

Prevention of Cruelty to Animals (Amendment) Bill 2006 (“the Bill”)

**Meeting of Bills Committee with Deputations and the Administration
on Tuesday, 26 September 2006**

SUBMISSION FROM THE CIVIC PARTY

Introduction

1. According to the Explanatory Memorandum of the Bill, the purpose of the Bill is to ‘increase the maximum penalty for the offences under the Prevention of Cruelty to Animals Ordinance (Cap.169) and its subsidiary legislation, namely Cap.169A (“the Ordinance”).
2. Cap.169 was enacted in **1935** ‘to prohibit and punish cruelty to animals’.
3. The penalty level contained therein was last amended in **1979** whilst its substantive provisions were only last amended in the **1950’s and 60’s**.
4. Thus, though we agree with the Government that the present penalty level in the Ordinance fails to reflect the seriousness of the crime concerning cruelty to animals nowadays in Hong Kong and also significantly fails to deter persons from abusing animals and thus welcome its decision to increase the relevant penalty, we are **disappointed** that:
 - (a) The proposed penalty level in the Bill is too low and not comprehensive enough; and
 - (b) The Government has yet to propose a comprehensive review of the Ordinance and related policies which have long been proved by countless animals abuse cases as ineffective to combat the crime and full of loopholes; and
 - (c) The Government has yet to propose a comprehensive review of all animal related legislations and policies which have also long been complained of as inadequate and ineffective to safeguard the general welfare of animals in Hong Kong.
5. We hereby strongly urge the Government to consider and adopt **our**

recommendations below.

The Bill

6. In the Bill, it proposes to increase the penalty level of Cap.169 to ‘a maximum fine of level 6 fine (ie \$100,000) and imprisonment for 12 months’. It is explained that such proposal will ‘bring the penalty level in line with other developed countries’.¹
7. Firstly, in respect of the fine, we find that the proposal is satisfactory and acceptable to us as compared to other counties listed in Annex B to the Legco Brief.²
8. However, we find the proposed imprisonment term is **inadequate** and not **truly** ‘in line with other developed countries’ because:
 - (a) In Canada, it is also in the midst of reviewing its outdated anti-cruelty to animals laws. Its bill proposed a maximum imprisonment of 5 years on indictment and 2 years on summary conviction.
 - (b) In UK, it is also in the midst of reviewing its outdated Protection of Animals Act. Its current Animal Welfare Bill proposed a maximum imprisonment of 51 weeks.
 - (c) Thus, there are 4 countries/states having penalty set/to be set at 4-5 years³ and 4 set/to be set at 1 year⁴ whilst New Zealand sets at 6 months⁵ and New South Wales at 2 years.
 - (d) Accordingly, we do not find the Government’s explanation of ‘1 year’ is really justified.
9. Having studied the relevant law in the Australia, Canada, UK and New Zealand we have the following **recommendations**:
 - (a) Amend the Bill with reference to Annexure A;
 - (b) Give additional power to the court to ban the convicted person from owning, etc any animal for any period of time. See Annexure B;
 - (c) Give additional power to the court to order the convicted person to attend

¹ See para. 4 of Legislative Council Brief: Proposal to Increase the Penalties for Cruelty to Animals (File Ref: HWF(F)6/8/2 pt.2)

² File Ref: HWF(F)6/8/2 pt.2

³ They are: Canada, New York, Washington and Western Australia.

⁴ They are: Victoria, Singapore, Japan and UK. For sake of easy reference, we take UK’s bill in this regard as close to ‘1 year’.

⁵ But in New Zealand, the relevant offence is one of strict liability and the onus is on the defendant to prove one of the statutory defences stipulated in the legislation. See section 13 of Animal Welfare Act 1999.

- mandatory counselling programme. See Annexure C; and
- (d) Animals owner shall not be given power to request its animal be destroyed such that no maintenance fee be payable under section 5(3) of Cap.169. See Annexure D

Cap.169 and related policies

10. Cap.169 and 169A are outdated and seriously inadequate to deal with and combat acts of cruelty to animals nowadays in Hong Kong.
11. A vivid example was revealed in a recent court case where an offender was charged with Criminal Damage instead of Cruelty to Animals when he threw his girlfriend's dog out of their premises located on the 22th floor resulting immediate death of the dog. In reply to the magistrate's query regarding choice of charge, prosecution answered that there was no evidence showing the offender had done anything causing fear, etc to the dog before throwing it out of the window and thus might not have sufficient evidence to proceed with the case under Cap.169. Also, prosecution noted that maximum penalty of Criminal Damage is 10 years imprisonment, much higher than that in Cap.169 which is only 6 months' imprisonment. See Annexure E for an extract of the newspaper report on this case.
12. Further, although unreasonable abandonment of animals is an offence under section 22 of Rabies Ordinance, Cap.421, it is not commonly known to the general public and loosely enforced by the authorities. Most importantly, failing to place this offence under the Ordinance gives the society a wrong message that unreasonable abandonment of animals does not constitute cruelty to animals and thus not punishable under the Ordinance. Further, we query that in what situation abandonment of animals can be 'justified' and thus become 'reasonable'. We therefore **urge** the Government to make abandonment an offence under the Ordinance just like New South Wales. See Annexure F.
13. Under section 6 of Cap.169, 'any magistrate, senior veterinary officer, health officer, health inspector, government medical officer, or police officer not below the rank of inspector' may order to destroy an animal as long as he/she has satisfied himself by personal inspection that the animal is in certain situations prescribed under subsections (a) to (c) of section 6. Thus, these people can destroy any animal without the need to obtain any professional opinion of a veterinary surgeon as to the situation of the animal. We find that this is

completely unsatisfactory.

14. In particular, under section 6(c), an animal can be destroyed if any of these people satisfies himself/herself that the animal '(whether injured or otherwise) is trapped in such a position as to render it impracticable to effect a rescue and it is contrary to public health or safety to keep it alive'. How can a healthy animal posing no threat to the public or public health or safety be killed merely because it is impracticable to rescue and contrary to public health or safety to keep it alive? We therefore **urge** that animals should only be killed upon humane reasons and professional opinions of veterinary surgeon as to their health and well-being. See Annexure G.
15. Besides, animals are living things of feelings and nowadays most of them are friends or treated as family members by many people. They are not 'objects' subject to be 'destroyed'. We therefore **urge** that the word 'destroy' should be replaced by 'killed' in the Ordinance and any other related legislations.
16. Also, under existing legislation, it is not an offence for a person to transfer an animal by way of sale or prize to persons below 18 years old. We **urge** the Government to make this an offence just like the bill in the UK because this will help to reduce the chance of allowing vulnerable animals going into the hands of children too easily so as to avoid the risk of unnecessary suffering by the animals and reduce abandonment rate due to impulsive purchase of animals. See Annexure H
17. Finally, by the definition of cruelty to animal under section 3 of Cap.169, there are doubts if certain acts can constitute an offence under that section or is it practicable for the prosecution in certain cases to collect evidence and prove that certain acts are cruelty to animals under that section. Apart from the real example as shown above, there are doubts if the followings are or can be proved to be offences under section 3:
 - (a) A person, without lawful reasons, merely kills an animal but there is no evidence that in the process of killing, the animal is in pain or suffering, etc (maybe because sleeping pills are given to the animal beforehand).
 - (b) Poisoning of animals or placing poison or other substance which may have a harmful effect to the animal in such a position that it may easily be consumed by an animal.
 - (c) A person negligently causing unnecessary pain, suffering or injury to an

animal.

- (d) A person, being the owner or the person having the custody or control of an animal, recklessly abandons it or negligently fails to provide suitable and adequate food, water, air, shelter and care of it.
 - (e) A person, being the owner or the person in charge of a sick or injured animal and unreasonably fails to provide veterinary or other appropriate attention or treatment for the animal.
 - (f) A person who, for example, crops the ears of a dog, debarks a dog, docks the tail of a dog or declaws a dog or a cat, etc or causes the animal to be subject to these acts without however causing any 'pain' or 'suffering' to the animal.
 - (g) A person who, being the owner or the person in charge of an animal, fails to allow free movement in all directions to the animal which is not inside 'a basket, crate, cage'.
18. From the above examples, it is obvious that the Ordinance is significantly inadequate and full of grey areas and loopholes in dealing with everyday cases and real examples.
19. Accordingly, we strongly **urge** the Government to conduct a comprehensive review of the Cap.169 and 169A.
20. Apart from the Ordinance being inadequate and outdated, related policies and law enforcement authorities like the police and AFCD also fail to effectively implement the law and enforce the policies. Protection of animals is simply not their agenda. We therefore strongly **urge** the Government:
- (a) To review its existing policies to prevent and combat cruelty to animals;
 - (b) To require relevant authorities to keep full record and database of all reported animals abuse cases, suspected or not.
 - (c) To set out guidelines and checklists to relevant authorities how to properly handled reported animals abuse cases, suspected or not.
 - (d) To provide special training to all relevant authorities and personnel like the police, frontline officers of AFCD, prosecutors, judges, etc to raise their awareness that animals abuse is a serious crime and that violence to animals has strong correlation to violence to human beings.
 - (e) To enhance public education on respecting animals and the fact that animals abuse is a serious crime.

Animal related legislations and policies

21. In fact, not only the Ordinance is inadequate and outdated in protecting and ensuring the welfare of animals in Hong Kong, there are many other animals-related legislations and policies also urgently call for an overall review.
22. For example, the law in relation to sale of animals, namely the Public Health (Animals and Birds) Ordinance, Cap.139 and its regulation, Public Health (Animals and Birds) (Animal Traders) Regulations, Cap.139B. Check and monitor of and the issue of licence to animal traders have all along been complained of as inadequate and ineffective to protect animals from being abused or ill-treated by the animal traders. **An urgent review** of the law and its implementation and the system to issue licence and impose conditions is required.
23. We also **urge** the Government to take urgent and determined actions to combat the disgraceful and terrible situation in private animals farms / breeders and the general inhumane and cruel treatments of animals therein.
24. Besides, the critical situations of ‘construction sites dogs’, ‘stray animals’, etc in HK are also lack of proper and adequate (if not any at all) law and policies to safeguard these animals’ basic welfare. We therefore **urge** the government to review existing law and policies in the regard such that these animals are adequately and humanely protected.
25. Finally, in light of the general increase of concerns from nowadays HK society as to the welfare of animals in HK and thus substantial increase in number of NGOs working in the protection of animals, we strongly **urge** the Government to increase funding to these NGOs, in particular in respect of certain specific programs like TNR, CCCP, provision of shelters, etc and enhance monitoring policies and transparency to ensure the public funding has been rightly applied without being abused.
26. In fact, existing Cap.169 and its regulations aims at the situations where animals are being used in business and trading context. However, the general relationship of animals and HK people nowadays is very much different from the time when the Ordinance was first enacted several decades ago. Thus, we strongly urge the Government to **conduct an overall review** of Cap.169 and 169A and all other animals-related legislations and policies such that animals abuse will be

effectively prevented and combated and the general welfare of animals in Hong Kong is truly and duly protected and enhanced. We therefore strongly request the Government to put forward a **timetable** as to when each of the above reviews and reforms will be carried out.

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18th September 2006

Annexure A

“Every one who commits an offence under section ?? is guilty of an offence of cruelty to the animal and shall be liable to a fine of \$100,000 and to imprisonment for 3 years.”

“Every one who commits an offence under section ??

(a) which results in the death or serious disablement of the animal; or

(b) and is a second or subsequent offender under this Ordinance in the past 5 years is guilty of an offence of aggravated cruelty to the animal and shall be liable to imprisonment for 5 years.”

Annexure B

Replace section 5(2A) of Cap.169 with the following:-

“(1) When any person has been convicted of an offence under section ?? or of any regulations made under this Ordinance, the court may make any other orders against the person and/or in respect of the animal that the court considers appropriate to protect the welfare, safety and health of an animal, a group of animals or animals in general.”

“(2) Without limiting subsection (1), a court may make an order prohibiting such person from dealing with, purchasing, acquiring, owning, having the custody, possession or control of or contact with or residing in the same premises as an animal for any period that the court considers appropriate but, in the case of a second or subsequent offence, for a minimum of five years.”

“(3) Without limiting subsection (1), a court may suspend, revoke or impose conditions on a licence held by such person.”

“(4) Without limiting subsection (1), a court may disqualify such person from obtaining a licence for a period the court thinks fit (which may be permanently).”

“Licence means the licence referred to under Public Health (Animals and Birds)(Animal Traders) Regulations, Cap.139B.”

Annexure C

“When any person has been convicted of an offence under section ?? or of any regulations made under this Ordinance, the court may make an order directing such person to attend a specified programme.”

*“**Specified programme** means a programme that is for the time being approved in accordance with regulations made under this Ordinance; and that is provided by a programme provider; and that has the primary objective of preventing abuse to animals on the part of the person convicted of an offence under this Ordinance.”*

*“**Programme provider** means a person who is for the time being approved, in accordance with regulations made under this Ordinance, to provide programmes.”*

Annexure D

Delete the proviso of section 5(3) of Cap.169:-

s.5(3) *“If any animal has been taken to any place in pursuance of an order made under this section any person who has been convicted of an offence in respect of such animal shall be liable to pay the prescribed fees for its maintenance and treatment for so long as it shall remain therein, and such fees may be recovered as a fine. ~~Provided that, if the owner of any such animal shall request the officer in charge of the animal~~*

~~to destroy it, such officer shall forthwith cause the animal to be destroyed, and no fees shall be payable in respect of the maintenance or treatment of such animal for any time subsequent to such request.”~~

Annexure E

蘋果日報 / 2005-10-8

官曾查詢控罪 案件押後判
男子掙死狗被控刑事損毀

【本報訊】中年漢與女友因感情問題爭執，竟將女友心愛的北京狗從二十二樓掙落平台慘死，他昨在屯門裁判法院承認刑事損毀罪名，求情稱一時意氣用事，願意作出賠償，裁判官查問為何不控告虐畜罪，控方表示經徵詢法律指示，認為控以刑事損毀罪較恰當，案件現押後至十月二十日，待取閱社會服務令報告，被告准保釋候判。

北京犬為其女友所有

被告黃志倫，三十二歲，任職服務員，控罪指他於本年九月十五日在天水圍天恆的二十二樓單位，無合法辯解意圖損毀屬於女子陳月珍的一隻北京狗，價值一千五百元。

案情透露，被告與事主為同居男女朋友，事發當晚兩人在寓所飲酒聊天，至凌晨五時許，兩人因感情問題發生爭吵，事主表示要離開單位，但被告出言威嚇，若她離去會將其心愛北京狗掙落街，事主未有理會便離開。

約三十分鐘後，事主折返寓所，不但屋內空無一人，連小狗也不見，她擔心被告會對愛犬不利，於是報警，警方到場與事主四處搜尋，結果發現小狗倒斃在大廈平台，被告則站在一旁。被告被拘捕後，警誡下承認一時惱怒，才將小狗掙落街。

論刑罰較虐畜罪更重

大律師陸偉雄指出，根據案情，本案控以刑事損毀罪合適。他解釋，不論小狗屬於生物或死物，但牠為事主的擁有物，被告將牠從高處掙死，即是將事主具擁有權的物品破壞。

此外，本案亦可考慮控告虐畜或高空擲物罪名，但相信小狗被掙落街墜斃前，沒有遭受被人捉懸吊在半空，受驚嚇折磨等虐待，故此不控告虐畜罪名。

陸偉雄表示，其實刑事損毀罪的刑罰最高可判監十年，較虐畜罪最高可判監半年為重，至於高空擲物罪的刑罰一般為判處罰款，相信控方並沒有輕率處理本案。

案件編號：TMCC 3063/2005

Annexure F

“Any person who abandon an animal shall be liable on summary conviction for a fine of \$100,000 and to imprisonment for 3 years.”

Annexure G

“(1) If a magistrate, senior veterinary officer, health officer, health inspector, government medical officer, or police officer not below the rank of inspector reasonably believes that an animal is suffering, he may take, or arrange for the taking of, such steps as appear to him to be immediately necessary to alleviate the animal’s suffering.

(2) Subsection (1) does not authorise the killing of an animal.

(3) If two veterinary surgeons certify that the condition of an animal is such that it should in its own interests be killed, a magistrate, senior veterinary officer, health officer, health inspector, government medical officer, or police officer not below the rank of inspector may—

(a) kill the animal where it is or take it to another place and kill it there, or

(b) arrange for the doing of any of the things mentioned in paragraph (a).

Provided that the animal is killed only by way of administering euthanasia.

(4) A magistrate, senior veterinary officer, health officer, health inspector, government medical officer, or police officer not below the rank of inspector may act under subsection (3) without the certificate of two veterinary surgeons if it appears to him—

(a) that the condition of the animal is such that there is no reasonable alternative to killing it,

and

(b) that the need for action is such that it is not reasonably practicable to wait for a veterinary surgeon.

(5) A magistrate, senior veterinary officer, health officer, health inspector, government medical officer, or police officer not below the rank of inspector may take an animal into possession if two veterinary surgeons certify—

(a) that it is suffering, or

(b) that it is likely to suffer if its circumstances do not change.

(6) A magistrate, senior veterinary officer, health officer, health inspector, government medical officer, or police officer not below the rank of inspector may act under subsection (5) without the certificate of two veterinary surgeons if it appears to him—

(a) that the animal is suffering or that it is likely to do so if its circumstances do not change,

and

(b) that the need for action is such that it is not reasonably practicable to wait for a veterinary surgeon.

(7) The power conferred by subsection (5) includes power to take into possession dependent offspring of an animal taken into possession under that subsection.

(8) Where an animal is taken into possession under subsection (5), a magistrate, senior veterinary officer, health officer, health inspector, government medical officer, or police officer not below the rank of inspector may—

(a) remove it, or arrange for it to be removed, to a place of safety;

(b) care for it, or arrange for it to be cared for—

(i) on the premises where it was being kept when it was taken into possession, or

(ii) at such other place as he thinks fit;

(c) mark it, or arrange for it to be marked, for identification purposes.

(9) A person acting under subsection (8)(b)(i), or under an arrangement under that provision,

may make use of any equipment on the premises.

(10) A veterinary surgeon may examine and take samples from an animal for the purpose of determining whether to issue a certificate under subsection (3) or (5) with respect to the animal.

(11) If a person exercises a power under this section otherwise than with the knowledge of a person who is responsible for the animal concerned, he must, as soon as reasonably practicable after exercising the power, take such steps as are reasonable in the circumstances to bring the exercise of the power to the notice of such a person.

(12) A person commits an offence if he intentionally obstructs a person in the exercise of power conferred by this section.

(13) A magistrates' court may, on application by a person who incurs expenses in acting under this section, order that he be reimbursed by such person as it thinks fit."

Annexure H

"Any person who transfer an animal by way of sale or prize to persons whom he has reasonable cause to believe to be under the age of 18 shall be liable on summary conviction for a fine of \$50,000 and to imprisonment for 12 months."