

Submission
No 222

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

Organisation: Animal Defenders Office

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Animal Defenders Office

Using the law to protect animals

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Dear Sir/Madam

Submission—Inquiry into the use of exotic animals in circuses and the exhibition of cetaceans in New South Wales (“the Inquiry”)

We thank the Portfolio Committee No.4 – Industry for inviting public comment on the use of exotic animals in circuses and the exhibition of cetaceans in New South Wales (“NSW”). We acknowledge the importance of inquiries such as these to enable the NSW Parliament to consider a variety of stakeholder perspectives.

About the Animal Defenders Office

The Animal Defenders Office (“the ADO”) is a nationally accredited community legal centre that specialises in animal law. The ADO is run by volunteer lawyers and interns. We aim to raise community awareness about animal protection issues, and to advance animal interests through law reform.

The ADO is a member of Community Legal Centres NSW Inc.

The Inquiry—our position

- The ADO does not support the practice of breeding or keeping exotic animals for use in circuses and cetaceans for exhibition.
- We submit that a legislative ban on keeping and breeding cetaceans for exhibition purposes should be introduced in NSW, with a finite period to allow cetaceans currently kept for exhibition purposes to be translocated to a sea sanctuary.
- We submit that a legislative ban on the keeping, breeding and transporting in or through NSW of exotic animals for use in circuses be introduced in NSW, with a short period to allow exotic animals currently kept for this purpose to be rehomed to a sanctuary.
- We submit that the legislative ban(s) regarding exotic circus animals could be achieved by reintroducing the Exhibited Animals Protection Amendment (Prohibitions on Exhibition) Bill 2018 (NSW).

Wild animals in travelling circuses—NSW regulatory framework

Circuses using exotic¹ animals are required² to comply with Exhibited Animals Protection legislation³, the *General Standards for Exhibiting Animals in New South Wales* (“the General Standards”)⁴, and the *Standards for Exhibiting Circus Animals in New South Wales* (“the Circus Standards”)⁵.

The current version of the General Standards available on the website of the Department of Primary Industries (“DPI”)⁶ states that the document was published in February 2019. There is, however, no version history of the document, which makes it difficult to determine whether the standards have been updated since the March 2004 version⁷ and if so, how. We note that the most ‘recent’ resource listed in the bibliography in the 2019 version is from 2003 (p32). This would suggest that the standards have not been substantially updated since around that time ie 16 years ago.

Similarly, the Circus Standards were also published in 2019, but there is no version history disclosed in the document itself so again it is difficult to determine whether or how they have been updated since the previous version which we understand was published in 2009 (10 years ago).

The ADO submits that these documents are out of date and should be substantially revised to take into account developments in scientific understandings of the deleterious impact that permanent confinement for exhibition purposes has on animals, especially wild animals.

We note that the *Australian Animal Welfare Standards and Guidelines for Exhibited Animals* (“the Australian Standards”) were endorsed by Australian Agriculture Ministers in April 2019.⁸ The official website for the Australian Standards states that NSW ‘intends to adopt the Australian Animal Welfare Standards and Guidelines for Exhibited Animals into legislation subject to normal policy development processes’.⁹ However, the NSW DPI website is less committed, stating that ‘NSW already has existing prescribed standards under the Exhibited Animals Protection Regulation 2010 and *is considering* implementation of the national standards.’¹⁰

¹ This submission uses the terms ‘exotic’ and ‘wild’ interchangeably.

² *Exhibited Animals Protection Regulation 2010*, clause 8(1).

³ *Exhibited Animals Protection Act 1986* and *Exhibited Animals Protection Regulation 2010*.

⁴ *General Standards for Exhibiting Animals in New South Wales*, NSW Department of Industry (2019).

⁵ *Standards for Exhibiting Circus Animals in New South Wales*, NSW Department of Industry (2019).

⁶ https://www.dpi.nsw.gov.au/_data/assets/pdf_file/0012/577767/Exhibited-Animals-General-Standards-for-Exhibiting-Animals-in-New-South-Wales-February-2019.pdf.

⁷ As listed in clause 8(1), *Exhibited Animals Protection Regulation 2010*, at the commencement of the Regulation on 1/9/2010. While the General Standards may have been updated in 2015, the same questions apply (ie whether the 2015 version updated the 2004 version and if so, how).

⁸ <http://www.animalwelfarestandards.net.au/exhibited-animals/>, September 2019.

⁹ Ibid.

¹⁰ <https://www.dpi.nsw.gov.au/animals-and-livestock/animal-welfare/exhibit/standards,-guidelines-and-policies>, emphasis added.

We also note that the Australian Standards do not apply to ‘circuses and mobile exhibitors’.¹¹

For these reasons, we have not considered the Australian Standards for the purposes of this submission.¹²

Space requirements for exotic circus animals

Minimum enclosure space requirements are a useful measurement of the adequacy of standards and guidelines applying to exotic animals in circuses.

In NSW the space requirements for keeping exotic animals in circuses are far below the minimum space required for the same species in zoos, and in the ADO’s view are inadequate to protect the welfare of the animals held in captivity in a travelling circus.

Circus lions

Lions kept in a zoo in NSW must have an enclosure of at least 300 m²,¹³ whereas in a circus the enclosure can be as small as 20 m².¹⁴ Moreover circus lions may have access to these areas for only 6 hours during the day and can be kept in small ‘animal wagons’ for the remaining 18 hours.¹⁵ Research has shown that animals in circuses spend only 1–9% of the day actually performing or being trained, meaning that most of their time is spent back in these limited enclosures.¹⁶

Circus monkeys

Animal circuses in NSW breed, keep and display Rhesus Macaque monkeys.¹⁷ If these monkeys were to be kept in a zoo, they must be kept in an enclosure that is at least 6.5 m wide and 3.5 m high.¹⁸ However, if these monkeys are kept in a circus, their enclosure can be as small as 2.4 m wide and 2.5 m high.¹⁹

¹¹ The *Australian Animal Welfare Standards and Guidelines for Exhibited Animals*, p4; emphasis added.

¹² In relation to cetaceans, we note that there is no specific reference to aquatic animals, or keeping animals in water, in the *Australian Animal Welfare Standards and Guidelines for Exhibited Animals*. Moreover the specific National Standards and Guidelines covering the exhibition of specific types or species of animal do not appear to cover cetaceans: <http://www.animalwelfarestandards.net.au/exhibited-animals/>.

¹³ Appendix 1, *Standards for Exhibiting Carnivores in NSW*, DPI (2016).

¹⁴ *Standards for Exhibiting Circus Animals in New South Wales*, NSW Department of Industry (2019), clause 7(4)(a)(ii): <https://www.dpi.nsw.gov.au/animals-and-livestock/animal-welfare/exhibit/prescribed-standards2/circus>

¹⁵ Ibid, clause 7(4)(a)(i). An ‘animal wagon’ is ‘any wagon, truck, float or van intended for the transport or holding, and/or static display, of an animal or animals’ (*Standards for Exhibiting Circus Animals in New South Wales*, ‘Definitions’, *ibid*).

¹⁶ Lossa G, Soulsbury CD and Harris S, (2009) ‘Are wild animals suited to a travelling circus life?’ *Animal Welfare Journal* 18, 129-140.

¹⁷ <https://stardustcircus.com.au/monkeys/>.

¹⁸ *Policy on Exhibiting Primates in New South Wales*, NSW Agriculture (2000), p27, <https://www.dpi.nsw.gov.au/animals-and-livestock/animal-welfare/exhibit/prescribed-standards2/primates>.

¹⁹ *Standards for Exhibiting Circus Animals in New South Wales*, *op.cit*, clause 7(4)(e)(ii).

The ADO submits that these legal space limitations are extremely inadequate for wild animals such as lions and monkeys.

Cetaceans in display establishments in NSW—regulatory framework

Persons breeding or keeping cetaceans for exhibition purposes are also required to comply with Exhibited Animals Protection legislation.²⁰ The *Exhibited Animals Protection Act 1986* (NSW) has additional requirements for exhibiting dolphins compared to other animals. Cetacean displays require special ministerial approval (s35), and conditions can be placed on display licences limiting the display to captive-born dolphins (that is, not caught from the wild—s36).

Cetacean displays must also comply with the General Standards²¹, and the *Standards for Exhibiting Bottle-nosed Dolphins (*Tursiops truncatus*) in New South Wales* (“the Dolphin Standards”)²². The Dolphin Standards were first published in 1994. At the time of writing this submission, the original 1994 version is still the only version available on the DPI website.²³ The ADO submits that it is unacceptable for highly intelligent, social and migratory animals such as dolphins to be kept in accordance with standards written over 25 years ago. We submit that both the standards and the very practice of permanently confining dolphins in extremely small enclosures purely for entertainment purposes are outdated, have not kept pace with scientific research about dolphins’ behaviour and capabilities²⁴, and are no longer in keeping with community expectations.

The ADO notes that when the Australian Senate held an inquiry into the keeping of dolphins and whales in captivity in 1985, there were ‘seven facilities housing captive cetacea in Australia’.²⁵ Now there are only two,²⁶ one of which has committed both to cease breeding dolphins,²⁷ and to translocate the existing dolphins to a sea

²⁰ *Exhibited Animals Protection Act 1986* and *Exhibited Animals Protection Regulation 2010*.

²¹ *General Standards for Exhibiting Animals in New South Wales*, NSW Department of Industry (2019).

²² *Standards for Exhibiting Bottle-nosed Dolphins (*Tursiops truncatus*) in New South Wales*, NSW Agriculture (1994), <https://www.dpi.nsw.gov.au/animals-and-livestock/animal-welfare/exhibit/prescribed-standards2/dolphins>.

²³ https://www.dpi.nsw.gov.au/_data/assets/pdf_file/0018/121554/dolphin-exhibition-standards.pdf.

²⁴ <https://www.nationalgeographic.com/magazine/2015/05/dolphin-intelligence-human-communication/>.

²⁵ *Dolphins and Whales in Captivity. Report by the Senate Select Committee on Animal Welfare*, 1985, 2.10, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Significant_Reports/animalwelfarectte/dolphinshalesincaptivity/index.

²⁶ Dolphin Marine Conservation Park (previously Dolphin Marine Magic) in NSW, and Sea World in Queensland.

²⁷ M Martin and L Rubbo ‘Dolphin Marine Conservation Park will no longer breed dolphins in captivity’, *ABC News*, 15 March 2019, <https://www.abc.net.au/news/2019-03-15/dolphins-no-longer-bred-in-captivity-at-marine-park/10900832>.

sanctuary.²⁸ The ADO submits that this demonstrates a shift in community values away from keeping wild animals permanently confined in artificial enclosures merely for entertainment purposes, and towards appreciating animals, including dolphins, in their natural environment.²⁹

Space requirements for exhibited cetaceans

The minimum enclosure dimensions under the Dolphin Standards are a clear example of how out-of-date the standards are. The Dolphin Standards allow up to five dolphins to be permanently confined in as little as 1,400 cubic metres pool space (p5), which compares to approximately 2,500 cubic meters in a standard 50 m Olympic swimming pool³⁰.

The ADO submits that this minimum enclosure requirement is extremely inadequate for animals who are now understood to swim up to 100km a day in the wild.³¹

Wild animals in travelling circuses—welfare concerns

In the ADO's view, circus life is inherently cruel for exotic animals regardless of how well the circus is managed or how well it complies with welfare codes or standards.

A 2009 scientific study (“the study”) showed that exotic animals were least suited to the conditions of circus life compared to other types of animals.³² The study confirmed that it is impossible to satisfy the behavioural and welfare needs of exotic animals in travelling circuses.³³ Exotic animals such as non-human primates are highly intelligent and social, and need high levels of stimulation to prevent stress in captive and artificial environments.³⁴ However, they are kept in confinement for long periods of time in tiny wagons or small ‘exercise’ pens which are many times smaller than the minimum sizes of zoo enclosures.³⁵ They can be kept in transportation wagons for up to 2 days with no exercise.³⁶ The conditions in travelling circuses cause severe stress to non-domesticated animals, leading to stereotypies such as pacing by

²⁸ ‘Coffs Harbour Dolphin Marine Conservation Park moves forward sea-pen sanctuary plan’, 15 June 2019, <https://www.ausleisure.com.au/news/coffs-harbour-dolphin-marine-conservation-park-moves-forward-sea-pen-sanctuary-plan/>.

²⁹ This shift in community attitudes was already starting to be noted in the 1980s in Australia—see above, n 25, 2.25.

³⁰ FINA specifications, quoted in https://en.wikipedia.org/wiki/Olympic-size_swimming_pool.

³¹ <https://www.worldanimalprotection.org.au/dolphin-faq>.

³² Lossa G, Soulsbury CD and Harris S, above n 16. The study found that for non-domesticated animals to be suitable for circus life they would need to be suitable for small living spaces, and have simple social structures, low cognitive function, non-specialist ecological requirements and an ability to be transported without adverse welfare effects. None of the most common exotic species exhibited by circuses in Australia, such as lions and monkeys, meets these criteria.

³³ Ibid.

³⁴ Ibid.

³⁵ *Standards for Exhibiting Circus Animals in New South Wales*, clause 7, above n 5.

³⁶ Ibid, clause 7(2).

big cats and monkeys,³⁷ and mouthing cage bars. These behaviours are scientifically acknowledged as indicators of impaired welfare due to the inability to cope with unsuitable living conditions.³⁸

In addition, animals are subjected to continuous travel over large distances, including continuous handling, loading, unloading, and changes in food and water availability and weather conditions,³⁹ which in Australia can include extreme heat and cold. These factors further compromise the welfare of circus animals.

Moreover, evidence suggests human audiences, loud noises, and bright lights—all inherent elements of a circus performance—are stressful for non-domesticated animals.⁴⁰

The study concluded that the species of non-domesticated animals that are commonly kept in circuses appear to be those least suited to a circus.

A more recent report in 2016 reviewed relevant legislation and scientific papers, and contacted over 650 experts and organisations around the world including trainers, circus owners, researchers and animal advocates.⁴¹ The report found that the welfare of wild animals in travelling circuses is compromised because travelling environments limit appropriate social interactions, restrict normal behaviours and are unable to provide animals with adequate enrichment.⁴² Training and performances were not considered to be appropriate substitutes for these things, or able to overcome the limitations imposed by the inadequate environment.⁴³

Cetaceans in display establishments in NSW—welfare concerns

The immense welfare concerns associated with keeping dolphins in captivity have long been documented. The 1985 Australian Senate report into dolphins and whales in captivity dedicated an entire chapter to welfare.⁴⁴ While acknowledging the role ‘oceanaria’ can play in raising awareness and advancing knowledge about dolphins, it concluded that an ‘examination of some of the evidence has indicated to the Committee, however, that cetacea in captivity have suffered stress, behavioural abnormalities, high mortalities, decreased longevity and breeding problems’ (8.3). It stated that it was ‘of the opinion that cetacea generally have paid a high price for the dubious advantages of captivity’ (8.3), and recommended ‘that the keeping of cetacea

³⁷ For footage of a circus monkey pacing in a small circus cage in Queanbeyan NSW, see: <http://www.al-act.org/issues/animals-in-entertainment/circuses>.

³⁸ RSPCA, *Animals in Circuses* http://kb.rspca.org.au/what-is-the-rspcas-view-on-the-use-of-animals-in-circuses_146.html; Animals Australia, *Animal Circuses* http://www.animalsaustralia.org/factsheets/animal_circuses.php.

³⁹ Ibid.

⁴⁰ Lossa, Soulsbury and Harris, above n 16.

⁴¹ Dorning J, Harris S and Pickett H, (2016) ‘The welfare of wild animals in travelling circuses. Report for the Welsh Government’, http://www.ispca.ie/uploads/The_welfare_of_wild_animals_in_travelling_circuses.pdf.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Above n 25, Chapter 6.

should eventually be phased out unless further research justifies their continuance’ (8.10).

The ADO submits that no research has emerged in the intervening 25 years since the Senate Report that would justify continuing to keep dolphins in captivity for entertainment purposes and that, as the Australian Senate committee recognised several decades ago, the keeping of dolphins in captivity should be phased out.

Animal welfare concerns—a global movement

Globally, law reform initiatives are being developed and implemented in response to growing concern about the animal welfare consequences of keeping exotic animals and dolphins for entertainment purposes.

International jurisdictions have recently introduced legislative bans on the use of animals for these purposes.

Cetaceans in captivity

In Canada, the *Ending the Captivity of Whales and Dolphins Act (2019)* (“the Canadian Act”) received Royal Assent on 21 June 2019.⁴⁵

The Canadian Act makes it a criminal offence to own or be in charge or control of a cetacean kept in captivity, or to breed or impregnate a cetacean.

However, the Canadian Act contains exemptions to these prohibitions.⁴⁶ The exemption of most concern from a welfare perspective is that it is not an offence to keep a cetacean in captivity if the cetacean was in captivity at the time the amendments came into force.

The Canadian Act is an amendment Act. It amends Canada’s *Criminal Code* (“the Code”) by inserting the following provisions in the part of the Code dealing with Cruelty to Animals:

Definition of *cetacean*

445.2 (1) In this section, *cetacean* includes any member of the cetacean order, including a whale, dolphin or porpoise.

Offence

- (2) Subject to subsections (2.1) to (3.1), every person commits an offence who
- (a) owns, has the custody of or controls a cetacean that is kept in captivity;
 - (b) breeds or impregnates a cetacean; or

⁴⁵ <https://www.parl.ca/DocumentViewer/en/42-1/bill/S-203/royal-assent>. The provisions appear to have come into force: <https://laws.justice.gc.ca/eng/acts/C-46/FullText.html>.

⁴⁶ For example, it is not an offence to keep a cetacean in captivity or to breed a cetacean if such acts are done for approved scientific research (s445.2(3.1)). We are not aware if there are guidelines for the approval process for the research and therefore whether there are restrictions on the granting of such approvals. The restrictions could include, for example, that an approval may only be granted if the research is in the interests of the individual cetacean.

(c) possesses or seeks to obtain reproductive materials of cetaceans, including sperm or an embryo.

Exception

(3) Paragraph (2)(a) does not apply to a person who

(a) owns, has the custody of or controls a cetacean that is kept in captivity at the coming into force of this section and remains continuously in captivity thereafter;

(b) has the custody of or controls a cetacean that is kept in captivity for the purpose of providing it with assistance or care or to rehabilitate it following an injury or another state of distress; or

(c) is authorized to keep a cetacean in captivity in the best interests of the cetacean's welfare pursuant to a licence issued by the Lieutenant Governor in Council of a province or by such other person or authority in the province as may be specified by the Lieutenant Governor in Council.

Exception

(3.1) Subsection (2) does not apply to a person who is conducting scientific research pursuant to a licence issued by the Lieutenant Governor in Council of a province or by such other person or authority in the province as may be specified by the Lieutenant Governor in Council.

...

Punishment

(5) Every one who commits an offence under subsection (2) or (4) is guilty of an offence punishable on summary conviction and liable to a fine not exceeding \$200,000.

...

In principle, the ADO supports a legislated phase-out of keeping cetaceans in captivity. We would not, however, support exemptions such as those in the Canadian Act that would allow cetaceans currently held in captivity to remain in captivity. This would allow an establishment that currently exhibits dolphins for entertainment purposes to keep the dolphins in conditions that are unsuitable, inappropriate and distressing for the rest of the dolphins' lives. At most, a transition period could be incorporated into any legislative ban, allowing the current NSW dolphin exhibitor to move its several dolphins to a sanctuary.

Exotic animals in circuses

England has introduced a legislative ban on the use of exotic animals in circuses. The *Wild Animals in Circuses Act 2019* (UK) was given Royal Assent on 24 July 2019 and will come into effect on 20 January 2020 (s4(2)). Its purpose is 'to make provision to prohibit the use of wild animals in travelling circuses.'⁴⁷

The prohibition is set out in section 1 of the Act:⁴⁸

⁴⁷ As stated in the Long Title to the Act.

⁴⁸ <http://www.legislation.gov.uk/ukpga/2019/24/introduction/enacted>.

1 Prohibition on use of wild animals in travelling circuses in England

- (1) A circus operator may not use a wild animal in a travelling circus in England.
- (2) For the purposes of this section, a circus operator uses a wild animal in a travelling circus if the animal performs or is exhibited as part of the circus.
- (3) A circus operator who contravenes subsection (1) is guilty of an offence and liable on summary conviction to a fine.
- (4) Where an offence under this section is committed by a body corporate and is proved—
 - (a) to have been committed with the consent or connivance of an officer of the body corporate, or
 - (b) to be attributable to any neglect on the part of an officer of the body corporate,the officer (as well as the body corporate) is guilty of the offence and liable to be proceeded against and punished accordingly.
- (5) In this Act—
 - “animal” has the meaning given by section 1(1) of the Animal Welfare Act 2006;
 - “circus operator”, in relation to a circus, means—
 - (a) the owner of the circus,
 - (b) any other person with overall responsibility for the operation of the circus, and
 - (c) if neither the owner of the circus nor any person with overall responsibility for its operation is present in the United Kingdom, the person in the United Kingdom who is ultimately responsible for the operation of the circus;
 - “officer”, in relation to a body corporate, means—
 - (a) a director, manager, secretary or other similar officer of the body corporate, and
 - (b) any person purporting to act in any such capacity;
 - “wild animal” means an animal of a kind which is not commonly domesticated in Great Britain.

The Act does not contain exemptions or defences that would undermine the positive effect of the prohibition in terms of animal welfare.

Australian prohibitions

Currently the Australian Capital Territory (“ACT”) is the only jurisdiction in Australia to ban the use of exotic animals in circuses.

Circuses using animals are regulated under the *Animal Welfare Act 1992* (ACT).

The Act makes it a criminal offence to conduct a circus using a ‘prohibited animal’ (s52(2)). Prohibited animals are defined to include several exotic animal species or types.

The Act also makes it a criminal offence to bring a prohibited animal into the ACT as part of a circus troupe, and it is immaterial whether the animal is brought into the ACT to be actually used (ie made to perform) in the circus (s52(3)-(4)).

The offences relating to exotic animals in circuses are set out in Part 5 of the Act:

51 Meaning of *prohibited animal*—pt 5

In this part:

prohibited animal means—

- (a) a bear, elephant, giraffe, primate (other than a human) or feline (other than a domestic cat); or
- (b) an animal prescribed by regulation.⁴⁹

52 Circuses

- (1) A person commits an offence if—
 - (a) the person conducts a circus; and

⁴⁹ No animal is currently prescribed by regulation.

(b)the circus has performing animals (but is not a travelling zoo); and

(c)the person does not have a permit to conduct the circus.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

(2) A person commits an offence if the person conducts a circus using a prohibited animal.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

(3) A person commits an offence if the person brings a prohibited animal into the ACT as part of a circus troupe.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

(4) For subsection (3), it does not matter whether the animal is brought into the ACT for use in the circus.

There are no exemptions to the ACT prohibitions on the use of exotic animals in circuses and on bringing exotic circuses into the ACT.

Law reform in NSW—protecting exotic animals and cetaceans

The ADO strongly supports a state-wide ban on the breeding and use of animals for both cetacean displays and exotic animal circus performances in NSW.

Exotic circus animals

Currently in NSW some local councils have banned circuses with exotic animals from setting up on council land. For example, Canterbury-Bankstown City Council recently introduced the *Use of Exotic Animals in Circuses Policy*, which states that ‘Council will not permit circuses or carnivals to use exotic animals for performance or display on Council land.’⁵⁰

The ADO strongly commends councils such as Canterbury-Bankstown City Council for banning animal circuses from setting up on council land. We note, however, that circuses can circumvent this restriction by setting up on *private* land within the municipality, or by setting up in neighbouring council regions close to the border of the council region that has instituted a ban.

For this reason, the ADO supports a state-wide ban on the breeding and use of exotic animals for circuses in NSW.

The ADO submits that the ban should apply to all animals specified in the ACT definition of ‘prohibited animal’⁵¹, or at the very least to both lions and monkeys as these are the two kinds of exotic animals currently used in circuses in NSW.⁵² The animals to be covered by the ban could be prescribed by regulation to provide flexibility should the definition need to be extended in the future due to our ever increasing awareness of the adverse welfare consequences for animals used in circuses.

⁵⁰ Paragraph 3.3, *Use of Exotic Animals in Circuses Policy*, adopted by Canterbury-Bankstown Council on 16 October 2018, <https://www.cbccity.nsw.gov.au/council/policies-plans/policies-and-codes>.

⁵¹ Section 51, *Animal Welfare Act 1992* (ACT).

⁵² <https://stardustcircus.com.au/about-us/>.

The ADO submits that breeding exotic animals for use in circuses should be banned immediately upon commencement of the legislative prohibition.

Using exotic animals in circus performances could also be banned upon commencement, provided that there is sufficient communication with stakeholders during the drafting phase and before commencement.

Possessing or transporting exotic animals within or through NSW as part of a circus troupe, whether or not they are used in performances, could commence at a specified time, giving existing users sufficient time to find suitable locations to which the animals could be retired (such as a sanctuary).

In terms of legislative precedent, the prohibition could be modelled on the ACT ban. Alternatively, the ADO would strongly support the reintroduction of the Exhibited Animals Protection Amendment (Prohibitions on Exhibition) Bill 2018.⁵³ This Bill would be an appropriate response to the serious welfare concerns regarding the breeding and use of animals for circuses in NSW.

Cetacean displays

The ADO submits that the time is right for a ban in NSW on both the breeding and confinement of cetaceans for exhibition purposes. The ban could allow time for the owners of the dolphins who are currently exhibited to find or construct a suitable alternative home for the dolphins. The ADO suggests that the prohibitions set out in s445.2(2) of the Canadian Act would be an appropriate model, but without the exemptions.

Conclusion

In summary, the ADO shares the community's deep concern for the welfare of exotic circus animals and of cetaceans used for exhibition purposes in NSW.

In light of that concern, the ADO strongly recommends that:

- the breeding of exotic animals and cetaceans for exhibition purposes in NSW be banned with immediate effect; and
- the use of these animals for circuses and exhibition be phased out over the short term.

These measures would be an appropriate response to the concerns shared by many in our community about the welfare of animals used for these purposes.

We thank you again for the opportunity to contribute to the Inquiry.

Tara Ward (Volunteer Solicitor) and Sapna Goundan (Intern)

Animal Defenders Office

25 November 2019

⁵³ <https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=3306>. The Bill lapsed in February 2019 at the end of the previous parliament.