

16th August 2006

Our Ref: FW/L016/08/2006

Your Ref: CB2/BC/5/05

Bills Committee on the Prevention of Cruelty to Animals
(Amendment) Bill 2006
C/o Katherine Yeung (Clerk to the Committee)
Legislative Council Building
8 Jackson Road,
Central.
Hong Kong

Attention: Hon James Tien (Chairman)

Dear Mr Chairman,

The SPCA welcomes the presentation of this Bill as a preliminary step towards improving animal welfare legislation in Hong Kong. Not only is such a review and increase of the penalties long overdue but the content of the Prevention of Cruelty to Animals Ordinance (Cap.169) itself needs updating.

The Ordinance needs to be expanded and have a more flexible statutory framework taking into account developments in animal welfare that have occurred since the Ordinance was first prescribed in 1935.

The SPCA has been involved in consultation on a review of the Ordinance (and other animal-related legislation) and has made many suggestions along with other parties concerned with improving animal welfare. Disappointingly, to date much of this work appears to have been wasted and advice ignored. We hope that with respect to further consultation with key stakeholders on this matter, a more formal approach is adhered to, with opinions and advice respected.

Comments on the Bill

While Annex B attached to the proposal gives a comparison between other jurisdictions and the penalties relating to cruelty to animals, it does not reflect the fact that some of these are also woefully outdated and inadequate. Rather than deciding on new penalties based on inadequate laws elsewhere, Hong Kong should look to legislation currently being developed and implemented. Such an approach would ensure that the SAR was at the forefront internationally in terms of animal welfare legislation.

For example, in the United Kingdom of Great Britain and Northern Ireland the Animal Welfare Bill is currently being discussed at the Grand Committee stage. In this piece of legislation not only have many separate pieces of legislation relating to animal protection been combined and rationalised but new elements have been introduced and the law enhanced with particular reference to duty of care. The new law has a more flexible statutory framework that accommodates the introduction of Codes of Practice.

In terms of penalties under this law, the maximum penalty for cruelty to animals will be raised significantly to a maximum of GBP 20,000 (about HK\$295,000) or 51 weeks in jail or both. For offences relating to duty of care, the penalties will be a maximum fine of GBP 5,000 (about HK\$74,000) or 51 weeks in jail or both.

Even with the proposed amendments to penalties under CAP 169, the levels of the maximum fines in the new Hong Kong legislation are still far below those in the new legislation being introduced in the UK.

Penalties under proposed animal welfare legislation in Hong Kong and the UK

Offence	Proposed HK penalties	Proposed UK penalties
Animal cruelty	Maximum fine \$100,000 52 weeks imprisonment	Maximum fine \$295,000 approx. (GBP 20,000) 51 weeks imprisonment
Failure in duty of care / promotion of welfare / contravening regulations	Maximum fine of \$25,000	Maximum fine of \$74,000 approx. (GBP 5,000) 51 weeks imprisonment

Recommendations for consideration by the Bills Committee

Re: Clause 2 of the Bill

For an offence under section 3 (1) a **significantly higher, excluded fine** should be considered, such as \$200,000, for the maximum fine.

We also have concern that in **section 3 (2)** it states “Provided that where an owner is convicted of permitting cruelty within the meaning of this Ordinance by reason only of his having failed to exercise such care and supervision, he shall not be liable to imprisonment without the option of a fine.”

We would recommend that this is **repealed and the maximum penalty should be the same as stated in section 3 (1)**.

Re: Clause 3 of the Bill

We **support the proposed amendment**; however, we have some general comments with regard to possible penalties under section 5.

Currently within CAP 169 there is no element that allows for the future protection of animals (other than one that has already been abused) from someone who may pose a significant threat to their well-being. We believe that it is possible to include under the orders by magistrates section the ability to disqualify someone. These disqualifications could include the following:

- *animal ownership and keeping (or participation in such);
- * positions of control or influence on the way that animals are kept;
- * dealing or trading in animals; and
- * transportation of animals or arranging such.

We also note that section 5 (3) may allow the offender to act in their own interests to the detriment of any animal involved in such cases and avoid a possible fine by electing to have the animal destroyed. There should be some provision in the law to protect the animals in such cases.

Re: Clause 4 and 5 of the Bill

For an offence under section 8 (contravening regulations) there should be a **higher maximum fine** in the first instance either **level 6 or 5**, plus the cumulative fine for continued offence **with the option of a jail sentence**.

(The regulations are the element in CAP 169 that mostly relate to duty of care/ promotion of welfare.)

Summary

The SPCA hopes that the raising of this bill is an indication of the Legislative Council's and the Chief Executive's intention to take matters relating to animal welfare seriously. The Bills Committee should act swiftly, without delay, to amend CAP 169 and significantly increase the penalties under the ordinance, taking into account our comments.

We also hope that the Committee will convey to the Legislative Council and Chief Executive that there is an urgent need to conduct a full and thorough review of all aspects of CAP 169 and that this amendment is only satisfactory as an interim measure.

The SPCA will continue in its efforts to encourage and support the administration in its improvement of animal welfare legislation.

We will also attend the meeting of the Panel to make a representation of views.

Yours faithfully,

Dr Fiona Woodhouse

Deputy Director (Welfare)

Society for the Prevention of Cruelty to Animals

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