

ANIMAL WELFARE (CIRCUSES) CODE OF WELFARE 2004 REPORT

Introduction

1. The draft Animal Welfare (Circuses) Code of Welfare 2004, the Code, has been developed by the National Animal Welfare Advisory Committee (NAWAC), pursuant to the Animal Welfare Act 1999 (the Act). This report accompanies the Code recommended by NAWAC to the Minister as required by section 74 of the Act. The report notes:
 - (a) the reasons for the Committee's recommendations;
 - (b) the nature of any significant differences of opinion about the Code, or any provision of it, that have been shown by the submissions; and
 - (c) the nature of any significant differences of opinion about the Code, or any provision of it, that have occurred within the Committee.

In providing this report, NAWAC notes that it fully considered all submissions it received, reviewed relevant scientific literature, and that there was lengthy debate among committee members on many points. This report is not required to, and does not attempt to, show every detail of the analysis and discussions that took place.

2. Circuses began as wondrous exhibitions of exotic animal species and perhaps chariot racing, in ancient Egypt and Greece. In Roman times, reflecting the morals of the day, they featured athletes who fought to the death for their freedom, exotic animals and animal duels, equestrian acts and chariot racing. Generally forgotten through the Dark Ages, groups of touring performers presented trained animals, acrobatic feats and riders keeping circuses going at marketplaces. The modern circus came about through a British cavalryman performing equestrian feats interspersed with clown antics, and later including tumbling, rope-dancing and juggling acts, and performing animals. The permanent equestrian shows were replaced by rolling shows, the predecessors of the modern tented circus. In the US at least, exotic animals were added to circuses in the early 19th century.¹ Some modern circuses contain no animals (neither exotic nor domestic) and among the more popular are the Cirque productions (e.g. Cirque Dreams and Cirque du Soleil) which elaborately combine theatre and music with the circus.

3. A circus* is defined, for the purposes of the Code, as a group of animals under the same ownership or control and that is usually a mobile entity, that primarily perform or are displayed for public exhibition. There are three animal circuses operating in New Zealand, but only one has exotic animals - four primates (two rhesus macaques, a capuchin, and a bonnet macaque), three lions and one elephant. Domestic animals kept in otherwise traditional circuses include horses and dogs. While there are other forms of touring animal acts, such as magician shows and farm sheep and dogs, they are not covered by the traditional understanding of the term circus, and are thus not subject to the provisions of this Code.
4. Circuses operate primarily to (1) entertain people and in doing so, (2) generate revenue. However, they have a variety of other potential functions and characteristics including (3) they may provide educational opportunities, (4) they are a way of life for the people involved, (5) they promote interactions between humans and animals in contrast to seeing animals at a distance, (6) they treat animals as individuals, and (7) they arguably provide suitable environmental enrichment opportunity (i.e. training and performing) for captive animals (the human – animal bond can be very enriching for both parties²). In addition, circuses are uniquely placed to undertake (though they rarely do) research into differences between individual animals' personalities, training and human interactions, and animal cognition.³ Circuses also have a number of limitations, most notably by their nature, they cannot provide the environmental space and complexity some animals require in order to be able to display normal patterns of behaviour. Furthermore, this limitation may not be completely compensated for by the positive or enriching effects of training, performing and interacting with humans.

Code preparation and public submissions

5. The Animal Welfare (Circuses) Code of Welfare was drafted on behalf of NAWAC. The draft Code addressed circus operation; food and water; shelter and accommodation; husbandry practices; disease and injury control; and transport. Representatives of those likely to be affected by the Code were consulted during its preparation and before public notification.
6. NAWAC considered the Code to ensure that it complied with the purposes of the Act, was clearly written as to be readily understood, and that representatives of those likely to be affected by it had been consulted. The Code was publicly notified on 2 October 2003 by notices in the major newspapers in Auckland, Wellington, Christchurch and Dunedin. In addition it was sent to all major libraries and to specific interested groups. NAWAC wishes to point out that at this stage NAWAC decided not to make any final decisions on the draft Code until it had received submissions. The Code is required to be publicly consulted and to make up its mind prior to this

* The Oxford Dictionary defines circus as “travelling show of performing animals, acrobats and clowns etc.” A circus is also described as being an organised sequence of performers within a ring of spectators (Croft-Coke & Cotes, 1976).

consultation would have meant that NAWAC was not following due process, by acting in a biased and predetermined manner.

7. A total of 957 written submissions were received during the public submission process. Fifty-five were grouped as general submissions which mainly addressed animals in circuses and included reference to specific issues. A further nine submissions were complex, commenting not only on circuses in general but including detailed comments on specific parts of the draft Code. Finally, 893 standard letters were received. These had been prepared by Save Animals From Exploitation (SAFE) and addressed both general and specific issues through seeking agreement or disagreement and inviting comment on nine issues. Appendix A is a summary of all written submissions.
8. In addition to receiving a written submission at the pre-consultation phase, NAWAC heard an oral submission from a representative of the owner of a New Zealand circus holding exotic animals during the public submission process. While the Chair of NAWAC had earlier visited that circus, NAWAC was unable to visit a circus during the period when the Code was considered. However, during the latter stages of consideration of the Code, the impacts of the Codes standards and recommendations were discussed with the owner of the circus and circus staff.
9. It was noted that there is little published material describing the welfare of circus animals, though there is considerable information on the biology of exotic animals of the same species as those normally held in circuses.
10. The preparation of the draft Animal Welfare (Circuses) Code of Welfare was guided by the existing deemed *Code of Recommendations for the Welfare of Circus Animals and Information for Circus Operators* prepared by NAWAC's predecessor the Animal Welfare Advisory Committee (AWAC), and the only New Zealand circus containing exotic or non-domestic animals. NAWAC has recommended appropriate standards which would be applicable to any circus containing exotic or domestic animals, either resident in New Zealand or visiting from overseas.

Main issues raised by the submissions

11. All written public submissions were in some way opposed to the use of animals in circuses, or at least exotic or wild animals. The reasons for these stances were related to: (1) the cruel, inhumane and unnatural treatment of animals in circuses; (2) the fact that circuses tend to perpetuate outdated and inappropriate attitudes of dominance and coercion of animals; (3) the welfare costs to the animals outweigh the benefits to humans who, anyway, have many other ways of being entertained or of viewing wild animals; (4) circuses can successfully operate without animals; and (5) circuses, by their very nature, cannot provide for the needs of exotic or wild animals resulting in health and welfare problems. Many submissions consequently called for the use of exotic or wild animals to be banned from circuses, and no further animals trained,

bred or imported. Any animals currently in circuses should be relocated to the wild or to parks, zoos or reserves. The specific reasons for this stance were the lack of space, constant travelling, questionable and unnatural training and performing routines, barren environments, and a lack of companions of the animal's own species.

12. The proposed space allowances for primates, elephants and lions were deemed too small preventing them from displaying any sort of normal behaviour. The proposed standards for exercise and environmental enrichment did not do justice to the intelligence of the species, or the complexity of environments and social lives these animals have evolved to live in. Similarly, training and performing routines were, by necessity because of the animals' exotic rather than domestic background, more likely to be based on fear and punishment rather than positive reinforcement. Finally, the lack of social companions of the animal's own species was considered a significant welfare issue, and likely to contribute to an impoverished life.
13. Exotic animals were distinguished from domestic animals. Exotic animals were seen as similar, if not identical, to those in wild or natural populations, whereas domestic animals have evolved over many thousands of years to be able to adapt to living with humans. It is inappropriate to keep exotic animals in domestic-like environments, and indeed they have a right to be left in the wild.
14. NAWAC, through the draft code of welfare, should be developing a more positive approach to improve circus animal welfare rather than setting standards which merely reflect current circus practices. The Code should also address the importation and acquisition of animals including their transfer from zoos, which most submissions opposed.
15. The oral submission highlighted the following points:
 - the critical relationship between the circus staff and their exotic animals;
 - that not transferring animals between zoos and circuses would affect the latter;
 - concern that a recommendation to not hold species requiring large living spaces would eventually lead to a minimum standard prohibiting them in circuses;
 - some animals cannot and should not be isolated from the public;
 - exotic species need to be supervised during exercise periods;
 - that the safety of the animals may be endangered by some members of the public;
 - circus staff and some exotic species are companions; and
 - the lack of specialised veterinary knowledge available in New Zealand for exotic circus species.

General issues considered by NAWAC

16. The scope of the code includes all species in the traditional understanding of the term circus. It does not include other forms of travelling animal acts such as magicians' shows and performing farm animals. NAWAC's view was that the inclusion of these performing acts would detract from the traditional circus focus of the Code. It is noted

that the welfare of animals in magician and farm shows is subject to the provisions of the Act. The term “circus animal” is used to refer to both non-domesticated (commonly referred to as “exotic” or “wild” animals and hereafter referred to as exotic animals) and domestic species. However, the Code does not specifically address the general welfare of domestic species (dogs, horses, sheep, rabbits, alpacas etc) except general issues specific to the nature of the circus (i.e. regular travelling, training and performing). This allows for the welfare of domestic animals in circuses to be aligned with their respective species-specific codes. The exotic species included in the Code are based on the current exotic circus animals in New Zealand circuses, namely lions, elephants and primates. The distinction between exotic and domestic animals is based on the latter’s significant period of co-evolution with mankind resulting in genetic changes and a degree of adaptation to extensive interaction with humans, including confinement.⁴ In contrast, lions, primates, and elephants, though tamed to enable interactions with people, have not undergone any significant evolutionary changes predisposing them to extensive interactions with humans. Compared with domestic animals, exotic species may require more space, need more separation from humans, and need greater social company or groupings of their own kind. Their welfare in captivity is critically dependent on the provision of appropriate social and physical environments.

17. Two other classes or types of animals do not readily fit with the exotic-domestic classification for circuses. These are feral animals (e.g. deer or thar) and native animals (e.g. bats and birds). While it is unlikely that these animals would contribute to circuses, NAWAC has considered how they might be regulated. The former group are most likely to be sourced from farm populations (and therefore would not be truly feral) and would be treated as domestic animals. The latter group would be subject to Department of Conservation approval and would come under the general provisions of the Act. It is noted that individuals in both groups would need to be treated similarly to exotic animals, as they would be less habituated to confinement or adaptation to contact with humans.
18. Is it appropriate to use animals for entertainment? There are a large range of activities where animals are used as a source of entertainment. Some forms are more accepted by society (e.g. horse and dog racing, hunting and fishing) and some are not (e.g. cock-fighting, bear-baiting). It is noted that the Act does not differentiate between uses of animals (farming, entertainment etc) but does allow for codes of welfare for animals in entertainment. Although the Act makes no explicit provision for valuing one use over another, NAWAC is of the opinion⁵ that the use of an animal is acceptable, provided that any harm to an animal is justified by ensuring that the benefit from treating it in that way outweighs the harm; and that the harm is minimised and the benefit maximised from treating an animal in that way. Many submissions implied that the use of animals for entertainment was not justifiable or at least required greater justification than if they were used for other purposes. NAWAC’s view is that using animals for entertainment is acceptable, providing that the welfare of the animals is addressed.

19. An additional but related aspect raised in the submissions was that wild or exotic animals somehow differ in the acceptability of being used for entertainment because of their “wildness.” Submitters argued while it might be acceptable to use domestic animals in this way, wild animals have some sort of intrinsic integrity or value (commonly expressed in such terms as “natural” or “majestic”). NAWAC understands that this implies that it is wrong to use such animals for entertainment since their integrity as wild animals is not respected. Such a stance could be seen as independent of the consequences for the welfare of the animals (i.e. it would still be wrong to use these animals for entertainment even if their welfare needs were met or even enhanced). NAWAC notes the growing philosophical movement to respect animals according to their nature or essential characteristics, in this case their wildness.
20. While NAWAC is of the opinion that, in principle, any animal could potentially be exhibited in a circus, provided that its welfare needs were met, it is concerned that the needs of some exotic animals may not always be satisfactorily addressed. This concern was also apparent in many of the public submissions, and in *A Report into the Welfare of Circus Animals in England and Wales* which “found clear indications of both physical and psychological abnormality in some circus animals, whereas others appear to be comparatively unaffected”.⁶ There is also scientific information that the presence of increased stereotypic behaviour and infant mortality in captivity in those carnivore species with large ranges in the wild, suggests that it may be inappropriate to keep some exotic animals in captivity.⁷ Finally, a major review of the welfare of elephants in zoos found many potential causes of poor welfare which it was noted would apply to a certain extent to circus elephants.⁸ Thus while in principle it might be possible to meet the welfare needs of some animals in circuses, in practice it may not always be possible. NAWAC has therefore made it a Recommended Best Practice that lions, elephants and large primates are not held in circuses, principally because it is difficult to adequately provide for their welfare. Species which it would be appropriate to be kept in circuses would be determined by the ability to meet the Minimum Standards in the Code. The appropriateness of keeping some animals may well vary between individual animals, species and circuses. (While many submissions called for a ban on animals in circuses, as in some other countries, NAWAC notes that this is not within the ambit of a welfare code and would require an amendment to the Act.)
21. While NAWAC has reservations about the welfare of some exotic animals in circuses, NAWAC notes that such animals are an attraction for a significant number of people (though they may also be repulsive to others). NAWAC understands its role as ensuring the welfare of these animals is protected and has therefore adopted stringent standards which are expected to enhance welfare. In summary, the keeping of exotic animals in circuses is seen by NAWAC as acceptable providing they have the opportunity to display natural or normal patterns of behaviour, interact with animals of their own kind, and maintain good health and welfare.
22. Furthermore, NAWAC is mindful that the interests of some individual circus animals could potentially be well served by circuses. These would include the rare instances

of dysfunctional or asocial individuals such as those brought up by, or bonded exclusively to humans, or those that have had traumatic experiences and are consequently unable to relate to members of their own species. In these special circumstances, it may not always be appropriate to introduce companions of their own species, and therefore it may be in the best interests of these individuals to remain in the circus. NAWAC accepts that the keeping of such individuals (effectively companion animals) in isolation may be in their best interests, provided they have contact with compatible people or other species, and are kept occupied (i.e. enriched). It is also acknowledged that the circus might well be a safer alternative to relocation in wildlife sanctuaries for some such dysfunctional individuals. While acknowledging that some such individuals exist and need to be cared for because of their particular upbringing, NAWAC does not want to see animals brought up in this way specifically to supply animals for circuses.

23. NAWAC also noted the need to be fair and consistent in setting some standards. NAWAC is concerned that circus standards for domestic animals do not penalise circus owners or their animals compared with other owners. This is particularly so of companion animals kept in circuses – for example, requirements to keep a social grouping of more than one animal are inconsistent with the usual practices of keeping of dogs as pets.
24. A critical issue central to the consideration of circus animal welfare is whether some practices characteristic of the circus (e.g. regular travelling, training and performing) can enhance welfare, and in so doing compensate for the restriction in space, behaviour and social companions? Whether circuses offer significant enrichment opportunities for animals is arguable, but NAWAC is of the opinion that training and performing regimes could not fully compensate for the restriction in space, and lack of an enriched environment and social interactions. It is noted though that travelling, training and performing might represent enhanced welfare for some individuals and species, but compromised welfare for others. It is not known to what extent individual animals can accept a lack of space and a barren environment, because of the regular travel and possible enrichment associated with training and performing?
25. NAWAC's most significant challenge was in setting appropriate standards for exotic circus animals. There are few guidelines, accepted standards or published material upon which justifiable standards could be based. The options which NAWAC considered were to (1) essentially describe current circus practices (as was expressed in the public draft of the Code), (2) use generally accepted zoo practices, (3) align the Code with overseas circus codes of welfare, noting that they face the same difficulties, (4) set standards based on the animals' behaviour in the wild, or (5) make an assessment using available knowledge and the public submissions, and guided by section 4 of the Act (physical, health and behavioural needs). NAWAC has opted to base the standards on current zoo practices, and the public submissions which have called for greater space, and social groupings more in keeping with those in natural populations. NAWAC wishes to point out that while this approach may not result in *optimal* standards for the keeping of exotic animals in circuses, they are expected to enhance animal welfare.

26. In coming to the above decision, NAWAC considered the Codes of Welfare for circus animals from a number of countries.⁹ However, these Codes are essentially very similar and give little justification for the standards used. NAWAC also considered whether the ability to perform behaviours displayed in the wild should determine how animals are to be held in circuses. Behaviours expressed in response to a need can have complex foundations. If consequences of a behaviour (e.g. a nest) are more important than the expression of the behaviour (e.g. nest-building), it is not necessary to perform the behaviour.¹⁰ However, not all behaviours can be averted by the satisfaction of a need, and a lifestyle in the wild (e.g. naturally large territories) can confer vulnerability to welfare problems in captivity.¹¹ Thus the opportunity to display behaviours expressed in the wild may be a good, but not necessarily an absolute, indicator of welfare.

Circus-specific issues considered by NAWAC

27. The major animal welfare issues associated with keeping animals in a circus are related to the restriction in space and opportunity for natural behaviour, training for and performing acts, regular travelling, and the acquisition of zoo animals, or the capture of wild animals, for transfer to circuses. Because of the inadequacy of space and surroundings provided, the Code also addresses environmental enrichment. NAWAC wishes to point out that while space is an essential component, it is the whole environment (nutrition, activity, companions, housing, travelling, training and performing, interactions with humans, and an animal's control of its environment) which is important and any one factor must be considered within the context of the others.

Space & accommodation

28. Four separate living spaces are distinguished. The first was space during transport and here a degree of confinement is accepted. The standard allows for circus animals to have enough space to travel in a natural position without risk of injury. The second, and most difficult, was the area to be made available for circus animals to have an opportunity to exercise. While recommending as large a space as possible is utilised, NAWAC is aware of the practicalities of providing safe and secure enclosures for some exotic animals at all performance sites. Nevertheless, space allowances have been markedly increased. While recognising that there is no robust rationale for these particular standards, NAWAC is of the opinion that because the animals are, for the most part, kept in strictly confined circumstances, any increase in space represents an improvement in animal welfare (for example the frequency of stereotypic behaviour in elephants can be reduced by increasing enclosure size, though the contents of the enclosure are also important¹²). It is noted that these standards are markedly different to those in the previous AWAC Code, and more in keeping with international codes for the welfare of circus animals. Furthermore, these standards are not to be taken in isolation, but are contingent upon improved standards for social companionship, exercise and comprehensive environmental enrichment (see below). The third living

space is the area animals are housed in while not performing, travelling or exercising. Here, the standard allows for animals to stand up in a natural stance without their heads touching the roof, and to be able to turn around and lie down comfortably. Finally, the space available to animals should they be held at a home base (sometimes referred to as an over-wintering facility, particularly in other countries). NAWAC has decided that in these more permanent settings, the provisions of the Animal Welfare (Zoos) Code of Welfare shall apply.

29. NAWAC has removed the minimum widths for enclosures set down in the AWAC Code, in order to give circus operators the flexibility to design enclosures for the most effective use of space for a particular animal. Minimum enclosure heights for lions and primates have also been increased, and animals must have the opportunity to climb and rest above the ground where appropriate to the species. Recommended Best Practices reflect the need to give the animals as much space as possible, including access to high climbing structures.

Social groupings

30. NAWAC has decided that the minimum grouping for any exotic social species is two compatible individuals, except in circumstances where it is in an individual animal's best interests to remain in the circus. The Recommended Best Practice is at least a stable grouping, e.g. families, similar to that as would be seen in the wild. NAWAC also recognises that circumstances may mean individuals may have to temporarily live in isolation (e.g. when one of a pair of individuals dies). In such situations the Circus Operator is required to make all reasonable efforts to acquire additional compatible animals or relocate the animal to another population. It is also noted that from time to time individuals may also require a degree of isolation as a last resort in the management of aggression, e.g. temperamental bull elephants. Individuals separated for this reason must retain visual contact with each other and all animals must have the opportunity for full social interaction with their companions at least daily.
31. While the minimum social grouping is 2 animals of a particular species, NAWAC has acknowledged the part that companions of other species play in enriching animals' lives. Therefore, contact between circus animals and other species, including humans, is encouraged, providing it does not compromise animal welfare. Such companions may be an integral part of an environmental enrichment programme, but not a substitute for contact with members of an animal's own species. Furthermore, it is a Minimum Standard that such companionship is demonstrably compatible.
32. While a circus may hold two or more animals, there are times when some animals may be held in isolation for short periods for the purposes of training, apparently resulting in better learning and retention among some primates. NAWAC notes that this practice is against the philosophy of maintaining natural social groupings it would like circuses to move towards but accepts it may be sometimes necessary.

Nevertheless, it cannot be used to justify keeping an animal isolated from members of its own species or other companions indefinitely. Therefore it is a requirement that all animals have the opportunity for full social interaction with their companions on at least a daily basis, and it is recommended that this period be for as long as possible.

Transport

33. Travelling is a necessary part of the operation of most circuses. Provisions in the Code are guided by the *Code of Recommendations and Minimum Standards for the Transport of Animals in New Zealand*. Animals must be fit to travel, be transported without causing unnecessary pain or suffering in facilities well constructed and maintained, and special consideration given to sick, injured, new-born, pregnant or nursing animals. The issue of how long circus animals should be transported for, and how long they should travel without food, water or exercise was also addressed. The Transport Code provides guidance on farm animals only but could be used in the absence of circus animal-specific standards. This approach would mean an 8-12 hour maximum on transport without water and 12-24 hours without food, depending on species, age and whether or not the animals were lactating. Adopting such a standard would however ignore the possibility that frequent travel may be more harmful (thus requiring more stringent standards) than the single trips many farm livestock are subject to. Alternatively, NAWAC considered taking an ad hoc stance of limiting travel to 8 hours without food and water and 12 hours without exercise. On the one hand while this would be more stringent than farm livestock standards it recognises that travel can be stressful and is an integral part of the circus. On the other hand it ignores the possibility that animals may become accustomed to regular travel. NAWAC therefore decided that the duration of travel and the need for food and water during travel must not compromise the health and welfare of the animal and any limits should be based on the requirements of the animals themselves and will depend on the species, and on the age, health and physiological status of the individuals.

Training and performing

34. Many submissions considered that the training and performing of exotic animals raises special issues. Specifically, because they are not domesticated, training methods are more likely to be based on fear and punishment rather than positive reinforcement. Furthermore, training animals to perform unnatural behaviours can increase the risk of injury (for example joint and muscle injuries and hernias have been associated with elephants which repeatedly stand on their hind legs during performances¹³). It is not known whether different techniques are required to train animals depending on their degree of domestication. (It has been suggested that the use of a whip in circus performances is a cultural stereotype expected by the audience rather than required by the trainer.¹⁴) Nevertheless, standards for training and performing are based on positive reinforcement, and methods must not cause injury, distress or undue pain. Furthermore, training and performing sessions and techniques

must be determined by the animal's reaction and condition without overworking the animal.

35. One of the issues related to performances in particular, and circus operations in general, was that animals were or could be confined without access to exercise areas on the days when performances were held. This practice is seemingly necessitated for safety reasons – circus staff cannot always be present to supervise animals in the presence of the public. (Indeed, the safety and security of animals from irresponsible members of the public at all times is an area of concern for at least one circus.) NAWAC is anxious that such a concern is not used to justify the routine confinement of animals for long periods on the days when the circus is performing. Consequently, exercise periods are mandatory on all days when the circus is performing, except when travelling and dismantling or erecting the circus or in circumstances likely to endanger their welfare.
36. It is noted that training and performing can represent significant opportunities for behavioural enrichment for circus animals. NAWAC notes that some training and performing sessions can be quite short, and perhaps very routine for the animals. Therefore, training and performing are seen as an important part of the implementation of an environmental enrichment programme. It does not obviate the need for animals to have an opportunity to exercise in an enriched environment.

Environmental and behavioural enrichment

37. As circus animals are held in confined circumstances, often in relatively barren environments and with limited opportunities to behave as they would in the wild, it is crucial to make provision for the maintenance of their health and welfare. This can be addressed through giving the animals the opportunity to be physically and psychologically active through enrichment programmes. Such programmes must be developed and implemented for each species of circus animal.
38. An essential part of an enrichment programme is giving the animals the opportunity to exercise. Consequently, NAWAC has decided that all exotic animals must have access to a larger space, allowing the opportunity to exercise, for at least 8 hours per day (except when the circus is being dismantled or being erected, when travelling, or in circumstances likely to endanger the animals or compromise their welfare). This significant increase in time is considered necessary since the animals are living in relatively confined circumstances. While the eight hour period could be seen as arbitrary, it does represent a significant increase in time available for the animals. Furthermore, it aligns with the minimum length of daylight in winter, and an eight-hour working day. NAWAC is aware that the circuses own requirements to supervise animals during the time they spend in these larger spaces may mean circuses will have to utilize more staff, but NAWAC nevertheless considers it important for the health and wellbeing of the animals.

39. NAWAC also addressed the difficult issue of bonding between different species of animals and between animals and humans. While bonding and companionship between individuals of a single species might be seen as preferable to bonding to individuals of other species, and in turn humans, NAWAC notes that there are many types of acceptable relationships. Furthermore, such bonding is an integral part or fundamental characteristic of the circus and could be very enriching for both parties in some situations. Attempts to limit such relationships to members of an animal's own species, or to closer biological or evolutionary animals, tend to miss the point of companionship, especially when the relationship has already formed. NAWAC notes that such relationships may be acceptable when they do provide true companionship in the case of animals without companions of their own species (e.g. when one of a pair dies). It could also be argued that as circus animals age, it might not be appropriate to acquire companions (leading to the "infinite circus"), or relocate animals, but to accept that companions of other species can be enriching. These reasons, however, are not to be seen as an excuse to acquiring single animals for a circus.

Acquisition of animals

40. Circus operators may obtain exotic animals from only two sources: from wild populations of animals, or from facilities such as other circuses, zoos, wildlife parks and/or private collections etc. Many public submissions called for the transfer of animals from zoos and the wild to be prohibited since it risks causing distress and thus constitutes ill-treatment. NAWAC notes that such a provision may well prevent circuses from operating unless they bred their own animals. It is noted that a circus may provide suitable opportunities for surplus zoo animals to be relocated rather than euthanased, providing their needs are met. If exotic species are kept in circuses, it might be better that they are more habituated to the degree of confinement and association with humans more characteristic of zoos than of wild populations.
41. The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), an international agreement between Governments, was also raised as a reason for preventing circuses obtaining exotic animals. CITES's aim is to ensure that international trade in specimens of wild animals and plants does not threaten their survival. Appendices I, II and III to the Convention are lists of species afforded different levels or types of protection from over-exploitation. Most of the common circus species are listed in Appendix I where trade is permitted only in exceptional circumstances. Individual species are regarded as endangered (e.g. elephant), vulnerable (e.g. lion and chimpanzee) or lower risk (e.g. rhesus and bonnet macaques). This aspect is essentially a conservation issue and NAWAC has no jurisdiction or responsibility for administering international trade in these species.

Impacts of drafted standards on current circuses

42. NAWAC expects that the Code, as drafted, will impact on, and could possibly restrict the activity of New Zealand circuses holding exotic animals, and circuses visiting from overseas. The most significant areas are:

- the requirement that there is a minimum of 2 animals of any exotic species unless there are special reasons for keeping an animal by itself,
- larger exercise areas for exotic animals (compared with the AWAC Code),
- the requirement to give animals the opportunity to exercise for a minimum of eight hours per day, except when related to travel, and
- the development and implementation of a complex environmental enrichment plan for each species.

NAWAC is of the opinion that these changes are necessary to ensure a significant improvement in the welfare of some circus animals. Furthermore, following discussions between MAF staff and the owner and staff of the New Zealand circus holding exotic animals, NAWAC is of the opinion that the circus will be able to meet those standards. However, NAWAC also recognises that while the circus is committed to the welfare of its animals, the feasibility and practicality of circus operators effecting a transition from current to new practices will require a transitional period in which to comply. Section 73(3) of the Act provides that NAWAC may, in exceptional circumstances, recommend minimum standards that do not fully meet the obligations to ensure that the physical, health and behavioural needs of the animal are met. In making this recommendation the NAWAC must have regard to, among other things, the feasibility and practicality of effecting a transition from current practices and any adverse effects that may result from such a transition, and the economic effects of any transition from current practices to new practices. This applies to Minimum Standard 10(a) which comes into effect 6 months from the date that the Code comes into force. All other standards shall apply to the circuses from date of the issue of the Code, as well as to any new circus being established or visiting New Zealand.

43. NAWAC is concerned that the welfare of the animals currently in the circus is maintained and enhanced. The longevity of many circus animals, and in some cases their special bonds or psychological dependence on their trainers and the trainer's or owner's families (and vice versa) mean relocation or rehabilitation of an animal to a zoo, park, sanctuary, or the wild may not always be in the animal's best interests. In addition, NAWAC wishes to draw attention to the standard requiring that circuses make contingency plans for dealing with animals that become unmanageable, old or infirm, or in the event of the circus not being able to operate.

Other issues considered by NAWAC

44. Additional material was added to the Code after it was publicly notified, much of it in response to the concerns outlined in the submissions. This included sections on staff and staff training, environmental enrichment, euthanasia, and record keeping. The order of the Code was also substantially revised to make it more consistent and this included grouping all material on lions, elephants and primates in a species-specific section.
45. A significant submission questioned the definitions of “good practice” and “scientific knowledge” NAWAC has been using to interpret the Act. The Committee has subsequently discussed the points raised, and along with other perspectives, has more clearly defined those terms. The complete position was published in NAWAC’s 2003 Annual Report and is reflected in the appropriate section in this and subsequent Codes.
46. Two other issues were also addressed. The first was whether there should be a requirement for animals to have a permanent home for at least some period of the year? NAWAC is of the opinion that providing the welfare of animals is met, there is no need to require a mandatory period at a home base. If such a facility is used however, it will be subject to the provisions of the Animal Welfare (Zoos) Code of Welfare. The second was if non-performing animals in a circus (e.g. retired primates or dogs) were to be regarded as circus animals, companion animals or zoo animals. NAWAC has decided to regard all animals in the circus as circus animals to ensure that minimum standards for housing, exercise, enrichment etc are met.
47. A late submission requested that the great apes or non-human hominids should be treated differently to other animals. Specifically, these animals should be respected as individuals and not euthanased unless it is in their best interests. NAWAC notes the increasing interest in the philosophical stance based on the advanced cognition and emotional capacity of the gorilla, chimpanzee, bonobo and orang-utan. However, NAWAC believes such a distinction in the context of euthanasia is currently beyond the ambit of a welfare code, and to take account of it would require a change to the Act.
48. NAWAC’s response to submissions pertaining to specific parts of the Code is summarized in Appendix B.

The nature of any significant differences

49. All significant differences of opinion about the Code, or any of its provisions, have been set out above or in the NAWAC’s Response to the Public Submissions (Appendix B).
50. No significant differences of opinion about the Code, or any provision of it, were recorded within the Committee.

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- ⁴ Berry, R.J. (1969). The genetical implications of domestication in animals. In *The Domestication and Exploitation of Plants and Animals*. Ed. P.J. Ucko & G.W. Dimbleby. Gerald Duckworth, London. pp 207-217; Price, E.O. (1984). Behavioral aspects of animal domestication. *Quart. Rev. Biol.* 59, 1-32.
- ⁵ NAWAC Guideline 1/02 Dealing with practices which might be inconsistent with the spirit of the Animal Welfare Act.
- ⁶ Circus Working Group. A Report into the Welfare of Circus Animals in England and Wales.
- ⁷ Clubb, R & Mason, G. (2003) Captivity effects on wide-ranging carnivores. *Nature* 425, 473-474.
- ⁸ Clubb, R. & Mason, G. A Review of the Welfare of Zoo Elephants in Europe. A Report Commissioned for the RSPCA.
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- ¹⁰ Veasy, J.S., Waran, N.K. & Young, R.J. (1996) On comparing the behaviour of zoo housed animals with wild conspecifics as a welfare indicator. *Animal Welfare* 5, 13-24.
- ¹¹ Clubb R. & Mason, G. (2003) Captivity effects on wide-ranging carnivores. *Nature* 425, 473-474.
- ¹² Clubb, R. & Mason, G. A Review of the Welfare of Zoo Elephants in Europe. A Report Commissioned for the RSPCA.
- ¹³ Clubb, R. & Mason, G. A Review of the Welfare of Zoo Elephants in Europe. A Report Commissioned for the RSPCA.
- ¹⁴ Kiley-Worthington, M. (1990) *Animals in Circuses and Zoos. Chiron's World?* Little Eco-Farms Publishing, Basildon.