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致： 張宇人議員，GBS，JP
香港特別行政區立法會
有關動物福利及殘酷對待動物事宜小組委員會主席

與動物福利及殘酷對待動物相關問題

剛成立的動物福利及殘酷對待動物事宜小組委員會提供更多渠道以提昇動物福利及相關問題，進一步推進動物福利議題，象徵今天的香港對動物福利更加關注及更為重視。香港愛護動物協會在未來數月，向委員會提供更多相關資訊，期望能幫助不同情況及不同種類的動物。

動物福利及殘酷對待動物事宜小組委員會在早前會議提出的議題包括：

1. 預防及打擊殘酷對待動物行為
2. 政府推廣負責任寵物主人的工作
3. 寵物食品安全
4. 政府針對流浪狗隻及貓隻管理的努力

但是，香港每天仍有不同種類的動物受到不同形式的負面對待。

此建議書將從宏觀角度探討如何協助提昇或保障動物福利及就以上四點提出具體的建議。

1. 預防及打擊殘酷對待動物

立法

香港愛護動物協會相信本港保障動物法例需要修改。我們需要一個全新及涵蓋面更廣泛的動物福利法，如動物福利條例，以保障所有動物，並且透過引入飼主責任，以規管動物托管人及負責管理動物的人。

香港的法律系統在多個動物福利及動物保障方面，不管是處理方式及內容都非常不合時宜。

2010年發表的動物福利法例檢討報告中，作者 Whitfort 及 Woodhouse 指出，『法例本身是支離破碎，令持份者難以跟隨。即使執法人員也會被混淆，難以釐清那條法例適用於某特定情況，以及應該如何演譯法例。不少法例與現今動物福利科學已經脫節，令執法出現困難。』



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自報告在 2010 年發表後，法例方面沒有甚麼修訂。不少涉及使用動物的法例仍保障不足或完全沒有任何保障。沒有法例框架以監管或指引飼主及動物照顧者的行為操守，不少動物每天受盡惡劣對待，並可能進一步被疏忽照顧及虐待。

不少在 2010 年發表的報告中提及的論述與委員會工作關係密切，因此本會附上整份動物福利法例檢討報告予以參考 (附件一)。

具體建議及例子

以下列出的建議及例子並非最詳盡，但可用以參考那些方向需要處理及應引入那些措施為動物提供最佳的保障

a) 增加執法人員以加強執法

建議增加執法人員數目，例如部份達到特定法例要求的愛護動物協會檢核部人員可獲授予若干權力，容許他們協助及如有需要時，例如動物有可能受傷害或已受傷害時，可介入托管該動物而無需等待有足夠罪證以進行檢控行動。

b) 為執法人員提供培訓以提昇執法成效

為不太熟悉動物福利概念、第 169 章<防止殘酷對待動物條例>內容及如何正確演繹該法例的政府官員提供培訓，讓他們能充份地履行第 169 章及其他條例附予的權責。

舉例，引用第 169 章，除漁農自然護理署特許人員外，其他獲授權的人員還包括衛生官員、衛生督察及警務人員，但他們可能較少處理動物案件，以致對相關的概念、法例及權力不太清晰。本會已為獲授權的漁護署及警務人員提供適當培訓，而本會認為這類培訓應繼續推行及伸延至衛生官員等等。

c) 現時不少動物相關法例以保障人類健康及衛生為主要目的，缺乏以動物為本的元素。部份使用動物的層面完全沒有保障或保障不足

不少規管動物售賣、屠宰或其他用途的法例在保障動物條款及提供良好照顧動物指引均不足夠。

舉例，第 139 章<公眾衛生(動物及禽鳥)(動物售賣商)規例>規管農場動物、動物寄宿、騎術學校及寵物店，第 132 章<公眾衛生及市政條例>規管屠宰及市場，第 340 章<動物(實驗管制)條例>規管在教學及研究上使用動物。這些條例以關注公眾衛生及健康為重點，或只顧及最基本的動物福利層面。



- d) 需要重新審視現行飼養動物及動物相關行業運作及未來趨勢**
就過時的法例，需要訂立規管使用動物的新規條。例如，目前法例並無對工作犬及其他有工作需要的動物提供保障。現時亦無法例規管動物收容所，要求它們申領牌照、配合巡查及符合特定標準。
- e) 目前法例未有涵蓋部份種類動物 - 例如第 139 章未有涵蓋魚類及兩棲類動物**
目前，售賣這些動物的寵物店無需申領牌照，而動物有否被殘酷對待或被錯誤使用也得不到適當保障。其中一個本會經常接收投訴的例子是『撈金魚』遊戲的金魚 - 他們可被用作遊戲中的元素及可當作獎品送給市民。
今天，很多傳統寵物以外的動物類別也被當作寵物飼養，因此第 139 章下介定的動物定義應延伸至與第 169 章並行。
- f) 處理法例之間不協調情況**
某些運作或情況與法例並不一致或與社區接受的道德有所違背。本會偶有接到本港發現貓狗毛皮投訴，而第 167 章<貓狗條例>下，目前只有屠宰、管有、預備及食用貓狗是違法行為。因此本港亦應禁止管有貓狗毛皮，一如其他外國國家一樣。
- g) 需要為不同種類動物在不同情況下或在不同用途下訂立更多運作守則以提供護理準則及特殊要求指引**
訂立運作守則，為動物飼主、照顧者及使用者提供指引。運作守則可為動物飼主及照顧者提供標準，確保他們履行照顧動物責任。
- h) 付予適時地更新保障動物相關法例的權力**
保障動物的相關法例必須與時並進，並且配合科學化理論及道德觀點，令法律漏洞得到適當處理。能更靈活地修改附屬法例，令法例的修訂變得更容易。
修改罰則亦應具備靈活性，避免修改基本條例的需要。個別情況下，不同條例適用的最高罰則可能已在基本條例下註明。這將令修改變得困難，令罰則與時代脫節，亦限制附屬法例下可判處的最高罰則。

第 169 章<防止殘酷對待動物條例>

2010 年發表的動物福利法例檢討報告 (附件一)已提出第 169 章<防止殘酷對待動物條例>的眾多不足之處，以及本建議書所列各點，應該在全面檢討動物福利法例時予以檢討、處理及修正。目前第 169 章<防止殘酷對待動物條例>中的傳統防止殘酷對待動物元素可予以保留，但應該草擬一套全新、涵蓋面更廣泛及更優質的動物福利條例 - 動物福利法。



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現行的第 169 章把殘酷對待動物界定為『引致不必要的痛苦』，而早前已提及在目前法例下，執法人員未能輕易地協助及保護身處危險境況，但處境在法例下未能被界定為受痛苦的動物。當全面重新審視動物福利相關條例時，應當改善及提昇拯救動物程序，並引入吊銷飼主管有權命令及剝奪管有權程序，進一步保障受害動物的福利。

與世界其他國家及地區比較，第 169 章的最高判罰(入獄三年及罰款港幣 20 萬圓)已相對較高。高刑罰當然能懲處犯案者及具阻嚇作用，但要進一步提昇動物福利及鼓勵動物照顧者及飼主更善待動物，更多輔助性的執法及懲罰措施應予以考慮，例如要求改善措施通告、定額罰款、累計扣分制、教育及改進課程等。

雖然殘酷對待動物的最高刑罰屬高水平，但仍有如社會服務令等其他懲罰作選擇，但案件必須適當地呈堂及在法庭上作出討論。但是，律政署、執法部門或治安部門均較少接觸動物福利法例(而目前個案數字不高)。

能夠在律政署及執法部門內增加處理同類案件機會及發展專業水平，對動物及人的福利都有所裨益，確保動物得到保護、避免出現虐待情況、動物福利能提昇至最高水平及犯案者得到懲處。應清楚列出判刑準則，讓執法部門能作出適當裁決。

第 139b 章 <公眾衛生(動物及禽鳥)(動物售賣商)規例> - 犬隻銷售及繁殖 倡議中的第 139b 章修例，提昇對犬隻銷售及繁殖監管，須立即予以執行。

過去二十多年，我們一直等待政府正式推出針對犬隻售賣及繁殖的措施。政府現時倡議的框架容許改善空間，因此我們不希望只為不斷等待更好的保障，令法例修訂再推遲，令更多狗隻受苦。

漁護署建議的框架制度已堵塞早前發現的漏洞，包括設立行業守則，為業界人士提供指引及訂立更多照顧動物標準，讓用以繁殖及售賣犬隻的生活得以改善。

當犬隻修訂條例落實後，更可成為其他種類動物的同類指引。任何法例都不會完美，當不可預見情況出現、需要進一步確保動物福利或切合公眾期望時，可再提出修訂。

倡議的框架應更富彈性，讓修訂更容易進行。當有需要進行更複雜的修改時，可與繁殖及售賣貓隻的修訂條例同時進行及通過。



2. 政府推廣負責任主人 (RPO)的工作

政府應繼續投放更多資源，透過相關部門或資助富經驗的團體，教育及培訓市民認識動物、動物福利、照顧動物常識及負責任主人的資訊。教育及培訓中需要帶出的主要訊息包括動物也有感覺、需要及期望，而決定飼養寵物是個一生一世的承諾。

所有與動物有直接關係的持份者，例如繁殖者、動物售賣商或動物領養機構，均需要支持及參與教育市民如何成為一個負責任的寵物主人。所有持份者均應向寵物主人提供該動物的生理及生活所需資料，照顧動物的建議及相關法律責任等資訊。

除教育外，政府更可設立支援性的法律框架、投放資源及移除障礙，令主人能更容易成為一位負責任寵物主人。

引入動物福利法及為寵物主人而設的運作守則能提供更多指引及資訊，滿足寵物的基本需要。動物福利法應設有鼓勵良好照顧的機制，及懲罰殘酷對待動物行為的所需元素。

部份政府政策及基建需要作出修改，以配合寵物主人需負起的責任。

以負責任飼養狗隻為例，經常為狗隻安排運動是讓狗隻得到身心健康的其中一個重要元素(對狗主的健康也有得益)。但是，很多由康文署管理的公園都禁止狗隻進入。一個較理想的處理方法是狗主可以使用拖繩牽著狗隻進入公園設施，而若需考慮設有若干限制，可限制狗隻使用公園某部份位置。同樣地，個別種類的動物應可獲准乘搭部份公共交通工具。

香港法例要求狗主需為狗隻植入晶片及申領牌照。但是，當狗隻走失又不幸地被汽車撞倒，現時與動物相關的交通法例並沒有要求撞傷動物的司機需向警方報案。若狗隻不幸身亡而市民向食環處報告發現動物屍體，以我們理解，食環處接收狗隻屍體時不會經常掃瞄狗隻是否已植入晶片。因此，漁護署及狗隻的註冊主人亦不會被知會。為提昇動物及人的福利，我們希望以上及其他法例上的缺失可以透過修訂道路交通條例(尤其將法例下『動物』的涵蓋面延伸)，並修改接收動物屍體的措施及程序。

飼養另類寵物的主人有可能較難做到完全負責任，因為不少另類寵物與生俱來是野生動物，不適宜被困養及成為寵物或伴侶動物。不少這些另類寵物有非常複雜的生理需要，被飼養成另類寵物經常需要經歷痛苦。漁護署應該重新審視另類寵物售賣，從動物福利角度修改行業守則及因應大部份負責任主人能力訂



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立『適合飼養』清單，令這些動物能得到適當及安全的照顧，及銷售作為寵物用途。

3. 規管寵物食品

大部份在香港售賣的寵物食品均源自設有監察系統，以確保品質及有商譽的海外公司 (例如歐洲、紐西蘭及美國)。但是，近年亦有很多從監管不甚嚴格甚至沒有監管的地區入口的產品。這情況絕對值得關注，而我們歡迎訂立措施管制進口情況，讓本港寵物主人可以安心選購。

4. 管理流浪貓狗工作

負責任地飼養寵物及教育工作

管理流浪貓狗的策略必須首先做好預防工作，而最重要的環節是教育公眾對待動物的責任。負責任飼養寵物的最重點工作是教導主人為動物絕育，以減低不受控的繁殖情況，從而根治流浪動物及遺棄動物問題。

有意飼養寵物的人士應考慮領養，有助減少等待領養的無家貓狗數量。

若未能再飼養寵物，主人應盡責地尋找新家庭照顧寵物或向動物機構尋求協助。切勿把動物遺棄街上。

負責任飼養寵物教育工作必須配合更好的規管及對動物友善的領養措施，以減低動物數量過剩及遺棄情況。這些措施包括：

a. 監管所有繁殖

第 139 章只能監管繁殖動物作商業用途的行為。沒有周詳計劃的繁殖(常見於自由放養貓狗)並不受此條例保障，除非當中涉及商業利益。政府可透過於第 421 章狂犬病條例或第 167 章貓狗條例下增加額外措施以堵塞漏洞。適當措施包括：

- 強制絕育法例
- 分等級的牌照費用制度，向不同動物收取不同費用。此系統可配合強制絕育法例，讓已絕育的動物繳付低廉的牌照費

b. 加強追溯所有寵物、提昇監管及增強對遺棄及其他相關情況的執法

往往，流浪動物都沒有植入晶片，或即使有晶片，所記載的主人資料已不準確，難以把動物交還給主人。同樣地，如動物給蓄意棄養，沒有植入晶片或找不到主人亦令檢控難以進行。我們建議採取以下措施以減少棄養情況：



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- 一套完善的牌照制度，將所有貓狗從源頭，包括進口及出生，直至被售賣到主人手上都記錄無遺
- 為更多種類的寵物引入晶片制度，包括貓隻（承以上提及的完善牌照制度）
- 設立一個集合多種類動物的牌照數據庫，讓不同動物機構及主人易於取讀及修改資料，確保資料正確及經常更新
- 需要重新審視遺棄動物罪名及提昇相關法例，讓檢控更易進行。改善法例及加強執法，確保主人適時地更新個人資料。

管理流浪貓狗政策的影響

政策的制訂可大大影響個人及大量動物的福利。兩項急需處理的政策分別是：

a. 漁護署對流浪貓狗採取捕捉、絕育及放回方法的政策

目前，漁護署某程度上批准推行貓隻捕捉、絕育及放回計劃，以協助管理流浪貓隻。貓隻捕捉、絕育及放回亦即愛護動物協會的貓隻領域護理計劃，為人道地控制本港流浪貓隻數量作出貢獻，減少因為需要控制貓隻數量而進行捕殺，亦同時提昇流浪貓隻在街上生活的福利。若貓隻領域護理計劃能進一步推廣到更多地域，便能幫助更多貓隻及讓計劃的正面影響覆蓋更多地區。

同一方法亦可用於控制流浪狗隻數量。目前試驗計劃正在推行中，但即使在試驗期內亦應該盡快擴展，讓香港市民及狗隻享有最大的得益。

政府應把捕捉、絕育及放回方式納入成為正式政策，用以管理貓狗數量，令捕捉、絕育及放回能更廣泛被採用，以更人道方式協助管理流浪貓狗情況。

b. 房屋署修訂政策容許在公營房屋飼養狗隻

公營房屋禁止飼養狗隻是持續地導致狗隻被遺棄的原因。輪候公屋狗主當獲分配公屋時，往往面對困難的選擇 - 放棄飼養多年的老朋友或放棄輪候已久的公屋，除非狗主能證明有特殊需要而必須飼養狗隻。若公營房屋准許飼養狗隻，現時已有機制作出管理，只是房署選擇不准許狗隻入住而已。只需得到屋苑管理批准，狗隻是可以合法居留的，但實際情況是房署只會在個別特殊情況下給予豁免。

多年來，公屋飼養狗隻一直不停為社會及動物福利界帶來困擾。隨著市民對飼養狗隻需求日增，需求及期望亦不斷提昇，問題只會不斷重現。



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有見及此，房署應修訂限制，准許更多居民在公營房屋內飼養狗隻。署方應引入一個具啟發性及公平的政策，以切合飼養狗隻居民所需，並同時保障動物福利。

政策及承諾

本港需要一個真正對動物友善的政策，並在政府、各政策局及部門落實執行。

要全面落實動物福利，不同部門的法例及政策應直接或間接地顧及對動物福利的影響

- 政策局及部門應無間地合作，處理動物福利事宜。

目前，多條影響動物的法例由不同部門執法，跨部門之間各自為政。舉例如下：

法例	名稱	部門
第 139 章	公眾衛生(動物及禽鳥)條例	漁護署
第 132 章	公眾衛生及市政條例	食環署
第 169 章	防止殘酷對待動物條例	大部份個案由警方跟進。部份由漁護署處理
第 340 章	動物(實驗管制)條例	衛生署

不同部門各自制訂的政策可能對動物福利構成影響，產生矛盾。此外，針對負責任寵物主人的教育，如得到教育局的投入及支持將更事半功倍。

- 動物福利專家、動物福利科學家及技術專家應向政府高層提供動物福利建議

目前，漁護署設有由不同持份者及技術專家組成的動物福利諮詢小組 (AWAG)，向署方建議動物福利事宜。但是，小組對動物福利政策作出改善的建議作用有限。

動物福利諮詢小組的職權範圍¹是諮詢性質，並只限於向漁護署提供建議。當問題局部或全面地涉及其他部門及政策局 (例如公屋飼養狗隻問題、動物運輸過程涉及的福利問題、動物在市場及屠宰時的福利問題及在教學及研究上使用動物的福利問題等等)。這大大限制了小組對動物福利提供的協助。

- 增加持份者的參與

持份者是重要的資訊及反饋訊息的來源。持份者應該更積極地參與。



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- **增撥資源協助推動計劃**

要成功提昇本港動物福利水平，政府需承諾投入所需資源，包括增撥資源，加強執法或拓展基建、為研究及草擬新法例增加專門人才，及為漁護署及相關單位增撥資源以提昇動物福利水平。

¹ 動物福利諮詢委員會小組成員及職權範圍

http://www.afcd.gov.hk/tc_chi/aboutus/abt_adv/abt_adv_f.html



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總結：

香港愛護動物協會相信，在動物福利而言，政府的運作及所需承擔的責任均有改善空間，對動物的保障在不同層面均可大大加強。如本建議書所述，個別急需關注及處理的範疇包括：

- 接納由漁護署倡議，加強對犬隻售賣及繁殖規管的第 139B 章<公眾衛生(動物及禽鳥)(動物售賣商)規例>，並在附加其他修訂後立即實施。此外，亦應同時開展加強監管繁殖及售賣其他種類的動物。
- 全面檢討所有動物相關條例，尤其第 169 章<防止殘酷對待動物條例>已嚴重地過時，應儘速處理。政府應考慮引入更全面的動物福利法，包括：飼主責任概念及強制性的運作守則以作參考，以及引入涵蓋面更廣泛及更佳的法例。
- 漁護署應將捕捉、絕育及放回方式納入政策內，作為協助人道地管理貓狗數量的常規性工具，並予以經常性地採用。
- 引入狗隻分等級的牌照費用制度，及考慮引入貓狗強制性絕育法例
- 為貓隻引入晶片、申領牌照註冊制度
- 增撥資源(人手)及提昇效率(關注、教育及培訓)以加強動物福利相關的執法及調查
- 為執法人員及檢察官提供動物福利相關法例及動物福利概念等培訓及指引
- 在公營房屋飼養狗隻方面，房屋署應採取更主動、更包容的政策
- 在政府高層訂立全面的動物福利政策，採納持份者及專家意見：包括動物福利界、法例界、道德及技術專業人士等。跨政策局及部門在涉及動物福利事宜上提昇合作空間，並予以常態化
- 政府需真切地承諾支持改善動物福利，增撥更多資源，包括人手、基礎建設及財務支持。

如對此建議書有任何查詢，請致電 22325563 或發電郵予 fiona.woodhouse@sPCA.org.hk。

此致

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Review of Animal Welfare Legislation in Hong Kong

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EXECUTIVE SUMMARY

This review was commissioned to evaluate legislation in Hong Kong directly affecting the welfare of animals, by comparing local laws with those in comparable jurisdictions and recommending reform, where necessary. An important part of the review involved field study conducted by researchers with veterinarian qualifications. These researchers visited the Sheung Shui slaughterhouse, local farms, wet markets, pet shops, animal management centres and laboratories. This review also involved consultation by letter, telephone and in person, with individuals and organisations with an interest in laws affecting animal welfare, in order to gather information as to how current laws are working. Comparison of Hong Kong's laws is made with the laws of the European Union, the USA, Australia, New Zealand, Singapore and Taiwan.

The government department primarily responsible for animal welfare in Hong Kong is the AFCD. The Ordinances enforced by the AFCD include the Prevention of Cruelty to Animals Ordinance (which is also enforced by the police), the Public Health (Animals and Birds) Ordinance (including regulations for licences imposed on livestock keepers and animal traders and a Code of Standards for Licensed Animal Traders), the Dogs and Cats Ordinance, the Pounds Ordinance, the Wild Animals Protection Ordinance and the Rabies Ordinance. Additionally, the FEHD enforce the Public Health and Municipal Services Ordinance, which includes regulations for slaughterhouses and wet markets. The FEHD have also published a Code of Practice for the Welfare of Food Animals (which describes their transport) and Operational Guidelines for the Welfare of Food Animals at Slaughterhouses. The Department of Health enforces the Animals (Control of Experiments) Ordinance. The AFCD have also produced a Code of Practice for the Care and Use of Animals for Experimental Purposes.

With such a plethora of legislation it might be assumed animal welfare concerns in Hong Kong are being adequately addressed. In fact, the opposite is the case. Laws are fragmented and often difficult for stakeholders to locate. There is confusion, even

amongst those implementing the laws, as to which laws apply to specific situations and how those laws should be interpreted. Many of the laws are out of step with modern animal welfare science and enforcement is extremely uneven.

A particular problem we have recognized is the complete inability of cruelty legislation, as currently drafted, to assist animals in danger and distress. Widespread reforms of cruelty laws in other jurisdictions have addressed this deficiency and resulted in significant improvement of animal welfare overseas. We recommend similar reform here through the introduction of a new Animal Welfare Ordinance, comprehensively consolidating animal welfare protection legislation and imposing a positive duty of care on all persons in charge of animals.

The lack of appropriate legislation controlling hobby breeders has resulted in large numbers of animals, of dubious origin and poor welfare being supplied to the pet trade. Currently there are only two licensed commercial breeders in Hong Kong. The rest of the local suppliers trade as unlicensed hobby breeders. Whilst the law allows the vast majority of breeders to sell their animals without undergoing the welfare checks provided by a licensing system, puppy and kitten mills, with their serious welfare concerns, will continue to supply the market.

Licensing conditions for pet shops are also seriously out of date. Currently there is no requirement to provide animals with exercise, no requirement for staff to have received basic animal welfare training and no minimum age at which animals may be sold. Of particular concern is that animal trader regulations do not allow the AFCD to cancel a trader's licence on conviction for cruelty to animals.

In local slaughterhouses we observed serious failures to meet animal welfare standards prescribed by the OIE Terrestrial Animal Health Code, including animals being subjected to violent and aggressive behaviour from workers and seriously injured animals being forced to walk up ramps to their slaughter. Addressing these concerns, we recommend extensive revision of licensing conditions and improved enforcement.

Another striking shortcoming is the failure to address the animal welfare requirements of animals kept on farms. In particular, the lack of legislation regulating enclosure size, husbandry practices and humane euthanasia protocols, is of concern. The OIE has equated poor animal welfare with risks to human, as well as animal, health. Intensive systems of farming allow for the spread of disease through large groups of animals with greater ease. In line with international standards, and advances in animal welfare science, we offer recommendations for the improvement of farm animal welfare.

It is also well documented that transportation of mammals, birds and fish can spread both animal and zoonotic diseases. The European Union's Scientific Committee on Animal Health and Welfare have warned of the health and welfare risks to transported animals, caused by the stressful conditions which they encounter during loading and transport, and also by exposure to infectious and other diseases, which may be exacerbated in this context. The FEHD Code provides some guidance to those transporting animals, however many standards prescribed by the OIE Terrestrial Animal Health Code are not being observed. We recommend extensive revision of the laws in this area to adequately protect the health and welfare of animals at transport.

Whilst in theory animals at wet markets are protected by anti cruelty legislation, commonly practised methods of confinement and slaughter, by market vendors, ignore basic welfare principles. Regulations specifying humane transport conditions, enclosure standards, and slaughter methods for animals sold at wet markets should be introduced. In particular, we recommend that exsanguination of chickens should be immediately prohibited.

We address the supposed legal impediments forestalling the introduction of a government approved trap neuter return programme in Hong Kong and present our legal opinion on the subject.

The definitions of 'animal' and 'experiment', for the purposes of laboratory animal use, are now widely out of date. Hong Kong's legislation is modeled on an Act passed in the

United Kingdom in 1876, which no longer exists. By limiting licensing requirements to only those experiments actually calculated to cause pain, animals used for research in Hong Kong's laboratories may legitimately be caused great distress, without legislative intervention. We recommend revisions to the primary Ordinance regulating animal experimentation and to the current licensing procedures.

The Veterinarian Surgeons Registration Ordinance is also in need of reform. The Ordinance provides no recognition of vet nurses, or veterinary students doing clinical work experience, leaving their treatment of animals outside the protection of the law. There is also no requirement that veterinary clinics be licensed, leaving the quality of facilities provided for animal care unregulated. We recommend the Ordinance be brought up to date with modern practice requirements.

Most importantly, if legislation to protect animals is to be effective, it must be adequately enforced. In Hong Kong, inadequate regulatory powers for enforcement bodies, inadequate use of those powers which are already available, and insufficiently deterrent sentencing of offenders, by the courts, combine to undermine legislative protection of animals. Whilst Hong Kong's maximum sentencing levels for cruelty were significantly raised in 2006, our research has found that, for the most part, sentencing practices have remained unaltered. Along with extensive additions to regulatory powers, we recommend those enforcing animal welfare legislation are provided with updated guidance on the provisions and implementation of the law. Resources must also be made available to ensure there are adequate numbers of personnel implementing animal welfare laws at the ground level.

In conducting this review we have not addressed laws relating solely to the protection of endangered species, as our remit was to address animal welfare, not conservation. We recognize, however, that there are significant problems with the laws currently regulating trade in endangered species and enforcement of CITES, in Hong Kong, and suggest that further study for law reform in this area is required.

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INTRODUCTION

This review was fully supported by a public policy research grant from the Central Policy Unit of the Government of the Hong Kong Administrative Region and the Research Grants Council of the Hong Kong Special Administrative Region, China (Award HKU 7010-PPR-5). The purpose of the review was to evaluate legislation in Hong Kong directly affecting the welfare of animals, by comparing local laws with those in comparable jurisdictions and recommending reform, where necessary.

This was to be carried out by reviewing the provisions of Hong Kong's Prevention of Cruelty to Animals Ordinance, Cap 169, Public Health (Animals and Birds) Ordinance, Cap 139, Dogs and Cats Ordinance, Cap 167, Pounds Ordinance, Cap 168, Wild Animals Protection Ordinance, Cap 170, Rabies Ordinance, Cap 421, Public Health and Municipal Services Ordinance, Cap 132, Marine Fish Culture Ordinance, Cap 353, Animals (Control of Experiments) Ordinance, Cap 340 and Veterinary Surgeons Registration Ordinance, Cap 529.

METHODOLOGY

An important part of this review involved field study conducted by a team of researchers with veterinarian qualifications, headed by Dr Fiona Woodhouse, Deputy Director (Welfare), Society for the Prevention of Cruelty to Animals, Hong Kong. These researchers visited the Sheung Shui slaughterhouse, local farms, wet markets, pet shops, animal management centres and laboratories. The review also involved consultation by letter, telephone and in person, with individuals and organisations with an interest in laws affecting animal welfare, in order to gather information as to how current laws are working in practice. A consultation list is appended at Annex 1. The provisions of local Ordinances, and subsidiary regulations, were compared with the legislation of European Union member states, the USA, Australia, New Zealand, Singapore and Taiwan. Comparisons were made with minimum standards enforced in these jurisdictions.

LEGISLATION PROMOTING ANIMAL WELFARE

Ideas of what animal welfare is are constantly evolving. In 1968 the word ‘welfare’ first entered UK legislation and scientific animal welfare research commenced. The more scientific research has discovered about animal behaviour and animal suffering, the stronger has been the pressure on governments to act to promulgate laws which promote positive animal welfare. Law, in this regard, has followed science.

It used to be that scientific studies of animal welfare only assessed on the absence of negative experience for the animal, but increasingly studies consider whether the animal’s experiences are positive. In Europe, the UK, USA, New Zealand, Australia and Taiwan, animal welfare laws have already been promulgated or revised to require that animal are provided with positive experiences before it can be said that their welfare is good, or even acceptable, under the law.¹ Positive experiences required for animal welfare to be good include vitality, companionship, contentedness, enough food and water, foraging, play and exploration.

Since 2002, the OIE,² whose role is to manage animal health across the world, has also begun to provide recommendations for positive animal welfare, underscoring an international recognition of the link between animal health and animal welfare.³

Against this background, Hong Kong’s current Prevention of Cruelty to Animals Ordinance is now very much out of step with the rest of the world. It is based on the

¹ See European Convention for the Protection of Pet Animals 1992 (signed and ratified by Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Finland, France, Lithuania, Luxembourg, Germany, Greece, Luxembourg, Norway, Portugal, Romania, Sweden, Switzerland, Turkey), UK Animal Welfare Act 2006, USA Federal Animal Welfare Act 1966 (as amended in 1970, 1976, 1985 and 1990), Australian State Animal Welfare Acts (promulgated in each state from 2000+), New Zealand Animal Welfare Act 1999; Taiwan Animal Protection Law 1998.

See also the European Council Directive 98/58 which provides for a duty of care towards all animals kept for farming purposes in the European Union.

² Office International des Epizooties (The World Organisation for Animal Health).

³ To date, six animal welfare standards have been adopted. These cover the transport of animals by land, the transport of animals by sea, the transport of animals by air, the slaughter of animals for human consumption, the killing of animals for disease control purposes and the control of stray dog populations. Animal welfare standards for farm animals and laboratory animals are currently in development.

Protection of Animals Act 1911 (UK) which has now been completely replaced by a new Act in the United Kingdom: The Animal Welfare Act 2006. The reasons for the UK's replacement of the 1911 Act are compelling.⁴ Specifically, the government recognized the law under the Protection of Animals Act 1911 had five major shortcomings:

(1) Nature of the Legislation: The UK's primary legislation, the Protection of Animals Act 1911, could not be readily updated on the basis of developing scientific knowledge of animal welfare and changing public attitudes towards animals. Where the law had been developed, amendments had been piecemeal and difficult for the public to identify and follow. The development of the law relating to animals in Hong Kong has followed this same pattern, with very little amendment to the primary legislation, Cap 169, since it was first enacted in 1935.

(2) Limited Offence of Cruelty: The legal definition of cruelty under the Protection of Animals Act 1911 was difficult to understand and outdated. The High Court of England and Wales called the definition of cruelty, (which is the same one still used in Hong Kong today), unnecessarily confusing. In *Isted v Crown Prosecution Service* (1988) Lord Justice Brooke stated 'it surely high time' that policy underlying the cruelty offence be expressed in 'clear, intelligible, modern language'.⁵ Whilst Hong Kong continues to use the confusing definition of cruelty expressed in Cap 169, the same criticism will apply here.

(3) Outdated Modes of Protection for Animals: Whilst the Protection of Animals Act 1911 allowed for persons that had treated animals *cruelly* to be prosecuted, the law remained silent as to how animals *ought* to be treated. The old law required each case to reach the threshold of prosecutable cruelty, before law enforcement bodies could intervene to assist the animal. Waiting for an act of overt cruelty before law enforcers could act meant animals remained unprotected from most kinds of harm. In the European

⁴ See Radford M, Memorandum submitted to Select Committee on Environment, Food and Rural Affairs First Report, The United Kingdom Parliament; available at <http://www.publications.parliament.uk/pa/cm200405/cmselect/cmenvfru/52/4101216.htm>

⁵ [1998] Crim L.R. 194.

Union, USA, Australia, New Zealand and Taiwan, it has now been recognized that animals can only be adequately protected from harm where those responsible for them are placed under a positive duty to protect them. Hong Kong, having failed to update its legislation, is now lagging behind many overseas jurisdictions where a standard of care approach has been in place for some time.

(4) Inadequate Regulations: The Protection of Animals Act 1911 (UK) and its subsidiary legislation was criticized for failing to regulate in areas where regulation was clearly necessary, and for utilising outmoded regulations which did not recognize modern concepts of animal welfare or provide sufficient powers to allow regulatory authorities to adequately protect animals. The same criticisms apply in Hong Kong where regulations are, all too often, non-existent or outdated and inadequate to protect animals.

(5) Insufficient Enforcement: Inadequate regulatory powers for enforcement bodies, inadequate use of those powers which were already available, and insufficiently deterrent sentencing of offenders by the courts, were also blamed for failure to protect animals under the Protection of Animals Act 1911 (UK). Hong Kong law still fails to provide the enforcement powers necessary for the adequate protection of animals and, whilst some sentencing maximums have been recently raised, the actual sentences imposed by courts are glaringly inadequate.

In the UK, the Animal Welfare Act 2006 has now addressed the shortcomings of the Protection of Animals Act 1911 and provides a proper framework for the protection of animals from abuse, ignorance and neglect by imposing a positive duty on those in charge of animals to provide them with high standards of care and treatment.

Unfortunately, all the shortcomings of the Protection of Animal Act 1911 (UK) have been inherited through our Cap 169, and have yet to be addressed in Hong Kong.

(1) Nature of the Legislation

The primary Ordinance regulating the welfare of animals in Hong Kong is Cap 169. It was introduced in 1935 and is based on the Protection of Animals Act 1911 (UK), which has now been superseded by the Animal Welfare Act 2006 (UK). The Protection of Animals Act 1911 (UK) was a consolidation Act and therefore presented in a very piecemeal way. Unfortunately Hong Kong faces the same problem with Cap 169, which was copied from the UK Act of 1911.

The general offence of cruelty in Cap 169, at section 3(1)(a) mirrors the concerns of Victorian law reformists at the end of the nineteenth and beginning of the twentieth centuries. These included concerns about dog carts, horses being overridden and animals being overloaded. In England the cruel beating or ill treating of an animal was first prohibited in 1822. Torture was added in 1835, over-driving in 1849. Infuriating and terrifying were added in 1911. The list of methods by which an animal might be treated cruelly clearly reflected the priorities of a UK society that, at that time, was still heavily dependent on the horse.⁶

In recognition of the problems with the Protection of Animals Act 1911 (the same law Hong Kong has inherited), section 4 of the Animal Welfare Act 2006 (UK) has abandoned the prescriptive list of nineteenth century offences, which is still in use in Hong Kong to define cruelty, and states, instead, that it is an offence for a person to cause an animal to suffer unnecessarily, in circumstances in which he knew, or ought to have known, that suffering was likely. The UK Act also provides that any person responsible for an animal (not merely the owner) may commit an offence if he allows any another person to cause that animal to suffer.⁷ This expands the law to require any person in charge of an animal (whether he is the legal owner or not) to actively protect it from unnecessary suffering.

⁶ Radford M (2001) *Animal Welfare Law in Britain: Regulation and Responsibility* Oxford, Oxford University Press.

⁷ Animal Welfare Act 2006 (UK) at section 4(2).

Recommendation:

A new Animal Welfare Ordinance should be drafted for Hong Kong, providing a duty of care towards animals. This duty should 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. Alternatively, a duty of care should be introduced under Cap 169.

It should be noted that if changes are to be made to the definition of ‘unnecessary suffering’ in Cap 169, any change must clearly state that ‘suffering’ is to be defined as inclusive of purely mental suffering, and need not involve physical suffering. This would ensure the current position under Cap 169 is retained.

(2) The Limited Offence of Cruelty

As long ago as 1889, English judges were ruling that while tail docking may occasionally be justified, mere fashion does not justify such painful mutilation and disfigurement and, *prima facie*, the suffering caused by this practice is unnecessary and cruel.⁸

In the UK tail docking is now only permitted for the purpose of proper medical treatment, or where the dog is certified as a working dog and the tail is docked before it is 5 days old. In either case, only a vet may legally dock the tail. Mutilations are defined by the Royal College of Veterinary Surgeons (RCVS) as: ‘All procedures carried out, with or without instruments, which involve interference with the sensitive tissues or the bone structure of an animal, carried out for non therapeutic purposes’.⁹ The RCVS has for many years been opposed to the docking of dogs’ tails, whatever the age of the dog. The College has stated that docking cannot be described as prophylactic unless it is undertaken for the necessary protection of the given dog from risks to that dog of disease or injury which are likely to arise in the future. Faecal soiling is not, for this purpose, a

⁸ *Ford v Wiley* (1889) 23 QBD 203.

⁹ Royal College of Veterinary Surgeons Report on Animal Mutilations 1986.

disease or injury. In the UK, docking of dogs tails, for reasons other than truly therapeutic or prophylactic, is capable of amounting to conduct disgraceful in a professional respect and is disciplined by the College.

Recommendation: Specific offences should be introduced under Cap 169 which prevent cruel practices, which can no longer be ethically justified, such as tail docking and other unnecessary mutilations (including teeth grinding, de-barking, de-clawing, ear cropping and routine removal of dew claws from newborn puppies).

In the UK, it is also an offence to knowingly administer poisonous or other injurious substances to animals, (or cause them to be taken), without lawful authority or reasonable excuse. The introduction of such an offence to Hong Kong law would provide an appropriate mechanism for dealing with persons who leave poisoned bait in public places. Currently the only welfare offence which can be charged against dog poisoners (the offence of cruelty, under Cap 169) requires proof of the offender's intention to act cruelly, which presents a significant evidentiary problem for prosecutors. The introduction of a specific offence would assist to make prosecution of such cases simpler.

Recommendation: Cap 169 should be amended to introduce an offence of administering poisons or other injurious substances to animals.

The offence of fighting, currently prohibited under section 3(1)(e) of Cap 169, should also be distinguished from the other offences in section 3 and placed in a separate section of the Ordinance for the purposes of clarity and to highlight its particularly heinous nature. Fighting involves organized, premeditated and intentional suffering inflicted on animals for profit and the law needs to be amended to take into account all modernised forms of the offence.

AFCD (and other government appointed inspectors, which should include the SPCA inspectorate) should also be provided with the power to enter premises for the purposes of searching for animals which are believed to be involved with fighting offences and

seize them. The power to seize animals should also extend to include any other animals kept by any person arrested for a fighting offence, in the interests of animal protection.

Mandatory disqualification and deprivation orders should be imposed against owners from keeping any animals of the relevant species, on conviction for a fighting offence. Deprivation should not be regarded as an alternative to punishment, but as an ancillary order, taken by the court as an animal protection measure.

Recommendation: The prohibitions relating to animal fighting currently imposed under Cap 169 should be extended to include publicising a proposed fight, providing information about a proposed fight with the intention of enabling or encouraging attendance, making or accepting bets on animal fights, possessing anything designed or adapted for use in animal fighting, keeping or training an animal for the purposes of fighting, and supplying, publishing or showing a recording of an animal fight. Appropriate powers to seize animals believed to be involved with fighting offences should also be provided under the legislation.¹⁰ Disqualification orders should be made mandatory on conviction for fighting offences.

(3) Outdated Modes of Protection for Animals

As section 3 currently appears in Cap 169, an animal must actually suffer before an offence has been committed. Only then can any action be taken to protect the animal. This means that in cases of neglect, authorities currently have to wait until evidence of suffering is legally actionable before the animal can be, in any way, protected. The current law in Hong Kong does not allow for enforcement authorities to take any action at all to prevent the impending suffering of animals, despite the fact that their care is obviously inadequate. Enforcement authorities must bide their time, while the condition of the animal deteriorates, and an offence of overt cruelty is eventually committed. While the law continues to require enforcement authorities to establish proof of unnecessary suffering, beyond reasonable doubt, before a conviction can be recorded, then the

¹⁰ See sections 8 and 22 of the Animal Welfare Act 2006 (UK).

difficulties in obtaining such proof will mean that many cases of animal abuse go unprosecuted. Such a situation is clearly unsatisfactory. Modern animal welfare laws do not just prosecute cruelty, they actively prevent it.

In many overseas jurisdictions it has now been recognized that 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. A 'keeper' of an animal is defined as the owner, or person responsible for the animal, or in charge of it. Once there is a positive duty, imposed at law, requiring keepers to care for their animals, enforcement authorities are able to step in and protect the animals, when care is not being provided. Authorities need not wait until the animal has suffered an overt act of cruelty before it can be protected.

The addition of a duty of care, in law, focuses a legal responsibility on the owner for the conditions in which he keeps the animal, not just their subsequent effect. For example, the Animal Welfare Act 2006 (UK) now allows authorized persons (government appointed inspectors and police) to deal with animals in danger and distress in a proactive way. Whilst it remains an offence to treat animals cruelly in the UK, the law now also places a positive duty on those who keep animals to provide their animals with adequate care to meet their basic needs.

The policy behind the law recognizes that placing a duty on those who keep animals to provide them with adequate care is not unnecessarily burdensome. No person is forced to keep animals. The choice to keep animals is voluntarily assumed and, as such, there is no reason why the law should not regulate the way in which they are kept, to ensure their most basic needs are met. Whilst the vast majority of people who keep animals are doing all that they need to do to comply with a duty of care requirement, the change to the law was thought necessary to ensure that those persons not ensuring the welfare of their animals do not escape intervention because the legal requirements for a full prosecution could not be adequately met.

On this basis we also recommend a new Animal Welfare Ordinance for Hong Kong, providing a duty of care towards 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. To this end, species specific codes of practice for the care of owned pets should also be introduced.

Under the Animal Welfare Act 2006 (UK), an animal's needs are taken to include a suitable environment, a suitable diet, the need to be able to exhibit normal behaviour patterns, any need to be housed with, or apart from, other animals, and the need to be protected from pain, suffering, injury and disease. These needs are based on the Brambell Report five freedoms.¹¹ In the UK, New Zealand and Australia, the legislation is supported by codes of practice, for different types of animals, which are used to determine whether the keeper of an animal is meeting his or her responsibility to protect that animal's welfare.

The duty of care does not require the animal to be treated in an unrealistic fashion. It takes into account any lawful purpose for which the animal is kept, and any lawful activity undertaken in relation to the animal, when determining the reasonable steps which the person responsible should take, to meet the animal's needs.

In the UK, where reasonable steps are not taken, to meet the needs of the animal, to the extent required by good practice, an offence is committed. The beauty of the UK law is that it does not, however, require authorities to initiate prosecutions in most cases. Where the animal's welfare needs are not being fully met, but the animal is not yet at the point of suffering, the duty of care law allows the authorities to serve improvement notices. These notices provide the opportunity for the person responsible for the animal to rectify the problem, within a specified time period. The time period allowed for fixing the problem takes into account the need to ensure that action is taken before the animal

¹¹ *Report of the Technical Committee to Enquire into the Welfare of Animals kept under Intensive Livestock Husbandry Systems* (1965) (HM Government, UK).

begins to suffer. If it is suspected that the animal is already suffering, issuing an improvement notice would not be appropriate. However, if a notice is served, it will usually only be on failure to comply with the notice that an offence will be prosecuted.

The law also allows for swift action if the situation changes. If, after an improvement notice is served, the animal's condition deteriorates, and it is in danger of suffering before the time for compliance with the notice has expired, the authorities can step in and take possession of the animal, to protect it from harm.¹²

In the UK, improvement notices specify the actual breach of the duty of care, the steps which should be taken by the person responsible to remedy the situation, the period in which remedial action should be taken and the consequences of non-compliance with the notice. The compliance period may be short (such as 24 hours) for urgent action, or longer (e.g. 4 weeks) for a long-term solution. If the person responsible for the animal takes remedial action, within the time specified in the notice, to meet the needs of the animal, then a prosecution cannot be instituted. If he fails, however, to act on the notice, then a criminal prosecution may follow. Extra time can be given for compliance with a notice, at the discretion of the authority.¹³

In practice, the UK authorities have found that improvement notices usually achieve a response, which sufficiently protects the animal from harm, without any need for prosecution.¹⁴ In an RSPCA survey, conducted one year after the law had been introduced, inspectors stated that in 99% of cases simply issuing a notice resulted in positive action benefiting the animal.

In cases where no action is taken by the person responsible for the animal to meet its needs, the UK law also provides a mechanism for immediate intervention to remove the animal from risk, without the need to commence a prosecution. Where a vet certifies the animal is at risk, the authority is able, under the law, to act immediately to remove it, in

¹² See 'Powers to deal with Animals in Distress' at p22 below.

¹³ See section 10(4) Animal Welfare Act 2006 (UK).

¹⁴ Information provided by the Senior Inspectorate, RSPCA (UK).

order to ensure its safety, without the need for any prosecution. In fact, the RSPCA (UK) have advised that the law has worked so well in the UK that prosecutions are now only undertaken with the view to recording a conviction as a precondition to achieving a disqualification order, which will stop the offender from keeping animals in the future.

It should also be noted that in Scotland, the Animal Health and Welfare Act 2006 provides SPCA inspectors with the same powers to issue formal improvement notices as are provided to the local government officers. The reason the UK does not authorize its own RSPCA inspectors to issue formal improvement notices is that the RSPCA, in the UK, is a fully functioning prosecuting body in its own right, and may therefore be said to have a conflict of interest in investigating offences. The SPCA of Scotland does not act as a prosecuting body, and as such is seen to have no conflict in taking such action. Hong Kong's own SPCA also does not function as a prosecuting body, and as such there would be no conflict in providing their inspectorate with the same powers which we recommend should be provided to the AFCD inspectors. Such authorization would, in fact be necessary, given the current manpower problems experienced by the AFCD in enforcing animal welfare legislation.

(4) Inadequate Regulations

During the scope of our review we have noted the widespread inadequacy of current regulations imposed on persons licensed for animal trade, farming, transport, slaughter and experimentation. Each of these problems will be addressed in detail in later chapters, however we highlight some of the more glaring deficiencies below.

On conviction of an animal trader for an offence of cruelty towards an animal the current law does not allow the AFCD to revoke the animal traders' licence. If there has been no breach of the licence requirements the AFCD must wait for the licence to expire before they can act to stop the licensee from continuing to trade.

There is no law regulating the welfare of pigs kept on farms. This is despite the fact that there are currently 43 licensed farms in Hong Kong, housing 80,000 pigs.¹⁵ The lack of regulations addressing pig welfare means that practices which have either been banned outright or severely restricted overseas, including castration, tail docking and ear notching, without pain relief, and the confinement of sows in farrowing crates and sow stalls, continue without any regulation in Hong Kong.

Hong Kong's Code of Practice for the Welfare of Food Animals provides no prohibition against transporting sick and injured livestock. In practice, vulnerable livestock are routinely sold to the slaughterhouse by farmers or abandoned to die.

Two of Hong Kong's three slaughterhouses (Tsuen Wan and Cheung Chau) are permitted to operate without a vet responsible for animal welfare on duty.

The current law does not require researchers conducting laboratory experiments on animals to report animal welfare problems encountered to the Department of Health.

Updating the legislation

Very importantly, extending the power to readily and swiftly update laws relating to animal protection has also been the subject of law reform in the UK¹⁶ and Scotland.¹⁷ Both Acts now provide extensive enabling powers to update the law, without recourse to the enactment of further primary legislation. This allows for developing scientific knowledge, changing ethical considerations and perceived weaknesses in current legislation to be addressed quickly. Both Acts provide the power to make any regulations that secure the welfare of animals, for which a person is responsible, and their progeny. Regulations are subject to the affirmative resolution of Parliament and the UK and Scottish Acts provides a non exhaustive list of the type of provisions which may be included in regulations, such as general and specific requirements for care, prohibitions on actions, creation of offences, enforcement, imposition of penalties, post conviction

¹⁵ Statistic provided by the Federation of Pig Raising Co-operative Societies Hong Kong, Kowloon and New Territories, 13.1.2010.

¹⁶ See section 12 Animal Welfare Act 2006 (UK).

¹⁷ See sections 26 and 27 Animal Health and Welfare Act (Scotland) 2006.

orders, the conferring of powers on specified individuals (such as powers of entry, search, inspection and seizure), and the creation of an offence of obstructing a person who is exercising their powers under the law.

Recommendation: Extensive enabling powers should be introduced under Cap 169 (requiring significant amendment to section 8), and ultimately, a new Animal Welfare Ordinance for Hong Kong enacted, which would allow for up to date regulations to be introduced, as required, without the need to amend primary legislation, ensuring prompt and effective protection of animals in Hong Kong.

(5) Insufficient Enforcement

The effectiveness of any law relies on its enforcement. Within the AFCD conflicting organizational priorities, lack of legal training for field officers and a serious shortage in manpower, all contribute to low numbers of prosecutions. Over the past 3 years¹⁸ AFCD has prosecuted only 26 cruelty cases under Cap 169, an average of 8 prosecutions per year. With the assistance of information and evidence provided by the SPCA inspectorate, the police prosecute an average of 16 cases per year.

Unfortunately, low prosecution rates result in low sentences, as magistrates are kept unaware of the true prevalence of animal abuse. In criminal sentencing practice, the prevalence of an offence is a significant factor in determining the appropriate sentence. Low prosecution rates also mean the public are less aware of the problem and less likely to galvanise momentum for change.

It is also significant to note that none of the 26 cruelty cases prosecuted by the AFCD between 2006 and 2009 involved animals kept on farms, in pet shops or breeding establishments. This is despite the fact that over 200 years of Common Law precedent emphasizes that offenders who ill treat animals they keep for profit should attract a significantly higher level of criminal culpability. Where animals are deliberately

¹⁸ April 2006- March 2009.

mistreated for commercial gain, enforcement should be more likely rather than non-existent. During the same three year period, 44 cases were brought against pet traders for breach of licensing conditions and 14 for trading animals without a licence. Many of these cases involved animals being treated cruelly. We recommend that where pet traders are prosecuted for licensing offences more consideration should be given to pursuing charges of cruelty, where there is evidence of such.

The offence of Abandonment of Animals

Currently Hong Kong prohibits the abandonment of animals under Cap 421, at section 22. Section 22(1) provides that the offence occurs where a keeper of any animal, without reasonable excuse, abandons that animal. Unfortunately, this section has been interpreted by the AFCD to require that a conviction can only be achieved if the prosecution is able to prove the defendant had an intention to *permanently* abandon the animal.¹⁹

In fact the wording of the section clearly denotes that this is an absolute liability offence, and that permanent abandonment is *not* an element of the offence. The only legal defence available under the law, as it is currently drafted, arises where a defendant can point to a reasonable excuse for abandoning the animal. There is no requirement at law to prove the abandonment was intended by the defendant to be permanent. If an animal is left unattended, and the person responsible has failed to make adequate provision for its welfare, the elements of the offence are already complete.

If legislation to protect animals is to be effective, it must be enforced. If the appropriate authorities are not exercising the powers available to them adequately, the welfare of animals is compromised. Inadequate enforcement of the law not only undermines the purpose of the legislation, but also damages public confidence in the law's ability to ensure proper protection for animals.

¹⁹ At a meeting held on 19 February 2008, of the LegCo Panel on Food Safety and Environmental Hygiene, the then Deputy Director AFCD opined that where AFCD could trace the owners of stray dogs from their microchips and those owners subsequently claimed their animals, there would be no grounds to prosecute them for abandonment.

In the UK, the offence of abandonment has now been included as a manner of failing to meet the needs of the animal, under the duty of care offence. Anyone who leaves their animal, without taking reasonable steps to ensure their needs are met, as required by good practice, commits an offence of abandonment. Failing to provide a suitable diet, suitable environment, and protection from pain and suffering, by leaving an animal to fend for itself, whether for a short or long term period, falls foul of the UK's duty of care offence.

Recommendation: The offence of abandonment of animals either becomes prosecutable under a new duty of care offence (as recommended above) or the current misunderstanding of the legal requirements for prosecution under section 22 of Cap 421, as it now stands, is clarified for those charged with prosecutions in Hong Kong.

It should also be noted that the only kind of animal which can be said to be illegally abandoned in Hong Kong are mammals.

Recommendation: Part 1 of Schedule 1, to Cap 421, should be amended to include birds, reptiles, amphibians and fish, all of which are commonly abandoned by their owners in Hong Kong.

Powers to deal with Animals in Distress

Under the current law in Hong Kong there is no power for the authorities to remove an animal from conditions where it is suffering or likely to suffer, without bringing a prosecution and achieving a conviction.

The Animal Welfare Act 2006 has remedied this deficiency in the UK by providing, at section 18 of the Act, the power for inspectors (local authority) or police to step in and take possession of animals which are suffering, or likely to suffer if their circumstances do not change. No offence need be committed, or proven, for this action to be taken. The

point of the law is simply to protect the animal from harm or further harm. Where it is in the best interests of the animal, it can also be destroyed.

Action to alleviate suffering can be taken immediately the inspector finds the animal. There is no need to seek the view of a veterinary surgeon. Such action may include providing food or drink, opening a door, or gate, to allow the animal to escape an enclosed space, or opening a car door to assist an animal likely to suffer from heat stress. Actual possession (and, where there is no reasonable alternative, euthanasia) of the animal can also be taken, usually on the prior certification of a veterinary surgeon, although in emergency situations, animals can be fully removed from premises, without prior vet certification. Possession of dependant offspring of the animal can also be taken.

The law provides that there is no need for a vet to complete documentary certification that the animal concerned should be taken into possession, a recording of any advice given by telephone, in the vet's own records, is sufficient. If the vet cannot say whether the animal is already suffering, from the information given to him, he can certify its removal for the purposes of examination, on the basis that it is likely to suffer if it is not so removed.

An animal that has been removed may be taken to a safe place (such as an animal welfare centre) where care can be provided to it, or care may be provided to the animal on the premises where it is already being kept, using whatever equipment is available at that place. Costs of care undertaken by the inspector, or police, may be reclaimed, on the order of a magistrate. After hearing from the owner of the animal,(if he can be located), a magistrate may also order that the animal is provided with specified treatment, that possession of the animal is given up to some other specified person (or body), that the animal is sold or that the animal is destroyed.²⁰

If the person responsible for the animal is not present when the animal is taken into possession, the law requires that he should be notified as soon a practicable thereafter.

²⁰ Section 20 Animal Welfare Act 2006 (UK).

In order to give effect to the powers under section 18 of the Animal Welfare Act 2006 (UK), local authority inspectors and police are provided with the power to enter public premises for the purposes of searching for animals which are suffering, or are likely to suffer if intervention is not taken.²¹ In Scotland, SPCA inspectors are also provided with the same powers.

If force is necessary to enter the premises then a warrant would usually be necessary although action may be taken without warrant in cases where it is required for the protection of the animal.

It should be noted here also that in Scotland, the Animal Health and Welfare Act (2006) provides SPCA inspectors with the same powers to take possession of animals in distress as are provided to government inspectors and police. The reason the UK does not authorize its own RSPCA inspectors to take possession of animals in distress is that the RSPCA in the UK is a fully functioning prosecuting body in its own right, and may therefore be said to have a conflict of interest. The SPCA of Scotland does not act as a prosecuting body, and as such is seen to have no conflict in taking such action. Hong Kong's own SPCA also does not function as a prosecuting body and as such there would be no conflict in providing their inspectorate with the same powers provided to the AFCD inspectors. Such authorization would, in fact be necessary given the current manpower problems experienced by the AFCD in enforcing animal welfare legislation.

Recommendation: Cap 169 should be amended, or a new Animal Welfare Ordinance enacted, introducing a similar power to that found in sections 18 and 19 and 20 of the Animal Welfare Act 2006 (UK), allowing AFCD senior veterinary officers, police and SPCA senior inspectors to assist and, where necessary, take possession of animals which are suffering or in danger or suffering, without the need for an offence to be charged or prosecuted.

²¹ Section 19 Animal Welfare Act 2006 (UK).

Disqualification and Deprivation Orders

Recommendation: On conviction for any animal welfare related offence a magistrate should have the power to disqualify a person from keeping animals and deprive him of any animals currently being kept. On conviction, where such an order is not imposed, the Court should be required to give written reasons why such an order was not made.

We are aware that the AFCD has proposed such an amendment to Cap 169 and we therefore offer only brief comments on this recommendation. Any order must be broad in nature. Thus the offender who is the subject of the order should be disqualified not only from owning or keeping those animals he presently has in his possession but also, where necessary, from owning or keeping animals in the future, participating in the keeping of animals with others, dealing with animals, transporting animals and from being a party to an arrangement under which he is able to control or influence the way in which animals are kept.²² The necessary power to seize animals currently being kept by the person subject to the disqualification order would also need to be introduced.²³

Current sentencing practice

Whilst Hong Kong's maximum sentencing levels for cruelty were significantly raised in 2006, for the most part sentencing practices have not altered, with moderate fines remaining the usual tariff for animal cruelty offences in the magistrates' courts.

As most cases are prosecuted in the magistrates' courts, and not appealed, sentencing notes are extremely rare. Records kept by the AFCD provide little detail of reasons for sentence, and cannot therefore be used to build a bank of precedent, on which legal submissions on tariff sentences, in future cases, could be based.

²² See section 34 Animal Welfare Act 2006 (UK).

²³ See sections 35 and 36 Animal Welfare Act 2006 (UK).

Police records provide more detail. In the 18 months following the increased penalty for cruelty to animals, to 3 years, 19 cases were prosecuted by the police for cruelty. Of these 19 convicted offenders, only 9 received sentences of imprisonment. Further, despite the fact that each of the 9 cases involved the poisoning, violent beating, prolonged starving, or suffocation of animals, the average sentence imposed was 2 months imprisonment, with most offenders being asked to serve 6 weeks or less. The intent of the legislative change is clearly not being recognized in the courts.

Despite the maximum fine level also having been raised, in 2006, to \$30,000, the average fine imposed for cruelty during the 18 months following the change was \$1200. As a standard tariff, this must be viewed as entirely inadequate.

Unfortunately statistics shown to the courts by prosecutors revealing the current low levels of fines imposed over the past years have only served to perpetuate the problem. Sentences imposed should reflect the gravity of the offence and the criminality of the actual offender, not the statistical average.

The importance of the role of the prosecutor in ensuring that facts relevant to sentencing are placed before the court, cannot be overemphasized. The Brief Facts of the case, provided to the magistrate, should include a detailed description of the offending, along with veterinary evidence of the injuries sustained, the likely level of suffering the animal endured and the period over which this suffering was inflicted. Of the cases reviewed by us, the Brief Facts provided often included scant veterinary evidence of such matters.

In the UK, New Zealand and Australia, sentencing guidelines have been formulated to assist courts in passing appropriate sentences in difficult cases. In the UK, Magistrates Court Sentencing Guidelines have been introduced for animal welfare offences.²⁴ These Guidelines require that for medium term neglect of an animal, at the very least, the offender should receive a high level community order (e.g. a long term community service order). Only where the animal has been caused little, or no, actual injury should a

²⁴ Published by the United Kingdom's Sentencing Guidelines Council, effective from 4 August 2008.

non custodial sentence be the norm. Where the animal has suffered more than minimum injury or fright, or where neglect of the animal has gone on for more than a short period of time, then 3 months custody is provided as the appropriate sentence. For attempts to kill, torturing, baiting or fighting of animals, the sentence should be set at a minimum of 3 months imprisonment, with more serious cases requiring at least 6 months imprisonment. Aggravating features which should increase sentences include situations where the offender has responsibility for the animal, the offender keeps the animal for his livelihood, the offender uses a weapon, the offender has ignored previous advice/warnings, the offender has committed the act for commercial gain, the offender has acted against more than one animal or the animal is seriously injured or has died.

Whilst in Hong Kong, reliance on the Court of Appeal's guideline judgments has traditionally been used to serve the same purpose in criminal law, animal cruelty cases are very rarely appealed. As such, the appellate courts have had very little opportunity to fill the lacuna.

Recommendation: Those charged with prosecuting have a responsibility to ensure that the intention of the legislature, that animal welfare is a serious concern, is conveyed adequately to the judiciary. We recommend legal training in case preparation for those charged with animal welfare prosecutions.

THE PET TRADE

The government department responsible for overseeing the pet trade in Hong Kong is the AFCD. Licences for pet shops and breeding establishments are provided under the Public Health (Animals and Birds) (Animal Traders) Regulations, Cap 139B. New licensing conditions have recently been added, to try to better control the supply of animals smuggled illegally into Hong Kong, but the welfare regulations imposed on pet shops and breeders are still widely out of date and Cap 139 is in need of serious amendment.

Animal Breeders: Hobby

Direct trade between purchaser and companion animal breeder is currently exempted from commercial regulation in Hong Kong if the animal concerned is a ‘pet’ or the offspring thereof. The UK has a similar exemption for ‘hobby breeders’. In the UK, however, far more legislative care has been taken, than in Hong Kong, to ensure that commercial breeders cannot disguise their trade as a hobby and run large scale breeding operations without inspection. Any person whose dogs produce five or more litters per year, which are then sold, either by the hobby breeder himself, or by someone else, is required to obtain a licence.²⁵ Under the UK law, there is no maximum number of dogs a hobby breeder may own but the four litter maximum, per hobby breeder, per year, includes the litters of dogs owned by relatives and living on the same premises, dogs kept elsewhere but owned by the hobby breeder, or dogs owned by someone else but kept under a breeding arrangement with the hobby breeder.

During the course of our review the AFCD considered altering the current law to require hobby breeders to own no more than two bitches at a time, to avoid licensing restrictions. However the amendment has not been pursued by the AFCD and hobby breeders remain unregulated in Hong Kong. As the AFCD reported, at the time of enquiry, there are only two licensed breeders in Hong Kong, the majority of breeders are subject to no licensing conditions at all. This situation is completely at odds with animal welfare requirements

²⁵ Breeding and Sale of Dogs (Welfare) Act 1999 (UK).

and places Hong Kong's control on puppy farming on a par with the worst jurisdictions in the world.

Recommendation: Any person breeding dogs should be required to register with the AFCD. Cap 139B should be amended to provide that any person whose dogs go on to produce five or more litters per year, which are then sold, either by the hobby breeder himself, or by someone else, must obtain a licence. The regulation should provide no maximum number of dogs a hobby breeder may own but a four litter maximum, per hobby breeder, per year, must be imposed, including the litters of dogs owned by relatives and living on the same premises, dogs kept elsewhere but owned by the hobby breeder, or dogs owned by someone else but kept under a breeding arrangement with the hobby breeder.

Animal Breeders: Licensed

The UK law also makes it an offence for a breeder to mate a bitch before one year of age and breeding from each bitch is restricted to no more than six litters in a lifetime, with no more than one litter per year. Dogs may not be sold to their final home until they are eight weeks old.²⁶ The same conditions are mandatory in Australia (NSW and Victoria).²⁷ Cats must not be mated before they are nine months of age and may have a may have no more than three litters in any two year period. It is also an offence to sell on animals acquired from an unlicensed breeder.

The UK, Victoria and NSW require that all licensed breeders keep records of their bitches, including name, date of birth, address where kept, breed, colour, details of sire, date of mating, and puppies birth dates, weight, description, and sale details (including date of sale, name, address and type of purchaser (pet shop/private)). Maintaining these

²⁶ The Breeding of Dogs Act 1973 as amended by The Breeding and Sale of Dogs (Welfare) Act 1999 (UK).

²⁷ See mandatory compliance codes: *Code of Practice for the Operation of Pet Shops*; Victorian Department of Primary Industries and *Animal Welfare Code of Practice: Animals in Pet Shops*; NSW Department of Primary Industries.

records accurately is a condition of licensing and the records must be available for inspection at all times.²⁸

Recommendation: Similar breeding age and litter requirements should be added to the Hong Kong Animal Traders Licence conditions, under Cap 139B, and also enforced against hobby breeders. Maximum numbers of animals which may be kept in breeding establishments should be set to control the opportunities for puppy/kitten mills or dog farms to establish.

In Australia, shops are required to consider the sources of puppies and kittens and encouraged to seek suppliers who comply with recommended conditions and can show good animal welfare records. Queensland provides a thorough checklist for this purpose.²⁹ California³⁰ requires shops to post full and complete details of each puppy's origins (and a health certification) on the outside of the animal's primary enclosure. Singapore recommends animals are only sourced from known sources that are reliable and consistent in producing healthy animals of good quality.³¹

²⁸ See by way of example The Breeding of Dogs (Licensing Records) Regulations 1999 (UK).

²⁹ According to the *Queensland Code of Practice for Pet Shops* Queensland Department of Primary Industries accepted standards may include those of recognised breed societies, or the following:

- (i) The breeder meets local government requirements for a breeder's permit.
- (ii) All animals are healthy, bright and alert, and sociable.
- (iii) Appropriate treatment is provided for injury or illness.
- (iv) Animals are accommodated with suitable space, cleanliness and shelter.
- (v) Animals are fed a high-quality diet.
- (vi) Dogs are provided with regular exercise, companionship and stimulation, and cats with environmental enrichment.
- (vii) The breeder is knowledgeable about breed standards (the desired characteristics of the breed, such as size, proportion, coat, colour, and temperament) and breed-specific genetic problems, and provides documentation that the kitten's/puppy's parents and grandparents have been tested (where possible) to ensure they are free of these genetic problems.
- (viii) A health care program is provided to both breeding stock and litters that includes worming, flea control, vaccination and heartworm prevention, as recommended by a local veterinarian.
- (ix) Documentation of health care and medical history is provided with each kitten/puppy.
- (x) A health guarantee is provided.
- (xi) Kittens/puppies have been desexed, or post-sale desexing is encouraged.

³⁰ See California Health and Safety Code, Article 122140.

³¹ *Pet Shop Best Practices*; Singaporean Centre for Animal Welfare and Control, Agri-Food and Veterinary Authority.

Queensland and NSW also encourage pet shop managers to support the sale and homing of animals from shelters and pounds. Whilst these measures are non-compulsory, they represent sensible and responsible practices and bolster awareness of a serious welfare issue.

Recommendation: Cap 139B should be amended to require that certification of the origin and health of all puppies and kittens for sale in pet shops is displayed on enclosures.

Staff Training in Pet Shops

Whilst the Hong Kong pet trade is governed by an overarching statute, trader legislation, licensing scheme and codes, they are dated and undemanding. Persons applying for an animal trader licence are not screened and no special qualifications or training are required. By way of contrast, Singapore requires that prospective licensees or managers of pet shops are interviewed to ascertain their suitability for the care of animals and suggests all staff are sent for formal training.³² The Australian states of NSW, Victoria and Queensland require that all staff of pet shops are trained and that training is updated.³³ All animals must be inspected daily in both shops and breeding establishments and any animal that appears ill, injured, behaving oddly or losing weight must be immediately reported to the licensee or manager for his action.³⁴ The Queensland Code recommends that staff are selected on the basis of attitude and empathy with animals.

³² In accordance with The Animals and Birds (Pet Shop and Exhibition) Rules 2004, Singapore.

³³ *Animal Welfare Code of Practice: Animals in Pet Shops*; NSW Department of Primary Industries, at section 4.1, *Code of Practice for the Operation of Pet Shops*; Victorian Department of Primary Industries, at section 1.1 and *Queensland Code of Practice for Pet Shops*; Queensland Department of Primary Industries, at section 5.

³⁴ According to the NSW Code the matters for which veterinary treatment should be sought include but are not limited to:

- runny nose;
- runny discharging or inflames eyes;
- repeated sneezing;
- coughing;
- vomiting;
- severe diarrhea;
- lameness;
- bleeding or swelling of body parts;

Persons in charge of breeding establishments in NSW and Victoria must also be competent and knowledgeable in animal welfare and must ensure their staff are trained or already experienced in the care of animals.³⁵

Recommendations:

-Cap 139B should be amended to require that all persons applying for animal trader licences must demonstrate their suitability for caring for animals (either through accreditation or experience) and have put in place an animal welfare training regime for all staff or volunteers participating in the care of the animals;

-A list of licensed traders and registered premises should be made available to the public;

-Animal Trade licences should be revocable at any time, for any breach of the law relating to animal welfare, (not just under Cap 139), at the discretion of the AFCD;

-Court orders, disqualifying persons from keeping animals, should be available under Cap 139B, where a licensee is convicted of any offence relating to animal welfare.

-
- inability to stand, walk, urinate or defecate;
 - loss of appetite;
 - weight loss;
 - apparent pain;
 - fits, staggering or convulsions;
 - patchy hair loss;
 - bloating of the abdomen;
 - difficulty to urinate or defecate;
 - red or brown coloured urine;
 - depression;
 - fever;
 - presence of external parasites;
 - any other serious physical or behavioral abnormality.

³⁵ *Animal Welfare Code of Practice: Breeding Dogs and Cats*; NSW Department of Primary Industries, at section 4.1, and *Code of Practice for the Operation of Breeding and Rearing Establishments*; Victorian Department of Primary Industries, at section 2.3.

Animal Health

Whilst Hong Kong requires that unweaned animals may not be sold, there is no minimum age for sale as is commonly found in other jurisdictions. In the Australian states of NSW and Victoria, the minimum age for sale of puppies and kittens is eight weeks; for rabbits, five to six weeks; for guinea pigs, four weeks; and for mice, three to four weeks. Juvenile birds must be self sufficient and fully feathered. Reptiles with active lesions should not be sold.³⁶

Recommendation: Minimum ages for sale of different species should be imposed under Cap 139B.

Whilst Hong Kong licensing requirements provide that no dogs, cats or birds suspected of being sick should be stocked and any animals being treated for communicable diseases should be separated from others, there is currently no requirement for animals to be vet checked and certified on arrival at the shop premises or for active management of sick animals held in either pet shops or breeding establishments. In terms of licensing conditions, NSW and Victoria require that quarantine facilities and treatment are provided for all sick animals (not just those with communicable illnesses as is required in Hong Kong).³⁷

Victoria require all animals to be examined by a vet within 24 hours of entry to a shop and California requires all dogs to be vet certified and to have their vet certificates posted on their primary enclosure. In the UK, model licensing conditions require that animals should have an acclimatisation period before being placed on display in pet shops.³⁸ In

³⁶ *Animal Welfare Code of Practice: Animals in Pet Shops*; NSW Department of Primary Industries, at section 10.1.9, *Code of Practice for the Operation of Pet Shops*; Victorian Department of Primary Industries, at section 2.4.

³⁷ *Animal Welfare Code of Practice: Animals in Pet Shops*; NSW Department of Primary Industries, at sections 7.1 and 8.2, *Code of Practice for the Operation of Pet Shops*; Victorian Department of Primary Industries, at sections 1.2 and 2.3.

³⁸ *Model Standards for Pet Shop Licence Conditions*; formulated under Pet Animals Act 1951 (UK).

Singapore it is recommended that such period should be a minimum of 72 hours.³⁹

In the Australian states of NSW, Victoria, and Queensland there are detailed requirements for the care and management of sick and pregnant animals (in both pet shops and breeding establishments) and pre-arranged vet care agreements must be in place, allowing for care to be available to the animals at all times and for humane euthanasia (in the form of an overdose of barbiturate) to be provided by the vet where necessary.⁴⁰ The NSW Breeding Code requires that animals that have commenced whelping or kitting, without progress for two hours, must be provided with veterinary attention.⁴¹ Whelping bitches and kitting queens must be provided with a suitable whelping or kitting box, with clean bedding changed daily.

Recommendations:

-Cap 139B should be amended to require that all pet shop and breeding establishments must have in place a veterinary care agreement ensuring sick animals receive care at all times, and humane euthanasia, where necessary. Such care must be provided to sick animals without delay.

-Cap 139B should be amended to require veterinary health certification on the entry of any animal to the pet shop, and such certification should be displayed on the animal's sale enclosure.

Whilst the Hong Kong licensing requirements provide that animals should have convenient access to food, there are no details as to how often certain animals should be fed. In Victoria, NSW and Queensland all adult animals (except reptiles) must be fed at

³⁹ *Pet Shop Best Practices*; Singaporean Centre for Animal Welfare and Control, Agri-Food and Veterinary Authority, at section 5.

⁴⁰ See n 37 above.

⁴¹ *Animal Welfare Code of Practice: Breeding Dogs and Cats*; NSW Department of Primary Industries, at section 8.1.1.3.

least once per day (including public holidays).⁴² Puppies and kittens must be fed suitable food at least three times daily, until they reach four months of age. Between four and six months of age they must be fed at least twice daily. Up to the age of six months of age, they must not be left without food for more than twelve hours. Co-habiting animals must be fed under supervision to ensure each animal receives the required amount of food.

NSW and Victoria require that dogs and cats held in breeding establishments are also placed on an effective worming programme. A heartworm programme must also be in place for dogs (NSW).⁴³

Recommendation: Minimum provision of nutrition and basic health care requirements should be regulated under Cap 139B.

Despite the fact that lack of environmental enrichment has been linked to psychological distress and stereotypies,⁴⁴ Hong Kong licensing conditions provide no requirement for the enrichment or active exercise of animals kept in pet shops for trade or in breeding establishments. By way of contrast, NSW and Queensland require that exercise facilities must be provided to dogs in pet shops and dogs actively exercised at least twice per day for a minimum of ten minutes per time (puppies must be exercised at least three times per day).⁴⁵ These minimum requirements include public holidays. Singapore recommends that dogs kept in shops are exercised twice per day for a minimum of thirty minutes per time.⁴⁶

⁴² *Animal Welfare Code of Practice: Animals in Pet Shops*; NSW Department of Primary Industries, at section 9.1, *Code of Practice for the Operation of Pet Shops*; Victorian Department of Primary Industries, at section 2.3 and *Queensland Code of Practice for Pet Shops*; Queensland Department of Primary Industries, at section 11.2.

⁴³ *Animal Welfare Code of Practice: Breeding Dogs and Cats*; NSW Department of Primary Industries, at section 8.2.1.

⁴⁴ Broom D M and Fraser AF (2007) *Domestic Animal Behaviour and Welfare*, Cambridge: Cambridge University Press.

⁴⁵ *Animal Welfare Code of Practice: Animals in Pet Shops*; NSW Department of Primary Industries, at section 12.1, *Code of Practice for the Operation of Pet Shops*; Queensland Department of Primary Industries, at section 14.

⁴⁶ *Pet Shop Best Practices*; Singaporean Centre for Animal Welfare and Control, Agri-Food and Veterinary Authority, at section 32.

The NSW Code of Practice for Breeding Dogs and Cats requires that dogs kept in breeding establishments must have the opportunity to run freely in an exercise area or be walked on a leash for at least twenty minutes a day.⁴⁷ Currently the Hong Kong Code sets minimum space requirements for exercise runs in establishments which engage in breeding, which would not allow dogs of any size to run freely and there are no requirements for dogs to be walked on leash at all.

Recommendation: Both pet shops and breeding establishments should be required, under Cap 139B, to exercise all dogs kept on the premises, at least twice a day, either on leash or within an area allowing sufficient space for the animal to run freely.

Australian states require that all animals in pet shops and breeding establishments have behavioral enrichment in their enclosures, recognizing the physiological status and special needs of differing ages and species, to ensure good psychological health.⁴⁸ Birds must have cuttlefish, toys, foliage etc as enrichments in their cages. Rabbits, rats, mice and guinea pigs must have wooden gnawing blocks. In Singapore, puppies are provided with toys, chewables and towels, and cats with toys and scratch posts.⁴⁹ Small mammals are provided with chewing blocks and exercise wheels. California requires that there is at least one enrichment toy provided per enclosure.⁵⁰ Australia (NSW, Queensland, Victoria and South Australia) and California also mandate regular socialisation of the animals with humans (if appropriate to the species) and regular socialisation with other animals. The Queensland law requires that puppies and kittens are not held in isolation unless there is no practical alternative.⁵¹ There are no provisions requiring enrichment or socialisation of animal enclosures in Hong Kong pet shops or breeding establishments.

⁴⁷ *Animal Welfare Code of Practice: Breeding Dogs and Cats*; NSW Department of Primary Industries, at section 7.1.1.7.

⁴⁸ *Ibid.* at section 7.1.1.10.

⁴⁹ *Pet Shop Best Practices*; Singaporean Centre for Animal Welfare and Control, Agri-Food and Veterinary Authority, at sections 33 and 34.

⁵⁰ California Health and Safety Code, Article 122352.

⁵¹ *Code of Practice for the Operation of Pet Shops*; Queensland Department of Primary Industries, at section 14.2.

Recommendation: Species appropriate enrichment of enclosures should be required under Cap 139B.

There is no restriction on who may purchase an animal in Hong Kong, and no requirement to provide purchasers with literature or advice as to the welfare needs of the animal. In Australia (NSW, Victoria, Queensland, South Australia) and California purchasers must be provided with literature about feeding, desexing, parasite control, health, housing, responsible ownership and current legislation covering registration of the animal.⁵² For reptiles, information prepared by a specialist herpetologist relating to the specific reptile sold must be provided at the time of sale. In Wales, such information must be made available upon the purchaser's request. Animals may only be sold to suitable persons in Australia, Singapore and the UK. In Queensland, the risk of impulse buying of pets displayed in shop windows is addressed by sales staff in their advice to customers.

In NSW a person must be 18 years of age to buy a dog and 16 years of age to buy any other kind of animal.⁵³ In Queensland a person must be 17 years of age to purchase any kind of animal.⁵⁴ Singaporean pet shops use checklists to determine the suitability of

⁵² See by way of example *Animal Welfare Code of Practice: Animals in Pet Shops*; NSW Department of Primary Industries, which requires written information to be provided to the purchaser on such topics as:

- general care including appropriate diet and feeding regimes;
- usual life span of breed;
- minimum requirements for humane shelter and accommodation;
- minimum requirements for the security of the animal;
- minimum requirements for social contact with humans and other animals of the same species;
- minimum requirements for disease and parasite control prevention;
- how to identify and appropriately manage common diseases;
- procedures for seeking emergency treatment and the value of establishing a relationship with a vet;
- estimated costs of providing food and shelter;
- routine vet treatment required, e.g. parasite control and vaccinations;
- maximum time the animal can be left unattended;
- expected behaviours of the species/breed, e.g. digging or scratching;
- information about legal requirements for pet ownership;
- minimum exercise requirements.

⁵³ *Animal Welfare Code of Practice: Animals in Pet Shops*; NSW Department of Primary Industries, at section 10.1.1.

⁵⁴ *Code of Practice for the Operation of Pet Shops*; Queensland Department of Primary Industries, at section 12.5.

potential purchasers. In the UK no person under the age of 16 may purchase an animal.⁵⁵

Recommendations:

-Licensing conditions should require that a leaflet outlining the care and welfare requirements of every animal sold is provided to potential purchasers before the point of sale and a person with appropriate knowledge of the species is available to answer queries.

-A minimum age of 16 years should be required before a person can purchase an animal in Hong Kong.

In Australia, animals purchased may be returned without cause within certain time limits for full or partial refunds and guarantees of animal health must be provided.⁵⁶ When the animal is sold, information as to where to go for emergency treatment during the warranty period must be provided. In the USA, most States have warranties for animals sold allowing the return of sick animals and refunds for animals which have died. In Hong Kong, buyers are not protected by the law; the maxim *caveat emptor* applies.

Recommendation: All animals sold in Hong Kong should be returnable within a specific time period, without cause, and guarantees of animal health provided for a stated period.

In Australia all dogs and cats must be micro chipped before sale, however in Hong Kong only dogs are micro chipped. Health problems and abandonment concerns could be avoided if Hong Kong required cats to be micro chipped before sale to either pet shop or pet owner. Micro chip numbers should also be required to be recorded on cat vaccination cards, as is the case with dogs.

⁵⁵ Animal Welfare Act 2006 (UK) at section 11.

⁵⁶ See by way of example *Code of Practice for the Operation of Pet Shops*; Victorian Department of Primary Industries, at section 2.4.

Recording requirements placed on proprietors of breeding establishments in Australia⁵⁷ and the UK⁵⁸ include the names of dam and sire, their descriptions and registration details, the date of mating, date of whelping/queening, sex and registration number of each member of the litter, dates of worming and details of treatment, dates of vaccinations with certification, name and address of purchasers, dates of sale and dates of death of any animal. These records must be kept for five years (Victoria) and three years (NSW).

During the course of our review amendments were made to Cap 139 licensing conditions⁵⁹ requiring vets to certify that puppies to be traded by private owners (hobby breeders) are the offspring of licensed dogs and record the details of the bitch and the date of birth, sex, colour and micro chip number of the offspring (once they are chipped). Licensing conditions have also been amended to require licensees to keep an up to date register of stock, including numbers, sales, purchases, transfers and deaths of all animals kept on the licensed premises. This is an important step forward in controlling the source of animals traded.

There is, however, still no requirement for a pet shop or breeding establishment to transfer ownership once they have sold the animal to the new owner. When the staff of AFCD Animal Management Centres permit an animal to be ‘adopted’ out, the new owner is, however, required to fill in a registration document on the spot before the animal is allowed to leave AFCD premises.

Recommendation: Cap 139B should be amended to place a requirement on pet shops and breeding establishments to ensure that those identified animals (e.g. microchip/leg ring) traded out are traceable to the purchaser, should the animal be later abandoned or lost.

⁵⁷ *Animal Welfare Code of Practice: Breeding Dogs and Cats*; NSW Department of Primary Industries, at section 5.1, and *Code of Practice for the Operation of Breeding and Rearing Establishments*; Victorian Department of Primary Industries, at section 4.

⁵⁸ Breeding of Dogs (Licensing Records) Regulations 1999 (UK).

⁵⁹ Additional Animal Trader Licensing Conditions were introduced by AFCD on 1 February 2010.

Enclosures in Pet shops and within Breeding establishments

The primary enclosure is a major determinant of the welfare of a pet shop or breeding animal. Primary enclosure regulations can be categorised into three areas: basic requirements, size requirements and species-specific requirements.

Basic requirements

Whilst Hong Kong licensing conditions provide basic enclosure requirements these lag behind more progressive US states and Australia, where far more detailed regulations are imposed. These include such requirements as the provision of new clean and soft bedding provided to dogs, cats, rabbits, guinea pigs and mice daily, and all animals in view of the public removed from shop window enclosures at night or the enclosures covered with opaque screens to exclude both light and the vision of the public. In NSW, all enclosures must provide space for the animals to withdraw to a quiet, dark area to take sleep breaks.⁶⁰ The floors of all dog and cat enclosures must be lined with absorbent disposable material that can be readily removed and replaced.⁶¹ We recommend that the current basic requirements imposed in Hong Kong be clarified and updated to ensure animals kept in pet shops and breeding establishments fully benefit from the intention of the conditions imposed.

Recommendations: Current licensing conditions under Cap 139 should be made more specific to require:

-the provision of clean soft bedding for all animals;

-a minimum of once daily cleaning out of enclosures, with the removal of all perishable or soiled bedding and uneaten food;

⁶⁰ *Animal Welfare Code of Practice: Animals in Pet Shops*; NSW Department of Primary Industries, at section 5.1.1.5.

⁶¹ *Animal Welfare Code of Practice: Animals in Pet Shops*; NSW Department of Primary Industries, at section 12.1.4.

-cats to be provided with clean litter trays daily;

-all watering and feeding utensils to be cleaned daily;

-all kennels to be provided with raised beds constructed of a material other than concrete, such as wood or plastic;

-all cats to be provided with a suitable box in which to hide or sleep;

-other animals to be provided with a suitable space to withdraw from sight;

-where different species are housed in adjoining cages, a solid opaque partition used to separate the enclosures;

-where forced ventilation is used in a breeding establishments, a minimum air change rate of 8-12 changes per hour, to prevent the build up of foul odours.

In Hong Kong, sub paragraph (j) of the ‘Additional Conditions attached to Animal Traders Licences’ currently provides that not less than 50% of the floor area of each primary enclosure must be solid or covered at all times with a solid platform or sleeping board of a design suitable to enable the animal (cat or dog) to stand, sit and lie comfortably. As a matter of practice AFCD is currently interpreting this section to allow for the entire floor of the enclosure to be made up of plastic gridding (as 50% of a grid is solid and 50% open). The obvious intent of sub paragraph (j) was to ensure animals are provided with proper resting places with adequate solid flooring to protect the animals’ feet. Such is the interpretation of similar clauses in the USA.

Recommendation: Sub paragraph (j) of the *Additional Conditions attached to Animal Traders Licences issued under Cap 139 (applicable to dog and cat traders)* should be

enforced in a manner consistent with its clear intent, or revised to ensure dogs and cats are provided with 50% solidly contiguous flooring in their enclosures.

Size requirements

In Hong Kong there are no legislated enclosure size requirements imposed on ordinary pet shops which do not engage in breeding on the premises. Cap 139B merely requires that primary enclosures are constructed to allow the animal to move about freely and stand, sit, lie and perch comfortably. In practice, our field research noted:

- dogs confined in enclosures of the same length and height as the animal;

- rabbits and guinea pigs crowded together, often at twice the prescribed densities set overseas;

- snakes and lizards enclosed in small takeaway food containers;

- turtles held in overcrowded buckets and tortoises enclosed in locked small cases with no ability to move.

In Australia (Victoria), the following Table sets out the minimum legal cage and pen sizes for specific species of animals. The NSW requirements are almost identical. By specifying minimum sizes for enclosures animals are ensured better protection than under the subjectively interpreted regulation used in Hong Kong. In some cases time limits are also imposed on the confinement of the animals (e.g. 21 days in South Australia). In Victoria, animals may only be kept in this size cage for a maximum of four weeks.

DOGS, CATS, RABBITS, GUINEA PIGS, MICE & SNAKES	Minimum floor area (Sq. cm)	Minimum width (cm)	Minimum height (cm)	Maximum number of animals	Increased floor area for each additional animal (sq. cm)
Dogs					
Puppies (8-16 weeks)					
Less than 3 kg	6,000	60	50	4	1,500
Over 3 kg	6,000	60	50	2	3,000
Adults less than 40 cm in height	15,000	90	180	1	-
Adults 40-70 cm in height	24,000	90	180	1	-
Adults over 70 cm in height	35,000	90	180	1	-
Cats					
Kittens (8-12 Weeks)	6,000	60	50	4	1,500
Adults	6,000	60	50	1	-
Rabbits					
Young(5-12 weeks)	6,000	60	50	6	300
Adult	6,000	60	50	2	600
Guinea pigs	2,500	50	40	4	600
Mice	600	20	20	2	300
Snakes					
Up to 100 cm	2000	45	35	2	1000
100 cm to 250 cm	4500	50	50	2	-
250 cm to 400 cm	6000	50	50	2	-
Over 400 cm	10000	90	75	1	

NOTE. Juvenile pythons (less than 40 cm) may be held singularly in holding units with a minimum floor area of 480 square cm. These units may be stored in one temperature controlled enclosure. Juvenile mice (less than 8 weeks) may be housed four to a pen.

LIZARDS, TORTOISES, FROGS	Minimum floor area (Sq. cm)	Minimum width (cm)	Minimum height (cm)	Maximum number of animals	Increased floor area for each additional animal (sq. cm)
Lizards					
Geckoes, skinks legless lizards to 25cm snout to vent length	1800	30	20	3 Adults 10 juveniles	300
Monitors, dragons, skinks* to 30 cm total length	2100	40	40	3 Adults 10 juveniles	350
Monitors, dragons, skinks** to 50 cm total length	2500	40	40	2 Adults 5 Juveniles	600
Monitors, dragons, skinks*** to 90 cm total length	7000	90	60	1	3500
Monitors to 120 cm total length	10000	90	90	1	5000
Monitors to 200 cm total length	30000	150	120	1	15000
Tortoises			Minimum water depth		
Carapace- 0 - 10 cm	1800	30	20	3	300
Carapace- 10 - 20 cm	3,600	40	30	3	600
Carapace- over 20 cm	6000	40	30	3	1500
Frogs					
Large Tree and Ground Frogs	2500	50	40	3	400
Small Tree and Ground Frogs	1800	30	30	6	150

NOTE * This group includes -Black Rock, Tree, White's, Water, Stripped Skinks

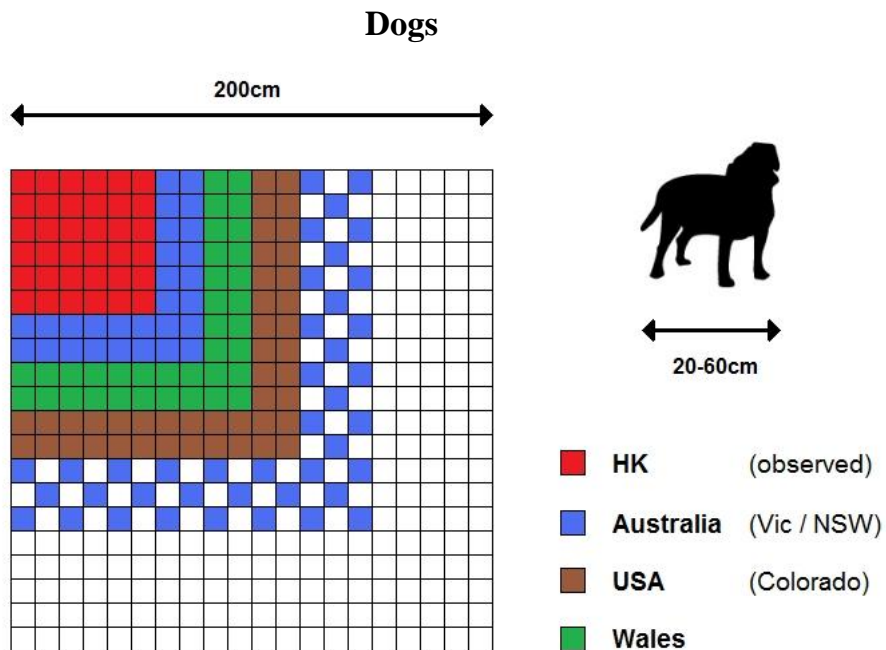
** Includes heavy bodied, slower moving species such as Blue-tongue, Shingleback, Gidgee Skinks

*** Includes Land Mullet, Yakka, Major, King's Skink

Comparisons with Hong Kong practice

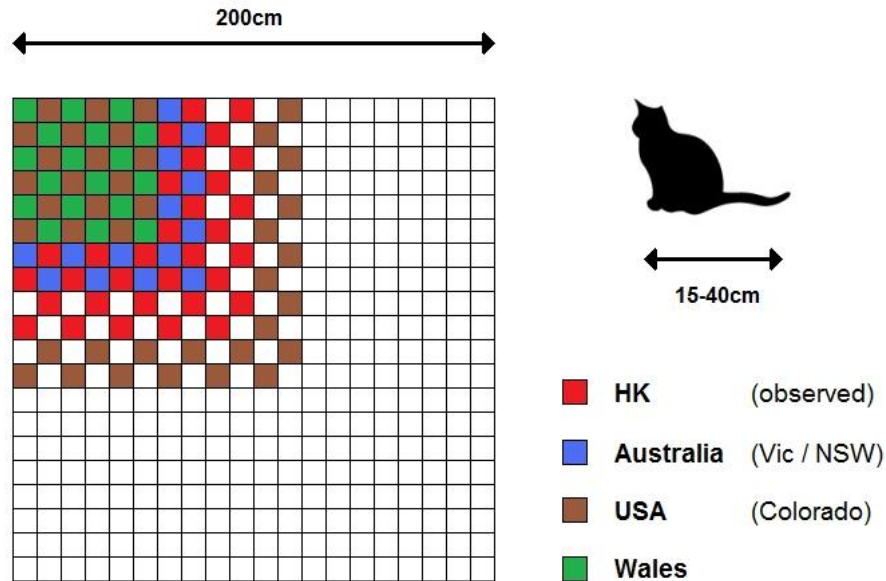
In the following charts, red areas indicate the common enclosure sizes observed by our researchers in pet shops in Hong Kong. For some animals, more than one enclosure size is indicated to fairly represent the various examples found.

Other coloured areas represent the minimum primary enclosure sizes in other jurisdictions. As the prescribed enclosure sizes may vary depending on the size of the animal, they have been correlated with the sizes of the animals generally observed in Hong Kong pet shops (e.g. puppies, adult cats, medium rabbits). For further clarification, the typical length of each animal is also represented alongside each chart. Where a number is indicated within the coloured areas of a chart, this represents (i) the number of animals observed in an enclosure in Hong Kong, or (ii) the maximum number of animals allowable in an enclosure of that size in another jurisdiction. Chequered areas represent notable variations; these are explained on a case-by-case basis.



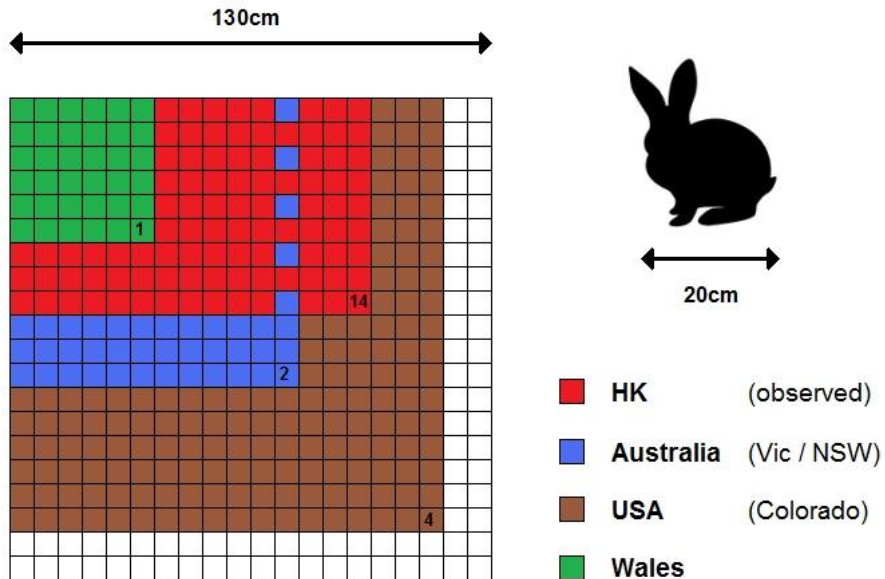
The chequered area represents the minimum enclosure size in Australia for the largest dog observed in a 60 x 60 cm enclosure in Hong Kong.

Cats



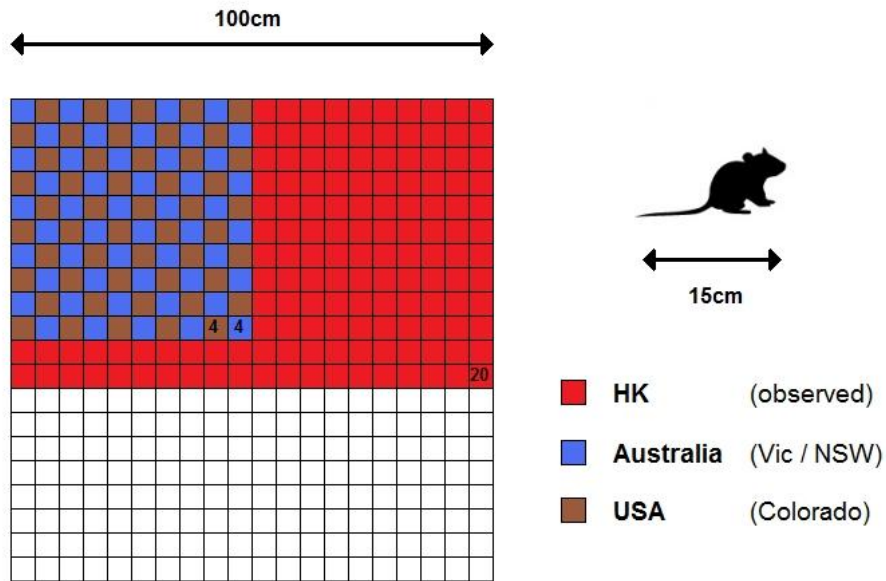
Hong Kong kitten housing practice reflects the Australian requirement. Hong Kong adult cat practice (where 1-2 cats were housed per enclosure) lags only behind Colorado's requirement for multiple adult cats.

Rabbits



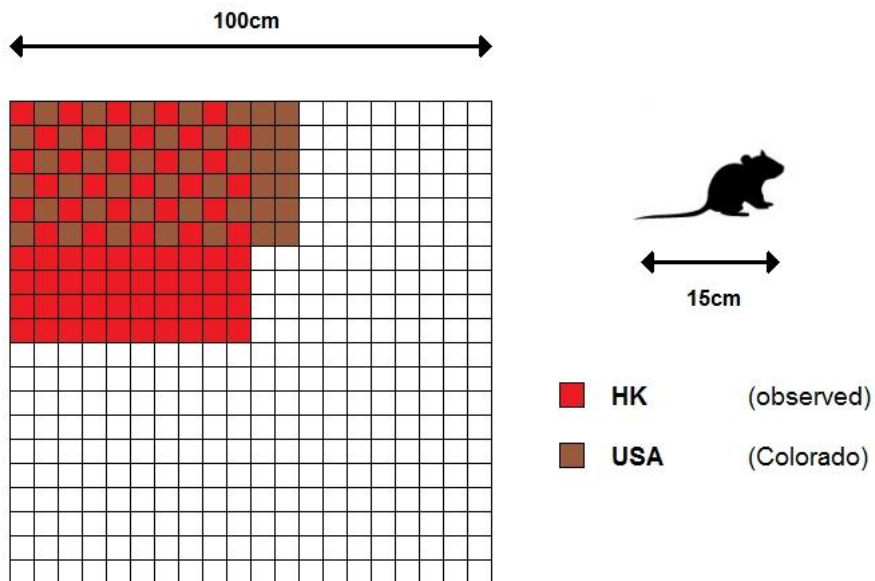
Note the very high density of animals per enclosure in Hong Kong compared to international requirements.

Guinea Pigs (pictorial licence used)



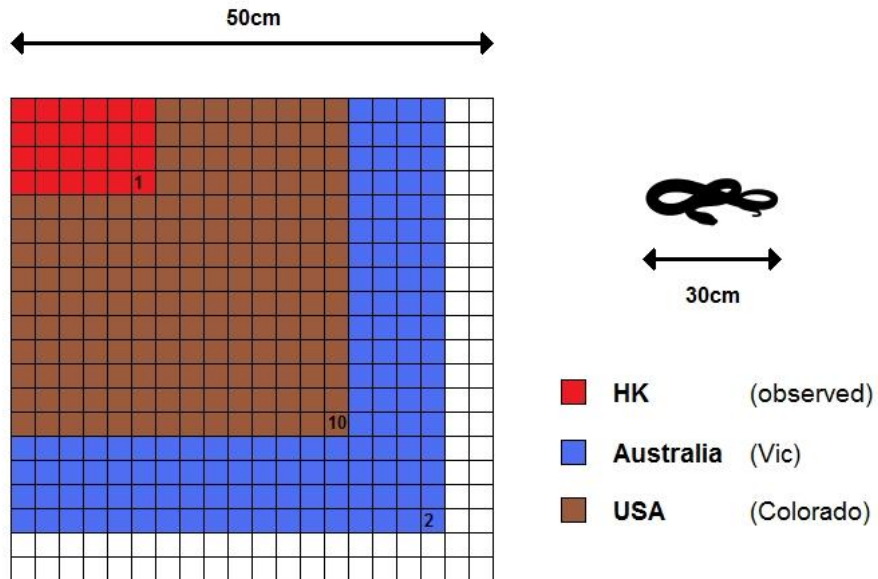
Note the high density of animals per enclosure in Hong Kong compared to the various international requirements (approximately double).

Chinchillas (pictorial licence used)



Hong Kong practice is similar to requirements in Colorado and Singapore (uncharted). Colorado also provides for significantly larger 2 and 3-storey enclosures where 3 or 4 animals (as opposed to 1-2 animals) are to be housed.

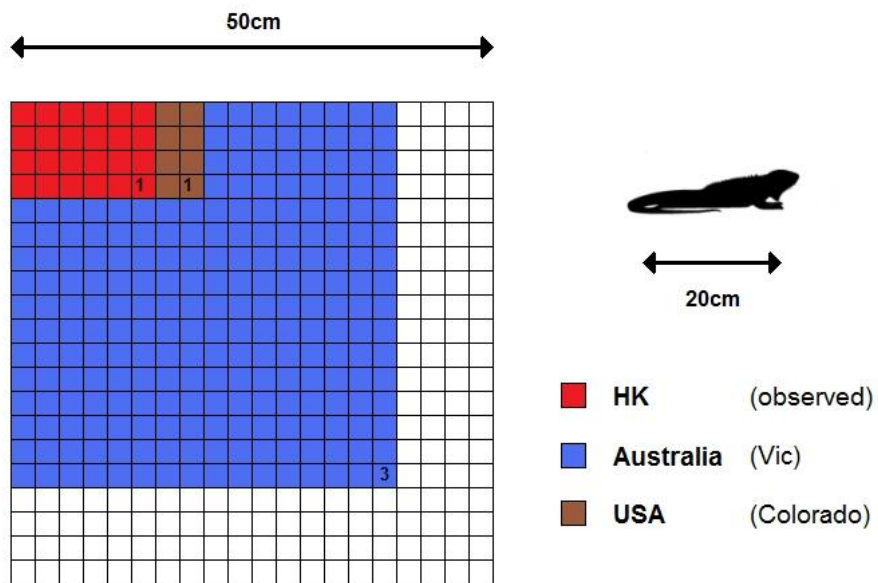
Snakes



While the US laws are harsh on snakes, Australia is very respectful.

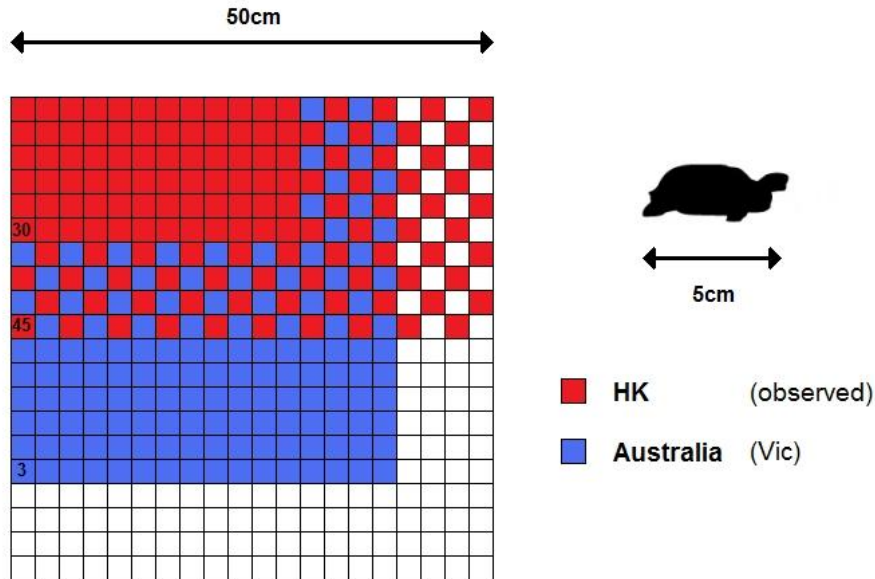
The charted size represents the worst practice observed in Hong Kong pet shops. These containers were approximately 5cm tall.

Lizards



Comments in respect of snakes apply here also.

Turtles



Some of the most varied and inadequate space conditions were observed for turtles and tortoises.

Comparison of enclosure size requirements for breeders

The Victorian Code of Practice for the Operation of Breeding and Rearing Establishments requires, at law, that, at a minimum, dogs of less than 40 cm in height at the shoulder are provided with 7 square metres of enclosure space. The Hong Kong licensing conditions require only 1.1 square metres for any dog up to 12 kg. The Victorian Code requires that dogs of between 40-70 cm height, at the shoulder, are provided with a minimum of 10 square metres of space. Hong Kong permits a minimum of 1.4 square metres for dogs up to 30 kg. The Victorian Code requires a minimum of 15 square metres space for dogs over 70 cm in height, at the shoulder. Hong Kong permits dogs of 30 kg, and over, to be enclosed within a space of 1.4 square metres.

Clearly there is a deficiency in the licensing conditions imposed in Hong Kong which currently allow for the largest dogs in the SAR to be enclosed in a space that would not even be permitted for the smallest dogs in Victoria.

Recommendation: Cap 139B should be amended to introduce adequate and humane space provisions for dogs, rabbits, guinea pigs and reptiles kept in pet shops and breeding establishments.

Species specific conditions

Whilst chinchilla trade requirements are by far the most comprehensive of any animal in Hong Kong, and match those typically found overseas, rabbits and guinea pigs, which would be accorded similar treatment to chinchillas in Australia, are not provided with the same regulatory attention. In Victoria and NSW, cages for rabbits, guinea pigs and mice must have a darkened private area for resting. Nest boxes must be provided for breeding females. Suitable, non toxic bedding must be provided and discarded daily.⁶² Such requirements are provided only for chinchilla in Hong Kong.⁶³

In Victoria and Queensland reptiles must be kept in optimal temperatures (20-33 degrees), with a maximum photoperiod (8-12 hours with red/blue lighting so that the animal has a dark period during the day), 3-walled enclosures with only one viewing panel, enclosures must include cage furniture that allows for concealment of the reptile and the enclosure must allow for screening from noise and vibrations.⁶⁴ Frogs and snakes must be provided with a shallow pool of water. In Hong Kong, the only regulatory requirement specifically addressing the welfare needs of reptiles is that the enclosure in which they are contained is escape proof.

⁶² *Code of Practice for the Operation of Pet Shops*; Victorian Department of Primary Industries, at section 3.2; *Animal Welfare Code of Practice: Animals in Pet Shops*; NSW Department of Primary Industries, at section 13.1.

⁶³ Probably due to the fact that these animals became popular as pets comparatively recently, and the newer code requirements have taken into account updated information on chinchilla husbandry and animal welfare science.

⁶⁴ *Code of Practice for the Operation of Pet Shops*; Victorian Department of Primary Industries, at section 3.2 and *Queensland Code of Practice for Pet Shops*; Queensland Department of Primary Industries, at section 18.

In Australia (Victoria and Queensland), turtles and tortoises kept in pet shops are required to be provided with areas in the enclosure allowing for both full water immersion and a totally dry haul out area large enough to allow all the animals to be completely out of the water. The edges of the haul out areas must be of a shallow gradient to allow easy access and not to abrade the bellies of the animals. Light and temperature control is also mandatory.⁶⁵ In Hong Kong, our researchers noted that turtles and tortoises are often subjected to extremes of heat and light, they are kept with a completely inadequate water supply or placed in full suspension in plastic bags or buckets of water, with no haul out area at all, like fish.

Recommendation: Additional species specific conditions applicable to rabbits, guinea pigs, mice and reptiles should be introduced, under Cap 139, to ensure the welfare of these animals in trade.

Livestock kept as pets

Current regulations directed at horses kept for riding are also deficient. The Public Health (Animals) (Riding Establishment) Regulations, Cap 139J, require persons operating riding establishments to be licensed. Also in place is the AFCD ‘Code of Standards for Licensed Riding Establishments’ (1998).

Whilst the Licensing Conditions and Code provide some protection to horses used for riding, it is of concern that species specific welfare requirements are not in place for all horses, regardless of usage. Since the regulations were enacted in Hong Kong there has been a change in traditional usage and ownership of equine, with increasingly common private ownership of riding horses for recreation and the introduction of horses that may be used as pets, exhibited on ‘petting farms’ or used for driving, etc.

By way of comparison, the Department for Environment Food and Rural Affairs (UK) has introduced a ‘Code of Practice for the Welfare of Horses, Ponies, Donkeys and their

⁶⁵ *Ibid.*

Hybrids' (2009) which sets out detailed accommodation, management, nutrition, socialisation and health care requirements for all named equine, regardless of use. When compared with this Code, the Hong Kong regulations are conspicuously lacking in detailed care requirements.

It is also of concern that there are currently no government regulations protecting the welfare of the largest population of horses used commercially in Hong Kong: racehorses in the training stables. Welfare protection of this group relies mainly on the internal mechanisms of the Hong Kong Jockey Club which, whilst apparently effective in ensuring these animals receive appropriate care, is not strictly the best approach. Whilst the welfare of race horses is left to the Jockey Club itself to police, there is always the possibility conflict of interest may arise.

Recommendation: Regulations should be introduced under Cap 139 to ensure the welfare of horses kept for all uses.

Species specific legislation does not address the welfare requirements of livestock such as sheep, cattle, buffalo and goats kept outside designated districts, (as identified under Cap 139C), or cows which are not being kept for milk (at registered dairies). Such animals are currently kept as pets, used in petting zoos, or as attractions on small organic farms.

Whilst these animals attract some protection under the AFCD 'Code of Standards for the Exhibition of Animals/Birds,' the Code does not recognise these animals' species specific welfare requirements. While the animals concerned may be able to rely on the general protection offered under Cap 169, in practice this only protects them from overt acts of cruelty and is ineffective as a safeguard against general neglect and ignorance of the specific requirements of the species kept.

Even for cattle kept at registered dairies, the welfare of the animals concerned is not the primary focus of the regulations, or even the licensing conditions, (under Cap 139D), with scant content aimed at positively promoting the welfare of the animals or setting minimum standards for their care. Again, this leads to the animals concerned relying on

the general protection offered under Cap 169, which in practice only protects them from overt acts of cruelty. By way of comparison, species specific protection offered under the Australian Primary Industries 'Model Code of Practice for the Welfare of Animals: Cattle' (2004) extends to all cattle, regardless of whether they are kept commercially or for other reasons (such as a hobby).

Recommendations:

-Cap 139 should require all persons keeping livestock (regardless of use) to be licensed.

-Licensing Conditions and Codes of Practice relating to the care of specific species should be updated and, where necessary, introduced to address special welfare requirements.

Street Trading of Pet Fish/Reptiles

Whilst street selling or hawking is now banned in Hong Kong there are grey areas of animal trade in Hong Kong which may infringe upon this ban but which are not actively being prosecuted. There is little practical distinction between street selling and many of the fish and reptile stalls located in Tung Choi Street, Mong Kok, Kowloon. Ornamental fish are traded in very large quantities in Hong Kong yet are not subject to trade regulation which addresses their specific welfare needs. The welfare needs of fish and reptiles are largely overlooked by the current regulations despite the fact that there is scientific evidence that fish feel pain and fear in much the same way as mammals do, a fact overtly recognised in the Australian state of Queensland's Code which prescribes detailed requirements for their proper care.⁶⁶ In Hong Kong, however, the conditions imposed for trading animals under Cap 139 do not address the specific welfare needs of fish or reptiles.

⁶⁶ *Queensland Code of Practice for Pet Shop*, Queensland Department of Primary Industries and Fisheries, at 17.1.

Recommendation: Appropriate licensing conditions should be added under Cap 139B targeting those who trade in fish and reptiles. ⁶⁷

Once sold, animal welfare problems continue due to owners having inadequate knowledge of the specific welfare needs of the less common reptiles. We recommend that the types of reptiles which should be permitted to be sold in Hong Kong should be limited to those which may be appropriately cared for by the public. In Singapore the types of reptiles which may be sold is limited on this basis to red-eared sliders, green tree frogs (*Litoria caerulea*) and Malayan box turtles (*Cuora amboinensis*) CITES Appendix II.

Recommendation: There should be a definitive list of legally traded pet species in Hong Kong. Where there is legal regulation on the ownership of certain species traded in Hong Kong, (such as CITES II species), a robust system of permanent identification of the animal, in order to ensure it is legally obtained, should be put in place.

Enforcement of Licensing Conditions

Over the past 3 years⁶⁸ only 14 persons have been prosecuted for selling animals without a licence and an average of only one prosecution per month brought against shops for failing to observe licensing conditions (most cases involving failing to vaccinate or micro chip dogs).

Breaches of licensing conditions are, however, rampant in Hong Kong, where a survey conducted by the SPCA, from November 2006 to May 2009, found 32% of 202 sick pet shop bought puppies,⁶⁹ brought to private clinics, had not been micro chipped, and 13% had been sold without a vaccination record. Of these sick puppies, 72% had exhibited

⁶⁷ See, by way of example, *Pet Shop Licence Conditions for Display and Sale of Fancy Fish*; Singaporean Centre for Animal Welfare and Control, Agri-food and Veterinary Authority.

⁶⁸ April 2006 to March 2009.

⁶⁹ The majority (79%) were aged 12 weeks or younger.

illness within a week of sale and 10% on the very day of purchase. Commonly, the puppies were diagnosed with distemper and parvovirus, some with more than one disease. Distemper and parvovirus are extremely serious, life threatening illnesses which cause intense suffering to the animal but which can be prevented by vaccination and proper disease control.⁷⁰ The death rate of these unfortunate animals is at least 30%.

Although traders are required to keep records of stock sold, the same survey found that 11% of the sick puppies identified were sold without a receipt.

Part of the problem in strengthening animal welfare in the pet trade lies with the low penalties imposed for breaching the law. The maximum penalty for breaching a licensing condition is currently \$1000. The AFCD proposes an amendment to this fine, raising the maximum to \$50,000. Trading without a licence or selling unweaned animals currently incurs a maximum fine of \$2000. It is proposed to amend this maximum fine to \$100,000.

It should be noted here that in the UK unlicensed dog breeders, or licensed breeders who breach their licensing conditions, may not only be fined but also imprisoned, for up to 3 months.

Whilst it is commendable that at least the maximum fine level in Hong Kong is likely to be raised, it is inherently unlikely that the law will be any better enforced against unscrupulous breeders/pet shop owners. Raising the maximum possible fines, assuming this has any effect on the sentences passed, will do little to deter poor pet shop and breeding practices whilst prosecution numbers remain low. Enforcement of the law requires manpower and AFCD has advised us they currently have only eight staff which

⁷⁰It should be noted here that despite the extreme suffering caused to some animals by contraction of parvovirus or distemper, failure to vaccinate, where it is prosecuted, is only ever pursued by AFCD as a licensing offence and has never been prosecuted as an act of cruelty. Amending the law to allow prosecution under a duty of care offence would rectify this problem.

can be deployed to police the pet trade.⁷¹ Clearly little can be addressed whilst manpower remains so limited.

In other jurisdictions similar problems have been relieved by specially accredited members of the SPCA Inspectorate being designated to assist the local authority in the inspection of shops and breeding establishments. In the UK, such accredited members of the SPCA Inspectorate are given the same powers to issue warnings and enforcement notices against offenders, as the local authority's officers.

It should finally be stated that the prosecution of vendors for acts of cruelty towards animals kept in pet shops, (as opposed to breaches of licensing conditions), is extremely unlikely in Hong Kong. In the past 3 years, of the 26 cruelty cases prosecuted by the AFCD, none have involved animals kept in pet shops.

⁷¹ As at November 2009, the AFCD employed a total of 25 field officers or inspectors. Investigating breaches of pet shop licensing conditions is not, however, the only task these staff are required to perform. The duties of the 25 staff also include investigating alleged cruelty offences under Cap 169, managing the 4 Animal Management Centres, handling complaints, processing licences, identifying unlicensed shops, breeding and boarding establishments, investigating offences under the Dogs and Cats Ordinance, Cap 167 and the Rabies Ordinance, Cap 421 and preparing cases for prosecution.

SLAUGHTER

The Food and Environmental Hygiene Department, (FEHD), is the government department responsible for overseeing the three slaughterhouses in Hong Kong: Sheung Shui, Tsuen Wan and Cheung Chau. The three slaughterhouses are required to comply with the Slaughterhouse Regulations, Cap 132BU. The regulations require the operators to allow inspection of animals by government officers, refuse entry of animals where necessary and certify dressed carcass and offal as fit for human consumption. The regulations also impose strict restrictions on alterations to the premises after a licence has been granted. The licensing conditions imposed provide detailed requirements for sanitation, but are silent on animal welfare, with the exception of one clause. Licensing Condition 8, at Appendix B, provides that: ‘All animals shall be slaughtered humanely with humane slaughter equipment’. In the absence of any other guidance to slaughterhouse workers, the FEHD has at least published ‘Operational Guidelines for the Welfare of Food Animals at Slaughterhouses’ however, as compliance with these guidelines is not a licensing condition, the guidelines are not actively enforced and are, in any case, largely out of date with humane practice overseas.

In 2008, the FEHD reported slaughtering 1.5 million pigs, 28,000 cattle and 10,000 goats. All cattle and goats, and most of the pigs, were slaughtered at the Sheung Shui Slaughterhouse. A smaller number of pigs (300,000) were slaughtered at Tsuen Wan and a much smaller number (6,000) at Cheung Chau.

By comparison, in the European Union, every year nearly 360 million pigs, sheep, goats and cattle as well as several billion poultry are slaughtered. Hatcheries kill around 330 million day-old-chicks and the control of contagious diseases may also require the killing of thousands to millions of animals.

In order to maintain the welfare of animals at slaughter the OIE Terrestrial Animal Health Code 2009 states that the following welfare issues, which directly affect animal health, should be properly addressed:

-stress reduction and minimisation of fear;

- handling and restraint of the animal prior to stunning;
- use and maintenance of race, stunning pen and stunning equipment;
- stunning efficacy and accuracy;
- used of qualified, trained and competent slaughter personnel;
- bleeding procedures and their duration.⁷²

Training of Staff

In particular, the OIE requires that persons engaged in the unloading, moving, lairaging, care, restraining, stunning slaughter and bleeding of animals should be of sufficient number. They should be patient, considerate, competent and experienced in the handling of animals and their behaviour patterns.⁷³

The OIE requires that those charged with managing slaughterhouse facilities and the local government veterinary services ensure that slaughterhouse staff perform their tasks in accordance with the principles of good animal welfare. OIE acceptable aids for moving animals include panels, flags, plastic paddles, flappers and metallic rattles. It is also required that these instruments are used in a manner sufficient to encourage and direct movement of the animals but *without* physical contact with them. The OIE Terrestrial Animal Health Code requires that under no circumstances should handlers resort to violence to move animals. Shouting or yelling at animals to encourage them to move should also not occur as such actions tend to panic animals, leading to crowding or falling. Injured or sick animals should be killed quickly and humanely where they are, and not forced to move on.

Hong Kong purports to be observing the standards set by the OIE Code but, during the course of our research, field observations of common practice at the Sheung Shui

⁷² As recommended in the Scientific and Technical Review, Office International des Epizooties (OIE), World Organisation for Animal Health, Vol 24 (2), 2005.

⁷³ See OIE Terrestrial Animal Health Code (2009), Article 7.5.2.

Slaughterhouse (representing 90% of slaughtered livestock) revealed the following breaches of animal welfare standards:

- slaughterhouse workers hitting animals with electric goads on power cords, sticks and pipes, and shouting at the animals and exhibiting other violent behaviour;
- constant screaming noises coming from pigs in fear;
- pigs with hind leg injuries/suspected fractured pelvises being forced to walk up ramps by having their legs tied together and being prodded with electric goads.

Recommendation: The Slaughterhouse Regulations, Cap 132BU, should be amended to require all persons employed by a licensee to work in a slaughterhouse to have received government specified training in animal welfare.

In beef plants, with well-trained handlers, Temple Grandin's survey⁷⁴ for the United States Department of Agriculture showed that 90-95% of the animals could be moved through the entire plant without the use of an electric prod. Her survey provides objective means for assessing whether the number of animals prodded meets animal welfare requirements.⁷⁵

The Code of Recommendations and Minimum Standards for the Welfare of Animals Transported in New Zealand (1994) recommends that noise should be used to move animals, such as metallic rattles. Electric prodders may not be used on any species other than cattle (and not on calves). Where they must be used on cattle, prodders are powered only by battery or dynamo.⁷⁶ The Australian Standards and Guidelines for the Welfare of Animals: Land Transport of Livestock (2010) also prohibit the use of electric goads on pigs.⁷⁷

⁷⁴ Grandin T, (1997) Survey of Handling and Stunning in Federally Inspected Beef, Pork, Veal and Sheep Slaughter Plants, ARS Research Project No 3602-32000-002-08G, United States Department of Agriculture, Washington DC.

⁷⁵ See further below at page 81.

⁷⁶ New Zealand Animal Welfare Advisory Committee *Code of Recommendations and Minimum Standards for the Welfare of Animals Transported in New Zealand* (1994) at 4.3.1.

⁷⁷ At Minimum Standard 9.4.

Recommendation: Licensing conditions should be amended to prohibit the use of electric goads, sticks and pipes on pigs. Only very limited electric goad use should be permitted on cattle, with all goads limited to battery or dynamo power, and the frequency of use of goads should be independently monitored and limited to the following percentage of cattle slaughtered on each shift:

-Moving from pen to chute: maximum of 5%

-At entrance to stunning box: maximum of 20%

-Total percentage of cattle prodded during shift: maximum of 25%

Aspects of the Australian Model Code for the Welfare of Animals: Livestock at Slaughtering Establishments (2002) should also be adopted in Hong Kong to provide a better reflection of the minimum requirements for animal welfare, established by the OIE.

The Australian Code specifically states those in charge of slaughterhouses must plan in advance for the receiving and unloading of animals. Planning allows adequate time for the animals to be unloaded quietly and with care. Planners should know the delivery times of animals, allocate pen and lairage areas for them and delegate responsibility for those animals to relevant staff. Those staff should then be required to accept responsibility for all subsequent events, whether planned or not.⁷⁸

Better regulation would ensure that those animal welfare problems observed on our site visits, such as excessive shouting, and unnecessary hitting of animals as they were unloaded and overcrowding of animals in the waiting, moving and unloading areas would be avoided.

Recommendation: Licensing conditions should require proper planning for calm and ordered receiving, unloading and housing of animals, with active enforcement action taken against staff who compromise animal welfare.

⁷⁸ Primary Industries Standing Committee; *Model Code of Practice for the Welfare of Animals: Livestock at Slaughtering Establishments*, CSIRO (2002) at 2.2.1.

Enforcement of Standards

It was also reported to us, by HKVA veterinarian members, that CCTV cameras in the slaughterhouse, which should act as a safeguard for animal welfare, are being turned off by workers. We also observed that those cameras in use are placed mainly in the urine testing area and the receiving lairage, on the ground floor. Most of the waiting for slaughter lairage and the cattle areas are not covered. The possibility of animal welfare breaches being observed is therefore minimal and is not assisted by the fact that monitoring screens show 16 camera views per screen and are placed out of the way, within cabinets and not at desk stations.

Recommendation: Turning off CCTV cameras should be made a breach of licensing conditions and proper video monitoring of all areas of the premises should be regulated and enforced. A live video feed of the lairage waiting area and ramps, passages and chutes along which animals are moved to slaughter should be provided to either AFCD, or an independent 3rd party (e.g. SPCA). This should be running at all times the slaughterhouse is in operation.

A fundamental problem with enforcing standards in slaughterhouses is caused by the fact that the responsibility for licensing rests with the FEHD, whilst responsibility for animal welfare rests with the AFCD. The AFCD therefore hire vets, who are seconded to FEHD to assist at slaughterhouses, but as FEHD provide the slaughterhouse licences the AFCD vets appear to exercise no authority with the workers, and do not effectively intervene with practices at the critical welfare stage for the animals (i.e. ante mortem). We also note that until recently vets were not even conducting ante mortem checks at the slaughterhouses (a breach of OIE standards). During the course of our review this problem appears to have been rectified.

Recommendation: Licensing conditions should require that all workers must immediately comply with all lawful instructions issued by AFCD vets and that AFCD vets should be permitted access to ALL areas of the slaughterhouse for animal welfare inspection at all times.

Whilst recent changes to staffing requirements have meant a veterinary surgeon should now always be present at the Sheung Shui Slaughterhouse, Tsuen Wan and Cheung Chau do not have a vet on duty.

Recommendation: The Slaughterhouse Regulations, Cap 132BU, should be amended to require that no slaughterhouse is allowed to operate without a vet on duty at all times.

Lairage Conditions and Animal Management

OIE standards require that animals have sufficient space to stand up, lie down and turn around without difficulty.⁷⁹

Welfare issues relating to lairage conditions that were noted on our field inspections included:

-insufficient space available for the animals in the waiting, moving and unloading areas leading to overcrowded animals, inadequate disinfection and insufficient down time between loads, causing a bio-security risk;

-contract transport agents, in competition with one another, locking up pens so second and third agents could not unload their animals, thereby increasing stock density and compromising animal welfare; (we understand that during the course of our review this matter has been addressed by the FEHD);

-pigs placed in close confinement playing with water hoses, attacking each other, and ripping at the strings of those animals whose legs had been tied together by workers (to enable them to be forced to walk with hind leg injuries/suspected fractured pelvises);

-pigs suffering heat exhaustion;

-wet concrete floors, without grooving, causing animals to fall over and injure themselves;

⁷⁹ OIE Terrestrial Animal Health Code (2009), Article 7.5.3.

-penned cattle tied up and overcrowded together making standing up and lying down difficult;

-drinking water not being provided to all animals at all times.

Recommendations:

-Where contract agents compromise animal welfare, enforcement action should be available, including the power to prohibit offenders from trade;

-Improved measures for dealing with heat exhaustion should be introduced under the regulations, including providing animals with more space and more efficient cooling systems;

-Licensing requirements should state cattle must be tied with sufficient length of rope and space to lie down easily;

-Regulations should require that all animals have access to fresh water at all times. The FEHD Operational Guidelines for the Welfare of Food Animals at Slaughterhouses currently require pigs to have constant access to water but allow for cattle and goats to be denied water for 12 hours before slaughter;

-Enforcement action should be taken to ensure that animals with suspected severe hind limb problems are treated as emergency cases and killed immediately, where they are, and never tied up and forced to walk to their slaughter.

The OIE standards require that if animals are not to be promptly slaughtered, suitable feed should be provided on their arrival at the slaughterhouse and then again at appropriate intervals for the species.⁸⁰ Our field inspections noted many left over pigs and cattle waiting for next day slaughter, without feed.

Recommendation: The FEHD Operational Guidelines (which should be actively enforced) should require that where animals are not to be promptly slaughtered,

⁸⁰ OIE Terrestrial Animal Health Code (2009), Article 7.5.4.

suitable feed must be provided on their arrival at the slaughterhouse and then again at appropriate intervals for the species.

Lairage Design

As even healthy pigs have poor eyesight, and negotiate ramps with difficulty, the OIE Code requires that all ramps should be as level as possible and provided with secure foot holds. Lateral side protection on ramps should be available to prevent escaping or falling. They should be well drained and adjustable to facilitate easy movement without causing distress or injury. Any risk of compromising animal welfare, for example slippery floor, should be investigated immediately and the defect rectified to eliminate the problem.⁸¹

At the Sheung Shui slaughterhouse, the passage for pigs from the waiting pen to the race is very poor. Pigs are forced towards the stunning area up a wet and slippery ramp of 10-15 degrees, which they find extremely difficult to negotiate. The two staff working in the area force the animals along this slippery ramp by excessive use of electric prodders, leading to constant screaming vocalisation from the animals. Such actions are not only in direct contrast with OIE standards, and animal welfare principles, but also violate the express recommendations of the FEHD Operational Guidelines for the Welfare of Food Animals at Slaughterhouses. They provide an effective illustration of why compliance with the FEHD Guidelines should be immediately made a licensing condition for operating a slaughterhouse in Hong Kong.

Our site observations also noted unnecessary and excessive use of electric prodders by slaughterhouse staff to move cattle along the races, despite the animals moving well on their own.

It should also be noted that no FEHD staff are normally present in these areas. This omission presents a serious danger to animal welfare and should immediately be rectified.

⁸¹ OIE Terrestrial Animal Health Code (2009), Article 7.5.2.1(f).

The OIE Code also requires that provision is made in the design of knocking boxes, races, pens and passageways to allow for easy access to animals that fall or lie down.⁸² The Australian Code goes further to specifically prohibit the winching or dragging of animals into the knocking box.⁸³ Access to downed cattle in races in Hong Kong currently presents difficulty due to limited side access.

Recommendation: The Regulations should introduce changes to slaughterhouse design to ensure there is easy access to downed animals without causing the animals further distress and injury.

Sick Animals

The Australian Code states that when injured or sick animals arrive at the slaughterhouse the healthy animals must be unloaded as quickly and quietly as possible to allow for immediate emergency slaughter of casualties. Animals with minor injuries, not causing pain or distress, which do not require immediate slaughter, must be slaughtered as soon as possible on the day of arrival and not kept overnight. Animals which would be likely, in a vet's opinion, to respond to rest or treatment, are placed in casualty pens with water, feed and appropriate treatment. Slaughter is delayed until the animal has recovered.⁸⁴

The FEHD Operational Guidelines for the Welfare of Food Animals at Slaughterhouses also recommend the removal, treatment and slaughter of injured animals, found during unloading, however, during one of our site visits, a pig in clear distress was observed beside a pen with a ripped claw hanging from its hind foot. This pig was ignored by workers for at least 10 minutes, before being stunned by a two prong electrical stunner. It was then hoisted and moved by rail over a 25-30 second period to the sticking area. This animal's suffering should have been identified far more quickly and immediate action taken to avoid its unnecessary suffering.

⁸² *Ibid.* at 7.5.3.2.

⁸³ Primary Industries Standing Committee; *Model Code of Practice for the Welfare of Animals: Livestock at Slaughtering Establishments*, CSIRO (2002) at 2.5.5.2.

⁸⁴ *Ibid.* at 2.3.

It is also in breach of the OIE Code for this same pig to have waited 25-30 seconds after stunning to be stuck and does not follow the FEHD Guideline which suggests a maximum of 15 seconds between stun and stick. The wait time of 25-30 seconds provides a very real likelihood this animal had regained consciousness before it had been sufficiently bled out (see 'Effective Slaughter' below).

Our site observations also noted as many as 20% of pigs had had their hind legs hobbled with strings in order for workers to be able to force the pigs to walk, or hop, up the ramps to the stunning box. FEHD confirmed that this is common practice where pigs are found to have difficulties in walking to slaughter. This is in spite of the FEHD Guideline which recommends injured animals are isolated and slaughtered immediately. Animal welfare considerations require that these injured animals should have been removed for emergency slaughter and not forced on to the stunning box.

Recommendation: Greater attention must be paid to the observation of injured or sick animals and the FEHD Operational Guidelines enforced. Where animals are found to be severely injured, they should be killed humanely where they are, (with a captive bolt to the head), and not forced to move on. Where they can be moved to the isolation room, without unnecessary suffering, they should be so moved and humanely killed, without delay.

Effective Slaughter

Voltage

Recent research, carried out for the British Department of Environment Food and Rural Affairs (DEFRA) on stunning pigs, has shown that an animal's resistance to current flow depends on the voltage used.⁸⁵ The work has shown that at 250 volts or above, the speed and effectiveness of the stun is much improved.

⁸⁵ *Electrical stunning in pigs: evaluation of the voltages and frequencies required for effective stunning while maintaining satisfactory carcass quality*, Report by University of Bristol, Department of Clinical Veterinary Science (2005).

By comparison, in Hong Kong, most pigs are stunned with electrical current/voltage of 1.1-1.3 amps/180 voltage, applied for 3 seconds, at Sheung Shui slaughterhouse, with the 3 point system on the slaughter line, with 2 point stunning tongs at 300 voltage for 5 seconds in the Sheung Shui emergency room, and 70-110 voltage with 2 point stunning tongs for 2-3 seconds at Tsuen Wan slaughterhouse and Cheung Chau slaughterhouse.

The Humane Slaughter Association and the Farm Animal Welfare Council (FAWC), which advise the British Government on farmed animal-welfare issues, do not recommend using less than 250 volts as only at that level can the operator be sure the animal does not suffer. With higher voltage stunning there is a far greater chance the animal will be stunned on first attempt, due to a better chance of immediate induction (flow of current).

The research carried out for DEFRA shows that where low-voltage systems are used the voltage must be applied for *at least* 7 seconds, to stun the animal properly. The equipment must also be regularly maintained, and the electrodes must be kept clean. In Britain, where higher voltages, (of at least 250V), are used, the recommended minimum application time is 3 seconds. For lower voltage levels, as used in Hong Kong, 3 seconds is an inadequate application time from an animal welfare perspective.

In Australia the recommended voltage for stunning equipment used on pigs and goats is even higher, at 400 volts, with a minimum application time of 2 seconds.⁸⁶

Recommendation: The low voltage equipment currently used for stunning animals should be phased out and equipment with a legal minimum of 250 volts, applied for at least 3 seconds, required for all electrical stunning. Whilst lower voltage equipment remains in use, the minimum application time required should be raised to 7 seconds. A minimum electrical current level of 1.3 amps should also be legislated.

⁸⁶ Primary Industries Standing Committee *Model Code of Practice for the Welfare of Animals: Livestock at Slaughtering Establishments*, CSIRO (2002) at 2.6.2.8.

Post Stun Procedures

The Australian and OIE Codes require that pigs and goats are fully unconscious during bleeding out, and kept under inspection for immediate re-stunning where necessary. The Australian Code states animals must be stuck immediately after stunning, and before hoisting, to ensure that as little time as possible elapses which could allow a return to consciousness.⁸⁷

Pigs in Hong Kong are stuck *after* hoisting, except for those pigs slaughtered at Sheung Shui slaughterhouse.

The Australian Code recognizes important anatomical and physiological features of pigs. If a pig has its throat cut, severing the carotid arteries and jugular veins, unconsciousness occurs in 13-25 seconds.⁸⁸ Thus, to be effective, reversible electrical stunning must render the animal unconscious for the above period *plus* the initial time between stunning and sticking. Anil (1991)⁸⁹ found that the period of unconsciousness induced in pigs may be as short as 38 seconds. Any reversible stun will be unlikely to last more than 45 seconds.⁹⁰ Accordingly the importance of sticking and bleeding out animals which are not irreversibly stunned, immediately after stunning, to ensure they do not regain consciousness, is paramount. The major blood vessels on both sides of the neck or the larger vessels near the heart must be completely severed, if they are not there is the chance the animal will regain consciousness.

In its 'Scientific Opinion on the Welfare Aspects of Main Systems of Stunning and Killing the Main Commercial Species' the European Food and Safety Authority's Animal

⁸⁷ *Ibid.* at 2.6.1.6 and OIE Terrestrial Animal Health Code (2009) at Article 5.

⁸⁸ Gregory NG and Wotton SB (1986) *Pig Slaughtering Procedures: Time to loss of brain responsiveness after exsanguination or cardiac arrest*; Research in Veterinary Science 40: 148-151.

⁸⁹ Anil MH. (1991) *Studies on the return of physical reflexes in pigs following electrical stunning*, Meat Science 30: 13-21.

⁹⁰ Primary Industries Standing Committee *Model Code of Practice for the Welfare of Animals: Livestock at Slaughtering Establishments* (2002) at 2.6.3.1.

Health and Welfare Panel (EFSA) stated that no more than 15 seconds should pass between stun and stick for *all* species.⁹¹

The Hong Kong practice of hoisting pigs after stunning and before sticking compromises animal welfare as it extends the time before sticking and increases the chances the animal will regain consciousness.

Recommendations:

-Regulations should be amended to require that ALL slaughterhouses in Hong Kong stick pigs and goats before hoisting.

-The maximum delay, before bleeding is started, for all animals stunned by reversible electrical methods (i.e. pigs and goats), should be regulated at 15 seconds.

-For cattle, licensing conditions should require that sufficient staff time is taken after stun to ensure the blow has been sufficient, (no signs of consciousness), before the side of the box is opened and the animal dropped to the bench below.

It should also be noted that no FEHD staff are normally present in the stunning area and no CCTV camera coverage is provided here. These omissions present a serious danger to animal welfare and should immediately be rectified.

Ritual Slaughter

In the UK, 90% of animals killed for halal meat are pre-stunned. In Australia, New Zealand, Denmark, Finland, Austria, Sweden and Switzerland, electrical pre stunning or captive bolt post cut stunning are a requirement at law. Australia and New Zealand are major exporters of halal meat to the Middle East, where reversible stunning is accepted as consistent with Halal teaching.⁹²

⁹¹ The EFSA Journal (2004), 45, 1-29.

⁹² See the Dialrel Report on *Animal Welfare Concerns in Relation to Slaughter Practices from the Viewpoint of Veterinary Sciences* (2010). Full series of reports available at www.dialrel.eu. This report has been published as part of an ongoing project funded by the European Commission and involving partners

By contrast, in Hong Kong, halal slaughter of cattle and goats, without prior stunning, at Sheung Shui Slaughterhouse is common.

The Farm Animal Welfare Council⁹³ stated, in its 2003 report to the UK government on the welfare of red meat animals at slaughter, that slaughter without stunning is unacceptable and recommended that if the practice was allowed to continue any animal not stunned must be required to receive immediate post cut stunning.⁹⁴

Most recently, the European Commission's Dialrel Report (2010) concluded that neck cutting of animals without pre-stunning poses the *highest* risk for animal welfare due to the high risks of pre slaughter handling stress, restraint stress and injury, inadequate equipment, lack of knowledge and skills, pain and suffering during the cut and post cut period, failure to diagnose prolonged consciousness or the need for back up stunning. The Report concluded that although stunning methods themselves involve risks to animal welfare which have to be managed, stunning prior to neck cutting represents the lowest risk for overall compromise of animal welfare.

Recommendation: Regulations should be introduced to require that all animals religiously slaughtered are pre stunned, in accordance with accepted Muslim practice in the UK, New Zealand, Denmark, Sweden, Switzerland and the Middle East. At a minimum, animals must be immediately post stunned to avoid unnecessary suffering (i.e. within 5 seconds).⁹⁵

Where ritual slaughter is used, the OIE Code requires that all animals killed without stunning must be mechanically restrained.⁹⁶ By contrast, the Hong Kong Guidelines allow for manual restraint of goats. This type of capture and restraint is recognized in the OIE Code as causing extreme stress to the animals.

from eleven countries. The project addresses issues related to religious slaughter in order to encourage dialogue between stakeholders and interested parties.

⁹³ An independent advisory body of veterinarians, animal scientists, academics and animal welfare specialists established by the UK government in 1997 to advise on legislative reform.

⁹⁴ Farm Animal Welfare Council, *Report on the Welfare of Farmed Animals at Slaughter or Killing: Part I- Red Meat Animals*, at para 203.

⁹⁵ The maximum time period recommended in accordance with the European Food Safety Authority's Scientific Veterinary Committee Report 1996.

⁹⁶ OIE Terrestrial Animal Health Code (2009), Article 7.5.6.

Recommendation: Regulations should be introduced to require that ALL animals slaughtered without stunning are mechanically restrained.

Prolonged Consciousness

For animals slaughtered without stunning, the OIE Code requires that no further procedure should be carried out before the bleeding out is completed (i.e. at least 30 seconds for mammals).⁹⁷

The Dialrel Report (2010) found that most cattle will take between 5 and 90 seconds to lose consciousness after being cut, however even under laboratory conditions, some cattle have had resurgence of consciousness lasting more than 5 minutes. The Report noted a major concern that animals will experience pain or be further processed during the period they are still conscious.

In Hong Kong, goats may begin dressing procedures within 20 seconds, which is far too soon to ensure animal welfare.

Recommendation: Licensing conditions should require that at least 30 seconds is allowed by slaughterhouse workers, after slaughter, for bleeding out to be completed, before animals are released from restraint, shackled or other dressing procedures commenced.

Rotation Boxes for Cattle

In Australia the use of rotating style knocking boxes for religious slaughter is prohibited due to the distress caused to the cattle when they are inverted and the likelihood of aspiration of blood while the animal is on its back.⁹⁸ Dunn⁹⁹ reported that significantly

⁹⁷ *Ibid.* at Article 7.5.9.

⁹⁸ Primary Industries Standing Committee *Model Code of Practice for the Welfare of Animals: Livestock at Slaughtering Establishments* (2002) at 2.6.1.5.

more cattle vocalised when they were held in a restraint device that inverted them on their backs than when cattle were subjected to upright restraint. Vocalisation is correlated with physiological measures of stress in both cattle and pigs (Dunn; Warris et al.¹⁰⁰)

In Hong Kong, rotation boxes are still being used for religious slaughter. Cattle are pushed into a holding crate, flipped upside down and then have their throats cut. Temple Grandin recommends that where these boxes must be used they should only be permitted where they have a large adjustable side to support the body and prevent struggling or vocalisation during rotation. Cortisol measurements show that animals placed in rotating boxes without adjustable sides suffer considerably more than those placed in boxes with adjustable sides. The style of rotating boxes used in Hong Kong does not have adjustable sides.

Grandin also mandates the animal must have its throat cut **within 10 seconds** after inversion.¹⁰¹

The Dialrel Report (2010) observed that animals inverted on their backs for slaughter spend longer time periods from entering the box to full restraint, show more vigorous and longer periods of struggling, have increased vocalisations, more laboured breathing, increased foaming at the mouth, greater serum cortisol concentrations and haematocrit than animals slaughtered in the upright position.

The Dariel Report concluded that the manner in which the animal is handled prior to stunning (e.g. hurried movement through the lairage, use of goads, slipping on wet floors) also directly affects pain and suffering at slaughter. The more excited the animal is, the

⁹⁹ Dunn CS (1990) *Stress Reaction of Cattle undergoing ritual slaughter using two methods of restraint*, Veterinary Record, 126, 522-525.

¹⁰⁰ Warris PD, Brown SN, Adams SJM (1994) *Relationships between subjective and objective assessments of stress at slaughter and meat quality in pigs*, Meat Science, 38, 329-340.

¹⁰¹ Grandin T (2005) *Restraint methods for holding animals during ritual slaughter*, in Luy J et.al. [ed] Animal Welfare at Ritual Slaughter. DVG Service gmbH, http://www.erna-graff-stiftung.de/cms/download/tierschutz_bei_der_rituellen_schlachtung.pdf, 64-69.

more likely the cut will be compromised. There is also an increased risk of prolonged consciousness post cut where the animal has been stressed prior to cut.¹⁰²

Skill of Butchers

During field research at Sheung Shui slaughterhouse our researchers observed halaal butchers failing to kill animals instantly (due to knives being inadequately maintained or the incompetency of the butchers).

The OIE Code states that the skill of the butcher and the maintenance of his instruments are critical. The OIE standards require that a very sharp blade or knife must be used of sufficient length so that the point of the blade remains outside the incision during the cut, the point of the knife is not used to make the incision and the incision should not close over the knife during the throat cut.¹⁰³

Responsibility for Animal Welfare and Food Safety

In the EU, Directive 93/119/EC (Protection of Animals at Slaughter) is now considered outdated in many respects. In recognition of the standards set out in the OIE's prior to current Animal Health Code (2008), a new EU Council Regulation will become enforceable in 2013 in all member states, with the intent to significantly improve animal treatment at the time of slaughter.¹⁰⁴ Along with welfare considerations, it is recognized that improving the protection of animals at the time of slaughter contributes to higher meat quality and indirectly has a positive impact on occupational safety in slaughterhouses.

Critically, the 2013 regulation will increase operator responsibility for animal welfare. Each operator will have to know what they are doing, through the use of a standard operating procedure. This methodology is already required and in place for food safety in slaughter houses (the HACCP system: Hazard Analysis Critical Control Point). The new regulation will set out standardized procedures for animal welfare in the EU.

¹⁰² The Dialrel Report, Conclusions, p55.

¹⁰³ OIE Terrestrial Animal Health Code (2009), Article 7.5.9.

¹⁰⁴ Council Regulation (EC) No 1099/2009.

Specifically operators will be required to put in place and implement appropriate monitoring procedures to verify and confirm that animals for slaughter are effectively stunned.

The monitoring procedures, as a minimum standard, must include:

(a) the name of the persons responsible for the monitoring procedure; **not a requirement in Hong Kong;**

(b) indicators designed to detect signs of unconsciousness and consciousness or sensibility in the animals; **recommended only, under the FEHD Operational Guidelines;**

(c) criteria of acceptability for determining whether or not the results of the indicators referred to in point (b) are satisfactory or not; **recommended only, under the FEHD Operational Guidelines;**

(d) the circumstances and/or the time when the monitoring must take place; **recommended only, under the FEHD Operational Guidelines, and needs to be more precise;**

(e) the number of animals in each sample to be checked during the monitoring; **Hong Kong has no such requirement;**

(f) appropriate procedures to ensure that in the event that the criteria of acceptability referred to in point (c) are not met, the stunning or killing operations are reviewed in order to identify the causes of any shortcomings and the necessary changes to be made to those operations; **Hong Kong has no such requirement.**

A monitoring procedure will be required to be put in place for each slaughterline where different stunning equipment is used.

The frequency of the monitoring checks will need to take into account the main risk factors, such as changes regarding the types of animals slaughtered or personnel working patterns and must be established so as to ensure results with a high level of confidence.

Each slaughterhouse in the EU will also have to appoint an Animal Welfare Officer who will be accountable for implementing the animal welfare measures. This does not replace the official inspection of animals, by the licensing authority, already required under the law. The animal welfare officer must be in a position to require that the slaughterhouse personnel carry out any remedial actions necessary to ensure compliance with the EU Regulation. **Hong Kong has no such appointment.**

The regulation also requires staff handling animals in slaughterhouses to possess a certificate of competence regarding the welfare aspects of their tasks. The competencies required are:

- (a) the handling and care of animals before they are restrained;
- (b) the restraint of animals for the purpose of stunning or killing;
- (c) the stunning of animals;
- (d) the assessment of effective stunning;
- (e) the shackling or hoisting of live animals;
- (f) the bleeding of live animals.

To obtain a certificate, staff will need to submit to independent examination by bodies recognised by the competent authority. Certificates of competence must state which

animals are covered by the certificate and will be valid for no longer than 5 years. **Hong Kong has no such requirement.**

Recommendation: Similarly rigorous monitoring procedures, the mandatory appointment of an Animal Welfare Officer, and the ongoing certification of all slaughterhouse staff, in animal welfare practices, should be regulated.

Objective Scoring of Animal Welfare

The American Meat Institute Guidelines¹⁰⁵ provide objective scoring methods which can be utilised easily, and with minimal expense, at those areas in the slaughterhouse which are critical points for assessing animal welfare. The Guidelines, developed by Temple Grandin over 20 years of surveying abattoirs, provide minimum acceptable percentage scores for:

- (1) Percentage of pigs on which the electrical stunner was placed in the wrong position;
- (2) Percentage of cattle that had to be shot more than once with the captive-bolt stunner;
- (3) Percentage of sensible and partially sensible animals on the bleed rail;
- (4) Percentage of animals falling down or slipping;
- (5) Percentage of cattle vocalising in the stunning chute area (the stunning chute area includes the stunning box, restrainer, lead-up chute and crowd pen);
- (6) Percentage of pigs vocalising in the stunning pen or on the restrainer conveyor;
- (7) Percentage of animals subjected to an electric prod.

¹⁰⁵ Grandin T (1997) *Survey of Handling and Stunning in Federally Inspected Beef, Pork, Veal and Sheep Slaughter Plants*, ARS Research Project No 3602-32000-002-08G, United States Department of Agriculture, Washington DC.

Temple Grandin's Guidelines for objectively scoring animal welfare for the American Meat Institute, which could be applied in Hong Kong, are as follows:

(I) Electrical Stunning and Electrode Placement Efficacy Criteria: Score a minimum of 100 pigs in large plants.

- (a) Excellent. 99.5 to 100% correct placement of stunning wand or tongs.
- (b) Acceptable. 99.4 to 99% correct placement of stunning wand or tongs.
- (c) Not Acceptable. 98% to 95% correct placement of stunning wand or tongs; or, 4% or more of the pigs vocalising due to energizing the electrodes before they are firmly positioned.
- (d) Serious Problem. Less than 95% correct placement of stunning wand or tongs; or, more than 4% vocalising in response to improper electrode placement.

(II) Captive-Bolt Stunning Efficacy Criteria: Score a minimum of 100 animals in large plants.

- (a) Excellent. 99 to 100% instantly rendered insensible with one shot.
- (b) Acceptable. 95 to 98% instantly rendered insensible with one shot.
- (c) Not Acceptable. 90 to 94% instantly rendered insensible with one shot.
- (d) Serious Problem. Less than 90% instantly rendered insensible with one shot.

If one-shot efficacy falls below 95%, immediate action must be taken to improve the percentage. If the first shot fails to induce instantaneous insensibility, the animal must be immediately re-stunned.

(III) Bleeding Rail Insensibility Efficacy Criteria: Score a minimum of 100 animals in large plants.

(a) Excellent. Sensible cattle occurring at less than 1 per 1,000; sensible pigs occurring at less than 1 per 2,000.

(b) Acceptable. Sensible cattle occurring at less than 1 per 500; sensible pigs occurring at less than 1 per 1,000.

Animals showing any sign of return to sensibility must be immediately restunned before any other slaughter procedures. Procedures such as skinning, scalding, leg removal or other slaughter procedures *must never* be performed on an animal that shows any sign of return to sensibility.

(IV) Considerations for Slipping and Falling: Good animal welfare and quiet, calm handling is impossible if animals slip or fall on the floor. All areas where animals walk should provide non-slip footing. Animals should be observed during all phases of handling and, if slipping or falling is observed, steps should be taken to correct it. Slipping on scales, unloading ramps and stunning boxes can often be corrected by installing a grating built from steel bars. A concrete-grooving machine can be used to roughen an existing floor.

(V) Slipping and Falling in the Stunning Chute-Area Efficacy Criteria (All Species): Score a minimum of 50 animals in large plants. The stunning chute area includes restrainer entrance, stunning box, lead-up chute and crowd pen. Scores assigned should consist of:

(a) Excellent. No slipping or falling.

(b) Acceptable. Slipping of less than 3% of the animals.

(c) Not Acceptable. 1% of the animals falling down (body touches floor).

(d) Serious Problem. 5% falling down or 15% or more slipping.

Temple Grandin's Considerations for Vocalisation Scoring of Cattle: Vocalisation (moos or bellows) is an indicator of cattle discomfort. Research by Bridgett Voisinet at Colorado State University demonstrated that the number of times that cattle vocalise during a stressful husbandry procedure is related to cortisol (stress hormone) levels.¹⁰⁶ Vocalisation is correlated with physiological measures of stress in both cattle and pigs (Dunn¹⁰⁷, Warris et al.¹⁰⁸).

Results of Temple Grandin's 1997 plant survey for USDA indicated that the percentage of cattle which vocalised in the stunning chute area ranged from 3% or less of the cattle in the three best plants, to 12 to 32% in the two worst plants (Grandin¹⁰⁹). Cattle vocalisations in the stunning chute area were caused by use of an electric prod, slipping in the stunning box, missing with captive-bolt stunners or excessive pressure applied by a restraint device. Grandin's USDA survey results showed that plants with a high percentage of vocalising cattle could easily reduce this percentage; the average vocalisation percentage in the two plants with the roughest handling was reduced from 22% of the cattle to 4.5% of the cattle by simply reducing electric prod usage. Results of the plant survey clearly demonstrated that cattle seldom vocalise during handling or stunning unless an easily observed, aversive event occurred. During Grandin's survey a total of 1,125 cattle were scored for vocalisation and 112 of those animals vocalised; only two animals vocalised which were not responding to an aversive event such as electric prodding, slipping, falling, missed stuns, or excessive pressure from a restraint device. Other aversive events which can cause vocalisation are hitting cattle with gates or pinching an animal in a restraint device which indicates that vocalisation is an indicator of discomfort.

¹⁰⁶ Voisinet BD, Grandin T, O'Conner SF, Tatum JD and Deesing MJ (1997) *Bos Indicus* cattle with excitable temperaments have tougher meat and a higher incidence of borderline dark cutters, *Meat Science*, 46; 367-377.

¹⁰⁷ Dunn CS (1990) *Stress Reaction of Cattle undergoing ritual slaughter using two methods of restraint*, *Veterinary Record*, 126, 522-525.

¹⁰⁸ Warris PD, Brown SN, Adams SJM (1994) *Relationships between subjective and objective assessments of stress at slaughter and meat quality in pigs*, *Meat Science*, 38, pp329-340.

¹⁰⁹ Grandin T, (1997) *Survey of Handling and Stunning in Federally Inspected Beef, Pork, Veal and Sheep Slaughter Plants*, ARS Research Project No 3602-32000-002-08G, United States Department of Agriculture, Washington DC and (1998) *The feasibility of using vocalization scoring as an indicator of poor welfare during slaughter*, *Applied Animal Behaviour Science*, 56, 121-128.

(VI) Vocalisation Scoring of Cattle in the Crowd Pen, Lead-Up Chute, Stunning Box or Restraining Device Efficacy Criteria: Score a minimum of 100 animals in large plants.

- (a) Excellent. 0.5% or less of the cattle vocalising.
- (b) Acceptable. 3% or less of the cattle vocalising.
- (c) Not Acceptable. 4% to 10% of cattle vocalising.
- (d) Serious Problem. Over 10% of the cattle vocalising.

When vocalisation is being evaluated, to make scoring simple, each animal should be classified as either a vocaliser or a non-vocaliser. Cattle vocalisations should be tabulated during handling in the crowd pen, lead-up chute, restrainer or stunning box.

Vocalisations occurring in the yards should not be tabulated because cattle standing quietly in the yards will often vocalise to each other.

Research conducted in commercial pork slaughter plants indicated that the intensity with which pigs squealed (measured with a sound meter) in the stunning chute area was correlated with physiological measures of stress and with poorer meat quality (Warris et al.¹¹⁰). White et al.¹¹¹ also found that the intensity of pig squeals is correlated with pig discomfort.

Because it is impossible to count individual pig squeals when a group of pigs is being handled, vocalisation scoring of individual pigs can only be conducted in the restrainer. Results of the survey conducted by Grandin indicated that there were two major causes of pig vocalisations: (a) misapplied electric stuns, and (b) pinching in the restrainer. Survey results further indicated that vocalisation in the restrainer ranged from 0% to 14%, with 72% (8 of the 11 plants) having no pigs squealing due to misapplied electric stuns; in two of the plants 2 to 4% of the pigs squealed during stunning. The use of sound-level meters should be investigated as a means for monitoring pig vocalisations during handling.

¹¹⁰ Warris, see n 108 above.

¹¹¹ White RG, DeShazer JA and Tressler CJ, 1995, *Vocalisations and physiological response of pigs during castration with and without anaesthetic*, Journal of Animal Science, 73, 381-386.

(VII) Vocalisation Scoring Of Pigs In The Restrainer Or During Stunning

- (a) Excellent. 0% or less of the pigs vocalising due to use of the restrainer; no vocalising due to a misapplied stunning device.
- (b) Not Acceptable. 2% or more of pigs vocalising in the restrainer for any reason.
- (c) Serious Problem. 5% or more of the pigs vocalising in the restrainer for any reason.

Grandin's Considerations for Use of Electric Prods

Reducing the use of electric prods will improve animal welfare. Many well-managed plants have eliminated use of electric prods in the holding pens. In beef plants with well-trained handlers, Grandin's survey showed that 90 to 95 percent of the animals could be moved through the entire plant without the use of an electric prod. The Australian Code for Land Transport of Livestock (2010) prohibits the use of electric goads on pigs. An easy way to test an electric prod to determine if it delivers too intense a shock is to touch an animal with the prod for one second; if such contact causes the animal to vocalise, the power should be reduced. Electric prods which have sufficient power to knock an animal down or paralyze it should not be used. Electric prods should never be applied to sensitive parts of the animal such as the eyes, ears, nose or anus.

(VIII) Use of Electric Prods Efficacy Criteria

Below is a table that characterizes the method to be used for scoring plants for appropriate incidence of cattle subjected to electric prods:

Table 1. Electric prod scoring criteria for cattle (percentages of animals prodded).			
	Crowd pen to chute	Entrance of stunning box or restrainer	Total percentage of cattle prodded
Excellent	None	5% or less	5% or less
Acceptable	5% or less	20% or less	25% or less
Serious problem	---	---	50% or more

Grandin's recommendations to reduce electric prod use and maintain efficient handling are as follows:

(1) Remove or correct distractions which cause balking: Distractions caused by air hissing, shadows, reflections from shiny metal, ventilation drafts blowing in the faces of approaching animals, and seeing either moving people or moving machinery up ahead should be corrected. The evaluator can enter the chutes and observe those things that cause the animals to balk. Shields or strips of conveyor belting can be installed to prevent animals from seeing movement up ahead as they approach the restrainer or stunning box. Reflections can sometimes be eliminated by moving an overhead lamp. Ventilation drafts blowing down the chutes toward the animals may make it impossible to reduce electric prod use. The plant ventilation system may need to be adjusted.

(2) Provide adequate lighting: Animals may refuse to enter a dark place. Entry into a restrainer can be facilitated by aiming a light into the entrance. The light must not shine into the eyes of approaching animals. Animals may be difficult to drive out of the crowd-pen and into the single-file chute if the chute is in the dark and the crowd-pen is brightly illuminated. Lighting problems can make quiet handling almost impossible. A common problem with lighting is that a handling system may work well when lamps are new, but the animals will balk more and

more as lamps dim with age. The most efficient lighting can be determined by experimenting with portable lights. Animals may also balk at shiny reflections from a piece of metal or from sparkling water on the floor.

(3) Reduce noise: Animals are very sensitive to high-pitched noise. Reducing high-pitched noises generated by motors and/or hydraulic systems can improve animal movement. Clanging and banging metal should be reduced and hissing air should be muffled.

(4) Move small groups: When animals are being handled, the crowd-pen and the staging areas which lead up to the crowd-pen should never be more than three-quarters full. Half full is best. Crowd gates should not be pushed up tightly against the animals. Animals need room to turn.

(5) Use other driving-aids: Electric prods should be replaced with other driving-aids such as a plastic paddle, a stick with a flag on the end or panels. The animals should move easily and handlers should not hit them. Animals can often be moved through a chute by having the handler walk by them in the opposite direction of desired movement. When the handler passes the shoulder of each animal, it will move forward.

Grandin concludes that an acceptable level of animal welfare can be maintained if scores at the critical control points for stunning, animal insensibility, slipping and falling, vocalisation and electric prod use are in the acceptable range. Scoring performance for these variables is simple and easy to do under commercial plant conditions. Electrical stunning equipment must have amperage, voltage, and frequency parameters which have been verified by either electrical or neurotransmitter recordings from the brain to reliably induce insensibility. Plant managers must be committed to good animal welfare. Plants which have managers who insist on good handling and stunning practices will usually have animal welfare practices that are superior to those of plants in which management and supervision are lax.

Recommendation: FEHD should introduce regular scoring surveys, conducted at all slaughterhouses at least once a week, at both the beginning and end of each shift. Where a score falls below the Guidelines recommended above, appropriate advice and action should be taken to immediately rectify the problem.

Wet Markets

Wet markets are regulated under Cap 132, The Public Health and Municipal Services Ordinance.

In the absence of any regulations requiring otherwise, chickens sold at wet markets in Hong Kong are killed by exsanguination. They are commonly dropped down into a container/bucket to bleed out, without pre-stunning.

In its 2009 Report on the Welfare of Farmed Animals at Killing or Slaughter, the Farm Animal Welfare Council (FAWC) considered chickens slaughtered by exsanguination and noted that current scientific evidence indicates many chickens are likely to be conscious for 20 seconds, or more, after the neck cut is made.¹¹² On the basis that slaughter without pre stunning is avoidable and causes significant pain and distress to the chickens before death, the FAWC concluded that, in the interests of animal welfare, all birds should be pre stunned. Similarly, the Australian Veterinarian Association has stated that decapitation without pre stunning should have no place in humane commercial slaughtering,¹¹³ as has New Zealand's National Animal Welfare Advisory Committee.¹¹⁴

This position is supported by the Common Law. In the case of *McDonalds's Corporation and McDonald's Restaurants Ltd v Steel and Morris* QBD, 19 June 1997, the English High Court, hearing a claim of libel against two individuals who distributed leaflets describing the cruel slaughter practices of McDonalds, found that, in allowing, (albeit by

¹¹² European Food and Safety Authority (2004): *Welfare Aspects of Animal Stunning and Killing Methods- Scientific Report of the Scientific Panel for Animal Health and Welfare on a request from the Commission related to welfare aspects of animal stunning and killing methods*, 117-118.

¹¹³ Australian Veterinary Association Policy 2004.

¹¹⁴ New Zealand National Animal Welfare Advisory Committee, *Animal Welfare (Commercial Slaughter) Code of Welfare Report* (2010).

negligence), chickens at their slaughter plants to have their throats cut whilst fully conscious, McDonalds was culpably responsible for cruelty to animals.

The slaughter of chickens at wet markets by exsanguination is not only objectively cruel but represents an ongoing bio security risk for Hong Kong. In recognition of such a risk, on 1 April 2010, Taiwan centralised the slaughtering of chickens (effectively stopping the sale of live chickens at wet markets, except by small vendors) as part of various measures taken by the Taiwanese government to prevent and control avian influenza virus. The legislative ban is expected to be extended to include all small vendors in Taiwan in the near future.

Singapore also bans the slaughter of chickens at wet markets.

Recommendation: Regulations, under Cap 132, should prohibit the slaughter of poultry at wet markets by exsanguination, or any other means.

The welfare of fish, eels, frogs, crabs and turtles sold for food at wet markets is also of extreme concern. The OIE guiding principles on the welfare of farmed fish during transport and slaughter state that the use of fish carries with it *an ethical responsibility to ensure their welfare to the greatest extent practicable*. The most basic requirements for the welfare of farmed fish include handling methods appropriate to the biological characteristics of the fish and a suitable environment to fulfill their needs.¹¹⁵

In Hong Kong wet markets, fish and eels are routinely kept alive on platters and surfaces, for display, with no water, whilst they suffocate. Some are chopped through the middle and left to slowly die. Where fish are removed from water, and exposed to air, their gills collapse and there is reduced oxygen intake resulting in anoxia. The time to death is obviously temperature and moisture dependent, but the European Food and Safety Authority has reported that this may take minutes, and in some cases hours.¹¹⁶

¹¹⁵ OIE Aquatic Animal Health Code (2009) Guidelines for the Welfare of Farmed Fish at Chapter 7.1.

¹¹⁶ EFSA Journal (2009) 1013, 11-37.

To attract custom at outside seafood restaurants, animals are sometimes thrown from tank to tank, or placed alive on the ground, until a crowd forms, causing them stress and often injury. Fish, which have been placed on the ground where they have begun to suffocate, may be returned to the tanks injured, or killed after the spectacle has served its purpose.

Animals are often intensively stocked, leaving them little room to swim and exposing them to injury from other fish. Larger sharks are sometimes placed in tanks so small they can barely turn around. Large groupers are often displayed for extended periods of time in 'showcase' tanks at seafood restaurants (there are two such tanks in Sai Kung). For these wild caught animals, which are used to traveling tens of thousands of square kilometers at sea, the space restrictions placed on them are of increased concern.

Methods of confinement and slaughter of other animals at wet markets also ignore basic welfare principles. Frogs are routinely kept three deep in cages and killed by decapitation with no stunning. Crabs are tied tightly in balls and kept piled on top of one another in tanks. Turtles routinely suffer their shells being chopped away from their bodies before decapitation.

By way of comparison, the New Zealand Animal Welfare (Commercial Slaughter) Code 2010 has been drafted to align with OIE guidelines for the slaughter of animals for human consumption. The Code applies to all farmed finfish, and wild finfish caught and held for killing at a later time, (such as in a restaurant) including eels.

The New Zealand Code requires that:

- Fish pumps, brailing equipment, nets and other fish handling equipment must be designed, maintained and used in a manner that minimizes harm to live finfish;
- Where finfish are held in tanks they must not be overcrowded to the extent that their welfare is compromised;
- Manual concussion must not be used to stun unrestrained fish;
- Killing methods must result in rapid and irreversible loss of consciousness;

-Gill arches must not be ripped or severed in unstunned fish.

The Code identifies acceptable methods of killing fish as appropriate doses of euthanizing drugs, concussion, brain spiking (by experienced handlers only) or electrical stunning (at specified levels for each species).

The New Zealand Code also requires that all crabs, lobsters and crayfish held in tanks containing water must be supplied with natural or artificial sea (or fresh water) that is clean, filtered or aerated. They must not be overcrowded to the extent their welfare is compromised. The Code states that only competent and experienced persons are permitted to slaughter crabs, lobsters and crayfish. The animals must have been either chilled to 4 degrees celsius, or less, at the time they are killed, or have been electrically stunned or rendered otherwise insensible, before they are killed. These stocking and slaughter requirements apply to all seafood processing premises, commercial fishing vessels, seafood shops and restaurants in New Zealand, without exception.

Hong Kong currently has no regulations controlling the transport, enclosure, stocking density and welfare at slaughter of fish, eels, snakes, frogs, crabs and turtles for food. Whilst Cap 169 applies to these animals, active enforcement is not pursued and no prosecutions for cruelty were undertaken during the period of our review.

Recommendation: Regulations, under Cap 132, should specify humane transport requirements, enclosure standards, and slaughter methods for fish, eels, snakes, frogs, crabs and turtles, sold for food.

FARM ANIMALS

In Hong Kong, farming is regulated by the Agriculture Fisheries and Conservation Department. Poultry and pig farms are licensed under the Public Health (Animals and Birds) Ordinance and Regulations, Cap 139. Licensing conditions are scant and focus on approval of premises and waste treatment systems and compliance with carcass disposal measures. Chicken farmers must now also comply with detailed biosecurity control measures. Notably, current licensing conditions do not require farmers to address animal welfare concerns. Cap 169 applies to farm animals but is not actively enforced for their protection.

In October 2009, the Farm Animal Welfare Council, an independent body which advises the UK government on legislative reform, published the report: *Farm Animal Welfare in Great Britain: Past, Present and Future*.¹¹⁷ This report highlights the need for government policy to respond to the public's growing concern that farm animals' experiences are not simply devoid of neglect or cruelty but that their day to day experiences are actively positive. This quality of life approach emphasizes that animals should not just have a life without suffering, but should routinely have a good life. The report also introduces the concept of government as guardian of farm animals with a responsibility to ensure effective and efficient measures are in place to ensure animal welfare.

As the welfare of farm animals directly influences the animals' productivity and susceptibility to disease, there are also important public health and economic benefits to having and enforcing good animal welfare legislation. Intensive systems of farming allow for the spread of disease through large groups of animals with greater ease. Poor animal welfare equates with risks to human as well as animal health.

On the relationship between animal health and animal welfare Professor Marian Stamp Dawkins¹¹⁸ has said: 'Animal health is the foundation of all good welfare...but most

¹¹⁷ Available at <http://www.fawc.co.uk/reports.htm>

¹¹⁸ Professor of Animal Behavior, University of Oxford.

people- scientists and lay people alike-mean more by the term “welfare” than just physical health. They mean something that includes the animal not being fearful...and not frustrated or deprived...’

BROILER and BREEDER CHICKENS

The New Zealand broiler chicken industry produces approximately 69 million birds per year. Their welfare is protected by a Code which requires that broiler chickens must be cared for by a sufficient number of personnel who possess the appropriate ability, knowledge and competence to maintain their health and welfare.¹¹⁹

This Code, and the other New Zealand Code for layer chickens,¹²⁰ provide minimum standards for their management at law, as well as recommended practices based on scientific information and experience. Where minimum standards are not met criminal prosecutions may be initiated.

In the EU, the Directive laying down minimum rules for the protection of chickens kept for meat production requires that persons managing them must have been trained in chicken welfare by 30 June 2010.¹²¹ They must also be able to supervise any persons employed to attend to chickens on farms, or to catch and load them, on all relevant animal welfare requirements, including culling. Those responsible for supervising the day to day needs of the chickens must receive training in housing systems and stocking density, chicken physiology (feeding, drinking, behaviour and stress indicators), the careful handling of chickens, including catching loading and transport, emergency care for chickens, emergency killing and culling of chickens, and preventative biosecurity measures. As stated, all such training will be mandatory for those involved in chicken farming by 30 June 2010.

¹¹⁹ National Animal Welfare Advisory Committee, *Animal Welfare (Broiler Chickens: Fully Housed) Code of Welfare*, 2003, Minimum Standard 16.

¹²⁰ There is also a Code for Layer Hens: National Animal Welfare Advisory Committee, *Animal Welfare (Layer Hens)*, 2005.

¹²¹ European Union Council Directive 2007/43/EC of 28 June 2007.

Hong Kong currently has 30 active chicken farms producing approximately 1.3 million chickens per year. Whilst the industry has reduced significantly in size over recent years, the welfare of these animals is still deserving of protection. The smaller number of farms also makes the enforcement of welfare standards easier.

Recommendation: Regulations should be introduced under Cap 139 requiring training, focusing on chicken welfare, for all persons involved in the management of broiler and breeder chickens.

Hatchery Management

The New Zealand Code of Welfare for Layer Hens (2005) states that the keys issues in hatchery management are:

- cleaning and hygiene procedures;
- promptness of removing chicks after hatching;
- grading of day old chicks;
- culling of chicks and unhatched eggs; and
- holding room conditions.¹²²

The Code states that the time allowed between hatching and removal from the hatcher must be humanely short in order to allow for each animal's swift ability to drink. Newly hatched birds must also be provided with food within 24 hours.

The Code requires that hatching trays with live chicks should be moved slowly and levelly, with extreme care taken not to drop chicks on the floor. When chicks are moved on conveyor belts the maximum height between belts should be no more than 40 cm. When being sexed chickens should have their whole bodies supported and not be lifted by the head or wing.

¹²² National Animal Welfare Advisory Committee, *Animal Welfare (Layer Hens)*, 2005, Minimum Standard 1.

For chicks, recognised Humane Methods of Destruction include instantaneous fragmentation and gas (CO₂). If instantaneous fragmentation units are used these must be routinely maintained and serviced. The machines must not be overloaded to avoid incomplete fragmentation. All staff must be trained in proper emergency euthanasia in case of equipment failure.

Young chicks reared away from the hen must be provided, for the first 3 days after hatching, with a minimum of 20 lux lighting to enable them to locate the food and water. The New Zealand Code requires that even after 3 days, the minimum level of light must never be below 10 lux, at ground level.

Hong Kong has no Code or laws to protect the welfare of chicks, despite the fact that local hatcheries in Hong Kong are producing about 5000 chicks per day.

Recommendation: Licensing conditions for hatcheries should be introduced which provide for:

- Holding room conditions for newly hatched chicks which provide for control of temperature and airflow;**
- Documented cleaning, sanitizing and hygiene programmes;**
- Documented euthanasia protocols;**
- All staff carrying out euthanasia trained in protocols;**
- All unhatched eggs at the time of day old chick removal destroyed by instantaneous fragmentation;**
- Cull or surplus chicks euthanized by humane methods such as instantaneous fragmentation or gassing (the current Hong Kong practice of bagging (suffocating) surplus male chickens from breeding hens should be immediately prohibited);**
- No chicks to be removed from gas units before death or irreversible unconsciousness;**
- Correct operation and maintenance of instantaneous fragmentation units;**

- No overloading of instantaneous fragmentation units;
- Proper monitoring and maintenance of euthanasia equipment.

Chicken Farms: Food and Water

Australia also has a Model Code of Welfare for Chickens, which, like its New Zealand counterpart,¹²³ requires that their daily diet should be adequate in quantity and nutrients to meet the chickens' requirements for good health and welfare.

In this regard, food must be provided daily to all birds, including day old chicks. Any animal that cannot access food and water must be removed daily and immediately euthanized or raised separately.

Food provision must prevent undue competition and injury. Feeders must be checked daily for mouldy and contaminated feed. At least one pan feeder must be provided for every 85 birds. Feeding troughs should have a depth that minimizes the risk of neck injury.

All birds must have continuous access to water that is palatable. The Australian Code requires not less than 10cm length of water trough or one independent nipple or cup feeder must be provided per bird. The Code notes that the splash cup under a nipple drinker is *not* an independent drinking point.¹²⁴

Hong Kong has no detailed requirements to ensure the food and water requirements of all chickens are being adequately met to protect their welfare.

¹²³ Australian Primary Industries Standing Committee, *Model Code of Practice for the Welfare of Animals: Domestic Poultry*, 4th edition, CSIRO (2002) at 9.2 and New Zealand National Animal Welfare Advisory Committee, *Animal Welfare (Broiler Chickens: Fully Housed) Code of Welfare* (2003), at Minimum Standard 2.

¹²⁴ Australian Code at 10.6.

Recommendation: Licensing Conditions for Chicken Farms should be introduced based on the New Zealand Animal Welfare (Broiler Chickens: Fully Housed) Code 2003 which provides that:

- Feed must be provided every day;**
- Feed must be provided in such a way as to prevent undue competition and injury;**
- Adequate quantities of feed must be provided to enable each bird to maintain good health, its physiological demands and avoid metabolic and nutritional disorders;**
- Water must be palatable and not harmful to health;**
- The size of feed particle must be appropriate to the size of the bird;**
- Any chicken which cannot access food or water due to injury or illness, must be removed daily and immediately humanely euthanized or raised separately.**

Housing systems for Broiler Chickens

The Australian and New Zealand Codes require that production systems should take into account insulation, ventilation, lighting, sanitation and hygiene and allow for easy inspection.¹²⁵

All equipment used for keeping poultry can have adverse effects on welfare if not used, maintained or designed properly. The Codes require that floors, doors, drinkers and feeders must be designed, constructed and maintained to support the animal and minimize the risk of injury and disease and prevent foot damage and discomfort. All equipment must be inspected regularly by a qualified person and repaired immediately where found to be faulty. At welfare inspections attention must be paid to bird health,

¹²⁵ See Australian Primary Industries Standing Committee, *Model Code of Practice for the Welfare of Animals: Domestic Poultry*, 4th edition, CSIRO (2002) Minimum Standards 4 -7 and New Zealand National Animal Welfare Advisory Committee, *Animal Welfare (Broiler Chickens: Fully Housed) Code of Welfare* (2003), Minimum Standards 4-8.

injury, behaviours indicative of a problem, feed, water, ventilation and lighting. Dead or injured birds should be attended to without delay and specific checks must be made as to whether birds have become entrapped, and preventative action taken against future entrapment. Birds should also be checked for parasites and treated effectively.

Ventilation systems must have the ability to prevent the build up of harmful gases such as ammonia. Where levels of 25 ppm or higher are detected at bird level immediate action must be taken to increase ventilation and reduce ammonia levels to below 25 ppm.

Birds should be protected from thermal stress. Adequate cool water and ventilation should be available. Temperature control systems must have the ability to remove heat and temperature recordings must be taken at least daily to note potentially stressful temperature fluctuations and these must be addressed and rectified promptly.

By way of contrast the requirements for farming under Hong Kong laws are very broad in nature. Primary enclosures are required to be kept clean, structurally sound, in good repair and avoid excessive illumination. Housing facilities must also provide for the removal and disposal of waste and dead animals, sufficient ventilation, and ample lighting to permit routine inspection and cleaning.

As such there are no detailed requirements as to how, and when, inspections should be carried out, what levels of ventilation are acceptable and what types of cooling systems must be provided to ensure animal welfare.

Recommendation: Licensing Conditions for Chicken Farms should be introduced based on the New Zealand Animal Welfare (Broiler Chickens: Fully Housed) Code 2003 which provides that:

-All equipment used for rearing chickens (feeders, drinkers, air vents, fans) must be inspected a minimum of four times daily for correct operational

- functions and where required appropriate remedial action immediately undertaken;**
- During inspections a minimum of 20 lux of light must be provided;**
 - All ventilation systems must have the ability to prevent the build up of harmful concentrations of gases such as ammonia and CO₂;**
 - Where levels of 25 ppm or higher are detected at bird level immediate action must be taken to increase ventilation and reduce ammonia levels to below 25 ppm;**
 - Temperature control systems must have the ability to maintain desired temperatures compatible with chicken health and welfare;**
 - Where 5% or more of chickens in a flock show persistent panting behaviour during inspection then prompt action must be taken to reduce environmental temperature;**
 - Temperature recordings must be taken at least daily to note any adverse fluctuations. Such fluctuations must be addressed promptly.**

Cage Rearing in the EU

In November 2004, based upon request from the Commission of the European Communities, the European Food Safety Authority (EFSA) published a scientific report and opinion on the welfare conditions of caged poultry. The report,¹²⁶ which was adopted by the EFSA's Animal Health and Welfare Panel, confirmed EFSA's previous findings that cage rearing prevents birds from displaying normal behaviour such as running, flying and continuous walking. The report, which considered pathological, zootechnical, physiological and ethological aspects as well as environmental and health impacts found that unenriched cages cause severe animal welfare problems that are inherent to cage systems. The report found that bone breaking is less frequent in birds reared in enriched cages; the birds showing significantly stronger bones. Foraging and dust bathing are high priority behaviours which cannot be achieved in the caged system. Resting and perching,

¹²⁶ *Opinion of the Scientific Panel on Animal Health and Welfare from the Commission related to the welfare aspects of various systems of keeping layer hens*, European Food Safety Authority Journal (2005) 197, 1-23.

(particularly at night), are also important aspects of bird welfare and perches should be available to all birds at the same time. Where birds cannot perform these high priority behaviours they experience significant frustration, deprivation or injury, which are all detrimental to the animals' health and welfare. The report emphasized that enriched cages provide an increased potential for display of natural behaviours. Scientific studies relied on by the EFSA also found that the disadvantages of unenriched cages outweigh the possible advantages of reduced parasitism, good hygiene and simpler management.

Newly built unenriched cage systems for laying hens have been banned from construction in the EU since 2003. Unenriched cage systems are to be banned outright, from 2012. All new cages built in the EU since 2003 have had to provide at least 750 sq cm per bird, 600 sq cm of which must be usable, and no cage may have a total area of less than 2000 sq cm. All cages must have nests, litter allowing for pecking and scratching and appropriate perches allowing at least 15 cm per bird. Feed troughs, providing at least 12 cm length per bird must be constantly available. Where nipple drinkers are used, at least two cups must be in reach of every bird. There must be a minimum aisle width of 90 cm between tiers of cages and a space of at least 35 cm between the floor of the building and the bottom tier of cages. Cages must be fitted with suitable claw shortening devices. These requirements will become mandatory for all farms throughout the EU in 2012.¹²⁷

The findings of the EFSA are backed up by more recent studies. Data obtained by Fouad M, Razek A and Badawy E (2008), recently published in the 'International Journal of Poultry Science' found the welfare status of poultry to be compromised under cage conditions. This is indicated by increased mortalities, higher prevalence of leg problems, increased stereotyped behaviour, higher fearfulness and a marked heterophil:lymphocyte ratio (physiological indices providing a good indicator of prolonged stress). The study concluded that cages could not be recommended from a welfare point of view for chickens.

¹²⁷ European Union Council Directive 1999/74/EC of 19 July 1999.

Whilst Hong Kong does not have commercial layer hens, breeders are kept in battery cages and the same welfare considerations apply.

Cage rearing in Australia and New Zealand

Battery cages are no longer used for broilers in New Zealand, Australia or Europe (except in some Eastern European countries). However, in these jurisdictions battery cages are still used for layer hens (although these will be banned outright in the EU from 2012).

The following sets out the minimum welfare standards for cage rearing hens in New Zealand¹²⁸ and Australia.¹²⁹

The floor of the cage must be constructed to enable support for each forward pointing toe. Birds must be able to stand erect easily. Cage openings and doors may not open inwards and must be designed to allow birds to be removed and replaced without injury and distress. Floors should not slope more than 8 degrees. At least 10 cm length of feeding trough and water trough, per bird, must be provided.

In Hong Kong, current legislation sets no welfare requirements for floor slope, cage door size, number of drinking points per bird or length of feed trough.

Stocking Densities

The New Zealand Code approaches stocking densities with a holistic attitude, taking into account disease and control measures, management skills and attitude, handling, nutrition, housing, facilities and environment. The Code requires a high standard of management skill and husbandry practice, as considered essential for good welfare.

¹²⁸ New Zealand National Animal Welfare Advisory Committee, *Animal Welfare (Layer Hens)*, 2005, Minimum Standard 5.

¹²⁹ Australian Primary Industries Standing Committee, *Model Code of Practice for the Welfare of Animals: Domestic Poultry*, 4th edition, CSIRO (2002) Minimum Standard 2.3.

In cage systems the surface area used for calculating stocking densities is the area of the cage. In Australia, the minimum unrestricted space required per bird is 550 square cm, measured in a horizontal plane, for birds weighing less than 2.4kg.¹³⁰

Each bird must be able to rest without contact with other birds, to ensure adequate air circulation. Where prolonged panting occurs action must be taken to relieve heat stress.

Wing and leg identification bands must be checked regularly and loosened or removed if the bird is at risk of injury.

Electric pulse wires should not be used to control feeding or drinking.

Recommendation: Licensing Conditions for Chicken Farms should be introduced based on the Australian and New Zealand Codes which provide that all cages must have:

- A floor slope of not more than 8 degrees;**
- Door openings which cover the full height and width of the cage front except for the area covered by the feed trough and any hinge or other door operating system;**
- Two drinking points accessible to each bird;**
- At least 10cm length of feeding trough and water trough provided per bird.**

In Hong Kong, farms have a maximum licensed capacity for poultry but no requirements as to stocking density within cages. Cap 169 provides only that the cage must be large enough to allow free movement, but leaves the interpretation of free movement open to discretion.

¹³⁰ *Ibid.*, Appendix 1.

In Hong Kong, particular care must be taken to control stocking densities due to Infectious Bursal Disease, an avian disease which has a strong immunosuppressant and plays a role in leg disorders.

Recommendation: A minimum cage floor space requirement of 550 square cm per bird should be regulated.

Humane Destruction of injured or diseased birds

The EU Directive, Australian and New Zealand Codes all provide that all persons responsible for the management of chickens and layer hens must be made aware of the signs of disease, either through training or supervision. A detailed inspection of the flock must be made daily. Any bird found to be injured or diseased must be killed humanely or treated as soon as it is recognized. Records of treatment used and response to treatment must be taken.

According to the New Zealand Code the recognized humane destruction methods are concussion followed by neck dislocation, electrical stunning followed by neck dislocation, neck dislocation or gas mixture of at least 70% CO₂ in air or a mix of 70% CO₂ and 30% argon. When gas is used the procedure must be sufficient to ensure all birds have collapsed within 35 seconds and must remain in the gas for at least a further 2 minutes after collapse. All birds must be carefully inspected to ensure they are dead. All persons destroying birds must be trained and must ensure procedures are conducted calmly and gently. All equipment used must be well maintained.¹³¹

The current widespread practice for killing birds in Hong Kong, (exsanguination without stunning), has been declared inhumane in the UK, Australia and New Zealand¹³². It is also common practice on Hong Kong farms to provide no treatment at all to sick birds or to sell them for slaughter. Such practices go against animal welfare principles.

¹³¹ New Zealand National Animal Welfare Advisory Committee, *Animal Welfare (Broiler Chickens: Fully Housed)*, 2003, Minimum Standard 11.

¹³² See page 84 above.

Recommendation: Regulations should be introduced defining accepted humane methods of slaughter and any other form of slaughter should be prohibited. Sick birds on farms should be required to be immediately treated or humanely euthanized.

Catching, Loading and Transport

The New Zealand Code requires that water must not be withheld prior to preparation for catching and loading and food must not be withheld for more than twelve hours before the expected time of slaughter.¹³³ The FEHD Code of Practice for the Welfare of Food Animals allows water to be removed shortly before the journey (an undefined period) and does not require animals to be slaughtered to be provided with food at any point.

The New Zealand Code requires that all members of the catching team must be trained and supervised in the handling of chickens.¹³⁴ The FEHD Code of Practice for the Welfare of Food Animals requires no training or supervision.

The New Zealand Code recognizes that frenzied, noisy behavior can cause distress and lead to smothering of the chickens. Rough catching and handling can injure the chickens. The Code states that birds should not be lifted or carried by the head, wing or tail. All chickens being carried must be held with their hocks and shanks aligned in the same manner within the hand. A catcher may carry no more than four chickens at a time in each hand. If a chicken starts flapping it should be brought under control by either resting it against the catcher's leg or on the ground, in order to help reduce the risk of hip dislocation. Chickens that are injured during catching and loading must be destroyed immediately. Chickens must be placed in crates in a way which allows them to rapidly

¹³³New Zealand National Animal Welfare Advisory Committee, *Animal Welfare (Broiler Chickens: Fully Housed)*, 2003, Minimum Standard 12

¹³⁴ *Ibid.* at Minimum Standard 13.

attain an upright position.¹³⁵ The FEHD Code provides no requirements for the catching and handling of poultry into transport crates.

Recommendations:

-Licensing Conditions for Chicken Farms should be introduced, based on the New Zealand Code, requiring personnel to be trained in the appropriate method for catching and handling chickens.

-Food and water requirements for chickens undertaking transport should be clarified under the FEHD Code.

New Guidelines for Chicken Farmers

Hong Kong currently has no detailed law regulating floor and air space allowances for chickens or pigs on farms, as it does for cattle, sheep and goats (Cap 139C). During the period of our review, the AFCD advised us they had begun to prepare a series of guidelines for keeping chicken and pig farms, however as described to us, these guidelines do not address the animal welfare concerns of accommodation space, lighting, cage design and the provision of litter and perches, and will do little to protect animal welfare.

Recommendation: Regulations promoting animal welfare for chickens on farms should be introduced.

PIGS

Hong Kong has 43 licensed pig farms containing approximately 80,000 pigs. As stated at the beginning of this chapter, poultry and pig farms are licensed under the Public Health (Animals and Birds) Ordinance and Regulations, Cap 139. Licensing conditions are scant and focus on approval of premises and waste treatment systems and compliance with

¹³⁵ New Zealand Broiler Code at 4.2.

carcass disposal measures. Notably, current licensing conditions do not require farmers to address animal welfare concerns. Cap 169 applies to farm animals but is not actively enforced for their protection.

By way of contrast, the European Union has a Directive¹³⁶ which sets down the minimum standards permitted in the EU for the protection of pigs. The pig industry in the EU member states numbers 250 million pigs.

New Zealand has a Code of Welfare for Pigs which was revised in 2005.¹³⁷ The New Zealand pig industry numbers over 300,000 pigs.

Australia's pig industry numbers 5 million pigs. In 2008, the Australian government also revised its Code of Practice for the Welfare of Pigs.¹³⁸ The Code was updated to reflect the latest scientific research into the welfare of pigs.

The Australian and New Zealand Codes provide minimum standards for the management of pigs at law as well as recommended practices based on scientific information and experience.

Competence of Stock Persons

Under the Australian Model Pig Code (2008) all persons managing and conducting procedures on pigs must be trained by 2010 or under the supervision of a trained person. The Australian Code requires anyone handling pigs to be skilled in pig husbandry and competent to maintain the health and welfare of the animals.¹³⁹ The New Zealand Code (2005) also requires pigs to be cared for by a sufficient number of personnel who possess

¹³⁶ Council Directive 2001/88/EC of 23 October 2001.

¹³⁷ New Zealand National Animal Welfare Advisory Committee, *Animal Welfare (Pigs) Code of Welfare* (2005).

¹³⁸ Australian Primary Industries Standing Committee, *Model Code of Practice for the Welfare of Animals (Pigs)*, Third Edition, (2008).

¹³⁹ *Ibid.* at Minimum Standard 2.

the appropriate ability, knowledge and professional competence to protect the welfare of the animals.¹⁴⁰

Recommendation: Regulations should be introduced, under Cap 139, requiring training, focusing on pig welfare, for all persons involved in the management of pig farms.

The Australian and New Zealand Codes require that trained persons must inspect pigs at least once per day and more often in hot conditions.¹⁴¹ Inspections should be made at feeding times. The New Zealand Code requires that all pig sheds should have sufficient lighting of at least 20 lux available to inspect pigs.

Recommendation: Licensing Conditions for Pig Farms should require daily welfare inspections of pigs.

Only the minimal force required is permitted when moving pigs. The Australian Code prohibits the use of electric prodders or hitting with solid objects.¹⁴²

Recommendation: Licensing Conditions for Pig Farms should prohibit the use of electric prodders and solid objects for hitting pigs.

Mutilations

The welfare of animals requires that the impact and stress of painful procedures should be minimized. Strict attention should be paid to the suitability of the area in which the procedure is carried out, catching facilities, restraint used, maintenance of instruments

¹⁴⁰ New Zealand National Animal Welfare Advisory Committee, *Animal Welfare (Pigs) Code of Welfare* (2005) at Minimum Standard 20.

¹⁴¹ *Ibid.* at Minimum Standard 18.

¹⁴² Australian Primary Industries Standing Committee, *Model Code of Practice for the Welfare of Animals (Pigs)*, Third Edition, (2008) at Minimum Standard 5.5.1.

used, hygiene, after care and competence of the stock person. Pigs may never be picked up or suspended by one or more of their front legs.¹⁴³

Where piglets are castrated the procedure should be performed between 2 and 6 days of age. In New Zealand, surgical castration of pigs older than 7 days or surgical procedures that render a male pig over 7 days of age sterile must be performed under anesthesia and by a vet.¹⁴⁴ Restraints used should be the minimum necessary to safely and quickly complete the procedure. By comparison, castration has been banned in Norway and castration without anesthetic has been banned in Switzerland. Castration is not performed in the UK and Ireland, and most male pigs in Spain and Portugal are not castrated.

In Hong Kong, lack of regulation allows castration to be done routinely on farm, without anesthesia or vet involvement, at 2 weeks of age.

Recommendation: Regulations under Cap 139 should be introduced requiring castration or sterilization of any pig, over 7 days old, only to be performed under anesthesia and by a vet.

The Australian Code recommends that tail docking should not be utilised. If used to prevent tail biting, docking should be carried out before the pig is 3 days old and no sooner than 6 hours after birth.¹⁴⁵ Other alternatives should first be considered such as topical application of unpalatable substance to the tail, environmental enrichment and smaller stocking densities. A report produced in 2007 by the European Food Safety Authority concluded that tail biting is caused by an inadequate welfare environment.¹⁴⁶ Scientific research shows that pigs fed an adequate diet, provided with sufficient water,

¹⁴³ New Zealand National Animal Welfare Advisory Committee, *Animal Welfare (Pigs) Code of Welfare* (2005) at Minimum Standard 14.

¹⁴⁴ *Ibid.* at Minimum Standard 13.

¹⁴⁵ Primary Industries Standing Committee, *Model Code of Practice for the Welfare of Animals (Pigs)*, Third Edition, (2008) at 5.6.8.

¹⁴⁶ *Scientific Opinion of the Panel on Health and Welfare on the risks associated with tail biting in pigs and possible means to reduce the need for tail docking considering the different housing and husbandry systems*, European Food Safety Authority Journal (2007), 611, 1-13.

provided with straw or other material for rooting, and kept at a reasonable stocking density seldom indulge in serious tail biting.

Hong Kong farmers routinely tail dock piglets with no regulation.

Recommendation: Regulations under Cap 139 should be introduced stating that tail docking should be avoided in most cases, and in any case will only be permitted where the piglets concerned are less than 3 days old and more than 6 hours old.

Ear notching causes pain and damage to a larger area of the ear than well designed tagging and has been found to be entirely without justification in the EU.¹⁴⁷

Farmers in Hong Kong routinely ear notch piglets without regulation.

Recommendation: Regulations under Cap 139 should be introduced prohibiting ear notching.

Where outbreaks of disease occur or individual animals are injured the New Zealand and Australian Codes state that the owner of the pigs is responsible for ensuring that ill or injured animals receive treatment or are killed humanely by trained staff.¹⁴⁸ The New Zealand pig code emphasizes that it is a criminal offence to fail to provide alleviating treatment to a suffering pig or to desert a pig in circumstances in which no provision is made to meet its physical, health and behavioral needs.¹⁴⁹

Recommendation: In Hong Kong the unfortunate practice of farmers dumping sick and dying pigs at FEHD rubbish collection sites in the New Territories has become commonplace. Such practice is in breach of current licensing conditions and

¹⁴⁷ Broom, D.M., Csermely, D., Dijkhuizen, A.A., Edwards, S.A., Hylkems, S., Jensen, P., Luther, M., Madec, F., Stamataris, C. (1997), *The Welfare of Intensively Kept Pig*, Report of the Scientific Veterinary Committee of European Commission, Doc XXIV/B3/ScVC/0005/1997.

¹⁴⁸ A humane death, according to the Australian Code (2008), requires that the animal is rendered suddenly unconsciousness, with death occurring whilst still unconscious and without distress, pain, fear or anxiety. (Minimum Standard 7.1 and Appendix 5).

¹⁴⁹ See New Zealand Animal Welfare Act 1999 at ss10-11.

aggressive legal action should be taken by AFCD to ensure such cruelty does not continue.

Food and Water

The Australian and New Zealand Codes require that pigs must be provided with daily access to feed that maintains their health and physiological requirements. Drinking water must be easily available at all times. A stock person must act if persistent bullying is leading to deprivation of food or water and more drinker spaces or troughs provided if necessary. The design and operation of feeders should allow pigs to approach and move away from the feeder with minimal bullying. Automatic feeders must be checked once, and water systems must be checked twice, daily, and problems rectified promptly. Water supplied to pigs must be at a temperature that does not inhibit drinking.¹⁵⁰

Recommendation: Licensing Conditions for Pig Farms should require daily inspections of food and water equipment.

The Australian and New Zealand Codes provide that all piglets must receive colostrum or an appropriate substitute within 24 hours of birth (preferably within 12 hours). If the lactating sow dies, or her milk supply fails, or her piglets are receiving inadequate nutrition, they must be fostered, hand reared or humanely destroyed.¹⁵¹ Weaners must be fed at least twice a day, and should preferably have unlimited access to feed. The EU Directive¹⁵² requires that no piglets may be weaned before 28 days unless the welfare or health of the dam or piglet would be adversely affected.

Recommendations:

Regulations under Cap 139 should be introduced requiring that:

¹⁵⁰New Zealand National Animal Welfare Advisory Committee, *Animal Welfare (Pigs) Code of Welfare* (2005) at Minimum Standards 1 and 3, and Australian Primary Industries Standing Committee, *Model Code of Practice for the Welfare of Animals (Pigs)*, Third Edition, (2008) at Minimum Standard 3.

¹⁵¹ *Ibid.* at Minimum Standard 2 (New Zealand) and 5.3 (Australia).

¹⁵² Council Directive 2001/88/EC of 23 October 2001.

-All piglets receive colostrum within 24 hours of birth. Where piglets cannot be cared for appropriately, humane euthanasia must be immediately utilised.

-Piglets may not be weaned before 28 days in the absence of adequate medical reasons. Weaned piglets must be fed at least twice daily.

The Australian and New Zealand Codes provide body condition scoring guidelines for pigs, as a useful method for assessing whether animals are receiving adequate nutrition. If the body condition of a pig falls below 2 (on a scale of 1-5, where 5 is the high end, and 1 the low end of the scale) action (vet attention, improved nutrition or husbandry practice) must be taken to improve the condition.¹⁵³ If a condition of 2 cannot be achieved the animal must be culled humanely.¹⁵⁴

Recommendation: AFCD should introduce Body Scoring Guidelines for Pigs which require farmers to take mandatory action where conditions fall below acceptable levels.

The New Zealand Code also recommends that pregnant sows should be given enough bulky feed or high fibre feed to satisfy hunger. Hungry sows are more likely to suffer stereotypic behaviour. A pregnant sow's body condition should be 3.5 to 4 (on a scale of 1-5). A minimum level of crude fibre, in grain based diets, of 4.5-5% should be provided for sows, gilts and boars. This recommendation is made on the basis that adequate fibre reduces stereotypic behaviour and aggressiveness.¹⁵⁵

Recommendation: Licensing Conditions for Pig Farms should set minimum levels of crude fibre in pig diets.

Accommodation Space

¹⁵³ See Appendix 1 (Australian Code) and Appendix 3 (New Zealand Code).

¹⁵⁴ See n 148 above.

¹⁵⁵ New Zealand National Animal Welfare Advisory Committee, *Animal Welfare (Pigs) Code of Welfare* (2005) at 3.1.

Based on current scientific knowledge and good practice, the Australian and New Zealand Codes require that accommodation must be provided for growing pigs at a rate of Area (square metres) per pig = $0.030 \times \text{liveweight } 0.67 \text{ (kg)}$.¹⁵⁶ Where there are a range of weights in the group of pigs the minimum space per pig is calculated according to the average weight of the pigs in the group.

Any dunging area/open drain must be excluded from the calculation of the total space provided per pig.¹⁵⁷ Lying areas contaminated with faeces and urine pose a threat to the health and welfare of the pigs. Both Codes recognise that increased aggression and soiling in the resting area are signs of over stocking. Where the temperature is above 25 degrees celsius then more space is recommended.¹⁵⁸ Action must be taken to detect and cool heat distressed pigs such as opening flaps and doors, water misting, increasing ventilation or providing more space.

Minimum Standard 5, under the New Zealand Code, requires that group housed unmated breeding gilts, (young female pigs), of less than 100kg body weight, are provided with at least 1 square metre per adult (over 9 months). For mated gilts, 1.5 square metres must be provided. It should be noted that the EU minimum space requirement is greater, at 1.64 square metres per pig. For sows in group housing, the New Zealand minimum standard requires 2 square metres per adult to be allowed. For sows in individual stalls, each pig must have 1.2 square metres space (0.6m x 2m).

In New Zealand, boars (uncastrated male pigs over 9 months of age) placed in individual pens must have 6 square metres of living space. The same minimum space is required under the 2001 EU directive. In stalls or crates, boars must have 1.68 square meters (0.7m x 2.4m). If the same pen is used for living and mating the floor space should be not less than 10 square metres (with the shortest side not less than 2.5m long) and be free of any obstacles. Boars should also be housed with visual and olfactory contact with other pigs. In Australia, boars kept in stalls must be released for exercise at least twice per

¹⁵⁶ Based on Spooler HAM, Edwards SA and Corning S (2000) *Livestock Production Science*, 64: 167-173.

¹⁵⁷ New Zealand National Animal Welfare Advisory Committee, *Animal Welfare (Pigs) Code of Welfare* (2005) at Minimum Standard 5(b).

¹⁵⁸ *Ibid.* at Minimum Standard 5(c).

week, to prevent muscular and skeletal weakness.¹⁵⁹ Boars kept in groups must be monitored daily and managed to avoid injury to, and bullying of, subordinate boars. Confinement in stalls for long periods of time is also considered unacceptable under the New Zealand Animal Welfare Act 1999. Confinement increases the risk of skin conditions due to urine scold and skeletal and muscular weakness.

For sows and boars accommodated individually, the Australian minimum standards require that they must be able to stand up and lie down without being obstructed by the bars and fittings of the stall, to lie with their limbs extended and stretch freely. They must be able to stand up, at rest, without simultaneously touching both sides of the stall. They must be able to lie down at rest without snout and hindquarters both touching the ends of the stall. If the stall has bars along the top these must not touch their backs when standing at rest or when feeding. Placement of feeding and water troughs must be easily accessible but must not prevent the free ability to stand, stretch and lie down. They must be provided with partitions to prevent injury from neighbours but still be able to see one another.¹⁶⁰

Lighting

The New Zealand Code requires that natural or artificial light of at least 20 lux must be made available at pig level in all buildings for a minimum of 9 hours daily.¹⁶¹ The EU Directive requires a mandatory lighting level of 40 lux for a minimum of 8 hours per day.¹⁶²

¹⁵⁹Australian Primary Industries Standing Committee, *Model Code of Practice for the Welfare of Animals (Pigs)*, Third Edition, (2008) at Minimum Standard 4.1.

¹⁶⁰*Ibid.*

¹⁶¹New Zealand National Animal Welfare Advisory Committee, *Animal Welfare (Pigs) Code of Welfare* (2005) at Minimum Standard 4(a).

¹⁶²Council Directive 2001/88/EC of 23 October 2001.

Pen Fittings and Flooring

The standard of accommodation in which the pigs are kept has a direct impact on the health and welfare of the pigs. Pen fittings must be kept in good working order. All sharp projections and edges including damaged flooring likely to cause injury to pigs must be removed or covered. Floors should have a non slip surface. Poor maintenance of concrete, slatted, or perforated floors can cause the foot damage and lameness.¹⁶³ Such floors are common on Hong Kong farms.

The EU Directive (2001) provides that the minimum slat width for piglets and weaners is 50 mm and for rearing pigs, gilts after service and sows the minimum is 80 mm. The maximum width of the gap openings allowed is 11 mm for piglets, 14 mm for weaners, 18 mm for rearing pigs and 20 mm for gilts after service and sows. These gap to slat proportions are intended to minimize the likelihood of foot damage and are mandatory already for all facilities built or rebuilt since 2003, all older facilities must be in compliance by 2013. The New Zealand Code requires that if wire mesh is used for flooring the gauge should be 6.4 mm.¹⁶⁴

The Australian and New Zealand Codes require that ventilation must be sufficient to prevent the build up of harmful concentrations of gasses such as ammonia and CO₂.¹⁶⁵ The New Zealand Code requires that where ammonia levels of 25 ppm or higher are detected during daily inspections immediate and appropriate action must be taken to reduce levels. The Australian Code recommends no higher than 11 ppm as a maximum ammonia level. The Codes recognise that high ammonia concentrations can cause eye and respiratory disease in both pigs and humans.

¹⁶³ New Zealand National Animal Welfare Advisory Committee, *Animal Welfare (Pigs) Code of Welfare* (2005) at Minimum Standard 4.

¹⁶⁴ *Ibid.* at Ch 4, Table 5.

¹⁶⁵ Australian Primary Industries Standing Committee, *Model Code of Practice for the Welfare of Animals (Pigs)*, Third Edition, (2008) at 4.3.10 and New Zealand National Animal Welfare Advisory Committee, *Animal Welfare (Pigs) Code of Welfare* (2005) at Minimum Standard 7.

Rooting Materials

The 1997 Report on the Welfare of Intensively Kept Pigs, by the European Union's Scientific Veterinary Committee¹⁶⁶ found that barren environmental conditions promote stress in pigs which compromises welfare. The Report recommended that environmental enrichment practices such as provision of rooting material, the use of a radio in growing sheds and "toys" in finishing pens, such as hanging chains, should be introduced. On the basis of this recommendation, the EU Directive for the protection of pigs provides that permanent access to rooting material will be mandatory for sows and gilts from 2013, and has been mandatory in all facilities built or rebuilt since 2003.¹⁶⁷

New Guidelines for Pig Farmers

Hong Kong currently has no detailed law regulating floor and air space allowances for chickens or pigs on farms, as it does for cattle, sheep and goats (Cap 139C). During the period of our review, the AFCD advised us they had begun to prepare a series of guidelines for keeping chicken and pig farms, however as described to us, these guidelines do not address the animal welfare concerns of accommodation space, lighting, pen fittings and flooring and the provision of rooting materials, as listed above, and will do little to protect animal welfare.

Recommendation: Regulations promoting animal welfare for pigs on farms should be introduced.

Welfare Issues with Sow stalls

Sow stalls place severe restrictions on the movement, social interactions and behaviour of the sows. When pigs are kept in sow stalls they have no opportunity to engage in exploratory and foraging behaviour, or to interact socially with other pigs. The environment is barren and the inability of the animal to exert any control over her

¹⁶⁶ See n 147 above.

¹⁶⁷ Annex to Council Directive 2001/93/EC of November 2001.

environment often results in boredom and frustration. Sows kept in sow stalls exhibit high levels of stereotypical behaviour (commonly expressed by repeating the same action, such as biting the bars of the stall, sham chewing, head weaving and tongue rolling) and suffer unresolved aggression.¹⁶⁸ Behaviour of this kind is rarely seen in animals kept in complex environments. In every detailed scientific study of sows in stalls, or on tethers, a substantial level of stereotypies has been reported, indicating poor animal welfare.¹⁶⁹

Sow stalls also do not permit the animal to exercise, causing their muscles and bones to deteriorate.¹⁷⁰ These changes affect the animal's ability to lie down. Joint damage, leg weakness and urinary tract infections are common results of stall confinement. The commonest problem for sow mortality is leg weakness.¹⁷¹

In recognition of the numerous animal welfare problems associated with sow stalls, Australia and New Zealand now prohibit confinement in sow stalls beyond a maximum of 6 weeks, after which the animals must be released to group housing with other sows. This period allows the placenta to fully develop and is sufficient to reduce the effects of aggression between sows following mating, allowing them to return to group housing.

Even permitting 6 weeks confinement is controversial. Any facilities built or refurbished in New Zealand since 2005 must allow confinement for no more than 4 weeks.¹⁷²

Welfare concerns have led to sow stalls being banned outright in the UK, Sweden, Finland, Switzerland and the Netherlands. From 2013, the EU has ordered sow stalls may

¹⁶⁸ Broom DM, Mendl MT and Zanella AJ (1995) A comparison of the welfare of sows in different housing conditions *Animal Science* 61: 369-385.

¹⁶⁹ See n 147 above.

¹⁷⁰ Marchant JN and Broom DM (1996) Effects of dry sow housing conditions on muscle weight and bone strength *Animal Science* 62: 105-113.

¹⁷¹ Christensen G, Vraa-Anderson L and Mousing J (1995) Causes of mortality among sows in Danish pig herds *Veterinary Record* 137: 395-399.

¹⁷² New Zealand National Animal Welfare Advisory Committee, *Animal Welfare (Pigs) Code of Welfare* (2005) at Minimum Standard 10.

not be used by any member country for any period longer than 4 weeks. Already facilities built or rebuilt since 2003 may be used to confine a sow for no more than 4 weeks.¹⁷³

Whilst the size of sow stalls being used on most Hong Kong farms is comparable with overseas jurisdictions, there are currently no legislated size requirements and thus farms are free to use smaller stalls without censure. Farmers are also free to use sow stalls, for the full 16 week gestation period, as there is currently no legislated time limit.

Recommendation: Regulations under Cap 139 should regulate the size of sow stalls and the maximum period of confinement, before sows are returned to group housing.

Welfare Issues with Farrowing Crates

The most prominent behaviours expressed by free range pregnant sows are movement and nest building.¹⁷⁴ Farrowing crates prevent pregnant sows from engaging in either of these instinctive behaviours, as they are confined in a small space and provided with no bedding or nesting material. Frustration of normal behaviour leads to chronic stress.¹⁷⁵ Confinement without exercise and social interaction leads to aggressive and abnormal behaviour, due to boredom.¹⁷⁶ Sows in farrowing crates also are severely restricted in their movement and suffer deterioration of their muscles and bones, often resulting in the animal becoming unable to stand up or lie down without great difficulty.¹⁷⁷

In recognition of these animal welfare issues, farrowing crates may be used for no longer than 6 weeks in New Zealand and Australia (and it is recommended they should be used

¹⁷³ Council Directive 2001/88/EC of 23 October 2001.

¹⁷⁴ Arey DS, Petchey AM and Fowler VR (1991) The preparturient behaviour of sows in enriched pens and the effect of preformed nests *Applied Animal Behaviour Science* 31:61.

¹⁷⁵ Baxter MR (1982) The nesting behaviour of sows and its disturbance by confinement at farrowing, *Hohenheimer Arbeiten* 121: 101-114.

¹⁷⁶ Fraser AF and Broom DM (1990) *Farm Animal Behaviour and Welfare*, 3rd Ed, Wallingford: CAB International.

¹⁷⁷ Jensen KH, Pedersen BK, Pedersen LJ and Jorgensen E (1995) Well being in pregnant sows: Confinement versus group housing with electronic sow feeding, *Acta Agriculturae Scandinavica, Section Am Animal Science* 45: 226-275.

for less).¹⁷⁸ The Codes also require that any animal showing serious behavioral problems due to individual confinement must be examined by a qualified person and treated.

The Australian Code states that when used, farrowing crates must be of a minimum of 0.5m x 2m, and the crate and creep area must be 3.2 square metres minimum. Farrowing pens must allow a minimum of 5.6 square metres per sow. The recommended length of farrowing crates is 1600-1850 mm for the lying area, 200 mm for the rump rail and 300 mm for the trough. The total length of the crate should be 2100-2350 mm. The crate width should be 800-900 mm. The bottom rail should be 180-250 mm in height from the floor. The bottom rails must enable all piglets to suckle freely at the one time. Lactating sows must be able to stand and lie down without obstruction from the bars and fittings of the crates, suckle piglets so both sides of the udder are accessible and access feed and water without obstruction. As most piglet deaths will occur within 4 days it is recommended that the crate is converted to a pen at that time.

Sweden and Switzerland have banned farrowing crates and New Zealand has stated an intention to do so.¹⁷⁹ Where used, the EU Directive¹⁸⁰ requires that a part of the total floor, sufficient to allow the animals to rest together at one time must be solid, covered with a mat or be littered with straw or other suitable material.

Hong Kong farmers routinely use farrowing crates with no regulation on acceptable time periods or size requirements.

Recommendation: Regulations under Cap 139 should regulate the size of farrowing crates and the maximum period of confinement, before crates are converted to pens.

¹⁷⁸ New Zealand National Animal Welfare Advisory Committee, *Animal Welfare (Pigs) Code of Welfare* (2005) at Minimum Standard 9 and Australian Primary Industries Standing Committee, *Model Code of Practice for the Welfare of Animals (Pigs)*, Third Edition, (2008) at Minimum Standard 4.1.7.

¹⁷⁹ New Zealand National Animal Welfare Advisory Committee note to *Pigs Code of Welfare* (2005), p32.

¹⁸⁰ Annex to Council Directive 2001/93/EC of November 2001.

Tethering

Tethering is another method used to restrain individually housed sows. The tether is made of webbing or chain and is tied to the sow at the neck or girth. Tethering is banned in Australia,¹⁸¹ New Zealand¹⁸² and under the EU Directive,¹⁸³ for the protection of pigs.

Hong Kong has not banned tethering of pigs.

Recommendation: Regulations under Cap 139 should prohibit the tethering of pigs.

FISH

Aquaculture in Hong Kong includes marine fish culture, pond fish culture and oyster culture. Under the Marine Fish Culture Ordinance, Cap 353, all marine fish culture activities must be licensed, however there are no requirements relating to welfare. Pond fish culture does not require a licence. The AFCD have introduced a voluntary 'Accredited Fish Farm Scheme' which encourages best practice in hygiene and management of fish farms, however only 12% of local farms are accredited.

In 2008 and 2009, the European Food and Safety Authority's Animal Health and Welfare Panel adopted 14 general and species-specific opinions on the welfare aspects of the husbandry, stunning and killing of farmed fish. These opinions include specific recommendations for the welfare of carp and seabream, both of which are widely farmed in Hong Kong.

The OIE guiding principles on the welfare of farmed fish during husbandry, transport and slaughter state that the use of fish carries with it an ethical responsibility to ensure their welfare to the greatest extent practicable. The most basic requirements for the welfare of

¹⁸¹ Australian Primary Industries Standing Committee, *Model Code of Practice for the Welfare of Animals (Pigs)*, Third Edition, (2008) at Minimum Standard 4.1.9.

¹⁸² New Zealand National Animal Welfare Advisory Committee, *Animal Welfare (Pigs) Code of Welfare* (2005) at Minimum Standard 11.

¹⁸³ Council Directive 2001/88/EC of 23 October 2001.

farmed fish include handling methods appropriate to the biological characteristics of the fish and a suitable environment to fulfill their needs.¹⁸⁴

New Zealand's Animal Welfare (Commercial Slaughter) Code 2010 sets out humane requirements for the slaughter of all finfish, in compliance with the current OIE guidelines. These require that all fish are stunned before slaughter.¹⁸⁵

Recommendation: Pond fish culture should be licensed and licensing conditions for all aquaculture should be updated to include animal welfare requirements.

¹⁸⁴ OIE Aquatic Animal Health Code (2009) Guidelines for the Welfare of Farmed Fish at Chapter 7.1.

¹⁸⁵ See page 87 above.

TRANSPORT OF FOOD ANIMALS

In the absence of appropriate legislation, the Food and Environmental Hygiene Department has published a Code of Practice for the Welfare of Food Animals which sets out guidance for transporters of pigs, cattle, goats and poultry. It should be noted, however, that the Code is not legally enforceable and in some aspects is out of date with humane practice overseas.

Animal welfare scientists have found that there are a variety of welfare indicators which can be used to assess the welfare of animals which are being handled or transported.¹⁸⁶ The most obvious indicators that an animal is having difficulty coping with handling and transport are changes in behavior, which show that some aspect of the situation is aversive. The procedures of loading and unloading animals into and out of transport vehicles can have very severe effects on the animals and these effects, which vary considerably by species, are revealed in part by their responses to loading procedures. Any animal which is injured or frightened by people during loading can show extreme responses, however, in most efficient loading procedures, cattle will sometimes be affected, pigs will always be affected, and poultry which are handled by humans will always be severely affected.

Without good stockmanship, animal welfare can never be adequately protected. The New Zealand Code of Recommendations and Minimum Standards for the Welfare of Animals Transported within New Zealand (1994) emphasises the responsibilities of the owner of the animals (or the owner's agent), drivers, attendants and transport officials. Ignorance is no excuse for the inappropriate handling of animals. Employers have an obligation to train employees in proper handling of animals, use of equipment and care of livestock.¹⁸⁷

Because the transport of animals creates stress, unnecessary transport is recommended to be avoided. Any transport that is necessary must be carried out in a way that is efficient and considerate and minimises stress, pain and suffering.

¹⁸⁶ Broom DM (2000) Welfare assessment and welfare problem areas during handling and transport; 43-61; *Livestock Handling and Transport*, T Grandin (ed.); CABI Publishing, New York.

¹⁸⁷ New Zealand Animal Welfare Advisory Committee *Code of Recommendations and Minimum Standards for the Welfare of Animals Transported in New Zealand* (1994) at 2.

The New Zealand Code¹⁸⁸ recognises that animals being transported are subjected to a number of stressors which may include:

- yarding and handling;
- deprivation of, or changes in quantity or the quality of food and water;
- changes in climatic conditions;
- the grouping of animals strange to each other both within and between species;
- separation from others of the animal's own kind;
- unfamiliar surroundings, noises and sensations;
- overcrowding or isolation;
- insufficient pre-travel rest periods;
- insufficient care during road transportation;
- physiological responses associated with pregnancy;
- disease.

Stress is a cumulative response of an animal to its surroundings and may result in severe behavioural and physiological effects. Animals of different species and breeds may vary in their susceptibility to stress.

Animals may be stressed by mustering and assembly for transport. Animals unaccustomed to handling will be the most severely affected.

Sensitive and sensible stockmanship should be practised in order to reduce stress to individual animals and those nearby.

¹⁸⁸ *Ibid.* at 3.

It is an offence, under the New Zealand Animal Welfare Act 1999, to allow animals to suffer unnecessary or unreasonable pain or distress.¹⁸⁹ A breach of the New Zealand Transport Code can be used in evidence to establish the guilt of anyone accused of causing an animal suffering under the Act. Relevant sections which specifically apply to the transport of animals are as follows:

-The *person in charge* of any vehicle, and the master, or where there is no master, the person in charge, of any vessel is responsible for ensuring that any animal conveyed is provided with reasonably comfortable and secure accommodation and is supplied with sufficient food and water.¹⁹⁰

-The *consignor* of animals confined in a vehicle, or vessel is responsible for arranging the supply of proper and sufficient food and water, and for arranging for the off-loading of the animals for the supply of food and water.¹⁹¹

Animals which should not be transported

The farmer/owner/stock agent is responsible for the careful selection of livestock for loading on to the road vehicle.¹⁹² The owner, consignor or agent has a responsibility to select only fit and healthy animals for travel. The nature of the proposed journey should be considered when determining the degree of fitness required.

Under the New Zealand Code, an animal which cannot stand and bear weight on all limbs without pain must not be transported.¹⁹³ An animal with any leg broken must not be transported *for any other reason* unless it has been treated by a veterinarian.¹⁹⁴

Similarly, the Australian Standards and Guidelines for the Welfare of Animals: Land Transport of Livestock (2010)¹⁹⁵ and the European Union's Regulation for the Protection

¹⁸⁹ New Zealand Animal Welfare Act (1999) at section 12(b).

¹⁹⁰ *Ibid.* at section 22(2)

¹⁹¹ *Ibid.* at section 12(a).

¹⁹² *Ibid.* at section 23(2).

¹⁹³ New Zealand Animal Welfare Advisory Committee *Code of Recommendations and Minimum Standards for the Welfare of Animals Transported in New Zealand* (1994) at Minimum Standard 4.9.

¹⁹⁴ *Ibid.* at 4.1.4.

of Animals in Transport¹⁹⁶ do not allow transport of animals that are ill, unable to move independently without pain, or walk unassisted. Where an animal is not fit to travel and is suffering unnecessary pain or suffering, both the Australian Standards and the EU Regulation require that immediate veterinary assistance must be obtained for the animal or it must be destroyed without delay.

These requirements underscore the conclusions of the European Union's Scientific Committee on Animal Health and Welfare, (ESFA). It is well documented that transportation of mammals, birds and fish can spread both animal and zoonotic diseases. A major measure to prevent the spread of infectious diseases in relation to transport is for there to be high health status in the population of origin. Poor welfare in transported animals is caused by stressful conditions which they encounter during loading and transport and also by exposure to infectious and other diseases which may be exacerbated in this context. It is important to ensure the high health status of transported animals and minimise stressful conditions in order to protect the health and welfare of animals.¹⁹⁷

Under the New Zealand Animal Welfare Act 1999, both the owner and the person in charge of an animal will be liable if either permits the animal to be conveyed on any highway, or in any vessel, while the condition or health of the animal is such as to render it unfit to be conveyed.¹⁹⁸

It should also be noted that the New Zealand law states that at no stage will liability shift from the farmer or his or her agent to the driver. Any liability of the driver is *additional* to the liability of the owner or his or her agent. If unfit stock are transported the owner and the driver are held equally liable for prosecution. Once a driver takes possession of animals he or she is deemed to be the person in charge. If the driver conveys animals that are unfit to travel he or she is liable for prosecution.

¹⁹⁵ Australian Primary Industries Standing Committee *Australian Standards and Guidelines for the Welfare of Animals- Land Transport of Livestock* (2010) at 4.1.

¹⁹⁶ Council Regulation (EC) 1/2005 of 22 December 2004.

¹⁹⁷ *The welfare of animals during transport* The EFSA Journal (2004) 44: 1-36.

¹⁹⁸ At section 23(2).

Stock transport operators are responsible for the care and welfare of all animals *during transport, until discharged*. As this is an onerous duty, transport operators have the right to refuse to transport stock. Proper arrangements are therefore to be made by the owner, or his or her agent, for the handling and care of animals rejected as unsuitable for loading. Where an animal is not fit to travel and is suffering undue pain or distress it must be destroyed without delay. Under a 1993 amendment to the New Zealand Meat Regulations 1969, injured stock may be slaughtered on the farm by a Ministry of Agriculture and Fisheries approved operator or veterinarian, immediately before loading.

The OIE's Terrestrial Animal Health Code 2009 and Aquatic Animal Health Code 2009 require that owners and managers of animals, agents and drivers are all responsible for animal handling, including ensuring that only animals fit for travel are transported.¹⁹⁹

The FEHD Code of Practice for the Welfare of Food Animals provides no prohibition against transporting sick and injured livestock. In practice, vulnerable livestock are routinely sold to the slaughterhouse or abandoned to die.

Recommendation: Regulations under Cap 139 should be introduced requiring that owners of sick or injured livestock provide immediate veterinary assistance to the animal or must destroy it, on farm, without delay, using a recognised humane method.

Driver Training

In Australia and New Zealand drivers must be trained to ensure the welfare of animals in their charge and must be familiar with the Codes. Transport operators have a responsibility under the Codes to ensure that proper training programmes are instituted.²⁰⁰

Training must be provided to ensure that drivers are experienced enough to identify physical problems such as broken limbs or obvious poor body condition. They must

¹⁹⁹ OIE Animal Health Code 2009 at Article 7.3.3 and Aquatic Animal Health Code 2009 at Article 7.2.3.

²⁰⁰ New Zealand Animal Welfare Advisory Committee *Code of Recommendations and Minimum Standards for the Welfare of Animals Transported in New Zealand* (1994) at 2.2.2 and Australian Primary Industries Standing Committee *Standards and Guidelines for the Welfare of Animals- Land Transport of Livestock* (2010) at 2.1.

refuse to transport stock they consider unfit and should ask for a veterinary opinion where doubt exists.

Drivers must stop and assist distressed or injured animals, immediately they become aware of a problem affecting the welfare of the animals being conveyed. An appropriate source of light should be available to allow inspections in poor light conditions. An animal found to be down, injured, distressed or with a limb protruding should be given immediate assistance by the driver or vessel attendant, who should have adequate training. Every effort should be made to get cast animals to their feet. Where the driver cannot provide adequate assistance, appropriate aid should be immediately enlisted.²⁰¹

In 2002, the European Union's Scientific Committee on Animal Health and Welfare, (the European Food Safety Authority), produced a major report on animal transport in which they reviewed the scientific literature on the subject.²⁰² They advised stock vehicles conveying animals must be driven steadily, avoiding rapid acceleration and braking as far as possible. Corners must be rounded at an appropriate speed to reduce the centrifugal force as much as possible. Drivers must be made aware that sudden braking can subject animals to horizontal loads as high as 33% of their own weight. Sudden acceleration and rapid cornering can cause horizontal forces of up to 20% of the animal's weight. Such loads will cause stress and may result in fall and injuries.

Since 2005, in the EU member states, no person is permitted to transport animals for over 65 km (as a driver or attendant) unless he has received appropriate training and a certificate of competence from the competent authority. Such training includes assessing animals fitness for travel, vehicle maintenance requirements, animal physiology (including feed, water and rest requirements), recognition of animal behaviour and stress, practical handling of animals, the impact of driving behaviour on animal welfare and on the quality of the meat and emergency care for animals. Such certificate must be made

²⁰¹ *Ibid.* at 6.4 (New Zealand) and 5.13 (Australia).

²⁰² Report of the Scientific Committee on Animal Health and Welfare adopted 11 March 2002: *The Welfare of animals during transport (details for horses, pigs, sheep and cattle)*, European Commission, 11.3.2002.

available to the authority when the animals are transported. Where the transporter is found to have treated the animals without due care he may have his certificate revoked.²⁰³

The OIE's Terrestrial Animal Health Code 2009 and Aquatic Animal Health Code 2009, require adequate competency of the driver in matters of animal welfare, for the species being transported, wherever a separate animal handler is not assigned to the truck. Transport companies, vehicle owners and drivers are also responsible for carefully planning the journey to ensure the care of the animals. This includes responsibility for choosing appropriate vehicles for the species transported and the journey, ensuring that properly trained staff are available for loading/unloading of animals, on route inspections, developing and keeping up-to-date contingency plans to address emergencies (including adverse weather conditions) and minimising stress during transport.²⁰⁴

The FEHD Code of Practice for the Welfare of Food Animals (which is not legally binding) only states that 'drivers must drive carefully for the welfare of animals'. There are no requirements for driver training or driver inspection en route or the provision of assistance to distressed or injured animals, or any responsibility for ensuring the animals' welfare needs will be met on unloading.

Inspectors appointed under New Zealand's Animal Welfare Act 1999 have the power to enter any vehicle or vessel for the purpose of inspecting any animal where the inspector is satisfied on reasonable grounds that an offence is being or has been committed. Inspectors are veterinarians and livestock officers of the New Zealand Ministry of Agriculture and Fisheries (MAF), warranted officers of the Royal New Zealand Society for the Prevention of Cruelty to Animals (RSPCA) and police officers.

Recommendations:

²⁰³ Council Regulation (EC) 1/2005 of 22 December 2004.

²⁰⁴ OIE Animal Health Code 2009 at Article 7.3.3.4 and Aquatic Animal Health Code at 7.2.2.

-The responsibility of farmers, owners, stock agents and transport operators, for the welfare of animals at all times, during loading and transport, until the animals are discharged into the care of another, should be legislated.

-Mandatory driver training, responsibility of drivers to conduct welfare checks routinely on route, and at the end point of the journey, and to provide assistance to distressed and injured animals, as and when required, should be legislated.

-Where duties are not complied with, strong action, including prosecution, should be undertaken.

-The SPCA Inspectorate should be provided with the power, under warrant, to enter vehicles and vessels on reasonable suspicion of an offence.

-Compliance with the FEHD Code of Practice for the Welfare of Food Animals should be made mandatory.

-As recommended under the New Zealand Code²⁰⁵ a checklist as to the duties of those transporting animals should become part of routine practice under the Hong Kong Code.

Animal Welfare Check List			
When did the journey start?	Date:	Time:	
Where did the journey start?			
What is the final destination?			
Name of transport company			
Name of the driver			
What is the type and class of stock carried?	1	How Many?	
	2		

²⁰⁵ New Zealand Animal Welfare Advisory Committee *Code of Recommendations and Minimum Standards for the Welfare of Animals Transported in New Zealand* (1994) at 4.8.

	3		
How many are pregnant?		How many in the 3rd trimester	
When was the stock last watered before transit?			
When was the stock last fed before transit?			
When was the stock fed and/or watered in transit?	1		
	2		
	3		
List the veterinary certificates attached	1		
	2		
	3		
Name of owner/consignor			
Address			
Telephone numbers	Day	Night	
Other emergency phone numbers	Stock Agent	Veterinarian	

Stock Vehicles

The New Zealand Code provides that vehicles must be designed so as to ensure that animals are contained within the vehicle. Limbs and heads must not be able to protrude outside the sides and top of the vehicle. Animals must have enough room overhead to enable them to travel in a natural position without injuring their heads or backs and to give them enough air when the vehicle is not moving.²⁰⁶

²⁰⁶ *Ibid.* at 4.5.

The OIE standards provide calculations for space requirements of specific animal species.²⁰⁷

The EFSA has advised that no animals should be tied during transport due to the risk of strangulation or ensnarement. The EU Directive requires that animals may not be tied by the horns or nose rings or have their legs tied together.²⁰⁸

The FEHD Code, (which is not legally enforceable), simply provides that vehicles should be escape proof and constructed to ensure the safety of the animal. Nose tying is not recommended in the text, although pictures of nose tied animals are included as examples of appropriate tying practice. Halter and horn tying are also depicted in detail. There is no recommendation against leg tying.

Recommendation: The FEHD Code of Practice for the Welfare of Food Animals should be updated to regulate space allowances, and only permit humane restraints, on all vehicles used to transport animals.

Food and water requirements

The EFSA report (2002)²⁰⁹ advised that deprivation of food and water or changes in the volume or quality of food and water will compound the stress associated with transportation and may result in metabolic disturbances or an increase in the numbers of pathogenic organisms in the gut.

The New Zealand Code²¹⁰ requires that clean drinking water should be provided for all animals while being held prior to loading. Water should be provided in troughs so that all ages and classes of animals can drink. Appropriate watering facilities should be provided to cater for the number of animals being handled.

²⁰⁷ OIE Animal Health Code 2009 at Article 7.3.12.

²⁰⁸ Council Regulation (EC) 1/2005 of 22 December 2004.

²⁰⁹ See n 202 above.

²¹⁰ New Zealand Animal Welfare Advisory Committee *Code of Recommendations and Minimum Standards for the Welfare of Animals Transported in New Zealand* (1994) at 4.1.2.

The FEHD Code, (which is not legally binding), recommends that animals have access to water before and after the journey however the Code does not recommend how such water is to be provided, nor for how long, to ensure animals are sufficiently watered before the journey.

The FEHD Code also envisages that the time spent without water will only include the time spent in actual travel. It states that pigs, cattle, goats may be without drinking water during local road journeys of 2 hours, and chickens in transport crates for 6 hours.

The EFSA has pointed out that in calculating any period of deprivation of food and water, account also needs to be taken of the time of initial yarding and assembly prior to the start of the journey, and unloading at the final destination, including all transit rest periods.²¹¹

The New Zealand Code recognises that water requirements increase with hot weather. The Code requires that pigs should be provided with at least 10 litres of water per head per day for roasters and 16 litres per day for porkers and 3% of body weight of grower ration. Cattle should be provided with at least 90 litres of water per day and 2% of body weight of good quality hay.²¹²

The EU Regulations for the Protection of Animals during Transport require that pigs should have access to water *at all times* during transit.²¹³

The New Zealand Code states that if, after the journey commences, a delay in carriage arises from disrupted services, it is the responsibility of the person at the point of disruption to ensure that the animals concerned are properly fed and watered and suitable arrangements for custody made.

Recommendation: The FEHD Code of Practice for the Welfare of Food Animals should regulate the amount of water which must be provided to animals both before

²¹¹ See n 197 above.

²¹² New Zealand Animal Welfare Advisory Committee *Code of Recommendations and Minimum Standards for the Welfare of Animals Transported in New Zealand* (1994) at 10.2.

²¹³ Council Regulation (EC) 1/2005 of 22 December 2004 at Chapter V.

and after local journeys, and where necessary, during transit. Time spent without access to water should be calculated to include time spent without water prior to loading and time spent in unloading. Sufficient time must be allowed for animals to drink sufficient amounts of water before loading. Where disruption in transport occurs, requirements for emergency unloading and watering must be provided.

Design and Construction of Loading Ramps

The EFSA Report (2002)²¹⁴ concluded that because animals move more readily uphill than downhill, ramps should be horizontal or slope upwards. If the ramps slope downwards, the slope should be as flat as possible. The maximum incline must not exceed 20° (about 1:3). Since 2005, in the EU member states, ramps may not be steeper than an angle of 20°.²¹⁵

The FEHD Code recommends a maximum gradient of 25°.

Recommendation: The maximum gradient for ramps should be regulated to no steeper than an angle of 20°.

Loading and Unloading of Animals

The EFSA have advised that loading and unloading are the activities during which injuries and stress to animals are most likely to occur. Loading should therefore be supervised by experienced stock attendants. Adequate numbers of handlers should be available to facilitate the easy loading of the animals.²¹⁶

The New Zealand Code recommends that noise should be used to move animals, such as metallic rattles. Electric prodders may not be used on any species other than cattle (and not on calves). Where they must be used on cattle, prodders are powered only by battery or dynamo.²¹⁷ Australia also specifically prohibits the use of electric prodders on pigs.²¹⁸

²¹⁴ See n 202 above.

²¹⁵ Council Regulation (EC) 1/2005 of 22 December 2004.

²¹⁶ See n 197 above.

²¹⁷ New Zealand Animal Welfare Advisory Committee *Code of Recommendations and Minimum Standards for the Welfare of Animals Transported in New Zealand* (1994) at 4.3.1.

In the EU it is mandated that any shock given may last no longer than one second, must be adequately spaced (if repeated), and may only be applied to the muscles of the hindquarters. The use of force when moving animals can cause bruising and pain and adversely affect the welfare and quality of animals. It is also prohibited for animals which have little, or no, room to move ahead, to be prodded.²¹⁹

It is recognised in these jurisdictions that properly designed loading and unloading facilities and planning minimise the need for goad use.²²⁰

In Hong Kong our field researchers at the Sheung Shui slaughterhouse observed excessive use of electric goads, sticks and pipes on pigs, causing unnecessary pain and fear amongst the animals as they were unloaded and moved to slaughter.

Recommendation: Regulations under Cap 139 should prohibit the use of electric prodders on pigs and goats. Lengths of metal piping and sticks and leather belts should be prohibited for use on any animal.

Humane Destruction

The Australian Code²²¹ requires that humane destruction must be carried out on moribund livestock, by a competent person or under the direct supervision of a competent person, using an approved method for the species, *at the first opportunity*. Where a competent person is not immediately available he must be contacted to carry out the procedure at the first opportunity. Blunt trauma to the brain must only be used by skilled operators on cattle and goats less than 24 hours old and piglets up to 15kg liveweight and must be followed by an effective procedure to ensure death.

Humane destruction methods *must* result in the immediate loss of consciousness for the animal followed by death while still unconscious. Following humane destruction animals

²¹⁸ Australian Primary Industries Standing Committee *Standards and Guidelines for the Welfare of Animals- Land Transport of Livestock* (2010) at Minimum Standard 9.4.

²¹⁹ Council Regulation 1/2005 at Annex 1, Chapter 3.

²²⁰ See chapter on *Slaughter* above.

²²¹ Australian Primary Industries Standing Committee *Standards and Guidelines for the Welfare of Animals- Land Transport of Livestock* (2010) at Minimum Standard 6.7.

should be monitored for at least 3 minutes to ensure death has occurred. Return of rhythmic breathing, corneal reflex, vocalisation or deliberate movement are the main signs the animal is only stunned and requires the application of an approved method to ensure death.

Approved humane destruction methods of destruction for cattle, pigs and goats are specified as:

- captive bolt devices;

- anaesthetic overdose;

- stunning by blunt trauma with immediate bleeding out (for piglets of less than 15kg, or calves and goats of less than 24 hours old, and where there is no captive bolt available).

For chickens, the approved methods of humane slaughter are cervical dislocation (but only when done by an operator with a high degree of skill), decapitation or CO₂ gas. Exsanguination is *not* an approved humane method for killing chickens.²²²

The Code provides that humane destruction should be done with minimum number of people present and all distractions minimised. The animal should be handled carefully and appropriately restrained so it is not unnecessarily alarmed

In Hong Kong the practice is to sell unwanted animals in need of euthanasia to the slaughterhouse for killing. Such practice extends the suffering of the animal and would not be considered humane under the Australian and New Zealand guidelines.

Recommendations:

²²² *Ibid.* at Minimum Standard 6.8.

-Regulations under Cap 139 and guidelines for emergency on farm humane euthanasia for sick and suffering animals should be introduced.²²³

-Exsanguination and suffocation of chickens should be prohibited and humane methods of destruction regulated for ALL animals.

Pregnant Animals

The New Zealand Code²²⁴ recognises that the movement of pregnant stock requires greater care, with a high level of stockmanship. Considerations should be given to the consequences of transporting heavily pregnant stock and in particular those in the last trimester of pregnancy and those that have recently given birth. Animals that are likely to give birth during transport must not be transported.

Veterinary advice should be sought. The movement of pregnant stock should be planned well ahead. Transport should take place early in pregnancy. Pre-conditioning time should allow for appropriate supplements and transition diets. Pregnant animals should be offered food and water as soon as possible after arrival at their destination. Lactating animals without offspring must be milked at least every 12 hours.

Electric prodders must not be used on pregnant animals.

Recommendation: The FEHD Code of Practice for the Welfare of Food Animals should require owners, loaders, drivers and receivers to take specific precautions when transporting pregnant animals.

²²³ See the OIE Terrestrial Animal Health Code 2009 at 7.6.6-7.6.18.

²²⁴ New Zealand Animal Welfare Advisory Committee *Code of Recommendations and Minimum Standards for the Welfare of Animals Transported in New Zealand* (1994) at 9.1.

Special Considerations for Cattle

The New Zealand Code²²⁵ states that cattle differing greatly in size should be penned in separate groups or individually. Horned cattle must be penned separately. Care must be taken when transporting adult bulls that may fight. They must be penned separately.

Recommendation: The FEHD Code of Practice for the Welfare of Food Animals should require separate penning of horned cattle and adult bulls.

The Codes recommend cattle that are wild or unaccustomed to handling should be quietened down over a period of days before transport. Daily feeding of hay can be used to achieve this.

Cattle should not be transported within 3 weeks of de-horning. Cattle known to be in the last 4 weeks of pregnancy may only be transported under veterinary advice.

The Australian Code²²⁶ states that conditions which could render cattle and buffalo unfit for transport include lethargy, profuse diarrhea, disease, wounds, abscesses and pregnancy.

Handling and transport of female buffalo in the last half of pregnancy should be avoided as they are particularly prone to abortion if stressed. Buffalo should be fed and watered as soon as possible after unloading and should be monitored carefully for gorging when reintroduced to water as this will have adverse effects on welfare.

Lactating dairy cows without calves at foot should be milked at regular intervals which do not exceed 12 hours. If dairy cows in early lactation are going to be transported over long distances, veterinary advice should be obtained.

In Hong Kong all live cattle consumed locally are imported from the Mainland. The number of live cattle imported into Hong Kong from the Mainland was around 28,000 in

²²⁵ *Ibid.* at 12.1.

²²⁶ Primary Industries Standing Committee *Standards and Guidelines for the Welfare of Animals- Land Transport of Livestock* (2010) at B2 and B4.

2008. On average, this means some 77 cattle were imported each day. Most of the live cattle imported into Hong Kong come from northern provinces such as Shandong and Inner Mongolia, a traveling distance of great length for the animals to endure (over 3500 km). As Hong Kong legislation cannot protect these animals on route through the PRC (a jurisdiction which, despite being a member of the OIE, currently has no animal welfare legislation in place), extra attention must be paid to the welfare of these animals on receiving them at the border and as they continue their journey through the region.

The EU Regulations for the Protection of Animals during Transport require that comprehensive veterinary checks of welfare conditions are conducted when animals cross borders between EU member states.²²⁷ The EU Regulations requires rest, with access to water, after every 14 hours of travel. The Australian minimum standards require that cattle that have been off water for 48 hours must stop and be rested for 36 hours before transport can continue again.²²⁸

In Hong Kong, special consideration must to be given to the length of travel time already endured through the PRC and the likelihood that welfare problems may well have already arisen before the animals enter Hong Kong.

Recommendation: At the Hong Kong border, careful welfare checks should be conducted to ensure animals are fit to continue with transport. Any animals found to be unfit should be immediately and humanly destroyed.

Special Considerations for Pigs

The OIE Animal Health Code 2009, the Australian and New Zealand Codes recognise that transporting pigs presents special problems, particularly if they are not accustomed to being herded. Patience is essential and the proper design of yards, loading ramps and other associated services will facilitate loading with minimum distress and bruising.

²²⁷ Council Regulation 1/2005 at Article 21.

²²⁸ Australian Primary Industries Standing Committee *Standards and Guidelines for the Welfare of Animals- Land Transport of Livestock* (2010) at Minimum Standard 4.2.

The EFSA Report (2002)²²⁹ concluded that pigs adapt worse to transport than other livestock and their cortisol levels will remain at very high levels for the entire period. Loading is the worst part of the ordeal, when pigs' cortisol levels rise to 75% of the maximum cortisol level possible before death ensues. During the journey cortisol routinely remains at 50% of the maximum level, unlike cattle where cortisol eventually goes down to near normal levels, as long as the road is straight. Cortisol levels are higher at high density stocking, where pigs are packed close together, as pigs prefer not to touch one another. At higher density stocking the animals are also more likely to experience falls and injury. The EU Regulations require that all pigs must, at the very least, be able to lie down and stand naturally during transport.²³⁰

The New Zealand Code²³¹ recommends that the following be transported or penned separately:

- young piglets;
- sows with piglets;
- adult boars;
- unfamiliar groups of pigs;
- sows in advanced pregnancy.

The OIE Animal Health Code 2009 states that mixing of unfamiliar pigs should always be avoided as serious aggression may result. Pigs destined for slaughter should be mixed at the time of loading onto the truck and never before.²³²

Provided the time to slaughter is not more than 12-14 hours away pigs should be fed 4 hours before transportation to minimize stress in transport, including motion sickness, to which they are particularly prone.

²²⁹ See n 202 above.

²³⁰ Council Regulation 1/2005 at Chapter 7.

²³¹ New Zealand Animal Welfare Advisory Committee, *Code of Recommendations and Minimum Standards for the Welfare of Animals Transported in New Zealand* (1994) at 13.1.

²³² OIE Terrestrial Animal Health Code 2009 at 7.3.12.

Pigs are highly susceptible to heat stress and need about 20% more floor area when the temperature is over 25° celsius. The New Zealand Code (1994) requires that the following minimum space requirements are provided to pigs.²³³

Average live weight (kg)	Space allowance (m ² /head) *	
	Minimum	Maximum
50	0.28	0.31
70	0.26	0.33
90	0.31	0.40
100	0.36	0.46
150	0.50	0.60
200	0.62	0.73

* Based on the UK formula in Randall, J.M.: Environmental parameters necessary to define comfort for pigs, cattle and sheep in livestock transporters; *Animal Production* 57,299-307, 1993.

The FEHD Code provides adequate minimum space requirements for smaller pigs but not for larger weights. Further, as the Code is not legally binding, smaller spaces are permitted.

Recommendation: The FEHD Code of Practice for the Welfare of Food Animals should provide mandatory space allowances for pigs in transport, reflecting the space required for expanding pig sizes, as per the New Zealand Code’s formula. The need to provide greater space in Hong Kong’s hotter months should also be regulated.

²³³ New Zealand Animal Welfare Advisory Committee, *Code of Recommendations and Minimum Standards for the Welfare of Animals Transported in New Zealand* (1994) at 13.2.

Special Considerations for Poultry

The Australian Code²³⁴ states that poultry with broken legs or that are unable to walk may not be transported. Legs of poultry must not be tied together.

On selection for transportation effective culling procedures should already be in place to ensure that any birds found unsuitable for transport are treated on the farm or humanely destroyed before the day of pick up. Humane destruction methods are cervical dislocation, decapitation or use of CO₂ gas. Cervical dislocation requires a high degree of skill to be humane.

During transit all birds should be able to sit on the floor of the transport cages at the same time. Regular inspections of birds should be conducted by either the driver or animal welfare attendant. Birds found injured, distressed or with a limb protruding should be given immediate assistance.

Recommendation: The FEHD Code of Practice for the Welfare of Food Animals should require regular in transit inspections of poultry, humane methods of slaughter, where required for injured animals, and sufficient space for all birds to sit down at the same time.

Special Considerations for Goats

The OIE Animal Health Code 2009 states that bullying is particularly serious in goats and housing strange goats together could lead to fatalities.²³⁵

The Australian Code recommends that bucks should always be segregated from does, and young stock, during transport. When handling goats, they should be picked up by

²³⁴ Australian Primary Industries Standing Committee *Standards and Guidelines for the Welfare of Animals- Land Transport of Livestock* (2010) at Minimum Standard 10.5.

²³⁵ OIE Terrestrial Animal Health Code 2009 at 7.3.12.

supporting the whole body. Horned goats should be restrained by holding the horn at its base, not its tip, as this may cause the horn to break.²³⁶

Recommendation: The FEHD Code of Practice for the Welfare of Food Animals should prohibit the mixing of strange goats and goats of different genders. Appropriate methods for handling of goats should also be regulated.

Special Considerations for Calves

For cows to produce milk they must give birth to a calf every year. In Hong Kong, calves born to cows at the dairy are sent to slaughter at approximately 2 weeks of age (50lbs). There are no specific requirements, however, as to their welfare at the dairy, in transport, or at the slaughter house.

By way of comparison, the New Zealand Animal Welfare (Dairy Cattle) Code of Welfare (2010), the New Zealand Code of Recommendations and Minimum Standards for the Welfare of Animals Transported in New Zealand (1994), the Australian Code of Practice for the Welfare of Animals: Cattle (2004) and the Australian Standards and Guidelines for the Land Transport of Livestock (2010) all provide for the welfare of calves.

These Codes recognise that young calves are very susceptible to stress and disease and should not be exposed to management procedures which are likely to aggravate these problems.

On Farm Requirements

The New Zealand Code of Recommendations and Minimum Standards for the Welfare of Animals Transported in New Zealand (1994) requires that calves weighing less than 15 kilograms at birth (which are usually too premature to survive), as well as those with severe physical defects and painful congenital defects, must be humanely destroyed and

²³⁶ Australian Primary Industries Standing Committee *Standards and Guidelines for the Welfare of Animals- Land Transport of Livestock* (2010) at 7.18.

not transported.²³⁷ Calves weighing less than 50 lbs are prohibited from leaving the farm.²³⁸

The Australian and New Zealand Codes for the welfare of cattle require that every calf must receive colostrum from its dam or another cow as soon as possible after it is born, and at most within 6 hours of life.²³⁹ Colostrum should be fed to the calf for a minimum of the first 7 days of life. Colostrum (and milk for older calves) should be fed at a rate of 10-15% body weight per day (i.e. 2-7 litres per day), over at least 2 daily feeds.

Housing must be dry, clean and sheltered. Dry comfortable litter should be provided for bedding, with enough space that all animals can lie down at the same time.²⁴⁰

Transport and Slaughter Requirements

All calves must be fed as close as possible to, and at least within 2 hours of the time of transportation.²⁴¹ Transport to the slaughter house should be direct, and sick or injured calves are prohibited from transport.²⁴² Calves should be able to rest by lying down on bedding during transport. Calves must be handled and moved in a manner which causes minimal distress and avoids injury, bruising and suffering.²⁴³ Drivers are required to drive steadily, avoid rapid acceleration, and sudden braking and turn corners slowly to avoid calves being thrown off their feet.

Like all young animals, calves have underdeveloped ‘following’ behaviour which means that they do not stay together as a group and move to where they are supposed to go. This makes moving and loading/unloading difficult and can lead to rough handling. Calves may not be carried by the legs, thrown, dragged or pulled along by the head or

²³⁷ New Zealand Animal Welfare Advisory Committee *Code of Recommendations and Minimum Standards for the Welfare of Animals Transported in New Zealand* (1994) at 12.6

²³⁸ Australian Primary Industries Standing Committee *Code of Practice for the Welfare of Animals: Cattle* (2004) at 5.11.4.

²³⁹ Australian *Code of Practice for the Welfare of Animals: Cattle* (2004) at 5.10.5 and New Zealand Animal Welfare Advisory Committee *Animal Welfare (Dairy Cattle) Code of Welfare* (2010) at Minimum Standard 3

²⁴⁰ New Zealand *Animal Welfare (Dairy Cattle) Code of Welfare* (2010) at 4.5.

²⁴¹ *Ibid.* at Minimum Standard 18.

²⁴² Australian *Code of Practice for the Welfare of Animals: Cattle* (2004) at 5.11.2.

²⁴³ New Zealand *Animal Welfare (Dairy Cattle) Code of Welfare* (2010) at Minimum Standard 17.

ears. In loading and unloading, calves must be handled humanely at all times, so they do not become injured or distressed. Rough handling, prodding, or electric prodders are prohibited from use on calves.²⁴⁴ Ramps which slope downwards should be gently sloped (12 degrees) and ramps sloping upwards should be no more than 20 degrees. Ramps should be non slip patterned or provided with steps.²⁴⁵

Once at the slaughter house, calves must be slaughtered on the same day, or fed. They must be given access to quality drinking water *at all times* prior to slaughter. Holding pens must be clean and well drained with non slip flooring.²⁴⁶

Recommendation: Regulations, based on the Codes utilised in Australia and New Zealand, should be introduced in Hong Kong to safeguard calf welfare at farms, during transport and at slaughterhouses.

Special Considerations for Fish

The OIE Aquatic Animal Health Code 2009 states that fish displaying significant physical injuries or abnormal behaviour, such as rapid ventilation or abnormal swimming, or fish which have had recent exposure to stressors that adversely affect behaviour or physiological state (for example extreme temperatures, chemical agents) should not be transported.²⁴⁷

Prior to loading care must be taken to avoid crowding in farm ponds, tanks, nets or cages. Loading equipment (such as nets, pumps, pipes and fittings) must be properly constructed, without sharp bends or protrusions and properly operated, avoiding overloading the system with fish of incorrect size or number, according to the equipments' capacity. Where necessary, fish should be acclimatised if there is a likelihood of their being transported in water of a significantly different temperature or other water parameters. Loading should be overseen by operators with appropriate knowledge and experience of the welfare needs of fish species being loaded.

²⁴⁴ Australian Code of Practice for the Welfare of Animals: Cattle (2004) at 5.11.7.

²⁴⁵ Australian Standards and Guidelines for the Land Transport of Livestock (2010) at 4.14.

²⁴⁶ Australian Code of Practice for the Welfare of Animals: Cattle (2004) at 5.11.8 and 5.11.10.

²⁴⁷ OIE Aquatic Animal Health Code 2009 at 7.2.3.

During transport, water quality should be monitored and the necessary adjustments made to avoid extreme conditions. Travel should proceed in a manner that minimises uncontrolled movements of the fish.

Where necessary to the species, fish should be acclimatised if there is a likelihood of their being unloaded into water of a significantly different quality (such as temperature, salinity, pH).²⁴⁸

Recommendation: The Code of Practice for the Welfare of Food Animals should address the protection of fish in transport.

²⁴⁸ *Ibid.* at 7.2.7.

WILD ANIMALS

The legislation relating to wild animals in Hong Kong; the Wild Animals Protection Ordinance, Cap 170, is primarily aimed at conservation, as cruelty to animals, whether wild or domestic, is prohibited under Cap 169. We have identified, however, three areas in which improvements to the current legislation would assist in promoting better animal welfare for wild animals.

It should here be noted that in addition to indigenous wild animals, Cap 586, (Protection of Endangered Species of Animals and Plants Ordinance), protects and regulates the trade in endangered species, in line with CITES (The Convention on International Trade in Endangered Species).²⁴⁹

Misconception of the right to hunt for sport

Cap 170A provides list of AFCD approved appliances for the purpose of capturing or killing rats, mice, cockroaches, mites, ticks, bugs, fleas, lice and similar household *pests*. The list of approved appliances is comprised of poisons, insecticides, and traps for rats and mice. Unfortunately this list is entitled the *Wild Animals Protection (Approval of Hunting Appliances) Notice*. This misnomer is concerning as the provision is clearly intended to allow for control of pests by the public but not to provide authorization for hunting animals living in the wild, which are not causing serious nuisance, for the purpose of sport. The clear intention of the legislature to ban the hunting of wild animals in Hong Kong (other than rodents, for the purpose of pest control) is verified by Hansard.²⁵⁰

It is also of concern that there are no conditions in place regulating the permissible use of traps. In some cases, animals legally trapped are then left to die inhumane deaths. Non

²⁴⁹ In this review we have not addressed laws relating solely to the protection of endangered species as our remit was to address animal welfare, not conservation. We recognize, however, that there are significant problems with the laws currently regulating trade in endangered species and enforcement of CITES, in Hong Kong, and suggest that further study of law reform in this area is required.

²⁵⁰ Wild Animals Protection (Amendment) Bill, Second Reading Speech, 9 July 1980.

fatal traps (such as glue traps for rats and mice) should be regulated to require animals trapped to be killed humanely or the traps should be banned outright.²⁵¹

Welfare requirements should also be introduced for the hunting of wild boars. Whilst such hunts require special permits, a risk assessment requirement, before such a hunt is initiated, should be imposed. Welfare guidelines for the protection of animals and the public, during hunts, should also be introduced. These should regulate who is permitted to join the hunt team, how such persons are selected for the team, what types of firearms and caliber are permitted for use and how animal welfare conditions will be monitored during the course of the hunt, (including when the hunt should be abandoned).

Recommendations:

-Cap 170A should be re-titled the ‘Wild Animals Protection (Approval of Pest Management Appliances) Notice’ to correct the misnomer which appears to authorize persons to hunt, for sport, wild animals with traps and poisons. Section 7 of Cap 170 should also be amended to reflect this change;

-Cap 170A should prescribe the permissible methods for use of traps, including the requirement that all trapped animals receive humane deaths;

-Cap 170 should include welfare requirements for special permit hunts.

Clarification of definition of ‘disturb’ in Cap 170

Section 4 of Cap 170 provides that it is an offence to willfully disturb any protected wild animal. No definition of *disturb* is provided in section 2 of the Ordinance. Whilst the definition remains unclear, it is difficult for the AFCD to take action in cases where protected animals are disturbed in a deliberate, but indirect manner. Whilst the definition

²⁵¹ Problems also arise with non target species such as small cats and kittens, being inadvertently trapped on glue traps intended for rats and mice. On the basis of potential animal cruelty, New Zealand has banned sale of glue traps to the public.

of what it is to disturb an animal is left unclear, enforcement against such persons remains unlikely.

Recommendation: Section 2 of Cap 170 should be amended to provide a clear definition of what manner of activities are prohibited under section 4, to assist AFCD in bringing appropriate prosecutions.

Protected Wild Animals and Endangered Species held in inappropriate conditions

Both section 20A of Cap 170 and section 35 of Cap 586 provide for the disposal of live animals that are likely to die, or to be subjected to unnecessary suffering, if kept in captivity. In practice, however, significant numbers of animals sit in government, or other holding facilities for long periods of time, until the completion of court cases or until government approved homes (such as correctional institutions and schools) can be found. Many species of wild and endangered animals have specific nutritional requirements and require specific care. Proper care of wild animals requires appropriate space, finances and expertise which may not be readily available in AFCD facilities (or indeed, government approved homes). Whilst it is possible, under the current law, for some of these animals to be sold or relocated to appropriate owners, such as zoos and aquariums, re-homed through NGO's, or sold to the local exotic pet trade, (where such animals are already freely available), the current AFCD practice is not to pursue these options.

The problem is further compounded by the fact that in Hong Kong many CITES restricted species are being imported and sold in pet shops under import licences. The law does not, however, licence the owner, or the animal itself. As such, if the owner becomes unable to keep the animal, the AFCD's policy, to confiscate it and not to allow the animal to be re-sold or homed, ensures that further animals will enter the market as imports. Whilst the intention of this policy is to control the trade of restricted species, by banning the further sale of animals if there is no proof they were legally imported in the first

instance,²⁵² the policy actually works to drive the import of further CITES restricted animals, as those already in the system cannot be re-sold or homed to private individuals.

Recommendations:

-The responsible disposal of confiscated wild and endangered animals, in a timely and efficient manner, should be further promoted under the legislation. The IUCN Guidelines for the Placement of Confiscated Animals²⁵³ should be utilized by government in determining the appropriate welfare outcome for confiscated animals.

-Guidelines should be put in place to ensure that any action taken to dispose of locally captured animals outside of Hong Kong (e.g. Burmese pythons released in mainland China) is necessary, and does not compromise the welfare of the animals concerned.

²⁵² The owner will usually have lost any receipts.

²⁵³ 2002 Report prepared by the International Union for Conservation of Nature and Natural Resources/ Species Survival Commission Re-introduction Specialist Group.

FERAL AND STRAY ANIMALS

Hong Kong has a large population of feral dogs and cats. The local problem is exacerbated by owners who abandon their animals. Abandoned animals which are lucky enough not to starve to death or get hit by vehicles, usually go on to breed, adding to the feral population.

The proposed Trap Neuter Return programme

Traditionally feral/stray dogs have been rounded up and killed by the AFCD in an effort to control numbers, however this practice does not seem to be effective in controlling the target dog population, nor does it promote animal welfare. It is also extremely expensive.²⁵⁴

World Health Organisation (WHO) data recognizes that slaughter produces only a short term effect on the population of feral dogs and even at maximum catching rates (of up to 24% of the dog population per year) euthanasia makes no significant impact on numbers.²⁵⁵ The WHO instead recommends the breeding and rabies control of stray dog populations by surgical neutering combined with rabies vaccination.

The OIE recently produced Guidelines on Stray Dog Population Control²⁵⁶ stating that dog populations should be controlled without causing unnecessary or avoidable animal suffering and that euthanasia, used alone, is not a recognized effective control measure.

Trap, Neuter, Return (TNR) programmes are widely recognized internationally as providing a humane method of both stabilising the dog population and controlling

²⁵⁴ In 2009-10 AFCD spent approximately \$30 million on the capture, housing and euthanasia of stray dogs and cats (approximately 81% of the total AFCD expenditure for that year).

²⁵⁵ World Health Organisation (1988), *WHO Consultation on Dog Ecology Studies related to Rabies Control*, WHO/Rab.Res/88.25, and World Health Organisation (1990) *Guidelines for Dog Population Management*, WHO/ZOON/90.166.

²⁵⁶ 2009 OIE Terrestrial Animal Health Code, Chapter 7.7.

rabies.²⁵⁷ Such programmes are utilized for managing feral or community dog populations in Australia, USA, Canada, India, Europe, parts of Africa, South America and the UAE.

In Hong Kong, whilst the AFCD have considered the introduction of a trial surgical neutering programme for the feral/community dog population, to date such a programme has not been instituted. At the AWAG meeting held in February 2009, AFCD Senior Veterinary Officer Dr Eric Tai, stated that such a programme had not yet been implemented due to concern over legal impediments. Specifically the AFCD noted their concern that if they allow the dogs to be neutered, vaccinated, micro chipped and returned, they will become responsible for the dogs, at law.

Our research indicates that such a concern is entirely ill conceived. The Rabies Ordinance, Cap 421, as it currently is drafted, would allow for the surgical neutering and rabies vaccination of feral dogs, without them becoming owned by the party which carries out the surgery and vaccination. The dogs could even be micro chipped by the AFCD, to allow their later identification as rabies vaccinated dogs, without the AFCD becoming responsible for the dogs at law.

Section 2 of the Rabies Ordinance defines the “keeper” of an animal as a person who:

- (a) owns the animal, or has it in his possession or custody; or
- (b) harbours the animal; or
- (c) occupies land or premises on which the animal is usually kept or permitted to remain; or

²⁵⁷ Along with the OIE’s endorsement, it should also be noted that sterilization and release programmes are internationally recommended by The Alliance for Rabies Control (UK), Humane Society International, International Fund for Animal Welfare, RSPCA International, World Small Animal Veterinary Association and The World Society for the Protection of Animals.

(d) is the parent or guardian of a person under the age of 16 years who is the keeper of the animal pursuant to paragraph (a), (b) or (c).

but specifically does not include a person who has seized or taken possession or custody of an animal under the Rabies Ordinance or who has possession or custody of an animal *for the purposes of examining or vaccinating it in accordance with the Ordinance.*

It should be noted that a similarly limited legal definition of “keeper” appears at section 2 of the Dogs and Cats Ordinance, Cap 167.

As such, the Rabies Ordinance specifically provides that a person does *not* legally become the keeper of an animal possessed only for the purposes of examination and rabies vaccination. Accordingly the AFCD would not become liable for a feral dog possessed for these purposes.

It would also be incorrect to equate the act of micro chipping with legal ownership. Section 27 of the Rabies Regulations²⁵⁸ provides that an authorized officer *may, as evidence of vaccination*, tattoo the ear, tag the collar or *microchip* a vaccinated animal.

Accordingly the action of micro chipping an animal will not cause the person performing that act to become the legal owner of the animal. Although proof of rabies vaccination is required to secure a valid dog licence, the act of micro chipping may be performed, by any authorized officer, merely to identify the animal as rabies vaccinated, as specifically envisaged in section 27, Cap 421A. Going on to secure a keeper’s licence requires further positive action.

The Rabies Regulations provide that any person keeping a dog of over 5 months of age must have a licence.²⁵⁹ However, in order to secure a valid licence, positive steps, post

²⁵⁸ Cap 421A, Laws of Hong Kong.

²⁵⁹ Section 20, Cap 421A.

micro chipping, must be taken by the dog's keeper. He must apply for a licence using the specified form and must pay the prescribed fee.²⁶⁰

On receipt of an application no licence may be granted for a dog unless it has already been vaccinated against rabies.²⁶¹ Proof of the prior vaccination may then be evidenced by the micro chip details of the animal.²⁶²

As such, the prior act of vaccinating the dog is a mandatory step in attaining a keeper's licence, but the person who provides the vaccination, or micro chips the dog, does not thus automatically become the legal keeper of the animal. Whilst prima facie the performing of such actions may be relied on as evidence of possession under section 2(a) of the Rabies Ordinance, the caveat in that section must not be overlooked. It is to misunderstand the law to conclude that in vaccinating or micro chipping a dog, any person automatically becomes the animal's legal keeper. Examining, vaccinating and micro chipping a dog may indeed be precursory steps taken towards becoming an animal's legal owner, but they are not definitive.

The fact that the Ordinance has specifically exempted those who examine and vaccinate animals from becoming their legal "keepers" underscores the clear intention of the legislature that persons who have temporary possession of animals, in order to protect public and animal health, do not incur unnecessary liability. The law clearly does not intend that those authorized to perform medical procedures on animals should indirectly become the legal keepers of those animals.

This interpretation is further borne out by the common law. A mere bailee of an animal does not become the owner of it simply by having it in his possession.²⁶³ Vets have long been recognised as specialized bailees in relation to animals in their care. Ownership does not pass on examination or treatment. As such a vet does not become liable for an animal

²⁶⁰ Section 19A, Cap 421A.

²⁶¹ Section 23, Cap 421A.

²⁶² Section 27A, Cap 421A.

²⁶³ See e.g. *Coggs v Bernard* (1703) 2 Ld Raym 909.

on neutering or spaying it. There is therefore no merit in the argument that the AFCD would become the owners of a feral dog through the provision of neutering procedures, rabies vaccination and micro chip identification.

It should be noted that the Director of AFCD also has the power, pursuant to section 47 of the Rabies Ordinance, to exempt any person or class of persons from the application of any or all of the provisions in the Ordinance. Thus, even if the issue of ownership proved not resolvable, a TNR programme could be introduced if AFCD took up the SPCA's offer to implement the programme on their behalf, and exempted them from various terms of Cap 421, for this limited purpose.

Recommendations:

-A government sanctioned Trap Neuter Return programme, targeting Hong Kong's feral dog population, should be immediately introduced.

-Dog licence fees, regulated under Cap 421, should be significantly increased for entire dogs and decreased for neutered dogs, in an effort to promote welfare and control unwanted breeding.

Animal Management Centres

In Hong Kong stray or feral dogs and cats captured by the AFCD are kept in one of the four Animal Management Centres operated by AFCD. The animals are kept for 96 hours after which they can be adopted by an Animal Welfare Organisation or euthanized.

Over the past three years, 3-5% of animals captured by AFCD have been adopted out by Animal Welfare Organisations. The vast majority of animals are euthanized. If the public were allowed some access the AFCD facilities some of these animals may have a better chance of adoption. Allowing public entry to Animal Management Centres would also better serve to educate the public on the need to care for animals proactively, including providing clear evidence of the need to neuter their pets.

Recommendation: The AFCD Animal Management Centre protocol should allow members of the public access in order to adopt animals direct from the facility.

Currently it is not the practice of the Animal Management Centres to provide veterinary treatment to the animals kept in the facilities, and healthy and sick animals mix freely. The practice should be amended to require the quarantining of obviously sick animals from healthy ones and basic health care should be provided to all animals including regular tick and flea treatments and basic cleaning.²⁶⁴ Special protocols should be adopted for young animals (including shorter gaps between feeds).

At present, animals are not examined on arrival at the Animal Management Centre, and may spend the 96 hours before euthanasia suffering from pain caused by injuries or illnesses that go untreated. The law should also be amended to ensure all animals are assessed for injuries and illness on entry, or within a short specified time period, and provided with appropriate pain relief. Where necessary, the veterinary officer in charge of the Animal Management Facility should have the power to euthanize any animal which is clearly suffering, before the 96 hour retention period has expired.

Recommendations:

-The AFCD Animal Management Centre protocol should be updated to require all animals receive basic health care during their period of detention, including basic disease control and prevention and that the special needs of young animals are satisfied.

-Cap 168, should be amended to ensure that all animals are assessed for injuries and illness on arrival, or within a short specified time period, at the Animal Management Centre and provided with appropriate pain relief. Where necessary, Cap 168 should allow an animal to receive emergency euthanasia, on the order of

²⁶⁴ The fees for licensing and detention should also be updated, which would assist with financing.

the veterinary officer in charge of the facility, where such action is judged to be in the best interests of the animal.

A recent audit of AFCD records revealed that of the 317,000 dog licences issued, as at 30 November 2009, 177,000 were expired. Nearly half of this figure had been expired for longer than 5 years. Owners may meanwhile have moved address, dogs may have been re-homed to new owners, or may have died, without the AFCD being informed of the change in circumstances. Out of date records may lead to owners being unable to be contacted when their missing dog has been found, and contribute to the wider problem of accurately assessing dog ownership in the population.

Recommendations:

-Cap 421 should be amended to require owners to report the death of dogs and fixed penalties should be introduced for owners who fail to notify AFCD within 5 days of any change in owner details.

-Dog licences should specify email contact addresses for owners.

-Only persons aged 18 or older should be permitted to become licensees.

Animal Shelters

Animal shelters, and animal welfare NGO's who care for animals on their premises, or through foster homes, do not require licences. This is an area of increasing concern as these shelters²⁶⁵ may house large numbers of animals and should, at a minimum, be required to show they have adequate facilities to meet the welfare needs of the number of animals they house, including having taken appropriate measures to prevent fire and

²⁶⁵ Regulation of shelters should include inspection of any premises housing large numbers of animals, including those kept by private owners, to counteract hoarding problems.

control disease. Licensing conditions should also ensure the shelter or NGO continues to take active responsibility for any animals they house in foster homes.

Recommendation: Licensing requirements should be introduced for animal shelters.

LABORATORY ANIMALS

The government department responsible for overseeing animal experimentation in Hong Kong is the Department of Health. Licences are granted under the Animals (Control of Experiments) Ordinance, Cap 340. Regulations specify the form in which all applications for licences must be made and provide some basic record keeping requirements. In regard to animal welfare, there is a general prohibition on experimentation on animals without anaesthetic, but such experiments are permitted where an endorsement of the licence has been granted.

It is unsurprising the animal welfare considerations do not feature largely in the Hong Kong legislation. Cap 340 was originally enacted in 1963 and has barely been altered since that time. As such, it is now widely out of date. The United Kingdom's Cruelty to Animals Act of 1876, on which it was originally modeled, has now been entirely replaced.

In 2004, the Animal Welfare Advisory Group to AFCD drafted a Code of Practice for the Care and Use of Animals for Experimental Purposes. The Code, however, is not legally enforceable and any compliance it attracts is entirely voluntary.

Definition of 'animal'

The current definition of an animal, provided in the Animals (Control of Experiments) Ordinance, Cap 340, is a *living vertebrate animal*. This definition of an animal, for the purposes of animal experimentation in Hong Kong, is now out of date.

Reflecting both the basic requirements of the European Council Directive (1986)²⁶⁶ and the most recent findings of the European Food and Safety Authority (EFSA),²⁶⁷ the current definition of an animal used for experimentation in the UK is much more

²⁶⁶ European Council Directive 86/609/EEC of 24 November 1986.

²⁶⁷ The EFSA Journal (2005) 292, 1-46, *Opinion on the Aspects of the Biology and Welfare of Animals used for Experimental and other Scientific Purposes*.

inclusive. The definition of an animal under the Animals (Scientific Procedures) Act 1986, includes all living vertebrates (and the invertebrate *octopus vulgaris*, since 1993). Legislative protection extends to mammals, birds and reptiles, from halfway through their gestation or incubation periods, and fish, amphibians and octopus from the time they are capable of independent feeding.²⁶⁸

In 2005, the ESFA Panel on Animal Health and Welfare were asked to consider the latest scientific evidence for the sentience and capacity of all invertebrate species used for experimental purposes, including fetal and embryonic forms, to ‘experience pain, suffering, distress or lasting harm.’²⁶⁹

The Panel concluded that the indicators of an animal’s capacity to experience suffering include long-term memory, plasticity of behaviour, complex learning and the possibility of experiencing pain. The Panel found that some invertebrate species:

- possess short and long term memory;
- exhibit complex learning such as social learning, conditioned suppression, discrimination and generalisation, and reversal learning;
- show spatial awareness and form cognitive maps;
- show deception;
- perform appropriately in operant studies to gain reinforcement or avoid punishment;
- possess receptors sensitive to noxious stimuli connected by nervous pathways to a central nervous system and brain centres;
- possess receptors for opioid substances;
- modify their responses to stimuli that would be painful for a human after having had analgesics;
- respond to stimuli that would be painful for a human in a manner so as to avoid or minimise damage to the body;

²⁶⁸ Section 1(2) Animals (Scientific Procedures) Act 1986 (UK).

²⁶⁹ See note 267 above.

-show an unwillingness to resubmit themselves to a painful procedure indicating that they can learn to associate apparently non-painful with apparently painful events.

The Panel found that at a certain stage of development within an egg, or the mother, these characteristics may appear. Such information was used in coming to conclusions about animal sentience and the Panel recommended an extension to the protection offered under the 1986 European Directive to include independently feeding larval forms, and embryonic or foetal forms of vertebrate animals, from the last third of their normal development.

The Panel also recommended that the definition of an animal, under the European Directive, be extended to cyclostomes (lampreys and hagfish) which have a pain system similar to that of other fish and brains that do not differ much from those of some other fish. The Panel similarly found evidence that cephalopods have adrenal and pain systems, a relatively complex brain, similar to many vertebrates, significant cognitive ability including good learning ability and memory retention especially in octopuses, individual temperaments, elaborate signaling and communication systems. This is especially so in cuttlefish and squid that can show rapid emotional colour changes, may live in social groups and have complex social relationships. The Panel found that nautiloids have many characters similar to those of other cephalopods; they can track other individuals, live for a long time and are active pelagic animals. The Panel found the largest of decapod crustaceans are complex in behaviour and appear to have some degree of awareness. They too have a pain system and considerable learning ability.

As a consequence of these findings, the European Commission has recently recommended revisions be made to the European Directive on the Protection of Animals used for Scientific Purposes (1986). These revisions would extend protection to independently feeding larval forms, and embryonic or foetal forms of vertebrate animals, from the last third of their normal development, and protect cyclostomes, cephalopods

and decapod crustaceans. It is also intended that the Directive be revised to extend protection to any animals bred specifically for their tissues and organs.

UK legislation is already ahead of much of the pending revision to the 1986 European Directive. The Animals (Scientific Procedures) Act 1986 has for some time extended protection to *octopus vulgaris* and foetal, larval and embryonic forms of vertebrate mammals, birds and reptiles, from halfway through their gestation period.

Recommendation: The definition of an animal under Cap 340 should, at minimum, be revised to reflect the current definition of a protected animal under the Animals (Scientific Procedures) Act 1986 (UK).

Definition of ‘experiment’

The current definition of an experiment under Cap 340 is confined to any experiment performed on an animal and *calculated to cause pain*. This definition is based on the English legislation of 1876,²⁷⁰ and is now widely out of date. The current definition, by limiting protection to only those experiments calculated to cause pain, allows many animals used for research, to be caused great distress without the possibility of legal intervention.

By way of contrast, the current English law, the Animals (Scientific Procedures) Act 1986 (UK), regulates any experimental or other scientific procedure applied to a protected animal *which may have the effect of causing that animal pain, suffering, distress or lasting harm*.²⁷¹ According to the UK Home Office Guidance Notes on the Act²⁷², the terms ‘pain, suffering, distress or lasting harm’ include death, disease, injury, physiological and psychological stress, significant discomfort, or any disturbance to normal health, whether immediately or in the long term. Procedures are regulated even though anesthetics, or other substances, are administered to sedate or dull the perception

²⁷⁰ Cruelty to Animals Act 1876 (UK).

²⁷¹ Section 2(1) Animals (Scientific Procedures) Act 1986 (UK).

²⁷² Home Office (2000) *Guidance on the operation of the A(SP)A 1986*, HMSO, London, at 2.13-2.23.

of pain, and the administration of these substances is itself a regulated procedure. Decerebration, or any other procedure to render the animal insentient, is also a regulated procedure.

Even more widely, under section 3 of Singapore's *Animals and Birds (Care and Use of Animals for Scientific Purposes) Rules 2004*, any experiment involving *the use of any animal for any scientific purpose* is regulated. A scientific purpose is defined as any purpose for which activities (including special breeding requirements integral to a research or teaching project) are performed to acquire, develop, or demonstrate knowledge or techniques in any scientific discipline.²⁷³

Licensed facilities in Singapore must comply with the guidelines for animal use developed by the National Advisory Committee for Laboratory Animal Research which provide wide protection for animals used for 'manipulation'. A manipulation is defined as: 'Any interference with the normal physiological, behavioural or anatomical integrity of the animal by deliberately depriving it of its usual care or subjecting it to a procedure which is unusual or abnormal; when compared with that to which animals of that type would be subjected to under normal management or practice and which involves exposing it to any parasite, micro-organism, drug, chemical, biological product, radiation, electrical stimulation, or environmental condition or any enforced activity, restraint, nutrition, or surgical intervention.'²⁷⁴

The Australian National Health and Medical Research Council's Code of Practice for the Care and Use of Animals for Scientific Purposes (2004) also provides a definition of experiment which is much wider than that currently utilised in Hong Kong. The Australian Code, with which all licensed institutions must comply, regulates *any activity involving the use of, or interaction with, animals for scientific purpose*.²⁷⁵ Scientific

²⁷³ *Animals and Birds (Care and Use of Animals for Scientific Purposes) Rules 2004* (Singapore) at section 2.

²⁷⁴ National Advisory Committee for Laboratory Animal Research (2004), *Guidelines on the Care and Use of Animals for Scientific Purposes*, Singapore, at 1.5.

²⁷⁵ Australian National Health and Medical Research Council (2004) *Code of Practice for the Care and Use of Animals for Scientific Purposes*, Australian Government, Canberra, at p4.

purposes include all those purposes which aim to acquire, develop or demonstrate knowledge or techniques in any area of science.

One obvious example, demonstrating the problem with Hong Kong's current definition of experiment, under Cap 340, is that it does not regulate research on animal tissue where animals are killed simply to harvest tissue. Such procedures, not being 'calculated to cause pain', currently fall outside the scope of Hong Kong legislation.

This problem in Hong Kong is compounded by the fact that there are also no required methods for killing animals for tissue, such as those provided by the AVMA Guidelines on Euthanasia,²⁷⁶ or the Code of Practice for the Humane Killing of Animals, under Schedule 1 to the Animals (Scientific Procedures) Act 1986 (UK).²⁷⁷

The UK definition of an 'experiment' regulates tissue harvesting, unless the animal is killed via a scheduled method. Schedule 1, to the Animals (Scientific Procedures) Act 1986, sets out the only methods which can be used, by appropriately trained staff, to kill animals to obtain their tissue or organs. However even the UK legislation is likely to soon find itself in need of reform as the current proposals to update the European Council's 1986 Directive will classify the killing of an animal, even by a specified method, for their tissue or organs, as a regulated procedure (and therefore require a licence).²⁷⁸

In the USA, both the Department of Health's Office of Laboratory Animal Welfare and the Department of Agriculture's Animal Care Unit have stated that a proposal involving animals to be killed for the purpose of using their tissues, or one that involves project-specific manipulation prior to euthanasia is not exempt from protocol review.

²⁷⁶ American Veterinary Medical Association (2007) *AVMA Guidelines on Euthanasia*.

²⁷⁷ Home Office (1997), HMSO, London

²⁷⁸ See n 267 above.

Recommendations:

-The definition of experiment, under Cap 340, should be revised to reflect the current definition of a regulated procedure under the Animals (Scientific Procedures) Act 1986 (UK).

-Procedures using animals to harvest tissue or organs should be regulated.

Failure to provide for a humane endpoint

In contrast with project licence applicants elsewhere, Hong Kong applicants are not required to provide for a humane endpoint to an experiment. In the interests of animal welfare, the law should be amended to recognize that severe suffering must be the endpoint of any experiment.²⁷⁹ If trained animal technicians are used, this point will be quickly recognized. Any animal that shows signs of illness should be classified as suffering and the law should then require the researcher to take objective measures of heart rate, respiration rate, blood pressure, food/water consumption, body weight, cortisol, and/or response to a measurable stimulus. A scoring system, such as Melbourne University's Pain Scale,²⁸⁰ should then be used to determine when a humane end point should be utilised.

The Singaporean guidelines for animal use developed by the National Advisory Committee for Laboratory Animal Research also require study end-points and include these principles:

(a) The Investigator should develop humane study end-points when preparing a project application.

²⁷⁹ See by way of example Animals and Birds (Care and Use of Animals for Scientific Purposes) Rules 2004 (Singapore) at section 10(g), and UK Home Office (2000) *Guidance on the operation of the A(SP)A 1986*, HMSO, London, at 5.19.

²⁸⁰ Developed in 1999, the scale uses multiple descriptors in six categories, utilising behavioural and physiological responses.

(b) Death as an end-point is generally ethically unacceptable and should be fully justified. When death as an end-point cannot be avoided, the experiments must be designed to result in the deaths of as few animals as possible.

(c) Best practice indicates that end-points earlier than the moribund condition should always be used. For the purpose of the Guiding Principles, animals can generally be considered to be in a moribund state when:

(i) they have lost more than 20% of their pre-study body weight; or

(ii) they have lost more than 10% in 24hrs; or

(iii) a tumour grows to more than 10% of the animal's weight; or

(iv) abscesses develop; or

(v) body temperature falls below a pre-set level (as determined by pilot studies which indicate that the level set is predictive of death); or

(vi) animals self-mutilate; or

(vii) animals become obviously incapacitated and are not able to eat, rest or perform normal activity.

(d) All animals found in a moribund state *must* be euthanized unless there is specific justification to do otherwise.²⁸¹

Recommendation: Identification of humane endpoints should be required in all license applications.

²⁸¹ National Advisory Committee for Laboratory Animal Research (2004), *Guidelines on the Care and Use of Animals for Scientific Purposes*, Singapore, at 8.4.3.

Euthanasia is defined as the act of inducing a humane or painless death. Currently there is no mention of euthanasia within Cap 340, despite it being an important component of animal welfare within the laboratory. Only the AFCD's voluntary Code of Practice for the Care and Use of Animals for Experimental Purposes states that when it is necessary to kill an animal, humane procedures must be used. The Code states these procedures must avoid stress, be reliable and produce rapid loss of consciousness without pain until death occurs. The procedure must be performed only by persons competent in the methods to be used, or under the direct supervision of a competent person.²⁸²

Recommendation: Cap 340 should be amended to introduce humane euthanasia requirements.

Further, in contrast with the Singaporean Guidelines on the Care and Use of Animals for Scientific Purposes (2004), which all Singaporean licensees must comply with, nothing in Hong Kong prohibits the use of electro-immobilisation, as an alternative to analgesia or anaesthesia.²⁸³ When electro-immobilisation is used a very small current is passed through the body that paralyzes the muscles. It does not, however, make the animal unconscious and insensible to pain. The animal is paralyzed, but remains conscious. The animal may suffer but be unable to vocalise or struggle because its muscles are paralyzed.

Recommendation: Cap 340 should specifically prohibit the use of electro immobilisation on animals.

²⁸² AFCD Animal Welfare Advisory Group (2004) *Code and Practice Care and Use of Animals for Experimental Purposes* at 5.33.

²⁸³ National Advisory Committee for Laboratory Animal Research (2004), *Guidelines on the Care and Use of Animals for Scientific Purposes*, Singapore, at 8.4.15.

Licensing procedures

In Hong Kong, the Department of Health are responsible for vetting licence applications and issuing licences for experiments calculated to cause pain to animals. Currently, doctors working within the Department are used to assess research protocols and to approve research licenses. During the course of our review, applicants for licences complained to us that these medical officers often have no little, or no, comparative knowledge of physiology, anatomy or pharmacology. Any informed judgment about the animal welfare aspects of an experimental protocol or a licensee's skills remains dubious.

This situation is not alleviated by the format of the current licensing application form. The information gathered by the Department of Health focuses largely on where the experiment will be done, rather than whether the researcher is adequately trained, what the procedure is and whether animal welfare will be monitored.

Competing priorities within the Department compound the problem. Department of Health officers are not solely employed to oversee or control animal experimentation. They are also responsible for the implementation of HKSAR Government's health policy, which is obviously given greater priority than laboratory animal welfare. The Department of Health has complained of manpower shortages and does not exercise its powers of inspection under section 11 of the Ordinance. Removal of responsibility for licensing experiments to another department would assist to remedy this problem.

If the AFCD, (which would also need sufficient manpower), were put in control of the licensing process, then a veterinarian or animal technician, with a scientific or laboratory animal background, would handle licensing applications. Such a person would be better suited to the task. Indeed, the administration of animal experimentation in Hong Kong should be by the same body that controls the Prevention of Cruelty Ordinance. This would make sense both for welfare reasons, and efficiency, as the Animal Welfare Advisory Group to AFCD has already produced the Code of Practice for Care and Use of Animals for Experimental Purposes, and currently oversees most other animal welfare legislation.

Recommendation: Licensing of animal experiments should be placed under the authority of appropriately experienced personnel of the AFCD.

Animal Housing

The AFCD's voluntary Code of Practice for the Care and Use of Animals for Experimental Purposes states that housing should allow for species-specific behavioural requirements, including the availability and design of space to enable free movement and activity, sleeping, privacy and contact with others of the same species. Whilst this should mean that the animals are living in the best possible conditions for that species, compliance with this standard is left up to subjective assessment by the facility as to what constitutes natural behaviour.

By way of contrast, the Singaporean guidelines set actual minimum housing standards and environmental conditions for most animal species, including floor area and height of the cage, as well as environmental conditions like lighting, humidity and ventilation.²⁸⁴

The United States National Academy of Sciences has published a Guide for the Care and Use of Laboratory Animals which also encourages enriching the environment as appropriate to the species. The Guide states that depending on the animal species and use, the structural environment (of the cage) should include resting boards, shelves or perches, toys, foraging devices, nesting materials, tunnels, swings, or other objects that increase opportunities for the expression of species-typical postures and activities and enhance the animals' well-being.²⁸⁵

²⁸⁴ National Advisory Committee for Laboratory Animal Research (2004), *Guidelines on the Care and Use of Animals for Scientific Purposes*, Singapore, at Appendix II.

²⁸⁵ National Academy of Sciences (1996) *Guide for the Care and Use of Laboratory Animals*, National Academy Press, Washington DC, USA, at p21.

Recommendations: Minimum housing and environmental standards should be regulated for laboratory animals in Hong Kong.

Academic Ethics Committees

Animal welfare considerations in research are, to some small extent, safeguarded by voluntary academic ethics committees, established in the universities, which consider research proposals relating to animals and may approve or reject them on the basis of compliance with the AFCD Code of Practice for the Care and Use of Animals for Experimental Purposes.

However, currently the Department of Health, the AFCD and the academic ethics committees are not required to work together to promote animal welfare. The terms of reference for the academic ethics committees provide a list of tasks, which they should ideally undertake but the AFCD Code provides no mandatory requirement to meet any minimum standard of care protecting the animals housed and used in academic institutions.

Despite recommendations in the AFCD Code, the university academic ethics committees of Hong Kong are not required to report on animal welfare issues. Without any legislative requirement as to how ethics committees should be formed, who should oversee them, what type of reporting of animal welfare issues is mandatory, and how problems must be addressed, the current system will continue to allow for abuses of animal welfare.

Currently, the powers of each committee, its role, objectives and functions, are entirely decided by the universities themselves, on an ad hoc basis. The system is unregulated by the licensing authority and the level of effectiveness of each committee depends entirely upon the staff controlling it and the policy of the university.

By way of comparison, the licensing system used in the USA and Singapore ensures that each institution provided with a licence must uphold the national guidelines for the proper care and use of animals, or risk losing accreditation for the entire organisation.

The system utilized in Singapore is modeled on that of the USA. The overriding national legislation, the Animal Welfare Act 1966 (USA) and the Animals and Birds (Care and Use of Animals for Scientific Purposes) Rules 2004 (Singapore), require any institution keeping and conducting experiments on animals, to hold a licence for research from the national authority. In Singapore, to get such a licence to experiment on animals from the Agri-Food and Veterinary Services (the AVA), an institution must fulfill the requirements set out under the 2004 rules. These rules require that a licensed institute must not only allow inspections by the AVA, but must, at all times, be in compliance with the Singaporean Guidelines on the Care and Use of Animals for Scientific Purposes.²⁸⁶ These Guidelines were adapted from the best practices in use in Australia, Canada, New Zealand and the USA. They set out the responsibilities of institutions, investigators, and persons involved in the care and use of animals. Any institute licensed to house and use animals must operate within the Guidelines if it is to qualify for, and retain, a licence from the licensing authority.

In Singapore, the AVA issues a general licence to keep animals and conduct experiments, to the chief executive officer, or equivalent, of the institution, who must ensure that his institute complies with the Guidelines. If the Guidelines are breached the Animals and Birds (Care and Use of Animals for Scientific Purposes) Rules 2004 provide for penalties for the institution, including revocation or suspension of the institution's licence.²⁸⁷

In order to ensure compliance with the Singaporean Guidelines, the licensing conditions require that each institution must set up an Institutional Animal Care and Use Committee (IACUC).²⁸⁸ The CEO of the institution relies heavily on the IACUC to ensure compliance with the Guidelines, in the interests of the entire institution. The IACUC determines which individuals on staff are accredited to work with animals, which proposals for research are accepted or rejected and ensures there is consistent and

²⁸⁶ National Advisory Committee for Laboratory Animal Research (2004), *Guidelines on the Care and Use of Animals for Scientific Purposes*, Singapore.

²⁸⁷ Section 9 *Animals and Birds (Care and Use of Animals for Scientific Purposes) Rules 2004* (Singapore).

²⁸⁸ *Ibid.* at section 7.

comprehensive inspection of facilities and review of animal care programmes, in order to ensure the institution remains licensed for research.

Such a system has much to recommend it. Not only does the system place the responsibility for ensuring compliance with the highest standards of ethical care squarely with the institution itself, but it allows those who are in the best position to judge the adequacies (or inadequacies) of the institute to make the decision as to whether a research proposal should proceed.

One major criticism borne by the Hong Kong Department of Health in recent years has been that applications to conduct experiments take an inordinate amount of time to process, in some cases in excess of 6 months. Unfortunately, this kind of delay encourages researchers to misuse licences already granted in the way described below. Introducing a system similar to that used in the USA and Singapore would streamline the research application process, allowing in house decisions to be made swiftly and efficiently.

Recommendations:

-The USA/Singapore licensing model should be adopted by Hong Kong. Specifically, institutions, rather than individuals, should be licensed and institutional animal care and use committees, overseeing all experiments, should be made mandatory, in all cases (whether the institution is a university, school, or part of private industry).

-Currently the Department of Health does not exercise its power of inspection under Cap 340. It cannot be overemphasized that if institutions are permitted to internally oversee individual licence applications, through an IACUC system, there must be concurrent action, taken by the overseeing government department, to vigilantly inspect licensed institutions and take action to suspend or revoke institutional licences, where animal welfare is being compromised.

Misuse of licensing process

A further shortcoming of the Cap 340 licensing process, in practice, is that in some institutions researchers are utilizing the one licence to conduct a series of experiments in the same area, without any true interrelation of projects. Whilst under the Ordinance one licence may legitimately be utilised to authorize several interrelated experiments, Cap 340 should not be interpreted to allow one licence to authorize a series of different experiments that are not interrelated, just because the same researcher is working in the same area. The Department of Health needs to provide clarification of the law to those researchers who are under the impression that they can legitimately conduct unrelated experiments under generic licences or use existing licences, that are not relevant to an animal ethics committee application, for a newly proposed project, in order to avoid applying for a new licence under the current slow moving system.

Recommendation: The licensing Authority should provide clarification of the Cap 340 requirements allowing inter-related licences.

Membership of the Ethics Committee

Not only should it be a legal requirement to have an animal ethics committee but its composition should also be legislated. The AFCD Code recommends that the animal ethics committee should have a membership that allows it to fulfill its terms of reference. This would include at least four persons, including a separate person appointed to each of the following categories:

Category A. A person registered as a veterinary surgeon;

Category B. A person with substantial recent experience in the use of animals in experimental activities;

Category C. A person who has a commitment to the welfare of animals and who is not

employed at the institution;

Category D. An independent person who does not currently and has not previously conducted experimental activities using animals, and who is either not an employee of the institution, or someone from the institution who is independent of the departments where medical or scientific research is undertaken.

This composition is recommended to ensure a balanced oversight of the experiments being carried out within the facility and best represent the interests of animal welfare.

Recommendation: Membership of ethics committees should be regulated under Cap 340.

Animal use in teaching

Cap 340 also permits the use of animals in teaching in academic institutions if specific permission by the researcher is sought from the Licensing Authority.²⁸⁹ The applicant is required to describe why the experimentation is necessary for the academic syllabus, but the requirements for assessing the necessity of the animal-use protocol are vague.

Furthermore the legislation says nothing about the use of animals in teaching in primary and secondary schools, assuming they are not performing animal experimentation, (as defined by the Ordinance).

Cap 340 needs to address the important ethical issue of using animals in teaching, especially now that there are a range of alternatives that can provide the same information. The value of using animals in teaching, whether at the primary, secondary or tertiary level, should be comprehensively investigated and fully justified.

²⁸⁹ Section 9 Animals (Control of Experiments) Ordinance, Cap 340, Laws of Hong Kong.

Guidelines on animals in teaching and school programs, such as those published by the Institute of Laboratory Animal Resources (USA),²⁹⁰ generally do not permit any type of animal-use research, nor live animal dissection, in primary or secondary schools. They do, however, permit the use of animals in programs that encourage students to develop positive attitudes about animal welfare, to teach animal care and to respect animal life and to encourage an understanding of animals and their environment. Hong Kong needs to identify the extent of animal usage within schools and academic institutions and legislate against unwarranted animal usage.

Recommendation: The use of any animals in pre-university teaching should be properly justified and regulated.

Staffing requirements

It should be a legal requirement that researchers must be adequately trained before being allowed to perform procedures on animals. The USDA Animal Welfare Act Regulations stipulate that personnel must be trained so that they are qualified to perform procedures on animals.²⁹¹ Each licensed institution is given the responsibility for providing training. As part of the protocol review process, the Institutional Animal Care and Use Committee must ensure that personnel are qualified to perform the procedures proposed in animals.

Singapore's Animals and Birds (Care and Use of Animals for Scientific Purposes) Rules 2004 require that every licensee must establish and maintain programmes of adequate veterinary care that are overseen by the attending veterinarian. The attending veterinarian may be engaged on a full-time or part-time basis, but the facility must ensure that there is always ready access to veterinary care, including emergency, weekend and holiday care. Components of veterinary care are listed within the Guidelines, including the use of appropriate methods to prevent, control, diagnose and treat diseases and injuries of the

²⁹⁰ Institute of Laboratory Animal Research, Commission on Life Sciences, National Research Council, National Academy of Sciences, and National Academy of Engineering (1989) *Principles and Guidelines for the use of Animals in Pre-College Education*, National Academies Press, Washington DC, USA.

²⁹¹ Section 2.32 Animal Welfare Act Regulations, Animal And Plant Health Inspection Service, Department of Agriculture, USA.

animals and the daily observation of all the animals to assess their health and wellbeing.²⁹² The provision of guidance to investigators and other personnel on the handling, immobilisation, tranquilisation, anaesthesia, analgesia and euthanasia is also regulated.

The USDA Animal Welfare Act Regulations stipulate that if procedures on animals are proposed that may cause more than momentary or slight pain or distress to animals, consultation with the attending veterinarian or his or her designee must occur in the planning of those procedures.²⁹³

Currently, only the University of Hong Kong and the Chinese University of Hong Kong have a registered veterinarian on staff. However, all facilities performing procedures on animals should have a designated vet, ideally holding a specific Laboratory Animal Diploma or Certificate.

In the UK each facility licensed to perform scientific procedures must also have a Named Animal Care and Welfare Officer (NACWO).²⁹⁴ This officer must be an animal technician or scientist that is working in the facility every day, with intimate knowledge of what is occurring in the laboratory, and who is well positioned to advise the ethics committee about how experiments are proceeding.

During the course of our review, one scientific officer at a university in Hong Kong, reported to us that due to the hierarchical structure of the complaint process technicians have no access to the ethics committee, as only senior staff are allowed to sit on the committees. Specifically we were told: ‘You may have professors, clinicians and senior vets, that last touched a lab animal 10 years ago, or perhaps have never done so, trying to advise on scientific procedures that are advancing very rapidly’.

²⁹² National Advisory Committee for Laboratory Animal Research (2004), *Guidelines on the Care and Use of Animals for Scientific Purposes*, Singapore at 6.2.

²⁹³ See n 291 above at 2.33.

²⁹⁴ Section 6 Animals (Scientific Procedures) Act 1986 (UK).

Another problem highlighted to us is that technical staff in Hong Kong universities currently have no power to require a senior academic to stop an experiment if they think animal welfare considerations are being ignored, and may feel compromised if they ‘blow the whistle’. If it were made a legislative requirement that someone, such as NAWCO, could intervene, if an animal’s welfare was being compromised in an experiment, then this situation could be improved.

In recognition of the likelihood of these types of problems occurring, the USDA Animal Welfare Act Regulations require an institution to train personnel about methods through which deficiencies in animal care and treatment may be reported, including deficiencies in animal care and treatment reported by any employee of the facility. The regulations specifically state that no facility employee, committee member, or laboratory personnel may be discriminated against, or be subject to any reprisal, for reporting violations of any regulation or standards under the Animal Welfare Act.²⁹⁵

Recommendations:

-All personnel performing procedures on animals should have received mandatory training in animal welfare.

-All institutions conducting regulated procedures on animals should be required to employ veterinarians on staff.

-Animal Ethics Committees should actively pursue effective communication with front line technicians.

-Structures should be introduced to ensure technicians specifically responsible for animal welfare have unimpeded access to Animals Ethics Committees.

²⁹⁵ Section 2.32 Animal Welfare Act Regulations (USA).

International Accreditation

The current deficiencies in the law protecting animals used for scientific purposes in Hong Kong are illustrated by the poor record of local institutions in achieving international accreditation for animal care practices.

The only university in Hong Kong to have achieved AALAC accreditation, (Association for Assessment and Accreditation of Laboratory Animal Care), is the University of Hong Kong, however even this institute has not achieved the US Food and Drug Administration's GLP (Good Laboratory Practice) standards. The Chinese University of Hong Kong's Laboratory Animals Service Centre is not AALAC accredited but has achieved ISO standard 9001-2000, (accredited by the International Organisation for Standardization). However, it should be noted that the ISO qualification is based on quality management rather than animal welfare standards. The other universities in Hong Kong have no internationally recognised accreditation for their animal welfare practices, at all. By way of comparison, ten Chinese laboratories have achieved AALAC accreditation, to date.

VETERINARY CARE

Pet ownership in Hong Kong has increased dramatically in the last decade and, in order to cater to need, there has been a vast increase in the number of veterinarians registered locally. Between 1998 and 2008, the number of vets registered grew threefold, to 498. All vets practising in Hong Kong are overseas-trained as there is currently no local veterinary school. The majority attended university in the UK, Australia or in some more recent case registrations, Taiwan.

With more vets registering to practice in Hong Kong, more clinics have opened and there has been a similar rise in the need for support staff. Most clinics have at least two ‘lay’ staff per veterinarian. Many of these staff are classified by the clinics as ‘veterinary assistants’ however few have had any previous training before starting work in the clinic. Many are initially hired because they are bilingual and are able to translate for the English-speaking veterinarian. They are then trained to do basic nursing, and other duties, as required.

The Hong Kong Veterinary Surgeons Board (VSB) oversees the profession and controls practice. The Veterinary Surgeons Registration Ordinance, Cap 529, is very much concerned with the composition of, and functions of, the Board, including disciplinary proceedings. The Ordinance also provides a brief description of what veterinary surgery involves, as well as those who are exempt from its provisions.

In the past there has been little incentive for vets to upgrade, or even maintain, their skill levels, but the VSB has recently recognized veterinary specialists and introduced compulsory continuing professional development (CPD) for members, which should assist in enhancing the level of service.

Definition of ‘Veterinary Surgery’

The current definition is virtually the same as that found in the UK and Australian Acts.

It was suggested to us, by several members of the profession, that the exclusion of owners from prosecution, found at Schedule 2 to Cap 529, should be repealed. At present, an owner may medically treat his animal himself, without breaking the law, as long as he does not make a surgical incision into the abdominal or thoracic cavity of the animal, or act cruelly. Of even more concern is the fact that the exclusion clause extends to members of the owner's family and even his employees. The concern expressed to us is that the exclusion clause encourages owners to treat animals themselves, forgoing necessary professional assistance, and often causing welfare problems for the animal.

Recommendation: The current owner exemption under Cap 529 should be removed or further restricted to 'minor medical treatment'.

Veterinary practice registration

There are currently no licensing requirements for veterinary clinics. There is a reliance on veterinarians to set up an appropriate facility and maintain it properly. Many clinics in Hong Kong started out as very small single vet operations, or branch clinics, and gradually grew, as their client numbers increase. Some of these clinics have progressed to become modern, well-equipped facilities but others have changed very little since opening.

The Hong Kong Veterinary Association (HKVA), realizing that there may be issues with a lack of quality in some clinics, designed accreditation guidelines in 2001-2003, but these have yet to be imposed due to opposition from small clinics operators, who perhaps feel they might fail to meet the minimum requirements set.

The proposed HKVA guidelines include the following accommodation requirements:

I. GENERAL WARD/S

Structure and Equipment

1. There are no specific size requirements for the general ward or wards;

however, all animal holding areas must be secure, escape proof and easily cleaned.

2. A separate compartment must be available for each animal.
3. The compartments should be constructed of smooth, impervious materials, which can be easily cleaned and disinfected.
4. The drainage from each compartment must be collected to prevent cross-contamination between compartments and within the room. Drainage from compartments must not be allowed to flow across the floor.
5. The facility must provide cages and/or hospitalization space that are large enough to permit the largest patient admitted to the facility to turn about freely and to easily stand, sit and lie in a comfortable, normal position.
6. All cages and runs must be constructed in such a way that contamination from one animal to the next is controlled at all times.
7. There must be adequate soundproofing to create a comfortable working environment for staff, and to prevent unwanted noise escaping to the rest of the building and outside.
8. Temperature control must be provided for the comfort of patients and staff.
9. Lighting, which is adequate to allow patient observation, must be provided.
10. There should be an adequate supply of food and water receptacles, which may be disposable or permanent. Adequate means of cleaning and disinfecting, non-disposable receptacles must be available.
11. There should be an adequate supply of bedding material, which may be disposable or permanent. Adequate means of cleaning and disinfecting non-disposable bedding material must be available

Unfortunately, with such accreditation yet to be introduced by the HKVA, there are currently no guidelines by which the public can measure veterinary wards in Hong Kong.

By way of contrast, in Australia,²⁹⁶ the law requires that veterinary hospitals are licensed,

²⁹⁶ See, by way of example, Veterinary Surgeons Act (1960) Western Australia at section 24A and the Veterinary Practice Act 2003 (NSW) at section 65.

ensuring that basic standards of care can be expected by members of the public of all clinics. In order to become licensed, a hospital must provide acceptable care for animals before, during and after major surgery. Under the NSW Veterinary Practice Regulation Code of Professional Conduct²⁹⁷ all veterinary practitioners have a responsibility to ensure they are available for the ongoing care of animals that they have treated, or make arrangements for another veterinary practitioner to take over the care of the animal. For example, a practitioner who carries out an ovariohysterectomy on a dog or cat is required to have in place after hours care, should it be required.

Before a hospital in NSW can be licensed to carry out major surgery it must fulfill the following requirements²⁹⁸:

- be located at premises that are in good condition with the immediate surrounding areas and the interior of the premises maintained in a clean, orderly and sanitary condition, and
- be designed and constructed so as to prevent the escape of an animal brought into the premises and to ensure the effective confinement of that animal at all times, and
- have internal walls and floors that can be easily cleaned and disinfected, and
- have adequate ventilation and be free from offensive odours, and
- have a supply of potable water available at a pressure and in a quantity sufficient for the needs of the hospital, and
- be supplied with electricity sufficient for the needs of the hospital, and
- have lighting in all rooms that is adequate for the purposes for which the room is to be used, and
- have facilities and equipment for adequately heating and cooling the interior of the hospital if required, and
- have facilities and equipment for the hygienic disposal of soiled dressings, animal tissue, animal bedding, animal excreta, dead animals and any other contaminated or unwholesome matter arising from the operation of the hospital, except in so far as

²⁹⁷ Veterinary Practice Regulation 2006 (NSW) at Schedule 2.

²⁹⁸ Veterinary Practice Act 2003 (NSW) Licence Guidelines.

other arrangements have been made for the matter to be removed from the hospital in a hygienic manner.

Operating facilities:

The hospital must have a separate surgical room that is equipped with appliances for carrying out surgical procedures to an acceptable outcome with regard to current standards and is not a general thoroughfare. It must:

- be equipped to perform intubation, provide and monitor gaseous anaesthesia and oxygen and administer fluid supportive therapy,
- all surgical instruments used at the hospital must be properly sterilised, and
- the ability for personal pre surgical preparation by veterinary practitioners must be provided at the premises.

Animal accommodation facilities:

The hospital must have:

- facilities (including accommodation areas) adequate for the number and nature of the animals to be accommodated at the hospital,
- accommodation areas that are constructed with walls and floors of non-permeable materials and have cages which can be easily cleaned and disinfected,
- facilities and equipment for the storage and preparation of food for consumption by animals, being facilities and equipment that:
 - (i) are separated from other areas of the hospital, and
 - (ii) are free from vermin, and
 - (iii) can be easily cleaned and disinfected,
- facilities for isolating animals that are suffering from suspected infectious diseases separate to all other areas of the hospital so as to prevent the spread of the disease to those other areas, and
- facilities and equipment for adequately heating and cooling the interior of animal accommodation areas.

Whilst most of these requirements would be easily met by many clinics in Hong Kong,

there are some which operate in cramped quarters and have facilities that compromise welfare and hygiene requirements. Without some form of regulation of clinics, either through accreditation, or licensing, by the Hong Kong VSB, sub standard facilities will continue to operate.

Recommendation: Licensing requirements should be introduced for all veterinary hospitals in Hong Kong.

Veterinary Nurses

Veterinary nurses, or ‘veterinary assistants’ as they are currently called in Hong Kong, play an integral part in veterinary practice, including animal welfare. They have been traditionally hired for their English-speaking abilities or previous experience working in clinics. In recent years many have started to receive training via external overseas courses such as the veterinary nursing course by Animal Industries Resource Centre (AIRC) in Australia. The Royal Veterinary College, University of London, (RVC) is also currently setting up a degree course at Hong Kong Polytechnic University.

Despite these changes, there is currently no recognition of vet nurses within the Ordinance, leaving them routinely treating animals without the protection of the law.

Such a situation is not usual. In Australia nurses are recognized and approved for prescribed duties.²⁹⁹ In the UK, vet nurses are recognised under the Veterinary Surgeons Act 1966, which allows them to provide any medical treatment, or any minor surgery (not involving entry into a body cavity), to any animal, under the direction of a registered vet.³⁰⁰ The RVC is also in the process of bringing in compulsory CPD and is considering the power to discipline veterinary nurses.

Recommendation: Cap 529 should be amended to allow veterinary nurses to perform prescribed procedures under the direction of a registered vet.

²⁹⁹ See by way of example Veterinary Surgeons Act (1960) Western Australia at section 26E

³⁰⁰ Veterinary Surgeons Act 1966 (UK) at Schedule 3.

Veterinary Students

In Hong Kong, whilst the VSB has recently included veterinary students in their Code of Practice, they are not yet recognized under Cap 529.

The Ordinance is out of date in that it does not recognise the need for veterinary students to gain clinical experience by performing tasks under veterinary supervision. Many local residents return from studying at universities overseas to do their compulsory work experience locally, and, as the profession has grown in size, Hong Kong has also become a more popular place for overseas students to visit to experience practice. These students have received at least three years of tuition already but need to spend several months visiting clinics, zoos, slaughterhouses and other facilities to experience real working conditions. Such practical experience provides an integral part of training and relies on the student being able to see and carry out basic procedures whilst supervised by a qualified vet. In specific recognition of the need to provide students with clinical experience, the Veterinary Surgeons Act 1966 (UK) allows the Council to make regulations permitting them to perform surgery under prescribed conditions.³⁰¹

Recommendation: Cap 529 should be amended to allow veterinary students to perform veterinary services, under the supervision of a registered vet.

³⁰¹ Veterinary Surgeons Act 1966 (UK) at section 19(3).

CONCLUSIONS

Hong Kong's anti cruelty legislation, Cap 169, as currently drafted, is entirely unable to assist animals in danger and distress. Whilst widespread reforms of cruelty laws in other jurisdictions have addressed similar deficiencies, Hong Kong's legislation has hardly been updated, since it was enacted in 1935. We recommend significant reform, through the introduction of a new Animal Welfare Ordinance, comprehensively consolidating all Hong Kong's animal welfare protection legislation and imposing a positive duty of care on all persons in charge of animals. Such an Ordinance should address the welfare needs of all animals in Hong Kong, regardless of usage.

Licensing conditions for pet shops are also seriously out of date and the lack of legislation controlling hobby breeders should be addressed. Of particular concern is that animal trader regulations do not allow the AFCD to cancel a trader's licence on conviction for cruelty to animals.

In order to address serious failures at local slaughterhouses to meet animal welfare standards prescribed by the OIE Terrestrial Animal Health Code 2009 (Slaughter of Animals) extensive revision of slaughterhouse licensing conditions and improved enforcement is required.

The complete failure of current legislation to recognise the animal welfare requirements of most animals kept on local farms must also be addressed. Extensive revision of laws relating to animals in transport is also necessary, to adequately protect their health and welfare.

Regulations specifying humane transport conditions, enclosure standards, and slaughter methods for all animals sold at wet markets should be introduced. In particular, we have recommended that exsanguination of chickens should be immediately prohibited.

We recommend a government approved trap neuter return programme for feral dogs in Hong Kong should be immediately implemented.

Revisions to the primary Ordinance regulating animal experimentation, and to current licensing procedures, are necessary for the welfare of laboratory animals.

The Veterinarian Surgeons Registration Ordinance should be brought up to date with modern practice requirements.

Most importantly, if legislation to protect animals is to be effective, it must be adequately enforced. In Hong Kong, inadequate regulatory powers for enforcement bodies, inadequate use of those powers which are already available, and insufficiently deterrent sentencing of offenders, by the courts, combine to undermine legislative protection of animals. We recommend extensive additions to regulatory powers and suggest that those enforcing animal welfare legislation are provided with updated guidance on the provisions and implementation of the law. Resources must also be made available to ensure there are adequate numbers of personnel implementing animal welfare laws at the ground level.

Whilst outside our remit, we recognise significant problems with the laws currently regulating trade in endangered species and enforcement of CITES, in Hong Kong, and suggest further study for law reform in this area.

List of parties consulted during the review process

Agriculture, Fisheries and Conservation Department, Hong Kong

Food and Environmental Hygiene Department, Hong Kong

The Hong Kong Police Force

Department of Justice, Hong Kong

SPCA (Hong Kong) Inspectorate

Kadoorie Farm and Botanic Garden, Hong Kong

World Wide Fund for Nature (Hong Kong)

Dr Anthony E James, Director of Laboratory Animal Services Centre, Chinese University of Hong Kong

Dr Yvonne Sadovy, Professor, School of Biological Science, The University of Hong Kong

Dr Christopher M Riggs, Head of Veterinary Clinical Services, Hong Kong Jockey Club

The Federation of Pig Raising Co-operative Societies, Hong Kong, Kowloon and NT Ltd

Hong Kong New Territories Fish Culture Association

Hong Kong Livestock Industry Association

New Territories Chicken Breeders Association

Laboratory animal researchers working at the University of Hong Kong and the Chinese University of Hong Kong

Members of the Hong Kong Veterinary profession

Sally Anderson, Hong Kong Dog Rescue

El Chan, Society for Abandoned Animals, Hong Kong

Dr David Mellor, Professor of Animal Welfare Science, Massey University, New Zealand

RSPCA Inspectorate (UK)