

18 August 2006

Clerk to Bills Committee on
Prevention of Cruelty to Animals (Amendment) Bill
Email:nsyeung@legco.gov.hk

Dear Sir,

Although I am chairman of the Animal Welfare Advisory Group I submit this paper in my capacity as a private individual. I am registered in Hong Kong as a veterinary surgeon and have a special interest in animal welfare. The presentation of this Bill as a preliminary step to improving animal welfare legislation in Hong Kong is a welcome development. However a review and an increase of the penalties, although long overdue does not go far enough, because the content of the Prevention of Cruelty to Animals Ordinance (Cap.169) itself needs extensive revision.

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

I have been involved in consultation on the review of the Ordinance (and other animal related legislation) and for nearly ten years now, have 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.

Whilst Annex B attached to the proposed ordinance 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and the penalties relating to Cruelty to Animals, it does not reflect the fact that some of these are also outdated and inadequate. Therefore, rather than deciding on new penalties based on inadequate laws elsewhere, Hong Kong should look to legislation currently being developed and implemented in similar common law jurisdictions. Such an approach would ensure that the SAR was at the forefront internationally in terms of animal welfare legislation.

For example, in Australia all states not only define cruelty along similar lines to Hong Kong's ordinance (highlighting our common jurisprudence) but most states have gone further and introduced the concepts of aggravated cruelty with commensurate increases in the severity of penalties, and interestingly, several states have imposed a

positive duty of care on persons in charge of the animal thereby embracing one of the contemporary strategies of animal welfare, that of *effective protection* which requires that a significant burden is placed on animal keepers and others who interact with animals to ensure the welfare of animals. None the less just as in Hong Kong, better defined definitions of cruelty and more severe penalties are all but toothless tigers if there is not a more concerted effort by courts to impose these tougher penalties on convicted wrong doers. It is therefore hoped that the courts will follow the example being set by the legislative council when it approves these increases in penalties, and be more willing to impose these harsher penalties on those that have been found guilty of cruelty.

In conclusion, I hope that 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 to amend CAP 169 and significantly increase the penalties under the ordinance taking into account these 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.

Yours sincerely,

(Dr. Anthony E. James)