

二零一七年一月十七日
討論文件

立法會食物安全及環境衛生事務委員會
研究動物權益相關事宜小組委員會

檢討《防止殘酷對待動物條例》中
有關「殘酷對待動物」的定義及相關罰則

引言

政府已就《防止殘酷對待動物條例》（第 169 章）（“《條例》”）中有關「殘酷對待動物」的定義，以及《條例》和《防止殘酷對待動物規例》（第 169A 章）（“《規例》”）下的相關罰則，參考其他司法管轄區的同等定義／罰則而作出檢討。本文件概述有關檢討結果。

本港的現時情況

2. 《條例》是藉禁止和懲處殘酷對待動物以保障動物福利的主體法例，而《規例》則訂明以禁閉方式畜養動物或於進出口運載期間的條件。根據《條例》，任何人如殘酷地打、踢、惡待、過度策騎、過度驅趕任何動物或殘酷地使任何動物負荷過重或殘酷地將其折磨、激怒或驚嚇，或因胡亂或不合理地作出或不作出某種作為而導致任何動物受到任何不必要的痛苦，即屬違法。任何人如據有或畜養任何動物，而所採用的方式可能導致該動物受到不必要或原可避免的痛苦，或疏於對動物提供充足的食物和清水，亦屬違法。此外，擁有人如沒有就保護動物免受殘酷對待而作出合理的謹慎措施及監管，須當作已准許殘酷對待動物。《規例》進一步載列以禁閉方式畜養動物或於進出口運載期間的基本規定，包括提供足夠遮蓋、保持清潔、有充足的照明、通風，及潔淨清水。警方及漁農自然護理署（“漁護署”）會根據《條例》及《規例》而採取執法行動，包括進行調查及檢控。

3. 政府上一次於 2006 年就《條例》及《規例》所訂定的罰則水平作出修訂。違反《條例》所禁止行為的罪行，最高罰款由 5,000 元大幅提高至 200,000 元，最高監禁刑期則由六個月大增至三年。違反《規例》所載規定的罪行，最高罰款由 2,000 元增至 50,000 元。法庭根據《條例》而定罪的案件中，曾頒布的最高刑罰為監禁 16 個月。

與其他司法管轄區的比較

「殘酷對待動物」的定義

4. 漁護署已把《條例》中「殘酷對待動物」的現行定義及罰則，與其他國家／地方的相關法例條文作比較，詳情見附件 A。在這些法例條文之中，大多數都以作出或不作出行為，導致動物受到不必要痛苦，作為「殘酷對待動物」定義的基本原則。此外，《條例》中「殘酷對待動物」的定義，與某些司法管轄區的條文甚為相近（例如：昆士蘭、新南威爾士州、加利福尼亞州和新加坡）。

5. 《條例》規定擁有人如沒有就保護動物免受殘酷對待而作出合理的謹慎措施及監管，須當作已准許殘酷對待動物。除了透過法例外，漁護署亦就如何善待動物及寵物，以及如何做個盡責的寵物主人方面提供建議。有些司法管轄區以守則方式列明這些要求，例如：新加坡、英國和新西蘭。

殘酷對待動物的最高罰則

6. 其他地區對殘酷對待動物的最高罰則，各有不同，監禁刑期由一年至七年不等，而最高罰款則由約 15 萬元至超過 100 萬元。另一方面，澳門採用按日的方法計算罰款。有關其他地方的罰則水平載於附件 B。

結論及未來路向

7. 經研究其他司法管轄區的有關法例條文之後，我們發現《條例》中「殘酷對待動物」的現行定義與這些地方所採用的定義大致相符。事實上，《條例》訂定的最高罰則比大部分這些地方為重。政府認為現時的法例條文及罰則水平具阻嚇作用，可有效防止殘酷對待動物的行為。透過警方、漁護署和動物福利機構通力合作，政府會繼續嚴厲打擊殘酷對待動物行為，並全力執行《條例》及《規例》的規定。

8. 此外，政府會致力加強在保障動物福利方面的工作，並會於適時推出新措施。漁護署會繼續透過廣告和網站增加公眾教育和宣傳，以宣揚愛護動物和以負責任的態度飼養寵物等訊息；舉辦推廣及動物領養活動；以及舉行學校講座及社區參與活動。

9. 去年，《公眾衛生(動物及禽鳥)(動物售賣商)規例》(第139B章)(“《動物售賣商規例》”)經已修訂，以加強規管動物售賣及狗隻繁育活動。《動物售賣商規例》的最高罰則，已由2,000元增至100,000元(涉及並無持有牌照或單次許可證而出售動物或禽鳥、飼養狗隻以作繁育及出售用途)，以及由1,000元增至50,000元(涉及違反牌照或許可證的附加條件)，以增強對違反動物售賣商和狗隻繁育牌照條件的阻嚇作用。此外，漁農自然護理署署長(“漁護署署長”)如認為某人並非動物售賣商／狗隻繁育者的適當人選，包括考慮該人曾否違反《條例》所載的罪行等因素，可拒絕批給牌照或取消牌照。漁護署會推行宣傳計劃，以向市民及業界傳遞有關動物售賣商及狗隻繁育者的新規管要求。

10. 在實施新規管制度的同時，漁護署即將發出適用於持牌動物售賣商及狗隻繁育者的新營業守則，以保障由牌照持有人在領有牌照處所內照顧及管理的狗隻的福利。營業守則列明在經營動物售賣及狗隻繁育活動方面對持牌人及在持牌處所工作的員工的規定。舉例而言，有關規定包括對環境及設施、溫度、通風設備、照明、持牌人和其員工的培訓(如有的話)，以及記錄保存等方面的規定。經諮詢業界、動物福利諮詢小

組、食物安全及環境衛生事務委員會（於 2016 年 6 月）後，漁護署已將營業守則的最新擬稿上載其網站 (<http://www.pets.gov.hk>)，並於規管制度開始實施時一併推行。漁護署會逐步向狗隻以外的其他動物（例如貓及爬行類動物）的持牌售賣商，制定營業守則。

徵詢意見

11. 請委員備悉本文件的內容。

食物及衛生局
漁農自然護理署
二零一七年一月

Definitions of “Cruelty to Animals” in Other Countries / Places
其他國家／地方對「殘酷對待動物」的定義

Country / Place 國家 / 地區	Law 法例	Definition of “Cruelty to Animals” 對「殘酷對待動物」的定義
New South Wales 新南威爾士州	Prevention of Cruelty to Animals Act 1979	<p>Under section 4(2), for the purposes of this Act, a reference to an act of cruelty committed upon an animal includes a reference to any act or omission as a consequence of which the animal is unreasonably, unnecessarily or unjustifiably:</p> <ul style="list-style-type: none">(a) beaten, kicked, killed, wounded, pinioned, mutilated, maimed, abused, tormented, tortured, terrified or infuriated,(b) over-loaded, over-worked, over-driven, over-ridden or over-used,(c) exposed to excessive heat or excessive cold, or(d) inflicted with pain. <p>Under Section 4(3), for the purposes of this Act, a person commits an act of aggravated cruelty upon an animal if the person commits an act of cruelty upon the animal or (being the person in charge of the animal) contravenes section 5(3) in a way which results in (a) the death, deformity or serious disablement of the animal, or (b) the animal being so severely injured, so diseased or in such a physical condition that it is cruel to keep it alive.</p> <p>Under Section 5, (1) a person shall not commit an act of cruelty upon an animal.</p> <ul style="list-style-type: none">(2) a person in charge of an animal shall not authorise the commission of an act of cruelty upon the animal;(3) a person in charge of an animal shall not fail at any time:<ul style="list-style-type: none">(a) to exercise reasonable care, control or supervision of an animal to prevent the commission of an act of cruelty upon the animal,(b) where pain is being inflicted upon the animal, to take such reasonable steps as are necessary to alleviate the pain; or(c) where it is necessary for the animal to be provided with veterinary treatment, whether or not over a period of time, to provide it with that treatment.

Country / Place 國家 / 地區	Law 法例	Definition of “Cruelty to Animals” 對「殘酷對待動物」的定義
Queensland 昆士蘭	Animal Care and Protection Act 2001	<p>Section 18 states that a person is taken to be cruel to animal if the person does any of the following to be the animal –</p> <ul style="list-style-type: none"> (a) causes it pain that, in the circumstances, is unjustifiable, unnecessary or unreasonable; (b) beats it so as to cause the animal pain; (c) abuses, terrifies, torments or worries it; (d) overdrives, overrides or overworks it; (e) uses on the animal an electrical device prescribed under a regulation; (f) confines or transports it— <ul style="list-style-type: none"> (i) without appropriate preparation, including, for example, appropriate food, rest, shelter or water; or (ii) when it is unfit for the confinement or transport; or (iii) in a way that is inappropriate for the animal’s welfare; or (iv) in an unsuitable container or vehicle; (g) kills it in a way that— <ul style="list-style-type: none"> (i) is inhumane; or (ii) causes it not to die quickly; or (iii) causes it to die in reasonable pain; (h) unjustifiably, unnecessarily or unreasonably— <ul style="list-style-type: none"> (i) injures or wounds it; or (ii) overcrowds or overloads it.
New Zealand 新西蘭	Animal Welfare Act 1999	<p>Section 10 states that the owner of an animal, and every person in charge of an animal, must ensure that the physical, health, and behavioural needs of the animal are met in a manner that is in accordance with both—</p> <ul style="list-style-type: none"> (a) good practice; and (b) scientific knowledge. <p>Section 11 states that (1) The owner of an animal that is ill or injured, and every person in charge of such an animal, must ensure that the animal receives treatment that alleviates any unreasonable or unnecessary pain or distress being suffered by the animal.</p>

Country / Place 國家 / 地區	Law 法例	Definition of “Cruelty to Animals” 對「殘酷對待動物」的定義
		<p>Section 12 states that a person commits an offence who, being the owner of, or a person in charge of, an animal,—</p> <ul style="list-style-type: none"> (a) fails to comply, in relation to the animal, with section 10 (Obligation in relation to physical, health, and behavioural needs of animals); or (b) fails, in the case of an animal that is ill or injured, to comply, in relation to the animal, with section 11(Obligation to alleviate pain or distress of ill or injured animals); or (c) kills the animal in such a manner that the animal suffers unreasonable or unnecessary pain or distress. <p>Section 14 states that</p> <ul style="list-style-type: none"> (1) A person commits an offence who, being the owner of, or a person in charge of, an animal, without reasonable excuse,— <ul style="list-style-type: none"> (a) keeps the animal alive when it is in such a condition that it is suffering unreasonable or unnecessary pain or distress; or (b) sells, attempts to sell, or offers for sale, otherwise than for the express purpose of being killed, the animal when it is suffering unreasonable or unnecessary pain or distress. (2) A person commits an offence who, being the owner of, or person in charge of, an animal, without reasonable excuse, deserts the animal in circumstances in which no provision is made to meet its physical, health, and behavioural needs. <p>Section 28 states that a person commits an offence if that person wilfully ill-treats an animal with the result that—</p> <ul style="list-style-type: none"> (a) the animal is permanently disabled; or (b) the animal dies; or (c) the pain or distress caused to the animal is so great that it is necessary to destroy the animal in order to end its suffering; or (d) the animal is seriously injured or impaired.

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UK 英國	Animal Welfare Act 2006	<p>Section 4 states that</p> <p>(1) A person commits an offence if—</p> <ul style="list-style-type: none"> (a) an act of his, or a failure of his to act, causes an animal to suffer, (b) he knew, or ought reasonably to have known, that the act, or failure to act, would have that effect or be likely to do so, (c) the animal is a protected animal, and (d) the suffering is unnecessary. <p>(2) A person commits an offence if—</p> <ul style="list-style-type: none"> (a) he is responsible for an animal, (b) an act, or failure to act, of another person causes the animal to suffer, (c) he permitted that to happen or failed to take such steps (whether by way of supervising the other person or otherwise) as were reasonable in all the circumstances to prevent that happening, and (d) the suffering is unnecessary. <p>(3) The considerations to which it is relevant to have regard when determining for the purposes of this section whether suffering is unnecessary include—</p> <ul style="list-style-type: none"> (a) whether the suffering could reasonably have been avoided or reduced; (b) whether the conduct which caused the suffering was in compliance with any relevant enactment or any relevant provisions of a licence or code of practice issued under an enactment; (c) whether the conduct which caused the suffering was for a legitimate purpose, such as— <ul style="list-style-type: none"> (i) the purpose of benefiting the animal, or (ii) the purpose of protecting a person, property or another animal; (d) whether the suffering was proportionate to the purpose of the conduct concerned; (e) whether the conduct concerned was in all the circumstances that of a reasonably competent and humane person.

Country / Place 國家 / 地區	Law 法例	Definition of “Cruelty to Animals” 對「殘酷對待動物」的定義
California 加利福尼亞州	CA PENAL § 597	<p>Section 597 of the Penal Code of the California states that</p> <p>(a) every person who maliciously and intentionally maims, mutilates, tortures, or wounds a living animal, or maliciously and intentionally kills an animal, is guilty of a crime punishable; and</p> <p>(b) every person who overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, drink, or shelter, cruelly beats, mutilates, or cruelly kills any animal, or causes or procures any animal to be so overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, drink, shelter, or to be cruelly beaten, mutilated, or cruelly killed; and whoever, having the charge or custody of any animal, either as owner or otherwise, subjects any animal to needless suffering, or inflicts unnecessary cruelty upon the animal, or in any manner abuses any animal, or fails to provide the animal with proper food, drink, or shelter or protection from the weather, or who drives, rides, or otherwise uses the animal when unfit for labour, is, for each offense, guilty of a crime punishable.</p>
District of Columbia 哥倫比亞特區	DC CODE § 22- 1001 - 1015	<p>Section 22 – 1001 states that</p> <p>(a) whoever knowingly overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, cruelly chains, cruelly beats or mutilates, any animal, or knowingly causes or procures any animal to be so overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, cruelly chained, cruelly beaten, or mutilated, and whoever, having the charge or custody of any animal, either as owner or otherwise, knowingly inflicts unnecessary cruelty upon the same, or unnecessarily fails to provide the same with proper food, drink, air, light, space, veterinary care, shelter, or protection from the weather, shall for every such offense be punished by imprisonment in jail not exceeding 180 days, or by fine not exceeding \$250, or by both.</p> <p>(b) For the purposes of this section, “cruelly chains” means attaching an animal to a stationary object or a pulley by means of a chain, rope, tether, leash, cable, or similar restraint under circumstances that may endanger its health, safety, or well-being. Cruelly chains includes, but is not limited to, the use of a chain, rope, tether, leash, cable or similar restraint that:</p> <ol style="list-style-type: none"> (1) Exceeds 1/8 the body weight of the animal; (2) Causes the animal to choke; (3) Is too short for the animal to move around or for the animal to urinate or defecate in a separate area from the area where it must eat, drink, or lie down;

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		<p>(4) Is situated where it can become entangled; (5) Does not permit the animal access to food, water, shade, dry ground, or shelter; or (6) Does not permit the animal to escape harm.</p> <p>(c) For the purposes of this section, “serious bodily injury” means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, mutilation, or protracted loss or impairment of the function of a bodily member or organ. Serious bodily injury includes, but is not limited to, broken bones, burns, internal injuries, severe malnutrition, severe lacerations or abrasions, and injuries resulting from untreated medical conditions.</p> <p>(d) Except where the animal is an undomesticated and dangerous animal such as rats, bats, and snakes, and there is a reasonable apprehension of an imminent attack by such animal on that person or another, whoever commits any of the acts or omissions set forth in subsection (a) of this section with the intent to commit serious bodily injury or death to an animal, or whoever, under circumstances manifesting extreme indifference to animal life, commits any of the acts or omissions set forth in subsection (a) of this section which results in serious bodily injury or death to the animal, shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment not exceeding 5 years, or by a fine not exceeding \$25,000, or both.</p>
Singapore 新加坡	Animals and Birds Act	<p>Section 42 states that</p> <p>(1) Any person who — cruelly beats, kicks, ill-treats, over-rides, over-drives, over-loads, tortures, infuriates or terrifies any animal; causes or procures or, being the owner, permits any animal to be so used; by wantonly or unreasonably doing or omitting to do any act, causes any unnecessary pain or suffering or, being the owner, permits any unnecessary pain or suffering to any animal; employs or causes or procures or, being the owner, permits to be employed in any work of labour, any animal which in consequence of any disease, infirmity, wound or sore, or otherwise is unfit to be so employed; or causes, procures or assists at the fighting or baiting of any animal, or keeps, uses, manages, or acts or assists in the management of any premises or place for the purpose, or partly for the purpose, of fighting or baiting any animal, or permits any premises or place to be so kept, managed or used, or receives or causes or procures any person to receive money for the admission of any person to the premises or place, shall be</p>

Country / Place 國家 / 地區	Law 法例	Definition of “Cruelty to Animals” 對「殘酷對待動物」的定義
		<p>guilty of an offence.</p> <p>(2) For the purposes of subsection (1), an owner shall be deemed to have permitted cruelty to an animal, if he has failed to exercise reasonable care and supervision in respect of the animal.</p>
Japan 日本	Law concerning Protection and Control of Animals	Cruelty means causing unnecessary pain to animal, killing or hurting animal without proper reason, negligence in daily care, not providing medical treatment to injured or sick animal, not providing sufficient food and water, and other neglects.
Taiwan 台灣	Animal Protection Act 動物保護法	<p>Article 5</p> <p>5.1 An animal owner must be over 20 years of age. The statutory agent or legal guardian of a minor (anyone less than 20 years old) keeping or tending animals shall be the owner on behalf of the minor.</p> <p>5.2 Regarding animals tended under his care, an owner shall comply with the followings:</p> <p>5.2.1 Providing proper, clean and harmless food as well as adequate and clean water which should be available at all times.</p> <p>5.2.2 Providing a living environment that is safe, clean, well- ventilated, non-flooding with proper and adequate shelter, lighting and warmth.</p> <p>5.2.3 Providing necessary precaution against infectious animal diseases.</p> <p>5.2.4 Preventing the animal from harassment, abuse or injury.</p> <p>5.2.5 Providing adequate room for a caged pet to stretch and move about, while allowing sufficient out-of-cage activities.</p> <p>Article 6 One must not harass, abuse or injure any animal.</p> <p>Article 10</p> <p>10.1 One must not do the followings to any animal:</p> <p>10.1.1 Conducting fights that pit an animal against another animal or human for direct/indirect gambling, entertainment, profit, business promotion or a dubious purpose.</p> <p>10.1.2 Conducting animal races or contests for direct/indirect gambling.</p>

Country / Place 國家 / 地區	Law 法例	Definition of “Cruelty to Animals” 對「殘酷對待動物」的定義
		<p>10.1.3 Abusing, swapping or giving away animals for direct/indirect gambling or a dubious purpose.</p> <p>Article 12 No one shall be allowed to kill animals without due cause unless in any of the [specified] situations under the law.</p> <p>第 5 條 動物之飼主，以年滿二十歲者為限。未滿二十歲者飼養動物，以其法定代理人或法定監護人為飼主。</p> <p>飼主對於其管領之動物，應依下列規定辦理： 一、提供適當、乾淨且無害之食物及二十四小時充足、乾淨之飲水。 二、提供安全、乾淨、通風、排水、適當及適量之遮蔽、照明與溫度之生活環境。 三、提供法定動物傳染病之必要防治。 四、避免其遭受騷擾、虐待或傷害。 五、以籠子飼養寵物者，其籠內空間應足供寵物充分伸展，並應提供充分之籠外活動時間。</p> <p>第 6 條 任何人不得騷擾、虐待或傷害動物。</p> <p>第 10 條 對動物不得有下列之行為： 一、以直接、間接賭博、娛樂、營業、宣傳或其他不當目的，進行動物之間或人與動物間之搏鬥。 二、以直接、間接賭博為目的，利用動物進行競技行為。 三、以直接、間接賭博或其他不當目的，而有虐待動物之情事，進行動物交換或贈與。</p>

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		<p>第 12 條 對動物不得任意宰殺。但有[法例上列明的情事之一者]，不在此限。</p>
Macau 澳門	Animal Protection Law 動物保護法	<p>Section 25 states that treating animals through cruel, violent or torturous means with intent to inflict suffering on them, which leads to severe physical disabilities, loss of important organs or death is punishable by a maximum of one year or a fine of up to 120 days.</p> <p>第 25 條訂定意圖令動物受痛苦，使用殘忍、暴力或折磨的手段對待動物，造成其肢體嚴重殘缺、失去重要器官或死亡者，處最高一年徒刑或科最高 120 日罰金。</p>

其他國家／地方對「殘酷對待動物」的罰則

國家／地方	法例	針對個人的 最高罰款額	最高監禁 刑期
新南威爾士州	Prevention of Cruelty to Animals Act 1979	AUD22,000 (HK\$131,000)	5 年
昆士蘭	Animal Care and Protection Act 2001	AUD235,600 (HK\$1,400,000)	7 年
新西蘭	Animal Welfare Act 2002	NZD100,000 (HK\$560,000)	5 年
英國	Animal Welfare Act 2006	GBP20,000 (HK\$200,000)	51 周
加利福尼亞州	California Penal Code 597	USD20,000 (HK\$156,000)	1 年
哥倫比亞特區	DC CODE § 22-1001 - 1015	USD25,000 (HKD194,000)	5 年
新加坡	Animals and Birds Act	SGD30,000 (HKD171,000)	3 年
日本	Law concerning Protection and Control of Animals	Yen 2,000,000 (HKD153,000)	2 年
台灣	動物保護法	NT\$1,000,000 (HKD247,000)	1 年
澳門	動物保護法	MOP 20,000 per day (每日)	1 年