

INQUIRY INTO THE EXHIBITION OF EXOTIC ANIMALS IN CIRCUSES AND THE EXHIBITION OF CETACEANS IN NEW SOUTH WALES

Supplementary questions - Dr Di Evans
Hearing – 14 August 2020

1. In evidence tendered by the representatives from the circus they stated they have often asked RSPCA NSW inspectorate for written reports highlighting their positive inspections and also invited the inspectors to witness the show, both of which have been declined by inspectors citing a fear from negative repercussions from people higher up in both RSPCA NSW and Australia. Has there been any direction in writing or verbally to any of the inspectors along these lines? If not, how do you explain your inspectors making such commentary?

Response: The RSPCA is a federated society comprising of RSPCA Australia which is situated in Canberra and member societies located in all states and territories. RSPCA Australia has no regulatory function with its main roles being to coordinate development and review of RSPCA policies, review and communicate evidence based and scientific literature relating to animal welfare, coordinate the operation of the Approved Farming Scheme, and provide support to member societies relating to national campaigns and advocacy work. Enforcement of animal welfare legislation is the responsibility of RSPCA member societies at the state level jurisdiction and RSPCA Australia has no role regarding the conduct of RSPCA inspectors. RSPCA Australia has at no time issued any written or verbal instructions regarding RSPCA staff attendance at circus performances in their personal time. RSPCA Australia does not adopt the comments described.

2. The *Standards for exhibiting bottle-nosed dolphins* have not been updated since 1994 – what is your opinion on this?

Response: All welfare codes of practice/standards and guidelines should be reviewed at least every ten years to ensure that consideration is given to advances in animal welfare science and increasing community expectations regarding the use and treatment of animals. Significant advances in animal welfare science recognises the importance of the following:

- Based on the Five Domains model, the importance of assessing and addressing impacts resulting in negative affective (mental state).
- That those in charge of animals, irrespective of the circumstance, (i.e., pets, farm animals, animals used in sport or entertainment etc) have a duty of care to provide a good quality of life to those animals, where those animals have their physical, mental and behavioural needs met.
- In terms of providing sufficient space and environmental diversity, the challenge for the standards is that the current facility which is very outdated and inadequate is not able to meet even the basic needs of these animals – even state of the art marine parks are unable to do this. This is the reason why cetaceans should not be bred or kept in captivity.
- To assist in ensuring that the remaining dolphins at DMCP receive the best available care based on the standards, it would be useful that the revision of the standards was undertaken by a panel of experts including veterinarians with extensive experience in dolphin care, including those who are not affiliated with any specific marine park facility, as well as scientific experts with knowledge of the species in the wild, as well as those with knowledge in cetacean rehabilitation programs.

In terms of community expectations, there are increasing recognition for the need for the harm versus benefit to those animals to be considered. Thus, where the benefits to an individual animal or a species do

not override harms, including deprivation of freedom, there is no justification to breed and maintain species such as cetaceans. Also, there is a greater recognition that animals have intrinsic value and that their treatment should not be determined by their perceived extrinsic value or utility to humans.

3. Do you have concerns regarding the size of enclosures prescribed in the *Standards for exhibiting circus animals* for lions and monkeys? If so, please explain.

Response: The concept of behavioural needs is important for designing housing of captive animals. To achieve acceptable welfare standards environments should;

- allow animals to have choice and a sense of control about what they do;
- minimise boredom, and
- enable a repertoire of behaviours that approximate those seen in the wild.

The prescribed enclosure sizes for lions and monkeys are inadequate to meet their needs and secure them an acceptable standard of welfare in these ways.

We know from observing animals in nature what behaviour they choose to engage in and for what proportion of their day. Lions have a home range of approximately 4,000ha up to 100 000ha. They can reach speeds of 50 – 80km/hr (Tucker 2010). In a circus, the standards allow for two lions to be kept in a 3m x 10m annexe. During transportation they can be confined even further into a space only large enough to allow for them to stand, lie stretched and turn around. Although there are a few mandated 'layover' weeks per year there is no requirement for this layover to be at the home base so this very restricted temporary annexe style housing may be their entire experience. This environment has no ability to meet the needs of the animals which is likely why fixed establishments are not permitted to keep animals in this way.

Similarly, in the wild macaques have a daily time budget of 20% travelling, 20% feeding, 17% rest and 10% grooming (Hambali et al 2012). In a circus, two macaques may legally be held in a space 3m x 3m x 2.5m high their entire lives (other than 45 minutes of training four times per week). It is impossible for them to even approximate the activity they require nor the quality and appropriateness of those activities in that space. Again, that is likely the reason that a fixed establishment are required to have a space at least 8 times larger for the same number of macaques. Pacing behaviour observed in captive macaques is nearly always absent in larger, more complex enclosures (Mallapur et al 2005).

With travelling circuses animals are subjected to reduced space allowance due to restrictions imposed by transportation and premises where circuses perform. As seen in the zoo industry, there is a recognition that larger mammals need to be afforded as much space as possible as evidenced by establishment of open plain zoos. Focusing on dimensions of an enclosure does not address either the obvious extensive space which is needed nor the importance of ensuring that the environment is enriching. In small enclosures it is more difficult to create appropriate enrichment opportunities including allowing monkeys to climb to heights and behave in a way which simulates moving in tree canopies as they would in nature. Where lions and monkeys are kept in an open plain facility all year round, their needs can be better met, rather than having this interrupted due to performance schedules as dictated by a travelling circus..

4. In your submission, you use the three dimensions model for assessing animal welfare to evaluate the welfare of exotic animals and cetaceans used for entertainment. Do you see this model being reflected in the DPI submission to the inquiry or the NSW Circus and Dolphins Standards, which seem to focus more on basic needs like water, food and shelter?

Response: In essence, the three dimensions model is not reflected in the DPI submission to the inquiry nor the NSW Circus or Dolphin Standards. The NSW DPI is the state regulator for these standards and so the submission simply reflects the standards as they are rather than including comments on what they

should be. No evidence is provided to substantiate the dimensions contained in either of these Standards to demonstrate that these will meet physical, mental and behavioural needs of the animals in question. Current scientific literature including acknowledgement of natural behaviours, should be used to provide baseline standards of care, health and welfare.

Dolphins

In terms of the three dimensions framework, neither the DPI submission, nor the NSW Dolphin Standards reflect requirements to meet critical natural behaviours such as travelling (which studies of wild dolphins has shown to account for 38% of their time, feeding (including hunting and foraging) which accounts for 19% of their time (Hawkins & Gartside 2008) and for dynamic social interactions where individuals may interact with up to over 30 individuals on an ongoing basis (Gero et al 2005). Another study by Dwyer et al 2014 which included 109 individuals recorded at Great Barrier Island, New Zealand revealed two groups of 60 and 49 dolphins, separated by a distance of 19.4 km. Furthermore, the feeding of captive dolphins is dictated by performance and training schedules rather than the dolphins being provided the opportunity to access food in a way which simulates natural behaviours. All natural foraging and hunting behaviours are totally denied, as well as the opportunity for dolphins to 'handle' their prey as delivery of their food in captivity is restricted to being tossed into the back of their throats.

In essence, if a prohibition were to be introduced for captive dolphins for exhibition, there would be no requirement for Dolphin Standards for these facilities. However, given the necessary grandfathering clause for the three remaining dolphins at DMCP, the current Standards should be reviewed to optimise their welfare. Furthermore, if a sanctuary were to be established successfully, a completely new set of 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

It is disappointing that the DPI submission did not recommend a review of the NSW Dolphin Standards which are more than 25 years old, to incorporate advances in animal welfare science and to consider increased community expectations regarding retaining dolphins in captivity. If the standards were written to meet all welfare needs of captive dolphins, facilities using these animals would not exist as they would not be able to meet these needs in a practical sense. This is effectively what happened in the UK, where new standards were introduced for dolphinariums after a comprehensive review. None of the existing facilities, of which there were three, could meet this requirement and so ceased to operate by 1993.

Exotic circus animals

In terms of the three dimensions framework, neither the DPI submission, nor the NSW Circus Standards reflect requirements to meet critical natural behaviours. The main issues include stresses associated with transportation, limited space particularly during transportation and at venues where animals must be confined to a restricted space due to safety and space restrictions. Furthermore, natural behaviours cannot be expressed such as hunting or foraging, engaging in complex social interactions and marking territory.

Quite simply it is impossible to replicate environments that allow for a similar repertoire of wild behaviours. For example, large carnivores in the wild occur at low densities and need large territories (Schaller, 1996) due to their biological traits. The home range of an animal is defined as the area traversed by the individual in its normal activities of food gathering, mating and caring for the young. A lion's territory is the part of a lion home range avoided by other lions or defended against other lions' intrusions (Schaller, 1972). Lion home ranges vary from 20 to 600 km² (Schaller, 1972; van Orsdol et al., 1985). Although, captivity provides food and protection from predators, pacing stereotypies by captive lions indicate that their innate behavioural needs based on survival instincts are not being met. With regard to monkeys, it has been shown that importance of providing access to appropriate bodies of water for captive macaques can improve welfare (Robins & Waitt 2011). Enrichment such as this is unlikely to be provided in a travelling circus environment due to practical limitations.

5. Submissions to the inquiry argued that circuses with exotic animals, and facilities exhibiting cetaceans in NSW, play an important role in education and conservation. In your submission, you disagree with this – can you provide further detail as to why?

Response: True conservation work relates to preserving a critically endangered species through habitat protection and protection of the species *in situ*. As a last resort, captive breeding and release programs can be implemented. Dolphins and exotic circus animals bred in captivity are not part of any *in situ* conservation programs. Although *ex situ* breeding programs are prevalent, these are not part of any recognised conservation programs, nor are any individuals released back into the wild after breeding (or at any point in their lives), nor are their progeny released into the wild to enhance populations. As such these captive breeding programs are only to enhance the captive populations and do not contribute to conservation. Effectively, the captive population is genetically isolated from the wild populations and as in many cases genetic stock (and in some cases species) hybrids are actively bred in captivity, any claims regarding conservation are disingenuous at best.

There is a major distinction between zoos and aquariums with some of the former engaging in significant conservation work when their aim is to return captive bred animals to a natural environment as well as supporting habitat restoration. This point is raised by Jenny Gray (CEO Zoos Victoria) in her book ‘Zoo Ethics’ stating that although marine parks with performing animals are considered part of the zoo industry it is a questionable fit given that the modern zoo focuses heavily on welfare, conservation and education (Gray 2017). She also states, “There is no evidence that dolphin shows in any way promote the health and conservation of wild dolphins.” There are other alternatives to retaining animals in captivity, for people to connect with animals either through responsible ecotourism experiences or genuine sanctuaries with rescue animals (i.e., a genuine sanctuary does not breed their animals, nor do they provide ‘entertainment’ or ‘interactive’ experiences that involve the animals). Genuine sanctuaries can play an important role in education, conservation, rescue, rehabilitation and release.

In terms of education, it is acknowledged that DMCP has shifted focus to raise awareness about protecting the marine environment by reducing pollution etc but this is not a conservation message but rather an environmental protection message to minimise impacts on all marine species including corals etc. However, this commendable work does not justify the keeping of dolphins for performance and human interactions, as welfare needs cannot be met.

In relation to circuses using exotic animals, there is no evidence supporting their use of animals in promoting conservation nor in education.

Another important trend to note is the increasing concern relating to the welfare of animals used in tourism. Two recent papers have been published which highlight trends in public attitudes towards the keeping of cetaceans in captivity for entertainment purposes.

Naylor & Parsons (2019) conducted an international online survey and reported results from 858 participants that only 19% of respondents indicated approval for dolphins performing tricks for human enjoyment, whilst 85% supported keeping dolphins in captivity when they are sick or injured. Only 5% of respondents from the USA strongly supported (with 33.3% ‘support’) keeping dolphins and whales in marine theme parks and aquariums. Most importantly, participants who supported cetaceans in captivity were significantly more likely to believe cetacean conservation is not important. This is concerning as it indicates that keeping performing captive cetaceans may be counterproductive in terms of promoting a conservation ethic. Further research of the attitude of people supporting captive cetaceans is required to determine the factors which influence this belief.

Furthermore, an article published by Winter (2020) which reviewed 74 articles from 10 tourism focused journals, found that overall the articles challenged the use of animals for entertainment and confirmed that there needs to be more research relating to ethics and the use of animals in tourism.

Another paper (Jiang et al, 2008) which I draw the Committee's attention is one I quoted during the hearing Page 5;

“Similarly a study published in 2008 of marine park visitors reveals that 47 per cent did not believe that dolphins and whales enjoyed their lives at aquariums compared to 24 per cent who thought they did. These are just really interesting results that are coming through. I can send this information to the Committee after this hearing.”

6. In your opinion, what are the top welfare issues for exotic animals in circuses and dolphins in exhibition?

Response:

Exotic animals in circuses

Lions kept in travelling circuses face a range of similar challenges. In their natural state, lions spend time hunting or foraging, engaging in social interactions, breeding and territory marking. A study examining the impact of captivity on large carnivores concluded that naturally wide-ranging species such as lions show the most evidence of stress and psychological dysfunction in captivity (Clubb & Mason 2003).

Macaques are highly intelligent non-human primates (e.g. monkeys) with complex behaviours and social relationships, forming strong lasting bonds. In the wild, they live in large mixed social groups. Providing for the needs of non-human primates such as macaques in captivity is extremely difficult. Space, social interactions and an interesting and stimulating environment are critical to prevent boredom and frustration.

Stereotypic behaviours (behaviours which are repetitive, unvarying and apparently have no function) are commonly observed in captive animals and are usually interpreted as a sign of poor welfare. Pacing behaviour, which is deemed to be a stereotypic behaviour is highly prevalent in cage-housed macaques. For instance, pacing was displayed by 78% of singly-housed individuals in a large research colony (Lutz et al., 2003) and is also frequent in socially housed caged macaques (Poirier & Bateson 2017). In contrast, pacing is nearly absent in macaques housed in large enclosures such as those encountered in modern zoos and some breeding facilities (Pomerantz et al, 2013). Another study also reported the behavioural impacts of reduced environmental complexity and social deprivation in captive macaques including stereotypic pacing (Mallapur et al 2005). Travelling circuses are not able to provide sufficiently large enclosures with adequate environmental enrichment to meet physical, behavioural, mental needs of these species.

Exhibited dolphins

Insufficient space & environment lacking complexity

Lack of sufficient space limits natural travelling behaviours which have been reported in wild dolphins to comprise nearly 40% of their daily activity (Hawkins & Gartside 2008). This is because dolphins are confined to small tanks which dictate distance and swimming patterns (i.e. mainly circular), as well as swim speed. Tanks also lack complexity and diverseness compared to that found in the natural environment. Exploration is an important behaviour to relieve boredom and frustration. Tanks cannot offer this stimulating experience even with innovative environmental enrichment. It is unrealistic and naïve to expect that a restricted artificial environment could meet the needs of these intelligent animals.

Training and performance regime which relies on food rewards

Dolphins are highly intelligent and quickly learn that to obtain food they must perform. Currently, to ensure that they perform, they are denied food within a specified period prior to training or performances. In other words, they are hungry. This is not acceptable. A test as to whether dolphins are willing participants in routine performances would be to provide them with the choice to participate, i.e. for specific behaviours not to be rewarded with food. To our knowledge, no marine park has done this. It is understood that this is probably due to the risk that dolphins won't perform – a situation which a marine park literally cannot afford to allow.

Artificial composition of groupings preventing normal social interactions

An Australian study has shown that wild dolphins interacted with up to 34 different individuals within a pod of 51 (Gero et al 2005). Although marine parks attempt to mimic natural social groupings, the number and diverse range of age and gender makes this an impossible task. Natural social interactions are dynamic and involve many different individuals. The situation at DMCP with only three dolphins is far from natural where these individuals are forced to interact with each other or not. There is no choice in this situation.

Extended exposure above water increasing risk of eye disease due to sun exposure

Captive dolphins expose their head and upper body for an abnormally excessive amount of time above the water surface, primarily to seek visual contact with the trainers (food providers). This leads to increased exposure to UV light, which results in eye damage, in particular damage to the cornea. This is a difficult problem to resolve given the inherent risks associated with training, performance regimes and that due to a lack of stimulating underwater environment, dolphins will tend to observe activities above the water surface, particularly as this is where their food source is derived.

Additional note regarding international scientific opinion and welfare of captive cetaceans

In 2016, 20 scientists from a number of different universities & dolphin conservation societies signed a [statement regarding captive cetaceans](#) which states (excerpt);

“As marine mammal biologists, we believe that odontocete species inherently cannot fully adapt to confinement in zoos and aquariums. All odontocetes are wide-ranging and share certain biological and ecological characteristics that do not allow them to thrive in zoos and aquariums, and this is particularly true for the larger species such as orcas (*Orcinus orca*).’

At a minimum, the maintenance of odontocetes in commercial captive display facilities for entertainment purposes is no longer supported or justified by the growing body of science on their biological needs.”

Additional note regarding the C-Well Index

Despite the C-Well Index developed by Dr Isabella Clegg providing a useful and practical tool for assessing the welfare of dolphins in captivity, it is limited in terms of the capacity to evaluate mental state. Mental state is the most significant concern, even for better operated and resourced marine parks as they are unable to provide;

- sufficient space and opportunities for dolphins to perform natural behaviours;
- for appropriate natural social interactions; and
- opportunities for control and/or choice.

This limitation is evidenced by the following extracts from relevant scientific papers including one authored by Dr Clegg.

The following is extracted from Clegg et al 2015:

‘The 12th WQ criteria, ‘positive emotional state’, was omitted due to the paucity of data regarding emotional state in cetaceans.’

Note: WQ is Welfare Quality

The following is extracted from Brando et al 2018:

‘The ‘C-Well Index’ contains 36 welfare measures including animal-based measures (e.g. body condition scores, swim speed, stereotypies and response to trainer) and resource-based measures (e.g. diet, shade, water quality). Compared with any previous examination of cetacean welfare, this framework allows analysis of behavioural and physiological measures together, and is an important first step in the development of comprehensive and practical bottlenose dolphin welfare assessment. **A deficiency is that the tool overlooks the importance of species-specific foraging behaviours for optimal welfare.**’

7. The Committee’s terms of reference defines ‘exotic animals’ as ‘any animal that is not native and is not a stock or companion animal.’

(a) Do you believe the term ‘exotic’ is satisfactory? If not, what would be a better term, and is it used in any other jurisdiction?

Response: RSPCA believes the intent of any legislative reform in this area is to restrict the use of animals by circuses to those normally domesticated. This is an acceptable welfare position as domesticated animals are genetically suited to life with humans.

The term ‘exotic’ does not capture wild species that are equally ill adapted to transportation, interacting with humans and intensive captivity. For example, there is unlikely to be support for kangaroos in circuses for the same reason that a monkey raises concerns.

Domestic animals are animals who have been selectively bred and genetically adapted over generations to live alongside humans. They are genetically distinct from their wild ancestors or cousins. They are not simply animals who are born in captivity.

Domestication is not the same as taming. A domestic animal is genetically determined to be tolerant of humans. An individual wild animal, or wild animal born in captivity, may be tamed—their behavior can be conditioned so they grow accustomed to living alongside humans—but they are not truly domesticated and remain genetically wild. <https://www.nationalgeographic.com/animals/reference/domesticated-animals/>

(b) Do you agree that this is a satisfactory definition? If not, what would be a better definition?

Response: The approach of the United Kingdom *Wild Animals in Circuses Act 2019* has merit. It refers to wild animals and defines “wild animal” as an animal of a kind which is not commonly domesticated in Great Britain. Regulations may also be used to provide additional clarity by naming particular species that are prohibited.

8. The Committee’s terms of reference refers to ‘circuses’.

(a) Do you believe the term ‘circuses’ is satisfactory?

Response: The term ‘circus’ is satisfactory.

(i) If so, how should it be best defined in legislation?

Response: The inclusion of the following may add clarity: A mobile animal establishment where there is no daily return to a fixed or off-display establishment.

(ii) If not, what would be a better term, and is it used in any other jurisdiction?

Response: No other term suggested.

(b) Some witnesses argued that the term ‘circuses’ could include agricultural shows, mobile petting zoos, and the supply of animals for use in film and television. Do you agree?

Response: Do not agree.

Animals used in film and television are regulated by a Code prescribed under POCTA.

The definition of circus could not capture these activities as the *NSW Exhibited Animals Protection Regulation 2010*, clause 5 already exempts these activities from the requirements of the Act. Specifically, these exemptions are:

for the purposes of paragraph (c) of the definition of exhibit in section 5 (1) of the Act, it is declared that the display, or keeping for display, of an animal in the following circumstances does not constitute an exhibition of the animal for the purposes of the Act:

- (a) that the animal is a free-living animal in its natural habitat,*
- (b) that the animal is a lawful captive and is part of a competitive display of household pets,*
- (c) that the animal is part of a competitive display of domestic farm animals,*
- (d) that the animal is a domestic farm animal being used to demonstrate the acquisition of wool, milk or other produce of a living animal,*
- (e) that the animal is of domestic hoof-stock and is performing, or is to perform, in an event at a rodeo,*
- (f) that the animal is a lawful captive that is not displayed, or kept for display, to the public,*
- (g) (Repealed)*
- (h) that the animal is displayed, or kept for display, in the course of carrying on the business of animal research, or in the course of carrying out animal research, without contravening the Animal Research Act 1985,*
- (i) that the animal, being an animal of a species listed in Schedule 3 and not being an animal kept pursuant to an approval or permit or at a licensed animal display establishment, is an animal used only for riding or racing,*
- (j) that the animal is kept in a pet shop for display and not for sale,*
- (k) that the animal, being an animal of a species listed in Schedule 1 and not being an animal kept pursuant to an approval or permit or at a licensed animal display establishment, is displayed:*
 - (i) at an agricultural show or show parade conducted by the Royal Agricultural Society or a society that is a member of the Agricultural Societies Council, or*
 - (ii) at an agricultural field day conducted on a farm or showground, or*
 - (iii) on the farm on which the animal is kept,*
 - (l) that the animal, being an animal of a species listed in Schedule 1, and not being an animal kept pursuant to an approval or permit or at a licensed animal display establishment, is displayed, or kept for display, for the purposes of promoting an agricultural product derived from that species of animal and:*
 - (i) the animal is one of no more than 10 animals displayed, or kept for display, for this purpose at any one time, and*
 - (ii) any display lasts for no more than 2 days at a time and is conducted at least 5 days after any previous display of the animal, and*
 - (iii) the animal is displayed near a display of the relevant agricultural product or shortly before or after such a display, and*
 - (iv) the person who normally cares for the animal attends the animal for the duration of any display,*
- (m) that the animal is a fish that is kept (otherwise than in a habitat display) at:*
 - (i) a fish hatchery, or*
 - (ii) a fish farm,*

for the purpose of:

(iii) commercial food production, or

(iv) re-stocking of lakes, dams or waterways,

(n) that the animal is a lawful captive and is being displayed, or kept for display, at a meeting of an association dedicated to the keeping of that type of animal,

(o) that the animal is being displayed, or kept for display, by a school student at a school for a single "show-and-tell" activity.

9. The Committee's terms of reference refers to the 'welfare' of exotic animals and cetaceans.

(a) Do you believe the term 'welfare' is satisfactory?

Response: The term welfare is satisfactory on the basis that welfare aspects include impacts on physical, behavioural and mental states.

(i) If so, how should it be best defined in legislation?

Response: The following aspects should be included perhaps under the objects of the Act;

- the concept that all vertebrate and some invertebrate species are sentient and can have positive and negative experiences;

- positive animal welfare involves meeting physical, mental and behavioural needs which includes providing choice and opportunities for animals to safely display natural behaviours; and

- acknowledgement of the five domains model which emphasises the importance of achieving a positive mental state for animals.

(ii) If not, what would be a better term, and is it used in any other jurisdiction?

Response: NA

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