Part 4:
Animals in Entertainment and Sport

Captive Dolphins In Australia
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1 Introduction

Throughout the world, animals are used and often harmed for the purpose of human entertainment. In rodeos, circuses, zoos and aquaria, animals are held captive and forced to perform acts which are often unnatural, to further the economic, social and cultural interests of humans. Cetacea, which include dolphins, whales and porpoises, are kept in aquariums around the world and are often forced to perform tricks and shows as a form of entertainment for humans. These shows are a source of substantial economic profit. While it is argued that dolphin captivity can provide valuable education for the public, opponents believe that any education and research generated through captive dolphin exhibits cannot justify the suffering caused to the dolphins. In Australia, the States and Territories are responsible for the regulation of animal welfare, and most have enacted relevant legislation and codes of
practice which offer standards and guidelines in relation to dolphin captivity and exhibition. This essay will comment on the existing legislative frameworks for dolphins in captivity in Australia, evaluating their adequacy in protecting dolphins from cruelty, stress and suffering.

2 Dolphin Captivity in Australia

For many years, aquaria, which are facilities which confine animals within water tanks displayed to the public, have operated as a source of human entertainment. Bottlenose dolphins are the most common cetacean that is held in captivity around the world. In Australia, there are currently thirty-two bottlenose dolphins held at Sea World on the Gold Coast, and four at the Pet Porpoise Pool in Coffs Harbour. While some of these dolphins have been rehabilitating from injuries, many are held in captivity for recreational use and entertainment. Dolphins are highly intelligent animals. They have a large brain, possess a complex vocabulary and a complex neocortex, which ‘has been linked to problem-solving, self-awareness and processing emotions in people’. With this high level of intelligence in mind, many people argue that dolphins held in captivity are imprisoned and are suffering as they are denied a natural existence by being held in aquariums. Marine animals in captivity spend their life in a highly restricted space that allows ‘limited scope to perform natural hunting, social and reproductive behaviour’. All aspects of the animals’ lives are monitored and managed and animal rights activists have likened this to slavery. Randall Eaton notes that cetacean, namely dolphins and orcas, have poor records in captivity, as they have ‘poor breeding success, shorter life spans, and poor health in captivity’.

1 Peter Sankoff, Steven White and Celeste Black (eds), Animal Law in Australasia (The Federation Press, 2nd ed, 2013) 142.
6 Ibid.
There is much contention relating to the role of zoos and aquaria within society, and as to whether these facilities serve purposes other than the display of animals for human entertainment. Zoos and aquaria have been regarded as ‘guardians of endangered species’\footnote{Sankoff, White and Black, above n 1, 142.}, and they claim to promote ‘community education, research and conservation’\footnote{Sankoff, White and Black, above n 1, 142.}. Zoos and aquaria can play a role in the conservation of endangered species, as a number of species which have died in the wild or were on the verge of extinction have been saved through captive breeding programs in zoos and aquaria.\footnote{John Pickrell, \textit{How Zoos are Saving Our Animals} (3 August 2010) ABC Environment <http://www.abc.net.au/environment/articles/2010/08/03/2971822.htm>.} Sea World Australia asserts that captive breeding programs can offer ‘a glimmer of hope and often refuge from environmental degradation issues’\footnote{Sea World Australia, \textit{Animal Management: Overview} <http://seaworld.com.au/research-and-rescue/animal-management.aspx> .} for marine species, and that they must maintain their captive dolphin population so that they can ‘continue to learn, educate and foster care for, all well-being of these precious mammals’\footnote{Ibid.}. Many zoos and aquaria aim to educate the public about conservation and environmental concerns relating to their animals. Sea World believes that people are more likely to value and wish to protect an animal if they are able to experience it up close.\footnote{Ibid.}

However, animal captivity can be harmful to the animals, regardless of the standard of care that they receive. Opponents to dolphin captivity assert that these goals of education, research and conservation cannot justify the pain and suffering that is imposed upon captive dolphins.\footnote{Sankoff, White and Black, above n 1, 145.} Those against animal captivity believe that dolphin exhibitions are not appropriate educational experiences because the dolphins don’t display the behaviour that they would in the wild due to restrictive and unnatural living conditions.\footnote{Animal Concerns Research and Education Society (ACRES), \textit{Suffering Not Smiling: The Truth About Captive Dolphins} <http://www.zoocheck.com/reportpdfs/acresdolphinreport.pdf> 26.} The Whale and Dolphin Conservation Society claims that ‘marine parks and dolphinariums significantly distort the public’s understanding of the marine environment’\footnote{Ibid.}, as they mislead people to think that it is
healthy and normal for cetacea to be kept captive in small areas. Captive dolphins are forced to perform tricks to entertain humans at dolphin shows and are given dead fish as reward. This is vastly different to their natural existence where they use their instincts to hunt for food. It is alleged that many aquariums and marine parks use deliberate punishment as a fundamental aspect of the training regimes. According to former dolphin trainer at Sea World Australia, Doug Cartlidge, if the dolphins are not performing properly, they are locked away in a pen on their own, and ignored. Cartlidge refers to this punishment as ‘psychological torture’. Many marine parks offer contact sessions where people, for an additional fee, can meet the dolphins, touch them, and sometimes swim with them. At Sea World in Australia they have various ‘dolphin adventures’ where visitors can have a ‘once-in-a-lifetime experience’ with the dolphins. Contact and petting sessions can cause additional stress on the captive dolphins, increase the chance of disease transmission, cause the dolphins’ sensitive skin to be exposed to the sun for extended periods, and can cause risk to the public of serious injuries.

4 The Law in Australia

In Australia, there is no federal legislation which specifically deals with the use of animals for entertainment. The Australian Constitution does not explicitly address matters of animal welfare, and therefore, the Commonwealth does not have a significant role in this area. In 2009, the Australian government drafted the Australian Welfare Standards and Guidelines: Exhibited Animals. These standards and guidelines have been reviewed by a panel of the Australasian Regional Association of Zoological Parks and Aquaria, and are open for public

19 Sankoff, White and Black, above n 1, 145.
20 ACRES, above n 17, 22.
21 Ibid, 24.
22 Ibid.
23 Ibid.
25 ACRES, above n 17, 24.
26 Sankoff, White and Black, above n 1, 130.
28 Sankoff, White and Black, above n 1, 130.
consultation. These standards aim to ‘ensure animal health and welfare and public safety’. In 1986, Victoria was the first Australian state to prohibit the capture of cetaceans from the wild for purposes of live display. Section 238(4) of the Environment Protection and Biodiversity Conservation Act 1999 (Cth) states that ‘the Minister must not grant a permit authorising its holder to kill a cetacean or to take a cetacean for live display’.

The State and Territory governments have long had the responsibility for animal welfare regulation and ‘the issuance of permits for keeping native and exotic species in zoos and aquaria’. Each State and Territory, except for the Northern Territory and South Australia, has its own legislative framework governing captive animals in zoos and aquaria, and the movement of these animals within Australia. Some states and territories also have codes of practice which ‘promote greater responsibility by zoos [and aquaria] for the professional exhibition of native animals’. In Queensland, the Animal Care and Protection Act 2001 (Qld) ‘promote[s] the responsible care and use of animals’. The Act outlines the duty of care owed to an animal by the person in charge of it, and contains provisions about cruelty prohibitions, the use of animals for scientific purposes, and the appointment of authorised officers. The Code of Practice of the Australasian Regional Association of Zoological Parks and Aquaria: Minimum Standards for Exhibiting Wildlife in Queensland provides detailed standards for exhibiting wildlife, regarding husbandry, food requirements, transport requirements and record keeping.

31 Schillmoller and Hall, above n 9, 105.
32 Environment Protection and Biodiversity Conservation Act 1999 (Cth) s238(4).
33 Sankoff, White and Black, above n 1, 143.
34 Ibid.
36 Animal Care and Protection Act 2001 (Qld) s3(a).
37 Animal Care and Protection Act 2001 (Qld).
In New South Wales, the regulatory framework is ‘quite comprehensive compared with the other States and Territories’.\(^40\) The *Exhibited Animals Protection Act 1986* (NSW) regulates the exhibition of all animals in New South Wales, whether they are in permanent displays such as aquaria, or temporary establishments such as circuses.\(^41\) The Act requires exhibitors to hold an authority issued by the Director-General of Industry and Investment New South Wales and that animal exhibitions adhere to standards produced by the Director-General.\(^42\) The *General Standards for Exhibiting Animals in New South Wales*\(^43\) list the minimum standards necessary to ‘ensure the welfare of animals kept for exhibit purposes’.\(^44\) The standards cover a range of areas including the psychological and physical welfare of animals, public safety, and the educational value of exhibits.\(^45\) Clause 18 requires that the ‘size and shape of enclosures must provide freedom of movement, both horizontally and vertically’.\(^46\) Clause 19 requires that exhibits provide, as far as possible, a ‘naturalistic setting’ that is similar to the animal’s habitat, unless the exhibitor can demonstrate that their exhibit will offer ‘sufficient educational merit’ which could not be achieved if the requirement were enforced.\(^47\)

There are also specific standards for the exhibition of bottle-nosed dolphins in NSW. Clause 5 of these standards provides that applicants for a license to exhibit captive dolphins need to show that education plays a key role in all aspects of the exhibition.\(^48\)

### 5 Assumptions Informing the Law

The aim of animal protection legislation is to prevent the ill-treatment of animals.\(^49\) Regulation for animals used in entertainment industries aims to minimise harm and suffering caused to animals to a degree that is necessary to fulfil the human desire to be entertained.\(^50\)

\(^{40}\) Sankoff, White and Black, above n 1, 143.


\(^{42}\) Ibid.


\(^{44}\) Ibid, cl 2.

\(^{45}\) Ibid.

\(^{46}\) Ibid, cl 18.

\(^{47}\) Ibid, cl 19.


\(^{49}\) Sankoff, White and Black, above n 1, 8.

\(^{50}\) Ibid, 129.
animals is viewed as being unnecessary if it does not provide any wider social benefit, and therefore suffering is assessed against the advantages achieved by imposing the suffering. Regulation of animals in entertainment often allows some degree of harm to animals, which is seen as justified on the basis that it provides entertainment, and/or education to humans. Various state and territory legislation and codes of practice prescribe the keeping of dolphins in tanks that are very small and allow little movement compared with their wild habitat. There is evidence that this causes suffering to dolphins, yet it is enshrined in law because it allows people to see dolphins up close for educational and entertainment purposes. It is evident when looking at legislation which regulates the exhibition of animals, including dolphins, that it is human demands that predominate. The suffering caused to dolphins for entertainment and education is permissible under Australian legislation, and is seen as legitimate because of its benefits to humans, particularly economically. Rather than a neutral balance between human needs and animal suffering, the balance is ‘tilted heavily from the outset in favour of justifying the harm imposed’. Human privilege has primacy over animal suffering, as ‘efficiency, higher economic productivity, more desirable aesthetics and even entertainment count as legitimate ends’. The law also appears to particularly value education in animal exhibitions, and appears to prioritise this education over the welfare of animals in some circumstances.

6 Adequacy of the Law

The existing law which regulates the exhibition of dolphins in aquaria does not sufficiently protect the welfare interests of the dolphins, as cruelty and suffering are routine in animal entertainment industries. While State and Territory legislation and codes of practice include standards and guidelines which offer some protection to dolphins, the reality is that this legislation does not protect them from the pain and suffering of being kept in captivity and used for entertainment purposes. In 1985, the Senate Select Committee on Animal Welfare

51 Ibid, 15.
52 Ibid, 16.
53 Ibid, 18.
54 Ibid, 16.
55 Sankoff, White and Black, above n 1, 27.
56 Ibid, 129.
published a report titled *Dolphins and Whales in Captivity*. The report indicated that cetaceans experience ‘varying degrees of stress and trauma during capture and captivity’, and the committee concluded that cetaceans should ‘not be subjected to the possibility of deprivation or suffering which conditions and quality of life in captivity might occasion’. The World Society for the Protection of Animals is one of many organisations that actively fight for the closure of all dolphin attractions. They believe that despite the existence of frameworks which regulate live dolphin exhibitions, ‘the entire captive experience for marine animals is so sterile and contrary to even the most basic elements of compassion and humanity that it should be rejected outright’. They assert that it is ‘unacceptable for marine mammals to be held in captivity for the purpose of public display’.

In the wild, cetacea swim large distances, some suggesting that it is up to 100 miles per day. In their natural environment, they are almost always in motion, and they often dive deeply, with some species spending under 20% of their time at the surface of the water. Life for dolphins in captivity is far different from life in the wild. In captivity, dolphins are confined in small tanks, which may be as small as 24 feet long, 24 feet wide, and 6 feet deep. Professor Giorgio calls this an ‘inherent contradiction’, as dolphins that are ‘accustomed to vast open spaces’, are kept in cramped conditions. Experts believe that the physical activity possible in the small exhibition tanks is far less than what is suitable, and necessary for satisfactory physical health of the dolphins. Enclosures for captive dolphins are more simplistic than their natural habitat, as it is not possible to replicate the natural setting of a


58 Schillmoller and Hall, above n 9, 106.

59 Ibid.

60 Ibid.

61 Ibid.

62 Schillmoller and Hall, above n 9, 106.

63 Ibid.


65 ACRES, above n 17, 13.

66 PETA, above n 62.

67 ACRES, above n 17, 14.

68 Ibid.

69 Ibid.

70 Ibid, 13.
dolphin in an aquarium or marine park.\textsuperscript{71} Dolphin enclosures are usually bland and sterile environments, and the tanks are chemically treated.\textsuperscript{72}

Boredom, restriction of normal activities, and sensory deprivation are serious concerns for captive dolphins.\textsuperscript{73} Evidence suggests that captive dolphins experience severe mental and physical stress, which can be expressed through aggression and frustration, stereotypies, and other behavioural changes.\textsuperscript{74} This stress can cause some captive dolphins to exhibit self-inflicted trauma, such as drifting on the surface of the water, or chewing on concrete and causing damage to their teeth.\textsuperscript{75} Captivity causes dolphins ‘profound social disturbance and neurotic behaviour’\textsuperscript{76}, which are then worsened by the tricks that dolphins are often forced to perform.\textsuperscript{77} Some captive dolphins have even ended their own lives by jumping out of their tank, hitting their head against the side of the tank, or not coming up from under the water for air.\textsuperscript{78} Some dolphins in captivity also die prematurely due to gastroententitis and fungal infections.\textsuperscript{79} A 2009 report titled \textit{The Case Against Marine Mammals in Captivity} identified that between 5.6\% and 7.4\% of dolphins die each year in captivity.\textsuperscript{80} This is higher than the 3.9\% in the wild.\textsuperscript{81}

\textbf{7 Law Reform}

While state and territory legislation and codes of practice do offer some protection to dolphins used for entertainment in aquaria by aiming to promote animal health and welfare, evidence suggests that the welfare of these animals is not adequately protected, and that they are subject to pain and suffering by being held in captivity. The current regulatory frameworks are insufficient, and reform is needed. It is concerning that the Northern Territory and South Australia don’t have any legislation or codes of practice in place to regulate the keeping of

\begin{itemize}
\item \textsuperscript{71} David Grimm, above n 5, 527.
\item \textsuperscript{72} Ibid.
\item \textsuperscript{73} ACRES, above n 17, 14.
\item \textsuperscript{74} Sankoff, White and Black, above n 1, 145.
\item \textsuperscript{75} PETA, above n 62.
\item \textsuperscript{76} ACRES, above n 17, 14.
\item \textsuperscript{77} Ibid.
\item \textsuperscript{78} Grimm, above n 5, 527.
\item \textsuperscript{79} Ibid.
\item \textsuperscript{80} Ibid.
\item \textsuperscript{81} Ibid.
\end{itemize}
dolphins in aquaria. It is essential that these jurisdictions adopt legislation and codes of practice which offer guidelines and standards that must be followed by aquaria, and provide penalties for where they are not adhered to. In the 1985 report, *Dolphins and Whales in Captivity*, the Senate Select Committee on Animal Welfare recommended that no new facilities for holding captive cetacea be established, and that ‘the keeping of cetacea should eventually be phased out unless further research justifies their continuance’. If the welfare of dolphins in Australia is to be adequately protected by the law, all dolphin captivity for entertainment must be prohibited and the keeping of dolphins in aquaria phased out. Overwhelming evidence suggests that aquaria ‘cannot adequately provide for the physical, health and behavioural needs’ of cetacea, and therefore their health and welfare are compromised when held in captivity and forced to entertain humans.

A number of countries have completely banned dolphin entertainment shows. In May 2013, the Ministry of Environment and Forests in India forbade keeping dolphins captive for public entertainment. The ministry said that it is ‘morally unacceptable’ to keep them held in captivity for the purpose of human entertainment. Due to the high level of intelligence of dolphins, India has granted them the status of non-human persons, therefore giving them their own specific rights. India is now the fourth country to prohibit captive dolphin shows, along with Costa Rica, Hungary and Chile. Dolphin enclosures and exhibits cannot closely resemble the natural habitat of dolphins, and therefore they should be prohibited to ensure that dolphins are not suffering in captivity. If dolphins in Australia are to be protected from cruelty and suffering, Australia should follow the lead of India and other countries, and prohibit the keeping of dolphins captive for entertainment.

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82 Sankoff, White and Black, above n 1, 143.
83 Senate Select Committee on Animal Welfare, above n 56.
84 Senate Select Committee on Animal Welfare, above n 56, recommendation 8.10.
85 Sankoff, White and Black, above n 1, 145.
86 Ibid.
89 Ibid.
90 Despain, above n 86.
91 Ibid.
8 Conclusion

Based on the outlined evidence, it appears that the regulative frameworks governing dolphins in captivity in Australia do not adequately protect their welfare. The regulations seem to allow suffering to dolphins based on the premise that it is ‘necessary’ in order to provide wider social benefits such as human entertainment, economic profit, public education and scientific research. Captive dolphins endure stress and frustration due to being kept in enclosures which are vastly different from their natural environment, and this stress is exacerbated by being forced to perform tricks, and participate in shows and human contact sessions. State and territory legislation and codes of practice offer some protection to captive dolphins, but they do not protect them from suffering. The small tanks and pools that hold dolphins in aquaria and marine parks can cause them to express aggression and frustration, and make them vulnerable to diseases and fungal infections. It is not possible to confine dolphins in small areas without causing them to suffer, and therefore in order to protect their welfare, dolphin captivity and dolphin entertainment shows should be prohibited and phased out.
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