

Submission  
No 173

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

**Organisation:** NSW Department of Primary Industries  
**Date Received:** 22 November 2019

---

**NSW Government Submission to the  
Legislative Council Portfolio  
Committee No. 4 inquiry into the use  
of exotic animals in circuses and the  
exhibition of cetaceans in New South  
Wales**

---

PREPARED BY THE NSW GOVERNMENT

22 NOVEMBER 2019

# Contents

---

<b>Contents</b>	<b>1</b>
<b>Industry overview</b>	<b>2</b>
<b>Exotic animals exhibited in NSW circuses</b>	<b>2</b>
<b>Cetaceans exhibited in NSW</b>	<b>2</b>
<b>Regulatory Context</b>	<b>3</b>
<b>Outline</b>	<b>3</b>
<b>Animal welfare minimum standards</b>	<b>4</b>
<b>Breeding of exotic animals</b>	<b>5</b>
<b>Interstate recognition</b>	<b>5</b>
<b>NSW Government Animal Welfare Action Plan</b>	<b>6</b>
<b>Compliance</b>	<b>7</b>
<b>Authorised inspectors under the EAP Act</b>	<b>7</b>
<b>Audit activities</b>	<b>7</b>

## Industry overview

---

The exhibition of exotic animals in circuses and the exhibition of cetaceans have been a highly popular form of entertainment for centuries. Circus exhibitions provide spectators with the opportunity to observe and learn about foreign animals when strict standards for the exhibition of these animals are met within a strong regulatory framework.

### Exotic animals exhibited in NSW circuses

There are two circuses in possession of animals that are not native, stock or companion animals in NSW (exotic animals):

- Animals All Around (previously known as Bullens Circus) has crab-eating macaques, hamadryas baboons, African lions and tigers.
- Stardust Circus has African lions and rhesus macaques.

Lennon Brothers Circus is authorised to display rhesus macaques and African lions but does not hold any exotic animals at this time.

Burtens Circus and Circus Royale, which is based interstate but authorised to travel to NSW, both have Arabian camels. Arabian camels may or may not be considered “exotic” for the purposes of this inquiry.

Not all animals held by circuses travel or perform.

### Cetaceans exhibited in NSW

Only one organisation in NSW currently has authority to exhibit cetaceans: the Dolphin Marine Conservation Park in Coffs Harbour. It currently exhibits four Indo-Pacific bottlenose dolphins.

# Regulatory Context

---

## Outline

The display, and the keeping for display, of animals in NSW is regulated by the *Exhibited Animals Protection Act 1986* (**EAP Act**) and the Exhibited Animals Protection Regulation 2010 (**EAP Regulation**). The EAP Act and EAP Regulation fall within the portfolio of the Minister for Agriculture and Western New South Wales. The Department of Primary Industries (DPI) in the Department of Planning, Industry and Environment, is responsible for administering and enforcing the EAP Act and the EAP Regulation.

The EAP Act and EAP Regulation contain various authorities for the different classes of establishment for exhibition of animals in NSW:

- **Prescribed species** are listed under Schedule 2 of the EAP Regulation. People exhibiting them must hold a **permit** authorising the exhibition of that species. All exotic animals and cetaceans require a permit to exhibit.
- **Fixed establishments** are premises used on an ongoing basis for the display and the keeping for display of animals. These premises are open to the public and include zoos, fauna parks and oceanariums. They must hold a **licence**, as well as a permit if they have prescribed species.
- **Mobile establishments** are premises used on a temporary basis for the display of animals, but only while the animals are displayed or kept for display at those premises. A mobile exhibitor does not have a fixed establishment for the public display of animals, instead they temporarily take animals to display them in transportable enclosures. These include circuses. They must hold an **approval** for non-prescribed species, as well as a permit if they have prescribed species.
- **Off display establishments** are not open to the public and animals are not displayed there. These premises are only allowed for authorised fixed and mobile exhibitors to hold animals while they are not being displayed at an authorised fixed or mobile establishment. These include home bases for mobile exhibitors, including circuses. They must hold a **licence**.

Licences, approvals and permits are collectively referred to as **authorities**.

The EAP Act also authorises the creation of enforceable standards (collectively the **Standards**). The standards relevant to this inquiry are:

- General Standards for Exhibiting Animals in New South Wales (2019) (General Standards)
- Standards For Exhibiting Circus Animals in New South Wales (2019)
- Standards for Exhibiting Bottle-nosed Dolphins (*Tursiops truncatus*) in New South Wales (1994)
- Other prescribed standards that deal more specifically with the exhibition of particular taxonomic groups of animals (e.g. carnivores).

Authorities to exhibit exotic animals in a circus may only be issued if the Secretary of the Department of Planning, Industry and Environment (Secretary) is satisfied that an establishment conforms to, and an animal will be exhibited according to, the Standards. Exhibitors are required to renew their authorities annually, meaning that exhibitors must continue to demonstrate that they are meeting animal welfare requirements after an authority is initially granted.

While the Secretary is authorised to issue authorities to exhibit exotic animals in circuses, the Secretary must obtain the Minister's approval before issuing any new licence for a cetacean display establishment.

When assessing an application for an authority, the Secretary may consider a range of factors specified in the EAP Act. This includes whether the applicant has been convicted or found guilty of an offence under the EAP Act, *Prevention of Cruelty to Animals Act 1979* (POCTA), the *Animal Research Act 1985*, the *National Parks and Wildlife Act 1974*, *Biodiversity Conservation Act 2016* or any law of another State, a Territory or the Commonwealth relating to the keeping or protection of animals.

Anyone in charge of an animal, including animal exhibitors, must comply with POCTA. POCTA sets out the minimum requirements for all people in charge of an animal. This includes requirements to provide food, drink and shelter, arrange veterinary treatment when needed, and provide adequate exercise to confined animals.

## Animal welfare minimum standards

The Standards set minimum requirements to ensure that the welfare of exhibited animals, including exotic animals and cetaceans, is safeguarded.

All animal exhibitors must meet the **General Standards**, which require that;

- Exhibitors must have appropriate qualifications, experience and knowledge of the species exhibited.
- Enclosures must ensure the safety of animals and spectators, provide protection from weather, offer enrichment to exhibited animals and meet prescribed spatial requirements.
- Exhibitors must maintain detailed husbandry records.
- Enclosures must meet minimum hygiene standards.
- Exhibited animals must have a varied and appropriate diet, decent food quality and access to water.
- Animals must have daily health checks and arrangements to access specialised veterinary care
- Training methods must be humane and not include physical or mental punishment resulting in temporary or permanent distress, pain or injury to any animal involved.
- Animals may only be bred as part of a managed program.

Exhibitors must also meet the Standards for **Exhibiting Circus Animals in New South Wales**, including that:

- Circus sites and animal display housing must maximise the area for animals and not fall below prescribed minimums.
- During animal transportation, animals must be routinely inspected, fed and watered; vehicles must meet certain safety requirements and be adequately ventilated.
- Animals must have a total of at least one month's rest in any twelve-month period.
- Exercise facilities must be provided at each circus mobile establishment, circus layover and off-display establishment. An animal must not be maintained in an animal wagon for more than two days without exercise.

- Animals must receive at least 45 minutes exercise per day, on at least 4 days of every week, in the form of training sessions or public performance.
- All training methods must be based on a positive reinforcement approach (i.e. the anticipation of a reward for successfully completing a desired behaviour). Negative reinforcement must never be used.
- An animal must not be required to perform movements that carry a high risk of injury.
- Circus exhibitors must also meet standards that are particular to specific animals in their care.

The relevant standards for the exhibition of bottlenose dolphins are the **Standards for Exhibiting Bottle-nosed Dolphins (*Tursiops truncatus*) in New South Wales** and require that:

- Animals must be given appropriate shaded, covered or sheltered areas and protected from the elements as well as potential abuse from the public.
- Animals must be protected from disturbing noises, such as from mechanical systems.
- Indoor housing facilities must have appropriate air temperature, ventilation and lighting.
- No pools containing bottlenose dolphins are to contain water that is detrimental to the health of the animal.
- Precautions must be taken to prevent any foreign bodies entering pools. Pools must be thoroughly checked for foreign bodies at least twice a day.
- Bottlenose dolphins must not be transported unless they are capable of withstanding the journey in the opinion of an experienced veterinary surgeon or practitioner.
- Written approvals must be obtained prior to transporting bottle-nosed dolphins and they must be transported according to specified minimum conditions.

## Breeding of exotic animals

There is no licensing regime specifically for the supply of exotic animals to circuses. The EAP Regulation stipulates that any authority to exhibit animals must not allow breeding if the breeding would have adverse impacts on the individual animals or on the species more broadly.

However, a circus may only acquire an animal if the circus is authorised to exhibit the species and has been given permission to acquire those individual animals.

There is only one licensed cetacean display in NSW. It only holds one species of cetacean and, due to the size of its enclosures, can only hold a maximum of 6 dolphins. There is only one other licensed cetacean display in Australia.

## Interstate recognition

NSW does not recognise interstate exhibited animal authorities. Interstate circuses travelling to NSW must apply for permits and approvals the same way as NSW-based circuses.

Interstate exotic animal breeders may supply to circuses that are based in, or travel to, NSW providing the circus has permission to acquire those animals.

## **NSW Government Animal Welfare Action Plan**

In May 2018, the NSW Government released the Animal Welfare Action Plan (the Action Plan) which sets out a framework to modernise animal welfare legislation that is almost 40 years old. The objective of the Action Plan is that people responsible for animals provide for their welfare, in line with the best available science and community expectations.

As part of the work under the Action Plan, the NSW Government is in the process of reforming the existing animal welfare legislative framework, including the EAP Act, POCTA and the *Animal Research Act 1985*, with the aim of developing a modern regulatory system to safeguard animal welfare in NSW. Consultation will be a key element of this process and the NSW Government will ensure that all members of industry, animal welfare groups and the community can have their say throughout the reform process.



# Compliance

---

## Authorised inspectors under the EAP Act

DPI Biosecurity and Food Safety inspectors are authorised under the EAP Act. Inspectors have, among others, the power to:

- enter any licensed animal display establishment where the inspector believes, on reasonable grounds, that a provision of the EAP Act or the EAP Regulation has been or is being contravened
- make such inquiries, investigations or searches, including examining animals, equipment and records, as are necessary to ascertain whether the provisions of the EAP Act and EAP Regulation are being followed
- seize or detain any animal if the inspector has reasonable grounds to suspect that an offence against the EAP Act or EAP Regulation has been committed
- issue directions to people who have failed to comply with the EAP Act, EAP Regulation or conditions of their licence, permit or approval.

There are 65 Biosecurity and Food Safety inspectors authorised under the EAP Act.

## Audit activities

Between 1 July 2017 and 30 June 2019 the Department conducted 191 audits and inspections at licensed display establishments. These audits and inspections were carried out as part of the normal audit program and as complaint driven investigations.