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Clerk to Panel

Legislative Council Secretariat

Att Ms Camy YOONG

By fax: 2509 9055

30 December 2013

Dear LegCo members,

Thank you for your invitation to attend the meeting on 14 January 2014 to discuss the Trap Neuter Return trial scheme for stray dogs and handling of animal cases. I will attend the meeting and make the following submission to the Panel.

TNR Trial for Stray Dogs

I fully support the introduction of a TNR scheme for Hong Kong's stray dog population. Such programmes are widely recognized internationally as providing a humane method of both stabilising dog populations and controlling rabies. The OIE, which is internationally recognized as the leader in animal health practice recently produced "Guidelines on Stray Dog Population Control". These guidelines state that dog populations should be controlled without causing unnecessary or avoidable animal suffering and that euthanasia, used alone, is not an effective control measure.

Along with the OIE, TNR programmes are internationally recommended by the Alliance for Rabies Control (UK), the Humane Society International, the International Fund for Animal Welfare, the RSPCA International, the World Small Animal Veterinary Association and the World Society for the Protection of Animals. Such programmes are already effectively used to manage feral and community dog populations in Australia, USA, Canada, India, Bali, Europe, parts of Africa, South America and the UAE.

Even ignoring humane considerations, science supports TNR as the only effective method for managing Hong Kong's stray dog population. Despite decades of commitment by the AFCD and enormous costs to taxpayers, the AFCD's current practice of catch and kill has not worked. The reason for this is simple. As has been noted by the World Health Organisation, catch and kill produces only a short term effect on the population of stray dogs and even at maximum catching rates (of up to 24% of the dog population per year) catch and kill can make no significant impact on the population numbers. The WHO instead recommends the more effective breeding and rabies control of stray dog populations by surgical neutering combined with rabies vaccination.

The process of bringing TNR to Hong Kong has been slow and I encourage the government to introduce the trials as soon as possible. Once the effectiveness of TNR is established in the trial areas there should be no impediment to moving the scheme beyond those areas, even before the first 3 year cycle has been completed. In assessing the effectiveness of the programmes, reduced reproductive potential e.g. puppies produced (rather than complaints) should be the key criterion used. Reduced puppy production is the key; it will take some time for natural attrition to take care of the adult population.

Handling of Animal Cruelty Cases

Hong Kong's Cap 169 is now very much out of date. While it used to be considered enough for governments to protect animals from acts of cruelty, it is now widely accepted that animals deserve to enjoy positive welfare. Legislation should provide animals with lives worth living, not just lives free from cruelty. In the UK, USA, New Zealand, Australia and Taiwan, animal welfare laws have already been promulgated or revised to require that animals are provided with positive experiences under the law. The laws in those countries require that companion animals are provided with socialization, adequate veterinary treatment, enough food and water and the chance to engage in exercise, play and exploration.

Obviously cruelty must also be prohibited under the law, but protection from cruelty alone is not enough.

In recent months there have been suggestions made in the media and LegCo that Hong Kong may require a specialized animal police unit as the general police, the SPCA and the AFCD are not doing enough to protect animals from harm. Such suggestions are ill conceived and risk detracting legislators from the chance to address the real problems facing animals in Hong Kong today

The police, the SPCA and the AFCD all have to work within the restrictions of Cap 169. They can only do what the law permits them to do. Cap 169 is an outdated law. It was enacted in 1935 and reflects the Victorian values of the British law of 1911. Cap 169 does not allow the police, the SPCA or the AFCD to force their way into private premises unless they already have clear evidence of cruelty. It does not allow them to require an owner to exercise his dog. It does not allow them to remove animals from owners who routinely keep them tethered or crated on roofs or balconies. It does not allow them to take action in cases where an animal clearly requires medical treatment or even euthanasia but has not yet been treated in a way that demonstrates the owner has acted cruelly, beyond all reasonable doubt, to the satisfaction of the courts.

Under Cap 169, an animal must actually have suffered demonstrable cruelty before any offence has been committed. Neglect, even over a long period of time is not a basis for liability in Hong Kong. Only where there is proof, to the criminal standard, of actual cruelty can any action be taken by the police, the SPCA or the AFCD to protect the animal. This means that in cases of neglect authorities have to wait until evidence of suffering is legally actionable before the animal can be, in any way, protected. Enforcement authorities must bide their time, while the condition of the animal deteriorates.

Modern laws do not just prosecute cruelty, they actively prevent it. The problem of animal abuse cannot be addressed, in law, without imposing

a duty of care on those who keep animals, requiring them to protect those animals from harm. Only where there is a positive duty, imposed at law, requiring owners to care for their animals, can enforcement authorities step in and protect the animals, when care is not being provided.

While Cap 169 remains the only law we have to protect animals many of the cases of concern to the general public will remain un-prosecuted. Such a situation is clearly unsatisfactory but it should be understood that the introduction of animal police will do nothing to rectify the situation. It will only transfer the same problems to another, less expert, body. Hong Kong needs better legislation, not animal police.

What Hong Kong needs is a replacement for Cap 169. Hong Kong should have a new law to protect animals which would not only prohibit cruelty but stop owners from neglecting their animals' needs. I recommend the replacement of Cap 169 with an Animal Welfare Ordinance which would impose on all owners a duty of care towards their animals. This duty would provide that a person commits an offence if he does not take such steps, as are reasonable, in all the circumstances, to ensure that the needs of the animal for which he is responsible are met to the extent required by good practice. The net of liability would thus be cast far wider than under Cap 169. Neglect of animals would become a strict liability offence and the need for animal police would become moot.

Such laws already exist in the UK, USA, Australia, New Zealand and Taiwan where they are now being utilized effectively against animal abuse.

Sentencing

It is also too simplistic to suggest that increasing the maximum penalties for animal cruelty is the answer to improving animal protection. The maximum penalty for cruelty under Cap 169 is already in line with comparable jurisdictions overseas. What is required is that the penalties

imposed by the courts should better reflect society's concern with the crime. Too often the penalties are pitched at the lower end of the sentencing spectrum, with sentences of imprisonment a rare event. Sentences of imprisonment should be the norm for animal cruelty, not the exception. Sentencing guidelines in animal cruelty and neglect cases have been twice issued to magistrates in the UK and our own courts may benefit from taking judicial notice of these.

Amendments to Cap 139B

My submissions on the proposed amendments to Cap 139B have already been provided to the Panel. I take this opportunity to reiterate that it is of critical importance for the law to set a cap on the number of animals which can be kept under licence by both the Category A and Category B traders.

Thank you for the valuable opportunity to provide my views to the Panel.

Yours sincerely



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