



Society for the Prevention  
of Cruelty to Animals (HK)  
香港愛護動物協會

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Mrs. Carrie Lam  
Chief Executive  
Office of the Chief Executive  
Tamar  
Hong Kong

Dear Mrs. Lam,

**"Consultation on the Chief Executive's policy address 2020"**  
**Improved protection of animals and developing an "animal friendly" Hong Kong**

The Society for the Prevention of Cruelty to Animals notes that over the past few years there has been commitment to improve animal welfare in Hong Kong and to attempt to make Hong Kong more animal friendly.

We note the commitment in the 2018 Policy Address to amend relevant legislation to protect animal welfare and we participated in the consultation process on amending CAP 169 The Prevention of Cruelty to Animals Ordinance (CAP 169) last year giving our views on how not only should the legislation be developed, amended and improved but also on what else needed to be implemented and addressed in order to provide the much needed support and resources. In this submission we again give our views in this area as well as other areas of legislation that need addressing. Some of our comments given at during the consultation are repeated in this submission.

Whilst we recognise that law reform by its nature may take some time there are areas such as improving supporting mechanisms and changes in policy position that can effect more timely changes and lead to rapid and marked changes in terms of animal welfare – leading to Hong Kong becoming more animal friendly and we encourage all areas of Government to adopt an animal friendly policy approach across their areas of responsibility.

## **Improving the legal protection of animals**

### **Changing the nature of legislative protection**

The SPCA HK welcomes the long awaited proposed revision of Cap.169. The direction of the amendment – to include a “duty of care” along with other proactive measures reflects an important change in attitude. Animal protection legislation is no longer solely about punishing abusers after the fact, but should be proactive, requiring those who control animals to fulfil their legal responsibility: to understand, provide for and safeguard the animals in their care – meeting their needs and protecting them from unnecessary suffering.

As such other areas of animal legislation should also adopt this approach and the “duty of care” concept should be integrated to other pieces of animal related legislation such as, but not limited to: CAP 139 Public Health (Animals and Birds) (Animal Traders) Ordinance that regulates animal trade including farming, animal boarding, riding schools and pet shops, CAP 132 Public Health and Municipal Services Ordinance that regulates slaughter and markets and CAP 340 Animals (Control of Experiments) Ordinance that regulates animal research and the scientific use of animals.

### **Closing legal loopholes**

Even where specific pieces of legislation aim to provide some degree of protection to animals they may be deficient with gaps in scope and, without regular legislative review and updating, fail to keep abreast with developments in the areas they attempt to regulate and also with development in knowledge related to animal welfare and the public's sentiment and expectations.

As such there needs to be an ongoing commitment and actual concrete progress in closing legislative loopholes that exist and either can be exploited or fail to provide any protection at all to some animals.

CAP 139 Public Health (Animals and Birds) (Animal Traders) Ordinance is one such example that needs urgent review with certain animal businesses avoiding regulation completely and some species of animals that are traded being afforded no protection at all. In some areas progress has been made with CAP 139 in increasing oversight and regulation such as with increased regulation of dog trading and breeding under CAP 139b however this progress needs to continue and not stall. Similar improvements need to be made in other areas of this primary piece of legislation and completely new regulations need to be added to cover new areas of animal businesses or businesses that use animals as part of their business model (such as animal cafes) or existing areas that have been overlooked (such as animal shelters).

### **Changing policy position and introducing new legislation**

Some areas may need to be addressed by both changing policy position and introducing new legislation. For instance in the exotic pet trade a more pro-trade position appears to be the overriding adopted policy position. Importation for the pet trade of most exotic species (often in

unchecked numbers) is usually permitted without question, as long as an export certificate is submitted and relevant health certification criteria are met. This often overlooks the negative consequences both to the individual animals in terms of meeting their long term welfare needs if not suitable for a life in captivity, or in terms of the greater good at the level of public health (disease transmission) or species conservation and environmental protection.

Some exotic species are vulnerable to misuse and may be purchased on a large scale for the purpose of “mercy release” activities. Other species are vulnerable to abandonment. Both these events are problematic in terms of individual welfare but also can significantly impact the local ecosystems if invasive species gain a foothold and start to compete with local species; equally introduction and the spread of disease is a major concern. In these areas a change in policy approach is needed and this should be back up with appropriate legislation. “Mercy Release” activities should be banned and legislation be brought in to support this. If it is to be allowed on a limited basis then such activities should be tightly regulated and only carried out with strict oversight and permits / licensing and rigid control over the species allowed to be released and disease status of the individual animals.

In terms of the exotic pet trade the focus should be more on public health and animal welfare rather than a free market approach. A “Positive List” should be developed to restrict what exotics species of animals are suitable for import into Hong Kong for the pet trade. This should be based on a risk assessment approach considering:

- The animals suitability to be kept as pets (welfare needs)
- The likelihood of the animals misuse / abuse (use for mercy release / abandonment etc),
- The public health risk (in terms of zoonotic disease and inter and intra species disease transmission) and,
- The conservation risks (in terms of both impact on the sustainability of the species and ecosystem in their home range as well as the risks in Hong Kong where invasiveness and biodegradation may be an issue if non-native species escape or are released).

Endangered species are particularly vulnerable to being exploited for a variety of reasons, either as part of the exotic pet trade or their body parts may be used or traded. Often this involves criminal activity at some point in the supply chain and the lucrative illegal wild life trade is often carried out by organized criminal networks with international links. However often when illegal wild trade items are intercepted investigation and enforcement action is limited. Often only the primary defendant (person caught in the act of smuggling items) is prosecuted or cases may not proceed to court at all and the criminal masterminds and networks behind the illegal trade and smuggling escape investigation and sanction completely. Including Cap 586 (The Endangered Species Protection Ordinance) offences in Schedule 1 of The Organised and Serious Crimes Ordinance (Cap 455) (OSCO). Would mean not only that there would be broader investigative powers available to tackle any criminal networks behind the illegal wildlife trade but that also means Hong Kong courts would be empowered, under the OSCO, to confiscate the proceeds of organised crime’s wildlife trafficking.

**Enhancing support for legislative intent – the introduction of a central reference authority and increased opportunities for enforcement and prosecuting agencies to collaborate**

Areas that can also affect an improvement in terms of legal protection for animals is the increased support from both an enforcement and a prosecution angle. The lack of a central reference authority and in-depth knowledge exchange opportunities for frontline staff of enforcement agencies can result in enforcement silos and inconsistent trial preparation.

One issue with legal cases involving animals is that where different departments, or even divisions within the same department, are charged with enforcing different animal related ordinances or other crimes that may involve animals in some way, there is variation in the way that the different types of cases are handled and as a result animal welfare issues may be inadvertently overlooked. For instance, smugglers of live animals seized by Customs and Excise Department (CED) are seldom charged with cruelty for offences for inhumane methods of transportation, as CED in this situation is often focused on prosecuting other types of Ordinances related to the act of smuggling itself. To support action under animal protection laws it is important that officers are sufficiently knowledgeable and have access to information and training regarding their powers and duties, as well as possible charges that can be brought by other departments in relation to the same cases. For instance the HK Police and AFCD are the two agencies that tend to prosecute animal cruelty offences and could assist CED if such offences were also suspected in a smuggling case.

The Animal Watch Scheme implemented in 2011 is an example of cross department and sector collaboration and such initiatives should be encouraged and expanded. Other departments should be represented in these collaborative efforts and attend such meetings including the Customs and Excise Department and the Department of Justice. In addition an operational mechanism should be developed that allows the frontline staff of multiple agencies to seek timely advice or collaborate on operational issues where animal welfare or animal cruelty offences are suspected or identified.

### **Increasing enforcement capability**

To allow the law to be used as intended, and as expected by the public, it is important that there are adequate and appropriate resources available to allow for effective enforcement. With the upcoming amendment to CAP 169 and the inclusion of new elements such as “duty of care” provisions and the expected inclusion of more welfare offences it is important that the enforcement capacity is enhanced. There should be an increased number of officers empowered to take action under the different pieces of legislation both in general and also under specific circumstances.

In support of this in the amended CAP 169 we would like to see the inclusion of an approved framework granting powers to the Director of the AFCD to authorise parties other than Government Officers (if deemed qualified and of suitable standing by the Director of AFCD), so that they are able to assist with some enforcement actions, under various sections of the legislation. This would increase capacity and maximise the impact of the amended legislation to pro-actively improve the quality of life for many more animals and save lives.

The SPCA HK Inspectorate has decades of experience relating to animal rescue and attend to animal welfare cases daily. They routinely educate the public, provide advice on welfare improvements and give warnings to negligent animal owners, in addition to working closely with the authorities on animal cruelty cases. The SPCA HK would like to positively contribute under the amended ordinance. Authorising some SPCA Inspectors would be a natural extension of our Inspectorate's existing work. Support could be given by assisting with action related assisting with "Duty of Care" infringements and the issuing of related improvement notices, as well as rescuing and removing animals at risk of suffering.

### **Improving prosecution support**

The HK Police and AFCD tend to prosecute the majority if not all the animal cruelty offences under CAP 169. Both agencies often seek Department of Justice (DoJ) advice prior to prosecution, thus the DoJ is well placed to provide consistent advice and guidance regarding complex cases. The DoJ is also positioned to give advice to other departments on issues / additional charges to consider should animals be involved in cases being investigated under different ordinances. Animal law is a specialised area that needs deeper understanding of not only the legislation itself but the intent and the different concepts that the legislation is based on. To this end, it would be helpful for the DoJ to develop specialist teams of prosecutors who could advise on, prepare for and subsequently prosecute any cases that came before the court. The current system of using prosecutors on fiat is particularly problematic as the prosecutors are often not familiar with and may not have time to familiarize themselves with this area of legislation, case law and related concepts. In other jurisdictions specialist prosecution teams have proven helpful in bringing guidance and consistency to the prosecution of cruelty offences. In the case of New Zealand, the Ministry of Agriculture and Forestry (MAF) has a special group of investigators and lawyers, the "Animal Welfare Group" to prosecute farming/ agriculture offences. The reason for their effectiveness is that they are relatively well funded, staffed by permanent lawyers who facilitate legal advances in forfeiture and animal ownership prohibition orders. As a centralised agency with a clear operational structure, they can pursue complicated and lengthy prosecutions. Staff were also noted to receive ongoing training that greatly enhanced their effectiveness.

Such specialized teams that handle prosecutions related to child abuse, human rights and cybercrime already exist in the DoJ in Hong Kong as such we suggest that the Government look into developing specialist team(s) at the Department of Justice to advise on and prosecute animal cruelty and animal related cases. The use of "on fiat" prosecutors from the private sector who have no specialised knowledge of this area of law should be discontinued.

With the introduction of new legislation and likely increase in complexity it is important that the judiciary is also kept up to date on legal developments and new concepts in terms of animal welfare. The introduction of sentencing guidelines should be considered.

For our more of our in-depth comments in relation to the Consultation on Amending CAP 169 and other supporting measures that should be considered and introduced you can refer to our submission to AFCD which is attached.

### **An Inclusive and Animal Friendly Hong Kong**

## **Policy and commitment**

We have previously stated that in order for Hong Kong to move forward with a truly inclusive and “animal friendly” agenda this needs to be a policy position that is adopted and adhered to across all bureaus and departments in the Government.

The Hong Kong public is showing increasing interest in animals and their welfare. More and more people own pets, and the role that pet ownership can play in terms of social cohesion and support, and improved physical and mental health is well recognized. More recently this was highlighted during the COVID-19 epidemic with pet owners reportedly coping better with the imposition of related social-distancing measures.

## **Comprehensive cross Bureau and Departmental approach with a high level panel advising on animal welfare and related matters**

Policy approach should be set at the highest level and all Bureaus and Department should adopt and adhere to an animal friendly approach to their planning and work. Cross Bureau and Department collaboration in the strategy and planning stage should lead to the deeper of any potential animal related issues. Joint responsibility should be accepted and the different Bureaus and Departments should work together in developing strategies to avoid triggering animal related crises in the first place. Mitigation measures (including changes to policy or the removal of administrative barriers) should be fully supported and action taken.

In support of this we have previously stated that is our belief that a panel consisting of animal welfare specialists, animal welfare scientists and technical experts should be created, and that this panel should advise the administration at a high government level on animal welfare issues and this advisory panel should be cross bureau and department in its role to ensure advice can be given to all appropriate and responsible parties.

At present, there is no consolidated animal welfare strategy at a high level that spans across Bureaus and Department. At times the impact of policies or projects implemented by different departments might be at odds with policies or programmes aimed at alleviating or dealing with animal related issues and may fundamentally undermine years of work on issues and could trigger an animal welfare crisis with social implications.

One such example is in the New Territories where redevelopment projects are taking place and pet owners (including dog owners are displaced) but pet friendly housing options for all that need it are not provided either in the short term or in the long term or in both. This is a result of the policies of the housing providers engaged in the projects that may ban pet keeping outright (Housing Society) or have a policy position that effectively bans dog keeping (Housing Authority). In this situation where separation from their pets is forced upon them the animals’ owners and their family members are left traumatised by events, frequently having been frustrated in their attempts to find solutions themselves. Eventually the burden of trying to help with animals negatively impacted by such actions will often fall on animal welfare NGOs or AFCD who are the parties who have been working with the public to avoid abandonment scenarios in the first place. This approach undermines a fundamental educational principle relating to pet keeping - requiring pet owners to take responsibility of their pets for life and forces owners unwillingly to give up their

pets or dogs. Much effort and many resources have been invested over the years on this front by the SPCA and more latterly by the Government itself via AFCD. Importantly the pet owning public has largely responded only to be unfortunately let down in some circumstances.

### **Creating the capacity for an animal friendly Hong Kong**

It is important that to create the fundamental basis for positive change for animals welfare there needs be continued educational efforts at all levels in the community. Education should focus on understanding animals and their needs. Humane education should be a key component of the school curriculum - aiming to cultivate compassion and empathy for all life from an early age.

AFCD should review and update its policies and procedures in certain areas of animal management. For instance trap, neuter, (vaccinate) and return should be adopted as official options for the humane management of feral cats and dogs and policy or administrative barriers that currently limit broader implementation should be removed. In addition a system allowing the public to directly adopt animals from the four Animal Management Centres should be developed.

### **Animal friendly planning and development strategy**

Previously we have stated that the Hong Kong Government includes the consideration of animals and animal welfare in its general planning vision and strategy and not just in areas that are specifically associated with animals.

We note that recent years there has been a degree of progress in certain areas (eg. pet access to public open spaces and development support for activities related to animal welfare) but there still could be more done in all areas. People are more concerned about how animals fare in our society. Development is putting pressure on the natural habitats of wild animals. More people in Hong Kong wish to keep an animal as a companion and pet ownership is increasing but Hong Kong's housing and infrastructure is generally out of step with such aspirations.

Our recommendations with regards to developing a planning vision and strategy for Hong Kong remain the same:

Animal welfare needs to be considered - animal friendliness should be included in planning, design and implementation.

Increased resources should be committed to assist with practical implementation of policies strategies and programmes.

Environmental protection and wild life conservation (biodiversity) should be a core consideration. Hong Kong's Country Parks and Special Areas and Sites of Scientific Interest need to be protected as do other green areas that provide natural open space and are important habitats for wild animals.

For instance:

- The legitimate needs of the pet owning public should be recognized and included in Hong Kong's overall planning vision and strategy

- In the process of redevelopment displaced pet owners should be catered for in terms of their needs to be relocated together with their pets (both in terms of temporary and permanent accommodation)
- Public (and other) housing should be designed and managed to be animal owner and animal friendly
- Public open space accessible to pet owners and their pets should increase further and be well-designed, conveniently located and be accessible to pet owners
- Walkability and pedestrian connectivity is to be encouraged and pet owners should also be able to freely access all pedestrian routes
- Public transport should also cater for the needs of pet owners
- Sufficient land needs to be provided to support conservation, bio-diversity and animal welfare activities (including dedicated facilities) to meet the needs of both the NGOs and the Government working in these fields
- Wild animal habitats should not be fragmented
- Barriers to natural wild animal movements should be avoided
- Fencing and drainage channels etc. that could be hazardous for animals should be designed to minimise risks to animals

Thank you for considering our views and aspirations. You may also consider our submissions in relation to previous consultation exercises in relation to the Chief Executive's annual Policy Address.

We would be delighted to discuss our suggestions further and give assistance in implementing any of our recommendations. Importantly any legislative barriers or policy positions that could hinder implementing the above recommendations should be reviewed and removed.

If you have any queries on our submission please do not hesitate to contact Dr Fiona Woodhouse. We would be grateful if you could also provide a contact point for us to follow up with on this matter.

Yours sincerely,

Ms. Alice Choi  
 Executive Director  
 Society for the Prevention of Cruelty to Animals (HK)

(Encl)