

Submission
No 34

**INQUIRY INTO THE RSPCA RAID ON THE WATERWAYS
WILDLIFE PARK**

Organisation: Department of Industry and Investment NSW
Name: Mr Richard Sheldrake
Position: Director General
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New South Wales

INDUSTRY & INVESTMENT NSW

2 July 2010

Hon Ian Cohen MLC
Committee Chair
General Purposes Standing Committee No 5
Legislative Council
NSW Parliament
Macquarie Street
Sydney NSW 2000

Dear Mr Cohen

I refer to your letter dated 25 June 2010 to the Minister for Primary Industries in which you invite representatives of the Department of Industry and Investment to give evidence at the public hearing of the Inquiry into the RSPCA raid on Waterways Wildlife Park Gunnedah. I also understand that the Committee is seeking further information regarding the Park's licence status under the *Exhibited Animals Protection Act 1986*.

I refer to the letter from Mr Brendan O'Reilly Director General of the Department of Premier and Cabinet to the Hon. Ian Cohen. I concur with his view that the Government is not in a position to have input into the inquiry at this stage out of concern that it could be construed as improperly and unfairly influencing the outcome of the licensing investigation process currently underway. As the Director General, I hold the statutory function of licensing authority and am currently undertaking a 'show cause' process with respect to the Park's licence. It is important that the deliberation process under the enactment is seen to be free from any real or apprehended bias or any irrelevant considerations to ensure the integrity and fairness of an ultimate decision. As you know, licence holders have a right of appeal to the Administrative Decisions Tribunal on such matters and it is important that throughout the process, the decision maker does not appear to favour any particular result or be seen to be favouring any recommendations by outside parties.

However, consistent with this concern but also desirous of being of assistance to the Inquiry, Mr Ross Burton, Director Emergency Management and Animal Welfare and Ms Barbara Jones, Director Legal are authorised to appear and provide evidence regarding the regulatory framework within which the Waterways Wildlife Park is licensed. While legal processes concerning Waterways Wildlife Park are still in train, departmental officers are not in a position to provide evidence to the Committee regarding the Park. The

attached submission sets out information concerning the regulatory framework in detail and I hope it is of assistance to the Committee.

Further, I suggest that consideration be given to the provision of the officers' evidence being presented in camera so as to ensure that any evidence they give can be considered before it is made public. The attached submission is considered to be public information and should be released.

Yours sincerely



Richard Sheldrake
DIRECTOR GENERAL

Structure of the *Exhibited Animals Protection Act 1986*

Background

The Committee undertaking the Parliamentary Inquiry into the matters associated with the actions of the RSPCA at Waterways Wildlife Park, Gunnedah on 3 February 2010 has requested information on the licensing system under the *Exhibited Animals Protection Act 1986*.

Exhibited Animals Protection Act 1986

The display, and keeping for display, of all vertebrate animals, whether domestic, native or exotic is controlled by the *Exhibited Animals Protection Act 1986*. The Act covers all animal exhibition operations and includes permanent displays such as zoos, as well as exhibits at temporary establishments by circuses and other mobile displays, including reptile displays and mobile animal farms.

There are a number of circumstances where the display of such animals is exempted from the Act. These circumstances are prescribed in the Clause 5 of the *Exhibited Animals Protection Regulation 2005*. Clause 4 prescribes some additional situations that do not require licensing.

The Act is administered by the Director General of Industry and Investment New South Wales, however the day-to-day operations of the Act are delegated to the Leader Exhibited Animals. Other officers within the Emergencies and Animal Welfare Unit also have delegations for different functions of the Act.

The Purpose of the *Exhibited Animals Protection Act 1986*

The Act requires an exhibitor of animals to hold an authority issued by the Director General of Industry and Investment NSW. The quality of the animal exhibits and the facilities provided by the exhibitors are required to meet a high standard of husbandry and presentation.

The function of the *Exhibited Animals Protection Act 1986* is to ensure a high degree of animal welfare, educational value of exhibits and public safety of all exhibitors of animals in New South Wales. This is achieved by the Act and Regulation themselves, and also by various standards that have been written with extensive industry consultation.

There are three types of authority that can be held by an exhibitor of animals under the Act. These include a 1) Licence that is held by zoos and fauna parks; 2) Approval that is held by mobile exhibitors such as circuses, mobile reptile exhibitors and mobile farms, and 3) Permit that can be held by either Licence or Approval holders and is required to hold any species that are listed within Schedule 2 of the Regulation. The prescribed species listed in Schedule 2 include those species that are:

- They require specialist care.
- They pose a threat to keeper or public safety.

- They present a danger to agriculture or the environment.
- They are subject to studbook or cooperative conservation programs conducted under the Australasian Species Management Program (ASMP).

Policies and Standards for the Exhibition of Animals

There are various standards that have been developed to date that are listed within Clause 8 of the Regulation. These include:

- *General Standards for Exhibiting Animals in New South Wales*
- *Policy on Exhibiting Primates in New South Wales*
- *Standards for Exhibiting Animals at Mobile Establishments in New South Wales*
- *Standards for Exhibiting Animals during Temporary Removals in New South Wales*
- *Standards for Exhibiting Australian Mammals in New South Wales*
- *Standards for Exhibiting Bottle-nosed Dolphins (*Tursiops truncatus*) in New South Wales*
- *Standards for Exhibiting Captive Raptors in New South Wales*
- *Standards for Exhibiting Carnivores in New South Wales*
- *Standards for Exhibiting Circus Animals in New South Wales*
- *Standards for Exhibiting Seals in New South Wales*

The General Standards apply to all exhibited animals and include the general principles required to the exhibition of animals. These include:

- Staff experience: Including knowledge and experience of staff.
- Educational value of the exhibitor: including individual enclosures.
- Visitor facilities.
- Animal enclosures: Including construction, fences, area and weather protection.
- Public safety: including stand-off barriers, warning signs and zoonoses.
- Husbandry and management requirements: including record keeping, hygiene, animal identification and hygiene.
- Nutrition and hygiene: including food quality, quantity and hygiene.
- Capture, handling and transport.
- Health and veterinary requirements: including daily health checks, veterinary care and preventative medicine and infectious diseases
- Behaviour: including social requirements, training and stress management.
- Breeding control.

The specific standards deal with distinct taxa that are held by authority holders within New South Wales. These taxon standards include specific requirements such as enclosure sizes, specific husbandry requirements and specific enclosure design requirements.

Information Available to the Public

There is a wide variety of information available at the "Welfare of Zoo, Circus, Exhibited & Other Animals" website within the Industry and Investment NSW website located at:

www.dpi.nsw.gov.au/agriculture/livestock/animal-welfare/exhibit

This website includes general information about the *Exhibited Animals Protection Act 1986*, links to the Act and Regulation, each of the published standards and policies that can be downloaded, and information about notifying Industry and Investment NSW about a complaint.

The website also includes "A Guide to the Exhibition of Animals in New South Wales" that outlines the general requirements of the Act and describes the application process. All prospective exhibitors are also provided with this Guide as well as all relevant application forms and standards.

Inspections

Inspections are carried out by an inspector authorised by the Minister or by an Exhibited Animals Advisory Committee member in the company of such an inspector. The aim of inspections includes assessing:

- 1) new applications for licenses or approvals to ensure that the establishment meets the appropriate standard.
- 2) new enclosures within existing facilities.
- 3) establishments on a routine basis to ensure appropriate standards.
- 4) the grounds of a complaint made against an exhibitor.

In extreme cases of non-compliance authorities for exhibition can be suspended and the authority owner being asked to show cause as to why the authority should not be cancelled. If required an authority can be cancelled by the Director General and the operator prosecuted under the Act.

Animal Records

Animal exhibitors in NSW are required to keep an up-to-date record of all the vertebrate animals they hold. This information is recorded in an Animal Record Book supplied by Industry and Investment NSW. Records must be kept for:

- any illness, disease, injury or other poor health of animals.
- the day to day progress or regress of animals.
- the treatment, medical or otherwise administered to the animals.
- any transactions into or out of the collection (including births and deaths).

Each year exhibitors forward a copy of their animal record pages to Industry and Investment NSW along with their license renewal applications. This information is then entered into a computer database operated by staff of the Animal Welfare Branch. The software used checks record sheets for errors, print error reports for exhibitors, monitor animal transactions and produce nominated species and licence holder reports. It also generates registers summarising changes in the population of the species exhibited in NSW over

a selected period. It is envisaged that the software will enhance the ability of the Animal Welfare Branch to identify areas where husbandry deficiencies may be affecting animal welfare. The new system has also been designed to facilitate the provision of information to individual exhibitors so they can better understand the role of their animal collection in the wider industry. It will permit exhibitors to evaluate both the relative quality of the animal collection and the quality of their husbandry practices.

Renewal of Authorities

Authorities for the renewal of authorities are undertaken each June, with the license period being from 1 July 2010 to 30 June 2010.

Exhibited Animals Advisory Committee

The Exhibited Animals Advisory Committee assists Industry and Investment NSW in the administration of the EAPA. The committee has two major functions that include:

- To advise the Director General so that the administration of the Act by Industry and Investment NSW is coordinated with that of other government departments which administer legislation relating to the importation, control, care and welfare of animals.
- To monitor the effectiveness of the licensing scheme and recommend any necessary changes to the Director General.

The Exhibited Animals Advisory Committee is a statutory body of six members that are appointed by the Minister.

Of the members:

- One is nominated by the Minister;
- One is selected by the Minister from a panel of persons nominated by the Board (i.e. the Zoological Parks Board of NSW);
- One is nominated by the Minister administering the *National Parks and Wildlife Act 1974*;
- One is nominated by the Minister administering the *Prevention of Cruelty to Animals Act 1979*;
- One is selected by the Minister from persons nominated by prescribed animal welfare organisations;
- One is selected by the Minister from persons nominated by prescribed organisations representing exhibitors of animals.

The Chairperson of the advisory committee can be any member of the Committee.

The prescribed animal welfare organisations are:

- Animal Welfare League
- Humane Society International
- Primates for Primates
- Royal Society for the Prevention of Cruelty to Animals
- World Wide Fund for Nature Australia

The prescribed organisations representing exhibitors are:

- Australasian Regional Association of Zoological Parks and Aquaria
- Circus Federation of Australia.
- Mobile Wildlife Educators Association
- NSW Fauna and Marina Parks Association.