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PORTFOLIO COMMITTEE NO. 4

The use of exotic animals in circuses and exhibition of cetaceans in New South Wales

Report 46

December 2020

4



Portfolio Committee No. 4 - Industry

The use of exotic animals in circuses and exhibition of cetaceans in New South Wales

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Terms of reference

1. That Portfolio Committee No.4 – Industry inquire into and report on the use of exotic animals (defined as any animal that is not native and is not a stock or companion animal) in circuses and the exhibition of cetaceans in New South Wales, and in particular:
 - (a) the welfare of exotic animals exhibited in circuses in New South Wales, with consideration of community expectation,
 - (b) the welfare of cetaceans exhibited in New South Wales, with consideration of community expectation,
 - (c) in light of the findings in (a) and (b) above, whether:
 - (i) to allow the continuation of the practice of breeding of exotic animals for use in circuses and cetaceans for exhibition,
 - (ii) there should be a phase out of the use of exotic animals in circuses and cetaceans for exhibition, and/or
 - (iii) there should be any other legislative or regulatory action that the committee considers appropriate, and
 - (d) any other related matter.
2. That the Committee report by 31 December 2020.**

The terms of reference were reported in the Legislative Council on 26 September 2019.¹

¹ *Minutes*, NSW Legislative Council, 26 September 2019, p 480.

Committee details

Committee membership

Hon Mark Banasiak MLC	Shooter, Fishers and Farmers Party	<i>Chair</i>
Hon Emma Hurst MLC	Animal Justice Party	<i>Deputy Chair</i>
Hon Lou Amato MLC	Liberal Party	
Hon Catherine Cusack MLC	Liberal Party	
Hon Sam Farraway MLC *	The Nationals	
Hon Peter Primrose MLC	Australian Labor Party	
Hon Mick Veitch MLC	Australian Labor Party	

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* The Hon Sam Farraway MLC replaced the Hon Trevor Khan MLC on 29 May 2020 for the duration of the inquiry

** The committee resolved on 17 March 2020 to extend the reporting date from 27 June 2020 to 31 December 2020 (*Minutes*, Legislative Council, 24 March 2020, p 859).

Chair's foreword

This inquiry was established to examine the welfare of exotic animals used in circuses and cetaceans exhibited in New South Wales. Ultimately, it considered whether using exotic animals in circus performance and the display of cetaceans, as well as the breeding of these animals, should be allowed to legally continue.

After reviewing the evidence received, the committee was not persuaded that there is a need for government action to ban or phase out current practices. The committee noted several factors in making this decision, including the voluntary cessation of breeding by some operators, as well as other changes naturally taking place in these sectors as a result of changing community expectations.

Another factor the committee considered was the lack of clarity regarding what constitutes an 'exotic animal'. The committee heard that the inquiry's findings may have ramifications beyond the lions and monkeys held by circuses. This uncertainty, combined with the fact that an update of the legislative and regulatory framework is being undertaken by the NSW Department of Primary Industries, dissuaded the committee from making recommendations that may pre-empt or disrupt the important animal welfare reform work in progress.

While we recommended that the concerns raised in this inquiry be considered within the broader reform context, the committee agreed that support should be provided to the Dolphin Marine Conservation Park, Action for Dolphins and World Animal Protection to complete its feasibility study into a sea sanctuary site for the dolphins currently exhibited in NSW. The committee also recommended that the NSW Government consider providing financial assistance to support marine rescue and rehabilitation work undertaken in the state, and consider applying limitations on the breeding of cetaceans.

Turning now to one point on committee process. I wish to note that the committee in finalising its inquiry discussed and debated over 90 amendments to the draft report. Disappointingly these amendments, proposed by the Animal Justice Party representative, were not shared with the rest of the committee until the last moment. I was disappointed with the member's decision to do this as the draft report was circulated well in advance of the meeting to allow for careful consideration and informed debate. Many members of the committee were disappointed with this approach, and in my view, it undermined the collegiality of the committee. Personally, I think this approach went against the common courtesy, etiquette and respect traditionally shown in upper house committees, which has developed over many years. I hope that this approach does not become the accepted standard, and I will be proposing an amendment to the standing orders to ensure that this does not occur again.

Finally, on behalf of the committee, I would like to thank all who have participated in this inquiry. I note that the committee originally planned to visit a circus and the Dolphin Marine Conservation Park but have not been able to do so due to the COVID-19 pandemic. In lieu of the visit the committee requested and received video footage and a briefing from these stakeholders. I thank them for accommodating our request. I would also like to express my gratitude to my committee colleagues and to the staff for their support during this inquiry.



The Hon Mark Banasiak MLC
Committee Chair

Recommendations

- Recommendation 1** **53**
That the NSW Government, when developing the new animal welfare legislative framework as part of the Animal Welfare Plan:
- address the concerns identified by stakeholders as raised during this inquiry and set out in this report, and
 - consult widely with all affected stakeholders, including industry groups and animal welfare organisations.
- Recommendation 2** **53**
That the NSW Government consider applying limitations on the breeding of cetaceans which allow for breeding for conservation or protection purposes.
- Recommendation 3** **54**
That the NSW Government consider providing financial assistance to support marine rescue and rehabilitation work in NSW.
- Recommendation 4** **54**
That the NSW Government provide support to the Dolphin Marine Conservation Park, Action for Dolphins and World Animal Protection, to enable the completion of a feasibility study into relocating the dolphins at the marine park to a sea sanctuary.

Conduct of inquiry

The terms of reference for the inquiry were self-referred by the committee on 26 September 2019.

The committee received a high volume of submission to the inquiry. In total, there were 2,021 submissions, including 1,746 pro-forma type submissions.

The committee received 3,037 responses to an online questionnaire.

The committee held two public hearings at Parliament House in Sydney.

The committee received an online briefing from the Dolphin Marine Conservation Park, Action for Dolphins and World Animal Protection Australia regarding the proposed sea sanctuary development.

Inquiry related documents are available on the committee's website, including submissions, hearing transcripts, tabled documents and answers to questions on notice.

Chapter 1 Overview

This chapter provides background information on the use of exotic animals in circuses and the exhibition of cetaceans in New South Wales. It will provide an overview of the marine park and circus establishments operating in the state and the animals exhibited by them. The chapter also sets out the regulatory and administrative framework that circuses with exotic animals and marine parks with cetaceans are subject to in New South Wales.

Marine park and traditional circuses in New South Wales

- 1.1 This section provides an outline of the circuses that are currently using exotic animals and the cetaceans held by the Dolphin Marine Conservation Park in Coffs Harbour.

Circuses with exotic animals in New South Wales

- 1.2 The inquiry's terms of reference defines exotic animals as any animal that is not native and is not a stock or a companion animal. According to information provided by the NSW Department of Primary Industries, there are two circuses based in New South Wales that exhibit exotic animals under this definition: Animals All Around, which retains certification as a circus but has more recently focussed on training and providing animals for media productions; and Stardust Circus, a brand owned and operated by Janlin Circuses Pty Ltd, which also owns the Burtons and Lennon Brothers brands.²
- 1.3 Animals All Around keeps tigers, rhesus macaques, hamadryas baboons and African lions; and Stardust Circus keeps African lions and rhesus macaques. The two entities currently hold 41 exotic animals, comprising 15 lions, two tigers, 16 rhesus macaques, five baboons and three camels.³
- 1.4 The NSW Department of Primary Industries further noted that:
- Lennon Brothers Circus was authorised to display rhesus macaques and African lions but did not hold any at the time of the inquiry.
 - Burtons Circus and Circus Royale are based interstate but authorised to travel to New South Wales and hold Arabian camels.
 - Other establishments, such as Webers and Hudsons circuses tour New South Wales with non-exotic animals such as horses and domestic dogs.⁴

² Submission 173, NSW Department of Primary Industries, p 2

³ Evidence, Mr Scott Hansen, Director General, NSW Department of Primary Industries, 13 August 2020, p 2.

⁴ Submission 173, NSW Department of Primary Industries, p 2.

Cetaceans exhibited in New South Wales

- 1.5 As of August 2020, there are two establishments in Australia that house and exhibit captive cetaceans. One establishment, the Dolphin Marine Conservation Park, is located in Coffs Harbour, New South Wales. The other is Sea World, located in Queensland.
- 1.6 The Dolphin Marine Conservation Park currently houses and exhibits three Indo-Pacific bottlenose dolphins. The three dolphins were all born in the park.⁵ The Dolphin Marine Conservation Park previously had five dolphins. However, two dolphins (Calamity and Bucky) recently passed away due to medical issues.⁶

Regulatory framework

- 1.7 It is the responsibility of state and territory governments to set and enforce animal production and welfare laws. This means that while standards and guidelines may be discussed and agreed at the national level to ensure consistency across Australia, it is through state and territory legislation and administration that such agreements become regulated and enforced.⁷

Legislation governing exhibited animals in New South Wales

- 1.8 The display, and the keeping for display, of animals in New South Wales is regulated by the *Exhibited Animals Protection Act 1986* (EAP Act) and the Exhibited Animals Protection Regulation 2010 (EAP Regulation). The EAP Act and Regulation are under the auspice of the Minister for Agriculture and Western New South Wales, and are enforced by the NSW Department of Primary Industries.⁸
- 1.9 Under section 12 of the EAP Act, an animal display establishment is required to be licensed. The EAP Regulation provides for different types of animal display establishments, and also lists the animals for which a separate permit is required. This list includes all exotic animals held by Stardust Circus and Animals Around; as well as the bottle-nosed dolphins held by the Dolphin Marine Conservation Park.⁹
- 1.10 In practice, this means that establishments looking to exhibit animals would need to acquire a combination of licences, approvals and permits – collectively known as 'authorities' – as required by their circumstances.
- 1.11 For example, premises that are open to the public on an ongoing basis, such as zoos and dolphinariums, are classified as fixed establishments and need to be licensed. In addition, the premises would need a permit for any of the prescribed species held. On the other hand,

⁵ Evidence, Mr Terry Goodall, Managing Director, Dolphin Marine Conservation Park, 13 August 2020, p 22.

⁶ Evidence, Dr Verne Dove, Founding Director, Australian Institute of Marine Rescues and Field Veterinarian, Sea Shepherd Conservation Society, 14 August 2020, p 28.

⁷ Department of Agriculture, Water and the Environment, Australian Government (4 November 2019) <https://www.agriculture.gov.au/animal/welfare/animal-welfare-in-australia>.

⁸ Submission 173, NSW Department of Primary Industries, p 3.

⁹ Exhibited Animals Protection Regulation 2010.

circuses that regularly travel between areas for temporary exhibitions, and house animals in home bases in between, would need approvals as mobile and off display establishments, in addition to permits for any prescribed species held.¹⁰

- 1.12** Authorities to exhibit exotic animals in circuses are issued by the Secretary of the Department of Planning, Industry and Environment. However, any new licence sought for a cetacean display establishment must be approved by the Minister.¹¹
- 1.13** Authorities are renewed annually.¹² The EAP Act provides a range of factors for consideration when assessing an application for an authority. This includes whether the applicant has been convicted or found guilty of an offence under the EAP Act, under the *Prevention of Cruelty to Animals Act 1979*, the *Animal Research Act 1985*, the *National Parks and Wildlife Act 1974*, the *Biodiversity Conservation Act 2016* or any law of another state, a territory or the commonwealth relating to the keeping or protection of animals.¹³
- 1.14** There is no separate licensing regime for breeding applicable to circuses or marine parks. The EAP Regulation provides that any authority to exhibit animals must not allow breeding if it would have adverse impacts on the individual animals or on the species more broadly.¹⁴ In regard to bottle-nosed dolphins, the *Standards for Exhibiting Bottle-nosed Dolphins (Tursiops truncatus) in New South Wales* (1994) states that breeding should be a fundamental aim of establishments keeping dolphins, unless this is unrealistic in light of the future welfare of the new captive-born individuals.¹⁵

Relevant standards

- 1.15** The EAP Act authorises the creation of enforceable standards with respect to the facilities for the exhibition of animals at, and the conduct of, animal display establishments of any class.¹⁶ The NSW Department of Primary Industries identified four standards as the most relevant to this inquiry.¹⁷
- 1.16** The first standard is the *General Standards for Exhibiting Animals in New South Wales* (2019). This seeks to set safeguards for the welfare of exhibited animals and applies in conjunction with all other relevant standards. These standards set requirements regarding:
- exhibitors' qualifications, experience and knowledge of the species to be exhibited
 - educational value of exhibited animals
 - visitor facilities

¹⁰ Submission 173, NSW Department of Primary Industries, p 3.

¹¹ Submission 173, NSW Department of Primary Industries, p 4.

¹² Submission 173, NSW Department of Primary Industries, p 3.

¹³ *Exhibited Animals Protection Act 1986*, s 27.

¹⁴ Submission 173, NSW Department of Primary Industries, p 5.

¹⁵ NSW Department of Industry, *Standards of Exhibiting Bottle-nosed Dolphins (Tursiops truncatus) in New South Wales* (1994), Clause 3.7(a)

¹⁶ *Exhibited Animals Protection Act 1986*, s 14.

¹⁷ Submission 173, NSW Department of Primary Industries, p 3.

- safety, enrichment and spatial requirements of enclosures
 - public safety
 - husbandry and record keeping
 - hygiene standards
 - animals' diet and access to water
 - health checks and arrangements for specialised veterinary care
 - training methods
 - breeding.¹⁸
- 1.17** There are also the *Standards for Exhibiting Circus Animals in New South Wales* (2019), which apply to all animals displayed, or kept for display, by a circus exhibitor authorised under the Act. These standards complement the General Standards noted above and sets out requirements concerning:
- suitability and safety of specific animal species in a circus environment
 - housing of animals, including transportation housing, display housing and night quarters
 - training of animals, including exercise and rest requirements
 - medical issues, including veterinary attention, drug administration and euthanasia
 - animals' interactions with the public, other animals and the exhibitor's staff
 - husbandry in a circus setting.¹⁹
- 1.18** In addition to the standards referred to above, the *Standards for Exhibiting Carnivores in New South Wales* (2016)²⁰ provide standards concerning housing, husbandry, health and behaviour needs of carnivores such as lions, and the *Policy on Exhibiting Primates in New South Wales* (2000) provides equivalent standards for primates, such as rhesus macaques.²¹
- 1.19** The relevant standards for the exhibition of bottle-nosed dolphins are the *Standards for Exhibiting Bottle-nosed Dolphins (*Tursiops truncatus*) in New South Wales* (1994). These standards:
- require evidence of financial viability from prospective exhibitors
 - set requirements regarding enclosure facilities, with specific space requirements and a need for contingency plans for emergency situations
 - set requirements regarding water quality

¹⁸ NSW Department of Industry, *General Standards for Exhibiting Animals in New South Wales* (February 2019).

¹⁹ NSW Department of Industry, *Standards of Exhibiting Circus Animals in New South Wales* (February 2019).

²⁰ NSW Department of Industry, *Standards for Exhibiting Carnivores in New South Wales* (August 2016)

²¹ NSW Department of Primary Industries, *Policy on Exhibiting Primates in New South Wales* (March 2000)

- set requirements regarding husbandry and management, including experience and qualifications of relevant staff, general handling, training, veterinary care and food provisions
- provide for record keeping and data publication requirements
- require that exhibitors of dolphins must make education a significant component of the exhibition
- set requirements regarding transportation of cetaceans
- specify that breeding should be a fundamental aim of any facility keeping bottle-nosed dolphins, unless this is unrealistic in light of the future welfare of the new captive-born individuals.²²

Animal cruelty legislation

- 1.20** More generally, anyone keeping an animal needs to comply with the *Prevention of Cruelty to Animals Act 1979*. Broadly, this legislation makes it an offence to commit an act of cruelty or aggravated cruelty upon an animal. It sets out the minimum requirements for all people in charge of an animal, including provisions relating to the carriage of animals, the obligation to provide food, drink and shelter, as well as the obligation to exercise confined animals. It also authorises officers and inspectors to oversight levels of care provided to animals, and, if needed, to enter premises to examine, gather evidence and seize.²³

Reforming the current framework

- 1.21** In May 2018, the NSW Government released *the Animal Welfare Action Plan* (the Plan), which sets out a framework to modernise animal welfare legislation. The objective of the Plan is to ensure that people responsible for animals provide for their welfare in line with scientific and community expectations.
- 1.22** The NSW Government is continuing to progress the Plan, with a view to introducing an updated legislative framework from late 2021. The committee also received evidence that the NSW Government is planning to consult publicly on the reform proposals in 2021.²⁴

Committee Comment

- 1.23** It was unclear why Animals All Around continues to be licensed as a circus in NSW and allowed to continue to acquire new exotic animals (as recently as January 2020) given it is no longer operating as a travelling circus.²⁵

²² NSW Department of Industry, *Standards of Exhibiting Bottle-nosed Dolphins (Tursiops truncatus) in New South Wales* (1994), see clause 3.7(a)

²³ *Prevention of Cruelty to Animals Act 1979* ss 7,8,9 and Part 2A

²⁴ Submission 173, NSW Department of Primary Industries, p 6; Evidence, Ms Suzanne Robinson, Director, Animal Welfare, NSW Department of Primary Industries, 13 August 2020, p 4.

²⁵ See Answers to Questions on Notice, Department of Primary Industries, 27 October 2020, p 2.

Chapter 2 Welfare of exhibited animals and community expectations

This chapter focuses on the welfare of exotic animals in circuses and cetaceans exhibited in New South Wales. It begins by exploring the circuses' experience and expertise in providing care for exotic animals, along with the industry's history in terms of regulatory compliance. It also examines the welfare concerns raised by some stakeholders with respect to these animals, particularly in terms of their ability to perform natural behaviours in these settings and concerns related to travelling and confinement. Specifically, the chapter will also consider the welfare of the cetaceans currently exhibited in the Dolphin Marine Conservation Park. Lastly, the chapter will discuss community expectations in regard to the welfare the exotic animals in circuses and exhibited cetaceans.

Welfare of exotic animals exhibited in circuses

- 2.1 Stakeholders were divided in their assessment of the welfare of exotic animals in NSW circuses. Broadly, stakeholders from the circus industry held positive views about the welfare of exotic animals in circuses, often making reference to their experience and expertise in caring for the animals, along with their positive track record of regulatory compliance.
- 2.2 On the other hand, stakeholders external to the industry – including representatives from animal welfare groups and researchers – held welfare concerns for exotic animals in circuses. This generally stemmed from concerns related to the animals' lifestyle in captivity as compared to the lifestyle and behaviour of the same species in the wild. These stakeholders also questioned the adequacy of the current regulatory framework in regards to animal welfare.

The circus industry perspective

- 2.3 Stakeholders from the circus industry noted their experience and expertise in caring and providing for the welfare of exotic animals in their care.
- 2.4 Mrs Zelic Bullen, Managing Director of Animals All Around, explained to the committee her extensive experience as an animal trainer, and how the traditional circus has been an intergenerational commitment for the Bullen family:

Animals All Around has a strong family background with exotic animals dating back to 1921 ... My own personal resume extends across over 100 film and television productions ... My husband and partner Craig Bullen is 3rd generation from one of Australia's oldest circus families, our children 4th generation ... the staff at Animals All Around have extensive experience with a large range of exotic and domestic animals and are passionate about continuing and expanding the 4th generation Bullen family tradition of working in harmony with these animals ...²⁶

- 2.5 The lifelong and intergenerational commitment to the traditional circus was not unique to the Bullen family, but reflected also in the experiences of other industry stakeholders who contributed to the inquiry.

²⁶ Submission 272, Animals All Around, p 1.

- 2.6 Ms Janice Lennon, owner of Janlin Circuses Pty Ltd, trading as the Stardust, Burton and Lennon Bros brands, referred to her circus as a 'family show', involving 24 family members who have participated in the breeding and training of generations of exotic animals over many years.²⁷
- 2.7 Mr Shane Lennon, Managing Director of Hudsons Circus, submitted that he is a 'fifth generation circus performer, animal trainer and circus owner', with experience in caring for and training exotic animals such as lions, tigers, rhesus macaques, baboons and chimpanzees.²⁸
- 2.8 Commenting on the depth of experience held by NSW circuses, Mrs Bullen submitted that the industry is well qualified to provide for the welfare of the exotic animals, with the 'benefit of modern scientific studies and research', as well as '... lifetimes of hands on animal handling techniques'.²⁹
- 2.9 The committee received other industry submissions that were supportive of the view that the depth of experience in the circus industry translated well in terms of the provision of quality care to exotic animals. For example, Ms Dante Ashton, a seventh generation circus performer, contended that the circus community as a whole provided high quality care and took pride in the welfare of its animals.³⁰ Ms Gail Grix, a former performer with Ashton's Circus, was of the view that the exotic animals lead '... long happy, enriched lives...'.³¹ Similarly, Ms Lennon was of the view that the exotic animals held in her circus are all 'happy healthy animals'.³²

History of compliance with the regulatory framework

- 2.10 In support of their positive assessments of the welfare of exotic animals in circuses, industry stakeholders also referred the committee to the current regulatory framework and the industry's positive history of compliance with it.
- 2.11 Mr Shane Lennon submitted to the committee that the welfare of the exotic animals is provided for through sufficient regulatory and legislative oversight:

The Department of Primary Industries in NSW is currently responsible for inspection and licensing in accordance with the Standards for Circus Animals.

...

The standards remain current and relevant, with changes made as recently as February 2019. With current legislation and constant updates I feel that the legislative framework is sufficient to provide for the welfare of exotic exhibited animals.³³

²⁷ Submission 95, Janlin Circuses Pty Ltd, p 2.

²⁸ Submission 274, Hudsons Circus Pty Ltd, p 2.

²⁹ Submission 95, Janlin Circuses Pty Ltd, p 3; Evidence, Mr Presland, Stardust Circus, 13 August 2020, p 15; Evidence, Mrs Zelig Bullen, Director, Animals All Around, 13 August 2020, p 15; Submission 272, Animals All Around, p 2.

³⁰ Submission 246, Ms Dante Ashton, p 1.

³¹ Submission 242, Ms Gail Grix, p 1.

³² Submission 95, Janlin Circuses Pty Ltd, representing Stardust Circus and Lennon Bros Circus, p 2.

³³ Submission 274, Hudsons Circus Pty Ltd, p 1.

- 2.12** Mr Lennon's view was supported by Animal Care Australia, who asserted that the welfare of the concerned animals was already 'heavily regulated'.³⁴
- 2.13** It was further noted by both Mr Lennon and Animal Care Australia that the current framework was produced in consultation with a range of stakeholders, including the circus industry, entertainment companies, zoological parks and the Royal Society for the Prevention of Cruelty to Animals (RSPCA).³⁵
- 2.14** During a hearing, the committee heard about the circus industry's compliance with the current regulatory framework.
- 2.15** Mrs Bullen confirmed that Animals All Around has been subject of a number of inspections and enjoyed a positive working relationship with the personnel who were responsible for conducting the checks on animals and premises.³⁶ Mr Adam Presland, Ringmaster and Public Relations Representatives of Stardust Circus, also confirmed that Stardust Circus has undergone inspections in the past and noted its 'A' ratings from recent audits.³⁷
- 2.16** Hudson's Circus noted that NSW circuses are subject to a number of regulatory checks, including the Department of Primary Industries' audits, as well as broader legislation that protects the animals against cruelty. Hudson's Circus further noted that no conviction has been recorded against an Australian circus for animal cruelty in over 35 years.³⁸
- 2.17** The view that the current regulatory framework is well complied with, and effective in protecting animal welfare, was articulated by Mr Damian Syred, Director of Circus Royale, who stated:
- Under the Exhibited Animals Protection Act 1986, New South Wales has had a standard for the exhibition of circus animals since 1996. Australian circus owners welcomed these standards. They fully embraced them and now frequently renew equipment and new facilities that exceed the minimum standards.
- In short, the standards work. Circus operators who do not comply with the exhibition standards do not operate in Australia. Animal cruelty is not tolerated. I have not ever seen it, nor would I tolerate it. The circus standards work well, as indicated by zero cruelty prosecutions.³⁹
- 2.18** By contrast, RSPCA Australia and other non-industry stakeholders argued that mere compliance with the law does not equate to positive animal welfare.⁴⁰
- 2.19** When questioned about the government's audit activities, Mr Peter Day, Director – Compliance and Integrity Systems, NSW Department of Primary Industries, informed the committee that

³⁴ Submission 178, Animal Care Australia, p 3.

³⁵ Submission 274, Hudsons Circus Pty Ltd, p 1; Submission 178, Animal Care Australia, p 3.

³⁶ Evidence, Mrs Bullen, 13 August 2020, p 16,

³⁷ Evidence, Mr Presland, 13 August 2020, p 11.

³⁸ Submission 178, Animal Care Australia, p 1.

³⁹ Evidence, Damian Syred, Director, Circus Royale, 13 August 2020, p 12.

⁴⁰ Evidence, Dr Liz Arnott, Chief Veterinarian, RSPCA NSW, 14 August 2020, p 2.

two audits of Stardust were conducted in 2017-18 and 2018-19, and that an audit of Animals All Around was conducted in 2018-19.⁴¹

2.20 Mr Day informed the committee that circuses would typically be notified before an audit, in order to ensure that the relevant personnel are present to answer any questions. However, the Department retained the capacity to make unannounced visits in instances where there are reasonable grounds to believe that the provisions of the Exhibited Animals Protection Act or Regulations have been contravened.⁴²

2.21 When asked to elaborate on the outcomes of the recent audits, Mr Day explained only 'minor' issues were identified with the audits of Stardust Circus and Animals All Around. Mr Day explained:

The issues in terms of the circuses were: a minor issue in terms of some of the enclosures needed to be repaired— these always have to be seen in context, I guess— there was a technical issue around some veterinarian arrangements that were not of the standards; food preparation not carried out indoors; an establishment not having adequate first aid, which is part of the public safety component of the standards; records of staff experience and qualifications—those types of things. Most of them were all minor issues that were raised.⁴³

2.22 In terms of enforcement action, Mr Day stated that there has been a directional order issued against a New South Wales circus in the past, but that no further enforcement action such as a penalty infringement notice or prosecution has arisen as a result of an audit since the commencement of the program in 2017.⁴⁴

2.23 The committee also received evidence that the care provided in circuses often exceeds what is required by the regulatory framework.⁴⁵ For example, Stardust Circus provides heating for its rhesus macaques, air-conditioning for its lions and establishes outdoor enclosures for both animals while travelling. Stardust Circus also used and advocated for the use of outdoor enclosures before it became a regulatory requirement, and its enclosures are larger than the mandated minimum.⁴⁶

2.24 However, animal welfare experts suggested that these changes did not guarantee higher welfare. For example, when Dr Joanne Dorning was asked if she considered providing lions with air-conditioning an indication of high welfare, she said 'No, I do not'. When questioned further, she explained:

⁴¹ Evidence, Mr Peter Day, Director, Compliance and Integrity Systems, NSW Department of Primary Industries, 13 August 2020, p 4.

⁴² Evidence, Mr Day, 13 August 2020, p 4 and NSW Department of Primary Industries, Clarification to Evidence Provided, 27 October 2020, p 1.

⁴³ Evidence, Mr Day, 13 August 2020, pp 4 and 9

⁴⁴ Evidence, Mr Day, 13 August 2020, pp 4, 9 and 10.

⁴⁵ Evidence, Mr Adam and Ms Lennon, Stardust Circus, 13 August 2020; Mrs Bullen and Mr Craig Bullen, Director, Animals All Around, 13 August 2020, pp 11-16.

⁴⁶ Evidence, Mr Presland, 13 August 2020, p 16; Submission 95, Janlin Circuses Pty Ltd, p 2; Evidence, Ms Jasmine Straga, Public Relations Representative, Circus Federation Australia and Board Member, Fédération Mondiale du Cirque, 13 August 2020, p 35.

Well, thermal regulation is something that animals need to be able to do, of course, but it depends on the animal's response to that. You cannot just measure: Do they have air conditioning or not? You have to say, "Is the animal the right the temperature? Is it behaving in a normal way?".⁴⁷

Exotic animals' suitability to the circus way of life

2.25 Stardust circus noted that all of its exotic animals were born, bred and trained in Australia under its care.⁴⁸ In turn, industry stakeholders contended that such early and lifelong exposure to the circus environment made the exotic animals the subject of this inquiry well suited and adapted to the circus way of life.

2.26 Mrs Zelig Bullen, Director of Animals All Around, stated:

The circus lions, for instance, from Stardust – they were not caught from Africa and brought over here as five year old lions. They were born in captivity and raised by the human.

For them, their normal is being in a caravan with the children until such time as they need more room and need more play space, when they go into their own enclosures... it is no different to raising a puppy in your home.⁴⁹

2.27 Mr Michael Donnelly, President of Animals Care Australia, took the point further, contending that: 'the animals involved within this inquiry are domesticated and are multiple generations distant from their wild cousins...'.⁵⁰

2.28 Yet, other stakeholders disagreed with the view that exotic animals in circuses have adapted to the circus way of life.

2.29 The Animal Defenders Office cited evidence that:

The conditions in travelling circuses cause severe stress to non-domesticated animals, leading to stereotypies such as pacing by big cats and monkeys, and mouthing cage bars. These behaviours are scientifically acknowledged as indicators of impaired welfare due to the inability to cope with unsuitable living conditions.⁵¹

2.30 The Animal Defenders Office also referred to research by Lossa, Soulsbury and Harris which concluded 'that the species of non-domesticated animals that are commonly kept in circuses appear to be those least suited to a circus'.⁵²

2.31 Dr Liz Arnott, Chief Veterinarian, RSPCA NSW, stated that animals are considered to be domesticated only once the particular species have been selectively bred and genetically adapted

⁴⁷ Evidence, Dr Joanne Dorning, co-author, *The Welfare of Wild Animals in Travelling Circuses Report*, 14 August 2020, p 42.

⁴⁸ Submission 95, Janlin Circuses Pty Ltd, p 1.

⁴⁹ Evidence, Ms Lennon, 13 August 2020, p 17.

⁵⁰ Submission 178, Animal Care Australia, p 2.

⁵¹ Submission 222, Animal Defenders Office, pp 5-6.

⁵² Submission 222, Animal Defenders Office, pp 5-6.

over countless generations for docility to humans, to the extent that the animals become distinct from their wild ancestors or cousins. Dr Arnott also explained that domestication goes beyond taming – where animals grow accustomed to living alongside humans – and genetically determines an animal to be tolerant of humans.⁵³

2.32 Dr Arnott's view was echoed by Dr Joanne Dorning, co-author of *The Welfare of Wild Animals in Travelling Circuses* report, who pointed out that an overseas breeding project of foxes required 50 generations of selective breeding before an increased affinity to humans was observed.⁵⁴

2.33 A related argument was made by Dr Rosemary Elliott, President of Sentient, who noted that the domestication of the dog is estimated to have taken between 11,000 and 30,000 years.⁵⁵ Dr Elliot echoed and summarised the view of other animal welfare stakeholders in claiming that the exotic animals held in circuses are tamed, but not domesticated, and remain 'wild animals at heart'.⁵⁶

Inability to perform natural behaviours in circus settings

2.34 Rejecting the view that the exotic animals in New South Wales circuses have adapted to the circus way of life, animal welfare and expert stakeholders drew upon the animals' inability to perform natural behaviours to support their concerns about the animals' welfare.

2.35 For instance, RSPCA Australia outlined that a non-domesticated animal would only be suitable for life in the circus – involving performance, travel and prolonged confinement in restricted space – if it exhibited the traits of:

- low space requirement
- simple social structure
- low cognitive function
- non-specialist ecological requirement
- an ability to be transported without adverse welfare effects.⁵⁷

2.36 It was contended by RSPCA Australia that none of the exotic species held in New South Wales circuses satisfied the above criteria.⁵⁸

2.37 Ms Georgie Dolphin, Program Manager, Animal Welfare of Humane Society International, sought to explain how the lifestyle required in circus settings is incompatible with exotic animals, drawing also upon a study in this area:

⁵³ Answers to supplementary questions, Dr Liz Arnott, Chief Veterinarian, RSPCA NSW, 30 September 2020, p 1. See also Submission 174, Animal Justice Party, p 3.

⁵⁴ Evidence, Dr Dorning, 14 August 2020, p 45.

⁵⁵ Evidence, Dr Rosemary Elliott, President, Sentient, 14 August 2020, p 31.

⁵⁶ Evidence, Dr Elliott, 14 August 2020, p 31.

⁵⁷ Submission 175, RSPCA Australia, p 4 and Submission 229, NSW Young Lawyers, p 4.

⁵⁸ Submission 175, RSPCA Australia, p 4 and Submission 229, NSW Young Lawyers, p 4.

... we believe that these artificial environments are grossly incompatible with their physiological, social and behavioural needs.

The lions and monkeys currently featured in circuses in New South Wales are subjected to regular transportation, caged confinement, loud noises and bright lights during shows. They are denied the ability to adequately socialise or exhibit natural behaviours, suffering stress and boredom likely due to lack of stimulation.

A 2009 Bristol University study revealed that lions in particular are one of the least suitable species for the captive environment like circuses. The study states: 'The deleterious effects that circus life has on individual animals are a primary welfare concern. Circus animals spend the majority of the day confined, a small amount of time performing/training, and the remaining time in exercise pens'.⁵⁹

2.38 Given difficulties in accommodating the range of natural behaviours in circus settings, NSW Young Lawyers contended that the regulatory framework does not reflect the latest scientific understanding of animal welfare, and that the committee should not be satisfied with regulatory compliance itself.⁶⁰

2.39 Dr Arnott, Chief Veterinarian of RSPCA NSW, acknowledged the industry's compliance with the regulatory framework, but supported the NSW Young Lawyer's view that the regulatory standards itself did not translate to the animals' positive welfare state:

We accept that the owners and handlers of circus animals may meet minimum requirements for care required by law, including food and shelter, but to assert that this secures a good quality of life for these animals and a positive welfare state is not in touch with a contemporary understanding of animal welfare. The prescribed standards for exhibiting circus animals in New South Wales show a real disconnect between, on one hand, accepting that certain exotic species are inappropriate for circuses because they have complex natural behaviours or preferences, while either still permitting their keeping or the keeping of animals of a similar kind. A similar tension exists in the standards permitting species to be confined in smaller enclosures than those that are required in fixed establishments. To suggest that the needs of an animal depend on their use by humans, rather than their species, is unsound.⁶¹

2.40 Dr Elliot, President of Sentient, echoed these concerns:

Circus environments can never meet the behavioural, physiological or social needs of exotic animals. No amount of enrichment or compliance with standards will change this, any more than they will for dolphins in captivity. The key question is this: What do cetaceans and exotic animals experience when subjected to lifelong confinement in a tank or small enclosure as part of a travelling circus?⁶²

2.41 The Animal Defenders Office used the mandated sizes of animal enclosures – which were described as 'extremely inadequate' when compared with the concerned animals' natural range

⁵⁹ Evidence, Ms Georgie Dolphin, Program Manager, Animal Welfare, Humane Society International, 14 August 2020, pp 13-14.

⁶⁰ Submission 229, NSW Young Lawyers, pp 4-5.

⁶¹ Evidence, Dr Arnott, 14 August 2020, p 2.

⁶² Evidence, Dr Elliot, 14 August 2020, p 27.

in the wild – as an example of how compliance did not equate to achievement of good welfare.⁶³ The example was echoed by Dr Elliott, who, when asked to comment on the minimum enclosure sizes for lions, likened it to 'keeping a sow in a sow stall or a hen in a battery cage'.⁶⁴

- 2.42** The Animal Defenders Office also highlighted that the space requirements for keeping exotic animals in circuses are far below the minimum space required for the same species in zoos:

Lions kept in a zoo in NSW must have an enclosure of at least 300 m², whereas in a circus the enclosure can be as small as 20 m². Moreover circus lions may have access to these areas for only 6 hours during the day and can be kept in small 'animal wagons' for the remaining 18 hours. Research has shown that animals in circuses spend only 1–9% of the day actually performing or being trained, meaning that most of their time is spent back in these limited enclosures.⁶⁵

- 2.43** The size of these mobile enclosures is significant because, under the current regulatory regime, animals could legally remain in these enclosures for up to 11 months of the year. The evidence we received from the circuses did not suggest this occurs.

- 2.44** Dr Elliot, further using the example of lions, explained why the regulatory requirements designed to protect the welfare of exotic animals were not enough:

The standards require 45 minutes of exercise four days a week, that is ridiculously low for a large animal that has a large range and can run a long way and very quickly.

They are deprived of the opportunity to express these natural and highly driven behaviours ... they are regularly transported and this is also an issue for all of them ... their social needs, this is a huge one, are unmet...

In the standards I read somewhere it is considered acceptable to keep lions in captivity because most of the time they sleep. That is probably true. But the 20 per cent of the time that they do not sleep they are engaging in behaviours that are necessary for their welfare. These behaviours would include ranging for kilometres to catch food, to work with others, allogrooming, everything they do is prohibited in this captive environment. It does not matter that they would normally sleep 80 per cent of the time, it is what they do with that 20 per cent of the time they can no longer do.⁶⁶

- 2.45** Overall, Dr Elliott considered that smaller living spaces offered by circuses, combined with the need to travel, would result in psychological distress for exotic animals, culminating in stereotypic behaviours and ill health.⁶⁷

- 2.46** This conclusion was supported by the evidence of Dr Dorning, who added that the circus way of life also removed the concerned animal's ability to exercise control and make choice in their lives:

⁶³ Submission 222, Animal Defenders Office, p 3; Dr Di Evans, Answers to Questions on Notice, 14 August 2020, p 2.

⁶⁴ Evidence, Dr Elliott, 14 August 2020, p 33.

⁶⁵ Submission 222, Animal Defenders Office, p 3.

⁶⁶ Evidence, Dr Elliott, 14 August 2020, p 33. See also Submission 174, Animal Justice Party, p 4.

⁶⁷ Submission 177, Sentient, p 2.

The main thing that kept coming up is the fact that animals do not have any control over their environment. That can also be perceived control rather actual control; so they do not have any choice; they cannot necessarily choose whether to participate in a performance or not; they cannot choose whether to be transported from place to place or not; and they cannot have the freedom to express their normal behavioural patterns or activity patterns just because of the nature of the activity of the circus life.⁶⁸

Studies on the welfare of exotic animals in circuses

- 2.47 Both sides of the debate referred the committee to research that supported their respective positions on the welfare of exotic animals in circuses.
- 2.48 For instance, a number of industry stakeholders referred the committee to the 1990 study of United Kingdom circuses by Dr Kiley-Worthington, which recommended that regulators work with circus operators to make improvements within circus settings, rather than impose an outright ban.⁶⁹
- 2.49 Another publication stakeholders referred to was the 2007 Radford Report, a publication commissioned by the UK Government to examine the use of wild animals in travelling circuses. The Australian Circus Festival and Fédération Mondiale du Cirque and Circus Royale noted that this report, on the balance of evidence available, found that there was no basis upon which to recommend a ban of the use of wild animals in travelling circuses.⁷⁰ Dr Dorning gave evidence that the Radford report ‘is considered by many to be scientifically inadequate’ and noted that it is one of the reasons the Welsh Government commissioned a new report to revisit the issue eight years later.⁷¹
- 2.50 Animal protection groups advised the committee that the first comprehensive scientific review of exotic animal welfare in travelling circuses was conducted by Lossa, Soulsbury and Harris in 2009. Animals Australia concluded from the report that the life of exotic animals in circuses is ‘impoverished’ and does not provide for their most natural behaviours.⁷²
- 2.51 On the other hand, the committee was also referred to *The Welfare of Wild Animals in Travelling Circuses* report commissioned by the Welsh Government in 2016. This study, having reviewed other studies and surveyed experts and organisations, concluded that wild animals in travelling circuses do not experience optimal welfare.⁷³

⁶⁸ Evidence, Dr Dorning, 14 August 2020, pp 40 -41.

⁶⁹ See Submission 184, Ms Nikki Ogle, p 1; Submission 185, Mr Casey Cainan, p 1; Submission 230, Australian Circus Festival and Fédération Mondiale du Cirque, p3; Submission No 264, Jessie Daley, p 3; Submission 266, Danielle Lennon, p 2; Submission 268, Damien Syred and Circus Royale p 4; Submission 271, Craig Bullen, p 1.

⁷⁰ Submission 230, Australian Circus Festival and Fédération Mondiale du Cirque, p 4; Submission 268, Damien Syred and Circus Royale p 6,

⁷¹ Answers to Supplementary Questions, Dr Joanne Dorning, Co-author, *The Welfare of Wild Animals in Travelling Circuses* Report, 27 October 2020, p 8.

⁷² Submission 223, Animals Australia, p 2.

⁷³ Submission 223, Animals Australia; p 2.

2.52 One of the authors of the report, Dr Joanne Dorning, appeared before the committee to further explain the findings. In reiterating her findings that the welfare of exotic animals in circuses are compromised in a circus setting, Dr Dorning stated:

A key question we need to ask is: is this a life worth living? Based on the evidence we reviewed, we concluded that by their very nature travelling circuses and animal shows cannot fulfil the welfare needs of wild animals.⁷⁴

2.53 During the conduct of the inquiry, it was apparent to the committee that both sides of the debate considered its position to be supported by scientific evidence. As such, there was considerable disagreement among stakeholders on which study should be relied upon by the committee.

2.54 Dr Dorning's research, in particular, was contested by industry stakeholders. For example, Ms Nikki Ogle and Mr Casey Cainan referred the committee to some concerns that were raised in regard to the interpretation of a source used in the review,⁷⁵ while Ms Straga, representing Australian Circus Festival and Fédération Mondiale du Cirque, raised questions regarding the authors' impartiality.⁷⁶

2.55 When asked about this issue, Dr Dorning explained that the concerns have been raised before, and that an independent review process was initiated by the University of Bristol. Dr Dorning advised that the independent process found the report to be scientifically objective and adhering to high academic standards.⁷⁷

Welfare of exhibited cetaceans

2.56 This section considers the welfare of cetaceans currently exhibited in New South Wales, which specifically covers the three bottle-nosed dolphins kept at the Dolphin Marine Conservation Park in Coffs Harbour.⁷⁸ It will first consider positive assessments made in relation to the welfare of these dolphins. It will then outline points put forward by stakeholders who held concerns over the welfare of the dolphins at the Dolphin Marine Conservation Park.

Positive views on the welfare of exhibited cetaceans

2.57 The Dolphin Marine Conservation Park, Animals Care Australia and the Zoo Aquarium Association Australasia submitted to the committee that they considered the three dolphins, all born and bred in the park, to be achieving positive welfare outcomes.⁷⁹

⁷⁴ Evidence, Dr Dorning, 14 August 2020, p 38.

⁷⁵ Submission 184, Ms Nikki Ogle, p 5; Submission 185, Mr Casey Cainan, p 2.

⁷⁶ Submission 230, Australian Circus Festival and Fédération Mondiale du Cirque, p 2.

⁷⁷ Answers to supplementary questions, Dr Joanne Dorning, Co-author, *The Welfare of Wild Animals in Travelling Circuses* Report; Evidence, Dr Dorning, 14 August 2020, p 40.

⁷⁸ Submission 173, NSW Department of Primary Industries, p 2.

⁷⁹ See, Submission 178, Animal Care Australia Inc; Submission 232, Dolphin Marine Conservation Park; Submission 231, Zoo Aquarium Association Australasia.

2.58 Mr Terry Goodall, Managing Director of the Dolphin Marine Conservation Park, noted that the welfare of the dolphins are oversights and positively assessed by three independent entities:

... We are also governed by the very strict regulations from the Department of Primary Industries, which we abide by.

We are accredited by the Zoo and Aquarium Association Australasia. We are judged under the five domains of welfare that they require all their members to conform to.

We have had the welfare of our dolphins independently checked last year and we came up good to excellent in that report.⁸⁰

2.59 Mr Peter Day, Director, Compliance and Integrity Systems, NSW Department of Primary Industries, confirmed that the Dolphin Marine Conservation Park was audited in 2017, 2019 and 2020 and has received 'A' ratings as a result.⁸¹

2.60 Ms Nicola Craddock, Executive Director of the Zoo Aquarium Association of Australasia (ZAA), explained to the committee that the ZAA, the peak body representing Australasian zoos, aquariums and sanctuaries, administers an independent accreditation program based on the 'Five Domains' model of welfare.⁸²

2.61 The Five Domains model examines factors such as nutrition, environment, physical health and behaviour, to help canvass the mental health of the animals examined. According to Ms Craddock, the accreditation process based on the model provides a 'science based assessment of welfare for animals in human care', and holds the ZAA's member organisations to a higher welfare standard than the regulatory minimum administered by the NSW Department of Primary Industries.⁸³

2.62 The committee also received evidence from Mr Goodall and Dr Isabella Clegg, a cetacean welfare scientist, that the three bottle-nosed dolphins exhibited in the Dolphin Marine Conservation Park have undergone a C-Well[®] assessment, a methodology involving 36 measures that serve as indicators for categories of nutrition, environment, health and behaviour.⁸⁴ The C-Well[®] assessment found the three dolphins to be in a positive welfare state.⁸⁵

2.63 At the same time, the C-Well[®] assessment noted a range of health and behavioural issues in the dolphins at Dolphin Marine Conservation Park including cracked and worn-down teeth, iron problems, anticipatory and attention seeking behaviour, stereotypic behaviours such as circle swimming, and eye problems. Dr Clegg noted these problems were 'not unique' to Dolphin Marine Conservation Park, and made a number of recommendations to improve the welfare of

⁸⁰ Evidence, Mr Terry Goodall, Managing Director, Dolphin Marine Conservation Park, 13 August 2020, p 22.

⁸¹ Evidence, Mr Day, 13 August 2020, p 4.

⁸² Evidence, Ms Nicola Craddock, Executive Director, Zoo and Aquarium Association Australasia, 13 August 2020, p 29

⁸³ Evidence, Ms Craddock, 13 August 2020, pp 29 and 34; and Submission 231, Zoo Aquarium Association Australasia, p 6.

⁸⁴ I Clegg, JL Borger-Turner and HC Eskelinen, 'C-Well[®]: the development of a welfare assessment index for captive bottlenose dolphins (*Tursiops truncatus*)' (2015) 24 *Animal Welfare*, pp 268-270.

⁸⁵ Evidence, Mr Goodall, 13 August 2020, p 22.

the dolphins including increasing shade, decreasing the amount of time dolphins spend staring into the sun, more stimulating and variable enrichment and less time playing with balls.⁸⁶

- 2.64** Dr Isabella Clegg, who developed the framework and undertook the assessment at the Dolphin Marine Conservation Park, maintained that, while difficult, it is possible to achieve positive welfare of dolphins under human care:

My position is that I believe that it is possible to keep cetaceans under human care and for them to have good welfare. It is still not common, I do not think. It is a hard thing to attain for lots of different reasons—because of the way the industry used to be, because of the money that is needed to be put in there, because of public perception... It is my personal position that I do think it is possible.

In my own personal interactions with the public on this and sharing my work, that is something that people are very surprised about. Obviously it is seen as a very black-and-white debate; either you are very pro-zoo or pro-dolphins in captivity or you are anti. I do think there is definitely a middle ground.⁸⁷

- 2.65** Noting Dolphin Marine Conservation Park's record of compliance with the regulatory framework, accreditation under the ZAA scheme, and results from the C-Well[®] assessment, Mr Goodall was of the view that the inquiry was 'a bit redundant' in terms of welfare.⁸⁸

- 2.66** Ms Craddock expressed concerns about the interchangeability of 'welfare' and 'ethics' in this inquiry:

It is important when considering the welfare of cetaceans for exhibition, not to use the terms 'welfare' and 'ethics' interchangeably. This submission is a response to the inquiry into the welfare of cetaceans exhibited in New South Wales, it being separate to any philosophical or ethical viewpoints.⁸⁹

Concerns for the welfare of exhibited cetaceans

- 2.67** The committee also received evidence from stakeholders who disagreed with the notion that positive welfare states could be achieved for dolphins in exhibition settings. These stakeholders often disagreed with the methodology used in the assessments discussed above, and emphasised the lifestyle and behaviour of bottle-nosed dolphins in the wild, before explaining how this contrasts with life in human care.

- 2.68** In particular, it became apparent to the committee that there was no consensus on the methods to be used when assessing the welfare of exhibited cetaceans. As an example, in explaining the C-Well[®] assessment model to the committee, Dr Clegg acknowledged that her methodology focussed on the 'welfare of the dolphins in front of the assessor'. That is, the dolphins were assessed as they were found, and the model in its assessment did not draw comparisons with their counterparts living in the wild.⁹⁰

⁸⁶ Evidence, Dr Isabella Clegg, Founder, Animal Welfare Expertise, 13 August 2020, pp 38-39

⁸⁷ Evidence, Dr Clegg, 13 August 2020, p 41.

⁸⁸ Evidence, Mr Goodall, p 22.

⁸⁹ Submission 231, Zoo Aquarium Association Australasia, p 5.

⁹⁰ Evidence, Dr Clegg, 13 August 2020, p 37.

- 2.69** While this model was accepted by the Dolphin Marine Conservation Park and the Zoo Aquarium Association Australasia, other stakeholders were of the view that such an assessment was not comprehensive.
- 2.70** For example, Dr Di Evans, Senior Scientific Officer of RSPCA Australia, contended that the lack of consideration of human imposed restrictions on opportunities that would be encountered by the same species in its natural environment resulted in an inadequate consideration of the dolphins' mental health.⁹¹
- 2.71** Evidence from other animal welfare groups and experts supported Dr Evans' emphasis on the tie to natural life.
- 2.72** PETA Australia, for instance, submitted that dolphins are social, intelligent animals who travel up to 100 kilometres a day with their family pods, using clicks, whistles and echolocation, while seeking out opportunities to wave surf and dive.⁹²
- 2.73** It was explained to the committee that such natural behaviour cannot be replicated in human care for a number of reasons. Dr Ingrid Visser, Founder and Principal Scientist of the Orca Research Trust and whale-rescue.org, submitted that even 'modern' facilities are not large enough to allow for the natural behaviours or social structures typical in the wild. Dr Visser also noted that captive facilities over habitats that distort and amplify sound, and that echolocation cannot be used as a result.⁹³
- 2.74** Dr Verne Dove, Founding Director of Australian Institute of Marine Rescues and Field Veterinarian of the Sea Shepherd Conservation Society, further observed that the dolphins were engaged in activities and behaviours that are unnatural in the wild. One particular behaviour Dr Dove elaborated on was the interactive sessions held at the Dolphin Marine Conservation Park that allowed for guests to swim with and handle dolphins. Dr Dove noted that such unnatural interactions create the potential for disease cross over, presenting a risk 'not only to the dolphins but also to humans'.⁹⁴
- 2.75** Another unnatural interaction highlighted to the committee was the dolphin 'kiss' activity at Dolphin Marine Conservation Park. Humane Society International Australia noted that these interactions can 'result in wounds and abrasions following frequent handling, and their sensitive beaks can be damaged'.⁹⁵
- 2.76** Sentient, the Veterinary Institute for Animal Ethics, also noted in its submission some of the health issues observed in captive dolphins. For instance, it was submitted that dolphins in captivity spend a higher proportion of their time with their head above the water surface in their interaction with the trainers. In turn, such additional exposure can lead to eye conditions, with at least 10 per cent of captive dolphins showing damage to the cornea.⁹⁶

⁹¹ Evidence, Dr Ingrid Visser, Founder and Principal Scientist, Orca Research Trust and whale-rescue.org, 14 August 2020, p 29.

⁹² Submission 19, PETA Australia, p 3

⁹³ Submission 193, Dr Visser, p 8.

⁹⁴ Evidence, Dr Dove, 14 August 2020, p 30

⁹⁵ Submission 224, Humane Society International Australia, p 7.

⁹⁶ Submission 177, Sentient, The Veterinary Institute for Animal Ethics, p 3.

2.77 At the hearing, noting that the dolphins were born in captivity, the committee asked experts whether there was a possibility of the dolphins getting used to and adapting to the performance roles assigned to them at the Park. Dr Elliott disagreed with this proposition, citing a study that showed that dolphins who participated in human interaction programs spent more time in the refuge area, and exhibited aggressive behaviours.⁹⁷

2.78 Dr Elliott's position was supported by Dr Visser, who contended that the dolphins participated in performance only because of its association with food, and that their stress is evident in the fact that captive dolphins display stereotypical behaviour that is unseen in the wild:

For example, in these facilities the dolphins do not go out and perform the shows without being fed. If you try and do a show without them being fed they refuse to do the tricks. You watch them outside of the show and typically they are not doing these types of behaviours and certainly not for extended periods that you would see in the show. The behaviours happen on command...

... These animals in the shows are very food motivated and when you look in the wild you do not see stereotypes. There is no record, there is not a single published paper of any stereotypes that you see in captivity exhibited with animals in the wild, and I am talking specifically about dolphins and orca. I think that is the contrast to make you question about whether the animal actually enjoys it and wants to do it...⁹⁸

2.79 Dr Elliott contended that the scientific literature is clear on the physical and mental health complication that afflict dolphins in human care:

The literature documents the debilitating eye conditions and respiratory, metabolic and gastrointestinal diseases; it documents the injuries inflicted by other dolphins; it documents the rostrum and teeth damage; and it points to the stress, frustration and boredom of such far-ranging animals confined to a tank, well divorced from all the stimuli of their natural habitat...⁹⁹

2.80 Dr Visser agreed with this view, informing the committee that she had visited over 40 facilities in 17 countries, holding 730 individual cetaceans, and failed to find a specimen that did not exhibit some form of stress, abnormal behaviour or self-mutilation.¹⁰⁰

Dolphins currently exhibited

2.81 The committee received evidence from the Dolphin Marine Conservation Park that all three of its dolphins were born in human care and that it would be very difficult for them to be released back into the wild.¹⁰¹ On this point, the committee did not receive any views to the contrary.

2.82 The committee also received evidence that the Dolphin Marine Conservation Park, along with two animal welfare organisations – Action for Dolphins and World Animal Protection – are canvassing the possibility of a sea sanctuary being built for the three dolphins currently living in

⁹⁷ Evidence, Dr Elliott, 14 August 2020, 36.

⁹⁸ Evidence, Dr Visser, 14 August 2020, p 36

⁹⁹ Evidence, Dr Elliott, 14 August 2020, p 27.

¹⁰⁰ Evidence, Dr Visser, 14 August 2020, p 29.

¹⁰¹ See Evidence, Dr Goodall, 13 August 2020, p 22;

the park.¹⁰² The committee also received evidence that an initial assessment by Dr Clegg indicated that a successful transition to such a sanctuary would improve the welfare outcomes of the three dolphins.¹⁰³

- 2.83** The proposal for a sea sanctuary and the Dolphin Marine Conservation Park's rescue and rehabilitation efforts are further discussed in chapter 3.

Community expectations

- 2.84** This section will set out the evidence received in regard to the community's expectations in terms of using exotic animals in circuses and the exhibition of cetaceans in New South Wales. It will first provide an outline of the argument that community expectations are changing, as well as the counter view, which focuses on the enduring popularity of the establishments and the cultural value of traditional circuses. Finally, this section will outline how differences in expectations and viewpoints result in varying conceptions and assessments regarding the welfare state of the animals concerned.

Evidence of changing community expectations

- 2.85** Before turning to a discussion of how community expectations have changed, it is important to note the high level of community interest in this inquiry, as reflected in the number of submissions received. The committee received a total of 2,021 submissions, including 1,746 pro forma-type responses. Further to the submission process, the committee also launched an online questionnaire to better enable community participation, with this receiving 3,037 responses.¹⁰⁴
- 2.86** The general sentiment of the submissions and the questionnaire responses were similar, with the majority of contributors contending that the exhibition of exotic animals in circuses and cetaceans in NSW compromised the welfare of the animals concerned, and these practices should cease. A minority of contributors supported the continuation of current practices.
- 2.87** A number of stakeholders reflected on community sentiment on these issues, and how animal welfare views have changed over time. For example, in her evidence, Dr Arnott stated that community expectations have changed to a point where the minimisation of harm and cruelty to animals in human care, in itself, is no longer accepted as an indication of positive welfare:

The new ethic for animals goes far beyond the issue of cruelty alone, so that most would agree that we want the animals in our care to live a life which is not just free from cruelty but that is, on balance, enjoyable and rewarding for these animals.¹⁰⁵

¹⁰² Evidence, Mr Goodall, 13 August 2020, p 22; Evidence, Ms Hannah Tait, Public Engagement Officer, Action for Dolphins, 14 August 2020, p 13; Evidence, Mr Ben Pearson, Head of Campaigns, World Animal Protection Australia, 14 August 2020, p 14.

¹⁰³ Evidence, Dr Clegg, p 37.

¹⁰⁴ Portfolio Committee No. 4 – Industry, NSW Legislative Council, *Report on the Online Questionnaire* (2019), p 1.

¹⁰⁵ Evidence, Dr Arnott, 14 August 2020, p 2.

- 2.88** Mr Farnham Seyedi, Volunteer Lawyer of the Animal Defenders Office, contended that the use of exotic animals in circuses is anachronistic, noting that a number of jurisdictions have legislated a ban on exhibiting exotic animals in circuses and cetaceans in marine parks:

The world has moved on since these practices were considered normal. International common law jurisdictions have banned these practices in legislation and New South Wales should follow suit ... The practice is rightly going the way of the so-called freak show...¹⁰⁶

- 2.89** Mr Seyedi's argument was supported by Mr Ben Pearson, Head of Campaigns, World Animal Protection Australia. Speaking in regard to dolphins, Mr Pearson noted that countries such as Chile, Costa Rica, Croatia, Cyprus, Greece, Hungary, India, Slovenia, Switzerland and, Canada have legislated bans for the keeping of cetaceans for entertainment purposes, contending: '...we are seeing people recognise that keeping an animal this intelligent in captivity for such a long period of time solely for the purposes of entertainment is really hard to justify'.¹⁰⁷

- 2.90** Along similar lines, Ms Hannah Tait, Public Engagement Officer from the Action for Dolphins, observed that business practices have changed in recent times, with companies such as Instagram, Booking.com, TripAdvisor and Virgin Holidays no longer selling tickets to marine parks without marine sanctuary plans.¹⁰⁸

- 2.91** The committee was also referred to a number of surveys which suggested a change in community attitudes on these issues. One example was a 2015 Galaxy poll regarding cetaceans which suggested that 'two out of three Australians are not in favour of captivity'.¹⁰⁹

- 2.92** There was also a 2015 and 2018 survey commissioned by the RSPCA and conducted by McCrindle, which showed that more than three in four respondents were 'concerned' or 'very concerned' about the use of exotic animals in circuses.¹¹⁰

- 2.93** The committee was also referred to a petition signed by over 10,000 NSW citizens, calling for a ban on forcing wild animals to perform in circuses, that was tabled in NSW Parliament in 2011 by Clover Moore.¹¹¹

- 2.94** Industry stakeholders agreed that community expectations have changed in regard to the traditional circus and exhibition of cetaceans over the years, and noted that their practices have also evolved in response.

- 2.95** Mr Goodall informed the committee that the Dolphin Marine Conservation Park has made a deliberate decision to change its operating model in light of changing community expectations:

... That is one of the reasons why I came in and we changed our model because the old—what has happened years ago happened years ago and the public's perception moves on and we have to move on with that public perception. Things that happened

¹⁰⁶ Evidence, Mr Farnham Seyedi, Volunteer Lawyer, 14 August 2020, p 2.

¹⁰⁷ Evidence, Mr Pearson, 14 August 2020, p 13.

¹⁰⁸ Evidence, Ms Tait, 14 August 2020, p 13.

¹⁰⁹ Evidence, Ms Tait, 14 August 2020, p 13.

¹¹⁰ Answers to questions on notice, RSPCA Australia, 26 October 2020, p 2

¹¹¹ Submission 224, Humane Society International Australia, p 2.

years ago, you would never dream of doing today, and that is not just associated with our place but it applies to everything.¹¹²

- 2.96** Mr Presland also noted that Stardust Circus has revised its performance to accord with contemporary expectations:

Attitudes have certainly changed over the years. Years ago the whole thing was whips and chairs and getting a lion revved up and that is what people expected and they do not expect that now. ... They want to see that there is a bond with the trainer. They want to see that what the animals are doing is an extension of what they can do the wild, but they are doing it from command, and people want to see, ultimately, that the animals are in good condition and loved.¹¹³

- 2.97** Yet, industry stakeholders also noted the enduring popularity and support for the use of exotic animals in circus performances and exhibition of cetaceans in marine parks.

- 2.98** Mr Presland informed the committee that Stardust Circus remained popular, with the performance of its exotic animals – particularly its lions – serving as the main attraction. Mr Presland stated that Stardust's performances are well attended in Sydney and regional New South Wales, with attendance mostly at three-quarters to full capacity and tours often extended due to high demand.¹¹⁴

- 2.99** Mr Goodall also conveyed to the committee that most of the Dolphin Marine Conservation Park's attendance and income is generated from the exhibition of the three bottle-nosed dolphins.¹¹⁵ The committee also learned during the hearing that the Park is funding its rescue and rehabilitation work from its ticket sales.¹¹⁶

- 2.100** Despite the popularity of animals in these performances, Mrs Bullen observed, based on her experiences, that : '...there is now a great divide between those who work daily with animals and the general public's perception of how animals in human care are or should be treated...'.¹¹⁷

The cultural value of the traditional circus

- 2.101** Another point of view that was presented to the committee was the characterisation of the use of exotic animals in circuses as a 'tradition'. For instance, Mr Syred, Director, Circus Royale, noted that circus performance using exotic animals have been 'part of Australian culture since 1847',¹¹⁸ while Ms Jasmine Straga, Public Relations Representative from the Circus Federation of Australia and a board member of Fédération Mondiale du Cirque, described the traditional circus as a '250-year old art form'.

¹¹² Evidence, Mr Goodall, 13 August 2020, p 24.

¹¹³ Evidence, Mr Presland, 13 August 2020, p 15.

¹¹⁴ Evidence, Mr Presland, 13 August 2020, pp 14 and 17.

¹¹⁵ Evidence, Mr Goodall, 13 August 2020, p 28.

¹¹⁶ Evidence, Mr Goodall and Dr Duan March, Veterinarian, Dolphin Marine Conservation Park, 13 August 2020, p 28.

¹¹⁷ Evidence, Mrs Bullen, 13 August 2020, p 12.

¹¹⁸ Evidence, Mr Syred, 13 August 2020, p 12.

- 2.102** Noting that circuses in New South Wales have been family run over multiple generations, Ms Straga contended that any major change to the practice of the traditional circus would 'deeply affect the identity of circus people'.¹¹⁹ In addition, Ms Straga noted that the United Nations Educational Scientific and Cultural Organisation and the Parliament of the European Union have recognised the traditional circus as an intangible cultural listing, and suggested that New South Wales do the same.¹²⁰
- 2.103** However, other stakeholders suggested that a ban on keeping exotic animals in circuses in NSW would not end the circus tradition, but rather encourage circuses to evolve with the times. For example, Humane Society International Australia suggested that circuses look to incorporate modern technology in their shows to replace the animals:

A German company, Circus Roncalli, has transitioned to modern techniques by employing larger-than-life holograms with 360-degree visibility rather than live animal exhibitions. This represents the final step in their effort to phase animals out of their shows altogether.¹²¹

- 2.104** Dr Verne Dove also expressed the view that:

circuses with live animals are a dying business model, and should be phased out for more suitable alternatives. Such alternatives are already being seen in various circuses around the world, for example performing dinosaurs, as well as holographic animals, and 4D cinematography'.¹²²

Varying ideas about how to assess 'welfare'

- 2.105** As noted previously, it became apparent to the committee during this inquiry that there was a clear divide between the views of industry groups on one hand, and animal protection groups and the community on the other hand, on what constitutes good animal welfare.
- 2.106** For instance, Animals All Around submitted that protection of animal welfare means providing for the animals' physical and mental needs based on the 'Five Freedoms' model, including animal care, animal husbandry, and the humane treatment of the animal.¹²³
- 2.107** Similarly, Ms Craddock explained that the Zoo and Aquarium Association of Australasia (ZAA) undertakes its welfare accreditation program using the Five Domains Model, which: 'under the four domains – nutrition, environment, health and behaviour – provide insight into the animals various experience, which make up for the fifth domain, the mental domain'.¹²⁴
- 2.108** On the other hand, stakeholders who held concerns for the welfare of exotic animals in circuses and exhibited cetaceans incorporated additional elements to these models to understand welfare in a more holistic way.

¹¹⁹ Submission 230, Australian Circus Festival and Fédération Mondiale du Cirque, p 2.

¹²⁰ Evidence, Ms Straga, 13 August 2020, p 30.

¹²¹ Submission 224, Humane Society International Australia, p 10.

¹²² Submission 179, Australian Institute of Marine Rescues and Sea Shepherd, p 1.

¹²³ Answers to question on notice, Animals All Around, p 3.

¹²⁴ Evidence, Ms Craddock, 13 August 2020, p 29.

- 2.109** The Animal Defenders Office, while acknowledging the Five Freedoms approach as a starting point, was of the view that this approach focuses on the minimisation of harm and risk arising from human care, rather than what it considered 'good welfare', which can only be considered in consideration of natural behaviour and capabilities.¹²⁵ Humane Society International similarly recognised the role of the 'five freedoms' in understanding good animal welfare but contended that it is also important to recognise animal sentience and the animals' intrinsic value.¹²⁶
- 2.110** Along similar lines, Dr Dorning urged the committee to consider all aspects of an animals' life in captivity, contending that an absence of poor welfare does not equate to achievement of positive welfare outcomes:
- Of course, an animal will have good and bad experiences throughout their day and throughout their life. It is important to consider all aspects of the captive experience as a whole and the life of the animal as a whole. Absence of poor welfare in one aspect of living does not always equate to good welfare overall. A key question we need to ask is: Is this a life worth living?¹²⁷
- 2.111** Some comments received in conducting this inquiry demonstrate the range of views on these matters, as listed in the box over the page.

¹²⁵ Answers to supplementary questions, Animal Defenders Office, 6 October 2020, p 8.

¹²⁶ Answers to supplementary questions, Humane Society International, p 2. See also answers to supplementary questions, Sentience, p 2.

¹²⁷ Evidence, Dr Dorning, 14 August 2020, p 38.

Opposition to the use of exotic animals and exhibition of cetaceans

- 'These enterprises use the animals for 'entertainment' and thereby also perpetuate the perception that animals exist for our amusement and/or commercial gain. The notion that children should be witness to captive wild animals performing unnatural 'tricks' simply reinforces a lack of respect for the animals' intrinsic worth as sentient individuals. Such displays therefore undermine the broader community goal of the improvement of animal welfare and promotion of compassion to all species'.¹²⁸
- 'In this day and age no animal should be used as a source of entertainment for people'.¹²⁹
- 'Animals are not created for the folly of human beings. It is not true that we have dominion over them'.¹³⁰
- 'Reverse the situation, how would you feel performing tricks not get paid and when it's over you're shoved in a cage or pen?! It's morally and ethically wrong!'¹³¹
- 'Animals exist with their own inherent value separate of human enjoyment or utility'.¹³²
- 'The exotic animal circuses that remain in Australia, are and always have been, commercial businesses ... they are an embarrassing remnant of our humane exceptionalism and dominance that has no place in a modern bio centric society and certainly no place in an educated Australia'.¹³³
- 'Circuses are open books, we invite every single person to come and see our animals for themselves, to see how well cared for they are, see the way they are trained and the way they are loved'.¹³⁴

Support for the continued use of exotic animals and exhibition of cetaceans

- 'The available data suggests that a ban on exotic animals in the circus is not based on welfare but on personal choice. There has been no incidence of animal abuse to justify an investigation and to hold an inquiry....'¹³⁵
- 'Those in opposition to exotic animals in the circus will tell you that animals are not ours to exploit for entertainment.... They are of the belief that animals have rights similar to that of humans and no matter how good the welfare needs of an animal are met that animals are not ours to use and want to see the end to all animals in entertainment, farming, hunting, assistant animals and even pets'.¹³⁶
- 'Exotic animals in a circus environment have an extremely good life, they have 24 hour care, our enclosures exceed legal requirements, lengthy interaction time each day with their trainer, not to mention the importance of upholding hundreds of years of tradition ... I would like to say (our industry) circus and marine parks have for many years been the victim of false allegations ...'.¹³⁷

¹²⁸ Submission 223, Animals Australia, p 1.

¹²⁹ Submission 31, Name Suppressed, p 1.

¹³⁰ Submission 5, Ms Kim Komesarook, p 1

¹³¹ Submission 17, Mrs Lynette Truskett, p 1

¹³² Submission 68, Mr Jake Ewings, p 1.

¹³³ Submission 20, Name Suppressed, p 4.

¹³⁴ Submission 246, Ms Dante Ashton, p 1.

¹³⁵ Submission 185, Mr Casey Cainan, p 2.

¹³⁶ Submission 274, Hudsons Circus, p 2.

¹³⁷ Submission 267, Ms West-Dorfliger, p 2.

Committee Comment

- 2.112** The committee received sharply contrasting views on the state of welfare of exotic animals and cetaceans exhibited in New South Wales. The committee heard evidence that the welfare of exotic animals and exhibited cetaceans was of paramount importance to all stakeholders involved in this inquiry, including industry and animal welfare groups. The committee acknowledges contributions from both sides of the debate, and accept that all who participated in the inquiry believed that they had the best interests of the animals at heart.
- 2.113** The committee acknowledges that animal protection groups involved in the inquiry presented concerns that exotic animals and cetaceans, as non-domesticated species, are unable to perform the repertoire of behaviours performed in the wild leading to frustration and poor animal welfare. Broadly speaking, these stakeholders contended that using animals for human entertainment and profit was not justified because of these welfare implications. We acknowledge that according to animal protection groups, the use of animals in traditional circus acts and exhibition of cetaceans in a marine park setting is ethically objectionable.
- 2.114** On the other side of the debate are the industry operators. The committee heard of the devotion these stakeholders feel towards their animals. The committee acknowledges that NSW operators report that they have a robust history of compliance with the regulatory framework, often exceeding the standards set down to protect animal welfare. We accept that it would be untenable to release most of the animals relevant to this inquiry into the wild, having heard that, although not domesticated, the animals have been born in captivity and have had no previous exposure to the wild. Broadly speaking, these stakeholders proposed that good animal welfare was achieved by ensuring that no harm or abuse comes to animals in human care, and that husbandry practices are delivered to the regulated standard.
- 2.115** Ultimately, the committee is satisfied that exotic animals in circuses and cetaceans exhibited in New South Wales meet the welfare requirements as set out in the current legislative and regulatory framework, but recognises that these welfare requirements are outdated and do not meet all community expectations.
- 2.116** We understand that the NSW Department of Primary Industries is currently undertaking work to update the animal welfare regulatory framework, as part of the Animal Welfare Plan (discussed further in chapter 3). This reform work will provide an opportunity for the Government to take note of the comments and concerns identified by stakeholders as set out in this inquiry and report. Therefore, as noted in chapter 3, the committee has recommended that the NSW Government address the issues identified by stakeholders in this inquiry when developing the new animal welfare legislative framework (recommendation 1).

Chapter 3 The future of exotic animals in circuses and the exhibition of cetaceans

This final chapter will focus on two key areas relevant to the future use of exotic animals in circuses and exhibition of cetaceans. The first is breeding, and in particular, industry stakeholders' intentions with respect to the breeding of animals in their care, followed by their views on whether breeding should be permitted or not.

Secondly, the chapter will discuss whether a legislative ban or phase out is needed in terms of the use of exotic animals in circuses and exhibition of cetaceans in marine parks. In this regard, it will outline the plans of current circus operators and the Dolphin Marine Conservation Park, including a proposal to move the existing three dolphins at the park to a sea sanctuary. The chapter will also look at the role of circuses and marine parks in conservation, education, entertainment and research. It will then conclude with a discussion on the NSW Government's current plans to reform the animal welfare regulatory framework more broadly.

Breeding

- 3.1 This section will focus on the breeding of exotic animals for use in circuses and breeding of cetaceans for exhibition. It will look at the industry's position on the breeding of animals in their care, as well as stakeholders' views on whether or not the practice of breeding, in the context of animals being exhibited, should be allowed.

The industry's position on breeding

- 3.2 As noted in Chapter 1, there is no separate licensing regime for breeding applicable to exotic animals in New South Wales circuses. The regulations provide that any authority to exhibit animals must not allow breeding if it would have adverse impacts on the individual animals or on the species more broadly.¹³⁸
- 3.3 In relation to dolphins, the *Standards for Exhibiting Bottle-nosed Dolphins (Tursiops truncatus) in New South Wales* (1994) specifically states that breeding should be a fundamental aim of establishments keeping dolphins, unless this is unrealistic in light of the future welfare of the new captive-born individuals.¹³⁹
- 3.4 During this inquiry, Mr Goodall, Managing Director of the Dolphin Marine Conservation Park, informed the committee that the park has voluntarily ceased breeding of its bottle-nosed dolphins and would not oppose legislative change that prevents future breeding of cetaceans in care.¹⁴⁰

¹³⁸ Submission 173, NSW Department of Primary Industries, p 5.

¹³⁹ NSW Department of Industry, *Standards of Exhibiting Bottle-nosed Dolphins (Tursiops truncatus) in New South Wales* (1994), Clause 3.7(a)

¹⁴⁰ Evidence, Mr Terry Goodall, Managing Director, Dolphin Marine Conservation Park, 13 August 2020, p 22.

- 3.5 Mr Goodall also gave evidence about the significant cost involved in building the proposed sea sanctuary to retire the existing three dolphins, which is now being considered because of public perceptions.¹⁴¹
- 3.6 Ms Janice Lennon, the owner of Janlin Circuses Pty Ltd – trading as the Stardust, Burton and Lennon Bros brands – also confirmed that the circus has voluntarily stopped breeding its lions and rhesus macaques. However, when asked whether there were any plans to reintroduce breeding, Ms Lennon stated: 'we may change our mind later but at this point in time we are not going to'.¹⁴²

Views on whether breeding should be allowed to continue

- 3.7 Stakeholders who opposed the practice of breeding did so on the premise that traditional circuses and aquariums cannot achieve positive welfare states for the animals, and expressed concerns about bringing additional animals into these dying industries, particularly given the significant cost and practical difficulties in retiring and rehoming these animals. As such, these stakeholders recommended a legal prohibition of breeding.
- 3.8 For instance, Sentient – the Veterinary Institute for Animal Ethics, recommended 'that all breeding of exotic circus animals and captive cetaceans used for entertainment cease as soon as possible through a legal prohibition'.¹⁴³ Such a prohibition was also supported by a number of other organisations who participated in the inquiry, including Animals Australia, NSW Young Lawyers Animal Law Committee, the Animal Defenders Office, RSPCA NSW, RSPCA Australia and Humane Society International.¹⁴⁴
- 3.9 Others, such as Action for Dolphins and World Animal Protection Australia, and individuals such as Dr Ingrid Visser and Dr Verne Dove, supported a legal prohibition on the breeding of cetaceans.¹⁴⁵
- 3.10 While some animal welfare groups reflected positively on the current direction of the Dolphin Conservation Marine Park and its commitment not to be breed its dolphins, a need for a legal prohibition was nevertheless identified. For example, Ms Hannah Tait, Public Engagement Officer with Action for Dolphins, noted that there is nothing in the legislation to prevent breeding if the management at the Park were to change its views on this issue. Dr Dove also informed the committee that she had visited and observed the park over many years, and noted

¹⁴¹ Evidence, Mr Goodall, 13 August 2020, pp 22 and 24.

¹⁴² Evidence, Ms Lennon, Owner, Janlin Circuses Pty Ltd, 13 August 2020, pp 17-18.

¹⁴³ Submission 177, Sentient, The Veterinary Institute for Animal Ethics, p 6.

¹⁴⁴ Submission 223, Animals Australia, p 3; Submission 229, The Law Society of New South Wales Young Lawyers, Animal Law Committee, p 3; Evidence, Mr Farnham Seyedi, Volunteer Lawyers, Animal Defenders Office, 14 August 2020, p 3; Evidence, Dr Liz Arnott, Chief Veterinarian, RSPCA NSW, 14 August 2020, p 4; Evidence, Ms Georgie Dolphin, Program Manager, Animal Welfare, Humane Society International, 14 August 2020, p 14.

¹⁴⁵ Submission 172, Action for Dolphins, p 3; Evidence, Mr Ben Pearson, Head of Campaigns, World Animal Protection Australia, pp 13-14; Evidence, Dr Ingrid Visser, Founder and Principal Scientist, Orca Research Trust, 14 August 2020, pp 28-29; Submission 94, Marine Connection, p 1. See also Submission 224, Humane Society International, p 10.

that the park had varied in terms of its welfare and ethics standards under different management over its history.¹⁴⁶

- 3.11** Industry stakeholders had a different view on these issues, arguing that the practice of breeding can lead to positive welfare states and benefits, particularly in terms of community education and entertainment, research and conservation. Stakeholders who expressed support for breeding included Mr Damian Syred, Director of Circus Royale; Mrs Zelic Bullen, Director, Animals All Around and Mr Michael Donnelly, President of Animal Care Australia.¹⁴⁷ Ms Nicola Craddock, Executive Director, Zoo Aquarium Association Australasia, also expressed support for the practice of breeding, provided that all the welfare needs of the animals are first met.¹⁴⁸
- 3.12** In its submission, Animal Care Australia contended that there are also sound husbandry and welfare reasons to breed captive animals. Using the example of the bottle-nosed dolphin, the submission explained that a prohibition on breeding would necessitate a physical separation of female and male groups, disrupting natural behaviours and bonds of a highly intelligent and social species.¹⁴⁹ This argument was supported by Animals All Around, who observed that, in their experience as animal trainers, animals under stress would simply 'not breed', and that a successful breeding program can only be maintained with sound husbandry, robust management and a lifelong commitment to the animals.¹⁵⁰
- 3.13** However, the committee also received evidence that questioned whether a breeding program would necessarily guarantee animals opportunities to pursue natural courtship and breeding behaviours. The World Cetacean Alliance, for example, noted that breeding programs used by marine parks outside NSW rely on human intervention, with sperm collection, use of medication to promote impregnation and gestation and artificial insemination.¹⁵¹
- 3.14** Another related concern put to the committee was the claim of high infant mortality rates among bottle-nosed dolphins in captivity. RSPCA Australia referred the committee to studies that found high rates of stillbirth and infant mortality in captive breeding programs for the species. Ms Hannah Tait, Public Engagement Officer, Action for Dolphins, informed the committee that more than one in ten bottle-nosed dolphins born pass away before the age of one.¹⁵² While the committee heard that these rates are generally higher than in the wild, the committee did not receive evidence as to what the comparable rate of stillbirth or infant mortality would be for the dolphins' counterparts in the wild.

¹⁴⁶ Evidence, Ms Hannah Tait, Public Engagement Officer, Action for Dolphins, 14 August 2020, p 20; Evidence, Dr Verne Dove, Founding Director, Australian Institute of Marine Rescues and Field Veterinarian, Sea Shepherd Conservation Society, 14 August 2020, p 34.

¹⁴⁷ Submission 268, Damien Syred and Circus Royale, p 6; Submission 270, Mrs Zelic Bullen, p 3 and Evidence, Mr Michael Donnelly, President, Animal Care Australia, 13 August 2020, p 29.

¹⁴⁸ Evidence, Ms Nicola Craddock, Executive Director, Zoo Aquarium Association Australasia, 13 August 2020, p 29.

¹⁴⁹ Submission 178, Animal Care Australia, p 2.

¹⁵⁰ Submission 272, Animals All Around, p 2.

¹⁵¹ Submission 171, World Cetacean Alliance, p 13.

¹⁵² Submission 175, RSPCA Australia, p 15; Evidence, Ms Tait, 14 August 2020, p 13.

- 3.15** The committee also received evidence about the death of an infant dolphin that occurred at Dolphins Marine Conservation Park in 2015. According to Humane Society International Australia:

In 2015 the Coffs Harbour marine park came under intense public scrutiny over the death of an infant captive dolphin known as Baby Ji. The dolphin had ingested significant amounts of debris and leaf litter from within the tank and a park vet attempted to remove it by reaching into the dolphins' stomach with one hand. As a result Baby Ji suffered from a heart attack and died.¹⁵³

A legislative phase out of exotic animals in circuses and cetaceans for exhibition

- 3.16** This section will discuss arguments both for and against a legislative phase out or ban on the use of exotic animals in circuses and exhibition of cetaceans. In doing so, it will consider other jurisdictions that have taken steps to put bans in place. It will also consider stakeholders views as to what should happen to the existing exotic animals in circuses and marine parks, if a ban was implemented.

Arguments in support of a phase out or ban

- 3.17** The majority of inquiry participants expressed their support for a legislative phase out or ban on the use of exotic animals in circuses and cetaceans for exhibition. This included Sentient – The Veterinary Institute for Animal Ethics, the Animals Defenders Office, the NSW Young Lawyers Animals Law Committee and Action for Dolphins.¹⁵⁴ A number of these submissions drew the committee's attention to the fact that, over 30 years ago the Australian Senate Select Committee on Animal Welfare Inquiry into Dolphins and Whales in Captivity recommended a national phase out of venues that keep cetaceans in captivity.¹⁵⁵
- 3.18** RSPCA Australia also supported a phase out of exotic animals in circuses, so that they are 'no longer forced to travel nor required to perform'. It also supported a phase out of cetaceans being exhibited in marine park facilities.¹⁵⁶
- 3.19** Likewise, Humane Society International stated that it 'strongly advocates for the use of exotic animals in circuses and cetaceans in marine parks to be banned'. It further stated that the animals need to be 'retired with immediate effect, ceasing all performances and public interactions'.¹⁵⁷
- 3.20** In calling for a phase out, stakeholders generally pointed to welfare concerns for exotic animals and cetaceans used for exhibition, and changing community expectations, as discussed in chapter 2.

¹⁵³ Submission 224, Humane Society International, p 7.

¹⁵⁴ Submission 155, Sentient, The Veterinary Institute for Animal Ethics, p 7; Submission 222, Animal Defenders Office, pp 10-11; Submission 229, NSW Young Lawyers Committee, pp 13-14; Submission 172, Action for Dolphins, p 4.

¹⁵⁵ Submission 93, World Animal Protection Australia, p 3.

¹⁵⁶ Submission 175, RSPCA Australia, p 19.

¹⁵⁷ Submission 224, Humane Society International, p 9.

3.21 For example, in terms of the use of exotic animals in circuses, Mr Farham Seyedi, a Volunteer Lawyer with the Animal Defenders Office, stated: 'The world has moved on since these practices were considered normal'. Noting that other jurisdictions have banned the use of exotic animals in circuses, Mr Seyedi urged New South Wales to 'follow suit'. He stated:

No-one is suggesting circuses shut down—most circuses provide wonderful entertainment—but confining and transporting non-domesticated animals purely for entertainment purposes is no longer considered acceptable by many societies around the world.¹⁵⁸

3.22 Like Mr Seyedi, several other submission authors highlighted jurisdictions in which bans or restrictions have been imposed on the keeping of animals in circuses.¹⁵⁹

3.23 For instance, Humane Society International provided an extensive list of the countries worldwide in which bans or restrictions have been imposed on the use of 'wild animals'. In its view:

This demonstrates that Australia is lagging behind in terms of the global legislation trend, and a NSW circus ban would serve as a significant step to help close this gap and show leadership for other Australian states to follow.¹⁶⁰

3.24 In its submission, the NSW Young Lawyers Animal Law Committee observed that the breeding and exhibition of cetaceans is also prohibited in some countries, including the United Kingdom, New Zealand, Greece, United States of America and Canada.¹⁶¹

3.25 The committee received a submission from The Hon. Wilfred P. Moore, a former member of the Senate of Canada and the original sponsor of a Bill which created 'a historic nationwide phase-out of whale, dolphin and porpoise captivity for entertainment purposes' in Canada. The former Senator noted:

Our Bill was based on the strong scientific evidence that cetacean captivity is inherently cruel, primarily because the biological and ecological needs of cetaceans cannot be met in the conditions of captivity.¹⁶²

3.26 Such legislative restrictions were not limited to overseas jurisdictions. The Animal Defenders Office noted that the Australian Capital Territory has banned the use of exotic animals in circuses,¹⁶³ while World Animal Protection noted that Victoria prohibits the keeping of dolphins in captivity.¹⁶⁴

¹⁵⁸ Evidence, Mr Seyedi, 14 August 2020, p 3.

¹⁵⁹ Submission 224, Humane Society International p 2; Submission 229, NSW Young Lawyers Animal Law Committee, p 11. See also Submission 20, Name suppressed, p 3; Submission 81, Mr Patrick Murphy, p 12; Submission 204, Name suppressed, p 1;

¹⁶⁰ Submission 224, Humane Society International, p 2.

¹⁶¹ Submission 229, NSW Young Lawyers Animal Law Committee, p 12.

¹⁶² Submission 227, The Hon Wilfred P. Moore, p 1.

¹⁶³ Submission 222, Animal Defenders Office, p 9.

¹⁶⁴ Submission 93, World Animal Protection Australia, p 3.

3.27 The committee also received evidence that a total of 33 countries have banned the use or import/export of some or all exotic species in circuses mainly due to animal welfare concerns.¹⁶⁵

3.28 Dr Ingrid Visser further noted that a ban on keeping cetaceans is necessary to comply with Australia's obligations under international conventions:

Australia is a party to many international conventions which encourage the conservation of cetaceans... the phasing out of captive cetaceans will bring Australia one step closer to formally keep in line with evolving international practice, as well as fulfil its responsibilities under the international conventions to which it is a party, when NSW phases out the keeping of cetaceans.¹⁶⁶

3.29 In addition to national and state and territory-level jurisdictions, the committee also heard about action taken by a number of local councils in New South Wales to limit the exhibition of circus animals.

3.30 Humane Society International noted that over 40 councils have now banned the use of circus animals. It contended that a ban is 'essential to ensure the protection of exotic animals and cetaceans going forward, and to prevent the establishment of any new facilities in the future'.¹⁶⁷

3.31 The NSW Young Lawyers Animal Law Committee also provided the committee with a list of councils, noting that it included Parramatta, Lismore, Newcastle, Blue Mountains, Warringah, Woollahra, Hornsby, Randwick and Ku-ring-gai councils.¹⁶⁸

3.32 The Animal Defenders Office explained that a state wide ban is important because even though some councils have banned animal circuses from setting up on council land, circuses can still set up on private land.¹⁶⁹

3.33 Stakeholders also discussed what would happen to the existing exotic animals being used in circuses, and the cetaceans exhibited, should a legislative ban or phase out be implemented.

3.34 RSPCA NSW, in supporting steps being taken to phase out the use of exotic animals in circuses and cetaceans for exhibition, acknowledged that a 'grandfather policy' might need to be considered, particularly for the Dolphin Marine Conservation Park so that the existing marine facility can care for the remaining three dolphins. In its view:

The phasing out of exotic animals in circuses should occur as soon as possible, but with consideration of the most appropriate retirement options and timing to best suit the needs of the animals and protect their welfare.¹⁷⁰

3.35 In terms of the three dolphins held at the Dolphin Marine Conservation Park, the committee learned that the Dolphin Marine Conservation Park, Action for Dolphins and World Animal Protection are working closely together in developing a proposal for a sea sanctuary to be

¹⁶⁵ Submission 175, RSPCA Australia, p 6.

¹⁶⁶ Submission 193, Dr Ingrid Visser, p 9.

¹⁶⁷ Submission 224, Humane Society International, p 1.

¹⁶⁸ Submission 229, NSW Young Lawyers Animal Law Committee, p 6.

¹⁶⁹ Submission 222, Animal Defenders Office, p 10.

¹⁷⁰ Evidence, Dr Arnott, 14 August 2020, p 2.

erected in Coffs Harbour.¹⁷¹ A number of animal welfare groups supported a proposal for the dolphins to be relocated to a sea sanctuary, including Sentient - The Veterinary Institute for Animal Ethics, Humane Society International and PETA Australia.¹⁷² Further information about this proposal is at paragraph 3.59.

- 3.36** Action for Dolphins also supported a phase out of the commercial exhibition of cetaceans and the transfer of the existing dolphins at the Dolphin Marine Conservation Park to a sea pen sanctuary. It noted:

The primary purpose of this type of environment would be to provide the dolphins with as natural a home as possible, rather than keep them for exhibition purposes.¹⁷³

- 3.37** Further, Action for Dolphins noted that the proposal to move the existing dolphins to a sea pen would be more in line with community expectations:

As such, the relocation of dolphins in New South Wales to more natural surroundings in the ocean, such as a sea-pen sanctuary, fits squarely within community expectations of how these complex animals should be treated.¹⁷⁴

- 3.38** Echoing the sentiment that a sea sanctuary for the existing dolphins is a good alternative and one which meets public expectations, Dr Verne Dove, Founding Director of the Australian Institute of Marine Rescues and Field Veterinarian of the Sea Shepherd Conservation Society, stated:

Sea Sanctuaries offer an alternative to concrete pools for cetaceans, and are far more pleasing to the general public. These sanctuaries offer dolphins the protection they are used to whilst exposing them to some elements of nature.¹⁷⁵

- 3.39** In terms of risks to be managed, Dr Dove noted that with a sea sanctuary, the environment fluctuates and the risk of disease increases. In this way, the monitoring of health becomes more important to avoid preventable deaths. Dr Dove also stated that 'the transition of some dolphins from sea sanctuary to soft-release may be possible with short-term care and rehabilitation, making this an easier transition than from pool to the ocean'.¹⁷⁶

- 3.40** Given the potential benefits, World Animal Protection Australia contended that any legislative phase out of exhibition of cetaceans should be accompanied by support for the development of the sea sanctuary.¹⁷⁷

¹⁷¹ Evidence, Mr Goodall, 13 August 2020, p 22.

¹⁷² Submission 177, Sentient - The Veterinary Institute for Animal Ethics, p 7; Submission 19, PETA Australia, p 5; and Submission 224, Humane Society International, pp 9-10.

¹⁷³ Submission 172, Action for Dolphins, p 4.

¹⁷⁴ Submission 172, Action for Dolphins, p 3.

¹⁷⁵ Submission 179, Australian Institute of Marine Rescues and Sea Shepherd, p 4.

¹⁷⁶ Submission 179, Australian Institute of Marine Rescues and Sea Shepherd

¹⁷⁷ Submission 93, World Animal Protection Australia, p 3.

- 3.41** If a transfer of the dolphins to a sea sanctuary is not possible, RSPCA Australia stated that 'optimal environmental enrichment must be demonstrated to help meet behavioural and psychological needs' of the dolphins.¹⁷⁸
- 3.42** Similarly, it was suggested that the exotic animals currently being used in circuses also be rehomed in wildlife sanctuaries, given many have lived a life in captivity and may not be able to be released back into the wild.
- 3.43** RSPCA Australia suggested that the exotic animals being used in circuses be retired to a sanctuary environment where their physical, psychological and social needs be met. It noted that 'this would mean that they are no longer forced to travel nor required to perform'.¹⁷⁹
- 3.44** Also supporting this proposal, Ms Georgie Dolphin, Program Manager, Animal Welfare, Humane Society International, stated that the animals 'deserve the opportunity to live in the most natural environment possible and if the Zambi Wildlife Retreat can offer that environment, then that would certainly be a welfare improvement from them'.¹⁸⁰
- 3.45** Sentient - The Veterinary Institute for Animal Ethics also called for the exotic animals in circuses to be rehomed in sanctuaries, in order to meet the animals' welfare needs. In its view, if this occurred, the existing operators could continue as exotic animal-free circuses.¹⁸¹
- 3.46** If the government stepped in to close circuses and the marine park at Coffs Harbour, Mr Scott Hansen, Director General, Department of Primary Industries, acknowledged that there were three possible outcomes for the animals in those facilities:
- One is the potential for them to be rehomed in a fixed exhibit such as a zoo that has both the space, the facility and the ability to rehouse the animals. That obviously is not an option for the dolphins. We are talking about the other exotic animals there at this stage. So that is one option. Second option is that they be rehomed in an alternative facility interstate, and that is both an option for the dolphins as well as obviously for all the other exotic animals. They have moved out of the New South Wales jurisdiction and into other jurisdictions, and not just interstate but potentially internationally. The third option, and obviously the least preferred of all of them, is the euthanasia of those animals.¹⁸²
- 3.47** Expanding on what would happen if there was no alternative housing option for the animals, Mr Hansen stated that we 'would see a natural reduction in numbers to the point where there was no more animals of that type in captivity, or if immediate, then their euthanasia'.¹⁸³
- 3.48** Both industry and animal welfare groups did not support the option of euthanasia. During the course of the inquiry, Stardust Circus confirmed that it has a retirement plan for the exotic animals currently under their care. Ms Lennon indicated she has 'paid for an enclosure at Zambi

¹⁷⁸ Submission 175, RSPCA Australia, p 19.

¹⁷⁹ Submission 175, RSPCA Australia, p 19.

¹⁸⁰ Evidence, Ms Dolphin, 14 August 2020, p 19.

¹⁸¹ Submission 177, Sentient, p 7; Submission 222, Animal Defenders Office, p 1.

¹⁸² Evidence, Mr Scott Hansen, Director General, NSW Department of Primary Industries, 13 August 2020, p 7.

¹⁸³ Evidence, Mr Hansen, 13 August 2020, p 7.

Wildlife Park' to retire the lions, and is 'building a huge enclosure on our property for the monkeys'. Similarly, Dolphin Marine Conservation Park talked extensively about its plan to retire the dolphins to a sea sanctuary.¹⁸⁴

- 3.49** Animal welfare groups suggested that a legislative ban could incorporate a 'sunset clause' or the 'grandfathering' of current animals in the industry. Both Dolphin Marine Conservation Park and Stardust Circus indicated they would benefit from financial support from the NSW Government to transition the animals to retirement, in the event of such a legislative change.¹⁸⁵

The industry's position on future display of exotic animals and cetaceans

- 3.50** In addition to highlighting that there is no intention to breed the exotic animals currently in circuses, and the bottle-nosed dolphins in the marine park (discussed at paragraph 3.4), industry stakeholders discussed their future plans for retiring or rehoming the existing exotic animals and cetaceans in their care.

- 3.51** Ms Jan Lennon, the owner of Janlin Circues Pty Ltd, advised the committee that the lions previously held by its Lennon Circus brand have already been retired, and that an enclosure at Zambi Wildlife Park for the retirement of the remaining lions at Stardust Circus has already been paid for as well.¹⁸⁶

- 3.52** Mr Presland, in acknowledging potential plans to retire the lions from Stardust Circus due to public pressure, stated:

Obviously, we do not want to retire the lions. We are quite happy with them and with our family, but if pressure came that we had to do something with them then obviously we would have to retire them, we would have no other option.¹⁸⁷

- 3.53** In terms of the rhesus macaques, Ms Lennon stated: 'At the moment we are just building a huge enclosure on our property for the monkeys as a retirement one, at any time in the future'.¹⁸⁸ Regarding a potential rehoming of their exotic animals, Mr Presland added: 'I think we should be able to have the animals with us'.¹⁸⁹

- 3.54** Ms Lennon expressed concern that there may be welfare concerns if the government intervened and rehomed the animals. Ms Lennon emphasised that the rhesus macaques in particular were very attached to her family members.¹⁹⁰

¹⁸⁴ Evidence, Ms Lennon, 13 August 2020, pp 17-18; Evidence, Mr Goodall, 13 August 2020, p 22

¹⁸⁵ Evidence, Dr Visser, 14 August 2020, p 28; Evidence, Dr Arnott, 14 August 2020, p 2; Evidence, Ms Dolphin, 14 August 2020, p 14; Evidence, Ms Lennon, 13 August 2020, p17; Submission 232, Dolphin Marine Conservation Park, p 12.

¹⁸⁶ Evidence, Ms Lennon, 13 August 2020, p 17.

¹⁸⁷ Evidence, Mr Presland, Ringmaster and Public Relations, Stardust Circus, 13 August 2020, p 14.

¹⁸⁸ Evidence, Ms Lennon, 13 August 2020, p 18.

¹⁸⁹ Evidence, Mr Presland, 13 August 2020, p 18.

¹⁹⁰ Evidence, Ms Lennon, 13 August 2020, p 19.

- 3.55** In discussing the possible future options for animals, the committee heard evidence from Ms Lennon about the case of Arna the elephant, who, as a former animal of Stardust Circus, was retired to a zoo following an incident where she had killed her handler.
- 3.56** Ms Lennon suggested that Arna had struggled with the transition, having, within a few weeks, '...lost over 300 kilograms in weight'. Ms Lennon also argued that it was clear that Arna '...just pined for the circus...'. Ms Lennon told the committee that Arna eventually died at the zoo without a clear cause of death, although it was suggested to her by the zoo that Arna '...died of a broken heart'.¹⁹¹
- 3.57** Turning to the three dolphins being held at the Dolphin Marine Conservation Park, as outlined above, Mr Terry Goodall, Managing Director, advised the committee that the Park is working closely with Action for Dolphins and World Animal Protection on a potential proposal to move the dolphins to a sea pen sanctuary in Coffs Harbour.¹⁹² Further information about this proposal is contained in the box below.
- 3.58** Mr Goodall acknowledged that community expectations have changed, particularly in terms of keeping marine mammals in captivity, which he explained is why the Park has transitioned to a different business model focussing on rescue, rehabilitation, education and conservation.¹⁹³ Noting that the existing dolphins in his care could not be released into the wild, Mr Goodall stated:

We have to accept that there are animals that are rescued, rehabilitated and just simply have received so much trauma that they could not survive in the wild environment. Either they are put down or they exist under human care. If the sea pen can provide that area for them to survive in then that is ideal.¹⁹⁴

Proposal for the existing cetaceans at the Dolphin Marine Conservation Park to be transferred to a sea sanctuary

- 3.59** A large number of stakeholders made submissions to the inquiry acknowledging and supporting the proposal for a sea pen or sanctuary to be erected, in order to improve welfare outcomes for the three remaining dolphins at the Dolphin Marine Conservation Park (the Park).
- 3.60** The committee heard how the Park is working closely with Action for Dolphins and World Animal Protection Australia to undertake a feasibility study on whether a sea sanctuary or sea pen is a viable option.
- 3.61** The committee learned that there are two potential sites being considered for a sea sanctuary, one at Coffs Harbour in the Corrambirra Point area and another at Nambucca Heads.¹⁹⁵ The Park advised that, while the Coffs Harbour site is preferred due to its close proximity, that

¹⁹¹ Evidence, Ms Lennon, 13 August 2020, p 19.

¹⁹² Evidence, Mr Goodall, 13 August 2020, p 22.

¹⁹³ Evidence, Mr Goodall, 13 August 2020, pp 22 and 24.

¹⁹⁴ Evidence, Mr Goodall, 13 August 2020, p 24.

¹⁹⁵ Evidence, Mr Goodall, 13 August 2020, p 22.

Nambucca Heads would also be manageable in terms of access.¹⁹⁶ The Park explained the importance of proximity and accessibility to the committee, as the dolphins, having been born and bred in captivity, will need continuous care and be quickly relocated should inclement weather approach.¹⁹⁷

3.62 Mr Goodall confirmed that if the dolphins are relocated to a sea sanctuary, the plan is to not conduct breeding, training, shows or physical interaction with the public. He noted, however, that there would still have to be some interaction with staff, given the life the dolphins have lived at the Park:

...the three dolphins that we have were born into our complex. They have lived their lives with the staff here so it would be welfare-negative to move them somewhere where they just simply ended up swimming around in circles, given, of course, that a sea pen is still an enclosed area. It is just probably a bigger one. But they would have to continue to have some interaction with humans and that would obviously, need to be trained people like the staff that we have looking after them now.¹⁹⁸

3.63 Mr Goodall also spoke of the benefits that the sea sanctuary proposal would bring, particularly in terms of the role it could play in the rescue and rehabilitation of marine animals. It was also suggested that the sanctuary could become an attraction that benefits the local economy and bring extra tourism into the area.¹⁹⁹

3.64 In terms of the work completed to date, the committee was advised that:

- there has been an analysis in terms of wave data on the area inside the potential sea sanctuary location
- a general C-Well[®] assessment on the welfare of the dolphins was completed by Dr Clegg with 'positive results', although additional work in this area is required
- draft designs and architectural renders of the facility have been arranged
- they have started to identify appropriate government bodies and stakeholders in the area of the proposed sanctuary, to gain support.²⁰⁰

3.65 It was also noted that further work including acoustic testing, further welfare assessment, finalisation of architectural plans and water quality testing would need to take place as part of the feasibility study.²⁰¹ It was also explained to the committee that the proponents planned to commission detailed financial modelling of the project once public and political support for the project is confirmed.²⁰²

¹⁹⁶ Answers to supplementary questions, Dolphin Marine Conservation Park, 27 October 2020, p 3.

¹⁹⁷ Answers to supplementary questions, Dolphin Marine Conservation Park, 27 October 2020, p 3.

¹⁹⁸ Evidence, Mr Goodall, 13 August 2020, p 23.

¹⁹⁹ Evidence, Mr Goodall, 13 August 2020, p 23.

²⁰⁰ Answers to supplementary questions, Dolphin Marine Conservation Park, 27 October 2020, p 5.

²⁰¹ Answers to supplementary questions, Dolphin Marine Conservation Park, 27 October 2020, p 5.

²⁰² Answers to supplementary questions, Dolphin Marine Conservation Park, 27 October 2020, p 5.

3.66 In terms of how the welfare of the three dolphins could be improved if they move to a sea pen, Dr Clegg stated:

...everyone knows that the Dolphin Marine Conservation Park facility is quite old and quite small relative to what some of the modern facilities are like and what it could be. That is the obvious first parameter that would be improved, is that the dolphins would have more space and that is not just so they can swim around physically, it is so they can avoid each other if they want to, they have more areas of the enclosure to do different activity, they have more depth, which is always great. That would be an undeniable positive. The enrichment side of things as well.

Obviously, having live fish and a difference of topography on the bottom of the enclosure would be more stimulating than a uniform pool that they have at the moment. I still think, as was touched on earlier, training sessions and enrichment would need to be added to the pool such as structures for them to play with, puzzle feeders, things for them to do. Because ... after acclimatising they will definitely still need to be occupied during the day.²⁰³

3.67 On the task of transitioning the dolphins to the sea pen, Dr Clegg noted that plans would have to be put in place to 'build the dolphins up slowly to be more comfortable' with the arrangement, with monitoring by the team at the Park for stress-related behaviours. Essentially, she explained that they could be moved to a smaller pen within the larger sanctuary before being freed into the larger area over a period of time.²⁰⁴

3.68 When asked whether the transition would be a 'high risk' exercise, Dr Clegg noted other successful examples, including a case where belugas were successfully transported from Iceland to China. Noting that the proposal before the committee involves less distance and variance in water temperature, Dr Clegg stated: '... I do not think it is impossible at all'. Dr Clegg also noted that the relative close proximity of the Park from the proposed sites also provides a backup plan if needed.²⁰⁵

3.69 In terms of cost, Mr Goodall acknowledged that the sea sanctuary, if built, would require a significant financial investment. Mr Goodall estimated that the cost of construction of the sanctuary would cost between \$10 to \$15 million, with recurrent funding of around \$3 million to \$3.5 million per annum for operations.²⁰⁶

3.70 In regard to the cost of the feasibility study, the Park estimated that it would require up to \$250,000 to complete the work remaining.²⁰⁷

3.71 Noting the significant sum of investment required, the committee asked during the hearing how long the sea sanctuary site would likely be used by the three dolphins currently living in

²⁰³ Evidence, Dr Isabella Clegg, Cetacean Welfare Scientist and Founder, Animal Welfare Expertise, 13 August 2020, p 37.

²⁰⁴ Evidence, Dr Clegg, 13 August 2020, p 40.

²⁰⁵ Evidence, Dr Clegg, 13 August 2020, p 40.

²⁰⁶ Evidence, Mr Goodall, 13 August 2020, p 22.

²⁰⁷ Answers to supplementary questions, Dolphin Marine Conservation Park, 27 October 2020, p 6.

the Park. Mr Pearson, representing World Animal Protection Australia, noted that dolphins can live for 50 or 60 years, and that the youngest dolphin at the Park is 11.²⁰⁸

- 3.72** Ms Hannah Tait, representing Action for Dolphins, informed the committee that the facility could also be used for the purpose of looking after up to seven cetaceans a year that require rescue and rehabilitation.²⁰⁹ The proponents thereby stressed that the sanctuary is a long-term proposition.²¹⁰
- 3.73** Mr Goodall explained that the work conducted to date on the proposal has been paid for by fundraising efforts of its project partners – Actions for Dolphins and World Animal Protection Australia – and that they were looking for support to complete the necessary investigations. He requested the committee to recommend that the government financially contribute to the feasibility study; construction; and ongoing operation of a sea sanctuary at Coffs Harbour or Nambucca.²¹¹
- 3.74** The Park also signalled an intention to make the necessary administrative and structural changes needed if public money were to be received. For example, Dr March observed that working groups could be set up with government representations, as well as expert representation to ensure that the sea sanctuary is both 'politically and publicly palatable'.²¹²

Arguments that a phase out or ban is not necessary

- 3.75** Several inquiry participants did not support a legislative phase out or ban. Generally, this position was taken by those who felt that the welfare needs of the animals were being met in their current environment, or because the operators had already taken steps to cease breeding and plan the retirement of the animals.
- 3.76** Animal Care Australia, an association representing the interest of animal hobbyists, contended that as the welfare needs of exotic animals and cetaceans are being met in their current environments, there is no need to phase out the ongoing care of exotic animals in circuses and cetaceans in marine parks.²¹³
- 3.77** Animal Care Australia acknowledged that a natural phase out may occur:

We sadly acknowledge the phasing out of exotics & cetaceans will naturally occur ...With no further breeding occurring and no stated intent at acquiring new animals it is only a short period of time before these species disappear, and are either retired or they 'pass' in the care of their loving families & owners.²¹⁴

²⁰⁸ Evidence, Mr Ben Pearson, World Animal Protection Australia, 14 August 2020, p 17.

²⁰⁹ Evidence, Ms Tait, 14 August 2020, p 16.

²¹⁰ Evidence, Mr Pearson, 14 August 2020, p 17.

²¹¹ Answers to supplementary questions, Dolphin Marine Conservation Park, 27 October 2020, p 6; Evidence, Mr Goodall, 13 August 2020, p 22.

²¹² Evidence, Mr Goodall, 13 August 2020, p 24.

²¹³ Submission 178, Animal Care Australia, p 3.

²¹⁴ Submission 178, Animal Care Australia, p 3.

3.78 Mr Damian Syred, Director, Circus Royale, also contended that a ban is not required, stating:

I genuinely believe the decision as to whether to attend a circus with exotic and/or domestic animals should rest with the public, not be made for them by banning animals, which has nothing to do with circus welfare.²¹⁵

3.79 Explaining the potential impact of a ban, given Stardust Circus is renowned for their lions, Mr Adam Presland, Ringmaster and Public Relations for Stardust Circus, stated that it 'would affect us very very deeply in many different ways', including from a 'business point of view'.²¹⁶

3.80 The Australian Circus Festival and Fédération Mondiale du Cirque noted in its submission that the circus community live in a 'symbiotic relationship beside their animals', and described a ban as 'discriminatory and unnecessary' given that regulations are already in place to protect the animals concerned.²¹⁷

3.81 In terms of exhibiting cetaceans, Mr Terry Goodall also highlighted how difficult it would be for a new marine park to set up. Noting that the Dolphin Marine Conservation Park is the last place in NSW to have cetaceans, he stated:

You cannot take dolphins out of the wild; you have not been able to for over 20 years. You cannot import dolphins so I do not see how somebody could set up. I do not know why you would want to, for a start, but I do not see how you could, physically or practically.²¹⁸

3.82 While setting up a new business to exhibit exotic animals or cetaceans may be difficult, Mr Peter Day, Director of Compliance and Integrity Systems with the NSW Department of Primary Industries, advised that technically there is nothing in the current legislation which would prevent this from occurring. He stated:

If another dolphin park wanted to open up it would have to get ministerial approval. With a circus or aquaria, they would have to meet all the relevant requirements and standards.²¹⁹

3.83 Relevant to whether legislative action is required to phase out the use of exotic animals and exhibition of cetaceans, several submission authors also highlighted how the tourism sector is rapidly evolving in line with public demand, phasing out animal based experiences. In particular, one individual noted that companies like Trip Advisor, Virgin, STA Travel and British Airways are 'ending the sale of tickets to dolphinarium and other wild or exotic animal based entertainment'.²²⁰

3.84 This was argued as another reason for a legislative ban on the breeding and use of animals for entertainment. Dr Verne Dove expressed the view that 'circuses with live animals are a dying business model, and should be phased out for more suitable alternatives' and World Animal

²¹⁵ Evidence, Mr Damian Syred, Director, Circus Royale, 13 August 2020, p 13.

²¹⁶ Evidence, Mr Presland, 13 August 2020, p 14.

²¹⁷ Submission 230, Australian Circus Festival and Fédération Mondiale du Cirque, p 2.

²¹⁸ Evidence, Mr Goodall, 13 August 2020, p 24.

²¹⁹ Evidence, Mr Peter Day, Director of Compliance and Integrity Systems with the NSW Department of Primary Industries, 13 August 2020, p 5.

²²⁰ Submission 20, Name suppressed, p 3.

Protection argued that a ban on breeding cetaceans was essential to ensure we do not 'have another generation held in entertainment venues'.²²¹

Role of circuses and marine parks in conservation

3.85 Relevant to the discussion of whether a phase out should occur, a number of industry stakeholders suggested traditional circuses and aquariums have a role to play in wider conservation efforts, reminding the committee of the environmental degradation and habitat loss affecting wild animals worldwide.

3.86 For instance, Ms Jasmine Straga, Director of Australian Circus Festival and a board member of the Fédération Mondiale du Cirque, noted that:

... animals in today's wild ... are being threatened by shrinking habitats, lack of abundance of food, water, risk of being poached and live much shorter lives than their circus or aquarium counterparts ... Many circuses and aquariums around the world aid conservation through breeding programs, often in conjunction with zoos and sanctuaries and by raising awareness of the species.²²²

3.87 Similarly, CETASEA, an association of marine mammal scientists and professionals based in France, submitted that there is a possibility that captive breeding programs may become an essential part of marine mammals' survival in the future. CETASEA submitted:

We are currently facing a dramatic decline of species, habitat loss and climate change and while we all still don't know the consequences of our actions yet, it is clear that many animals will depend on captive breeding for survival. This is especially true for marine mammals with their slow reproduction and sensitive response to environmental changes.²²³

3.88 The committee also received evidence from a number of stakeholders who challenged the claim that the practices of traditional circuses and aquariums contributed to conservation efforts.

3.89 For instance, Dr Liz Arnott, the Chief Veterinarian of RSPCA NSW, noted that the rhesus macaques held by NSW circuses are not considered an endangered species. While Dr Arnott acknowledged that lions are considered to be at greater risk, she also observed that NSW circuses have not in the past used its Australian bred lions for re-population in the wild.²²⁴ Similarly, RSPCA Australia stated: "The sole reason for breeding exotic animals in circuses is for performance and profit. No conservation or research work is undertaken by circuses to help preserve these species, and their use is for entertainment not educational purposes".²²⁵

3.90 In respect to breeding dolphins, RSPCA Australia observed:

²²¹ Submission 179, Australian Institute of Marine Rescues and Sea Shepherd, p 1; Evidence, Mr Ben Pearson, Head of Campaigns, World Animal Protection Australia, 14 August 2020, p 18.

²²² Submission 230, Ms Jasmin Straga, p 5.

²²³ Submission 176, CETASEA Association, p 2.

²²⁴ Evidence, Dr Arnott, 14 August 2020, p 11.

²²⁵ Submission 175, RSPCA Australia, p 5.

The only potential justification to breed dolphins in captivity is for conservation purposes, where the ultimate goal is for release into the wild to replenish diminishing populations. Bottlenose dolphins, the most common species held in captivity, are not threatened in the wild and are listed as of least concern on IUCN's Red List, with an estimated wild population of at least 600,000. There is no evidence of a global population decline that would justify the keeping and breeding of dolphins in captivity.²²⁶

- 3.91** A related observation was made in regard to bottle-nosed dolphins by Dr Verne Dove. In her submission, Dr Dove noted that the bottle-nosed dolphin is a common species. Dr Dove therefore stated that any efforts to breed the species in captivity would be 'counterproductive', as the resources and expertise required could be better directed to more vulnerable species.²²⁷
- 3.92** Dr Dove's view was echoed in the submission of Marine Connection, who stated that the continuation of captive breeding would only 'propagate the public display industry rather than provide any real conservation purpose'.²²⁸
- 3.93** Relevant to conservation, the committee received evidence about the rescue, rehabilitation and training work conducted by the Dolphin Marine Conservation Park.
- 3.94** The Dolphin Marine Conservation Park currently conducts rescue, rehabilitation, and release of marine animals in the Coffs Harbour area and beyond, routinely rescuing distressed seals, turtles and cetaceans. The Park undertakes these activities voluntarily, and the associated costs – estimated to be around \$100,000 per year – are met through the Park's revenue, generated from visitors.²²⁹
- 3.95** In its submission, the Dolphin Marine Conservation Park called on the Government to provide financial support, so that they are not reliant on this income to perform their important rescue and rehabilitation work:

If this Parliamentary Inquiry is genuine in promoting animal welfare and maintaining community expectations, DMCP [Dolphin Marine Conservation Park] calls upon the Parliament to provide financial assistance to the DMCP's transition to a full rescue, rehabilitation and wildlife research and education facility. An investment by the government into this model would facilitate transparency, maintain the local economic stimulus provided by DMCP and most importantly, support the capacity of DMCP to continue the rescue, rehabilitation and release of marine fauna along the NSW coast.²³⁰

- 3.96** Dr March informed the committee of the various educational activities undertaken by the Park, including the training of veterinarians to look after marine mammals:

As Mr Goodall mentioned in his opening statement, we do a range of educational activities across a broad spectrum, everything from primary school kids, right through to university students.

²²⁶ Submission 175, RSPCA Australia, p 16.

²²⁷ Evidence, Dr Dove, 14 August 2020, p 28.

²²⁸ Submission 94, Marine Connection, p 1. See also Submission 224, Humane Society International, p 10.

²²⁹ Submission 232, Dolphin Marine Conservation Park, p 5.

²³⁰ Submission 232, Dolphin Marine Conservation Park, p 12.

... areas that we are focusing on at the moment that I think have got the greatest potential to achieve better outcomes at training events is training to veterinarians. Myself and the veterinarian from Sea World have provided training for vets from border to border, from the Queensland border right down to the Victorian border.²³¹

- 3.97** Dr March also informed the committee that the Park is working with the Department of Primary Industries on a program called 'Sea Country Custodians' that is looking to build capacity for Indigenous rangers to manage sea country. Dr March explained:

The long term goal is to provide veterinarians with the skills to appropriately manage the welfare of these animals on the beach, link those veterinarians up with Indigenous rangers so that they can promote cultural protocols and have everyone working underneath the umbrella of National Parks and Wildlife Service. That is the program at the moment and it is running quite well.²³²

- 3.98** The Dolphin Marine Conservation Park also cooperates with universities and other institutions in terms of research into cetaceans. The committee learned that the Park, as of December 2019, was engaged in seven research project with organisations such as Griffith University, Macquarie University, National Parks and Wildlife, University of Queensland, Southern Cross University and the Sea Turtle Foundation.²³³

- 3.99** The significance and importance of the work undertaken by the Park was recognised by Dr Verne Dove. In her evidence, Dr Dove emphasised the contributions made by the Dolphin Marine Conservation Park to NSW, stressing that the Park is the only facility in the state with the requisite facilities and expertise to undertake marine mammal rescue and rehabilitation:

Marine Exhibition Parks that have a conservation focus for rescue and rehabilitation serve an important role for sick and injured marine mammals. Firstly, these facilities are armed with the knowledge and expertise to assist these animals and ensure their welfare and husbandry requirements are met. Secondly these facilities are already operational, which makes the logistical operations of a rescue more feasible.

This role of these facilities needs to be greatly acknowledged and expanded, so that more animals that require care are able to benefit from the knowledge and expertise of such facilities, without substantial red tape that may hinder rescues and prevent such rehabilitation work from occurring.²³⁴

- 3.100** Dr Dove further noted that, while jurisdictions such as the United States have several hundred facilities capable of rescuing and rehabilitating marine animals, Australia has two, with only one facility in NSW. Dr Dove therefore contended that the operations and expertise of the Park should be retained and further invested upon:

²³¹ Evidence, Dr Duan March, Veterinarian, Dolphin Marine Conservation Park, 13 August 2020, pp 26-27.

²³² Evidence, Dr March, 13 August 2020, pp 26-27.

²³³ Submission 232, Dolphin Marine Conservation Park, p 10.

²³⁴ Submission 179, Dr Dove, p 2.

... it is imperative that these parks be viewed as primary resources for this area of expansion. There is no doubt that this is an area that requires expansion in Australia, and as such the knowledge and expertise at these facilities will be vital.²³⁵

Role of the circus and marine parks in community education, entertainment and research

3.101 The committee also heard from circus operators and the Dolphin Marine Conservation Park that their establishments are often the first and only means by which the public gets to see and interact with exotic animals and cetaceans.

3.102 Mr Damian Syred, Director of Circus Royale, informed the committee that 'often the first entertainment New South Wales children see is a classic circus with animals', and that this is '...especially true for children living in rural and remote New South Wales'.²³⁶ Mr Syred's observation was supported by Mrs Zelig Bullen, Director of Animals All Around, who observed that circuses and marine parks provided the public with the opportunity to 'appreciate and enjoy animals just as zoos and wildlife parks do. Particularly in remote areas....'.²³⁷

3.103 When asked about this issue at the hearing, Mrs Bullen spoke of her experience of observing people encountering exotic animals for the first time, noting that it could spark a lifelong interest in the animals and inspire individuals to environmental and conservation causes:

... and it is a beautiful experience to meet people and to share these animals with people who have had no experience with exotic animals before and who instantly become engaged and passionate about how amazing it is to be around them, and how fabulous it is that they can be proactive themselves and each take responsibility for engaging in conservation and donating funds...²³⁸

3.104 Mr Adam Presland, Ringmaster and Public Relations Representative of Stardust Circus, also emphasised the community education aspect of Stardust's performances. When asked about the matter, Mr Presland explained:

At the end of our lion act I give a spiel, which goes for probably four to five minutes and I explain everything about our lions, how they are trained, how they were bred, the relationship they have with their trainer, and we invite anyone in our audience to ask any questions at the end of our show, which a lot of people do...

... I think people have a far better understanding once they have seen the show and heard the spiel about our lions. People can walk away from our show knowing that the animals are happy, well and looked after.

3.105 The view that these performances are educational for the community was shared by Mr Terry Goodall, Managing Director of the Dolphin Marine Conservation Park, who described the dolphins held at the Park as 'advocates' for their species:

²³⁵ Submission 179, Dr Dove, p 4.

²³⁶ Submission 268, Circus Royale, p 8.

²³⁷ Submission 270, Zelig Bullen, p 1.

²³⁸ Evidence, Mrs Bullen, 13 August 2020, p 13.

We have three dolphins that, as I said earlier, were born into this complex. We cannot let them go. We have to keep them enriched and occupied. So, they play a fantastic role in being—I know it is a bit of a cliché—advocates for their species.

If you see the look on the people's faces who meet them and can get up close to them, it is priceless. Because we have gone down this road of being very educative with the people that come in, they leave with a much, much greater appreciation of not only the dolphins but also the ocean in general. Particularly kids—they are the next generation, so I think they play a very, very important role...²³⁹

3.106 Mr Goodall observed that modern aquariums, as exemplified by the Dolphin Marine Conservation Park, play an essential role in education and conservation due to the unique ability to provide a safe space for animals and people to interact. Mr Goodall further informed the committee that the Park has been increasingly focussing on environmental themes in recent years, with conservation messages communicated to the guests throughout the duration of their visit.²⁴⁰

3.107 Ms Nicola Craddock, Executive Director of the Zoo and Aquarium Association Australasia (ZAA), echoed the important role played by the Marine Park in terms of education. She explained how exhibiting cetaceans connects people with wildlife:

... to connect people with nature in an emotive way, advocate for protection of our marine environment, support marine wildlife rescue and rehabilitation and contribute to the vital conservation research.²⁴¹

3.108 On the other hand, animal welfare groups disagreed with the notion that there are community education and entertainment benefits to be gained from traditional circuses or aquariums. Instead, animal welfare groups contended that the display of animals in such settings can create misperceptions among the community due to the animals being represented in a way that is completely removed from their natural surroundings.

3.109 Dr Joanne Dorning, co-author of *The Welfare of Wild Animals in Travelling Circuses report*, contended that the very use of animals in circuses and exhibitions of cetaceans itself characterises animals as means to an end, and misinforms the public by presenting animals devoid of their natural environment:

Using animals as entertainment ... sends the message that animals exist for our enjoyment and exploitation and this does not promote the respect and consideration towards them that we should be giving. Wild animals have intrinsic value and we must respect their wildness and encourage children to do the same. The fact that we are using them as entertainment sends the message that they are there for us to use for our own benefit and enjoyment, rather than appreciating them for what they are.

There is also the idea that circus animals are not being displayed in the environment that is representative of their natural habitat. For example, in a zoo enclosure tigers would be in a pool and they would have the right sort of habitat around them that gives the viewer, the visitor, the child—whoever it is who is that is looking at them—an idea

²³⁹ Evidence, Mr Goodall, Managing Director, Dolphin Marine Conservation Park, 13 August 2020, p 27.

²⁴⁰ Submission 232, Dolphin Marine Conservation Park, p 9.

²⁴¹ Evidence, Ms Craddock, 13 August 2020, p 29.

of what that animal would naturally be doing in the wild. That is a lot more of an accurate picture to be showing people than in a sandy arena or whatever environment it is that circuses have an animal perform in.²⁴²

3.110 Dr Dorning's point was echoed in the evidence of Ms Georgie Dolphin, Program Manager – Animal Welfare of Humane Society International, who stated that animal performances 'promote the notion that it is acceptable and enjoyable to exploit animals for entertainment' and that such a notion is '... not a positive way to educate a child'.²⁴³

3.111 Along similar lines, RSPCA Australia noted that there are viable alternatives to circuses and aquariums that can achieve the desired community education outcomes, without the need for the animals to be kept in captivity:

Some dolphinariums claim that dolphin performances are framed to educate audiences about marine conservation and dolphin behaviour. However, there is no evidence that live dolphin shows are necessary to achieve this outcome. People can experience and appreciate the natural environment as well as the animals who live within it by patronising ecologically sensitive and sustainable charter tours to observe dolphins in the wild. Messages about marine conservation can also be successfully extended through community education programs as well as beach walks and other activities to promote all sea life, not just through viewing performances of or interaction with captive animals.²⁴⁴

3.112 At the hearing, the committee also received evidence of a growing trend of using technology in lieu of live animals to hold animal exhibitions. Ms Dolphin, for example, noted the popularisation of hologram technology in parts of North Asia to offer virtual encounters with life-sized animals.²⁴⁵ Similarly, Dr Verne Dove informed the committee that she uses technology to exhibit dinosaurs in a tourism park owned and operated by her.²⁴⁶

3.113 Looking beyond community education and entertainment, the committee also received evidence that traditional circuses and aquariums provide researchers with valuable access to animals. Animal Care Australia observed that 'most of what we know about cetaceans – their physiology, reproduction, sensory abilities/ echolocation, cognition and more has been learned from monitoring cetaceans in human care'.²⁴⁷ This supported the evidence received in relation to the Dolphin Marine Conservation Park's engagement with universities and other research organisations in paragraph 3.98.

3.114 Animal welfare groups, while acknowledging that some studies are conducted on animals held in captivity, contended that such research opportunities are limited and do not constitute a ground upon which captivity can be justified. For example, RSPCA Australia submitted that research relating to captive dolphins has serious limitations as the animals live in highly

²⁴² Evidence, Dr Joanne Dorning, co-author, *The Welfare of Wild Animals in Travelling Circuses* report, 14 August 2020, p 39.

²⁴³ Evidence, Ms Dolphin, 14 August 2020, pp 18 and 24.

²⁴⁴ Submission 175, RSPCA Australia, p 17

²⁴⁵ Evidence, Ms Dolphin, 14 August 2020, p 24.

²⁴⁶ Evidence, Dr Dove, 14 August 2020, p 32.

²⁴⁷ Submission 178, Animal Care Australia, p

restrictive settings that are not representative of the wild.²⁴⁸ RSPCA Australia also noted that there are 'no formal scientific research programs associated with dolphinariums in Australia.'²⁴⁹

A review of the regulatory framework and standards

3.115 A number of inquiry participants called for the regulatory framework to be reviewed, including updates to the Standards for Exhibiting Circus Animals and Standards for Exhibiting Bottlenosed Dolphins in New South Wales. This was often raised in the context of allowing time for the industry to transition the existing exotic animals and cetaceans to sanctuaries, should a legislative ban or phase out occur. In particular, it was suggested that these standards need to be updated in relation to the minimum space requirements in which the animals are kept.

3.116 On the need to review the requirements relating to the display of these animals, the NSW Young Lawyers Animal Law Committee stated:

While it is clear that animals suffer in these environments, regulatory frameworks set up to deal with animal welfare have not kept up with the comprehensive evidence base on this issue and are now falling short of being relevant and appropriate in light of such evidence.²⁵⁰

3.117 NSW Young Lawyers Committee called for the Exhibited Animals Protection Act 1986 and associated regulations 'to enforce better housing, reduced travelling time and time spent in confinement', in order to ensure greater welfare outcomes for circus animals.²⁵¹

3.118 Humane Society International noted that the Stardust lions 'spend the majority of their days in exercise pens that are significantly smaller than minimum standards for outdoor zoo enclosures'. In its view, 'this presents a clear shortfall in the NSW Department of Primary Industries (DPI) Standards for Exhibiting Circus Animals in New South Wales'.²⁵² The Department of Primary Industries gave evidence that exotic animals in circuses are legally allowed to be kept in these small enclosures for up to 11 months of the year.²⁵³

3.119 Likewise, until a ban is implemented, Humane Society International called for the space requirements set out in the current standards to be extended significantly in order to facilitate welfare improvements.²⁵⁴

3.120 RSPCA Australia also called for the standards to be updated, both in terms of exotic circus animals and the exhibition of dolphins. For both, it contended that the standards do not reflect how the animals can meet critical natural behaviours. With respect to the standards for dolphins,

²⁴⁸ Submission 175, RSPCA Australia, p 17.

²⁴⁹ Submission 175, RSPCA Australia, p 17

²⁵⁰ Submission 229, NSW Young Lawyers Animal Law Committee, p 5.

²⁵¹ Submission 229, NSW Young Lawyers Animal Law Committee, p 15.

²⁵² Submission 224, Humane Society International, p 5.

²⁵³ Evidence, Mr Day, 13 August 2020, pp 2-3.

²⁵⁴ Submission 224, Humane Society International, p 10.

it contended that they do not reflect current scientific knowledge, particularly regarding suitable environmental enrichment and space requirements.²⁵⁵

3.121 In its response to supplementary questions, RSPCA Australia further noted that if there were to be no prohibition on the keeping of dolphins for exhibition, the standards would need to be reviewed 'to optimize their welfare'. Further, RSPCA Australia stated that if a sanctuary were to be established, the 'standards would need to be developed with as broad consultation as possible, including overseas experts, with experience in rehabilitation, sanctuaries and behaviours of wild dolphin populations'.²⁵⁶

3.122 Action for Dolphins noted that the Standards for Exhibiting Bottle-nosed dolphins in NSW have not been updated since they were established in 1994. It said:

Much has changed in terms of what we now understand about dolphin behaviour and their welfare needs. As such, it is AFD's view that the exhibition standards should be updated accordingly, in consultation with animal protection organisations such as the RSCPA and cetacean welfare experts.²⁵⁷

3.123 This was echoed by Dr Clegg, who agreed that the standards were in need of an update. As an international cetacean expert, she observed that the NSW standards regarding dolphins used to be one of the 'leading standards in world', but have since become 'a bit outdated'.²⁵⁸

Animal welfare reforms

3.124 The NSW Department of Primary Industries informed the committee about the reform work being undertaken in relation to the animal welfare regulatory framework.

3.125 In May 2018 the NSW Government released the Animal Welfare Action Plan, a plan to 'modernise animal welfare legislation that is almost 40 years old'. Under the Action Plan, the NSW Government will reform the existing animal welfare legislative framework, including the *Exhibited Animals Protection Act*, *Prevention of Cruelty to Animals Act* and the *Animal Research Act 1985*.²⁵⁹

3.126 Ms Suzanne Robinson, Director of Animal Welfare with the NSW Department of Primary Industries, explained that the process will involve three stages – it will look at reforming the legislation first, then the regulations and standards.²⁶⁰ Ms Robinson acknowledged that the circus standards were developed in the 1990s, agreeing that they 'are fairly dated' and need updating.²⁶¹

3.127 Mr Scott Hansen, Director General, NSW Department of Primary Industries, provided some context as to why the standards have not been updated yet:

²⁵⁵ Submission 175, RSPCA Australia, p 19.

²⁵⁶ Answers to supplementary questions, Dr Di Evans, RSPCA Australia, 30 September 2020, p 3.

²⁵⁷ Submission 172, Action for Dolphins, p 4.

²⁵⁸ Evidence, Dr Clegg, 13 August 2020, p 39.

²⁵⁹ Submission 173, NSW Department of Primary Industries, p 6.

²⁶⁰ Evidence, Ms Suzanne Robinson, Director, Animal Welfare, NSW Department of Primary Industries, 13 August 2020, p 4.

²⁶¹ Evidence, Ms Robinson, 13 August 2020, p 4.

... obviously the prioritisation of most recent refresh and revamping of standards focuses on those standards that cover a significant number of animals. Those standards that have been in operation now for 30 years currently cover 13 animals travelling across the State; 41 total of the prescribed animals in circuses, hence why it probably has not been updated as recently as some of the other standards that we have been working nationally to try to update.²⁶²

3.128 According to Ms Robinson, the NSW Government has committed to introducing the new Act later in 2021.²⁶³ She also confirmed that the submissions to the inquiry will be considered as part of the department's broader reform work.²⁶⁴

3.129 As to when new standards would be put in place, Mr Hansen advised:

Some of the national standards and guidelines, for example, that have been negotiated and agreed to over the last couple of years will probably be transitioned across whilst some of the standards that are 20 or 30 years old would probably elevate up in terms of their timing for the review, the consultation with industry and community and then the resetting of those. I guess some of them will happen quickly because of the pre-work that has already been done while others will be starting from scratch in terms of their consultation and the detailed discussion around the standards involved.²⁶⁵

3.130 Mr Hansen could not provide a timeframe as to when the standards might be reviewed, although he acknowledged it could take at least four to five years. He suggested that priority in reviewing certain standards may be related to the welfare risks associated with certain animals. Given the standards with respect to the exhibition of dolphins affects only three dolphins held in captivity in the state, Mr Hansen said:

Obviously you would understand that if at that point in time there were only one or two animals being covered by that standard the priority given to the consultation and the redevelopment of that standard versus another standard would probably see it as a lower priority.²⁶⁶

3.131 In terms of whether consultation with the Dolphin Marine Conservation Park and circuses has been undertaken, as part of this reform work, the committee was informed that this has not occurred yet. Mr Goodall said that the Park has not been involved in the process but would be happy to contribute.²⁶⁷ Mr Presland from Stardust Circus also noted that they have not 'had a huge amount to do with the review' at this stage, as did Mr Craig Bullen, who stated: 'we would welcome participating in that review'.²⁶⁸

²⁶² Evidence, Mr Hansen, 13 August 2020, p 4.

²⁶³ Evidence, Ms Robinson, 13 August 2020, p 4.

²⁶⁴ Evidence, Ms Robinson, 13 August 2020, p 4.

²⁶⁵ Evidence, Mr Hansen, 13 August 2020, pp 8-9.

²⁶⁶ Evidence, Mr Hansen, 13 August 2020, p 9.

²⁶⁷ Evidence, Mr Goodall, 13 August 2020, p 28.

²⁶⁸ Evidence, Mr Presland, 13 August 2020, p 14; Evidence, Mr Craig Bullen, Director, Animals All Around, 13 August 2020, p 14.

3.132 Ms Robinson, from the department, explained that a round of consultations with an issues paper have already occurred, but that there 'will be another public consultation on the proposals as the next phase of that reform piece'.²⁶⁹

3.133 Reflecting on the role of the department in undertaking this reform work, given clear opposing views on the issues, Mr Hansen stated:

Our role at the moment is also to collect the views and thoughts of the community, of community organisations, of lobbyist groups such as RSPCA Australia and of industry in trying to formulate what a modern piece of legislation for good animal welfare outcomes should be as we look to modernise and reform the current legislation, regulation and standards that are applicable. We are very conscious of the fact that in doing so we are going to have all parties on a very common path in terms of their goals and ambitions about providing good animal welfare outcomes.

I think you will hear from all of the participants today that common theme about their care for the animals either in their care, or their care for the animals for which they lobby and seek to achieve changes for. It always comes down to the question of how that is being delivered. That will be a difference in views. Our job over the course of this animal welfare reform program is to try to navigate a path through that, to ensure that the Government's intervention in this space is to ensure the best animal welfare outcomes possible for the animals within the State.²⁷⁰

Committee comment

3.134 The committee understands that there are many community members who feel strongly that the use of exotic animals in circuses and the exhibition of cetaceans, along with the breeding of these animals, should no longer be permitted to continue in NSW.

3.135 On the other hand, the committee also understands that the industry and its supporters believe that current practices should be allowed to continue. The committee appreciates that the industry and animals often constitute more than a workplace for these stakeholders, as demonstrated in the circus families' lifelong and intergeneration commitment to their trade, as well as the impressive range of conservation and education activities voluntarily undertaken by the Dolphin Marine Conservation Park. The committee acknowledges that there are concerns in relation to the business impacts of any change to current practices that may be implemented by the government. However, we also note that representatives from the circus and dolphinarium industry indicated that any such transition to retire the animals would be made easier with financial support from the NSW Government.

3.136 The committee notes that there are some changes already taking place by the industry in recognition of changing community expectations and understanding of animal welfare. We acknowledge that Janlin Circuses has voluntarily stopped the breeding of its lions and rhesus macaques, and that the Dolphin Marine Conservation Park has ceased breeding of its dolphins and increased its focus on its conservation, rescue and rehabilitation work.

²⁶⁹ Evidence, Ms Robinson, 13 August 2020, p 4.

²⁷⁰ Evidence, Mr Hansen, 13 August 2020, p 6.

- 3.137** Given such changes are already taking place in the industry, and given that the committee – as explained in Chapter 2 – is satisfied that exotic animals in circuses and cetaceans exhibited in NSW meet the welfare requirements as required by the current legislative and regulatory framework, the committee does not see a need to recommend a legislative change in regard to the breeding or use of exotic animals in circuses, or the exhibition of cetaceans. However, the committee also recognises that there is nothing in the regulatory regime to prevent further breeding if operations change hands, or to stop other operators from setting up in New South Wales.
- 3.138** The committee agrees that the legislative and regulatory framework currently used in New South Wales is in need of review. In this regard, we note that the Department of Primary Industries is currently progressing its Animal Welfare Action Plan and as part of that work, will be reforming animal welfare legislation, regulations and standards.
- 3.139** Therefore, the committee recommends that the NSW Government address the issues identified by stakeholders in this inquiry when developing the new animal welfare legislative framework. As part of this process, we recommend that consultation occur with all key stakeholders, including industry stakeholders and animal welfare organisations.

Recommendation 1

That the NSW Government, when developing the new animal welfare legislative framework as part of the Animal Welfare Plan:

- address the concerns identified by stakeholders as raised during this inquiry and set out in this report, and
 - consult widely with all affected stakeholders, including industry groups and animal welfare organisations.
-

- 3.140** The committee recognises that the Dolphin Marine Conservation Park, the only remaining facility exhibiting cetaceans in NSW, does not object to a legislated ban on breeding. The committee also acknowledges that both industry and welfare stakeholders identified the use of cetaceans in captive entertainment had declining public support. Further, the committee recognises the large cost of a potential sea pen and the difficulties surrounding the retirement of cetaceans as a species, and therefore recommends stronger limitations around the breeding of cetaceans to overcome future difficulties with the re-homing of these specific animals.

Recommendation 2

That the NSW Government consider applying limitations on the breeding of cetaceans which allow for breeding for conservation or protection purposes.

- 3.141** The Dolphin Marine Conservation Park also provided evidence that they fully fund their own marine rescue and rehabilitation work, and called on the government for financial assistance to support their efforts. The committee therefore makes a recommendation in this regard.

Recommendation 3

That the NSW Government consider providing financial assistance to support marine rescue and rehabilitation work in NSW.

- 3.142** The committee was interested to learn of the proposal for a sea sanctuary that was put forward by the Dolphin Marine Conservation Park, Actions for Dolphins and World Animal Protection.
- 3.143** The committee was encouraged by the fact that the Dolphin Marine Conservation Park and the two animal welfare organisations – who have long been on opposing sides – have formed a constructive relationship in recent years and are now working together to improve the welfare outcomes of the three bottle-nosed dolphins at the marine park. The committee found this to be a highly commendable example of progress on these issues, given that the subject area of this inquiry can be contentious.
- 3.144** From the information received, the committee understands that the proposal for a sea sanctuary is still in early stages of development, with a feasibility study to be completed in order to ascertain the proposal's viability. The committee can see benefit to work on this proposal continuing, and therefore recommends that the NSW Government provide support to the Dolphin Marine Conservation Park, Action for Dolphins and World Animal Protection to enable the completion of a feasibility study into relocating the dolphins at the marine park to a sea sanctuary.
-

Recommendation 4

That the NSW Government provide support to the Dolphin Marine Conservation Park, Action for Dolphins and World Animal Protection, to enable the completion of a feasibility study into relocating the dolphins at the marine park to a sea sanctuary.

Appendix 1 Submissions

No.	Author
1	Mr Karl Augustine
1a	Mr Karl Augustine
2	Name suppressed
3	Name suppressed
4	Name suppressed
5	Ms Kim Komesarook
6	Ms Elizabeth Gentle
6a	Ms Elizabeth Gentle
7	Name suppressed
8	Rheusuin Brown
9	Mrs Lea Aitken
10	Ms Donna Allen
11	Name suppressed
12	Miss Rebecca Reynolds
13	Name suppressed
14	Mrs Barbara Murphy
15	Mr Ted Hume
16	Name suppressed
17	Mrs Lynette Truskett
18	Mrs Leanne Ortiz
19	PETA Australia
20	Name suppressed
21	Ms Anne Leeson
22	Wildlife Carers Group
23	Name suppressed
24	Name suppressed
25	Ms Joanne Bishop
26	Mr Michael Vincent
27	Ms Narelle Taylor
28	Louis Gauci
29	Mrs Irene Boumans

No.	Author
30	Mrs Lisa Apostolides
31	Name suppressed
32	Ms Janette Tegg
33	Mrs Kerrie Curran
34	Ms Janet Catesby
35	Ms Erica Holding
36	Ms Jane Canfield
37	Mr Richard O'Sullivan
38	Name suppressed
39	Mrs Sandra Ferns
40	Name suppressed
41	Name suppressed
42	Name suppressed
43	Mrs Claire Bridgman
44	Name suppressed
45	Ms Maria Soria
46	Mr Dale Steenbergen
47	Name suppressed
48	Name suppressed
48a	Name suppressed
49	Miss Sophie Cross
50	Name suppressed
51	Mr Anthony Cook
52	Ms Jane Mari
53	Maggie Ashley
54	Ontario Captive Animal Watch
55	Miss Sophie Poredos
56	Mr Mark Giese
57	Ms Jana Harker
58	Name suppressed
59	Name suppressed
60	Ms Michelle Gable
61	Ms Benita Johnson
62	Ms Marissa Lalor
63	Name suppressed

No.	Author
64	Name suppressed
65	Name suppressed
66	Miss Angela Treharne
67	Name suppressed
68	Mr Jake Ewings
69	Mr Mohammad Hassan
70	Ms Elizabeth Hope
71	Mr Peter Page
72	Dr Asha Persson
73	Name suppressed
74	Ms Sara Eisner
75	Mrs Roslyn Hemmings
76	Name suppressed
77	Name suppressed
77a	Name suppressed
78	Ms Teresa Kiernan
79	Mr Ryan Gruell
80	Miss Traudy Glasencnik
81	Mr Patrick Murphy
82	Mrs Lenore Taylor
83	Ms Rhonda Green
83a	Ms Rhonda Green
84	Ms Gae Constable
85	Ms Carolina Rodriguez
86	Mr Mike Irodenko
87	Mrs Sandra Grubey
88	Mrs Julie Collins
89	Mr Bernard Kelly
90	Mr Martin Carrasco-reyes
91	Ms Nicci Soukoulis
92	Name suppressed
93	World Animal Protection Australia
94	Marine Connection
95	Janlin Circuses Pty Ltd, representing Stardust Circus and Lennon Bros Circus
96	Ms Anthea Von Staerck

No.	Author
97	Mr Phillip Butler
98	Name suppressed
99	Mr Igor Srbinovski
100	Dr Ross Hill
101	Ms Sabrina Nizeti
102	Ms Nicole McGregor
103	Name suppressed
104	Ms Kellie Pearce
105	Ms Bronwyn Kelly
106	Ms Catherine Ward
107	Name suppressed
108	Name suppressed
109	Ms Melisse Reynolds
110	Mr Lawrence Murphy
111	Name suppressed
112	Name suppressed
113	Name suppressed
114	Ms Jo Hobson
115	Professor Anne Wilson
116	Ms Amy Johnson
117	Ms Linda Mathew
118	Ms Mia Kudrycz
119	Dianne Poynton
120	Ms Anne-Marie Dineen
121	Name suppressed
122	Ms Pauline McCarthy
123	Mr Temple Eyre
124	Ms Louise Guthrie
125	Name suppressed
126	Ms Heather Barnes
127	Name suppressed
128	Name suppressed
129	Jan Kendall and Charles Davis
130	Name suppressed
131	Dr Anna Lewis

No.	Author
132	Ms Sue Ho
133	Name suppressed
134	Name suppressed
135	Name suppressed
136	Name suppressed
137	Name suppressed
138	Mrs Martine Porret
139	Name suppressed
140	Name suppressed
141	Mrs Angela Knell
142	Name suppressed
143	Name suppressed
144	Name suppressed
145	Ms Lynne Halpin
146	Ms Sharleen Burns
147	Ms Anne Edwards
148	Katina Czyczelis
149	Name suppressed
150	Fraser Paterson
151	Mrs Lindy Coop
152	Ms Francesca Nyilas
153	Mrs Lisbeth Caldwell
154	Ms Justine Iesu
155	Name suppressed
156	Name suppressed
157	Ms Cecilia Smith
158	Ms Alexandra Popof
159	Ms Susan Sorensen
160	Name suppressed
161	Name suppressed
162	Name suppressed
163	Alison Goodwin
164	Ms Carolyn Barnes
165	Name suppressed
166	Mrs Susan Moran

No.	Author
167	Ms Gail McDonald
168	Name suppressed
169	Mrs Linda Lumley
170	Name suppressed
171	World Cetacean Alliance
172	Action for Dolphins
173	NSW Department of Primary Industries
174	Animal Justice Party
175	RSPCA Australia
176	CETASEA Association
177	Sentient, The Veterinary Institute for Animal Ethics
178	Animal Care Australia Inc
179	Australian Institute of Marine Rescues and Sea Shepherd
180	Sandra Finn
181	Name suppressed
182	Name suppressed
183	Ms Sandy Zillman
184	Ms Nikki Ogle
185	Mr Casey Cainan
186	Name suppressed
187	Toni Gundry
188	Ms Michelle Buckmaster
189	Mrs Theresa Hawkins
190	Ms Teresa Romanovsky
191	Ms Emily Power
192	Name suppressed
193	Dr Ingrid Visser
194	Name suppressed
195	Mrs Rachel Gabiola
196	Ms Françoise Dupen
197	Asha Singham
198	Name suppressed
199	Name suppressed
200	Julie Power
201	Name suppressed

No.	Author
202	Ms Brenda Glasgow
203	Name suppressed
204	Name suppressed
205	Ms Michelle Myers
206	Name suppressed
207	Name suppressed
208	Name suppressed
209	Name suppressed
210	Name suppressed
211	Name suppressed
212	Name suppressed
213	Ms Francisa Miller
214	Mrs Lisa Weeks
215	Ms Inez Hamilton-Smith
216	Name suppressed
217	Mr Wayne Dyett
218	Jack McMahan
219	Name suppressed
220	Dolphinaria-Free Europe (DFE)
221	Ms Lisa J Ryan
222	Animal Defenders Office
223	Animals Australia
224	Humane Society International
225	Ms Marianne Salvotpre
226	Mr Patrick Daley
227	The Hon. Wilfred P. Moore
228	Phil Demers
229	NSW Young Lawyers Animal Law Committee
230	Australian Circus Festival and Federation Mondiale du Cirque
231	Zoo Aquarium Association Australasia
232	Dolphin Marine Conservation Park
233	Name suppressed
234	Atiana Lopez
235	Tony Ratcliffe
236	West's Entertainment

No.	Author
237	Memphis West
238	Jamie Nelson
239	Linda Minten
240	John MacDonnell
241	Dr Michael Scibilia
242	Gail Grix
243	Bekki Ashton
244	Barry Nixon
245	Wonona West-Smith
246	Dante Ashton
247	Rikki Ashton
248	Chantel Ashton-Rodriguez
249	Brian Legge
250	Colin R Ferrell
251	Jansen Grant
252	Matthew Ezekial Smith
253	Joseph Maynard
254	Eloise O'Toole
255	Pixi Robertson
256	Shaun Felton
256a	Shaun Felton
257	Kelly Maynard
258	Chris Shannon
259	Circus Joseph Ashton
260	Judith Trimboli
261	John Le Mare
262	Jessica Larkin
263	Peter and Jo
264	Jessie Daley
265	Natalie Weber
266	Danielle Lennon
267	Yelena West-Dorfliger
268	Damien Syred and Circus Royale
269	Mark De'Souza
270	Zelie Bullen

No.	Author
271	Craig Bullen
272	Animals All Around
273	Confidential
274	Hudsons Circus Pty Ltd
275	Mrs Acacia Grant

Appendix 2 Witnesses at hearings

Date	Name	Position and Organisation
Thursday 13 August 2020 Macquarie Room, Parliament House, Sydney	Mr Scott Hansen <i>(via teleconference)</i>	Director General NSW Department of Primary Industries
	Mr Peter Day <i>(via teleconference)</i>	Director, Compliance and Integrity Systems NSW Department of Primary Industries
	Ms Suzanne Robinson <i>(via teleconference)</i>	Director, Animal Welfare NSW Department of Primary Industries
	Ms Zelic Bullen <i>(via teleconference)</i>	Director – Animals All Around
	Mr Craig Bullen <i>(via teleconference)</i>	Director – Animals All Around
	Ms Janice Lennon	Owner/Manager, Stardust Circus
	Mr Adam Presland	Ringmaster/Public Relations, Stardust Circus
	Mr Damian Syred <i>(via teleconference)</i>	Director Circus Royale
	Mr Terry Goodall <i>(via teleconference)</i>	Managing Director, Dolphin Marine Conservation Park
	Dr Duan March <i>(via teleconference)</i>	Veterinarian Dolphin Marine Conservation Park
	Ms Stacy Fairfax <i>(via teleconference)</i>	Team Leader Dolphin Marine Conservation Park
	Mr Michael Donnelly	President Animal Care Australia
	Ms Jasmine Straga	Public Relations Representative Circus Federation of Australia Board Member Oceania Federation Mondiale du Cirque
	Ms Nicola Craddock Executive	Director Zoo Aquarium Association Australasia
	Ms Maigan Thompson	Communications Manager Zoo Aquarium Association Australasia
Dr Isabella Clegg <i>(via teleconference)</i>	Cetacean Welfare Scientist Founder, Animal Welfare Expertise	

Date	Name	Position and Organisation
Friday 14 August 2020 Macquarie Room, Parliament House, Sydney	Dr Di Evans <i>(via teleconference)</i>	Senior Scientific Officer RSPCA Australia
	Dr Liz Arnott	Chief Veterinarian RSPCA NSW
	Ms Tara Ward <i>(via teleconference)</i>	Volunteer Lawyer, Animal Defenders Office
	Mr Farnham Seyedi <i>(via teleconference)</i>	Volunteer Lawyer Animal Defenders Office
	Ms Hannah Tait	Public Engagement Officer Action for Dolphins
	Ms Georgie Dolphin	Program Manager – Animal Welfare Humane Society International, Australia
	Mr Ben Pearson	Head of Campaigns World Animal Protection Australia
	Dr Verne Dove <i>(via teleconference)</i>	Founding Director Australian Institute of Marine Rescues and Field Veterinarian Sea Shepherd Conservation Society
	Dr Ingrid Visser <i>(via teleconference)</i>	Founder & Principal Scientist Orca Research Trust and Whale-Rescue.Org
	Dr Rosemary Elliott	President, Sentient
Dr Joanne Dorning <i>(via teleconference)</i>	Co-author 'The Welfare of Wild Animals in Travelling Circuses' report	

Appendix 3 Minutes

Minutes no. 8

Thursday 26 September 2019
Portfolio Committee No. 4 - Industry
Room 1136, Parliament House, 2.31 pm

1. Members present

Mr Banasiak, *Chair*
Ms Hurst, *Deputy Chair*
Mr Amato
Mr Blair (*substituting for Mr Khan*) (*from 2.34 pm*)
Ms Cusack
Mr Graham
Mr Veitch
Mr Field (*participating*)

2. Previous minutes

Resolved, on the motion of Ms Cusack: That draft minutes no. 7 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received

- 25 September 2019 – Letter from Ms Hurst, Mr Amato, Mr Khan and Ms Cusack requesting a meeting of Portfolio Committee No. 4 to consider a proposed self-reference into the exhibition of exotic animals in circuses and the exhibition of cetaceans in New South Wales.

4. Consideration of terms of reference

The committee considered the following self-referred terms of reference:

1. That Portfolio Committee No. 4 - Industry inquire into and report on the use of exotic animals (defined as any animal that is not native and is not a stock or companion animal) in circuses and the exhibition of cetaceans in New South Wales, and in particular:
 - (a) the welfare of exotic animals exhibited in circuses in New South Wales, with consideration of community expectation;
 - (b) the welfare of cetaceans exhibited in New South Wales, with consideration of community expectation;
 - (c) In light of the findings in (a) and (b) above, whether:
 - (i) to allow the continuation of the practice of breeding of exotic animals for use in circuses and cetaceans for exhibition;
 - (ii) there should be a phase out of the use of exotic animals in circuses and cetaceans for exhibition; and/or
 - (iii) there should be any other legislative or regulatory action that the committee considers appropriate.
 - (d) Any other related matter.

2. That the Committee report by 27 March 2020.

Resolved, on the motion of Ms Hurst: That the terms of reference be amended by omitting 'report by 27 March 2020' and insert instead 'report by 27 June 2020'.

Ms Hurst moved: That the committee adopt the terms of reference as amended.

Question put.

The committee divided.

Ayes: Mr Amato, Mr Blair, Ms Cusack, Ms Hurst.

Noes: Mr Banasiak, Mr Graham, Mr Veitch.

Question resolved in the affirmative.

5. Conduct of the inquiry into the exhibition of exotic animals in circuses and the exhibition of cetaceans in New South Wales

5.1 Closing date for submissions

Resolved, on the motion of Mr Veitch: That the closing date for submissions be 24 November 2019.

5.2 Proposed timeline

Resolved, on the motion of Mr Veitch: That the proposed timeline for the inquiry be determined by the Chair after consultation with members regarding their availability.

5.3 Stakeholder list

Resolved, on the motion of Mr Veitch: That the secretariat circulate to members the Chair's proposed list of stakeholders to provide them with the opportunity to amend the list or nominate additional stakeholders, and that the committee agree to the stakeholder list by email, unless a meeting of the committee is required to resolve any disagreement.

5.4 Online questionnaire

Resolved, on the motion of Mr Amato: That the committee use an online questionnaire, and that:

- the media release announcing the establishment of the inquiry, and the committee's website, note that the committee will use an online questionnaire to capture individual views
- draft questions be circulated to the committee next week, with a meeting called if members wish to discuss in detail.

5.5 Advertising

All inquiries are advertised via Twitter, Facebook, stakeholder letters and a media release distributed to all media outlets in New South Wales.

It is no longer standard practice to advertise in the print media. The committee should pass a resolution if it wishes to do so.

6. Other business

Resolved, on the motion of Mr Graham: That the committee defer consideration of the terms of reference for the implementation of the recommendations contained in the NSW Chief Scientists' Independent Review of Coal Seam Gas activities in New South Wales until its next meeting on Thursday 3 October 2019.

7. Adjournment

The committee adjourned at 2.47 pm, until Thursday 3 October 2019, Macquarie Room (Right to Farm Bill hearing).

Madeleine Foley
Committee Clerk

Minutes no. 9

Thursday 3 October 2019
Portfolio Committee No. 4 – Industry
Macquarie Room, Parliament House, 9:15 am

1. Members present

Mr Banasiak, *Chair*
Ms Hurst, *Deputy Chair*
Mr Amato
Ms Cusack
Mr Field (participating for the duration of the inquiry into the provisions of the Right to Farm Bill)
Mr Graham (from 9.30 am)
Mr Khan
Mr Primrose (substituting for Mr Graham until 9.30 am)
Ms Sharpe (substituting for Mr Veitch for the duration of the inquiry into the provisions of the Right to Farm Bill)
Mr Shoebridge (participating from 1.47pm)

2. Previous minutes

Resolved, on the motion of Ms Cusack: That draft minutes no. 8 be confirmed.

3. Correspondence

The Committee noted the following items of correspondence:

Received

- 26 September 2019 – Email from the Hon Mark Buttigieg MLC, Opposition Whip, to the secretariat, advising that the Hon Penny Sharpe MLC will be substituting for the Hon Mick Veitch MLC for the duration of the inquiry into the provisions of the Right to Farm Bill 2019
- 26 September 2019 – Email from Ms Emily Dyball, Office of Justin Field MLC, to the secretariat advising of Mr Field's intention to participate for the duration of the inquiry into the provisions of the Right to Farm Bill 2019
- 27 September 2019 – Email from Ms Gina Higham, Executive Assistant to CEO and Deputy CEO, Legal Aid, to secretariat, advising that Legal Aid is unavailable to attend public hearings scheduled for Thursday 3 October 2019
- 27 September 2019 – Email from Ms Emilia Michael, The Animal Law Institute, to secretariat, advising that The Animal Law Institute is unavailable to make a submission and attend the public hearings scheduled for Thursday 3 October 2019
- 30 September 2019 – Email from Dr Jed Goodfellow, Science and Policy Team Lead, RSPCA Australia, to secretariat, advising that RSPCA Australia is unavailable to attend public hearings scheduled for Thursday 3 October 2019

- 30 September 2019 – Email from Ms Glenys Oogjes, CEO, Animals Australia, to secretariat, advising that Animals Australia is unavailable to make a submission or attend the public hearings scheduled for Thursday 3 October 2019
- 30 September 2019 – Email from Mr Daniel Cung, Chair, Animal Law Committee, NSW Young Lawyers, The Law Society of New South Wales, to secretariat, advising that NSW Young Lawyers is unavailable to attend public hearings scheduled for Thursday 3 October 2019
- 1 October 2019 – Email from Mr Evan Quartermain, Head of Programs, Humane Society International, to secretariat, advising that Humane Society International is unavailable to attend public hearings scheduled for Thursday 3 October 2019
- 1 October 2019 – Email from Ms Isilay Kizilcik, Supporter Relations Team, FOUR PAWS Australia, to secretariat, advising that FOUR PAWS Australia is unavailable to attend public hearings scheduled for Thursday 3 October 2019
- 1 October 2019 – Email from Mr Douglas Brand, Receptionist/Admin, Law Council of Australia, to secretariat, advising that Law Council of Australia, is unavailable to make a submission
- 1 October 2019 – Email from Mr Mark Johnstone, Director, Policy & Practice, The Law Society of New South Wales, to secretariat, advising that the Law Society of New South Wales is unavailable to make a submission or attend the public hearings scheduled for Thursday 3 October 2019
- 1 October 2019 – Email from Ms Sarah Waladan, Head of Legal and Regulatory Affairs, Free TV, to secretariat, advising that Free TV is unavailable to attend the public hearings scheduled for Thursday 3 October 2019
- 2 October 2019 – Email from Ms Phoebe Fear, Australian Veterinary Association, advising that Australian Veterinary Association is unavailable to attend the public hearings scheduled for Thursday 3 October 2019.

4. Consideration of terms of reference – Independent Review of Coal Seam Gas Activities

The committee considered the following terms of reference:

1. That Portfolio Committee No. 4 - Industry inquire into and report on the implementation of the recommendations contained in the NSW Chief Scientist's Independent Review of Coal Seam Gas Activities in New South Wales, and in particular:
 - (a) the status of the implementation of the recommendations,
 - (b) the effectiveness of the implementation of the recommendations and whether or not there are gaps in implementation,
 - (c) whether any other inquiry findings or other major reports relating to unconventional gas in Australia or the east coast gas market published since the release of the Chief Scientists are relevant to the suitability or effectiveness of the Chief Scientists recommendations, and
 - (d) any other related matters.
2. That the committee report by Tuesday 12 November 2019.

Ms Sharpe moved: That the terms of reference be adopted.

Mr Khan moved: That motion of Ms Sharpe be amended by omitting 'Tuesday 12 November 2019' and inserting instead 'Friday 20 December 2019'.

Amendment put and passed.

Original question, as amended:

That the committee adopt the following terms of reference:

1. That Portfolio Committee No. 4 - Industry inquire into and report on the implementation of the recommendations contained in the NSW Chief Scientist's Independent Review of Coal Seam Gas Activities in New South Wales, and in particular:
 - (a) the status of the implementation of the recommendations,
 - (b) the effectiveness of the implementation of the recommendations and whether or not there are gaps in implementation,
 - (c) whether any other inquiry findings or other major reports relating to unconventional gas in Australia or the east coast gas market published since the release of the Chief Scientists are relevant to the suitability or effectiveness of the Chief Scientists recommendations, and
 - (d) any other related matters.
2. That the committee report by Friday 20 December 2019.

The committee divided.

Ayes: Mr Banasiak, Ms Hurst, Ms Sharpe, Mr Primrose.

Noes: Mr Amato, Ms Cusack, Mr Khan.

Question resolved in the affirmative.

5. Conduct of the inquiry – Independent Review of Coal Seam Gas Activities

5.1 Proposed timeline

Resolved, on the motion of Mr Khan: That the closing date for submissions be Sunday 27 October 2019, and that following consultation with the chair, the secretariat circulate dates for the hearing and report deliberative to the committee for consideration.

5.2 Stakeholder list

Resolved, on the motion of Ms Hurst: That the secretariat circulate to members the Chair's proposed list of stakeholders to provide them with the opportunity to amend the list or nominate additional stakeholders, and that the committee agree to the stakeholder list by email, unless a meeting of the committee is required to resolve any disagreement.

5.3 Advertising

The committee noted that all inquiries are advertised via Twitter, Facebook, stakeholder letters and a media release distributed to all media outlets in New South Wales.

6. Inquiry into the exhibition of exotic animals in circuses and the exhibition of cetaceans on New South Wales

6.1 Proposed inquiry timeline

Resolved, on the motion of Ms Hurst: That the committee adopt the following timeline for the administration of the inquiry:

- Sunday 24 November 2019 – Submission closing date (as resolved at meeting on 26 September 2019)
- March/April 2020 – Hearing and site visits
- Week of Monday 22 June 2020 – report deliberative
- Friday 26 June 2020 – table report

6.2 Stakeholder list and online questionnaire

Resolved, on the motion of Ms Hurst: That the stakeholder list be as follows:

- NSW Department of Primary Industries
- Exhibited Animals Advisory Committee

- The Animal Welfare Advisory Council
- Bob Carr – former Premier NSW
- Lennon Bros Circus
- Stardust Circus
- Dolphin Marine Conservation Park (Coffs Harbour)
- The Southern Cross University Whale Research Group
- Di Evens RSPCA
- Naomi Rose The Whale Sanctuary Project
- Dr Nick Gales
- G Iossa, CD Soulsbury and S Harris – University of Bristol
- Action for Dolphins
- Animal Defenders Office
- Animal Liberation NSW
- Animal Welfare League NSW
- Animals Australia
- Australian Veterinary Association
- Four Paws Australia
- Humane Society International
- Organisation for the Rescue and Research of Cetaceans in Australia
- People for the Ethical Treatment of Animals (PETA) Australia
- RSPCA Australia
- Voiceless
- World Animal Protection
- Sea Shepherd Australia
- Sentient
- NSW Young Lawyers Animal Law Committee
- Animals Asia
- Animal Law Institute
- Western Plains Zoo
- Western Sydney Zoo/Zambi Wildlife Retreat
- Local Government NSW
- RSPCA NSW
- Taronga Zoo
- TripAdvisor
- Virgin Holidays

Resolved, on the motion of Ms Hurst: That the proposed amendments to the online questionnaire, as circulated via email in track changes, be agreed to.

7. Inquiry into the provisions of the Right to Farm Bill 2019

7.1 Allocation of questions

Resolved, on the motion of Ms Sharpe: That the allocation of questions to be asked at the hearing be left in the hands of the chair.

7.2 Questions on notice and supplementary questions

The committee noted that there would be no questions taken on notice or supplementary questions for the hearing, as previously resolved.

7.3 Public submissions

The committee noted that the following submission were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 1, 3-9, 12-15, 17, 19, 20, 22, 23, 24, 27, 28, 29, 34, 35, 37, 39-42, 46-54, 56, 60-65, 68, 70-74, 76, 77, 78, 81-83, 85, 86, 89, 92, 93, 95, 99, 100, 117, 123-130, 135, 142, 144-146, 149, 163, 186 -198, 206, 215, 216, 217.

7.4 Name suppressed submissions

Resolved, on the motion of Mr Khan: That the committee authorise the publication of submissions nos. 2, 10, 11, 16, 18, 21, 26, 30-33, 36, 38, 43, 44, 45, 55, 58, 59, 67, 84, 87, 88, 90, 91, 94, 96, 97, 98 with the exception of the author's name, which is to remain confidential, at the request of the author.

7.5 Partially confidential submissions

Resolved, on the motion of Mr Kahn: That the committee authorise the publication of submission nos. 31, 69, 75, 79, 97 and 141, with the exception of the following identifying and/or sensitive information, which is to remain confidential, as per the recommendation of the secretariat:

- the names and locations of individual properties, or
- hyperlinks to websites, which may show footage of alleged animal cruelty at particular properties, including hyperlinks too numerous to be checked by the secretariat.

7.6 Confidential submissions

Resolved, on the motion of Mr Khan: That the committee keep submission nos 25, 57, 66 and 80 confidential, as per the request of the author.

7.7 Approach to proformas and late submissions

The committee noted that approximately 3,000 copies of two proformas had been received. The proformas are either identical to, or a variation on, the samples circulated to members.

Resolved, on the motion of Mr Khan: That:

- proformas not be treated as submissions
- one copy of each proforma be published on the committee's website, noting the number of responses but without the authors' names
- proformas and submissions received after 3 October 2019 not be accepted, other than in exceptional circumstances such as organisations invited to be witnesses but that were unable to attend the hearing.

7.8 Provision of documents to participating members

Resolved, on the motion of Ms Sharpe: That Mr Field, who has advised the committee that he intends to participate for the duration of the inquiry, be provided with copies of inquiry related documents, including unpublished submissions.

7.9 Public hearing

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The Chair declared the public hearing for the inquiry into the Right to Farm Bill 2019 open for examination.

The following witnesses were sworn:

- Mr Scott Hansen, Director General, Department of Primary Industries
- Mr Simon Vincent, Director Strategy and Policy, Department of Primary Industries
- Mr Paul McKnight, Executive Director, Policy, Reform and Legislation, Department of Communities and Justice
- Mr Cameron Whiteside, Detective Inspector & State Crime Rural Coordinator, NSW Police,

Mr Banasiak left the hearing at 10.00 am.

Mr Scott Hansen tendered the following document:

- Opening statement by Mr Scott Hansen, Director General, Department of Primary Industries, dated 3 October 2019

Mr Banasiak joined the hearing at 10.20 am.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn:

- Mr Pete Arkle, CEO, NSW Farmers Association
- Ms Annabel Johnson, Policy Director – Livestock, NSW Farmers Association

The evidence concluded and the witnesses withdrew.

The following witness was sworn:

- Ms Naomi Sharp SC, Co-Chair of the Human Rights Committee, NSW Bar Association

The evidence concluded and the witness withdrew.

The public hearing adjourned for lunch at 12.45pm.

Witnesses, the public and the media were readmitted.

The following witness was sworn:

- Ms Tara Ward, Volunteer Lawyer and Executive Director, Animal Defenders Office

The evidence concluded and the witness withdrew.

The following witnesses were sworn:

- Mr Chris Gambian, Chief Executive, Nature Conservation Council of NSW
- Ms Rachel Walmsley, Police and Law Reform Director, Environmental Defenders Office, NSW
- Ms Kate Minter, Executive Officer, Unions NSW
- Ms Pauline Wright, President, NSW Council for Civil Liberties

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn:

- Ms Frankie Seymour, Co-founder, Animal Protectors Alliance
- Ms Robyn Soxsmith, Co-founder, Animal Protectors Alliance

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 4.20 pm.

8. Tendered documents

Resolved, on the motion of Ms Sharpe: That the committee accept and publish the document tendered by Mr Scott Hansen during the hearing.

9. Adjournment

The committee adjourned at 4.20 pm, until Tuesday 15 October 2019 at 6.30 pm.

Madeleine Foley
Committee Clerk

Minutes no. 23

Thursday 18 June 2020
Portfolio Committee No. 4 – Industry
Room 1136, Parliament House, Sydney at 1.35 pm

1. Members present

Mr Banasiak, *Chair*
Mr Amato
Ms Cusack
Mr Farraway
Mr Field (substituting for Ms Hurst for the water bills inquiry, until 1.52 pm)
Mr Primrose
Mr Veitch

2. Apologies

Ms Hurst

3. Correspondence

The Committee noted the following items of correspondence:

Received

- 17 June 2020 – Email from the Office of the Hon. Emma Hurst MLC, to the secretariat, advising that Mr Justin Field MLC will substitute for the duration of the inquiry into the Constitution Amendment (Water Accountability and Transparency) Bill 2020 and Water Management Amendment (Transparency of Water Rights) Bill 2020.

4. Inquiry into Constitution Amendment (Water Accountability and Transparency) Bill 2020, Water Management Amendment (Transparency of Water Rights) Bill 2020 and Water Management Amendment (Water Allocations - Drought Information) Bill 2020

The committee noted the referral on 16 June 2020 of the following terms of reference:

That:

- (a) the provisions of the Constitution Amendment (Water Accountability and Transparency) Bill 2020 be referred to Portfolio Committee No. 4 – Industry for inquiry and report,
- (b) the Constitution Amendment (Water Accountability and Transparency) Bill 2020 be referred to the committee upon receipt of the message from the Legislative Assembly,
- (c) the Water Management Amendment (Transparency of Water Rights) Bill 2020 be referred to Portfolio Committee No. 4 – Industry for inquiry and report,
- (d) the committee report by Friday 31 July 2020, and
- (e) on the report being tabled a motion may be moved immediately for the first reading and printing of the Constitution Amendment (Water Accountability and Transparency) Bill 2020.

The committee noted the referral on 17 June 2020 of the following terms of reference: That the Water Management Amendment (Water Allocations—Drought Information) Bill 2020 be referred to Portfolio Committee No. 4 – Industry for inquiry and report by Friday 31 July 2020.

Resolved, on the motion of Mr Veitch: That all three bills be examined concurrently with one report, and that the terms of reference be incorporated into one, as follows:

1. That Portfolio Committee No. 4 – Industry inquire and report on:
 - (a) the provisions of the Constitution Amendment (Water Accountability and Transparency) Bill 2020,
 - (b) the Water Management Amendment (Transparency of Water Rights) Bill 2020, and
 - (c) the Water Management Amendment (Water Allocations—Drought Information) Bill 2020.
2. That the committee report by Friday 31 July 2020.

4.2 Proposed timeline

Resolved, on the motion of Ms Cusack: That the committee adopt the following timeline for the administration of the inquiry:

- Sunday 5 July 2020 – closing date for submissions and online questionnaire (2 weeks)
- Monday 13 July and Tuesday 14 July – 2 hearings
- Friday 24 July – circulation of chair's draft report (Note: this will allow less than seven days to consider the chair's draft report, in variance to the sessional order)
- Wednesday 29 July – report deliberative
- Friday 31 July – report tabled.

4.3 Physically distanced hearing

Resolved, on the motion of Mr Farraway: That the committee hold a physically distanced hearing.

4.4 Submissions, online questionnaire and proformas

Resolved, on the motion of Mr Veitch:

- That the committee accept submissions from nominated stakeholders and organisations/experts in the field who apply to make a submission and are approved by the chair.
- That the committee not issue an open call for submissions through the website.
- That the committee not accept any proformas.
- That the committee conduct an online questionnaire to close on the same date as submissions.
- That the wording for the website be as follows:

Submissions

- Individuals are invited to submit their comments on the bill/s here [hyperlink to online questionnaire]. This is a new way for individuals to participate in inquiries and it means we will no longer accept proformas.
- If you are an organisation or have specialist knowledge in the field and you would like to make a more detailed submission, please contact the secretariat before [submission closing date].

4.5 Online questionnaire and summary report

Resolved, on the motion of Mr Veitch: That the questions for the online questionnaire be as follows:

- What is your position on the Constitution Amendment (Water Accountability and Transparency) Bill 2020? Select one of these options: support, oppose, neutral/undecided
- What is your position on the Water Management Amendment (Transparency of Water Rights) Bill 2020? Select one of these options: support, oppose, neutral/undecided
- What is your position on the Water Management Amendment (Water Allocations—Drought Information) Bill 2020? Select one of these options: support, oppose, neutral/undecided

- In relation to the previous question, please explain your position on the bill/s (500 word text box)
- Do you have any other comments on the bill/s? (250 word text box)

Resolved, on the motion of Mr Veitch: That the secretariat prepare a summary report of responses to the online questionnaire for publication on the website and use in the report, and that:

- the committee agree to publication of the report via email, unless a member raises any concerns
- individual responses be kept confidential on tabling.

4.6 Submission invitations

Resolved, on the motion of Mr Farraway: That the following stakeholders be invited to make a submission, and members be given 24 hours to nominate additional stakeholders:

- Political parties represented in the NSW Parliament, independent members of NSW Parliament
- Minister for Water, Hon Melinda Pavey MP
- Former Water Ministers Blair, Humphries and Hodgkinson
- Department of Planning, Industry and Environment – Water
- Murray Darling Basin Authority
- National Resources Access Regulator
- Farmer/irrigator bodies – NSW Farmers' Association, NSW Irrigators Council, Namoi Water, Gwydir Valley Irrigators' Association, Border Rivers Food and Fibre, Southern Riverina Irrigators, Speak up 4 Water
- Environmental groups – Environmental Defenders Office, Inland Rivers Network, Australian Floodplain Association
- Clerks of NSW Legislative Assembly and Legislative Council
- Independent Commission Against Corruption
- Parliamentary Ethics Advisor.

4.7 Witness list

Resolved, on the motion of Mr Farraway: That the following stakeholders be invited to appear as witnesses, with consideration given to additional witnesses from among the stakeholders nominated by members:

- Political parties represented in the NSW Parliament
- Minister for Water, Hon Melinda Pavey MP
- Former Water Ministers Blair, Humphries and Hodgkinson
- Department of Planning, Industry and Environment – Water
- NSW Farmers' Association
- NSW Irrigators Council
- Speak up 4 Water.

4.8 Questions on notice and supplementary questions

Resolved, on the motion of Ms Cusack: That there be no questions taken on notice at the public hearing or supplementary questions from members.

4.9 Advertising

Resolved, on the motion of Ms Cusack: That in addition to the inquiry being advertised via social media, stakeholder emails and a media release distributed to all media outlets in New South Wales, the secretariat investigate the costs of advertising the inquiry in regional newspapers and advise the committee.

Mr Field left the meeting.

5. Inquiry into the provisions of the Prevention of Cruelty to Animals Amendment (Restrictions on Stock Animals Procedures) Bill 2019

5.1 Terms of reference

The committee noted the referral on 17 June 2020 of the following terms of reference:

That the provisions of the Prevention of Cruelty to Animals Amendment (Restrictions on Stock Animals Procedures) Bill 2019 be referred to Portfolio Committee No 4 – Industry for inquiry and report by 31 July 2020.

The committee also noted that on Thursday 18 June 2020, the House extended the reporting date to the last sitting day in September 2020.

5.2 Proposed timeline

Resolved, on the motion of Mr Veitch: That the committee adopt the following timeline for the administration of the inquiry:

- Submissions – closing 31 July (6 weeks)
- Hearings – 1 day hearing in August TBC

5.3 Physically distanced hearing

Resolved, on the motion of Mr Veitch: That the committee hold a physically distanced hearing.

5.4 Submissions, online questionnaire and proformas

Resolved, on the motion of Ms Cusack:

- That the committee accept submissions from nominated stakeholders and organisations/experts in the field who apply to make a submission and are approved by the chair.
- That the committee not issue an open call for submissions through the website.
- That the committee not accept any proformas.
- That the committee conduct an online questionnaire to close on the same date as submissions.
- That the wording for the website be as follows:

Submissions

- Individuals are invited to submit their comments on the bill/s here [hyperlink to online questionnaire]. This is a new way for individuals to participate in inquiries and it means we will no longer accept proformas.
- If you are an organisation or have specialist knowledge in the field and you would like to make a more detailed submission, please contact the secretariat before [submission closing date].

5.5 Online questionnaire and summary report

Resolved, on the motion of Mr Veitch: That the questions for the online questionnaire be as follows:

- What is your position on the Prevention of Cruelty to Animals Amendment (Restrictions on Stock Animals Procedures) Bill 2019? Select one of these options: support, oppose, neutral/undecided
- In relation to the previous question, please explain your position on the bill (500 word text box)
- Do you have any other comments on the bill? (250 word text box)

Resolved, on the motion of Mr Veitch: That the secretariat prepare a summary report of responses to the online questionnaire for publication on the website and use in the report, and that:

- the committee agree to publication of the report via email, unless a member raises any concerns
- individual responses be kept confidential on tabling.

5.6 Submission invitations

Resolved, on the motion of Mr Faraway: That the secretariat circulate to members the Chair's proposed list of stakeholders to be invited to make submissions to provide members with the opportunity to amend the list or nominate additional stakeholders, and that the committee agree to the stakeholder list by email, unless a meeting of the committee is required to resolve any disagreement.

5.7 Questions on notice and supplementary questions

Resolved, on the motion of Mr Veitch: That there be no questions taken on notice at the public hearing or supplementary questions from members.

5.8 Advertising

Resolved, on the motion of Mr Farraway: That in addition to the inquiry being advertised via social media, stakeholder emails and a media release distributed to all media outlets in New South Wales, the secretariat investigate the costs of advertising the inquiry in regional newspapers and advise the committee.

6. Inquiries into the Exhibition of Exotic Animals and the Dairy Industry

Resolved, on the motion of Mr Veitch: That:

- the 23 July and potentially August 2020 hearings for the Inquiry into the Exhibition of Exotic Animals Inquiry be delayed
- the Inquiry into the Dairy Industry not be placed on the website until 10 August 2020 and the online submission portal be opened on this date.

7. Adjournment

The committee adjourned at 1.57 pm until Monday 13 July 2020.

Madeleine Foley
Committee Clerk

Minutes no. 28

Thursday 13 August 2020
Portfolio Committee No.4 - Industry
Macquarie Room, Parliament House at 9.45am

1. Members present

Mr Banasiak, *Chair*
Ms Hurst, *Deputy Chair*
Mr Amato (via teleconference)
Ms Cusack (from 10.55 am)
Mr Farraway
Mr Primrose
Mr Veitch

2. Correspondence

The Committee noted the following items of correspondence:

Received

- 4 February 2020 – Email from Ben Pearson, Head of Campaigns, World Animal Protection to secretariat requesting an invite to a public hearing for the exotic animals and cetaceans inquiry.
- 6 February 2020 – Email from Dr Ingrid Visser, Orca Research Trust, to secretariat, requesting an invitation to give evidence at a public hearing for the exotic animals and cetaceans inquiry.
- 18 February 2020 – Email from Georgie Dolphin, Program Manager – Animal Welfare, Humane Society International Australia, to secretariat, requesting an invitation to give evidence at a public hearing for the exotic animals and cetaceans inquiry.
- 24 February 2020 – Email from Mr Tony Pickard to secretariat, providing views on the contents of Santos' 2019 Annual Report.

- 17 March 2020 - Letter from Mr Richard Bean, Interim Chief Executive Officer, Environmental Protection Authority, to committee, forwarding a response to People for the Plains regarding Narrabri Gas Project.
- 6 April 2020 – Letter from Mr Mike Young, Executive Director, Energy, Resources and Compliance, Department of Planning, Industry and Environment, to committee, forwarding response to People for the Plains regarding the Narrabri Gas Project.
- 13 May 2020 – Letter from Ms Janice Lennon, Owner and Director, Janlin Circuses Pty Ltd, to secretariat, providing the committee with video footage of circus operations.
- 16 July 2020 – Email from Glenys Oogjes, Chief Executive Officer, Animals Australia, to secretariat, advising that Animals Australia will not be able to attend the hearing on 14 August 2020 for the exotic animals and cetaceans inquiry.
- 21 July 2020 – Email from David Edney, President, NSW Young Lawyers, Law Society of New South Wales, to secretariat, advising that NSW Young Lawyers Animal Law Committee will not be able to attend the hearing on 14 August 2020 for the exotic animals and cetaceans inquiry.
- 5 August 2020 – Email from Kaelee Aboud, office of the Government Whip, advising that the Hon Wes Fang MLC will be substituting for the Hon Lou Amato MLC at the hearing on Friday 14 August 2020 for the exotic animals and cetaceans inquiry.
- 5 August 2020 – Email from Dr Isabella Clegg, Founder of Animal Welfare Expertise, providing documentation for the information of the committee.

Sent

- 17 March 2020 – Email from secretariat, to Mr Terry Goodall, Managing Director, Dolphin Marine Conservation Park, deferring the planned site visit for the exotic animals and cetaceans inquiry due to the COVID-19 pandemic.
- 23 April 2020 – Email from secretariat, to Mr Terry Goodall, Managing Director, Dolphin Marine Conservation Park, canvassing possibility of a virtual site visit, for the exotic animals and cetaceans inquiry.
- 23 April 2020 – Email from secretariat, to Ms Janice Lennon, Owner and Director, Janlin Circuses Pty Ltd, canvassing possibility of a virtual site visit, for the exotic animals and cetaceans inquiry.
- 31 July 2020 – Email from secretariat, to Mr Shane Lennon, owner of Hudson's Circus, confirming the organisation's decision to decline the opportunity to appear at a hearing, for the exotic animals and cetaceans inquiry.
- 31 July 2020 – Email from secretariat, to Ms Natalie Weber, owner of Weber's Circus, confirming the organisation's decision to decline the opportunity to appear at a hearing, for the exotic animals and cetaceans inquiry.

3. Inquiry into the use of exotic animals in circuses and the exhibition of cetaceans in New South Wales

3.1 Public submissions

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 53, 232–272, 274–275.

3.2 Confidential submissions

Resolved, on the motion of Mr Veitch: That the committee keep submission no 273 confidential, as per the request of the author, as it contains identifying information

3.3 Pro forma responses

The committee noted that it has received 1,746 pro forma responses and that a copy of each pro forma has been published on the inquiry webpage.

3.4 Conduct of inquiry and remaining hearing dates

The committee deferred consideration of planned activities for 3 and 7 September to the next day.

3.5 Public hearing

Resolved, on the motion Mr Veitch: that the timing of questioning for the hearing be left in the hands of the Chair.

Witnesses and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Mr Scott Hansen, Director General, NSW Department of Primary Industries (*via teleconference*)
- Mr Peter Day, Director, Compliance and Integrity Systems (*via teleconference*)
- Ms Suzanne Robinson, Director, Animal Welfare (*via teleconference*)

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Janice Lennon, Owner / Manager, Stardust Circus
- Mr Adam Presland, Ringmaster / Public Relations, Stardust Circus
- Ms Zelic Bullen, Director, Animals All Around (*via teleconference*)
- Mr Craig Bullen, Director, Animals All Around (*via teleconference*)
- Mr Damian Syred, Director, Circus Royale (*via teleconference*)

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Terry Goodall, Managing Director, Dolphin Marine Conservation Park (*via teleconference*)
- Dr Duan March, Veterinarian, Dolphin Marine Conservation Park (*via teleconference*)
- Ms Stacy Fairfax, Team Leader, Dolphin Marine Conservation Park (*via teleconference*)

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Michael Donnelly, President, Animal Care Australia
- Ms Jasmine Straga, Public Relations Representatives, Circus Federation of Australia / Board Member, Oceania Federation Mondiale du Cirque
- Ms Nicola Craddock, Executive Director, Zoo Aquarium Association Australasia
- Ms Maigan Thompson, Communications Manager, Zoo Aquarium Association Australasia

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Dr Isabella Clegg, Cetacean Welfare Scientist / Founder, Animal Welfare Expertise (*via teleconference*)

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 3.45 pm.

3.6 Tended documents

Resolved, on the motion of Mr Veitch: That the committee accept and publish the following documents tendered during the public hearing:

- Document titled 'Cetacean Welfare Improvement Plan', tendered by Mr Terry Goodall, Dolphin Marine Conservation Park

- Document titled 'Yes to circuses with animals – important information', tendered by Ms Jasmine Straga, Public Relations Representative, Circus Federation of Australia
- Document titled 'Close to 1000 animals dead after exotic animals ban in Mexico', tendered by Ms Jasmine Straga, Public Relations Representative, Circus Federation of Australia
- Set of slides titled 'Recognition of Circus as Culture', tendered by Ms Jasmine Straga, Public Relations Representative, Circus Federation of Australia
- Letter to the EU Commissioner for Education and Culture, tendered by Ms Jasmine Straga, Public Relations Representative, Circus Federation of Australia
- Set of slides titled 'Don't be fooled by the animal rights rhetoric', tendered by Ms Jasmine Straga, Public Relations Representative, Circus Federation of Australia
- Set of slides titled '10 good reasons for animals in the circus', tendered by Ms Jasmine Straga, Public Relations Representative, Circus Federation of Australia.

4. Adjournment

The committee adjourned at 4.05pm.

Joseph Cho
Committee Clerk

Minutes no. 29

Friday 14 August 2020

Portfolio Committee No. 4 - Industry

Jubilee Room, Parliament House, 11.00 am

1. Members present

Mr Banasiak, *Chair*
Ms Hurst, *Deputy Chair*
Ms Cusack
Mr Fang (substituting for Mr Amato)
Mr Farraway
Mr Primrose
Mr Veitch

2. Inquiry into the use of exotic animals in circuses and the exhibition of cetaceans in New South Wales

2.1 Allocation of questioning

Resolved, on the motion of Mr Primrose: That the allocation of questioning be left in the hands of the Chair.

2.2 Declaration

Ms Hurst made the following declarations regarding witnesses appearing at the hearing:

- Ms Hurst had previously worked for World Animal Protection International
- Ms Tara Ward, Volunteer Lawyer, Animal Defenders Office had previously filled a casual vacancy in Ms Hurst's office.

2.3 Public Hearing

Witnesses were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Dr Di Evans, Senior Scientific Officer, RSPCA Australia (*via teleconference*)
- Dr Liz Arnott, Chief Veterinarian, RSPCA NSW
- Ms Tara Ward, Volunteer Lawyer, Animal Defenders Office (*via teleconference*)
- Mr Farnham Seyed, Volunteer Lawyer, Animal Defenders Office (*via teleconference*).

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Hannah Tait, Public Engagement Officer, Action for Dolphins
- Ms Georgie Dolphin, Program Manager Animal Welfare, Humane Society International, Australia
- Mr Ben Pearson, Head of Campaigns, World Animal Protection Australia.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Dr Verne Dove, Founding Director, Australian Institute of Marine Rescues and Field Veterinarian, Sea Shepherd Conservation Society (*via teleconference*)
- Dr Ingrid Visser, Founder & Principal Scientist, Orca Research Trust and whale-rescue.org (*via teleconference*)
- Dr Rosemary Elliott, President, Sentient.

The evidence concluded and the witnesses withdrew.

2.4 Correspondence

Resolved, on the motion of Ms Cusack: That the committee write to Sea World Australia to request information on their rescue work, how many scientists they employ, and how they are funded.

2.5 Potential site visit

The committee deferred consideration of an in-person or virtual site visit on 3 September 2020 pending the secretariat seeking advice from the Department of Parliamentary Services and NSW Health, and the committee considering the feasibility of an in-person visit.

2.6 Public Hearing

The following witness was sworn and examined:

- Dr Joanne Dorning, Co-author 'The Welfare of Wild Animals in Travelling Circuses' report (*via teleconference*).

The evidence concluded and the witness withdrew.

The public hearing concluded at 4.50 pm.

3. Adjournment

The committee adjourned at 5.00 pm, *sine die*.

Monica Loftus
Committee Clerk

Minutes no. 31

Tuesday 27 October 2020

Portfolio Committee No. 4 - Industry

via videoconference, 10.05am

1. Members present

Mr Banasiak, *Chair*

Ms Hurst, *Deputy Chair*

Mr Amato

Ms Cusack (until 10.55am)

Mr Farraway

Mr Primrose

2. Apologies

Mr Veitch

3. Inquiry into the use of exotic animals in circuses and the exhibition of cetaceans in New South Wales**3.1 Virtual Site Visit**

The committee virtually visited the proposed sea sanctuary sites and met with:

- Mr Terry Goodall, Managing Director, Dolphin Marine Conservation Park
- Dr Duan March, Veterinarian and Operations Manager, Dolphin Marine Conservation Park
- Ms Stacy Fairfax, Welfare Officer, Dolphin Marine Conservation Park
- Ms Hannah Tait, Public Engagement Officer, Action for Dolphins
- Ms Jordan Sosnowski, Advocacy Director, Action for Dolphins
- Mr Ben Pearson, Head of Campaigns, World Animal Protection Australia.

3.2 Answers to questions on notice and supplementary questions

The committee noted that the following answers to questions on notice and supplementary questions were published by the committee clerk under the authorisation of the resolution appointing the committee:

- answers to supplementary questions from Dr Isabella Clegg, received 7 September 2020
- answers to questions on notice and supplementary questions from Humane Society International, received 11 September 2020
- answers to questions on notice from Action for Dolphins, received 17 September 2020
- answers to questions on notice and supplementary questions from RSPCA NSW, received 18 September 2020
- answers to questions on notice from RSPCA Australia, received 18 September 2020
- answers to supplementary questions from RSPCA Australia, received 18 September 2020
- answers to supplementary questions from Sentient, received 18 September 2020
- answers to questions on notice from Dr Joanne Dorning, received 18 September 2020
- answers to questions on notice from World Animal Protection, received 18 September 2020
- answers to questions on notice from Animal Defenders Office, received 20 September 2020
- answers to questions on notice and supplementary questions from NSW Department of Primary Industries, received 21 September 2020
- answers to supplementary questions from Animal Defenders Office, received 29 September 2020
- answers to questions on notice from Animals All Around, received 30 September 2020.

Resolved, on the motion of Mr Amato: That the committee:

- keep the two documents: 'Sea Sanctuary Operational Scope' and 'Dolphin Sanctuary in Coffs Harbour: Feasibility Study – Stage 2', from Dolphin Marine Conservation Park, received 21 September, confidential as it contains confidential information, as per the request of the author.
- keep the response to supplementary question number 3 confidential, except for the first paragraph, as per the request of the author.

Resolved, on the motion of Ms Hurst: That the committee:

- publish the supplementary responses received from Animal Care Australia, received 18 September, except Appendix 4, as it contains potential adverse mention.
- publish Dr Dorning's answers to supplementary questions, received 18 September.

3.3 Clarification of evidence

Resolved, on the motion of Mr Primrose: That the committee authorise the publication of the clarification provided by Mr Scott Hansen and Mr Peter Day, clarifying evidence provided to the committee on 13 August 2020.

4. Draft minutes

Resolved, on the motion of Mr Primrose: That draft minutes nos. 28 and 29 be confirmed.

5. Correspondence

The Committee noted the following items of correspondence:

Received

- 21 September 2020 – Letter from Mr Wayne Phillips, Head of Marine Sciences, Sea World, to Chair, providing information on rescue and rehabilitation works undertaken by Sea World.
- 29 September 2020 – Email from Mr Terry Goodall, Managing Director, Dolphin Marine Conservation Park, confirming requested publication status of documents provided as response to supplementary questions.
- 5 October 2020 – Letter from Dr Ingrid Visser, Founder and Principal Scientist, Orca Research Trust and Whale-rescue.org, to the committee, providing a draft chapter of an upcoming book to provide further information on the keeping of cetaceans in captivity.
- 7 October 2020 – Email from Mr Wayne Phillips, Head of Marine Sciences, Sea World, to secretariat, requesting information provided to the committee be kept partially confidential.

Sent

- 28 August 2020 – Letter from Chair to Mr Wayne Phillips, Head of Marine sciences, Sea World, requesting information on the rescue and rehabilitation work undertaken; number of experts employed as part of such efforts; and how they are funded.

Resolved, on the motion of Mr Amato: That the letter from Mr Wayne Phillips, Head of Marine Sciences, Sea World to Chair, received 21 September 2020, be published, except for the financial information provided, as per the request of the author.

6. Adjournment

The committee adjourned at 11.08 am, *sine die*.

Joseph Cho
Committee Clerk

Draft minutes no. 33

Wednesday 9 December 2020

Portfolio Committee No. 4 - Industry

Room 1043, 9.01am

1. Members presentMr Banasiak, *Chair*Ms Hurst, *Deputy Chair*

Mr Amato (via videoconference)

Mr Farraway

Mr Martin (*substituting for Ms Cusack*)

Mr Primrose

Mr Veitch

2. Draft Minutes

Resolved, on the motion of Mr Amato: That draft minutes no. 32 be confirmed.

3. Correspondence

The committee noted the following correspondence:

- 8 December 2020 – Email from the office of the Hon Natasha Maclaren-Jones MLC, Government Whip, to committee, advising that Mr Martin will substitute for Ms Cusack for the report deliberative on 9 December 2020.
- 29 October 2020 – Email from Mr Wayne Phillips, Head of Marine Sciences, Sea World to secretariat, providing a revised version of the information previously provided regarding the rescue and rehabilitation work undertaken by Sea World, reflecting the redactions previously requested and agreed to by the committee.

4. Inquiry into the use of exotic animals in circuses and the exhibition of cetaceans in New South Wales**4.1 Consideration of Chair's draft report**The Chair submitted his draft report entitled *The Use of Exotic Animals in Circuses and Exhibition of Cetaceans in New South Wales*, which, having been previously circulated, was taken as being read.**Chapter 1**

Resolved, on the motion of Ms Hurst: That the following new paragraph be inserted at the end of Chapter 1 as a committee comment:

'It was unclear why Animals All Around continues to be licensed as a circus in NSW and allowed to continue to acquire new exotic animals (as recently as January 2020) given it is no longer operating as a travelling circus.' [FOOTNOTE: Answers to Questions on Notice, Department of Primary Industries, 27 October 2020, p 2].'

Resolved, on the motion of Ms Hurst: That paragraph 1.6 be amended by inserting at the end: 'Dolphin Marine Conservation Park previously had five dolphins. However, two dolphins (Calamity and Bucky) have recently passed away due to medical issues' [FOOTNOTE: Evidence, Dr Dove, 14 August 2020, p 28]

Resolved, on the motion of Ms Hurst: That:

- paragraph 1.14 be amended by inserting at the end: ' , unless this is unrealistic in light of the future welfare of the new captive-born individuals.'
- paragraph 1.19 be amended by inserting ' , unless this is unrealistic in light of the future welfare of the new captive-born individuals.' after 'bottle-nosed dolphins'

- c) paragraph 3.3 be amended by inserting ‘, unless this is unrealistic in light of the future welfare of the new captive-born individuals.’ after ‘bottle-nosed dolphins’.

Resolved, on the motion of Ms Hurst: That paragraph 1.18 be amended by inserting at the end: ‘, and the Policy on Exhibiting Primates in New South Wales (2000) provides equivalent standards for primates, such as rhesus macaques.’ [FOOTNOTE: NSW Department of Primary Industries, Policy on Exhibiting Primates in New South Wales (March 2000)]

Chapter 2

Resolved, on the motion of Ms Hurst: That paragraph 2.1 be amended by omitting ‘drawing from’ and inserting instead ‘making reference to’.

Resolved, on the motion of Ms Hurst: That the heading before paragraph 2.3 be amended by omitting ‘as expert carers of exotic animals’ and inserting instead ‘perspective’.

Resolved, on the motion of Ms Hurst: That paragraph 2.9 be amended by inserting ‘industry’ before ‘submissions’.

Resolved, on the motion of Ms Hurst: That the following new paragraph be inserted after paragraph 2.17:

‘By contrast, RSPCA Australia and other non-industry stakeholders argued that mere compliance with the law does not equate to positive animal welfare.’ [FOOTNOTE: Evidence, Dr Liz Arnott, Chief Veterinarian, RSPCA NSW, 14 August 2020, p 2.]

Resolved, on the motion of Ms Hurst: That the following new paragraph be inserted after paragraph 2.22:

‘However, animal welfare experts suggested that these changes did not guarantee higher welfare. For example, when Dr Joanne Dorning was asked if she considered providing lions with air-conditioning an indication of high welfare, she said ‘No, I do not’. When questioned further, she explained:

Well, thermal regulation is something that animals need to be able to do, of course, but it depends on the animal's response to that. You cannot just measure: Do they have air conditioning or not? You have to say, "Is the animal the right the temperature? Is it behaving in a normal way?"

[FOOTNOTE: Evidence, Dr Joanne Dorning, co-author, *The Welfare of Wild Animals in Travelling Circuses report*, 14 August 2020, p 42.]

Resolved, on the motion of Ms Hurst: That paragraph 2.24 be amended by omitting ‘observed’ and inserting instead ‘stated’.

Resolved, on the motion of Ms Hurst: That the following new paragraph be inserted after paragraph 2.26:

‘The Animal Defenders Office cited evidence that:

‘The conditions in travelling circuses cause severe stress to non-domesticated animals, leading to stereotypies such as pacing by big cats and monkeys, and mouthing cage bars. These behaviours are scientifically acknowledged as indicators of impaired welfare due to the inability to cope with unsuitable living conditions.’

The Animal Defenders Office also referred to research by Lossa, Soulsbury and Harris which concluded “that the species of non-domesticated animals that are commonly kept in circuses appear to be those least suited to a circus.” [FOOTNOTE: Submission 222, Animal Defenders Office, pp 5-6]

Resolved, on the motion of Ms Hurst: That paragraph 2.35 be amended by inserting at the end:

‘The prescribed standards for exhibiting circus animals in New South Wales show a real disconnect between, on one hand, accepting that certain exotic species are inappropriate for circuses because they have

complex natural behaviours or preferences, while either still permitting their keeping or the keeping of animals of a similar kind. A similar tension exists in the standards permitting species to be confined in smaller enclosures than those that are required in fixed establishments. To suggest that the needs of an animal depend on their use by humans, rather than their species, is unsound.'

Resolved, on the motion of Ms Hurst: That the following new paragraph be inserted after paragraph 2.35:

'Dr Elliot, President of Sentient, echoed these concerns:

"Circus environments can never meet the behavioural, physiological or social needs of exotic animals. No amount of enrichment or compliance with standards will change this, any more than they will for dolphins in captivity. The key question is this: What do cetaceans and exotic animals experience when subjected to lifelong confinement in a tank or small enclosure as part of a travelling circus?"". [FOOTNOTE: Evidence, Dr Elliot, President, Sentient, 14 August 2020, p 27.]

Resolved, on the motion of Ms Hurst: That the following new paragraph be inserted after paragraph after 2.36:

'The Animal Defenders Office also highlighted that the space requirements for keeping exotic animals in circuses are far below the minimum space required for the same species in zoos:

Lions kept in a zoo in NSW must have an enclosure of at least 300 m², whereas in a circus the enclosure can be as small as 20 m². Moreover circus lions may have access to these areas for only 6 hours during the day and can be kept in small 'animal wagons' for the remaining 18 hours. Research has shown that animals in circuses spend only 1–9% of the day actually performing or being trained, meaning that most of their time is spent back in these limited enclosures.' [FOOTNOTE: Submission 222, Animal Defenders Office, p 3.]

Ms Hurst moved: That the following new paragraph be inserted after paragraph 2.36:

'The size of these mobile enclosures is significant because, under the current regulatory regime, animals can be forced to remain in these enclosures for up to 11 months of the year' [FOOTNOTE: Evidence, Department of Primary Industries, 13 August 2020, pp 2-3.]

Mr Faraway moved: That the motion of Ms Hurst be amended by:

- a) omitting 'animals can be forced to remain' and insert instead 'animals could legally remain'.
- b) inserting at the end: 'The evidence we received from the circuses did not suggest this occurs'.

Amendment of Mr Faraway put and passed.

Original question of Ms Hurst, as amended, put and passed.

Resolved, on the motion of Ms Hurst: That paragraph 2.42 be amended by inserting at the end:

'Dr Dorning gave evidence that the Radford report 'is considered by many to be scientifically inadequate' and noted that it is one of the reasons the Welsh Government commissioned a new report to revisit the issue 8 years later.' [FOOTNOTE: Answers to Supplementary Questions, Dr Dorning, p 8.]

Resolved, on the motion of Ms Hurst: That the following new paragraph be inserted after paragraph 2.42:

'Animal protection groups advised the committee that the first comprehensive scientific review of exotic animal welfare in travelling circuses was conducted by Lossa, Soulsbury and Harris in 2009. Animals Australia concluded from the report that the life of exotic animals in circuses is 'impoverished' and does not provide for their most natural behaviours.' [FOOTNOTE: Submission 223, Animals Australia Submission, p 2.]

Resolved, on the motion of Ms Hurst: That paragraph 2.46 be amended by:

- a) omitting 'Dr Dorning's research, in particular, was contentious' and inserting instead 'Dr Dorning's research, in particular, was contested by industry stakeholders'.
- b) omitting 'Ms Straga raised questions regarding' and inserting instead 'Ms Straga, representing the

Australian Circus Festival and Federation Mondiale du Cirque, raised questions regarding'.

Resolved, on the motion of Ms Hurst: That the following new paragraph be inserted after paragraph 2.54:

‘At the same time, the C-Well assessment noted a range of health and behavioural issues in the dolphins at Dolphin Marine Conservation Park including cracked and worn-down teeth, iron problems, anticipatory and attention seeking behaviour, stereotypic behaviours such as circle swimming, and eye problems. Dr Clegg noted these problems were ‘not unique’ to Dolphin Marine Conservation Park, and made a number of recommendations to improve the welfare of the dolphins including increasing shade, decreasing the amount of time dolphins spend staring into the sun, more stimulating and variable enrichment and less time playing with balls.’ [FOOTNOTE: Evidence, Dr Clegg, Cetacean Welfare Scientist, 13 August 2020, pp 38-39]

Ms Hurst moved: That paragraph 2.57 be amended by omitting ' 'Ms Craddock asserted that there were no legitimate welfare grounds to oppose the keeping of dolphins at the Park, and that opposition could only be sustained on ethical and philosophical grounds' and inserting instead the quote from Ms Craddock which states: 'It is important when considering the welfare of cetaceans for exhibition, not to use the terms "welfare" and "ethics" interchangeably. This submission is a response to the inquiry into the welfare of cetaceans exhibited in New South Wales, it being separate to any philosophical or ethical viewpoints.'

Mr Veitch moved that the motion of Ms Hurst be amended by inserting before the quote from Ms Craddock the words 'Ms Craddock expressed concerns about the interchangeability of 'welfare' and 'ethics' in this inquiry:'.

Amendment of Mr Veitch put and passed.

Original question of Ms Hurst, as amended, put and passed.

Resolved, on the motion of Ms Hurst: That the following new paragraph be inserted after paragraph 2.65:

‘Another unnatural interaction highlighted to the Committee was the dolphin ‘kiss’ activity at Dolphin Marine Conservation Park. Humane Society International Australia noted that these interactions can ‘result in wounds and abrasions following frequent handling, and their sensitive beaks can be damaged’ [FOOTNOTE: HSI Australia Submission, page 7]

Resolved, on the motion of Ms Hurst: That the following new paragraph be inserted after paragraph 2.82:

‘The committee was also referred to a petition signed by over 10,000 NSW citizens, calling for a ban on forcing wild animals to perform in circuses, that was tabled in NSW Parliament in 2011 by Clover Moore.’ [FOOTNOTE: Submission 224, Humane Society International Australia, p 2]

Resolved, on the motion of Ms Hurst: That paragraph 2.90 be amended by inserting 'Director, Circus Royale' after 'Mr Syred,'.

Resolved, on the motion of Ms Hurst: That the following new paragraph be inserted after paragraph 2.91:

‘However, other stakeholders suggested that a ban on keeping exotic animals in circuses in NSW would not end the circus tradition, but rather encourage circuses to evolve with the times. For example, Humane Society International Australia suggested that circuses look to incorporate modern technology in their shows to replace the animals:

A German company, Circus Roncalli, has transitioned to modern techniques by employing larger-than-life holograms with 360-degree visibility rather than live animal exhibitions. This represents

the final step in their effort to phase animals out of their shows altogether. [FOOTNOTE: Submission 224, Humane Society International Australia, page 10]

Dr Verne Dove also expressed the view that ‘circuses with live animals are a dying business model, and should be phased out for more suitable alternatives. Such alternatives are already being seen in various circuses around the world, for example performing dinosaurs, as well as holographic animals, and 4D cinematography.’ [FOOTNOTE: Submission 179, Australian Institute of Marine Rescues and Sea Shepherd, Page 1]

Resolved, on the motion of Ms Hurst: That paragraph 2.92 be amended by omitting 'no community consensus on what constitutes sound animal welfare' and inserting instead 'a clear divide between the views of industry groups on one hand, and animal protection groups and the community on the other hand, on what constitutes good animal welfare.'

Resolved, on the motion of Ms Hurst: that paragraph 2.98 be amended by omitting 'It was apparent to the committee that differing ethical positions on the acceptable role of humans in regard to animals constituted the key point of differentiation between the two sides in this inquiry.'

Resolved, on the motion of Ms Hurst: That the following bullet point be inserted after the heading 'Opposition to the use of exotic animals and exhibition of cetaceans':

"These enterprises use the animals for ‘entertainment’ and thereby also perpetuate the perception that animals exist for our amusement and/or commercial gain. The notion that children should be witness to captive wild animals performing unnatural ‘tricks’ simply reinforces a lack of respect for the animals’ intrinsic worth as sentient individuals. Such displays therefore undermine the broader community goal of the improvement of animal welfare and promotion of compassion to all species.’ [FOOTNOTE: submission 223, Animals Australia submission, p 1]

Ms Hurst moved: That paragraph 2.99 be amended by omitting ‘The committee received sharply contrasting views on the state of welfare of exotic animals and cetaceans in New South Wales. Regardless of this, it was clear to the committee that the welfare of exotic animals and exhibited cetaceans was of paramount importance to all stakeholders involved in this inquiry, including industry and animal welfare groups.’

Mr Veitch moved: That the motion of Ms Hurst be amended by omitting "The committee received sharply contrasting views on the state of welfare of exotic animals and cetaceans in New South Wales. Regardless of this, it was clear to the committee' and inserting instead "The committee heard evidence'.

Amendment of Mr Veitch put and passed.

Original question of Ms Hurst, as amended, put and passed.

Resolved, on the motion of Mr Veitch: That paragraph 2.99 be amended by:

- a) omitting 'the committee appreciates' and inserting instead 'the committee acknowledges'
- b) omitting 'accept that all who participated in the inquiry were genuine in having the best interests of these animals at heart.' and inserting instead 'accept that all who participated in the inquiry believed that they had the best interests of the animals at heart'.

Resolved, on the motion of Ms Hurst: That paragraph 2.100 be amended by omitting: 'The committee acknowledges that some stakeholders feel that exotic animals and cetaceans, as non-domesticated species, must be able to perform the repertoire of behaviours performed in the wild in order to achieve positive states of welfare. Broadly speaking, these stakeholders also feel that animals, as sentient beings, should not be used by humans unless absolutely necessary. Many contended that using animals for human entertainment and profit does not meet this test. We acknowledge that according to such views, the use of animals in traditional circus acts and exhibition of cetaceans in a marine park setting is ethically objectionable.' and inserting instead:

'The committee acknowledges that animal protection groups involved in the inquiry presented concerns that exotic animals and cetaceans, as non-domesticated species, are unable to perform the repertoire of behaviours performed in the wild leading to frustration and poor animal welfare. Broadly speaking, these stakeholders contended that using animals for human entertainment and profit was not justified because of these welfare implications. We acknowledge that according to animal protection groups, the use of animals in traditional circus acts and exhibition of cetacean in a marine park setting is ethically objectionable!'

Resolved, on the motion of Ms Hurst: 'That paragraph 2.101 be amended by omitting ' On the other side of the debate are the industry operators and their supporters. The committee has witnessed firsthand the devotion these stakeholders feel towards their animals. The committee also acknowledges that all NSW operators have a robust history of compliance with the regulatory framework, often exceeding the standards set down to protect animal welfare. We accept that it would be untenable to release most of the animals relevant to this inquiry into the wild, for the animals, although not domesticated, have always lived in human care, have been tamed, and have had no previous exposure to the wild. We recognise that for these stakeholders, good animal welfare is achieved by ensuring that no harm or abuse comes to animals in human care, and that husbandry practices are delivered to the regulated standard.' and inserting instead:

'On the otherwise of the debate are the industry operators. The committee heard of the devotion these stakeholders feel towards their animals. The committee acknowledges that NSW operators report that they have a robust history of compliance with the regulatory framework, often exceeding the standards set down to protect animal welfare. We accept that it would be untenable to release most of the animals relevant to this inquiry into the wild, having heard that, although not domesticated, the animals have been born in captivity and have had no previous exposure to the wild. Broadly speaking, these stakeholders proposed that good animal welfare was achieved by ensuring that no harm or abuse comes to animals in human care, and that husbandry practices are delivered to the regulated standard.'

Resolved, on the motion of Ms Hurst: 'That paragraph 2.102 be amended by inserting ', but recognises that these welfare requirements are outdated and do not meet all community expectations' after 'update the animal welfare regulatory framework'.

Chapter 3

Resolved, on the motion of Ms Hurst: 'That the following new paragraph be inserted after paragraph 3.4:

'Mr Goodall also gave evidence about the significant cost involved in building the proposed sea sanctuary to retire the existing three dolphins, which is now being considered because of public perceptions.'

[FOOTNOTE: Evidence, Mr Terry Goodall, Managing Director, Dolphin Marine Conservation Park, 13 August 2020, pp 22 and 24.]

Resolved, on the motion of Ms Hurst: 'That paragraph 3.6 be amended by omitting 'did not confer any real benefit to NSW other than entertainment and profit' and inserting instead 'expressed concerns about bringing additional animals into these dying industries, particularly given the significant cost and practical difficulties in retiring and rehoming these animals'.

Resolved, on the motion of Ms Hurst: 'That the following new paragraph be inserted after paragraph 3.13:

'The committee received evidence about the death of an infant dolphin that occurred at Dolphins Marine Conservation Park in 2015. According to Humane Society International Australia:

'In 2015 the Coffs Harbour marine park came under intense public scrutiny over the death of an infant captive dolphin known as Baby Ji. The dolphin had ingested significant amounts of debris and leaf litter from within the tank and a park vet attempted to remove it by reaching into the dolphins' stomach with one hand. As a result Baby Ji suffered from a heart attack and died.'

[FOOTNOTE: Submission 224, Humane Society International, p 7.]

Resolved, on the motion of Ms Hurst: That paragraph 3.15 be amended by omitting 'A number of' and inserting instead 'The majority of'.

Resolved, on the motion of Ms Hurst: That paragraph 3.15 be amended by inserting at the end:

'A number of these submissions drew the committee's attention to the fact that, over 30 years ago the Australian Senate Select Committee on Animal Welfare Inquiry into Dolphins and Whales in Captivity recommended a national phase out of venues that keep cetaceans in captivity.'

[FOOTNOTE: Submission 93, World Animal Protection Australia, p 3.]

Resolved, on the motion of Ms Hurst: That the following new paragraph be inserted after paragraph 3.22:

'The committee received a submission from The Hon. Wilfred P. Moore, a former member of the Senate of Canada and the original sponsor of a Bill which created 'a historic nationwide phase-out of whale, dolphin and porpoise captivity for entertainment purposes' in Canada. The former Senator noted:

Our Bill was based on the strong scientific evidence that cetacean captivity is inherently cruel, primarily because the biological and ecological needs of cetaceans cannot be met in the conditions of captivity'.

[FOOTNOTE: Submission 227, The Hon Wilfred P. Moore, p 1.]

Resolved, on the motion of Ms Hurst: That the following new paragraph be inserted after paragraph 3.23:

'The committee also received evidence that 'a total of 33 countries have banned the use or import/export of some or all exotic species in circuses mainly due to animal welfare concerns.'

[FOOTNOTE: Submission 175, RSPCA Australia, p 6.]

Resolved, on the motion of Ms Hurst: That the following new paragraph be inserted after paragraph 3.23:

'Dr Ingrid Visser further noted that a ban on keeping cetaceans is necessary to comply with Australia's obligations under international conventions:

'Australia is a party to many international conventions which encourage the conservation of cetaceans... the phasing out of captive cetaceans will bring Australia one step closer to formally keep in line with evolving international practice, as well as fulfil its responsibilities under the international conventions to which it is a party, when NSW phases out the keeping of cetaceans.'

[FOOTNOTE: Submission 193, Dr Ingrid Visser, p 9.]

Resolved, on the motion of Ms Hurst: That the following new paragraph be inserted after paragraph 3.42:

'Both industry and animal welfare groups did not support the option of euthanasia. During the course of the inquiry, Stardust Circus confirmed that it has a retirement plan for the exotic animals currently under their care. Ms Lennon indicated she has 'paid for an enclosure at Zambi Wildlife Park' to retire the lions, and is 'building a huge enclosure on our property for the monkeys'. Similarly, Dolphin Marine Conservation Park talked extensively about its plan to retire the dolphins to a sea sanctuary.'

[FOOTNOTE: Evidence, Ms Janice Lennon, Owner/Manager, Stardust Circus, 13 August 2020, pp 17-18; Evidence, Mr Terry Goodall, Managing Director, Dolphin Marine Conservation Park, 13 August 2020, p 22.]

Resolved, on the motion of Ms Hurst: That the following new paragraph be inserted after paragraph 3.42:

'Animal welfare groups suggested that a legislative ban could incorporate a 'sunset clause' or the 'grandfathering' of current animals in the industry. Both Dolphin Marine Conservation Park and Stardust Circus indicated they would benefit from financial support from the NSW Government to transition the animals to retirement, in the event of such a legislative change.'

[FOOTNOTE: Evidence, Dr Ingrid Visser, 14 August 2020, p 28; Evidence, Dr Liz Arnott, Chief Veterinarian, RSPCA NSW, 14 August 2020, p 2; Evidence, Ms Georgie Dolphin, Program Manager, Animal Welfare, Humane Society International, Australia, 14 August 2020, p 14; Evidence, Ms Janice

Lennon, Owner/Manager, Stardust Circus, 13 August 2020, p17; Submission 232, Dolphin Marine Conservation Park, p 12.]

Resolved, on the motion of Mr Farraway: That paragraph 3.47 be amended by omitting 'Agreeing that there may be' and inserting instead 'Ms Lennon expressed concern that there may be'.

Resolved, on the motion of Ms Hurst: That paragraph 3.48 be amended by omitting 'also learned' and inserting instead 'heard evidence from Ms Lennon'.

Resolved, on the motion of Ms Hurst: That paragraph 3.49 be amended by:

- a) omitting 'noted' and inserting instead 'suggested' before 'Arna had struggled with the transition'
- b) omitting 'noted' and inserting instead 'argued' before 'that it was clear that Arna'
- c) omitting 'informed' and inserting instead 'told'.

Resolved, on the motion of Ms Hurst: That paragraph 3.69 be amended by omitting 'care of exotic animals' and inserting instead 'use of exotic animals', subject to the secretariat confirming this is correct in evidence.

Resolved, on the motion of Ms Hurst: That paragraph 3.76 be amended by inserting at the end:

'This was argued as another reason for a legislative ban on the breeding and use of animals for entertainment. Dr Verne Dove expressed the view that 'circuses with live animals are a dying business model, and should be phased out for more suitable alternatives' and World Animal Protection argued that a ban on breeding cetaceans was essential to ensure we do not 'have another generation held in entertainment venues'.

[FOOTNOTE: Submission 179, Australian Institute of Marine Rescues and Sea Shepherd, p1; Evidence, Mr Ben Pearson, Head of Campaigns, World Animal Protection Australia, 14 August 2020, p 18.]

Resolved, on the motion of Ms Hurst: That paragraph 3.77 be amended by:

- a) inserting 'industry' after 'a number of'
- b) omitting 'highlighted how' and inserting instead 'suggested'.

Resolved, on the motion of Ms Hurst: That the following paragraph 3.79 be omitted:

'Ms Straga's observation was echoed in the submission of Ms Maggie Ashley. The submission, noting that some of the species currently bred and used in the acts of NSW circuses are endangered, contended that current practices will ensure the affected species: '... are given an opportunity to grow in population once again!'

Resolved, on the motion of Ms Hurst: That paragraph 3.82 be amended by omitting 'No conservation or research work is undertaken by circuses to help preserve these species' and inserting instead:

'The sole reason for breeding exotic animals in circuses is for performance and profit. No conservation or research work is undertaken by circuses to help preserve these species, and their use is for entertainment not educational purposes.'

Resolved, on the motion of Ms Hurst: That the following new paragraph be inserted after paragraph 3.82:

'In respect to breeding dolphins, RSPCA Australia observed:

'The only potential justification to breed dolphins in captivity is for conservation purposes, where the ultimate goal is for release into the wild to replenish diminishing populations. Bottlenose dolphins, the most common species held in captivity, are not threatened in the wild and are listed as of least concern on IUCN's Red List, with an estimated wild population of at least 600,000. There is no evidence of a global population decline that would justify the keeping and breeding of dolphins in captivity'.

[FOOTNOTE: Submission 175, RSPCA Australia, p 16.]

Resolved, on the motion of Ms Hurst: That the following new paragraph be inserted after paragraph 3.86:

'In its submission, the Dolphin Marine Conservation Park called on the Government to provide financial support, so that they are not reliant on this income to perform their important rescue and rehabilitation work:

'If this Parliamentary Inquiry is genuine in promoting animal welfare and maintaining community expectations, DMCP calls upon the Parliament to provide financial assistance to the DMCP's transition to a full rescue, rehabilitation and wildlife research and education facility. An investment by the government into this model would facilitate transparency, maintain the local economic stimulus provided by DMCP and most importantly, support the capacity of DMCP to continue the rescue, rehabilitation and release of marine fauna along the NSW coast.'

[FOOTNOTE: Submission 232, Dolphin Marine Conservation Park, p 12.]

Resolved, on the motion of Ms Hurst: That paragraph 3.105 be amended by inserting at the end:

'RSPCA Australia also noted that there are 'no formal scientific research programs associated with dolphinariums in Australia.'

[FOOTNOTE: Submission 175, RSPCA Australia, p 17.]

Resolved, on the motion of Ms Hurst: That paragraph 3.109 be amended by inserting at the end:

'The Department of Primary Industries gave evidence that exotic animals in circuses are legally allowed to be kept in these small enclosures for up to 11 months of the year' (Footnote: DPI evidence, 13 August, pages 2-3)

[FOOTNOTE: Evidence, Mr Peter Day, Director, Compliance and Integrity Systems, NSW Department of Primary Industries, 13 August 2020, pp 2-3.]

Resolved, on the motion of Ms Hurst: That paragraph 3.126 be amended by omitting 'The committee further acknowledges that there are legitimate concerns' and inserting instead 'The committee acknowledges that there are concerns'.

Resolved, on the motion of Ms Hurst: That paragraph 3.126 be amended by:

- a) omitting 'forced on industry stakeholders by the government' and inserting instead 'implemented by the government'
- b) inserting at the end: 'However, we also note that representatives from the circus and dolphinarium industry indicated that any such transition to retire the animals would be made easier with financial support from the NSW Government'.

Resolved, on the motion of Ms Hurst: That the following new paragraph be inserted after paragraph 3.127:

'However, the committee also recognises that there is nothing in the regulatory regime to prevent further breeding if operations change hands, or to stop other operators from setting up in New South Wales.'

Ms Hurst moved: That the following new paragraph and recommendation be inserted after paragraph 3.127:

'Given the evidence that Stardust Circus (being the only active travelling circus with exotic animals in NSW) has voluntarily ceased breeding its lions and monkeys, a breeding ban would have no adverse effect on its business operations. However, a failure to ban further breeding could have serious welfare implications. As such, the Committee recommends that a ban on breeding exotic animals in circuses be implemented.'

Recommendation X

That the NSW Government ban the breeding of exotic animals for exhibition in circuses.'

Question put.

The committee divided.

Ayes: Ms Hurst.

Noes: Mr Amato, Mr Banasiak, Mr Farraway, Mr Martin, Mr Primrose, Mr Veitch.

Question resolved in the negative.

Ms Hurst moved: That the following new paragraph and recommendation be inserted after paragraph 3.127:

'The committee recognises the difference of opinion between circus industry participants and animal welfare groups on the continued breeding of exotic animals in travelling circus shows. The Committee also had divergent views.'

'Recommendation X

That the NSW Government consider the issue of a legislative ban on the breeding of exotic animals in circuses as part of the Animal Welfare Action Plan.'

Question put.

The committee divided.

Ayes: Ms Hurst, Mr Primrose, Mr Veitch.

Noes: Mr Amato, Mr Banasiak, Mr Farraway, Mr Martin.

Question resolved in the negative.

Ms Hurst moved: That the following new paragraph and recommendation be inserted after paragraph 3.127:

'The majority of the evidence provided to this inquiry, both from the community and animal protection groups, established that good welfare for exotic animals cannot be achieved in a travelling circus and the practice should be banned. Stardust Circus is the only travelling circus with exotic animals left in NSW. There was some disagreement about whether the industry should be allowed to die out on its own, or whether Government support should be provided to assist the circus to retire their animals. Stardust Circus indicated that financial support would be useful in the event of any legislative phase out. As such, the Committee makes the following recommendations:'

'Recommendation X

That the NSW Government ban the exhibition of exotic animals in circuses immediately and ensure the current animals are retired.'

Question put.

The committee divided.

Ayes: Ms Hurst.

Noes: Mr Amato, Mr Banasiak, Mr Farraway, Mr Martin, Mr Primrose, Mr Veitch.

Question resolved in the negative.

Ms Hurst moved: That the following new recommendation be inserted after paragraph 3.127:

'Recommendation X

That the NSW Government provide financial support to circuses with exotic animals to retire the animals under their care.'

Question put.

The committee divided.

Ayes: Ms Hurst, Mr Primrose, Mr Veitch.

Noes: Mr Amato, Mr Banasiak, Mr Farraway, Mr Martin.

Question resolved in the negative.

Ms Hurst moved: That the following new paragraph and recommendation be inserted after paragraph 3.127:

'The committee again recognises the difference of opinion between circus industry participants and animal welfare groups on the continued use of exotic animals in travelling circus shows. The Committee also had divergent views.'

'Recommendation X

That the NSW Government consider the issue of a legislative ban on the use of exotic animals in circuses as part of the Animal Welfare Action Plan.'

Question put.

The committee divided.

Ayes: Ms Hurst, Mr Primrose, Mr Veitch.

Noes: Mr Amato, Mr Banasiak, Mr Farraway, Mr Martin.

Question resolved in the negative.

Ms Hurst moved: That the following paragraph 3.128 be omitted:

'Given such changes are already taking place in the industry, and given that the committee – as explained in Chapter 2 – is satisfied that exotic animals in circuses and cetaceans exhibited in NSW meet the welfare requirements as required by the current legislative and regulatory framework, the committee does not see a need to recommend a legislative change in regard to the breeding or use of exotic animals in circuses, or the exhibition of cetaceans.'

Question put.

The committee divided.

Ayes: Ms Hurst, Mr Primrose, Mr Veitch.

Noes: Mr Amato, Mr Banasiak, Mr Farraway, Mr Martin.

Question resolved in the negative.

Ms Hurst moved: That:

- a) paragraph 3.129 be amended by:
 - i. inserting 'urgent' before 'review'
 - ii. inserting at the end: 'However, the Committee received evidence from the Department of Primary Industries that the standards relating to exotic animals kept in circuses and cetaceans may not be updated for four to five years. Given the wide interest from animal protection groups, and the significant length of time since the standards have been updated, the Committee forms the opinion that this process should be expedited'
- b) paragraph 3.130 be amended by inserting 'urgently' after 'NSW Government'.

Question put.

The committee divided.

Ayes: Ms Hurst, Mr Primrose, Mr Veitch.

Noes: Mr Amato, Mr Banasiak, Mr Farraway, Mr Martin.

Question resolved in the negative.

Ms Hurst moved: That Recommendation 1 be amended by inserting 'urgently' before address'.

Question put.

The committee divided.

Ayes: Ms Hurst, Mr Primrose, Mr Veitch.

Noes: Mr Amato, Mr Banasiak, Mr Farraway, Mr Martin.

Question resolved in the negative.

Resolved, on the motion of Ms Hurst: That the following new paragraph and recommendation be inserted before paragraph 3.131:

'The committee recognises that Dolphin Marine Conservation Park, the only remaining facility exhibiting cetaceans in NSW, does not object to a legislated ban on breeding. The Committee also acknowledges that both industry and welfare stakeholders identified the use of cetaceans in captive entertainment had declining public support. Further, the Committee recognises the large cost of a potential sea pen and the difficulties surrounding the retirement of cetaceans as a species, and therefore recommends stronger limitations around the breeding of cetaceans to overcome future difficulties with the re-homing of these specific animals.'

'Recommendation X

That NSW Government consider applying limitations on the breeding of cetaceans which allow for breeding for conservation or protection purposes.'

Ms Hurst moved: That the following new paragraph and recommendation be inserted before paragraph 3.131:

'The Dolphin Marine Conservation Park has acknowledged that the public no longer supports dolphins in captivity. As a result, it is seeking to retire the current dolphins to a sea pen and move to a non-profit business model that is more focussed on rescue and rehabilitation. The Committee applauds this effort but notes that, right now, there is nothing to stop a change in management at Dolphin Marine Conservation Park undoing this decision or a new dolphinarium operator setting up. Therefore, the Committee supports a legislative ban on the keeping of cetaceans for entertainment, with the current dolphins to be 'grandfathered in' to ensure they are able to remain under the care of Dolphin Marine Conservation Park.'

'Recommendation X

That there be a mandatory ban on exhibition of cetaceans for the purposes of performance, with current animals to be 'grandfathered' under the legislation to enable them to remain under the care of Dolphin Marine Conservation Park.'

Question put.

The committee divided.

Ayes: Ms Hurst, Mr Primrose, Mr Veitch.

Noes: Mr Amato, Mr Banasiak, Mr Farraway, Mr Martin.

Question resolved in the negative.

Resolved, on the motion of Ms Hurst: That the following new paragraph and recommendation be inserted before paragraph 3.131:

'Dolphin Marine Conservation Park provided evidence that they fully fund their own marine rescue and rehabilitation work, and called on the Government for financial assistance to support their efforts.'

'Recommendation X

The NSW Government consider providing financial assistance to support marine rescue and rehabilitation work in NSW.'

Ms Hurst moved: That Recommendation 2 be amended by inserting 'financial and other' before 'support'.

Question put.

The committee divided.

Ayes: Ms Hurst, Mr Primrose, Mr Veitch.

Noes: Mr Amato, Mr Banasiak, Mr Faraway, Mr Martin.

Question resolved in the negative.

Mr Veitch and Mr Primrose noted that a lack of clarity in regards to the definition of an 'exotic animal' affected the opposition's votes on amendments raised during the meeting.

Resolved, on the motion of Mr Amato: That:

- The draft report [as amended] be the report of the committee and that the committee present the report to the House;
- The transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, summary report of the online questionnaire and correspondence relating to the inquiry be tabled in the House with the report;
- Upon tabling, all unpublished attachments to submissions and individual responses to the online questionnaire be kept confidential by the committee;
- Upon tabling, all unpublished transcripts of evidence, submissions, responses to the online questionnaire and summary report of these responses tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee;
- The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;
- The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;
- Dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting;
- The report be tabled on Monday 14 December 2020.

5. Adjournment

The committee adjourned at 11.23 am, *sine die*.

Joseph Cho / Anthony Hanna
Committee Clerk

Appendix 4 Dissenting statements

The Honourable Emma Hurst MLC, Animal Justice Party

As Deputy Chair, I am disgusted by the failure of this report to recommend a legislative ban on the use of animals in entertainment.

The need for a legislated ban on further breeding within these industries, and a ban on continuing to force exotic animals and cetaceans to perform for human entertainment, was supported by evidence from thousands of community members, animal welfare groups including the RSPCA, academics, and scientists who all highlighted the serious welfare issues faced by animals forced to travel in circuses or to perform in pools. Yet the recommendations in this report do not reflect the evidence provided by stakeholders with genuine animal protection concerns and expertise, instead favouring the viewpoint of industry and industry lobby groups who have a vested financial interest in allowing animal performances to continue.

There was significant evidence presented to this Inquiry that there are enormous animal welfare implications for exotic animals in travelling circuses. According to animal welfare experts, these animals will experience boredom, stress, frustration and a range of other behavioural abnormalities related to the constant travel and confinement in circus life. In light of this evidence, it is clear that the current NSW regulatory regime is outdated, inadequate and unjustified.

We also received evidence of the overwhelming community opposition to this dying industry, which only has one active circus left in NSW. Councils across Australia, and many countries worldwide, have banned the use of exotic animals in circuses. NSW continues to fall behind other jurisdictions on these critical animal protection issues. It is unconscionable that the Government rejects community concerns on this abuse of animals, and fails to acknowledge the worldwide shift in animal protection laws.

While the only remaining exotic animal circus in NSW has voluntarily agreed to stop breeding, they indicated during this Inquiry they may start breeding again at any point in time. There is also nothing in the current regulatory regime to stop another circus operator setting up in NSW. It makes no sense to continue to support the ongoing breeding of animals in circuses when the evidence we heard was that the industry was on its last legs, was unlikely to survive, and therefore any new animals born into the industry would have nowhere to go.

Despite the significant future risk for animals bred into this dying industry, the Committee failed to recommend a ban on breeding or use of exotic animals for circuses, or to even ask the Government to consider a legislative ban as part of the Animal Welfare Action Plan.

The Committee also chose not to recommend that the Government provide financial support to assist circuses in NSW to retire their exotic animals, despite evidence that such support would be welcomed by both welfare groups and industry. Instead, it seems some Committee members preferred to let this industry die out on its own with no support for the employees or animals. This was a particularly strange decision from those members of the Committee who claimed to support the circus industry.

The Committee even rejected a recommendation for the issues raised in this inquiry to be considered 'urgently'. Given the Department of Primary Industries gave evidence that the standards for keeping exotic animals in circuses may not be reviewed for 4-5 years, and that under the current regulatory regime

animals can be held in enclosures many times smaller than zoo enclosures for up to 11 months at any time, this is simply not good enough. It raises serious questions about the extent to which the Government is listening to the community and experts when it comes to matters of animal protection.

With respect to the use of cetaceans for human entertainment, it was encouraging to see the Committee support recommendations regarding further work on a feasibility study to retire the final three dolphins in captivity in NSW to a sea sanctuary, restrictions on further breeding on dolphins in captivity and funding for marine rescue and rehabilitation.

However, the Committee has made a grave error in failing to support a recommendation to enact an outright ban on the exhibition of cetaceans for performance purposes. There was overwhelming evidence at the inquiry that the community no longer supports keeping these animals in captivity to perform 'dolphin shows', due to the significant animal welfare issues associated with this practice.

Dolphin Marine Conservation Park - as the only remaining dolphinarium in NSW - recognises this, which is why they have voluntarily ceased breeding and are seeking to retire their three remaining dolphins to a sea sanctuary. While this is admirable, similar to the situation with the circus industry, there is nothing in NSW law to stop a change in management at Dolphin Marine Conservation Park undoing this decision or a new dolphinarium operator setting up. As such, a legislative ban on keeping cetaceans for the purpose of performance entertainment was an essential recommendation that this Committee failed to make.

Overall, this Inquiry has made clear that the community does not support keeping sentient animals in captivity for the purposes of human entertainment.

These animals were not born to perform. They do not exist for our entertainment. They deserve a life worth living, and this Inquiry has established that the circus and dolphinarium industries can never provide this.

The Honourable Peter Primrose MLC and the Honourable Mick Veitch MLC, Australian Labor Party

We dissent from the lack of clarity regarding the legal definitions used in the motions that were proposed for the report regarding the terms ‘exotic animals’, ‘circuses’ and ‘exhibition of cetaceans.’

Labor Policy is to ban exotic animals in circuses and the exhibition of cetaceans, but we held concerns that if these imprecise definitions were adopted in a Parliamentary Inquiry recommending legislative and regulatory changes this could result in an unintended broadening of this ban to other situations.