

Submission
No 219

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

Name: Name suppressed
Date Received: 24 November 2019

Partially
Confidential

Inquiry into the use of exotic animals in circuses and the exhibition of cetaceans in New South Wales

Introduction

Thank you for the opportunity to submit on the pressing issue of exotic animals in circuses and the exhibition of cetaceans in New South Wales. I am a final year law student at Macquarie University and have a keen interest in animal law, having volunteered at a community legal centre specialising in animal law for close to two years. I have seen the niche field of animal law grow in recent years, with the establishment of organisations specialising in animal law and political parties dedicated to animal protection, both in Australia and overseas. Resultantly, we are seeing more inquiries into animal welfare taking place and I welcome the opportunity to make a submission.

TERMS OF REFERENCE

1. That Portfolio Committee No.4 – Industry inquire into and report on the use of exotic animals (defined as any animal that is not native and is not a stock or companion animal) in circuses and the exhibition of cetaceans in New South Wales, and in particular:

- (a) the welfare of exotic animals exhibited in circuses in New South Wales, with consideration of community expectation,*
- (b) the welfare of cetaceans exhibited in New South Wales, with consideration of community expectation,*

Community Expectations

First it is imperative to recall why animal welfare is so important and the reason is - sentience. Science has long recognised the sentience of animals¹, sentience being defined as consciousness and the ability to feel pain and experience various psychological states². The awareness of animal sentience and concern for non-human animals is growing - the election of members from the Animal Justice Party to NSW and Victorian Parliaments is testimony to this.

Specifically, when it comes to exotic animals, forty³ councils across Australia have already banned the use of exotic animals in circuses on council owned or controlled land. And states such as the ACT instituted a ban decades ago.

An estimated 33 countries have banned the use or import/export of some or all exotic species in circuses based primarily on welfare concerns⁴. In similar jurisdictions like the UK over 130 local authorities have banned circuses with any animals, with a further 65 prohibiting circuses with wild animals⁵. Local municipalities in several countries including the USA, Canada, Brazil, Spain, Norway and Poland have prohibited exotic animal circus performances.

The RSPCA puts the number at 45 for countries that have imposed national or local bans, with animal welfare being cited as the chief reason. And some councils throughout Australia have prohibited circuses with any animals from performing on council park lands⁶. Concurrently, the opposition to the exploitation of wild animals can also be seen in the proliferating campaigns on smart and ethical tourism.

A 2015 survey found that 68% of Australians are concerned or very concerned about the use of exotic animals in circuses. This proportion is even higher in young adults, with over 75% of Australians aged 18-25 years being concerned about the use of exotic animals in circuses. A similar trend was seen with domesticated animals in circuses with 56% being concerned or very concerned, including over 68% of young adults⁷.

Community expectations are essentially based on the competing interests of humans and non-human animals – the harm to the animals versus the benefit to humans. Here the weighting consists of great harm to animals for trivial human interest – entertainment. It is a use with no legitimacy.

If the human interest is trivial and the suffering of the animal is significant, the practice must cease as it is unethical.

Lastly, circuses can function without exploiting exotic animals for 'entertainment'. In recent times, there has been a substantial fall in the total number of operators, a reduction in the use of animals, and the emergence of circuses with human-only performers⁸. Only two circuses continue to use exotic animals in performances, both using lions (*Panthera leo*) and rhesus macaque monkeys (*Macaca mulatta*). For many years, several travelling circuses kept elephants, but there are no longer any

¹ Helen S Proctor, Gemma Carder and Amelia R. Cornish, 'Searching for animal sentience: A systematic review of the scientific literature' (2013) 3 *Animals* 882.

² Webster, J. *Animal Welfare, Limping towards Eden* (Wiley-Blackwell Oxford, UK, 2005).

³ <https://markpearson.org.au/exotic-animals-and-circuses/>

⁴ Dorning J, Harris S & Pickett H (2016) *The welfare of wild animals in travelling circuses*. Report for the Welsh Government

⁵ *Ibid.*

⁶ http://kb.rspca.org.au/what-is-the-rspcas-view-on-the-use-of-animals-in-circuses_146.html

⁷ McCrindle (2015) RSPCA 2015 Brand Awareness and Perception. National representative survey of 2,011 Australians conducted in November 2015.

⁸ <http://kb.rspca.org.au/afile/146/142/>.

elephants performing in Australian circuses. Other animals used include horses, donkeys and dogs and less traditional species such as camels, alpacas and cows⁹.

Welfare

Circuses and cetacean exhibitions negatively affect all aspects of these animals' lives. Scientific evidence indicates that exploiting captive wild animals in circuses/travelling animal shows¹⁰ and 'marine parks'¹¹ is not in accordance with welfare standards.

The circus life is inherently incompatible with the physiological, social and behavioural needs of animals, thus no circus, no matter how well managed, can provide an appropriate environment for wild animals.

Performing wild animals are kept confined for prolonged periods, in artificial social groups and are continually being transported between venues for the duration of their performing lives. The life of a circus animal leads to stress, boredom and often results in abnormal behaviours, such as repetitive pacing or swaying. Captive breeding of wild animals for many generations does not in any way resolve these issues¹².

In a vast country like Australia, circuses must travel for extensive periods of time for most of the year in extreme weather conditions.

In 2016 a comprehensive report was released. It encompassed a review of relevant legislation and scientific papers, as well as communications with over 650 experts and organisations around the world including trainers, circus owners, researchers and animal advocates. It concluded that the welfare of wild animals in travelling circuses is seriously compromised. The report found travelling environments negatively impacted on all areas of the animals' lives including space requirements, social interactions, expression of normal behaviours and dietary needs. Training and performances were not an appropriate substitute, or able to overcome, the limitations imposed by the inadequate environment¹³. The report uncovered the following:

Enclosures for Exotic Animals

Enclosures for animals in circuses and any travelling animal shows are generally much smaller and barren in comparison to zoos. Environmental enrichment is likely to be limited or non-existent due to the demands of portability and to facilitate handling and compliance of the animals. Likewise, enclosures for cetaceans are not appropriate and compromise welfare¹⁴.

Isolation

Constraints of space and facilities results in animals being kept in inappropriate social conditions, such as isolation of social species, grouping of solitary species and/or proximity of incompatible species.

Diet

It is challenging to provide proper diets, to feed at appropriate intervals and to store food appropriately. This, in combination with space restriction, can lead to health problems such as obesity, diabetes, cardiorespiratory disease, reproductive disorders, urinary disorders, lameness, thermal discomfort, tumours and mortality.

Handling and Performance

Normal behaviour of wild animals in circuses and travelling animal shows is frequently disturbed by handling, restraint, training, performance and transport.

An earlier study reported that the majority of evidence suggests audiences have stressful effects on non-domesticated animals, and that noise and bright lights have negative impacts¹⁵.

Training

Training methods commonly used in circuses involve use of negative reinforcement, such as force and aggression. Further, caging/tethering and the performance of unnatural movements contribute to physical deformities, injuries, lameness and psychological distress¹⁶.

While much of this refers specifically to circus animals, it is equally pertinent to cetaceans, such as confinement, training, stress of performance, inadequate diet and consequent health issues¹⁷.

⁹ <http://kb.rspca.org.au/afile/146/142/>

¹⁰ There are many instances where animals form part of a performance, such as in circuses, bird of prey shows, horse shows, rodeos and magic shows.

¹¹ <https://www.worldanimalprotection.org.au/dolphins-and-marine-animals-captivity>.

¹² http://kb.rspca.org.au/what-is-the-rspcas-view-on-the-use-of-animals-in-circuses_146.html

¹³ Dorning J, Harris S & Pickett H (2016) The welfare of wild animals in travelling circuses. Report for the Welsh Government.

¹⁴ <https://www.worldanimalprotection.org.au/dolphins-and-marine-animals-captivity>.

¹⁵ G Iossa, CD Soulsbury and S Harris, Are wild animals suited to a travelling circus life? School of Biological Sciences, Woodland Rd, University of Bristol, Bristol BS8 1UG, UK.

¹⁶ Ibid; https://www.ispca.ie/uploads/The_welfare_of_wild_animals_in_travelling_circuses.pdf.

¹⁷ <https://kb.rspca.org.au/knowledge-base/what-is-the-rspcas-view-on-keeping-dolphins-in-captivity/>;

<https://kb.rspca.org.au/wp-content/uploads/2019/03/The-Welfare-of-Dolphins-in-Captivity-RSPCA-Australia-Research-Report-February-2019.pdf>.

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

(i) to allow the continuation of the practice of breeding of exotic animals for use in circuses and cetaceans for exhibition,

In light of the above, breeding exotic animals for exhibition is not in line with the welfare of animals based on current scientific research and community expectations and thus, should be prohibited. The licensing scheme around breeding and any other relevant provisions should be amended as needed in the relevant Acts, explored further below.

(ii) there should be a phase out of the use of exotic animals in circuses and cetaceans for exhibition, and/or

Phase outs are commonly used when there are high numbers of animals and when community support isn't sufficient for an outright ban. In this instance there are a small number of exotic animals used, which could feasibly be retired to sanctuaries and community support is high.

In 2012, in response to the concerns raised in a UK report by a government appointed circus animal working group, the British Government stated that it intended to prohibit the use of exotic species in the future. As an *interim* measure it was proposed to introduce regulations requiring licensing and compliance with specified standards to safeguard the welfare of animals in travelling circuses¹⁸ – which is what NSW has currently.

(iii) there should be any other legislative or regulatory action that the committee considers appropriate, and

Legislative Framework

The adoption and enforcement of compulsory welfare standards for all animals in circuses and exhibitions is required. At present there are no national welfare standards for circus animals or animals in exhibitions. States and Territories have primary responsibility for regulation and issuing permits for keeping native and exotic animals in zoos and aquaria. Some states have endorsed codes of practice, which lack consistency and provide only limited protection to animals. And where minimum legal requirements exist in relevant acts and regulations - they primarily only protect animals against acts of *cruelty* rather than *ensuring welfare* of animals.

The *Exhibited Animals Protection Act 1986* (NSW) would require amendment to remove allowance of exotic animals in circuses and exhibitions. This could include: amending Definitions to include *exotic* and *cetacean* animals, amending Part 3 Division 2 to prohibit the use of *exotic* animals, repealing Part 4 and amending other provisions relating to licensing as needed, such as Section 12(1) which requires a licence to display animals for entertainment and Section 27 which requires renewal and variation of licences. A new provision could be introduced specifically listing which animals are prohibited in circuses and exhibitions.

The *Exhibited Animals Protection Regulation 2010* (NSW) could also be amended to include *exotic* and *cetacean* animals in Definitions, Section 15 could be amended to prohibit breeding of exotics for circuses or exhibition. And Part 4 could include exotic animals in circuses and cetaceans in exhibitions as an offence.

General Standards For Exhibiting Circus Animals in NSW 2004

These Standards set down minimum standards and only *encourage* exceeding the minimum within the Standards.

For instance, it is encouraged to exceed the dimensions of enclosures, but this is not mandatory, for instance, Clause 7 Display. And Clause 8 Night quarters includes no minimum size specifications.

Clause 9 allows for 45 minutes of exercise per day OR 4 days out of the week. This does not apply during travel or layover – but travel and layovers are a regular part of circus life. These are a few examples where the minimum should be lifted if meaningful animal welfare is to be ensured.

Possible amendments could include inserting a clause which stipulates which animals can no longer be used and amending other clauses as needed, for instance Clause 3 – Suitability of animal species.

Standards for Exhibiting Bottle-nosed Dolphins (Tursiops truncatus) NSW 1995

These Standards could likely be repealed if cetaceans are prohibited for use in 'entertainment'. At the very least, they require updating as they are over two decades old.

Prevention of Cruelty to Animals Act

Part 2 of the Act could be amended by inserting a new provision listing exotic species as being prohibited from being used in circus performance and cetaceans being prohibited in exhibitions or 'entertainment'.

(d) any other related matter

Conservation/Education Myth

¹⁸ <https://kb.rspca.org.au/wp-content/uploads/2019/03/Exotic-Animals-in-Australian-Circuses-RSPCA-Information-Paper-March-2017.pdf>

Research into conservation and education of visitors is sometimes used as justification for holding animals in captivity to be displayed for entertainment. However, animals housed in artificial environments compromises research and education of the public - people are misled into thinking that captivity is normal. It is not educational for children or adults – it just enforces a detrimental myth.

As Associate Professor Barry Spurr of the University of Sydney argues, not only do performing-animal circuses serve no genuine educational purpose, they are in fact counterproductive to this goal: 'they are anti-educational, sending wrong messages to children about how animals behave, naturally, and how they should be respected, ethically. Circuses encourage children to believe that animals exist to perform unnatural acts for audiences' amusement, and to spend their lives in captivity for this purpose. Nothing could be more damaging to nurturing children's education about animals and their respect for them and their welfare'.