

Getting closer to animals: changing attitudes and the regulation of the zoo industry in New South Wales

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ABSTRACT

Since the introduction of the *Exhibited Animals Protection Act* in 1986 there has been a marked improvement in the standard of animal displays in zoos, fauna parks and mobile exhibits within New South Wales. These changes have been assisted by the development of general standards and standards for specific groups of animals including primates, carnivores, Australian mammals, dolphins and circus animals, and by the routine inspection of facilities. Significant challenges that have been faced include the holding of koalas by visitors, the use of animals in circuses and the euthanasia of healthy exhibit animals. Other significant events that have led to policy changes include the forced closure of several fauna parks due to the poor standard of animal care and the occurrence of a solitary circus elephant. Apart from the direct effects of the legislation, the changes to the zoo industry have been driven from within the industry itself and through public awareness and associated complaints. Court proceedings have also helped test the legislation and standards and identify shortcomings. In the future more research needs to be undertaken to identify specific requirements of different animal groups and zoo regulators will need to continue consulting with the industry.

Key words: Exhibited, Animals, Zoos, Fauna Parks, Standards, Welfare, Legislation.

Introduction

The display of animals to the public in New South Wales has a long history. The first zoo to open to the public in New South Wales was the Moore Park Zoological Gardens at Billy Goat Swamp in 1884. Albert Le Souef, the secretary of the zoo, realised in 1908 that the Moore Park site was too small, so the NSW Government responded in 1912 by setting aside 43 acres of land on the northern shore of Sydney Harbour at Ashton Park in Mosman for a new zoo. Management of the new zoo was assigned to a Government-appointed trust. A further nine acres were granted in 1916, the year that Taronga Zoological Park first opened its doors to the public. In 1973, responsibility for the administration of Taronga Zoo and Western Plains Zoo in Dubbo was assumed by the newly created statutory body, the Zoological Parks Board of New South Wales (ZPB).

Since the Moore Park Zoological Gardens first opened, the zoo industry in New South Wales has grown steadily, where today we see over 60 licensed animal display establishments. The animal collections range in size from two brown rats in an enclosure at the Hyde Park Barracks in Sydney to approximately 2,600 animals of 315 species/subspecies kept for display at Taronga Zoo and approximately 12,000 animals of 550 species at Sydney Aquarium. The exhibition of animals is not limited to stationary facilities however, as there are over 40 mobile

exhibitors, including circuses, mobile farms and mobile reptile displays, that travel throughout the State visiting schools, universities, fairs and various other facilities.

The zoo industry has come under growing regulation in recent decades, with the pace of change increasing. This raises a number of important questions including: 1) Why is there a need for the regulation of zoos and fauna parks in New South Wales? 2) What is driving the change? 3) Where is the zoo industry heading? and 4) Are the changes due to community attitudes arising from an increasing knowledge about, and concern for, animals or are they due to an increasing interest in conservation and education?

Therefore the aims of this paper are to outline the evolution of the regulation of the zoo industry in New South Wales, examine how the regulation of the industry works, discuss several of the key controversial issues that have been faced since the *Exhibited Animals Protection Act* 1986 came into effect, outline the forces driving change and look at the likely future direction of the industry.

History of the regulation of the zoo industry in NSW

Until the *Exhibited Animals Protection Act* (EAPA or Act) was introduced in 1986, zoos and fauna parks in New South Wales were regulated under a number of legislative schemes.

Native animals on display to the public were licensed by the NSW National Parks and Wildlife Service under the *National Parks and Wildlife Act 1974*. The display of exotic species was licensed by the Australian Quarantine Inspection Service (AQIS) under the *Commonwealth Quarantine Act 1908*, with NSW Department of Agriculture staff administering this legislation under delegation from the Commonwealth. The welfare of animals was regulated under the *Prevention of Cruelty to Animals Act 1979* and enforced by the RSPCA, Police and Animal Welfare League.

In the early 1980s concerns were being raised that too many private zoos and circuses had poor facilities, low standards of care and bad management. In particular, the Zoological Parks Board of New South Wales was worried that zoos were able to commence operation with little or no investigation into matters such as the expertise of the staff or the financial viability of the operation. Financial viability is especially important because if a zoo is forced to close down, the State Government and animal welfare organisations are faced with the burden of accommodating the animals and arranging for their placement. If other display establishments cannot absorb these animals then the authorities may have to euthanase the very animals they are expected to protect.

Evidence supporting the concerns of the Zoological Parks Board was spectacularly provided by the case of a zoo that opened in Tamworth, New South Wales. It opened in late 1983 after acquiring a number of exotic species including bears, lions and primates. The zoo had been granted permission to acquire these exotic species after successful application for a B Class licence under the *Commonwealth Quarantine Act 1908*. The NSW authorities, including the Zoological Parks Board of NSW and the RSPCA, had no knowledge of this successful application. The Board was also concerned about a misleading advertising campaign that gave the impression that the zoo in Tamworth was supported by the Zoological Parks Board of NSW.

In early 1984 the concerns of the Zoological Parks Board, and others, resulted in the Board proposing amendments to the *Zoological Parks Board Act 1973* to provide it with additional legislative authority. Advice in April 1984 indicated that it was preferable to draw up an entirely new Act, rather than change the *Zoological Parks Board Act 1973* significantly.

Approval was granted in August 1984 by the Zoological Parks Board for discussions to be organised between each of the government agencies involved in overseeing zoos and fauna parks in New South Wales. Representatives from each agency with a role in regulating animals on display, including the National Parks and Wildlife Service, the Department of Agriculture, the Department of Local Government (which administered the *Prevention of Cruelty to Animals Act 1979*) and the Zoological Parks Board met in order to develop proposals for the regulation of establishments where animals are held for public display.

In October 1984 the Zoological Parks Board confirmed that it wished to be the official zoo licensing authority for New South Wales. The discussions between the different government authorities ultimately led to the preparation of the *Exhibited Animals Protection Bill* and amendments to

the *Zoological Parks Board Act 1973*. The amendments to the *Zoological Parks Board Act 1973* allowed the Zoological Parks Board to exercise the functions proposed to be conferred or imposed on it by the new *Bill*. The aim of the *Bill* was to establish a licensing scheme for private zoos and circuses, and to develop standards for the housing, care and welfare of animals. The *Bill* provided for a centralised licensing scheme, to be administered by the Zoological Parks Board, which would regulate the keeping and welfare of all animals in animal exhibits. It was envisaged that the legislation would promote efficient and humanely operated animal exhibitions with high standards consistent with those demanded by the public.

Passage of the *Bill* was assisted by widespread public concern regarding the closure of the zoo in Tamworth and the destruction of many of its animals. The Minister for Lands, The Hon. R.J. Hallam, in the second reading speech for the *Bill*, referred specifically to the closure of the zoo in Tamworth and the subsequent destruction of animals. The *Bill* passed in late 1986. The part of the *Act* relating to the Exhibited Animals Advisory Committee was the first to be commenced.

The Tamworth zoo had been placed into receivership in late 1985 due to insufficient funding. Once the zoo closed its gates, the animals were left in their enclosures for over three months as no formal arrangements to care for the animals had been made. One or more people did feed them occasionally but the frequency is not known. There was much publicity surrounding the plight of the animals, with various allegations regarding who was to blame. Representatives from the Department of Agriculture occasionally crawled under the fence to count the animals. Most of the animals had been confined to smaller holding pens presumably because these were more secure and provided less risk of the animals escaping.

A decision was finally made to remove the animals from the zoo. As a result an American brown bear *Ursus arctos* was put down using a shotgun, and a local veterinarian euthanased five lions *Panthera leo* by intravenous tail injection. These animals were euthanased as no other exhibitors wanted them. At the time there was an oversupply of lions in the region and the bear was a rogue who had been donated by a major zoo after it found the bear to difficult to handle. Many of the exotic animals were transferred to a private zoo at Mulgoa in western Sydney, including four jaguars *Panthera onca*, a black leopard *Panthera pardus*, at least one tiger *Panthera tigris*, one bobcat *Lynx rufus* and five racoons *Procyon lotor*. One small monkey named Archie was taken by a circus. Other animals at the failed zoo, such as buffalos and Australian native animals, were moved to other wildlife parks prior to the Department of Agriculture becoming involved.

Arrangements had been made with staff from a Sydney museum to bury the carcasses of the euthanased animals after the museum had taken the heads and skins for taxidermy. Unfortunately, the carcasses were left on top of the ground at the local rubbish tip at Tamworth. These carcasses, with their skins removed, were shown on the Channel 10 National News and caused great concern to many people, especially the local primary school children who had sponsored animals at the zoo.

The establishment of the EAPA resulted in the formation of the Exhibited Animals Advisory Committee (EAAC). Its roles included advising the Zoological Parks Board and monitoring the effectiveness of the legislation. The formation of this committee was strongly argued against by the parliamentary Opposition at the time, because it felt the Zoological Parks Board already had the necessary experience in the care of zoo animals. There was also strong opposition to the composition of the Committee due to fears that animal liberationists, whose views the Opposition regarded as extreme, could have undue influence. Despite the protests the EAAC was formed and now consists of six members who represent: 1) prescribed animal welfare organisations, 2) the *Prevention of Cruelty to Animals Act 1979*, 3) the *Exhibited Animals Protection Act 1986*, 4) the Zoological Parks Board of NSW, 5) the *National Parks and Wildlife Act 1974*, and 6) prescribed organisations representing exhibitors of animals.

In 1988 the Zoological Parks Board employed three staff to administer the EAPA. Licensing of zoos and fauna parks in New South Wales began in 1989 following the inspection of all zoos (except Taronga Zoo and Western Plains Zoo, which were exempt) and fauna parks throughout the state. Facilities were given the opportunity to upgrade to the new standards or to close down prior to the commencement of the standards. At least three parks, including a dolphin exhibit at Port Macquarie, decided to close before licensing commenced. Another well known lion park at Warragamba was closed, after initially being licensed, when the operators decided they could not afford to make the necessary changes to remain licensed. Regulation of the zoo industry continued to be carried out by the Zoological Parks Board of NSW until 1991, when the Zoological Parks Board delegated its powers to NSW Agriculture to allow the subsequent transfer of all authority to NSW Agriculture. The transfer of responsibility was necessary due to concerns about the potential conflict of interest that existed as a result of the licensing authority (the ZPB) also being an exempt exhibitor in competition with the exhibitors it licensed.

The transfer of full responsibility for administering the EAPA was ultimately passed to the Director-General of NSW Agriculture, with the EAAC also transferring its advisory role to the Director-General. Ministerial responsibility was also transferred from the Minister for the Environment to the Minister for Agriculture. Initially the Zoological Parks Board remained exempt from the requirements of the EAPA due to it being a statutory body. This caused a deal of unrest within the zoo community in New South Wales which thought the Zoological Parks Board should be regulated and treated in the same manner as the rest of the industry. Subsequently Taronga Zoo and Western Plains Zoo became licensed in July 2000 after four years of negotiations and upgrades to comply with the standards prescribed by the *Exhibited Animals Protection Regulation* (EAPR). Administration of the zoo industry legislation continued under NSW Agriculture, until its name changed to the NSW Department of Primary Industries (DPI) on 1 July 2005. The Director-General of the NSW DPI is the current licensing authority.

Administration of the Exhibited Animals Protection Act 1986

The EAPA is administered by the Director-General of the NSW Department of Primary Industries, with the day to day responsibility resting with the Leader Exhibited Animals, who has delegated authority for nearly all administrative procedures. Under the current requirements of the legislation, all animals that are on display, or kept for display, to the public must be licensed under the Act unless exempted by the EAPR. The legislation has a strong education focus and all exhibitors are required to undertake educational talks and/or include signage for their displays. There is a thorough review process for applications for a licence to operate an animal display establishment, such as a zoo or fauna park, and for an approval to display animals at mobile establishments. Permits to exhibit prescribed species (most being threatened or difficult to keep, or dangerous) may be held by both mobile exhibitors and zoos. Each display is inspected routinely by inspectors appointed by the Minister and more often if significant non-compliance exists.

A number of standards have been developed to assist in the enforcement of the Act. These standards have been developed after extensive consultation with the exhibited animals industry in New South Wales, including the NSW Fauna and Marine Parks Association, Taronga Zoo and Western Plains Zoo, the Circus Federation of Australia and the Mobile Wildlife Educators Association. Valuable contributions are also made by the staff of zoos in other states, wildlife researchers and animal welfare groups. Standards developed so far include:

- General Standards for Exhibiting Animals in New South Wales.
- Policy on Exhibiting Primates in New South Wales.
- Standards for Exhibiting Australian Mammals in New South Wales.
- Standards for Exhibiting Bottle-nosed Dolphins (*Tursiops truncatus*) in New South Wales.
- Standards for Exhibiting Captive Raptors in New South Wales.
- Standards for Exhibiting Carnivores in New South Wales.
- Standards for Exhibiting Circus Animals in New South Wales.

Standards currently being developed by the Department, in consultation with industry include:

- Standards for Exhibiting Animals at Mobile Establishments in New South Wales.
- Standards for Exhibiting Animals During Temporary Removals in New South Wales.
- Standards for Exhibiting Pinnipeds in New South Wales.
- Standards for Exhibiting Reptiles in New South Wales.

The standards establish minimum requirements for the size of enclosures, public safety, husbandry and management, nutrition and hygiene, capture and restraint, health, behavioural considerations, breeding, and the general operation of exhibition facilities. These standards help to provide a framework for the

Department to administer the Act and are included within the Regulation to give them legal effect. The development of the standards has been driven by the need for consistent assessment of display facilities and plans for new enclosures. Licensees must obtain approval of their enclosure plans from the Department prior to commencing construction. Some parties within the industry see the development of standards and their enforcement as inhibiting, others like it because it takes much of the subjectivity out of the process and makes the application process more predictable.

The Act, Regulation and standards are enforced by inspectors who inspect each exhibitor routinely and in response to complaints. These documents are used by the inspectors as the basis for assessing exhibition facilities and providing directions to upgrade unsatisfactory facilities and practices.

Significant issues that have faced the zoo industry since the introduction of the *Exhibited Animals Protection Act 1986*

Since the development of the EAPA, a number of controversial issues have been faced by those involved in the administration of the Act. The examples that follow have had a significant influence on the shaping of EAPA policy and/or standards and help clarify the public and industry position on the issues.

Handling of koalas by members of the public

Procedures for the successful management of captive koalas *Phascolarctos cinereus* are now well established and self sustaining populations are held throughout Australia and in various other countries (eg Jackson 2003). There is however a significant difference of opinion regarding the appropriateness of allowing zoo visitors to hold koalas. This practice is currently permitted in some states including Queensland, South Australia and Western Australia. In contrast, New South Wales was the first state in Australia to formally ban the holding of koalas by zoo visitors, which it did in January 1997 after being lobbied by the New South Wales zoo industry which was concerned about the impact of the practice on their captive koalas. Concerned about the perceived negative effect on the tourism industry, the Tourism Council of Australia pressured the NSW State Government to change its mind, pointing to a number of tours cancelled for this very reason. However, the ban has remained in place and there appears to have been no long term detriment to the koala tourism industry in New South Wales. Here members of the public are typically allowed to stand next to the koala to have their photo taken, while the koala remains comparatively undisturbed within the fork of a tree or perch. New South Wales has positioned itself to minimise criticisms of exploitation or unacceptably stressing its exhibit koalas. Recently support for the ban on koala handling has come from a study that suggests handling often interrupts resting or feeding times in koalas, which might act as a stressor (Benesch 2007). This study found that even if no immediate stress symptoms are observed on koalas during visitor contact it has an impact

on their activity pattern and time budget. The author of this study questioned whether the ban on holding koalas in New South Wales is enough to protect captive koalas and concluded by suggesting that actual contact between visitors and koalas is not advisable at all.

Animals held in circuses

Despite the continuing popularity of circuses that display performing animals there are several national and international organisations that vocally campaign against their display within these facilities. The Minister for Primary Industries regularly receives letters from members of the public and animal liberation groups protesting against the use of animals, especially the larger exotic species such as big cats, elephants and primates, by circuses. These complaints typically raise concerns about the animals' dignity, the unnatural behaviours they are required to perform, the unnatural surroundings they live in, and the amount of time they spend being transported and suggest their use is a barbaric form of entertainment. Many local councils have banned circuses from displaying on council owned or controlled land due to lobbying by animal welfare and animal rights groups, and complaints from circus patrons. However after subsequent lobbying by the circus industry, many of those councils have reversed their previous decisions and allowed circuses to again display within their council area. In reality there appear to be relatively few complaints from the patrons who actually visit the circuses with animals. Many of the complaints are from people who object in principle to the way circuses use and hold their animals.

The mauling of a circus trainer by a lion in 2001 only helped to focus negative attention on animals in circuses. Headlines in the *Sunday Telegraph* at the time included "Crouching tiger, hidden cruelty": the article quoted Albert Schweitzer the famous physician and philosopher saying "What an amount of suffering and cruel punishment the poor creature has to endure in order to give a few moments of pleasure to men devoid of all thought and feeling".

The New South Wales Government attempts to reflect community opinion and, at this stage, it does not appear that a majority of the community are in favour of banning the use of exotic animals in circuses. In responding to concerns about animals in circuses the DPI highlights its development of welfare standards for the exhibition of circus animals in New South Wales. These standards, introduced in September 1996, were developed in consultation with the circus industry and animal welfare groups and cover a wide range of requirements such as animal housing and management, transport, performance and training, animal dignity and public safety. These requirements are enforceable under the EAPA. The *Standards for Exhibiting Circus Animals in New South Wales* were also endorsed by the National Consultative Committee on Animal Welfare (NCCAW) as the basis for the model code for all Australian jurisdictions.

Inspections of circuses, and all other exhibitors of animals in New South Wales, are carried out by officers of the Animal Welfare Branch within the DPI, to assess

compliance with the EAPA and its standards for the exhibition of circus animals. Compliance with these standards ensures that circus animals in New South Wales receive an appropriate level of care. Despite the opposition of some sections of the community the circus industry appears to remain a successful one in New South Wales with high demand and relatively few complaints.

Euthanasia of healthy animals

It is sometimes necessary for zoos to euthanase animals on welfare grounds due to injury or illness. Zoos occasionally consider euthanasia as an option for healthy animals. Although the management of reproductive capacity is a preferable method of population control, excess animals that cannot be readily placed elsewhere are sometimes euthanased. The euthanasia of healthy animals consistently evokes a strong public reaction. In particular, the euthanasia of some sentimental favourites, such as primates, big cats and large mammals often creates extraordinary public outcry. Most zoos are therefore reluctant to euthanase such animals.

The Department is occasionally asked by exhibitors to approve the euthanasia of certain animals, but it has no authority either to grant or refuse such requests. Rather exhibitors are advised that euthanasia is an internal management decision, to be taken as a last resort only after all reasonable avenues for the placement of animals have been exhausted. If exhibitors do euthanase animals they are advised to be certain they have strong ground for doing so and to have a media strategy in place in case it is required.

Many zoo managers feel that routine euthanasia is acceptable if it assists in achieving conservation goals. They feel some species are best managed by controlling animal numbers and managing species at the population level, rather than at the individual level. An example of this is the management of naturally short-lived species such as carnivorous marsupials of the Family Dasyuridae (Braithwaite & Lee 1979). In the wild these species typically live from only one to four years, but in captivity they can live considerably longer as there is usually less stress involved in finding food, mates and shelter. However, they are also sterile after the period of their typical wild longevity and so provide no reproductive potential after this time. Though many of these post-breeding animals can be relocated to homes at other zoos, there are some for which homes cannot be obtained. So the decision must be made either to euthanase otherwise healthy animals or to stop breeding because of the limited number of enclosures available within the zoo system. The problem with stopping breeding arises from the animals' very short reproductive life. Often they are incapable of restarting breeding if it has been stopped for a year or more. Therefore the cessation of breeding by the exhibitor can significantly increase the likelihood of the captive population becoming extinct.

A similar quandary arises with the use of cross fostering to assist the reproductive output of some endangered species. In recent years, joeys of the critically endangered Victorian brush-tailed rock wallaby *Petrogale penicillata* have been

cross fostered from their mothers to other species such as tamar wallabies *Macropus eugenii* or yellow-footed rock-wallabies *Petrogale xanthopus* with pouch young of a similar age (Taggart *et al.* 2005). The positive side to this is that instead of producing a maximum of one young per year, female brush-tailed rock wallabies have the potential to produce six or more young per year as they mate shortly after giving birth. The downside to this however is that the young of the surrogate wallaby must be either hand-reared or euthanased. Providing resources for hand-rearing of the removed joeys can impact substantially on the resources of the conservation project and may be considered unwarranted from a conservation point of view.

Significant incidents that have occurred since the introduction of the Exhibited Animals Protection Act 1986

Closure of a private zoo

There had been problems with a private zoo in western Sydney over a number of years. These included the euthanasia of numerous animals including five big cats (one leopard, two tigers and two pumas *Puma concolor*) in August 1996. The operator claimed he had taken this action due to "licensing difficulties" and under advice from the Department. These difficulties arose after the operator was advised in February 1996 that the licence renewal application for the 1994/95 period had been refused because of a failure to comply with various requirements. No licence to exhibit animals at the zoo had been issued since 30 June 1994 while the Department tried to get the operator to upgrade his facilities. The Director of the company that owned the zoo had been advised in late February 1996 that he was lawfully obliged to close all animal displays at the zoo and that it was an offence to permit the continued viewing of animals at the zoo by visitors. An appeal to the Minister by the Director of the zoo was unsuccessful in May 1996.

Further complaints regarding the park were received from members of the public in late February and mid May 1996. A subsequent visit by staff of the Animal Welfare Unit in July 1996 discovered that the facility was displaying a number of species, including ten permit species, to the public. After the department commenced enforcement action, all the animals were sold to other zoos and fauna parks between late 1996 and early 1997.

The Directors of the companies that owned the zoo were subsequently prosecuted for using the premises as an animal display establishment without a licence, and exhibiting ten permit species without authority. The species displayed included alligator *Alligator mississippiensis*, wedge-tailed eagle *Aquila audax*, koala, spider monkey *Ateles geoffroyi*, crab eating macaque *Macaca fascicularis*, mandrill *Mandrillus sphinx*, jaguar, tiger, dingo *Canis lupus dingo* and fallow deer *Dama dama*. In March 1999 one of the Directors pleaded guilty to eleven breaches of the EAPA and was fined \$5,500 and ordered to pay costs of \$5,500. The company was also ordered to pay a further \$11,000 in fines and costs.

Arna the solitary elephant

Arna, a female Asian elephant *Elephas maximus* owned by a circus, became solitary when her elephant companion of 30 years died on 16 July 1996. As it is widely known that elephants are social species this situation received considerable attention from members of the public and particularly from animal liberation groups opposed to animals being held and used in circuses. As a result of concerns over Arna being held by herself, the Department of Agriculture received petitions with thousands of names and hundreds of emails and letters.

Throughout the period that Arna was by herself she was inspected at least every six months when residing in New South Wales. Her welfare was assessed by veterinary inspectors of the Department of Agriculture, an elephant keeper from Taronga Zoo, a wildlife veterinarian from the University of Queensland, and on at least one occasion by a veterinarian from the University of Sydney. Their investigations consistently concluded that Arna was in good physical and mental health and was not apparently stressed by the lack of an elephant companion as she had a strong, secure and longstanding bond with her trainer and other circus staff. Advice that the risk of attempting to combine her with other elephants was unwarranted was also reiterated on a number of occasions by the people mentioned above.

A short term partial introduction was undertaken between Arna and three elephants from another circus on 30 December 2000. Animal Liberation filmed this introduction and subsequently made statements in the media describing Arna's behaviour as distressed, agitated, neurotic, psychotic and disturbed as a result of the removal of the three other elephants later that day. The Exhibited Animals Advisory Committee and the senior elephant keeper agreed that the level of agitation did not occur until well after the departure of the other elephants and thought that it was difficult to maintain the argument connecting this behaviour to the departure of the elephants. Indeed there was opinion to suggest that the behaviour of the protestors may have contributed to Arna's aberrant behaviour.

The president of Animal Liberation NSW commenced a prosecution action against the circus involved and NSW Agriculture under the *Prevention of Cruelty to Animals Act* in March 2001. The proceedings against the circus operators alleged they had breached the *Prevention of Cruelty to Animals Act*. These allegations were made after publicising the footage of the elephant in an agitated state after the removal of the elephants on 30 December 2000. The proceedings against NSW Agriculture alleged the government knowingly permitted the commission of acts of cruelty upon Arna by permitting her owners to deny her contact with other elephants. Both of these proceedings were unsuccessful.

In August 2003 an elephant companion was found for Arna. Gigi was another circus elephant that had become solitary as a result of her companion dying. After an incident at the circus in which one of the trainers was killed both elephants were transported to Western Plains Zoo in Dubbo in January 2008. The introduction of Arna to Gigi was apparently straightforward and without incident. Given the small

elephant population in Australia, it is highly likely that more elephants will become solitary in the future.

Closure of a well-known fauna park

On 6 February 2003 all animals from a fauna park at Duffy's Forest in Sydney, the home of "Skippy" the bush kangaroo, were seized by inspectors of NSW Agriculture, with the assistance of Taronga Zoo, members of the NSW Fauna and Marine Parks Association, NSW RSPCA and NSW Police. The seizure of the animals received widespread media coverage with all of the major television stations present. The owner of the park made various allegations about the Department whose officers were referred to as "storm troopers". The company that owned the park went into voluntary administration the day after the animals were seized.

The seizure of these animals was the result of the operator exhibiting animals without a licence. The fauna park had been the subject of an increasing number of complaints over the previous few years. The issues faced by the park were highlighted by the media release issued on 6 February 2003, by the then Minister for Agriculture, who said the reasons for the intervention included:

- an unacceptably high number of animals deaths (more than 30% a year);
- failure to obtain veterinary treatment;
- failure to keep animal health records;
- inadequate staffing in terms of number, experience and training;
- provision of poor diets and husbandry standards;
- insufficient maintenance of enclosures and park facilities; and
- failure to make required changes and comply with directions under the EAPA.

After the animals were seized they were held in zoos and fauna parks throughout New South Wales. The majority of the animals were subsequently transferred to the various fauna parks in exchange for having looked after them, while a small number were sold to other exhibitors who had not been involved in caring for them.

The Director of the company that owned the park was charged with knowingly exhibiting animals without holding an animal display establishment licence and with exhibiting prescribed species without a permit. The defendant entered a plea of guilty to both offences during a court appearance in March 2005. The magistrate found that the defendant had not taken effective steps to remedy the inadequacies identified by Departmental staff in relation to the maintenance of the park. Issues that were identified included inadequate staffing, poor veterinary treatment, inadequate food for the animals, insufficient shading for birds, insufficient labelling of animal enclosures and failure to obtain a companion for the dingo. The magistrate found that the breaches by the defendant were flagrant in light of warnings previously given to the defendant by the Department.

The magistrate also found that the defendant had poorly attended to the matters required by the Department,

which he found had been addressed either incompletely, inadequately or not at all. He found the defendant had not set out to be cruel to animals and indicated that he was not punishing the defendant for cruelty to animals. However, he bore in mind the need to punish the defendant such that the punishment would have a general deterrent effect. The Director of the company was ordered to pay \$7,000 in fines and costs for each of the two offences.

Cancellation of exhibitor authorities and prosecution of mobile exhibitor due to neglect of animals.

In September 2004 police were called to the residence of a mobile exhibitor of reptiles by neighbours who feared that the occupant may have been deceased. Once inside they found many dead and sick reptiles.

RSPCA inspectors subsequently attended the premises in the early hours of the morning and examined the reptiles and their facilities. Department of Environment and Conservation officers also attended. After a thorough inspection of the premises the RSPCA seized the reptiles under the *Prevention of Cruelty to Animals Act 1979* with the guidance of the Department of Environment and Conservation, on the grounds that the reptiles had been abandoned and due to concerns about the number of deceased reptiles on the property, the quality of housing of the reptiles, the provision of food and water for them and the health and physical condition of a number of the reptiles. After the animals were initially seized by the RSPCA most of these were subsequently seized by the Department of Environment and Conservation under the *National Parks and Wildlife Act 1974* due to concerns that the person did not have a licence for them and that the records were inadequate.

A number of the animals seized from the person were being held under EAPA authorities. However as many of the animals were also of species held under his Department of Environment and Conservation Licence, and because of the person's poor record keeping, it was difficult for the officers from the Department of Environment and Conservation and DPI to identify which authority many of the animals were held under.

It was later found that the owner of the reptiles had loaned a number of animals to another person without an exhibitor's authority while the owner was away. This was revealed when the person notified the Department of Environment and Conservation. The display of the animals without adequate supervision by the authorised exhibitor was allegedly a breach of the General Standards for Exhibiting Animals in New South Wales, as adequate supervision of display animals by the authority holder is required. These animals were subsequently held at the unauthorised person's home, also allegedly a breach of the conditions of the exhibitor's authority.

As a result of these events the reptile exhibitor was formally interviewed at their home address by DPI inspectors. Though the house had been greatly cleaned up since the seizure of his animals several weeks before, it still smelt strongly of dead animals and reptile faecal matter. After the interview with the person the inspectors were shown a video of the seizure that had been made by

the RSPCA. It showed that the premises were kept in a highly unhygienic state, and that many of the enclosures contained dead animals, with some including both dead animals and live animals, such as a dead snake in the water with a live juvenile crocodile.

The person was a relatively new exhibitor who had begun to exhibit only 18 months before. As part of the approval process, the person's reptile facilities had been assessed by an inspector authorised under the EAPA. The facilities were considered acceptable at that time. At that inspection the number of animals was considerably less than the number subsequently seized, so the rapid acquisition and the death/disappearance of so many animals was a matter of great concern.

Due to the breaches of the legislation the person's approval and permit to display animals were cancelled and the person was prosecuted, resulting in a plea of guilty to four charges. The charges included contravention of a condition of authority requiring animals be kept at the address specified in the authority, contravention of a condition of an authority requiring that up to date records be kept, failure to lodge animal records on suspension and cancellation of authority, and failure to make sure there was, at all times, a person authorised to call for veterinary advice in relation to animals. As a result the person was ordered to pay fines and costs of \$3,865.

Inconsistencies between the requirements of the EAPA and other legislation

Most of the requirements under the EAPA are consistent with other legislation, however there are several that are not. For example, an exhibitor of dingoes is required to hold a Permit under the EAPA. The applicant for such a permit must demonstrate significant experience in dingo husbandry and have a thorough understanding of dingo behaviour and housing requirements. The applicant must commit to holding the animal in an enclosure that has an area of at least 220m² with an adjoining holding area of 25m², and a fence height of at least 2.5 metres with an additional fence inhang of 0.5 metres to stop the animals escaping.

In contrast, under the *Companion Animals Act 1998* the only requirement placed on a person keeping a dingo is that the animal, which the Act treats as a domestic dog; be implanted with a microchip for identification. It became legal for members of the public to keep dingoes when the definition of wild dog in the *Rural Lands Protection Act 1998* was amended to exempt any dingo held in captivity. This means that the pest control provisions relate to the dingo only if it is living in the wild. Dingoes that are domestic pets are therefore only subject to the *Companion Animals Act*.

The changes to the *Rural Lands Protection Act* in 1998 allowing the private ownership of dingoes have caused considerable problems. Not long after the changes were made, the Animal Welfare Branch of the Department of Agriculture became aware that several fauna parks were selling large numbers of dingo pups to members

of the public. Concerns were raised by The Australian Dingo Conservation Association regarding the high abandonment rate for dingoes once they reach two years of age due to a change in their behaviour which occurs at this time. It appears that dingoes at this age often become more aggressive and aloof towards their owners or other dogs, more prone to escaping and more prone to attacking other domestic animals.

The Minister for Local Government was advised of the concerns regarding keeping dingoes as pets in 2002. Although dingoes can be held in domestic situations if the owner understands the significant long-term requirements for the animals, we believe they should not normally be considered appropriate pets for most households as:

- they can become dangerous;
- they usually bond with only one person within a household so other household members will often have little control over them;
- there is a high likelihood of them escaping if they are not maintained in an adequate enclosure;
- they have a significant predatory nature towards other pets and farm animals; and
- facilities and individuals that breed them are potentially maintaining and exacerbating the hybridisation of dingoes as it is likely that most captive dingoes are hybrids with domestic dogs.

This situation could be resolved by reclassifying the status of the dingo under the *Companion Animals Act* or by prescribing conditions which restrict ownership of dingoes to those who have adequate experience and appropriate facilities. No changes have been made to the *Companion Animals Act* since this advice was provided and the issue remains unresolved.

Conclusions and future directions

The introduction of the EAPA in 1986 has seen a fundamental change in the standard of care of animals held on display in New South Wales. Initially there was a dramatic increase in the standard of exhibition due to exhibitors either upgrading to meet the requirements of the legislation and standards, or simply closing. Subsequently, the quality of the zoo industry in New South Wales has steadily improved, with the development of further exhibition standards in collaboration with organisations such as the NSW Fauna and Marine Parks Association, the Zoological Parks Board, the Circus Federation of Australia and the Mobile Wildlife Educators Association.

Increased professionalism in the zoo and fauna park industry has also been driven by the industry itself. The formation of the NSW Fauna and Marine Parks Association in 1981 has provided the industry with a forum to exchange ideas and promote the industry. The objectives of the NSW Fauna and Marine Parks Association include:

- 1) promoting the industry of commercial fauna and marine parks in Australia, particularly in the State of New South Wales;

- 2) encouraging, fostering and engendering good relationships, ethical behaviours and professionalism;
- 3) promoting the philosophy of wildlife parks for the purpose of conservation, education, research and recreation;
- 4) liaising with government bodies and other organisations in the development and management of sustainable wildlife management practices;
- 5) providing technical advice and current information to the industry;
- 6) taking any necessary action to represent the views and requirements of the association members in all matters pertaining to the fauna and marine parks industry; and
- 7) developing and promoting high standards of animal care and management throughout the industry.

The increased professionalism has also been driven by changing attitudes of the general public, who are ever more knowledgeable and subsequently have increasingly higher expectations with regard to the quality of displays and animal welfare. As a result of these expectations, facilities that are not at a satisfactory standard tend to be reported by members of the public or animal welfare groups. In turn these complaints lead to inspection of these facilities, and where necessary, EAPA inspectors issuing directions to exhibitors to elevate their facilities and/or practices to the appropriate standard. An exhibitor who fails to satisfactorily upgrade faces closure of the premises and/or prosecution.

The complaints made by members of the public, inspections of facilities and the significant issues and events that have faced the zoo industry since the introduction of the Act have all helped to drive change. These issues have often tested the legislation and identified shortcomings resulting in numerous changes to the standards and legislation.

Many exhibitors approve of the zoo industry being regulated, as they think that it helps to maintain a high standard for the entire industry. They also suggest that it provides a more consistent application of the legislation and allows exhibitors to plan new exhibits more easily as they know from the outset what the expectations are. Some exhibitors, however, see some aspects of the regulation of the industry as inhibitory, especially when they do not get their way on a particular issue. At these times there have been calls by some members of the zoo community to become self regulated. However, when the *Exhibited Animals Protection Regulation* was reviewed in 2005, the strong belief throughout the industry appeared to be that a licensing scheme administered by the NSW State Government was the most appropriate way forward.

The Department of Primary Industries has a strong working relationship with the industry. Together this team has enormously increased the professionalism of the industry in New South Wales over the last 20 years. Testament to the effectiveness of this has been the adoption of standards developed in New South Wales

by several other states. The New South Wales standards have, with minor alteration, also been adopted by the South East Asian Zoo Association and have formed the basis for a proposed regulatory system in Papua New Guinea. The regional zoo association, the Australasian Regional Association of Zoological Parks and Aquaria or ARAZPA, also sought permission to use the New South Wales standards as the basis for its own guidelines.

Future directions for the regulation of the zoo industry in New South Wales include:

- electronic licensing with forms available on the internet;
- electronic submission of animal records instead of hand written records;
- one exhibitor authority instead of the three authorities (Permits, Approvals and Licences) currently prescribed;
- reduction in application requirements in situations where an exhibitors' standard operating procedures can be approved;

- potentially combining the *Non-Indigenous Animals Act 1987* with the EAPA;
- development of further standards for other groups, such as birds and ungulates; and
- promotion of national standards for exhibited animals.

To aid in the development or revision of standards it is important that more research be undertaken to identify the specific requirements of different animal groups. Currently most enclosures are provided for captive animals without testing what specific features the animals actually prefer. In the case of some groups, enclosure design has been driven by what is easier for the keeper of the animals, rather than by what is best for the animals, and therefore the Animal Welfare Branch will advocate that standards be based on tests to indicate the preference of animals towards different enclosure sizes, social groups, substrates, climbing opportunities, shelter, enclosure designs and enclosure furniture.

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