

**TO: THE SELECT COMMITTEE ON LAND AND MINERAL
RESOURCES**

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**FROM: THE CENTRE FOR APPLIED LEGAL STUDIES (CAL)
UNIVERSITY OF THE WITWATERSRAND, JOHANNESBURG**

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**CENTRE FOR APPLIED LEGAL STUDIES SUBMISSION ON THE
PERFORMING ANIMALS PROTECTION AMENDMENT BILL**

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INTRODUCTION

The Centre for Applied Legal Studies (CAL S) is a civil society organisation based at the School of Law at the University of the Witwatersrand. CAL S is also a law clinic, registered with the Law Society of the Northern Provinces. CAL S practices human rights law and social justice work with a specific focus on five intersecting programmatic areas, namely Basic Services, Business and Human Rights, Environmental Justice, Rule of Law, and the Gender

CAL S is pleased to note that there has been a call for submissions on the Performing Animals Protection Amendment Bill¹ yet would like to clarify that by making submissions on the Bill, CAL S does not condone the exploitation of animals for their use as entertainment or protection under any circumstances whatsoever and would rather suggest legislation that punishes the exploitation of animals rather than regulating it.

STRUCTURE OF THE SUMISSION

	Page
1. <u>Section 3B</u>	3 – 4
2. <u>Section 3F</u>	4 – 5
3. <u>Section 3G</u>	5
4. <u>Section 3H</u>	5
5. <u>Section 3K</u>	5
6. <u>Section 3L</u>	5 – 6
7. <u>Section 3N(2)(b)</u>	6
8. <u>Section 3O(3)</u>	6

¹ Hereinafter referred to as ‘the bill’.

9.	<u>Section 3P</u>	6
10.	<u>Section 5</u>	7
11.	<u>Section 7(2)</u>	7
12.	<u>Section 8</u>	7
13.	<u>General Comments</u>	7

SUBMISSIONS

1. Insertion of Section 3B

- 1.1. Section 3B describes a National Licensing Officer as being either an Animal Scientist or a Veterinarian. There arises an issue around the choice of using an Animal Scientist as having the responsibility of issuing licences for the exhibition or training of animals or for the use of animals for safeguarding. An Animal Scientist deals with the ‘breeding, physiology and nutrition (of animals), but also aspects of animal product sciences’.² These are individuals whose primary focus is on livestock (in the context of agriculture) and have no focus on the physical, emotional and psychological wellbeing of different animals, especially those species different to livestock. These individuals should not be considered as licencing officers as they do not have the expertise required for dealing with numerous species of animals and their physical, emotional and psychological needs.
- 1.2. It is submitted that instead of requiring an ‘Animal Scientist’ be a licencing officer, Zoologists may be more suited for the position. Zoology is describes as ‘the study of animals and a zoologist is a scientist who studies animals and their environment or habitats. Animals, in this context, are any living organisms that are not plants, fungi, viruses or bacteria (the study of these organisms is the realm of the botanists and microbiologists).³ This is more aligned for the task of issuing a licence as these

² South African Society for Animal Sciences ‘About Animal Science’ <http://www.sasas.co.za/about-animal-science>.

³ Zoological Society of South Africa ‘What is Zoology?’ http://zssa.co.za/?page_id=42#sthash.iPVXZbol.dpuf

individuals would be able to speak to the type of habitat that different species of animals inhabit and can give an informed decision on whether the applicant can provide this habitat. It is important to note that ‘Zoological Science’, similar to ‘Animal Science’, is also a field of science set out under the Schedule 1 ‘Fields of Practise’ of the Natural Sciences Professions Act 27 of 2003.

2. Section 3F

- 2.1. **Section 3F(2)** – the applicant should be required to produce photographs of the living quarters, training area, entertainment area and safeguarding area where the animal will be kept. Furthermore in the description the dimensions of each should be included.
- 2.2. **Section 3F(2)** – it should be mandatory as part of the criteria for awarding a licence for the applicant to produce proof of medical insurance for the specific animal that the application is for.
- 2.3. **Section 3F(2)** – the applicant must upon application for a licence supply the licencing officer with a veterinarian’s account of the animals species, size, age, health, temperament and whether it is recommended that the animal partake in the activity set out in the application.
- 2.4. **Section 3F(3)** – should not require that the applicant consent to the visitation of the licencing officer to inspect the premises, accommodation, equipment and facilities used for the training, exhibition, performance or safeguarding of the animals. Instead the licencing officer should be guaranteed unfettered access for visitation and inspection of the premises, activities, and well-being of the animal. Where a licencing officer is refused visitation, the officer should be afforded an expedited procedure for obtaining an order of court allowing such visitation, with the legislation recognising that such applications if necessary, are inherently urgent. This should be similar to section 4(5) of the Domestic Violence Act 116 of 1998 where an application for an order ‘may be brought outside ordinary court hours or on a day which is not an ordinary court day, if the court is satisfied that the complainant may suffer undue hardship if the application is not dealt with immediately’. The proving of ‘undue hardship’ should be *prima facie* established on the fact that the applicant has refused entrance. The court having jurisdiction to grant such orders should be the Magistrate’s Court in the district where the licence was issued.

2.5. **Section 3F(3)** – As an alternative to the above, in order to prevent the harm of animals, which is equivalent to torture in international law, it is suggested that licencing officers always be permitted to inspect the premises where the animal is being held and this should occur without notice.⁴

3. Section 3G

3.1. **Section 3G(1)(b)** – there should be a definition of ‘harm’ included in the definition section of the act. Harm should be defined broadly to include overt and intentional acts of violence towards an animal, animal neglect, psychological harm (distress, torment or terror), confining or transporting an animal in a way that is inappropriate for its welfare, failing to provide appropriate or adequate food or water for an animal; failing to provide appropriate treatment for disease or injury.⁵

4. Section 3H

4.1. The applicant should advertise that she/he has applied for a licence in the Government Gazette and a newspaper in the district where she/he had submitted said application. The advertisement should summarise the contents of 3F(2) and should invite interested parties to make written or oral submissions on the granting of the said licence.

5. Section 3K

5.1. If an animal is being transported from place to place in the Republic then the requirements of 3F(2)(d) should apply and the applicant must include the details set out in 3F(2)(d) in relation to the mode of transport. Photographs thereof should be mandatory.

6. Section 3L

6.1. **Section 3L(2)(b)** – if the license has been suspended, withdrawn or amended based on any harm inflicted on the animal, written representation should not be considered in

⁴ The importance of unannounced visitation of animals and inspections by licensing officers is drawn from the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), adopted by the UN General Assembly in 2002 and came into force in 2006. The OPCAT establishes a system of unannounced and unrestricted visits to all places where persons are deprived of their liberty by independent international and national monitoring bodies. The basic premise is that the more open and transparent places of detention are, the lesser the risk for abuse.

⁵ RSPCA ‘What is animal cruelty’ <http://www.rspca.org.au/animal-cruelty/what-animal-cruelty>.

reversing the suspension, withdrawal or amendment of the license. Furthermore, the option of ‘rectif[ing] the deficiency’ as set out in 3L(2)(b) should only be considered in cases where the harm is of such a low level that it can be rectified. As to what constitutes ‘low level’ should be a discretionary, yet should include (but not limited to) harm that does not require major medical care and continued harmful conduct, for example animals being kept in force enclosures for long periods of time. In all other cases of harm the license should be withdrawn and the animal should be removed from the care of the licence holder.

6.2. **Section 3L(3)** – this section should include that the animal will be removed from the care of the applicant and the cost of removal and care will be borne by the applicant.

7. **Section 3N(2)(b)**

7.1. The definition of the qualification of the two non-legal members of the Appeal Board is vague and thus problematic. It states that these members ‘must have expert knowledge of the subject of the appeal’; instead it should refer to what types of individuals would be considered as ‘experts’. This could include those that have the same qualifications as the Licensing Officer or and/or individuals who are from organisations that deal with harm perpetrated against animals.

8. **Section 3(O)(3)**

8.1. The chairperson should advertise the appeal in the Government Gazette and a newspaper in the district the license was issued and invite interested parties to submit written or oral evidence, which will be considered at the hearing of the appeal.

9. **Section 3P**

9.1. The consideration by the Minister of the decision made by the Board set up in terms of section 3N should be based on a threshold of consideration. For example the Minister should make her/his decision based on a rational relationship between the infringement made by the licence holder and the decision made by the Board or alternatively a reasonableness standard. The decision cannot simply be left without a standard to be judged by, as this will render the decisions of the Minister arbitrary.

10. Section 5

10.1. The offence of obstruction should not only be based on obstruction of a police officer but also the obstruction of a Licencing Officer in terms of section 3F(3).

10.2. Reference should also be made to other offences such as those contained in the Animal Protection Act 71 of 1962, where there has been harm perpetrated against the animal.

11. Section 7(2)

11.1. This section should not allow a magistrate to merely suspend a licence for a year based on 'a second or subsequent offence under this Act or any other laws relating to the prevention of cruelty to animals'. A magistrate should have the discretion to revoke the licence with no option of it being granted again. This is important as one would not allow an individual who perpetrated harm against a child to have more opportunities to interact with that child or any child after a period of suspension. This protection safeguard has equal merit for the treatment and protection of animals.

12. Section 8

12.1. A clear definition of a 'wild animal' is required. Would this include animals such as reptiles or amphibians? Does the inclusion of both domestic and wild animals in the definition of animal then mean all animals are protected under this act? Is this to the exclusion of any animals such as invertebrates?

13. General Comments

13.1. It is customary in legislation for the definition section of any act to appear at the beginning of the act (at section 1).

13.2. The act should not allow any individual who has been convicted of a crime against a woman or a child to apply for a license. A link between the likelihood of those who perpetrate child, woman, or animal abuse to perpetrate one of the others has been proven.⁶ This would thus be a preemptive provision to ensure that the animal is not exposed to harm which is likely to occur.

⁶Ascione, Frank R., Claudia V. Weber, and David S. Wood. "The abuse of animals and domestic violence: A national survey of shelters for women who are battered." *Society & Animals* 5.3 (1997): 205-218 and Simmons, Catherine A., and Peter Lehmann. "Exploring the link between pet abuse and controlling behaviors in violent relationships." *Journal of Interpersonal Violence* 22.9 (2007): 1211-1222.

Yours faithfully,

A handwritten signature in black ink, appearing to be 'Sheena Swemmer', written over the closing 'Yours faithfully,'.

Sheena Swemmer

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