



EARTHCARE
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By Fax and Email

Members of the Legislative Council
3/F Citibank Tower
3 Garden Road
Central, Hong Kong SAR
Attn: Clerk to Bills Committee on
Prevention of Cruelty to Animals (Amendment) Bill 2006

Your Ref: HWF (F) 6/8/2 pt.2

August 11, 2006

Dear Sir/Madam,

Prevention of Cruelty to Animals (Amendment) Bill 2006:
Proposed Amendments to
The Prevention of Cruelty to Animals Ordinance (Chapter 169)

Please find attached EarthCare's comments of the captioned matter at the Annex.

Thank you for your kind attention. Please do not hesitate to contact me for any further questions at 25780434 or 90880686.

Yours faithfully,

NG Wai Yee
Director

EarthCare's views regarding the existing animal welfare situation and The Prevention of Cruelty to Animals Ordinance (Chapter 169) (thereafter called "the Ordinance") and the Prevention of Cruelty to Animals (Amendment) Bill 2006 (thereafter called "the Bill") in Hong Kong Special Administrative Region (thereafter called "HKSAR")

Under the Ordinance, any person who causes unnecessary suffering to any animal shall be liable on conviction to a maximum fine of \$5,000 and imprisonment of six months. Acts of cruelty towards animals, such as beating, kicking, torture, etc. constitute offences under the Ordinance. The level of fine in the Ordinance was first prescribed in 1935 and amended subsequently in 1950 and 1979. In the Prevention of Cruelty to Animals Regulations (Cap. 169A)("the Regulations"), it is provided that any person who contravenes any provisions set out therein, such as keeping animals in substandard baskets/cages or failing to provide adequate supply of clear fresh water to animals, etc. shall be liable to a fine of \$2,000 or in case of a continuing offence, the sum of \$200 for every day during which the offence continues.

It is now year 2006 and major provisions of existing ordinance are long outdated and not in line with social, economic and sustainable development and expectations of a civil society. EarthCare believes and agrees that the present penalty level under the Ordinance does not reflect the seriousness of the crime concerning cruelty to animals nowadays and does not serve the purpose of effectively deterring persons from committing acts of cruelty towards animals.

Firstly, the definition of acts of cruelty towards animals is narrow and fails to cover a wide range of abuses of animals.

The number of prosecutions, not to mention successful prosecutions, is shamefully small.

The duration of immediate imprisonment is usually very short, just one month.

The average amount of fine is only about \$1,200 dollars. Previous court cases show that penalties imposed by the court for offences concerning cruelty to animals were usually on the low side.

It is a positive act to see that the main provisions of the Bill as follows have increased the maximum penalty: (a) Clauses 2 and 3 increase the maximum penalty in the Ordinance from a fine of \$5,000 and imprisonment for 6 months to a Level 6 fine (i.e. \$100,000) and imprisonment for 12 months. (b) Clause 4 amends the regulation making power in the Ordinance to increase the maximum penalty that may be prescribed under the Regulations. The penalty is amended from a fine of \$2,000 to a Level 4 fine (i.e. \$25,000).

No doubt, Clauses 2, 3, 4 and 5 increase the maximum penalty for the offences defined in the Ordinance but the following issues are not addressed properly and effectively:

- 1) The proposed increases only bring the penalty level more in line with some other developed countries, not all. The duration of imprisonment should be within the range of 1 to 2 years.
- 2) There is a lack of provision(s) that would increase the likelihood of detection and arrest, given the known situation of a huge dark figure. The prosecuted cases only form the tip of an iceberg.
- 3) There is a lack of provision(s) that includes into the definition and coverage of acts of cruelty towards animals regarding abandoning/dumping of an animal into a non-private/private area or space due to inappropriate, illegitimate or illegal ownership, for example, keeping a non-human animal in a public housing flat due to a lack of careful deliberation and consideration of one's own ability and circumstances whether he/she has the ability to keep such animal and followed by abandoning of an animal into a non-private/private area or space. According to statistics and data from various sources, the problem of abandoning of animals in Hong Kong is serious. There should be clear delineation of acts of omission and neglect that should also be prohibited.
- 4) There is a lack of provision(s) that could effectively improve the procedures and mechanisms adopted by law-enforcement agencies for handling and following-up reports by the public on animal abuse cases. Given the lack of a substantial number of successful cases being prosecuted and penalised appropriately, the proposed amendments (though good-willed) would remain symbolic and may not be able to achieve the deterrent effects as stated as part of the intentions of the Bill to amend the Prevention of Cruelty to Animals Ordinance and the Prevention of Cruelty to Animals Regulations to increase the penalty for cruelty to animals.
- 5) There is a lack of provision(s) to provide a review and an overhaul of legislations and regulations regarding humane treatment of animals in order to maintain Hong Kong as a civilised and advanced city with sustainable development in the medium and long run.
- 6) The Bill fails to address the issue of a transparent system that keeps track of the progress and effectiveness of law enforcement.

EarthCare's views regarding the Proposal to increase the penalties for cruelty to animals as stated in the Prevention of Cruelty to Animals Ordinance (thereafter called the "Ordinance") and the Prevention of Cruelty to Animals Regulations (thereafter called the "Regulations") and the Prevention of Cruelty to Animals (Amendment) Bill 2006 (thereafter called "the Bill") to increase the penalty for cruelty to animals in the HKSAR

1. EarthCare agrees that the Ordinance and the Regulations should be amended and expanded according to the proposals. To EarthCare, this option is viable and practical especially in the short run though it may not be able to solve the problems and needs facing HKSAR in the long run.
2. The existing Bill has not taken into account cruelty occurred and occurring within the animal rearing and pet sales business.
3. The definition and coverage of acts of cruelty towards animals should be widened to take into account of a wide variety of negligent and irresponsible behaviour. For instance, it should also be made unlawful, to abandon or neglect animals, where by doing so the animal is caused to suffer.
4. EarthCare proposes that the Ordinance should include an order for all relevant departments and agencies of the HKSAR Government should give recognition to the:
 - (a) establishing and including of provision(s) that could effectively improve the procedures and mechanisms adopted by law-enforcement agencies for handling and following-up reports by the public on animal abuse cases. For instance, as one of the possible steps in the law enforcement process, the police may arrest without warrant any person who he/she has reason to believe is guilty of an offence under this Ordinance and he/she may also act on a complaint from a member of the public, who must provide a name and address and other contact information when making the said complaint.
 - (b) There should be clear guidelines and directives in terms of the **discretion** that could be exercised to prevent law enforcers, prosecutors and court staff to impose penalties on the low side within the range of penalties.
 - (c) System of transparency and public announcements should be established for public access to monthly or quarterly report of progress of cases and data regarding cases and prosecution etc.
5. **Strict liability** should be imposed on a variety of acts of cruelty towards animals to increase the effectiveness of law, law enforcement and the importance of law as a sermon and stick to prevent inhumane behaviour in a civilised society. The offences to be contained in the Ordinance should be offences of "strict liability" and the Ordinance should set standard of care and treatment of animals which, if broken, even unintentionally, will result in an offence.
6. Performance pledges should be established and imposed on relevant government departments and agencies to render laws and law enforcement effective.

This Bill is clearly inadequate to take into account the needs of a civilised, humane and sustainable society in the medium and long run.