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**立法會CB(2)1753/18-19(06)號文件**  
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**Proposals to amendment Cap 169**  
**The Prevention of Cruelty to Animals Ordinance**

Animals Asia Foundation would like to begin by offering overall support for the proposed review of Cap 169 (Prevention of Cruelty to Animals Ordinance) following public and stakeholder consultation. We agree with the need to bring Hong Kong's legislation in line with that of other regions, promoting good and positive animal welfare and providing guidance on how that can be achieved, as well as ensuring penalties for contraventions of the legislation, act as deterrents.

Over the past 20 years, Hong Kong has seen a major shift in the importance placed upon animals as our companions and within society, with pet ownership rapidly increasing, as well as greater interest and concern regarding animal welfare and cruelty issues in the territory.

It is clear however from numerous recent cases, that our legislation continues to lack in its ability to prevent and deter cases of animal cruelty. Conclusions drawn from the 2010 Legislative Review of Hong Kong's animal related laws, recognized that in many instances the lack of a good, progressive, legislative framework for animal protection meant that the actions of the authorities may never be able to match the expectations of society at large. The report found that Hong Kong's anti-cruelty legislation cannot protect animals at risk of abuse and suffering. Currently, authorities cannot step in to help a neglected animal until it has actually been harmed by the neglect. This must change.

Animals Asia Foundation supports legislation and enforcement, that can prevent unnecessary suffering, before it happens. We see it as a positive that the proposed amendments to Cap 169, somewhat take into consideration the sentience of animals and attempts to consider that 'good' welfare results not only from an absence of suffering, but also from the presence of positive experiences and sensations.

It is important when drafting the amended Cap 169 legislation to use a flexible framework that will more easily allow for additional measures (or exemptions) to be introduced through secondary legislation eg. regulations as and when necessary.

## **1. Comments on proposed improvements to Cap 169**

### **Duty of Care**

We support the introduction of 'duty of care' and clear guidelines of whom and how the duty of care will apply.

### **Codes of Practice**

We support the introduction of codes of practice (CoP), and hope that there will be sufficient CoP's for all common species of domestic animal kept as companions in due course. CoP's are vital in regards to 'owner' education, providing guidelines for good care of animals, enabling them to experience good welfare.

### **Abandonment**

We note that 'abandonment' will be included primarily as a 'duty of care' offence, which we support, however we hope that existing loopholes can be closed, placing strict liability onto the owners and licensees of animals.

It is vital to ensure that responsible parties can be charged with the higher offence of animal cruelty, when suffering occurs as a results of abandonment.

### **Improvement Notices**

We support the introduction of improvement notices, but also hope that there will be mechanisms in place so that should multiple improvement notices, within a set time frame be ignored or not acted upon, further serious sanctions and higher penalties will apply. We also hope that there will be sufficient manpower allocated to and by the relevant parties (AFCD, HK Police and SPCA) to issue, follow up with and prosecute contraventions of improvement notices, and some system in place to regularly check up on those issued with improvement notices and encourage compliance.

## **2. Areas of Concern**

### **Enforcement**

Evidence - what constitutes 'enough' or 'good' evidence. If the Government is to promote 'good' welfare standards, they also must ensure clarity on what constitutes 'poor' welfare, so that the public can have clear guidelines on what to report e.g. currently, if there is food, water and shelter (in any form) provided to an animal - even if the water is filthy or the food is rotting or the shelter is a sheet of metal - it is deemed there is no 'cruelty' in many cases. This currently provides much frustration to many within the animal welfare community.

Frontline officers need to be educated on how to use the new legislation to achieve its aims. Concepts and offences under the new legislation need to be understood by prosecutors and magistrates and judges need to assess and take into account the key elements of animal suffering when deciding on appropriate sentences.

### **Prosecutions**

Often, evidence has been gathered, prosecutions commence and finally, a 'slap on the wrist' penalty or no penalty at all, is the outcome. It seems there needs to be further investigation, training and emphasis placed on the importance of animal cruelty cases within the legal system and stronger cooperation between the Department of Justice and the relevant parties (Government and NGOs) initiating prosecution proceedings.

There is also the issue of the current time bar of 6 months for summary offence. Whilst making more serious offences indictable will remove the time bar concerns for cases that are handled that way, in some cases even though suspects have been identified it may not be possible to locate them and serve a summons within the 6 months period from when the offence was committed. Such a short time bar thus allows suspects to evade being held accountable for their actions or inactions.

### **Powers to act, seize and enter and continued care of animals obtained in relation to offences**

We believe it is of critical importance, to grant increased powers to officers of the Hong Kong Police, AFCD and the SPCA, to enter, seize and act in cases where animals are at serious risk of continued suffering, neglect and/or death. This should be able to be done either with or without (in emergencies) a warrant.

It is recommended that the relevant section of the legislation is worded such that besides government officers, the Director of AFCD also has the option of authorising other suitable parties (such as SPCA inspectors) as appropriate or when needed to assist with various actions under the legislation.

We support the additional offences proposed, relating to the obstruction of carrying out of lawful duties under Cap 169, by those authorised.

We also support provisions within the legislation that allow for animals to be released from detention following seizure or as part of cruelty cases, as early as possible. We also urge the Government to cancel the ability for an 'owner' to insist upon on the destruction of an animal seized in relation to an offence.

We also support restitution to organisations involved in the care of seized / rescued animals, as part of the sentencing of those under Cap 169 contraventions. At present animals are routinely held for several months as the cases are investigated and progress through the legal system, but this can be extended to many months even years.

Legislation should be amended to give the courts the option of considering the costs incurred in rehabilitating and caring for the animals from the date of seizure when setting fines or making cost orders upon conviction.

Added to the above we also support measures proposed to protect animals from potential abuse through mechanisms to remove animals from the care of convicted parties (seizures and deprivation orders) and to implement bans (disqualification and restriction orders) relating to ownership, care and control of possession of animals for certain periods of time at the discretion of the court.

### **3. Areas for further improvement / legislation**

Other animal groups and circumstances involving animals, also need to have their legislation reviewed to promote and ensure good welfare, prevention of cruelty and legislative protection:

- Farm/Production Animals
- Exotic species
- Stray / Feral Animals
- Wild Animals
- Captive Animals
- Laboratory Animals

Animal Traders / Pet Trade

Release of Animals (under Cap 170 Wild Animal Ordinance)

Trap, Neuter, Return/Release

Shelter Regulations (under Cap 139 Public Health (Animals and Birds) Ordinance)

Inevitably Cap 169 in its current and future form, will have implications for many different groups of animals, not just those kept as domestic pets. It is important to consider the implications for these animals too and how the breeding, rearing, sale, transport, capture, slaughter and use of animals, also needs to be addressed within the territory.

In light of the proposed amendments to Cap 169, Animals Asia Foundation would also like to see through reviews of all other animal related legislation, to ensure animal welfare issues and loopholes in other areas, are also addressed.

Should you have any enquiries in relation to this submission please do not hesitate to contact us by email c/o: [kcarroll@animalsasia.org](mailto:kcarroll@animalsasia.org).

Yours sincerely,

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