

Submission on the Hawkesbury City Council's Draft Circus Policy

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The NSW Young Lawyers Animal Law Committee (the **Committee**) is grateful for the opportunity to make a submission to the Hawkesbury City Council (**Council**) in relation to its Draft Circus Policy (the **Draft Policy**). The Committee commends the Council for considering the appropriateness of circuses using or displaying wild or exotic animals.

NSW Young Lawyers

NSW Young Lawyers is a division of The Law Society of New South Wales. NSW Young Lawyers supports practitioners in their professional and career development in numerous ways, including by encouraging active participation in its 16 separate committees, each dedicated to particular areas of practice. Membership is automatic for all NSW lawyers (solicitors and barristers) under 36 years and/or in their first five years of practice, as well as law students. NSW Young Lawyers currently has over 15,000 members.

The Committee comprises a group of over 400 members interested in animal welfare and laws regulating the treatment of animals. The Committee aims to raise awareness and provide education to the legal profession and wider community, while increasing understanding about the importance of protecting animals from abuse and neglect. A common theme amongst Committee members is a passion and desire to use their legal skills and the law to help improve the lives of animals.

Summary of Recommendations

The Committee submits that the Council should not permit circuses and related organisations to conduct performances and displays of non-domesticated (exotic animals) on Council-managed land. The Committee therefore supports clause 3 of the Draft Policy.

The Committee's position is based on the following:

1. in the Committee's view, the legal regulations in respect of exotic performing animals are not adequate to ensure acceptable animal welfare outcomes; and
2. the laws and regulations relating to the treatment of animals in circuses are inherently difficult to enforce and enforcement is the prerogative of a charity (the RSPCA) which has limited funds.

As a result of the limitations in the legislative framework and its enforcement, the appropriate treatment of animals used in circuses is not guaranteed. It is therefore imperative that councils take progressive action on this issue by not permitting circuses and related organisations to conduct performances and displays of non-domesticated (exotic animals) on Council-managed land. The Committee notes that if the Council were to

prohibit performances and displays of non-domesticated (exotic animals) on Council-managed land, it would be in line with a number of other Australian councils which have taken similar action.¹

The Committee also sets out some recommended amendments to the text of the Draft Policy.

Discussion

The Committee recommends that the Council not permit circuses and related organisations to conduct performances and displays of non-domesticated (exotic animals) on Council-managed land. This is because, in the Committee's view, the legislative framework governing the treatment of animals in circuses is inadequate in a number of respects. Accordingly, the welfare of animals which are used in circuses is not guaranteed. The Committee is therefore concerned that if Council were to continue to permit circuses and related organisations to conduct performances and displays of non-domesticated (exotic animals) on Council-managed land, Council risks allowing activities that do not meet appropriate animal welfare standards.

The legislative framework

The legislative framework concerning the welfare of exotic performing animals is comprised of the following instruments:

- the *Exhibited Animals Protection Act 1986* (NSW) (**Act**);
- the *Exhibited Animals Protection Regulation 2010* (NSW) (**Regulation**); and
- the Standards for Exhibiting Circus Animals in New South Wales (**Standard**).

In addition, the *Prevention of Cruelty to Animals Act 1974* (NSW) (**POCTA**) applies to animals used in circuses.

The substantive law concerning the protection of animal welfare for exhibited animals or performing animals is contained in the Standard, which is an instrument made under cl 8 of the Regulation, which itself is an

¹ E.g. Manly Council, see 'Policy No C20: Operation of Circuses in the Manly LGA' available through the online Policy Register at <http://www.manly.nsw.gov.au/council/policies-and-codes2/>. The policy provides 'It is also Council's policy to refuse any application which includes the use or display of exotic, wild or native animals in its performance.' Hobsons Bay City Council, see 'Circus Bookings Policy' available at: <http://www.hobsonsabay.vic.gov.au/Council/Policies-strategies-plans/A-Z-Council-policies-strategies-amp-plans>. The policy provides 'The Council does not permit non domesticated (exotic) animals to be used in performances and displays by event organisers including circuses on Council owned land. These views are in line with those of the RSPCA which opposes the use of non domesticated (exotic) animals in circuses believing the requirements of circus life are not compatible with the physiological, social and behavioural needs" of the animals'.

instrument made under the Act. Clause 17 of the Regulation requires that exhibited animals are kept in accordance with the Standard.

In the Committee's view, the Standard is deficient in various respects. This submission sets out in the table below some of the specific deficiencies in the Standard. On a more general level, the Committee is concerned that the Standard's primary objective is to facilitate the continuation of the use of exotic animals in circuses, and the welfare needs of animals appear secondary to that objective. The Standard assumes that exotic animals can and should be exhibited in circuses. In the Committee's view, this does not reflect current scientific research into the suitability of animals in circuses.

A 2009 study found that for non-domesticated animals to be suitable for circus life they would need to exhibit low space requirements, simple social structures, low cognitive function, non-specialist ecological requirements and an ability to be transported without adverse welfare effects.² By contrast, the Standard recognises that big cats, elephants, monkeys and chimpanzees have large space requirements and complex social structures. Accordingly, these animals are not likely to be suitable for life in a travelling circus. The Committee notes that the RSPCA does not support the use of exotic (i.e. non-domesticated) animals in circuses for this reason.³

Table – Specific deficiencies in the Standard identified by the Committee

Clause	Requirement	Deficiency
6(6)	The animals must have a total of at least one month's rest in any twelve-month period. One of these layover periods must be for an uninterrupted period of at least two weeks, the other days can be in the form of rest days at regular intervals.	The Standard does not provide an appropriate limit on how many days of the year animals can be held in transportation housing. Clause 7(1) provides that animals kept in transportation wagons must be exercised every two days. Clause 6(6) provides that there must be a one month rest period each year. Presumably, a circus could meet these requirements by keeping animals in transportation housing for 11 months of the
7(1)	Animals must not be maintained in transportation wagons for greater than two days without exercise.	

² G Iossa, CD Soulsbury and S Harris "Are wild animals suited to a travelling circus life?" Volume 18 *Journal of Animal Welfare* (2009).

³ The RSPCA's stated position on circuses is available here: <http://kb.rspca.org.au/what-is-the-rspcas-view-on-the-use-of-animals-in-circuses_146.html>.

Clause	Requirement	Deficiency
		year and allowing an animal five minutes of exercise every two days. Although circuses may not (in practice) keep animals in transportation housing for 11 months of the year, animals may nevertheless spend a significant portion of their lives in transportation housing. The implications of this are illustrated below.
6(13)(d)(ii) 6(13)(e)(ii)	<p>During transportation, each elephant must be sufficiently contained so that it can stand up normally but is unable to turn around (and thereby unable to cause itself any possible injury).</p> <p>Compartments for transporting primates must provide sufficient space to allow each animal to assume a normal standing posture, lie down fully stretched, and turn around.</p>	<p>Whilst the standards for transportation housing have been designed to reduce the risk of physical injury, the Committee submits that they do not cater for the long term behavioural and psychological needs of the animals. By way of example, pursuant to cl 6(13)(d)(ii), the Standard provides that transportation housing for elephants should be designed such that they can stand up normally but cannot turn around. As indicated above, an elephant could spend a large portion of its life in this type of confinement.</p> <p>Compartments for transporting primates need only provide each animal enough space to assume a normal standing posture, lie down fully stretched, and turn around. While this may be suitable as temporary housing, it is not sufficient space in which an animal should spend a significant portion of its life.</p>
9(1)	Animals shall receive at least 45 minutes exercise per day, on at least four days of every week, in the form of training sessions and/or public performance. This does not apply when the circus is travelling or the	The minimum exercise requirements (45 mins per day, four days per week) do not apply when the circus is travelling. As observed above, the upper limit on how long animals can spend in travelling conditions is 11 months of

Clause	Requirement	Deficiency
	animals are in a layover period as described by these standards.	the year.
7(3)(d)(i)	Elephants must be confined in a compound. A circus holding elephants must be competent in containing elephants via the use of electric fencing. Except under special circumstances, it is unacceptable to tether elephants during daylight hours using metal leg bands and chains or any equivalent form of restraint. The special circumstances when elephants may be tethered for short periods during daylight hours are during storms, when the elephant trainer/handler is temporarily absent from the circus, in an emergency situation, or for immediate human safety. For safety reasons tethers are allowed at night. When elephants are tethered, only a metal leg band may be used and this must be placed around only one leg and with a minimum tether length of four metres.	The Standard permits elephants to be tethered at night. Presumably this is necessary to ensure human safety. However, tethering is implicitly recognised in the Standard (within cl 7(3)(d)(i) itself) as compromising animal welfare. This illustrates the fact that it can be very difficult to exhibit animals in circuses while ensuring their physical, behavioural and psychological needs are catered for.

Enforcement of the Standard

The Committee is concerned that should the Council allow performances and displays of non-domesticated (exotic animals) on Council-managed land, the laws under which these activities are regulated may not be properly enforced, with the risk that animals in circuses may be kept in conditions and treated in a manner which falls well below acceptable animal welfare standards.

In NSW, the POCTA is enforced by the RSPCA – a charity with limited funds. Furthermore, many of the requirements in the Standard are by their very nature, difficult to enforce and breaches of those requirements are difficult to detect or investigate. We give the following examples of regulations which may be easily breached with such breaches being difficult to detect:

- CI 6(1): If the distance to be covered entails more than two hours travelling, vehicles must stop for at least 10 minutes every two hours in order to properly inspect the animals and their facilities, and to provide food and water as required.
- CI 6(2): There must be a stationary period of no less than 12 hours in any 24-hour period, when the circus moves between venues and/or layover sites.
- CI 9(1): Animals shall receive at least 45 minutes exercise per day, on at least four days of every week, in the form of training sessions and/or public performance.
- CI 9(7): 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.
- CI 9(9): Physical punishment of any animal is not permissible.
- CI 11(3): Animals that are unwilling to perform a desired behaviour, for whatever reason, must not be forced to continue.
- CI 11(4): It is considered essential that animals be constantly provided with minor changes in their behavioural repertoire.
- CI 11(5): Trainers must halt a training session if a decreased attention span and an increasing level of unwillingness to perform a behaviour by the animal becomes apparent.

It is the Committee's submission that unless the Council takes steps to prevent the use of exotic circus animals on Council-managed land, then it is possible that the treatment of those animals would largely be self-regulated by the circus operator.

Recommended amendments to the Draft Policy

The Committee sets out below recommended amendments to the Draft Policy with a view to making clearer the Council's position on the use of certain types of animals in circuses.

In the Committee's view, there are two aspects of the Draft Policy which are unclear:

- **Council's position with respect to Australian Native Animals.** The term 'Australian Native Animals' is defined in the Draft Policy but is not currently used in any operative clause. In the Committee's view, Australian Native Animals should also not be permitted to be used in circuses.
- **Council's position with respect to untrained animals.** The current wording of the Draft Policy proposes not to permit circuses which include *trained* wild/exotic animals to use Council-managed land. The implication is that untrained wild/exotic animals may be used by circuses. In the Committee's view, there is no justification for such a distinction.

To address the above concerns, the Committee recommends that clause 4.3 of the Draft Policy be amended to read:

Circuses using Council premises must limit their use of animals to domesticated animals. Hire will not be approved to circuses which include wild/exotic animals (such as elephants, lions, tigers, monkeys and apes) or Australian Native Animals in their performances.

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Concluding Comments

For the reasons set out above, the Committee supports the Council taking a proactive step to prohibit performances and displays of non-domesticated (exotic animals) on Council-managed land as envisaged by the Draft Policy. In the Committee's view, this prohibition would be the most effective way of ensuring that these animals are not kept in conditions and treated in a manner which falls below acceptable standards of animal welfare.

NSW Young Lawyers and the Committee thank you for the opportunity to make this submission. If you have any queries or require further submissions please contact the undersigned at your convenience.

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