

# Exhibited Animals Protection Act 1986 No 123

[1986-123]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Responsible Minister

- Minister for Agriculture

For full details of Ministerial responsibilities, see the [Administrative Arrangements \(Minns Ministry—Administration of Acts\) Order 2023](#).

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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## Contents

<b>Long title</b>	5
<b>Part 1 Preliminary</b>	5
1 Name of Act	5
2 Commencement	5
3 Application of Act	5
4 Exemptions	5
5 Definitions	6
<b>Part 2 The Exhibited Animals Advisory Committee</b>	7
6 The advisory committee	7
7 Staff of the advisory committee	8
8 Functions of the advisory committee	9
9 Inspections	9
10 Recommendations and reports	9
11 Delegation	10
<b>Part 3 Licences, approvals and permits</b>	10
<b>Division 1 Licensing of animal display establishments</b>	10
12 Licence required for animal display establishment	10
13 Classes of establishments	10
14 Standards	10
15 Issue of licences	11
16 Particulars to be specified in licences	11

17 Authority conferred by licence.....	11
18 Approval of erection of animal display establishment .....	11
19 Alteration of licensed animal display establishment .....	12
20 Register .....	12
21 Certificate of registered particulars .....	12
<b>Division 2 Approvals for the exhibition of animals at circuses etc.....</b>	<b>13</b>
22 Persons to be authorised to exhibit animals .....	13
23 Issue of approvals.....	13
<b>Division 3 Permits for the exhibition of certain animals .....</b>	<b>13</b>
24 Certain animals may be displayed only with permit.....	13
25 Issue of permits .....	14
<b>Division 4 General .....</b>	<b>14</b>
26 Definition .....	14
27 Applications .....	14
28 Terms and conditions .....	15
29 Duration .....	16
30 Suspension and cancellation .....	16
30A Disqualification.....	17
31 Offences relating to licences, approvals and permits .....	18
31A Prohibition on employing persons convicted of, or charged with, certain offences .....	19
<b>Division 5 Administrative reviews by Civil and Administrative Tribunal ..</b>	<b>19</b>
32 Applications for administrative review by Civil and Administrative Tribunal.....	19
33 (Repealed) .....	20
<b>Part 4 Provisions relating to the exhibition of dolphins and whales .....</b>	<b>20</b>
34 Definitions .....	20
35 Issue of licences .....	20
36 Limitation on dolphins and whales that may be exhibited .....	20
37 Bonds .....	21
<b>Part 5 Inspectors .....</b>	<b>21</b>
38 Appointment of inspectors .....	21

39 Identification certificates .....	21
40 Powers of inspectors .....	22
41 Care of seized animals .....	23
42 Search warrant .....	24
43 Offences relating to inspectors .....	24
<b>Part 6 Supplementary</b> .....	25
44 False or misleading information .....	25
45 Disclosure of information .....	25
46 Proceedings for offences .....	26
46A Penalty notices .....	26
47 Offences by corporations .....	27
48 Recovery of charges etc .....	27
49 Evidentiary certificates .....	27
49A Delegation .....	27
50 Liability .....	27
51 Service of notices .....	28
52 Refund .....	28
53 Regulations .....	28
54 Relationship to other Acts etc .....	30
55 (Repealed) .....	30
<b>Schedule 1 Provisions relating to the members of the advisory committee</b> .....	30
<b>Schedule 2 Provisions relating to the procedure of the advisory committee</b> .....	33
<b>Schedule 3 Standards</b> .....	34
<b>Schedule 4 Relationship to other Acts etc</b> .....	34
<b>Schedule 5 Savings, transitional and other provisions</b> .....	35

# Exhibited Animals Protection Act 1986 No 123



New South Wales

An Act with respect to the exhibition of animals at marine or zoological parks, circuses and other places.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Exhibited Animals Protection Act 1986*.

### 2 Commencement

- (1) Sections 1 and 2 shall commence on the date of assent to this Act.
- (2) Except as provided by subsection (1), the several provisions of this Act shall commence on such day or days as may be appointed by the Governor and notified by proclamation published in the Gazette.

### 3 Application of Act

- (1) This Act binds the Crown.
- (2) Nothing in this Act affects the operation of the *Prevention of Cruelty to Animals Act 1979* or any regulation made under that Act.

### 4 Exemptions

- (1) The Governor may by regulation—
  - (a) exempt, to the extent prescribed, any specified person or premises or persons or premises of a specified class from the operation of this Act, and
  - (b) exempt, in prescribed circumstances, any specified person or premises or persons or premises of any specified class from any requirement made by or under this Act,either unconditionally or subject to conditions.
- (2) Where an exemption is given subject to conditions, the exemption does not have effect while any of the conditions is not being complied with.

- (3) Regulations made for the purposes of this section may provide that any failure to comply with a condition prescribed in relation to an exemption is an offence under the regulations.

## 5 Definitions

- (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

**advisory committee** means the committee constituted by this Act.

**animal** means a vertebrate animal, and includes a mammal, bird, reptile, amphibian and fish, but does not include a human being.

**animal display establishment** means premises used for the exhibition of animals and includes a zoological park, marine park and oceanarium.

**approval** means an approval issued under Part 3 and in force.

**board** means the Zoological Parks Board of New South Wales.

**Department** means Regional NSW.

**exhibit**, in relation to an animal, means the display, or the keeping for display, of the animal for educational, cultural, scientific, entertainment or other prescribed purposes, but does not include the display, or the keeping for display, of an animal solely—

- (a) in connection with the sale or intended sale of the animal,
- (b) for animal research, within the meaning of the [Animal Research Act 1985](#), or
- (c) in circumstances declared by the regulations not to constitute an exhibition of the animal for the purposes of this Act.

**inspector** means a person appointed or authorised under section 38.

**licence** means a licence issued under Part 3 and in force.

**licensed animal display establishment** means premises that are the subject of a licence.

**licensee** means the holder for the time being of a licence.

**member** means a member of the advisory committee.

**occupier**, in relation to premises—

- (a) includes a person in charge of the premises as a manager or lessee or otherwise,  
and

(b) where the premises are the subject of a licence, includes the licensee.

**permit** means a permit issued under Part 3 and in force.

**premises** includes any land or place (whether or not wholly or partly built upon or covered by water) and any part thereof.

**register** means the register referred to in section 20.

**regulation** means a regulation made under this Act.

**Secretary** means the Secretary of the Department.

**sell** includes—

- (a) auction or exchange,
- (b) offer, expose, supply or receive for sale,
- (c) send, forward or deliver for sale or on sale, and
- (d) have in possession for sale.

**species** includes order, class and description.

**zoological park** means—

- (a) zoological gardens,
- (b) aquariums, and
- (c) similar institutions,

in which animals are exhibited or displayed, or kept for display, for any prescribed purpose.

(2) In this Act—

- (a) a reference to a function includes a reference to a power, authority and duty, and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

## **Part 2 The Exhibited Animals Advisory Committee**

### **6 The advisory committee**

- (1) There is constituted by this Act an Exhibited Animals Advisory Committee.
- (2) The advisory committee—
  - (a) shall have and may exercise the functions conferred or imposed on it by or under

this or any other Act,

- (b) shall, for the purposes of any Act, be deemed to be a statutory body representing the Crown, and
- (c) shall, in the exercise of its functions (except in relation to the contents of a report or a recommendation made by it to the Minister), be subject to the control and direction of the Minister.

(3) The advisory committee shall consist of 6 members who shall be appointed by the Minister.

(4) Of the members—

- (a) one is to be a person nominated by the Minister,
- (b) one is to be a person selected by the Minister from a panel of persons nominated by the board,
- (c) one shall be a person nominated by the Minister administering the *National Parks and Wildlife Act 1974*,
- (d) one shall be a person nominated by the Minister administering the *Prevention of Cruelty to Animals Act 1979*,
- (e) one shall be a person selected by the Minister from persons nominated by prescribed animal welfare organisations, and
- (f) one shall be a person selected by the Minister from persons nominated by prescribed organisations representing exhibitors of animals.

(5) Where, but for this subsection, the Minister would be unable to appoint a member because of the failure of a person or body to nominate a person or panel of persons in accordance with any paragraph of subsection (4)—

- (a) the Minister may appoint any person the Minister considers qualified to hold office as that member, and
- (b) the person so appointed shall be a member and shall be deemed to have been appointed in accordance with that paragraph.

(6) Schedule 1 has effect with respect to the members.

(7) Schedule 2 has effect with respect to the procedure of the advisory committee.

## **7 Staff of the advisory committee**

(1) The advisory committee may—

- (a) with the approval of the Minister, and



(b) on such terms and conditions as may be approved by the Public Service Commissioner,

arrange for the use of the services of any staff or facilities of a Public Service agency or public authority.

- (2) The Secretary may, with the approval of the Minister, engage, under agreements in writing, persons having suitable qualifications and experience as consultants to the advisory committee.
- (3) The terms and conditions under which persons are engaged under this section shall be such as are from time to time determined by the Secretary with the approval of the Minister.

## **8 Functions of the advisory committee**

The advisory committee has the following functions—

- (a) to advise the Secretary so as to promote a co-ordinated approach in policy and administration between the Secretary and government departments administering legislation relating to the importation, control, care and welfare of animals,
- (b) to monitor the effectiveness of the scheme governing the exhibition of animals established under Part 3 and to recommend to the Secretary any changes which may appear to the advisory committee to be necessary for the efficient operation of that scheme,
- (c) to carry out any function which may be delegated to it by the Secretary.

## **9 Inspections**

- (1) The advisory committee may at any time request the Secretary to cause an inspection to be made of any licensed premises.
- (2) The advisory committee may, by instrument in writing, authorise a member to accompany an inspector during the conduct of an inspection and any member so authorised shall, during the conduct of the inspection, be deemed to be an inspector.

## **10 Recommendations and reports**

- (1) The advisory committee shall forward to the Secretary any recommendations and reports made by it in the exercise of the functions conferred or imposed on it by or under this Act.
- (2) The Secretary shall, at such times as the Minister may request, forward copies of any such recommendations or reports to the Minister.

## **11 Delegation**

- (1) The advisory committee may delegate to a person the exercise of any of its functions, other than this power of delegation.
- (2) A delegation under this section—
  - (a) shall be in writing,
  - (b) may be general or limited, and
  - (c) may be revoked, wholly or partly, by the advisory committee.
- (3) A delegate is, in the exercise of a function delegated under this section, subject to such conditions as are specified in the instrument of delegation.
- (4) A function delegated under this section, when exercised by the delegate, shall be deemed to have been exercised by the advisory committee.
- (5) A delegation under this section does not prevent the exercise of a function by the advisory committee.
- (6) A function purporting to have been exercised by a delegate under this section shall, until the contrary is proved, be deemed to have been duly exercised by a delegate under this section.

## **Part 3 Licences, approvals and permits**

### **Division 1 Licensing of animal display establishments**

#### **12 Licence required for animal display establishment**

- (1) Each occupier of premises used as an animal display establishment of a prescribed class is guilty of an offence and liable to a penalty not exceeding 20 penalty units or to imprisonment for not more than 6 months, or to both, if the use of the premises as an animal display establishment of that class is not authorised by a licence.
- (2) (Repealed)

#### **13 Classes of establishments**

For the purposes of this Act, there shall be such classes of animal display establishments as are prescribed by the regulations.

#### **14 Standards**

- (1) Standards may be prescribed for or with respect to—
  - (a) the facilities for the exhibition of animals at, and

(b) the conduct of,

animal display establishments of any class.

- (2) Without limiting the generality of subsection (1), a standard may be prescribed in relation to any matter referred to in Schedule 3.

## **15 Issue of licences**

- (1) A licence for an animal display establishment of a prescribed class shall not be issued unless the Secretary is satisfied that the animal display establishment conforms to and will be conducted in accordance with any standards prescribed under section 14 for animal display establishments of that class.
- (2) Different animal display establishments shall each be the subject of a separate application and a separate licence or separate licences.

## **16 Particulars to be specified in licences**

- (1) A licence for an animal display establishment shall describe the animal display establishment which is the subject of the licence.
- (2) A licence for an animal display establishment shall relate to an animal display establishment of the class specified in the licence.
- (3) Separate licences relating to animal display establishments of different classes may be held concurrently for the same premises.

## **17 Authority conferred by licence**

A licence for an animal display establishment authorises the use under this Act of the premises which are the subject of the licence as an animal display establishment of the class specified in the licence, but only when the premises are used in accordance with the terms and conditions to which the licence is subject.

## **18 Approval of erection of animal display establishment**

- (1) A person shall not erect an animal display establishment of a prescribed class or convert any premises into any such establishment unless the erection of the establishment or the conversion of the premises has been approved by the Secretary.
- Maximum penalty—20 penalty units or imprisonment for 6 months, or both.
- (2) A person may apply for the approval of the Secretary of the erection of, or conversion of premises into, a proposed animal display establishment of a prescribed class.
- (3) Approval for the erection of, or conversion of premises into, an animal display establishment of a prescribed class shall not be issued unless the Secretary is satisfied that the animal display establishment will, when completed, conform to and be

conducted in accordance with the standards prescribed in respect of that class of animal display establishment under section 14.

- (4) An appropriate licence shall be issued in respect of an animal display establishment completed in accordance with an approval granted under this section.
- (5) A person is not guilty of an offence under subsection (1) if the person satisfies the court that erection or conversion of the establishment to which the alleged offence relates was substantially commenced before the establishment became an animal display establishment of a prescribed class.

## **19 Alteration of licensed animal display establishment**

A licensee shall not cause or permit a licensed animal display establishment to be altered or extended unless—

- (a) approval of the Secretary is first obtained for the alteration or extension, and
- (b) the animal display establishment is altered or extended in accordance with that approval.

Maximum penalty—20 penalty units or imprisonment for 6 months, or both.

## **20 Register**

- (1) The Secretary shall cause a register to be kept as prescribed.
- (2) The following particulars shall be entered in the register—
  - (a) the address of each licensed animal display establishment,
  - (b) the full name and residential address of the licensee,
  - (c) the class of the animal display establishment,
  - (d) the terms and conditions to which the licence for the animal display establishment is subject, and
  - (e) such further particulars as may be prescribed.
- (3) The Secretary may, from time to time, cause the particulars for the time being entered in the register to be varied so as to ensure that the register remains a true and accurate record of the matter to which the particulars relate.

## **21 Certificate of registered particulars**

- (1) A person may apply to the Secretary for a copy of the registered particulars in respect of a licensed animal display establishment.
- (2) Where the Secretary receives an application under this section, the Secretary shall, on

payment of the prescribed fee, cause the applicant to be furnished with a certificate, in a form approved by the Secretary, containing a copy of the registered particulars in respect of the licensed animal display establishment to which the application relates.

## **Division 2 Approvals for the exhibition of animals at circuses etc**

### **22 Persons to be authorised to exhibit animals**

(1) In this section—

***person in charge***, in relation to an animal, includes—

- (a) the owner of the animal,
  - (b) a person who has the animal in his or her possession or custody, or under his or her care, control or supervision, and
  - (c) where a person referred to in paragraph (b) is bound to comply with the directions, in respect of the animal, of any servant or agent of the owner of the animal, that servant or agent, as the case may be.
- (2) A person in charge of an animal of any species (other than an animal of a species prescribed for the purposes of section 24) shall not exhibit the animal on premises occupied by temporary or movable structures used for the purposes of a circus, fair, fun-fair, amusement park or similar place of public entertainment, or at a preschool, school, TAFE establishment, university or other place of education, unless the person is the holder, or is supervised by the holder, of an approval authorising the holder to exhibit animals of that species.

Maximum penalty—20 penalty units or imprisonment for 6 months, or both.

### **23 Issue of approvals**

- (1) An approval authorising the exhibition of animals of a species shall not be issued unless the Secretary is satisfied that the person to whom it is issued has appropriate qualifications or experience, or both, to exhibit animals of that species.
- (2) An approval authorises the holder to exhibit, or supervise the exhibition of, animals of the species specified in the approval, but only when the animals are exhibited in accordance with the terms and conditions to which the approval is subject.

## **Division 3 Permits for the exhibition of certain animals**

### **24 Certain animals may be displayed only with permit**

A person shall not exhibit an animal of a prescribed species unless the person is the holder, or is supervised by the holder, of a permit authorising the holder to exhibit animals of that species.

Maximum penalty—20 penalty units or imprisonment for 6 months, or both.

## 25 Issue of permits

- (1) A permit authorising the exhibition of animals of a prescribed species shall not be issued unless the Secretary is satisfied that animals of that species will be exhibited in accordance with the standards prescribed in respect of animals of that species for the purposes of this section.
- (2) Without limiting the generality of subsection (1), a standard may be prescribed in relation to any matter referred to in Schedule 3.
- (3) A permit authorises the holder to exhibit, or supervise the exhibition of, an animal or animals of the species specified in the permit, but only when the animal is or animals are exhibited in accordance with the terms and conditions to which the permit is subject.

## Division 4 General

### 26 Definition

In this Division—

**authority** means a licence, an approval or a permit.

### 27 Applications

- (1) An application for the issue, renewal or variation of an authority shall be made to the Secretary in the prescribed manner and accompanied by the prescribed fee.
- (2) An application for the transfer of a licence shall be made to the Secretary in the prescribed manner and accompanied by the prescribed fee.
- (3) The application shall be considered by the Secretary who may grant or refuse the application.
- (3A) In considering whether to grant or refuse the application, the Secretary may consider the following—
  - (a) whether the applicant has been convicted or found guilty of an offence under this Act, the *Prevention of Cruelty to Animals Act 1979*, the *Animal Research Act 1985*, the *National Parks and Wildlife Act 1974*, an instrument made under this Act or any of those Acts or any law of another State, a Territory or the Commonwealth relating to the keeping or protection of animals,
  - (b) whether the applicant has previously failed to comply with any term or condition of an authority held by the applicant,
  - (c) whether the applicant has previously held an authority that has been suspended

or cancelled by the Secretary,

- (d) the capacity of the applicant to comply with this Act and any prescribed standards,
- (e) the capacity of the applicant to care for the animals,
- (e1) any biosecurity risk (within the meaning of the [Biosecurity Act 2015](#)) that arises from keeping the animals, and the capacity of the applicant to prevent, eliminate or minimise that risk,
- (f) whether the applicant has made a statement or furnished information in connection with the application that was, in the opinion of the Secretary, false or misleading in a material particular,
- (g) whether the applicant is a fit and proper person to hold the authority,
- (h) any other matter that the Secretary considers relevant.

(3B) The Secretary must refuse to grant an application for the issue of an authority to a person if—

- (a) the person is disqualified from holding an authority under this Act, or
- (b) the person is a corporation and any officer of the corporation is disqualified from holding an authority under this Act.

(4) Where the application has not been granted or refused—

- (a) within the period of 60 days after the making of the application, or
- (b) within such longer period as may be agreed between the Secretary and the applicant,

the application shall be deemed (for the purposes only of any review) to have been refused.

- (5) Where the application is granted, a licence, an approval or a permit, as the case may require, shall be issued by the Secretary.
- (6) Where the Secretary refuses to grant an authority, the Secretary shall, as soon as practicable after so refusing, cause notice of the refusal, and of the reasons for the refusal, to be served on the applicant for the authority.
- (7) In this section, an **officer** of a corporation means a director of the corporation or a person who is otherwise concerned in its management.

## 28 Terms and conditions

- (1) An authority is subject to—

- (a) the terms and conditions prescribed in respect of the authority,
  - (b) any terms and conditions specified in the authority when it is issued, and
  - (c) any terms and conditions imposed by the Secretary upon the authority in accordance with the regulations after it has been issued,
- as may be varied from time to time in accordance with the regulations.

- (2) Without limiting the generality of subsection (1) (b), an authority may specify the number of animals of a species that may be displayed at the premises the subject of the authority or by, or under the supervision of, the holder of the authority.
- (3) The terms and conditions of an authority shall continue to have effect during any suspension, and after the expiration or cancellation of the authority, if—
  - (a) the terms and conditions relate to the care to be provided for the animal or animals to which the authority relates, and
  - (b) the terms and conditions are expressed to have that effect.

## **29 Duration**

An authority shall remain in force for such period as is prescribed and may be renewed from time to time.

## **30 Suspension and cancellation**

- (1A) The Secretary must, by written notice served on the holder of an authority, cancel the authority if the holder is, after the commencement of this subsection, convicted of—
  - (a) an offence, in relation to an animal, against one of the following Acts—
    - (i) this Act,
    - (ii) the *Animal Research Act 1985*,
    - (iii) the *Biodiversity Conservation Act 2016*,
    - (iv) the *National Parks and Wildlife Act 1974*,
    - (v) the *Prevention of Cruelty to Animals Act 1979*, or
  - (b) an offence, in relation to an animal, against an instrument made under an Act specified in paragraph (a), or
  - (c) an offence against the *Crimes Act 1900*, section 79, 80, 530 or 531.
- (1) The Secretary may, by notice in writing served on the holder of an authority, suspend



the authority for a period of not more than 60 days specified in the notice or cancel the authority at any time—

- (a) if the holder commits an offence, other than an offence in relation to an animal, against this Act, the *Prevention of Cruelty to Animals Act 1979*, the *Animal Research Act 1985*, the *National Parks and Wildlife Act 1974* or an instrument made under this Act or any of those Acts,
  - (b) if the holder fails to comply with any term or condition of the authority or of any other authority, being a term or condition applicable to the holder,
  - (c) in the case of a licence, if the holder fails to ensure that the licensed animal display establishment—
    - (i) conforms to, and
    - (ii) is conducted in accordance with,the prescribed standards,
  - (d) if the authority was issued pursuant to a false or misleading document, statement or representation,
  - (e) if for any other reason the Secretary is of the opinion that the holder is not a fit and proper person to hold the authority,
  - (f) if the holder requests the suspension or cancellation of the authority, as the case may be, or
  - (g) if the authority was issued in error.
- (2) Where an authority has been suspended, the Secretary shall return it to the former holder on the expiration of the period of suspension.
- (3) Before suspending or cancelling a licence under subsection (1) (c) (i), the Secretary shall cause a notice to be served on the licensee specifying the works to be carried out to bring the premises to the prescribed standard and stating that unless the work is done within the time specified in the notice the licence will be suspended or cancelled.
- (4) A licence shall not be suspended or cancelled under subsection (1) (c) (i) until the expiration of the time so specified.

### **30A Disqualification**

- (1) If the Secretary cancels a person's authority under section 30(1A), the Secretary must, by written order served on the person, declare the person to be disqualified from holding an authority.

- (2) If the Secretary cancels a person's authority under section 30(1)(a)–(e), the Secretary may, by written order served on the person, declare the person to be disqualified from holding an authority.
- (3) A person who is declared to be disqualified from holding an authority is disqualified from holding an authority under this Act during the disqualification period specified in the order.
- (4) If the person who is the subject of the declaration is a corporation, any person who was an officer of the corporation at the time that the authority was cancelled is taken, unless the declaration otherwise provides, to also be disqualified from holding an authority under this Act during the disqualification period specified in the order.
- (5) An order may specify a separate disqualification period for officers of the corporation or for particular officers of the corporation, or may provide that no disqualification period applies to officers of the corporation or to particular officers of the corporation.
- (6) It is not necessary for the order to name individual officers of a corporation.
- (7) A disqualification period specified in an order must not exceed 5 years from the date on which the relevant authority is cancelled.
- (8) (Repealed)
- (9) In this section, an **officer** of a corporation means a director of the corporation or a person who is otherwise concerned in its management.

### **31 Offences relating to licences, approvals and permits**

- (1) A person shall not—
  - (a) by act or omission, contravene any of the terms or conditions of any authority issued under this Act or the regulations, or
  - (b) without reasonable excuse, fail to surrender upon the request of the Secretary or of an inspector an authority that has been suspended or cancelled under this Act or the regulations.

Maximum penalty—10 penalty units.

- (2) A person shall not—
  - (a) falsely advertise or claim to hold an authority issued under this Act or the regulations,
  - (b) alter in any material respect any such authority or use any such authority so altered,
  - (c) produce or sign any such authority knowing it to be false in any material

particular, or

(d) impersonate a person named in any such authority.

Maximum penalty (subsection (2)): 20 penalty units.

### **31A Prohibition on employing persons convicted of, or charged with, certain offences**

(1) The holder of an authority must not knowingly cause or permit a prescribed person to work with, or care for, an animal exhibited under the authority.

Maximum penalty—

(a) for an individual—400 penalty units or imprisonment for 1 year, or both, or

(b) otherwise—2,000 penalty units.

(2) In this section—

**prescribed person** means—

(a) a person who has been convicted of a relevant offence, or

(b) a person who is charged with a relevant offence until one of the following events occurs—

(i) the charge is heard and determined by a court,

(ii) the charge is withdrawn,

(iii) a decision is made not to take or continue proceedings against the person.

**relevant offence** means—

(a) an offence under this Act or the regulations in relation to an animal, or

(b) an offence under the [Crimes Act 1900](#), section 79, 80, 530 or 531, or

(c) an offence under the [Prevention of Cruelty to Animals Act 1979](#), or regulations made under that Act, in relation to an animal.

## **Division 5 Administrative reviews by Civil and Administrative Tribunal**

### **32 Applications for administrative review by Civil and Administrative Tribunal**

(1) A person may apply to the Civil and Administrative Tribunal for an administrative review under the [Administrative Decisions Review Act 1997](#) of any of the following decisions—

(a) a decision to refuse an application by the person for the issue, renewal, variation or transfer of an authority,

- (b) a decision to suspend or cancel an authority held by the person,
- (c) a decision to impose a term or condition on an authority held by the person or vary any such term or condition (other than a term or condition prescribed by the regulations),
- (d) a decision that results in the person being disqualified from holding an authority under this Act.

(2) If an application for an administrative review of a decision is made to the Tribunal under this section, the cancellation or expiry of the authority, the imposition or variation of the term or condition or the disqualification of the person (as the case may be) is stayed by lodgment of the application, pending its outcome. This subsection has effect despite the provisions of Division 2 of Part 3 of Chapter 3 of the [Administrative Decisions Review Act 1997](#).

(3) In this section, **authority** means a licence, an approval or a permit.

### 33 (Repealed)

## Part 4 Provisions relating to the exhibition of dolphins and whales

### 34 Definitions

In this Part—

**cetacea display establishment** means an animal display establishment used for the exhibition of captive dolphins or whales.

**dolphin** includes porpoise.

### 35 Issue of licences

The Secretary shall not issue—

- (a) an approval for the erection of, or for the conversion of premises into, a cetacea display establishment, or
  - (b) a licence for a cetacea display establishment—
    - (i) so that there will be more than one such licence in force at any time, or
    - (ii) if the establishment was not in existence before the commencement of this Part,
- without the approval of the Minister.

### 36 Limitation on dolphins and whales that may be exhibited

The Secretary may specify as a term of a licence that only those dolphins and whales kept in captivity, when this Part commences, at the premises the subject of the licence, and

their progeny born in captivity at those premises, may be exhibited at those premises.

### **37 Bonds**

- (1) The Secretary may, as a condition of the issue of a licence for a cetacea display establishment, require that an amount of money, not exceeding the prescribed amount, be deposited with the Secretary by the holder of the licence or that the holder enter into other prescribed arrangements securing the payment of money to the Secretary.
- (2) The Secretary may use money deposited with the Secretary by the holder of a licence for a cetacea display establishment or secured under other prescribed arrangements to pay any expense incurred by the Secretary in caring for, rehabilitating or returning to its natural environment any dolphin or whale—
  - (a) placed in the care of the Secretary by the holder of the licence, or
  - (b) cared for by the Secretary as a consequence of the failure of the holder of the licence to care for the dolphin or whale in accordance with this Act or the regulations or the terms and conditions of the licence.
- (3) Money deposited under this section as a condition of the issue of a licence and not liable to be applied in accordance with subsection (2) shall be refunded when the licence ceases to have effect.
- (4) (Repealed)

## **Part 5 Inspectors**

### **38 Appointment of inspectors**

- (1) The Secretary may appoint a Public Service employee to be an inspector for the purposes of this Act.
- (2) The Minister may authorise in writing any person to exercise the functions of an inspector, subject to such restrictions (if any) as are specified in the authority.
- (3) The Minister may amend or revoke an authority referred to in subsection (2).
- (4) An inspector shall have, and may exercise, the functions conferred or imposed on inspectors by or under this Act.

### **39 Identification certificates**

- (1) The Secretary shall cause each inspector to be issued with a certificate of identification.
- (2) A certificate of identification shall be in a form approved by the Secretary.

- (3) In exercising in or on any premises any power conferred by section 40, an inspector shall, if required to do so by a person apparently for the time being in charge of those premises, produce to that person the inspector's certificate of identification.

#### **40 Powers of inspectors**

- (1) For the purposes of this Act, an inspector may—
- (a) except as provided by subsection (2), enter any premises which are a licensed animal display establishment or any other place (including land and a building, and a place on or in a vehicle or vessel) where the inspector believes, on reasonable grounds, that a provision of this Act or the regulations has been or is being contravened,
  - (b) with respect to any such premises or place, make such inquiries, investigations or searches as are necessary to ascertain whether the provisions of this Act and the regulations are being complied with,
  - (c) request a person to produce for examination by the inspector any licence, approval or permit issued to the person under this Act or the regulations, or alleged by the person to have been so issued, and any books, papers or records required to be kept or made under this Act or the regulations by the person,
  - (d) examine any article produced pursuant to paragraph (c) and make copies of or take extracts from any such article,
  - (e) examine any equipment or materials used or kept for use in relation to the exhibition of an animal found at any such premises or place,
  - (f) examine any animal found at any such premises or at the place,
  - (g) seize or detain any animal in respect of which the inspector suspects, on reasonable grounds, that an offence against this Act or the regulations has been committed,
  - (h) remove any animals seized under this Act, and any eggs of such animals, to such place as the inspector thinks fit, or cause them to be so removed,
  - (i) seize any books, papers or records in the possession of the occupier of any such premises, and within that person's power to deliver up, relating to any such suspected offence,
  - (j) question any person in charge (within the meaning of section 22) of an animal found at any such premises or place and ask the person to answer any question put to the person in relation to the use of those premises or of that place,
  - (k) require a person referred to in paragraph (j) to state the person's full name and residential address to the inspector and (if the inspector suspects, on reasonable

grounds, that a name or address so stated is false) require the person to produce evidence of the correctness of the name or address so stated,

- (l) when accompanied by a member of the police force, stop, detain and search any vehicle or vessel which is being used or which the inspector believes, on reasonable grounds, is being used for the carriage of animals in contravention of this Act or the regulations or the terms or conditions of any licence, approval or permit issued under this Act or the regulations,
  - (m) by order in writing, direct a person who has failed to comply with this Act or the regulations or with the terms or conditions of a licence, approval or permit issued under this Act or the regulations to take, within such time as is stated, specified action to correct those matters in respect of which the non-compliance has occurred,
  - (n) transport animals seized under this section to a place approved by the Secretary and obtain veterinary treatment for those animals, and
  - (o) employ such assistance or force as is necessary in the exercise of the functions conferred or imposed on the inspector by or under this Act.
- (2) An inspector may not exercise the powers conferred by subsection (1) in relation to a dwelling except—
- (a) with the permission of the occupier of the dwelling, or
  - (b) under the authority conferred by a search warrant issued under section 42.
- (3) In exercising any power conferred by this section at any premises or place, an inspector shall, as far as practicable, avoid doing any act which is likely to impede the exhibition of animals being lawfully carried on at the premises or place.
- (4) A book, paper or record seized from premises or a place by an inspector under subsection (1) shall not be retained beyond the day that next succeeds the day of its seizure unless the occupier of the premises or place from which it was seized is provided with a copy of the book, paper or record certified by that inspector as being a true copy of the book, paper or record so seized.
- (5) A copy of a book, paper or record provided under subclause (4) is for all purposes of equal validity to the original.

#### **41 Care of seized animals**

- (1) Any animal seized under section 40 in connection with the commission of an offence may, with the approval of the Minister—
- (a) be sold or otherwise disposed of,

- (b) be condemned and destroyed,
  - (c) be placed in the care of the Secretary either indefinitely or for rehabilitation and return to its natural environment, or
  - (d) be returned to its natural environment.
- (2) Animals seized under section 40 shall be returned to the person from whom they were seized or any other person who appears to the Minister to be their owner if they are not sold or otherwise disposed of, destroyed, placed in care or returned to their natural environment before the expiration of the prescribed period.
- (3) No compensation is payable in respect of an animal seized or detained under section 40 or sold or otherwise disposed of, destroyed, placed in care or returned to its natural environment under this section.

#### **42 Search warrant**

- (1) In this section—

**authorised officer** has the same meaning as it has in the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#).

- (2) An inspector may apply to an authorised officer for the issue of a search warrant if the inspector has reasonable grounds for believing that a provision of this Act or the regulations has been or is being contravened in any dwelling.
- (3) An authorised officer to whom an application is made under subsection (2) may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an inspector named in the warrant, when accompanied by a member of the police force—
- (a) to enter the dwelling, and
  - (b) to search the dwelling for evidence of a contravention of this Act or the regulations.
- (4) Division 4 of Part 5 of the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#) applies to a search warrant issued under this section.

#### **43 Offences relating to inspectors**

- (1) A person shall not—
- (a) assault, obstruct, hinder, threaten, abuse, insult or intimidate an inspector, or a member authorised to accompany an inspector, in the exercise of the inspector's or member's functions under this Act,
  - (b) fail or refuse to comply with any direction given under this Act by an inspector,



- (c) without reasonable excuse, fail or refuse to answer any question authorised under this Act to be put by an inspector or give a false or misleading answer to any such question,
- (d) fail or refuse to render assistance or fail or refuse to furnish information required by or under this Act to be furnished or, in purporting so to furnish information, furnish information that is false or misleading in a material particular,
- (e) fail or refuse without reasonable excuse, proof of which shall lie upon the person—
  - (i) to produce for examination at the request of an inspector any licence, approval or permit issued to the person under this Act or the regulations, or
  - (ii) to produce for examination at the request of an inspector any book, paper or record required to be kept or made by the person by or under this Act,or fail or refuse to allow an inspector to make a copy of or take an extract from any such licence, approval, permit, book, paper or record so produced,
- (f) prevent, or attempt to prevent, a person from appearing before or being questioned by an inspector, or
- (g) impersonate an inspector.

Maximum penalty—20 penalty units.

- (2) A person is not guilty of an offence against this Act because of a failure or refusal referred to in subsection (1) unless it is established that the inspector concerned—
  - (a) identified himself or herself as an inspector to the person, and
  - (b) warned the person that the failure or refusal, as the case may be, is an offence.

## **Part 6 Supplementary**

### **44 False or misleading information**

A person shall not, in or in relation to any application under this Act or in purported compliance with any requirement under this Act, make any statement or furnish any information that is false or misleading in a material particular.

Maximum penalty—20 penalty units.

### **45 Disclosure of information**

A person shall not disclose any information obtained in connection with the administration or execution of this Act unless that disclosure is made—

- (a) with the consent of the person from whom the information was obtained,

- (b) in connection with the administration or execution of this Act,
- (c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings,
- (d) in accordance with a requirement imposed under the *Ombudsman Act 1974*, or
- (e) with other lawful excuse.

Maximum penalty—20 penalty units.

#### **46 Proceedings for offences**

- (1) Proceedings for an offence against this Act or the regulations shall be dealt with summarily before the Local Court.
- (2) Any such proceedings must be commenced not later than 2 years from when the offence was alleged to have been committed.

#### **46A Penalty notices**

- (1) An authorised officer may issue a penalty notice to a person if it appears to the officer that the person has committed a penalty notice offence.
- (2) A penalty notice offence is an offence against this Act or the regulations that is prescribed by the regulations as a penalty notice offence.
- (3) The *Fines Act 1996* applies to a penalty notice issued under this section.

**Note—**

The *Fines Act 1996* provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to any further proceedings for the alleged offence.

- (4) The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations (not exceeding the maximum amount of penalty that could be imposed for the offence by a court).
- (5) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.
- (6) In this section, **authorised officer** means—
  - (a) an inspector (other than a member who is deemed to be an inspector under section 9 (2)), or
  - (b) a person of a class prescribed by the regulations as a class of persons who may issue penalty notices under this section.

#### **47 Offences by corporations**

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or a regulation, each person who is a director of the corporation or who is concerned in the management of the corporation shall be deemed to have contravened the same provision if the person knowingly authorised or permitted the contravention.
- (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or been convicted under that provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

#### **48 Recovery of charges etc**

Any charge, fee or other money due to the Secretary under this Act or the regulations or the terms and conditions of a licence, an approval or a permit issued under this Act or the regulations may be recovered as a debt due to the Crown in a court of competent jurisdiction.

#### **49 Evidentiary certificates**

A certificate that is signed by a person authorised in writing by the Secretary for the purposes of this section and that certifies that on a specified date or during a specified period—

- (a) a specified person was or was not an inspector,
- (b) specified premises were or were not a licensed animal display establishment,
- (c) a specified person was or was not the holder of a licence, an approval or a permit issued under this Act or the regulations and specified or described in the certificate, or
- (d) the provisions of any such licence, approval or permit were or were not in specified terms,

is admissible in any proceedings under this Act and is evidence of the fact or facts so certified.

#### **49A Delegation**

The Secretary may delegate the exercise of any function of the Secretary under this Act (other than this power of delegation) to any person employed in the Department.

#### **50 Liability**

A person is not personally liable for anything done or omitted to be done by the person in good faith in the exercise of the functions conferred or imposed on the person by or under

this Act.

## **51 Service of notices**

A notice that the Secretary is required or permitted, by or under this Act, to cause to be served on a person may be served—

- (a) personally, or
- (b) by means of a letter addressed to the person at the person's address last known to the Secretary, or
- (c) by electronic transmission to an address or location specified by the person for the service of notices of that kind, or
- (d) by any other method authorised by the regulations for the service of notices of that kind.

## **52 Refund**

- (1) Where a licence, an approval or a permit is cancelled upon the request of the holder of the licence, approval or permit or as a result of its having been issued in error, a refund of the fee paid shall, upon application to the Secretary, be made to the former holder of the licence, approval or permit.
- (2) The amount of a refund made under subsection (1) shall be the same proportion of the fee paid as the proportion that the number of unexpired months for which the licence, approval or permit was issued bears to the total number of months for which it was issued.

## **53 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to—
  - (a) the qualifications and functions of inspectors,
  - (b) the procedures to be followed by the Secretary and advisory committee in relation to the investigation of applications made to the Secretary or referred to the advisory committee under this Act,
  - (c) the records to be kept for the purposes of this Act,
  - (d) the forms to be used under this Act or the regulations,
  - (e) the fees and other charges which may be imposed under this Act or the regulations,

- (f) the issue, duration, transfer, renewal, cancellation and suspension of licences, approvals and permits under this Act or the regulations,
  - (g) the terms and conditions of any such licence, approval or permit, and the variation of any such terms and conditions,
  - (h) the exhibition of animals and the care of animals for which the holders of any such licences, approvals or permits are responsible,
  - (i) (Repealed)
  - (j) the identification of animals at licensed animal display establishments, or for which holders of approvals or permits are responsible,
  - (k) the submission of itineraries and other returns with respect to circuses and other public entertainments involving the exhibition of animals,
  - (l) bonds and other arrangements for the purposes of section 37,
  - (m) without limiting the generality of paragraph (l), the deposit of, and payment of interest on, money deposited as a bond or paid under other arrangements for the purposes of section 37, and
  - (n) the rehabilitation, return to their natural environment or escape of animals.
- (2) A provision of a regulation may—
- (a) apply generally or be limited in its application by reference to specified exceptions or factors,
  - (b) apply differently according to different factors of a specified kind, or
  - (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,
- or may do any combination of those things.
- (3) A regulation may adopt wholly or partially or by reference any guideline or similar published document setting standards for the care of animals in captivity which is recommended or adopted by—
- (a) the Australian National Parks and Wildlife Service,
  - (b) the National Parks and Wildlife Service, or
  - (c) any similar body,
- relating to the matter with which the regulation deals.
- (4) A regulation may create an offence punishable by a penalty not exceeding 10 penalty

units or imprisonment for 3 months, or both.

- (5) A provision of a regulation which relates to the acquisition, disposal or removal of animals may extend the meaning of the word “animal” when used in any such regulation to include the eggs, sperm, embryos and other reproductive material of animals.

#### **54 Relationship to other Acts etc**

Schedule 4 has effect.

#### **55 (Repealed)**

### **Schedule 1 Provisions relating to the members of the advisory committee**

(Section 6 (6))

#### **1 (Repealed)**

#### **2 Chairperson of the advisory committee**

- (1) A member of the advisory committee appointed by the Secretary is to be Chairperson of the advisory committee.
- (2) The Chairperson may be referred to as the Chairman or Chairwoman, as the case requires.
- (3) A person who is the Chairperson shall be deemed to have vacated office as Chairperson if the person ceases to be a member.

#### **3 Term of office**

Subject to this Schedule, a member shall hold office for such period, not exceeding 3 years, as may be specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.

#### **4 Remuneration**

A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

#### **5 Filling of vacancy in office of member**

If the office of any member becomes vacant, a person shall be appointed to fill the vacancy.

#### **6 Casual vacancies**

- (1) A member shall be deemed to have vacated office if the member—

- (a) dies,
- (b) absents himself or herself from 4 consecutive meetings of the advisory committee of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for being absent from those meetings,
- (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit,
- (d) becomes a mentally incapacitated person,
- (e) is convicted in New South Wales of an offence which is punishable by imprisonment for 12 months or upwards or is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be an offence so punishable,
- (f) resigns the office by instrument in writing addressed to the Minister, or
- (g) (Repealed)
- (h) is removed from office by the Minister under subclause (2) or (3).

(2) The Minister may remove a member from office.

(3) Without affecting the generality of subclause (2), the Minister may remove a member from office if the member contravenes the provisions of clause 7.

## **7 Disclosure of pecuniary interests**

(1) A member who has a direct or indirect pecuniary interest—

- (a) in a matter that is being considered, or is about to be considered, at a meeting of the advisory committee, or
  - (b) in a thing being done or about to be done by the advisory committee,
- shall, as soon as practicable after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the advisory committee.

(2) A disclosure by a member at a meeting of the advisory committee that the member—

- (a) is a member, or is in the employment, of a specified company or other body,
- (b) is a partner, or is in the employment, of a specified person, or
- (c) has some other specified interest relating to a specified company or other body or a specified person,

shall be deemed to be a sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body or to that person which may arise after the date of the disclosure.

- (3) The advisory committee shall cause particulars of any disclosure made under subclause (1) or (2) to be recorded in a book kept for the purpose and that book shall be open at all reasonable hours to the inspection of any person.
- (4) After a member has, or is deemed to have, disclosed the nature of an interest in any matter or thing pursuant to subclause (1) or (2), the member shall not, unless the Minister otherwise determines—
  - (a) be present during any deliberation of the advisory committee, or take part in any decision of the advisory committee, with respect to that matter, or
  - (b) exercise any functions under this Act with respect to that thing,as the case requires.
- (5) Notwithstanding that a member contravenes the provisions of this clause, that contravention does not invalidate any decision of the advisory committee or the exercise of any function under this Act.
- (6) Nothing in this clause applies to or in respect of an interest of a member in a matter or thing which arises by reason only that the member—
  - (a) is associated with a licensed animal display establishment, or
  - (b) is entitled to a share of any profits of licensed animal display establishments,other than a licensed animal display establishment which is, or which belongs to a class of licensed animal display establishments which is, the subject of that matter or thing.
- (7) A reference in this clause to a meeting of the advisory committee includes a reference to a meeting of a committee of the advisory committee.

## **8 Effect of certain other Acts**

- (1) The [Government Sector Employment Act 2013](#) does not apply to or in respect of the appointment of a member and a member is not, as such a member, subject to that Act.
- (2) Where by or under any other Act provision is made requiring a person who is the holder of an office specified therein to devote the whole of his or her time to the duties of that office, or prohibiting the person from engaging in employment outside the duties of that office, that provision shall not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining



any remuneration payable to the person under this Act as such a member.

- (3) The office of a member shall, for the purposes of any Act, be deemed not to be an office or place of profit under the Crown.

## **Schedule 2 Provisions relating to the procedure of the advisory committee**

(Section 6 (7))

### **1 General procedure**

The procedure for the calling of meetings of the advisory committee and for the conduct of business at those meetings shall, subject to this Act, be as determined by the advisory committee.

### **2 Quorum**

The quorum for a meeting of the advisory committee is 4 members.

### **3 Presiding member**

- (1) The Chairperson (or, in the absence of the Chairperson, another member elected as chairperson for the meeting by the members present) shall preside at a meeting of the advisory committee.
- (2) The person presiding at any meeting of the advisory committee has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

### **4 Voting**

A decision supported by a majority of the votes cast at a meeting of the advisory committee at which a quorum is present shall be the decision of the advisory committee.

### **5 Minutes**

The advisory committee shall cause full and accurate minutes to be kept of the proceedings of each meeting of the advisory committee.

### **6 Authentication of documents**

Any document requiring authentication by the advisory committee is sufficiently authenticated if it is signed by the Chairperson or by any member who is authorised by the Chairperson in that behalf.

### **7 First meeting of the advisory committee**

The Minister shall call the first meeting of the advisory committee in such manner as the Minister thinks fit.

## Schedule 3 Standards

(Sections 14, 25)

- 1 Housing, fencing, caging and exercise facilities for animals.
- 2 Hygiene for the keeping and housing of animals.
- 3 Nutrition, general care and husbandry of animals.
- 4 Records to be kept in relation to the breeding, health, welfare, movement, acquisition, death and disposal of animals.
- 5 Destruction of animals and disposal of carcasses.
- 6 Educational and scientific requirements for animal exhibits.
- 7 Public safety.

## Schedule 4 Relationship to other Acts etc

(Section 54)

### 1 Effect of other provisions relating to exhibition of animals

Except as provided by clause 2, where by or under any other Act any provision is made relating to the exhibition of animals, the provision so made shall be observed in addition to the provisions of this Act and the regulations made under this Act, but no person is, by virtue of this clause, liable to be punished twice for the same offence.

### 2 Effect of licences, approvals, permits etc

The holder of a licence, an approval or a permit issued under this Act or the regulations is not guilty of an offence under—

(a) section 107 of the [National Parks and Wildlife Act 1974](#), or

(b) any prescribed provision of an Act or an instrument made under an Act,

in exhibiting an animal under the authority conferred by the licence, approval or permit.

### 3 Inconsistent provisions

Where by or under any other Act (other than the [Prevention of Cruelty to Animals Act 1979](#) or the [Biosecurity Act 2015](#)) any provision is made relating to the exhibition of animals, being a provision that is inconsistent with this Act or a regulation made under this Act, the provision of this Act or the regulation shall prevail.

## **Schedule 5 Savings, transitional and other provisions**

### **Part 1 Preliminary**

#### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts—

*Animal Welfare Legislation Amendment Act 2009*

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as—
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

### **Part 2 Provision consequent on enactment of *Animal Welfare Legislation Amendment Act 2009***

#### **2 Appeals and reviews**

Division 5 of Part 3, as substituted by the *Animal Welfare Legislation Amendment Act 2009*, applies to decisions made on or after the substitution of that Division. Division 5 of Part 3, as in force immediately before that substitution, continues to apply to decisions made before that substitution.