



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

Hearing – 14 August 2020

Question on Notice to the Animal Defenders Office

Answer:

The term ‘exotic animals’ has been used in State and Federal court cases about animals typically found in zoos or sanctuaries and who are not Australian native animals. For example, in the Federal Court case of *Owston Nominees No 2 Pty Ltd v Branir Pty Ltd* [2000] FCA 145 the term ‘exotic animals’ is used to refer to animals contained in a ‘wildlife sanctuary’. The purpose of the sanctuary was said to be ‘for the breeding and preservation of endangered and exotic animals’ and housed, or was constructed to house, ‘wildlife’ including hippopotamus, tapirs, rhinoceros, and a range of rare bird species. At the time of the case the sanctuary was ‘populated with approximately 1500 animals of about 29 species and 425 birds of about 54 species, most of which are rare whose survival as a species is endangered’ (par. 5). All of the animals had been either bred in the sanctuary or bought from sources overseas and in Australia (par. 5). Elsewhere the sanctuary is referred to as ‘containing exotic and domestic species’ (par. 111). Nothing appears to turn on the use of the term ‘exotic’ with reference to animals or species in the case, and nothing about the term itself or the animals it covered appears to be in dispute. Therefore there is no judicial consideration of the actual term in this case.

The terms ‘exotic animals’ and ‘exotic species’ are used in the NSW Land and Environment Court case of *Elanor Investors Limited v Sydney Zoo Pty Ltd (No 5)* [2020] NSWLEC 93 to refer to animals to be displayed in the respondent’s proposed zoo (i.e Sydney Zoo). Throughout the judgement the term ‘exotic animal(s)’ is used in contrast or opposition to the term ‘Australian animals’ or ‘native animals’ (eg pars 16, 23, 25, 153). In the context of the general type of animals held captive at the zoo, the Court stated that ‘it is axiomatic that zoos contain wildlife’. The term ‘exotic animals’ is therefore implied by the Court to be a subset of wildlife, and is clearly distinguished from ‘Australian’ or ‘native’ animals. Elsewhere the Court refers to the respondent zoo’s logo with:

silhouettes of exotic animals (for example, a giraffe, elephant and lion) and with Australian animals. If nothing else the logo itself conveys that this is a full-service zoo with a focus on exotic animals. (par. 175)

The Court also cites the respondent zoo’s marketing materials as referring to ‘charismatic animals from around the world’ (par. 175), and featuring ‘images of exotic animals such as lions, giraffes and elephants’, as opposed to images of ‘koalas and kangaroos’ (par. 179), further reinforcing the view that ‘exotic animals’ means non-native wild animals.

We note that in this case there is no reference to the exotic animals held captive at the zoo having to be captured from the wild overseas, obtained overseas, and/or bred overseas. The implication from

the judgement is that the two criteria for being an 'exotic' animal is that the species must be considered wild(life), and must not be native to Australia.

Finally, while there is discussion of the terms 'wildlife' and 'wild' in the judgement, it is only regarding whether a display establishment exhibiting 'wildlife' should be considered a 'wildlife park' rather than a 'zoological facility'. The Court did not agree with this proposition and held that an establishment exhibiting wildlife could be a 'zoological facility' (par. 176), and that the terms 'wildlife park' and 'zoological facility' were 'not necessarily mutually exclusive' (par. 151).

We are not aware of a case in which the term 'exotic animals' was used to refer to, or in which it was argued that it should refer to, animals typically kept as 'pets' or livestock such as dogs, cats, chickens, cows, pigs or sheep. Further, we are not aware of any case in which it was assumed or argued that animals such as lions, tigers or bears born in captivity could or should be considered to be 'domestic' animals.

While we acknowledge the concern that laws intended to apply to 'exotic animals' kept in a zoo or circus or other display establishment could be interpreted broadly, the case law did not suggest to us that legislating in these terms would lead to this consequence. In any event, it would be open to the NSW Parliament to prescribe the animals by their precise species, rather than using broad, general or potentially ambiguous terms. For example, the legislation could prescribe animals such as lions, tigers, bears, elephants, primates and giraffes, regardless of whether they were captured from the wild or bred in Australia. Alternatively, the legislation could **exclude** animals from the definition: such as domestic dogs, cats, birds and fish typically kept as companion animals, as well as animals kept as 'livestock'.