

Exhibited Animals Protection Instrument of Delegation 2020

under the

Exhibited Animals Protection Act 1986

I, GARY BARNES, Secretary of Regional NSW, in pursuance of section 49A of the *Exhibited Animals Protection Act 1986*, make the following Instrument of Delegation.

Dated this 21 day of August 2020



GARY BARNES,

Secretary

Regional NSW

Explanatory note

This Instrument is made under section 49A of the *Exhibited Animals Protection Act 1986*. The object of this Instrument is to delegate functions conferred or imposed on the Secretary by or under the *Exhibited Animals Protection Act 1986*.

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1 Name

This Instrument is the Exhibited Animals Protection Instrument of Delegation 2020.

2 Commencement

This Instrument commences on the day on which it is signed.

3 Interpretation

(1) In this Instrument:

Administrative and Clerical Officer Grade 9 or above means a person employed by the Department as an Administrative and Clerical Officer at Grade 9 or above under the Crown Employees (Administrative and Clerical Officers - Salaries) Award 2007 in the Crown Employees Award, and whose responsibilities include supporting the Act or any instruments made under the Act by the Department.

Crown Employees Award means the Crown Employees (Public Sector – Salaries 2019) Award approved by the NSW Industrial Relations Commission, as amended, consolidated or replaced from time to time.

Food Safety Officer Grade 5 or above means a person employed by the Department as a Food Safety Officer at Grade 5 or above level under the Crown Employees (Department of Industry, Skills and Regional Development) Food Safety Officers Award in the Crown Employees Award, and whose responsibilities include supporting the Act or any instruments made under the Act by the Department.

function includes a power, authority or duty, and ***exercise*** a function includes perform a duty.

Professional Officer Grade 6 or above means a person employed by the Department at Grade 6 or above level under the Crown Employees (Department of Industry, Skills and Regional Development) Professional Officers Award in the Crown Employees Award, and whose responsibilities include supporting the Act or any instruments made under the Act by the Department.

Senior Executive Band 1 means a senior executive employed by the Department in Band 1 under the *Government Sector Employment (Senior Executive Bands) Determination 2014* or in any equivalent band in a determination made by the Minister administering the *Government Sector Employment Act 2013* under section 35 of that Act, and whose responsibilities include supporting the Act or any instruments made under the Act by the Department.

Senior Executive Band 2 means a senior executive employed by the Department in Band 2 under the *Government Sector Employment (Senior Executive Bands) Determination 2014* or in any equivalent band in a determination made by the Minister administering the *Government Sector Employment Act 2013* under section 35 of that Act, and whose responsibilities include supporting the Act or any instruments made under the Act by the Department.

Senior Executive Band 3 means a senior executive employed in the Department in Band 3 under the *Government Sector Employment (Senior Executive Bands) Determination 2014* or in any equivalent band in a determination made by the Minister administering the *Government Sector Employment Act 2013* under section 35 of that Act, and whose responsibilities include supporting the Act or any instruments made under the Act by the Department.

the Act means the *Exhibited Animals Protection Act 1986*.

the Department means the Department of Primary Industries within Regional NSW.

the Regulation means the *Exhibited Animals Protection Regulation 2010*.

the Standards means any Standard prescribed in clause 8 of the Regulation.

- (2) The summary of a function delegated in Column 2 of Schedules 2, 3 and 4 is only for general explanation and does not limit the delegation of a function under the provisions identified in Column 1 of those Schedules except to the extent that it is clearly identified as a limitation pursuant to clause 4(3).

4 Delegation of functions

- (1) The functions conferred or imposed on the Secretary under the Act in Column 1 of Schedule 2, and under the Regulation in Column 1 of Schedule 3 are delegated to any person assigned to the delegate category specified in Column 3 of Schedules 2 and 3 respectively.
- (2) All of the functions of the Secretary specified in the Standards are delegated to any person assigned to the delegate category specified in Column 2 of Schedule 4.
- (3) Delegate categories are defined in Schedule 1 by the letter A to D. Each delegate category specified in Column 1 of Schedule 1 has the meaning specified adjacent to that letter in Column 2 of the table.
- (4) Any limitation on a delegation is specified in Column 4 (if any) of Schedules 2, 3 and 4.
- (5) The person assigned to a delegate band or grade specified in Column 2 of Schedule 1 includes any person who is for the time being acting in that band or at that grade.

5 Revocation of Exhibited Animals Protection Instrument of Delegation (No 2) 2018

Pursuant to section 49A of the Act, the Exhibited Animals Protection Instrument of Delegation (No 2) 2018 published in the NSW Government Gazette No. 119 of (November 2018 at pages 8468 to 8476 is revoked, as is any instrument of delegation revived as a result of this revocation.

Schedule 1 – Delegate categories

Column 1 Delegate Category	Column 2 Delegate Band or Grade
A	A Senior Executive Band 3.
B	A Senior Executive Band 3. A Senior Executive Band 2.
C	A Senior Executive Band 3. A Senior Executive Band 2. A Senior Executive Band 1.
D	A Senior Executive Band 3. A Senior Executive Band 2. A Senior Executive Band 1. An Administrative and Clerical Officer Grade 9 or above. A Professional Officer Grade 6 or above. A Food Safety Officer Grade 5 or above.

Schedule 2 – Exhibited Animals Protection Act 1986

Column 1 Section	Column 2 Summary of functions delegated	Column 3 Delegate category	Column 4 Limitation (if any)
Part 2, The Exhibited Animals Advisory Committee			
7	Enter into agreements to engage consultants to the advisory committee and determine terms and conditions of the agreement. Note: The exercise of this function requires prior approval by the Minister.	B	
8(c)	Delegate functions to the advisory committee.	B	
9	Cause an inspection to be made of any licensed premises.	C	
10	Forward any recommendations and reports made by the advisory committee to the Minister.	C	
Part 3, Licences, approvals and permits			
15	Issue licence for an animal display establishment.	D	Delegation to issue license for a cetacean display establishment may only be exercised by a person in Category C.
18	Approve erection or conversion of an animal display establishment and issue an appropriate licence.	D	
19	Approve alteration or extension of a licenced animal display establishment.	D	
20	Cause a register of animal display establishments to be kept and maintained.	D	

21	Cause a certificate of registered particulars of a licensed animal display establishment to be provided to an applicant and approve the form of the certificate.	D	
23	Approve the exhibition of an animal.	D	
25	Issue permit authorising the exhibition of animals.	D	
27	Determine an application for the issue, renewal or variation of an authority and determine an application for transfer of a licence. Note: This includes any decision of the Secretary pursuant to clause 10(4) of the Regulation.	D	
28	Impose terms or conditions in an authority.	D	
30	Suspend or cancel an authority, and return an authority after the expiration of the period of suspension.	C	
30A	Declare a person to be disqualified from holding an authority.	C	
31	Request the surrender of an authority that has been suspended or cancelled.	D	
Part 4, Provisions relating to the exhibition of dolphins and whales			
35	Issue an approval for erection of, and licence for a cetacean display establishment. Note: The exercise of this function requires prior approval by the Minister.	B	
36	Specify as a term of a licence as a limitation on dolphins and whales that may be exhibited as a term of	C	

	a licence.		
37	<p>Require the holder of the license for a cetacean display establishment to deposit money.</p> <p>Use such deposited money in caring, rehabilitating or returning a dolphin or whale to its natural environment</p> <p>Note: This delegation does not apply to the Secretary's function in caring for, rehabilitating or returning a dolphin or whale to its natural environment.</p>	C	
Part 5, Inspectors			
38	Appoint a public service employee to be an inspector.	C	
39	Cause inspectors to be issued with a certificate of identification and approve the form of the certificate.	C	
40(1)(n)	Approve the place to which a seized animal is transported.	D	
Part 6, Supplementary			
49	Authorise a person to issue evidentiary certificates.	C	
Schedule 1 Provisions relating to the members of the advisory committee			
2(1)	Appoint chair of EAAC	A	

Schedule 3 – Exhibited Animal Protection Regulation 2010

Column 1 Clause	Column 2 Summary of functions delegated	Column 3 Delegate category	Column 4 Limitation (if any)
Part 2, Animal display establishments			
4	Form a view as to whether an animal is in a wild state, and it would be unreasonable to require the use of the establishment to be licensed	C	
8	Vary standards otherwise applicable in relation to the establishment or exhibition of an animal.	C	
Part 3, Authorities			
10(1) and (2)	Approve form for the purposes of an application for issue, renewal or variation of authority or transfer of licence. Notify a holder of an authority that renewal has been refused.	C	
10(4)	Approve a course of study.	D	
13	Approve the standard to which authority holder is to educate the public on conservation of animals.	C	
15	Form an opinion on matters relating to the breeding of animals to which an authority relates.	D	
16	Approve amount of insurance cover the holder of an authority is to maintain.	C	
17	Approve and publishing of	C	

	standards for exhibiting circus animals.		
18	Give notice of consideration of imposing terms and conditions on an authority, and vary or revoke a term or condition of an authority.	D	
Part 4, Offences			
24	Form the opinion that an exhibited animal is caged or otherwise housed in conditions that threaten human safety or are unsuitable for the animal and direct the exhibitor of that animal. Approve housing for the animal.	D	
31	Consent to acquisition or sale of an animal of a species listed in Schedule 2.	D	
32	Consent to keep an exhibited animal outside its fixed establishment, remove an exhibited animal and related permissions and approval of form for such applications.	D	
33	Exempt the holder of an authority from requirements concerning acquisition, disposal and removal of animals.	C	
35(2)	Approve the form and location of animal records which the holder of an authority must keep.	C	
35(5)	Approve the manner for making entries and deleting erroneous entries in electronic animal records.	D	
36	Approve the manner in which an exhibitor of animals is to	C	

	keep specified records.		
37	Direct an exhibitor of animals to have species of animals identified and nominate a person to do this.	D	
38	Exempt the holder of an authority or an exhibitor from an obligation to keep records.	C	
Part 5, Miscellaneous			
41	Dealing with bonds as a condition of cetacea display licence.	B	

Schedule 4 – Standards

Column 1 Functions delegated	Column 2 Delegate category	Column 3 Limitation (if any)
All.	D	Delegation for cl 41(7) of the <i>General Standards for Exhibiting Animals in New South Wales</i> , may only be exercised by a person in Category C.