an area which is unable to contain the enclosed birds.

(3) Premises in which animals in category 1,2,3a or 3b are kept must conform with the appropriate security and safety standards prescribed under sections 14 and 25 of the Exhibited Animals Protection Act 1986.

(4) A person who keeps:

- (a) birds of the order Anseriformes in category 1, 2 or 3a must keep the birds in an escape-proof enclosure; or
- (b) fully flighted birds must keep the birds in a roofed enclosure; or
- (c) birds rendered flightless must keep the birds in an enclosure with a fence of sufficient height to prevent escape.

(5) A person who keeps Lama glama (llama) or Lama pacos (alpaca) must keep such animals within fences conforming to such standards as the Director-General may approve.

## **PART 6—MISCELLANEOUS**

### **Appeals under section 20**

25. (1) For the purposes of section 20 (1) of the Act, the prescribed manner for making an appeal is by lodging a notice of appeal in Form 1 with the Clerk of the Local Court.

(2) A copy of the notice of appeal lodged with the Clerk of the Local Court is to be furnished to the Minister when giving the notice required by section 20 (3) of the Act.

### **Licensee's returns**

26. (1) A return required to be furnished by a licensee to the Minister under section 21 of the Act is to contain the following information for the period specified in the notice from the Minister:

- (a) the number and species of animals kept by the licensee at the start of the period;
- (b) the number and species of animals transferred by the licensee during the period and the licence number of the persons to whom such animals were transferred;

- (c) the name and address of the persons who, during the period, acquired a bird from the licensee under clause 13;
- (d) the number and species of animals received by the licensee during the period and the licence number of the persons from whom such animals were received;
- (e) the number and species of animals kept by the licensee which were born (and which died) during the period.

(2) A licensee must not provide information in a return which the licensee knows is false or misleading in a material particular.

Maximum penalty: 10 penalty units.

**Prescribed address**

27. The prescribed address for the purpose of section 28 of the Act is:

The Director-General  
NSW Agriculture  
161 Kite Street  
Orange  
New South Wales 2800

**SCHEDULE 1—FORMS**

(Cl. 2 (2))

**Form 1**

(Cl. 25 (1))

**NON-INDIGENOUS ANIMALS ACT 1987**

*Notice of appeal under section 20*

To the Clerk of the Local Court

I ..... am the owner/occupier of [state name of premises in which animals to be kept] situated at .....

The Minister for Agriculture and Fisheries gave me notice on [state date] that the Minister had decided under Part 4 of the Act to:

- \* refuse to grant a licence/permit to [state nature of licence/permit sought]; or
- \* renew a licence/permit to [state nature of licence/permit]; or
- \* impose [state conditions/s] on a licence/permit to [state nature of licence/permit]; or
- \* cancel a licence/permit to [state nature of licence/permit].

Take notice that I desire to appeal from the decision of the Minister to the Local Court on the following grounds:

I seek the following orders or directions from the Court:

Date: .....

(Signature) .....

(Full postal address) .....

\* strike out the inappropriate option.

#### **EXPLANATORYNOTE**

The objects of this Regulation are as follows:

- (a) to distinguish subcategories of certain non-indigenous animals (proposed clause 6);
- (b) to prescribe the matters which the Minister must take into account in considering an application for a licence to keep animals under the Non-Indigenous Animals Act 1987 (proposed clause 7);
- (c) to exempt certain persons and premises from requirements under the Act:
  - to have a licence to keep, or a permit to import or move, certain non-indigenous animals (proposed clause 8 (1)–(3)); or
  - not to release or allow the escape of certain animals (proposed clause 8 (4));
- (d) to exempt certain institutions from the payment of fees for licences and permits under the Act (proposed clause 8 (5));
- (e) to exempt certain persons from the requirement to have a permit to import, move or transport non-indigenous animals (proposed clause 8 (6));
- (f) to specify:
  - the requirements for applications for the issue or renewal of licences and the issue of permits under the Act (proposed clauses 9 and 10); and
  - the fees for such applications (proposed clause 11); and
  - the periods during which initial licences and renewed licences are valid (proposed clause 12);
- (g) to provide for standards for the housing, fencing, caging and security of non-indigenous animals (proposed clauses 14–24);
- (h) to make provision in relation to appeals under the Act, licensee's returns and the service of notices (proposed clauses 25–27 and Schedule 1).

This Regulation is made under the Non-Indigenous Animals Act 1987, including the general regulation-making power (section 29) and sections 5 (1), 6 (3), 14 (1) and (3), 15 (2) (g), 16, 19 (1), 20 (1) and 28.