



REF: 14/R
ENQUIRIES: Robert Shaw

To: **Ms M R Semenya**

Chairperson of the Portfolio Committee on Agriculture, Forestry and Fisheries

Attention: **Ms A Kakaza**

Per Email: akakaza@parliament.gov.za

Cc: msemenya@parliament.gov.za

Comments on the Performing Animals Protection Amendment Bill [B9—2015]

Dear Ms Semenya

Please find herewith the Western Cape Government's comments on the Performing Animals Protection Amendment Bill [B9—2015].

Yours faithfully

ADV BRENT GERBER

DIRECTOR-GENERAL

PROVINCIAL GOVERNMENT: WESTERN CAPE

DATE: 8/5/2015

Comments on the Performing Animals Protection Amendment Bill [B9—2015]

("the Amendment Bill")

**Submitted by: The Director-General, Department of the Premier, Western
Cape Government**

COMMENTS:

Draft provision	Comment	Suggestion
<u>PART A — General</u>		
Legislation outdated	<p>It is noted that the Performing Animals Protection Act, 1935 (Act 24 of 1935) ("the Principal Act") has not been amended since 1991 and the Animals Protection Act, 1962 (Act 71 of 1962) has not been amended since 1997.</p> <p>Further, regulations (under the Principal Act) were published in <u>1993</u> (published under GN R1672 in <i>Government Gazette</i> 15102 of 1 September 1993) ("the Performing Animals Regulations").</p> <p>It is, therefore, clear that the legislation which relates to the protection of animals is outdated and requires serious amendment in order to bring them in line with, amongst others, international trends relating to the protection of animals. In this regard, it is noted that there has been much debate in the media about whether it is ethical to use animals for entertainment purposes. The use of animals in films and circuses has been widely condemned internationally.¹ It is noted that several countries have passed, or are contemplating</p>	<p>The legislation relating to the protection of animals must be updated, in consultation with relevant stakeholders and the public. The pending Animal Welfare Bill is thus eagerly awaited.</p> <p>Further, it may be prudent to have regulations or standards which regulate specific industries and categories of animals, such as animals which are used for work purposes (e.g. sheep dogs).</p>

¹ See, for example <http://www.peta.org/features/10-reasons-attend-circus/>;
https://en.wikipedia.org/wiki/Cruelty_to_animals;
https://en.wikipedia.org/wiki/Animal_Defenders_International and
<http://www.animalcircuses.com/>.

	<p>passing, laws which ban the use of wild or other animals in circuses.²</p> <p>It is noted that the Memorandum on the Objects of the Performing Animals Protection Amendment Bill, 2015 ("the Memorandum") states that "[t]he Department of Agriculture, Forestry and Fisheries...was in the process of consolidating the [Principal Act] and the Animals Protection Act, 1962 (Act No. 71 of 1962), into one Animal Welfare Bill".³ It is unclear when this process will be finalised.</p>		
<p>Application of the Principal Act (and the Amendment Bill) to certain matters</p>	<p>Animals used in international acts</p>	<p>It is unclear to what extent the Principal Act (and hence the Amendment Bill) regulates the use of animals in international circuses (or other international acts) that perform in South Africa and animals that have been trained in other countries and are used in exhibitions or for safeguarding in South Africa. It is also unclear to what extent the Principal Act (and the Amendment Bill) regulates the importation and transportation of these animals. Is it envisaged that these matters will be dealt with in regulations made under sections 7(c) or 7(d) of the Principal Act?</p>	<p>These issues should be clarified.</p>

² See, for example, <http://www.mapsofworld.com/poll/should-animal-circuses-be-banned-infographic-text.html>.

³ See paragraph 1.2 of the Memorandum.

	Working dogs	It is unclear to what extent the Principal Act (and hence the Amendment Bill) applies to the use of working dogs such as police dogs, prison dogs, cattle or sheep dogs, guide dogs for visually impaired persons, or dogs that assist persons who are deaf or who suffer from epilepsy.	
Amendment Bill and Draft Regulations	<p>It is unclear whether the Draft Regulations Related to the Animals Protection Amendment Act (published in Notice 285 in <i>Government Gazette</i> 38632 of 2 April 2015) ("the Draft Regulations") will replace the Performing Animals Regulations.</p> <p>It is important that there is consistency between the Amendment Bill and all relevant regulations that are made under the Principal Act (whether these regulations are the Draft Regulations or the Performing Animals Regulations) and that duplications are avoided.</p> <p>It is noted that the Draft Regulations contain matters which should be dealt with in the Amendment Bill or which are already dealt with in the Principal Act). See in this regard the attached comments on the Draft Regulations submitted by the Western Cape Government to the Department of Agriculture, Forestry and Fisheries on 30 April 2015 (Annexure A).⁴</p>	<p>There should be consistency between the Amendment Bill and the regulations made in terms of the Principal Act (whether these regulations are the Draft Regulations or the Performing Animals Regulations).</p> <p>Further, duplications should be avoided and matters which should rather be dealt with in the Principal Act, as opposed to in the relevant regulations, should be inserted into the Amendment Bill and, where applicable, they should be deleted from the relevant regulations.</p>	
Consequential	Consequential amendments that need to be	Attend to all consequential	

⁴ See, for example, the comments on page 4 (definitions of "the Act" and "Minister"), pages 5 and 6 (definitions of "applicant" and "application"), page 7 (draft regulation 2(1)), pages 8 to 10 (draft regulations 2(3), 3(1), 3(2) and 3(3)), page 11 (draft regulations 4(1) and 4(2)), page 13 (draft regulation 6(1)) and pages 14 and 15 (draft regulation 6(1)(b)).

<p>amendments</p>	<p>made as a result of the proposed amendments to the Principal Act should be attended to (for example, those arising as a result of the proposed repeal of sections 2 and 3 of the Principal Act).</p> <p>If these amendments are not made, there may be anomalies in the Principal Act. The Performing Animals Regulations would also need to be amended if they are not replaced by the Draft Regulations (see, for example, regulation 2 of the Performing Animals Regulations and Schedule 2 thereto).</p> <p>For example, section 3 of the Principal Act requires licence holders to hold a certificate to exhibit or train for exhibition any animal or use any dog for safeguarding.⁵ These certificates are issued by magistrates⁶ and specify the form of training, exhibition and use of the animal or animals in respect of which it is issued.⁷ These details may be amended by a magistrate upon application by the holder of the certificate.⁸</p> <p>Sections 7, 8 and 11 of the Principal Act refer to these certificates. In this regard, section 11 of the Principal Act defines the term "certificate". Section 7 of the Principal Act states that the Minister may make regulations on a number of matters, including "<i>the form of certificate which shall be issued...and the form of amendments which may be made on such certificates</i>",⁹ "<i>the information to be supplied for the issuing of a certificate...</i>",¹⁰ "<i>the method and form of confinement and accommodation of any animal class, species or variety of animals in</i></p>	<p>amendments that need to be made as a result of the proposed amendments to the Principal Act.</p> <p>Further, amendments may need to be made to the provisions of the Animals Protection Act, 1962, during the process of consolidating said Act and the Principal Act into the Animal Welfare Bill. See, for example, section 2(1)(l) of said Act, which refers to permits which are issued by magistrates.</p>
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⁵ See section 3(1) of the Principal Act.

⁶ See section 3(2) of the Principal Act.

⁷ See section 3(3) of the Principal Act.

⁸ See section 3(4) of the Principal Act.

⁹ See section 7(b)(i) of the Principal Act.

¹⁰ See section 7(b)(ii) of the Principal Act.

	<p>respect of which a certificate has been issued, whether travelling, or being transported or stationary" ¹¹ and "any other reasonable requirement which may be necessary to prevent cruelty or suffering in the exhibition, training, maintenance, use or travelling of animals in respect of which a certificate has been granted".¹² Section 8(1) of the Principal Act states that a person who contravenes, amongst others, "...any condition of a...certificate", is guilty of an offence.</p> <p>In the circumstances, it is clear that, should section 3 of the Principal Act be repealed without amending the above sections (for example, by deleting references to the certificates), there would be an anomaly in the Principal Act. In this regard, the Principal Act would no longer provide for the issuing of certificates (it is noted that the Amendment Bill does not mention certificates), but it would continue to empower the Minister to make regulations in respect of the certificates. It would, further, criminalise the failure to comply with the conditions of a certificate. This would be absurd.</p>	
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PART B — Comments on specific provisions

Long title

Long title	N/A	The phrase "for the issuance of licences" should be replaced with "for the issuing of licences".
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¹¹ See section 7(c) of the Principal Act.

¹² See section 7(d) of the Principal Act.

Clause 3 of the Amendment Bill (insertions of sections 3A to 3L in the Principal Act)

<p>General: Application of clause to renewal applications and applications for amendments to licences</p>	<p>It is unclear whether the application process contemplated in clause 3 of the Amendment Bill applies to renewal applications and applications for amendments to licences.</p>	<p>This issue should be clarified in the Amendment Bill.</p>
<p>Proposed section 3A</p>	<p>It seems unlikely that one person (the National Licensing Officer ("the NLO")) would be able to decide on all licence applications from across the country. It would also be impractical to require the NLO to inspect premises (in terms of the proposed section 3H(3)) that are located in different provinces.</p> <p>In the circumstances, to centralise the application process at national level would be impractical and inefficient. Applicants should be able to apply for licences in the provinces in which they are located. See also the discussion in relation to the proposed section 3I.</p> <p>Further, it is unclear how the Minister will "<i>designate</i>" the NLO (i.e. will the Minister "<i>designate</i>" the NLO by way of notice in the <i>Government Gazette</i> or in another way?). This should be clarified.</p>	<p>The Amendment Bill should be revised to make provision for applications to be considered at provincial offices.</p>
<p>Proposed section 3B</p>	<p>Only a veterinarian is sufficiently trained in all aspects of animal behaviour (ethology), animal welfare and animal health to be able to carry out the tasks of a NLO. A veterinarian is also trained to deal with a broad spectrum of species (e.g. dogs, horses, production animals, wildlife, birds, fish, aquatic animals, etc). Animal scientists are not trained in many of the specific fields or have advanced knowledge of all of</p>	<p>The proposed section should be revised to state that the NLO must be a veterinarian. The reference to an animal scientist should, thus, be deleted.</p>

	the animal species which would be required of a NLO. Thus, the NLO should be a veterinarian.	
Proposed section 3C(2)(c)	The proposed section 3C(1) does not mention the suspension of a right or privilege. Therefore, it is unclear why the proposed section 3C(2)(c) refers to the suspension of a right or privilege.	The drafter should reconsider the wording of this proposed section and the proposed section 3C(1).
Proposed section 3C(3)	<p>In terms of this proposed section, the NLO "<i>must perform such other functions as may be <u>assigned</u> to him or her in terms of this Act</i>" (emphasis added).</p> <p>It is unclear whether the use of the word "assigned" was deliberate or not. It is noted that the Principal Act and the Performing Animals Regulations do not contain provisions which relate to assignment.</p>	<p>The Amendment Bill should clarify whether this proposed section envisages an assignment (which has a particular meaning in law), a delegation (which also has a particular meaning in law, which differs from the meaning of assignment), or simply an ordinary allocation of functions to the NLO.</p> <p>The Amendment Bill should also clarify who will assign, delegate or allocate the functions to the NLO and the manner in which the relevant action will take place.</p>
Proposed sections 3D and 3E: General	These provisions are problematic as they do not give any detail regarding the qualifications that the "expert or other person" should have or the criteria that will be used when the NLO decides who to delegate a function to. The NLO thus has a very wide discretion. There should be some guidance as to how the NLO should exercise this discretion.	It is recommended that detail be given regarding the qualifications that the "expert or other person" should have and the criteria that the NLO should use when deciding who to delegate a function to.
Proposed section 3F: Heading	N/A	It is recommended that the words "by National Licensing Officer" be deleted (as they are unnecessary and it is preferable to keep headings

		as short as possible).
Proposed section 3F(1)	N/A	It is recommended that the word "any", which is in the first line of the clause, be replaced with the indefinite article "a" (i.e. "a licence", as opposed to "any licence").
Proposed section 3F(1)(b)	It is important that animals are treated humanely. Thus, the training methods and exhibition practices should also be assessed to ensure that they are safe and will not cause harm to the animal.	<p>There should be a link between this proposed section and the proposed section 3H(3). Thus, the proposed section 3F(1)(b) should also refer to the suitability of the premises, accommodation, equipment and facilities for their intended purpose.</p> <p>Further, training methods and exhibition practices must be assessed to ensure that they are safe and not harmful to animals.</p> <p>Further, it is recommended that any relevant Society for the Prevention of Cruelty to Animals ("SPCA") (or similar organisation/s) should inspect the premises, accommodation, equipment, facilities, the conditions in which animals are or will be kept, consider the training methods and exhibition practices and make a recommendation to the NLO as to whether a licence should be granted or not.</p>

<p>Proposed section General</p>	<p>3H: It is noted that regulation 2 of the Performing Animals Regulations also sets out the process that applies to applications for the granting or renewal of a licence. However, that provision is not in line with the judgment of the Constitutional Court in <i>National Society for the Prevention of Cruelty to Animals v Minister of Agriculture, Forestry and Fisheries and Others</i> (CCT 120/12) [2013] ZACC 26; 2013 (5) SA 571 (CC); 2013 (10) BCLR 1159 (CC) (11 July 2013) ("the NSPCA case").¹³</p> <p>Again, it is unclear whether the Draft Regulations will replace the Performing Animals Regulations or not. That having been said, care should be taken to ensure that all consequential amendments arising from the proposed amendments to the Principal Act are attended to (including those that were proposed in order to comply with the judgment of the Constitutional Court in the NSPCA case).</p>	<p>There should be consistency between the Amendment Bill and the relevant regulations with regard to the application process that must be followed and duplications should be avoided.</p> <p>Further, it is recommended that the Amendment Bill be revised to make provision for the public and relevant stakeholders to be afforded the opportunity to comment on a licence application, an application for the renewal of a licence and an application for the amendment of a licence. The Amendment Bill should stipulate the manner in which the public and relevant stakeholders will be informed of the application (alternatively, the Amendment Bill should give the Minister the power to make regulations on this matter). See, for example, the public participation processes contemplated in the Western Cape Liquor Act, 2008 (Act 4 of 2008) and in the Environmental Impact Assessment Regulations, 2014 (published under GN R982 in <i>Government Gazette</i> 38282 of 4 December 2014).</p>

¹³ The judgment in the NSPCA case should be read with the judgment of the North Gauteng High Court in *National Society for the Prevention of Cruelty to Animals v Minister of Agriculture, Forestry and Fisheries and Others* (44001/2012) [2012] ZAGPPHC 329 (15 November 2012).

<p>Proposed section 3H(1)</p>	<p>N/A</p>	<p>The clause should begin with the indefinite article "A" instead of the word "Any".</p> <p>Further, the words "for a licence" should be inserted after the words "<i>must apply</i>".</p> <p>Further, the comma that appears after the words "<i>must apply</i>" should be deleted.</p>
<p>Proposed section 3H(2)(a)</p>	<p>The term "<i>use for safeguarding</i>" is very confusing and problematic. It is noted that this term is defined in the Principal Act; however, the definition is confusing in that it is not clear which persons or organisations would have to obtain licences.</p>	<p>The Amendment Bill should clarify that not every person who owns a dog and who uses it for protection would need to obtain a licence.</p>
<p>Proposed section 3H(3)</p>	<p>N/A</p>	<p>Again, it is recommended that any relevant SPCA (or similar organisation/s) should inspect the premises, accommodation, equipment, facilities, the conditions in which animals are or will be kept, consider the training methods and exhibition practices and make a recommendation to the NLO as to whether a licence should be granted or not.</p> <p>Further, the proposed section 3H(3) should set out the consequences of non-compliance with that provision (i.e. failing to grant access).</p>

		It is also recommended that the NLO and other appropriate officials be given the power to enter premises for the purpose of ascertaining whether licence holders are complying with, amongst other things, licence conditions.
Proposed sections 3H and 3I (read together)	N/A	The Amendment Bill should indicate the amount of time that the NLO has to make a decision on an application.
Proposed section 3I(2)	N/A	Insert a comma after the words " <i>submitted by the applicant</i> ".
Proposed section 3I(2) and 3I(3) (read together)	<p>Presumably, hearings will be held where the NLO is located. If this is so, then some applicants and interested parties may have to travel far (e.g. from other provinces) to attend the hearings. Previously, applicants only had to approach magistrates in their applicable areas for licences.</p> <p>The proposed system is, therefore, likely to result in applicants and interested parties incurring travel expenses. It should be borne in mind that interested parties are likely to be non-profit organisations which are concerned with animal welfare and, therefore, they may have limited funds.</p> <p>It would be more efficient and cost-effective for applications to be considered at provincial offices, instead of at the offices of the NLO who would, presumably, be based in Pretoria.</p>	<p>Hearings should take place in the province in which an applicant is located.</p> <p>Further, it is recommended that applicants be given the option to have legal or other representation at the hearing.</p>
Proposed	It is unclear whether the intention is for the	The proposed section 3I(4)

<p>section 3I(4)</p>	<p>"further oral or written representations" to be made at the hearing contemplated in the proposed sections 3I(2) and 3I(3), or for such representations to be made at another time.</p>	<p>should be amended to clarify this issue.</p>
<p>Proposed section 3J</p>	<p>The heading contains the word "issuing"; however, there is no reference to the "issuing" of a licence in the proposed section.</p>	<p>The proposed section 3J should be amended so that there is a reference to the issuing of a licence. Alternatively, the word "issuing" should be removed from the heading and be replaced by another word that appears in the proposed provision.</p>
<p><u>Clause 4 of the Amendment Bill (Amendment of section 11 of the Principal Act)</u></p>		
<p>Proposed section 11(a): definition of "Animal Scientist"</p>	<p>The title of the Act mentioned in this proposed provision is incorrect.</p>	<p>The title of the Act mentioned in this provision should be the "Natural Scientific Professions Act, 2003 (Act No. 27 of 2003)".</p> <p>Further, it is recommended that the upper case letters "a" and "s" in the term "Animal Scientist" be replaced with lower case letters.</p>
<p>Proposed section 11(b): definition of "officer"</p>	<p>N/A</p>	<p>The term "officer" is also defined in the Draft Regulations. Again, duplications should be avoided.</p>
<p>Proposed section 11(d): definition of "Veterinarian"</p>	<p>N/A</p>	<p>It is recommended that the upper case "v" be replaced with a lower case "v".</p>

Clause 5 of the Amendment Bill (insertion of section 11A in the Principal Act)

<p>Proposed section 11A(1)</p>	<p>N/A</p>	<p>The word "any", which appears in the first line of the proposed section 11A(1), should be replaced with the indefinite article "a".</p>
<p>Proposed section 11A(2)</p>	<p>The appeal board should be appointed in terms of a fair process and should comprise of independent persons.</p>	<p>It is recommended that the appointment of the appeal board be subject to a public participation process and the appeal board should comprise of independent persons.</p> <p>Further, for the same reasons given earlier as to why it would be prudent to have a licensing officer in every province, it would also be prudent to have an appeal board in every province.</p>
<p>Proposed section 11A(2)(a)(ii)</p>	<p>The appeal board must have relevant expertise and skills to adjudicate and deliver fair, balanced and informed decisions. Thus, it should have wide, balanced and complementary expertise.</p>	<p>The appeal board should consist of the chairperson and at least three other members. In addition to the fact that it will assist in ensuring that the appeal board comprises of wide expertise, it will also be beneficial for the purposes of breaking a deadlock that might occur should one person (for example, the chairperson) be absent.</p>
<p>Proposed section 11A(2)(a)(ii)(aa)</p>	<p>N/A</p>	<p>It is recommended that the word "and" which appears between the terms "Intellectual Property Law" and "Administrative Law" be</p>

		changed to the word "or".
Proposed section 11A(2)(a)(ii)(bb)	N/A	It is recommended that the other members should include a veterinarian who has at least 5 years' experience in veterinary science, an animal scientist who has at least 5 years' experience in animal science (with expertise in animal behaviour and ethology) and a representative of the animal welfare community (e.g. from a non-governmental organisation).
Proposed section 11A(6)(b)	N/A	A comma should be inserted after the words " <i>paragraph (a)</i> ".
Proposed section 11A(8)	N/A	This proposed section should specify the amount of time that the board has to determine an appeal. It should also indicate by when the appellant and interested parties should be informed of the decision.
Proposed section 11A(9)	This proposed section refers to the payment of " <i>prescribed fees</i> " by appellants. The difficulty with charging fees is that appellants may be animal welfare organisations with limited finances. The prescribed fees will add to the cost burden for such parties.	Reconsider the charging of fees.
Proposed section 11A(10)	N/A	The definite article " <i>the</i> " in the words " <i>the relevant court</i> " should be changed to the indefinite article " <i>a</i> ".

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Annexure A



DIRECTORATE: OPERATIONAL SUPPORT

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Attention: **Dr Songabe**

 Director: Veterinary Public Health

 Department of Agriculture, Forestry and Fisheries

Per Email: TembileS@daff.gov.za

Comments on the Draft Regulations Related to the Performing Animals Protection Amendment Act

Dear Dr Songabe

Please find herewith the Western Cape Government's comments on the Draft Regulations Related to the Performing Animals Protection Amendment Act (published in Notice 285 in Government Gazette 38632 of 2 April 2015).

Yours faithfully

ADV BRENT GERBER

DIRECTOR-GENERAL

PROVINCIAL GOVERNMENT: WESTERN CAPE

DATE: 28/4/2015

**Comments on the Draft Regulations Related to the Performing Animals
Protection Amendment Act ("the Draft Regulations")**

**Submitted by: The Director-General, Department of the Premier, Western
Cape Government**

COMMENTS:

Draft regulation	Comment	Suggestion
<u>General</u>		
Legislation outdated	<p>If it is noted that the Performing Animals Protection Act, 1935 (Act 24 of 1935) ("the Act") has not been amended since 1991 and the Animals Protection Act, 1962 (71 of 1962) has not been amended since 1997.</p> <p>Further, regulations (under the Act) were published in 1993 (published under GN R1672 in <i>Government Gazette</i> 15102 of 1 September 1993) ("the Performing Animals Regulations").</p> <p>It is, therefore, clear that the legislation which relates to the protection of animals is outdated and requires serious amendment in order to bring them in line with, amongst others, international trends relating to the protection of animals. In this regard, it is noted that there has been much debate in the media about whether it is ethical to use animals for entertainment purposes. The use of animals in films and circuses has been widely condemned internationally.¹ It is noted that several countries have passed, or are</p>	<p>In the circumstances, it is recommended that the legislation relating to the protection of animals be updated, in consultation with relevant stakeholders and the public.</p> <p>It may be prudent to have regulations or standards which regulate specific industries and categories of animals, such as animals which are used for work purposes (e.g. sheep dogs).</p> <p>Further, it may be prudent and more effective to consolidate the Act and the Animals Protection Act, 1962, as they deal with similar subject matter.</p>

¹ See, for example <http://www.peta.org/features/10-reasons-attend-circus/>; https://en.wikipedia.org/wiki/Cruelty_to_animals; https://en.wikipedia.org/wiki/Animal_Defenders_International and <http://www.animalcircuses.com/>.

	<p>contemplating passing, laws which ban the use of wild or other animals in circuses.²</p> <p>Any proposed regulations, such as the Draft Regulations, should also be in line with current trends.</p>	
<p>Incorrect reference to Amendment Act</p>	<p>The call for comments and the Draft Regulations incorrectly state that the Draft Regulations are made in terms of the Performing Animals Protection Amendment Act ("the Amendment Act") (currently still in Bill form). See pages 46 and 47 of the <i>Government Gazette</i> in which the Draft Regulations were published for comment (<i>Gazette</i> No. 38632 of 2 April 2015).</p> <p>Regulations are made in terms of the Act and not in terms of the Amendment Act.</p> <p>Further, on page 48 of the Draft Regulations, the term "<i>the Act</i>" is defined as meaning the Amendment Act. This is incorrect. It should refer to the Act.</p>	<p>The definition of "<i>the Act</i>" (page 48 of the <i>Gazette</i>) should refer to the Act and not the Amendment Act.</p> <p>Further, the word "<i>Amendment</i>" should be deleted from the title of the Draft Regulations.</p>
<p>Performing Animals Regulations (existing regulations)</p>	<p>It is noted that the Performing Animals Regulations deal with, amongst other things, applications for the granting or renewal of licences, conditions of licences and offences and penalties.</p> <p>The Draft Regulations should either replace the Performing Animals Regulations (the Performing Animals Regulations would then need to be repealed) or be incorporated into the latter.</p> <p>It is noted that the Performing Animals Regulations are not in line with the judgment of the Constitutional Court in <i>National Society for the Prevention of Cruelty to Animals v Minister of Agriculture, Forestry and Fisheries and Others</i></p>	<p>The drafter should consider whether the Draft Regulations should replace the Performing Animals Regulations or whether the Draft Regulations should be incorporated into the Performing Animals Regulations.</p>

²See, for example, <http://www.mapsofworld.com/poll/should-animal-circuses-be-banned-infographic-text.html>.

	(CCT 120/12) [2013] ZACC 26; 2013 (5) SA 571 (CC); 2013 (10) BCLR 1159 (CC) (11 July 2013) ("the NSPCA case"), ³ in that they provide for magistrates to issue licences.	
Language, numbering and formatting	<p>The Draft Regulations require extensive language editing, which should be performed by a language editor.</p> <p>The Draft Regulations also require extensive editing in relation to formatting and numbering. The Draft Regulations should be checked by a legal editor or drafter with knowledge of the national drafting practices and the Commonwealth conventions, to ensure that the formatting and numbering of the Draft Regulations are consistent with such practices and conventions.</p>	Conduct language editing and revise the formatting and numbering in light of the national drafting practices and the Commonwealth conventions.
<u>Draft regulation 1: "Definations (sic)"</u>		
Heading	The heading is spelt incorrectly.	<p>The letter "a" that appears in the heading should be replaced with the letter "i".</p> <p>In other words, the word "Defination" should be replaced with the word "Definition".</p>
Numbering	N/A	The number ".1" should be deleted.
Arrangement of definitions	N/A	The definitions should be arranged in alphabetical order.

³ The judgment of the Constitutional Court should be read with the judgment of the North Gauteng High Court in *National Society for the Prevention of Cruelty to Animals v Minister of Agriculture, Forestry and Fisheries and Others* (44001/2012) [2012] ZAGPPHC 329 (15 November 2012).

<p>Definition of "Department"</p>	<p>N/A</p>	<p>This definition should be deleted, as the defined term is not used anywhere in the body of the Draft Regulations.</p> <p>That having been said, the proposed definition of "Department" should be more generic in nature (for example, "the national department responsible for the administration of the Act").</p> <p>Further, the brackets enclosing the abbreviation "DAFF" and said abbreviation should be deleted.</p>
<p>Definition of "the Act"</p>	<p>It is noted that the term "<i>the Act</i>" is defined in the Performing Animals Regulations.</p> <p>Thus, the definition contained in the Draft Regulations will only be necessary if the Draft Regulations replace the Performing Animals Regulations.</p>	<p>Refer to the comments on the incorrect references to the Amendment Act.</p> <p>Further, consider whether the Draft Regulations should replace the Performing Animals Regulations or be incorporated therein.</p>
<p>Definition of "Minister"</p>	<p>N/A</p>	<p>This definition should be deleted, as this term is already defined in the Act. Further, this term is only used in the heading of draft regulation 5 (i.e. it is not used elsewhere in the Draft Regulations).</p> <p>The heading should, therefore, be amended to omit the reference to the Minister (in this regard, the heading could be</p>

		"Appeals").
<p>Definition of "application"</p>	<p>N/A</p>	<p>It is noted that the Performing Animals Protection Amendment Bill [B9—2015] ("the Amendment Bill") deals quite extensively with the issue of applications. It may, therefore, be more prudent for the definition of "application" to be included in the Amendment Bill instead of in the Draft Regulations.</p> <p>That having been said, the definite article "the" should be inserted before the word "National" and the word "Licencing" should be replaced with the word "Licensing".</p> <p>Further, it is recommended that the words "<i>which meet all the requirements as set out in the Act</i>" be deleted, as they are unnecessary. In this regard, applications must, in any event, meet the requirements of the Act. Further, it is noted that draft regulation 2(2) states that "<i>[a]n application is treated as duly lodged when all necessary documents and information [contemplated] in [s]ection 3H(2) of the Act, have been submitted</i>" (emphasis added).</p> <p>The definition should also cross-refer to the specific provision of</p>

		the Act (as inserted by the Amendment Bill) which deals with applications.
Definition of "applicant"	N/A	<p>The Amendment Bill contains numerous references to the term "applicant". Thus, it is recommended that the definition of "applicant" be included in the Amendment Bill instead of in the Draft Regulations.</p> <p>Further, the word "any" should be replaced with the indefinite article "a" and the word "Licencing" should be replaced with the word "Licensing".</p>
Definition of "officer"	It is unclear whether this term refers to the National Licensing Officer ("the NLO") contemplated in the Amendment Bill or whether it refers to another person. This should be clarified.	<p>If the term "officer" is, in fact, a reference to the NLO, it is recommended that this definition be deleted and that a definition of "National Licensing Officer" be inserted in the Amendment Bill (given that the Amendment Bill refers extensively to the NLO).</p> <p>That having been said, the comma that appears before the words "and employed in a national" should be deleted.</p>
Definition of "facility"	N/A	<p>This term is not used in the Draft Regulations and should be deleted.</p> <p>That having been said, the word "and" which appears</p>

		<p>between the words "exhibits" and "trains" should be replaced with the word "or".</p> <p>Further, it is recommended that the words "for the use of dogs for safeguarding" be replaced with the words "where dogs are used for safeguarding".</p>
<u>Draft regulation 2: "Application for a Licence in terms of Section 3H of the Act"</u>		
Heading	Headings in legislation should not contain the definite article "the" or the indefinite article "a" and should not end with a full stop.	Amend the wording so that there are no definite or indefinite articles and delete the full stop.
Draft regulation 2(1)	<p>The Performing Animals Regulations provide for two types of fees; one in respect of "an application for the granting of a licence" (R50) and one in respect of "the renewal of a licence" (R30).</p> <p>It is unclear why the Draft Regulations do not provide for two types of fees, as provided for in the Performing Animals Regulations.</p>	<p>The drafter should consider whether it would be prudent to provide for two types of fees as is currently the case in terms of the Performing Animals Regulations.</p> <p>That having been said, it is noted that the language of draft regulation 2(1) requires editing. It is recommended that it be amended as follows:</p> <p>"An application [shall] <u>must</u> be accompanied [with] <u>by [the] a fee [amount]</u> of..."⁴</p> <p>The use of the word "fee" is consistent with the proposed section 3H(2)(e) of the Act (clause 3 of the Amendment Bill).</p>

⁴ In these comments, words in bold type indicate omissions and words underlined with a solid line indicate insertions.

<p>Draft regulation 2(2)</p>	<p>N/A</p>	<p>It is recommended that draft regulation 2(2) be amended as follows:</p> <p>"An application [lodged] is treated as [duly] lodged when all necessary documents and information [completed] <u>contemplated</u> in [S]section 3H(2) of the Act[.] have been submitted."</p>
<p>Draft regulation 2(3)</p>	<p>Applicants will, in any event, have to complete the form in accordance with what is stated in the form. Further, the proposed section 3H(2) of the Act (clause 3 of the Amendment Bill) already states that applications must be in writing.</p>	<p>It is recommended that draft regulation 2(3) be amended as follows:</p> <p>"(3) An applicant must submit an [written] application [(in block letters)] for a licence, using the application form in Annexure A, [and must-</p> <p style="padding-left: 40px;">(a) furnish such information as solicited in the application form, and</p> <p style="padding-left: 40px;">(b) declare under oath or truly affirm at the end of the said form that the information contained therein is true.]".</p>
<p><u>Draft regulation 3: "Issuing and Renewal of Licences"</u></p>		
<p>Draft regulation 3(1)</p>	<p>Again, it is unclear whether the term "officer" is intended to refer to the NLO or another person. If the intention is to refer to the NLO, then reference should be made to the NLO and not "[t]he officer".</p> <p>Further, it is unclear what is meant by "complies with all the requirements". If the intention is simply to reiterate that applications must be consistent with the requirements of the Act, then the words</p>	<p>The Draft Regulations should clarify whether the term "officer" refers to the NLO or another person.</p> <p>Further, the drafter should consider the meaning of the phrase "complies with all the requirements" and revise the draft regulation as may be</p>

	<p>"complies with all the requirements" should be deleted. Applicants would, in any event, have to comply with the Act, whether this is stated in the Draft Regulations or not.</p>	<p>required.</p>
<p>Draft regulation 3(2)</p>	<p>The Amendment Bill does not specifically refer to renewal applications. On the face of it, it seems that all applications will be treated the same. If this is so, then it is important to note the wording of the proposed section 3F(1) of the Act (clause 3 of the Amendment Bill).</p> <p>The proposed section 3F(1) of the Act states as follows:</p> <p><i>"(1) The [NLO] may grant an application for <u>any licence</u> if he or she is satisfied that—</i></p> <p style="padding-left: 40px;"><i>(a) the information furnished by the applicant as contemplated by section 3H(2) is in accordance with the purpose of this Act; and</i></p> <p style="padding-left: 40px;"><i>(b) the premises, accommodation, equipment and facilities that are utilised for the training, exhibition or performance of the animal are safe and will not cause harm to the animal."</i> (emphasis added).</p> <p>If the proposed section 3F of the Act (clause 3 of the Amendment Bill) applies to renewal applications, then it means that the NLO may refuse a renewal application if the criteria set out in paragraphs (a) and (b) of the proposed section 3F(1) of the Act are not met.</p> <p>Draft regulation 3(2) states that <i>"[t]he officer may, if in his or her opinion there is good and sufficient reason, refuse to renew such licence"</i>.</p> <p>If the proposed section 3F(1) of the Act applies to renewal applications, then draft regulation 3(2)</p>	<p>To the extent that the proposed section 3F(1) of the Act applies to renewal applications, draft regulation 3(2) would need to be amended in order to bring it in line with that proposed section.</p>

	would be inconsistent with that proposed section.	
Draft regulation 3(3)	<p>The drafter should consider whether the period of two months is feasible. If the proposed section 3H(2) of the Act (clause 3 of the Amendment Bill) applies to renewal applications, then the NLO would need to consider numerous documents and may also need to conduct site visits in terms of the proposed section 3H(3).</p> <p>Further, it is unclear what the position will be should a licence holder submit a renewal application timeously, but the process is only finalised after the expiry of the licence. This needs to be clarified in the Amendment Bill, given that the proposed section 3G of the Act (clause 3 of the Amendment Bill) states that a licence is only valid for 12 calendar months from the date of issue thereof.</p>	<p>Delete the words "[s]uch licence shall be valid for twelve calendar months, as stipulated in section 3(G) from the date of issue thereof", as this is a repetition of the proposed section 3G of the Act (clause 3 of the Amendment Bill).</p> <p>Given that the Amendment Bill does not specifically mention renewal applications, it is advisable that the Amendment Bill be revised to state that renewal applications should be made by way of application, instead of this being stated in the Draft Regulations.</p> <p>Further, it is recommended that the last sentence of this draft regulation be amended as follows:</p> <p>"The application for the renewal of a licence should be submitted two months before <u>the expiry of the licence</u>."</p>
Draft regulation 3(4)	It is unclear whether a "movement permit" will be issued in terms of the Draft Regulations or in terms of other legislation. Further, it is unclear what is meant by "state veterinary office of origin". These issues should be addressed.	Amend the Draft Regulations in a manner that addresses these issues.
<u>Draft regulation 4: "Conditions of Approval"</u>		

Draft regulation 4(1)	N/A	This draft regulation should be deleted, as it repeats the proposed sections 3F and 3H(3) of the Act (clause 3 of the Amendment Bill).
Draft regulation 4(2)	The NLO should advise an applicant whether an application was granted or refused. An applicant would not necessarily know whether or not he or she has met the requirements of the proposed section 3F(1) of the Act (clause 3 of the Amendment Bill).	This draft regulation should be deleted.
<u>Draft regulation 5: "Appeal to the Minister"</u>		
Heading	N/A	The definite article "the" should be deleted from the heading.
Draft regulation 5(1)	N/A	The line underneath the words "section 11A" should be deleted. Further, the word "shall" should be replaced with the word "must". Further, the dash should be replaced with an emdash.
Draft regulation 5(1)(a)	The term "Director-General" is not defined in the Act, the Performing Animals Regulations, the Amendment Bill or the Draft Regulations.	The term "Director-General" should be defined or elaborated on in the appropriate legislation. Further, the word "Licencing" should be replaced with the word "Licensing".
Draft regulation 5(1)(b)	N/A	The words "such" and "that" should be replaced with the definite article "the".

Draft regulation 5(1)(c)	N/A	The word "and", which appears after the semi-colon, should be deleted.
Draft regulation 5(1)(d)	N/A	A semi-colon and the word "and" should be inserted at the end of this provision.
Draft regulation 5(1)(e)	N/A	<p>This provision should mention the legislation in terms of which the manual was issued (if applicable) and the party who issued the manual.</p> <p>Further, the line which appears underneath the words "section 11A(2)" should be deleted.</p> <p>Further, the word "shall" should be replaced with the word "must".</p> <p>Further, the word "Services" should be replaced with the word "Service".</p> <p>Further, the word "bearers" should start with a capital letter.</p>
Draft regulation 5(2)	N/A	<p>The word "shall" should be replaced with the word "must".</p> <p>Further, the dashes which appear in draft paragraphs (a) and (b) should be replaced with emdashes.</p> <p>Further, a full stop should be inserted at the end of the draft regulation (i.e. after the words</p>

Draft regulation 6: "Offences and Penalties"

Draft regulation 6(1)

The wording of this provision is too wide and has the effect of criminalising any non-compliance with the Act or the Draft Regulations. This will have far-reaching (and unintended) consequences. For example, some of the consequences that will arise as a result of draft regulation 6(1) are:

- if the NLO delegates a function in a manner that is inconsistent with the proposed section 3E of the Act (clause 3 of the Amendment Bill), the NLO commits an offence;
- if a person fails to submit one or more of the documents contemplated in the proposed section 3H(2) of the Act (clause 3 of the Amendment Bill), such person commits an offence;
- if the NLO fails to inform an applicant within 21 days after making a decision in relation to an application of the outcome of the application, he or she commits an offence – see the proposed section 3J of the Act (clause 3 of the Amendment Bill);
- if the Minister fails to appoint a board to hear an appeal, he or she commits an offence – see the proposed section 11A(2) of the Act (clause 5 of the Amendment Bill);
- if an appeal is not heard on the date, time and place determined by the chairperson, the chairperson of the appeal board and the appeal board would have committed an offence – see

The reference to the Act should be deleted.

Further, the provision should be amended to refer to specific provisions of the Draft Regulations which, if contravened, would constitute offences.

Further, the word "contractures" should be replaced with the word "contravenes".

Further, the full stop that appears at the end of this draft regulation (i.e. after the words "these regulations") should be replaced with an emdash.

	<p>the proposed section 11A(4)(a) of the Act (clause 5 of the Amendment Bill);</p> <ul style="list-style-type: none"> • if the decision of the appeal board is not in writing or a copy of the decision is not given to the NLO, the appellant and "any other party", the board would have committed an offence – see the proposed section 11A(8) of the Act (clause 5 of the Amendment Bill); • if an application for a licence is not accompanied by R390, the applicant commits an offence – see draft regulation 2(1); • if an application is not completed correctly (for example, it is not written in block letters), the applicant commits an offence – see draft regulation 2(3); and • if the format of an appeal is not consistent with the format contemplated in draft regulation 5, the applicant commits an offence (for example, the applicant provides the incorrect reference number). <p>Further, the Draft Regulations should not state which contraventions of the Act constitute offences under the Act. This should be stated in the Act. The Draft Regulations should only deal with contraventions of the Draft Regulations that constitute offences under the Draft Regulations. The Draft Regulations should, therefore, not state, as it is proposed in draft regulation 6(1), that "[a]ny person who [contravenes] or fails to comply with any provision of the Act...shall be guilty of an offence".</p>	
Draft regulation	Section 7 of the Act states that the Minister may "make regulations not inconsistent with the Act	The provision should be amended so that it is consistent

<p>6(1)(b)</p>	<p><i>for prescribing any or all of the following matters" and proceeds to list such matters, one of them being "a penalty of a fine not exceeding R4 000 or imprisonment for a period not exceeding twelve months for a contravention of any regulation" (section 7(e)).</i></p> <p>The proposed fine and period of imprisonment contemplated in draft regulation 6(1)(b) are, therefore, inconsistent with section 7(e) of the Act.</p>	<p>with section 7(e) of the Act.</p>
<p>Draft regulations 6(1)(c) and 6(1)(d)</p>	<p>Again, clarity is needed regarding whether the term "officer" refers to the NLO or not.</p>	<p>See previous comments on this matter.</p>
<p>Draft regulation 6(1)(d)</p>	<p>N/A</p>	<p>It is recommended that the words "an amount" be replaced with "a fee".</p>
<p>Draft regulation 6(2)</p>	<p>N/A</p>	<p>The word "Licencing" should be replaced with the word "Licensing".</p>