

Submission  
No 152

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

**Name:** Ms Francesca Nyilas

**Date Received:** 16 November 2019

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Dear Committee Members,

My name is Francesca Nyilas and I am a member of the Animal Justice Party and animal/environmental law student. My submission speaks to reference items 1(b) and (c) regarding the welfare of cetaceans and recommends a legislative phase out of cetacean exhibition and the creation of strict, regulatory welfare requirements for cetacean captivity. I submit that cetacean exhibition is associated with poor animal welfare because cetacean physiological and physical needs cannot be adequately met in a captive environment. The community is unable to justify the suffering endured by cetaceans based on any educational benefit, acquired research or commercial profit.

***(b) the welfare of cetaceans exhibited in New South Wales, with consideration of community expectation***

Cetaceans are particularly vulnerable in captivity, as their nature renders them uniquely unsuited to confinement. In the wild, they freely roam aquatic environments and can travel over 100km per day. They seek enrichment through deep diving, sprint swimming and ocean exploration. Cetaceans spend only 20% of their time at the water's surface and the largest captive facilities are a tiny fraction of their natural home range. When denied adequate space, cetaceans commonly engage in abnormal repetitive action (stereotypies) and aggressive behaviour. In the wild, most cetacean species live in intergenerational groups. Captive cetaceans sharing a pool are frequently unrelated, from different ocean

areas or different species, which causes poor group dynamic, often resulting in dominance behaviour, aggression, sickness, injury and even death. As captive facilities are unable to replicate the complex, natural ocean environment, they are empty of natural stimuli and inhibit hunting and foraging instincts. Captive tanks are significantly noisier than marine environments and the glass and concrete walls inhibit the natural use of sound by whales and dolphins. The sounds of pumps and filters cause significant stress to cetaceans, who heavily depend on their acute sense of hearing. The high levels of stress cetaceans are subjected to through handling, restraint, captivity, transport and isolation or over-crowding causes a substantial decrease in their life expectancy. Orcas, in particular, possess a substantially greater annual mortality rate in captive environments than in the wild (6.2% vs 2.3%). Beluga whales frequently live around half as long in captivity compared to in the wild, indicated by tooth ring studies.<sup>1</sup>

Exhibitors of cetaceans often claim they serve an educational purpose and assist in conservation efforts, research efforts and prevention of extinction.<sup>2</sup> These claims are misconceptions and are unable to justify the actuality of what cetaceans exhibition facilities are, which are collections of aquatic animals bred in captivity or forcefully extracted from their natural habitat and confined in an artificial environment. Cetaceans in marine parks

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<sup>1</sup> 'Captive Cetacean Welfare and Status in the EU', *World Cetacean Alliance* (Web Page) <<https://worldcetaceanalliance.org/wp-content/uploads/2016/05/Captive-Cetacean-Welfare-and-Status-in-the-EU.pdf>>.

<sup>2</sup> Clive Phillips, 'Ringling Bros Circus Closure Shows our Changing Attitudes to Animals in Captivity', *The Conversation* (online at 24 January 2017) <<https://theconversation.com/ringling-bros-circus-closure-shows-our-changing-attitudes-to-animals-in-captivity-71485>>.

are forced to endure incursions by spectators, which are inherently stressful.<sup>3</sup> Dr Naomi Rose claims that research output from these facilities are minimal and the primary learning acquired from research of captive cetaceans is that they should not be in captivity. Cetacean captivity does not serve an educational purpose because cetacean shows and exhibitions do not facilitate awareness of real issues encountered by wild whale and dolphin populations. Cetacean exhibition centres present an artificial depiction of these species and their needs and frequently emphasise the 'showmanship' of their performance rather than providing any educational or conservational value.<sup>4</sup> There is simply no educational value in witnessing cetaceans forced into unnatural, tiny spaces or forced to carry out unnatural tricks. They are frequently left bored and restless and forced to perform tricks for food that trainers withheld as punishment.<sup>5</sup>

Current legislative standards for the breeding and captivity of cetaceans are now over two decades old and irreflective of present knowledge of cetacean behaviour and community animal welfare concerns.<sup>6</sup> Evidence shows that mature and conscientious attitudes towards wildlife are developing in the public domain. A survey conducted on marine park visitors in 2008 revealed that 47% did not believe that cetaceans enjoy their life at aquariums compared to 24% who believed they did.<sup>7</sup> This shift in community attitude is also reflected

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<sup>3</sup> Malcom Caulfield, *Animals in Australia: Use and Abuse* (Vivid Publishing, 2018) 241.

<sup>4</sup> 'CFAF's Work for Whales and Dolphins in Captivity', *Change for Animals Foundation* (Web Page) <<https://www.changeforanimals.org/whales-and-dolphins-in-captivity>>.

<sup>5</sup> Jerry Adler, 'Why Killer Whales Belong in the Ocean, Not SeaWorld', *Smithsonian* (online at 1 March 2015) <<https://www.smithsonianmag.com/arts-culture/why-killer-whales-belong-in-the-ocean-not-seaworld-180954333/>>.

<sup>6</sup> RSPCA, *Research Report: The Welfare of Dolphins in Captivity* (Report, February 2019) 2.

<sup>7</sup> Yixing Jiang, Michael Lück, and E.C.M Parsons, 'Public Awareness, Education and Marine Mammals in Captivity' 11(1) *Tourism Review Journal* 237, 239.

in the proposal for the building of a \$100 million aquarium in Queensland, which will not display dolphins. There has also been greater focus on animal welfare by Dolphin Marine Conservation, situated in Coffs Harbour, who announced a collaborative partnership in 2018 with animal welfare groups, Action for Dolphins and World Animal Protection, to conduct a feasibility test to transfer their five captive dolphins to a sea pen sanctuary.<sup>8</sup> The shift in how people view captive cetaceans has arisen due to greater recognition of animal sentience and their intrinsic value. The public is becoming increasingly aware of our symbiotic relationship with animals and are finding it increasingly difficult to justify the stress cetaceans endure by their forceful subjection to incursions by spectators and display of tricks.<sup>9</sup>

***(c) in light of the findings in (a) and (b) above, whether:***

***(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***

The *Exhibited Animals Protection Act* ('the Act') is inadequate in protecting exhibited cetaceans and allows for their exploitation for entertainment. The Act specifies the purpose

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<sup>8</sup> RSPCA, *Research Report: The Welfare of Dolphins in Captivity* (Report, February 2019) 12.

<sup>9</sup> Clive Phillips, 'Ringling Bros Circus Closure Shows our Changing Attitudes to Animals in Captivity', *The Conversation* (online at 24 January 2017) <<https://theconversation.com/ringling-bros-circus-closure-shows-our-changing-attitudes-to-animals-in-captivity-71485>>.

of animal exhibition as recreational, cultural, educational and scientific.<sup>10</sup> The Act should undergo significant amendment to emphasise positive animal welfare enhancement in its objectives. A stringent regulatory framework should be introduced, creating stricter regulations for cetacean captivity, including requirements for providing adequate space, exercise, socialisation and an appropriate environment. In the UK, no outright ban on cetacean captivity exists, however the requirements for exhibiting cetaceans are so strict that aquariums have refrained from cetacean import and exhibition.<sup>11</sup> NSW parliament should follow the UK's approach in creating a strict regulatory framework for cetacean confinement to deter the import and display of cetaceans. Parliament should also legislate for a two-year phase out of the use of cetaceans in marine parks.<sup>12</sup> NSW should follow Canada's approach in ultimately banning cetaceans from being bred or held in captivity.<sup>13</sup> A qualified ban on cetacean captivity should allow the creation of sea pen sanctuaries for cetaceans lacking the necessary survival skills for release in the wild, and captivity for purposes of rescue and rehabilitation.

## Recommendations

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<sup>10</sup> *Exhibited Animals Protection Act 1986* (NSW) s 5(1).

<sup>11</sup> 'List of Captive Dolphin and Whale Bans', *In Defense of Animals* (Web Page) <<https://www.idausa.org/campaign/cetacean-advocacy/cetacean-bans/>>.

<sup>12</sup> 'Exhibition of Exotic Animals in Circuses and Exhibition of Cetaceans Must End', *Humane Society International* (Web Page) <[https://action.hsi.org.au/page/50509/action/1?utm\\_medium=social&utm\\_source=facebook.com&utm\\_campaign=animal+welfare&utm\\_exp\\_id=rKt05JqSUmiX\\_23IwuJLg.1&utm\\_referrer=https%3A%2F%2Fwww.google.com%2F](https://action.hsi.org.au/page/50509/action/1?utm_medium=social&utm_source=facebook.com&utm_campaign=animal+welfare&utm_exp_id=rKt05JqSUmiX_23IwuJLg.1&utm_referrer=https%3A%2F%2Fwww.google.com%2F)>.

<sup>13</sup> Hannah Sparks, "Free Willy' Bill Bans Dolphin and Whale Captivity in Canada", *News.com.au* (online at 12 June 2019) <<https://www.news.com.au/travel/world-travel/north-america/free-willy-bill-bans-dolphin-and-whale-captivity-in-canada/news-story/a1a985c2ae6827b68a03a3631d3414dc>>.

It is in the public interest that parliament legislate for:

- 1) The immediate ban of captive breeding of cetaceans.
- 2) A strict regulatory framework governing the captivity of cetaceans.
- 3) A two-year phase out of cetacean captivity and exhibition, followed by a qualified legislative ban.

I trust this information is helpful for the committee and I thank you for the opportunity to provide a submission. I can be contacted at

Yours faithfully,

Francesca Nyilas

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## B. Legislation

*Exhibited Animals Protection Act 1986* (NSW)

## C. Other

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