CHAPTER 13

ANIMAL WELFARE ADMINISTRATION IN AUSTRALIA

Introduction

13.1 The Committee believes it is timely to consider the administration of animal welfare in Australia in this report. Administration of animal experimentation is intertwined with the administration of general animal welfare matters in some States so that consideration of one and not the other would be impractical.

13.2 The administration of animal welfare falls into two areas - the legislative, regulatory and administrative framework on the one hand and operational matters on the other. In this report the Committee will address the former but not the latter. Operational matters, such as the day-to-day administration of prevention of cruelty to animals legislation and the funding of animal welfare organisations with statutory responsibilities, will be examined and reported on later in the Committee's inquiry.

Commonwealth/State Responsibilities

13.3 Under the Commonwealth Constitution, animal welfare is mainly a State responsibility. The Commonwealth Government has direct responsibility for quarantine, customs, exports and imports. It also has other responsibilities which arise indirectly from its activities in the field of foreign affairs. Under the latter, for example, the Commonwealth has to deal with

animal welfare issues on a government to government basis and act as a focal point for other overseas interests in animal welfare in Australia. In recent years, overseas concern about the killing of kangaroos and the helicopter shooting of horses and buffalo, among other issues, has generated considerable work for the Commonwealth Government. It has had to respond to numerous letters from overseas and to defend Australian policies and practices in a number of overseas forums, particularly in Europe and the U.S.A.

13.4 Nevertheless, most animal welfare issues remain State responsibilities. In each State and Territory there is legislation for the prevention of cruelty to animals.

13.5 The legislation in New South Wales, Victoria and South Australia was significantly revised between 1985 and 1986 to take account of changing community attitudes to the use and care of animals. In New South Wales the Government enacted separate legislation (the Animal Research Act 1985) to control the use of animals in research and teaching.

13.6 In Queensland, the Government recently advertised a review of the Animals Protection Act. A wide review of the Prevention of Cruelty to Animals Ordinance 1959 has been done in the A.C.T. The period for public comment on the report of the review has closed and new legislation may be prepared later in the year. A little work has been done on revising the Western Australian Prevention of Cruelty to Animals Act 1920-1976. As far as the Committee can find out, no work has been done to update the Tasmanian Cruelty to Animals Prevention Act 1925 or the Prevention of Cruelty to Animals Act in the Northern Territory.

13.7 Under the revised legislation, animal welfare advisory councils (AWAC) have been appointed in New South Wales, Victoria and South Australia. In New South Wales, in addition to the AWAC, an Animal Research Review Panel has been appointed under the Animal Research Act 1985.

13.8 These three States have adopted a new participative approach to animal welfare administration by including on the advisory councils representatives of a range of animal welfare, community, user and government interests.

13.9 There are two main Commonwealth/State organisations which have been involved in animal welfare issues - the Sub-Committee on Animal Welfare of the Australian Agricultural Council (SCAW) and the Joint Animal Welfare Council (JAWC). SCAW's main function has been to prepare codes of practice for farm animal husbandry and transportation. It was also involved in the preparation of the 1985 edition of the Code of Practice for the Care and Use of Animals for Experimental Purposes and in the current revision of the Code of Practice.

13.10 JAWC comprises the Chairmen of State AWACs and the officers responsible for the administration of animal welfare in the States, Territories and the Commonwealth. At present, membership has been limited to those States which have appointed AWACs, but observers from Western Australia, the A.C.T., the Northern Territory and the Commonwealth have attended meetings.

13.11 The main purpose of JAWC is to provide a forum for State, Territory and Commonwealth animal welfare administrators and representatives of AWACS to discuss issues of mutual concern with a view to the States and Territories adopting, where possible, a common approach to them.

13.12 Because only three States have appointed AWACs, JAWC is still in its formative stage. Nevertheless, it has successfully brought together representatives from States and Territories to consider various animal welfare problems.

13.13 A number of organisations in their original submissions proposed a national structure for animal welfare administration in Australia. These proposals centred on the Commonwealth Government playing a key role in developing and co-ordinating animal welfare policy. These proposals are outlined below.

13.14 In its original submission, ANZFAS proposed that the Commonwealth Government assume responsibility for animal welfare in Australia and establish a statutory authority to administer it nationally. ANZFAS acknowledged that there was no constitutional head of power under which the Commonwealth could make laws concerning animals, but stated that:

> ... reliance upon a combination of existing heads of power capable of application to animals and their welfare would suffice to create a statutory authority equipped to play a significant role in animal welfare in Australia. Perhaps, such existing heads of power could be amplified by co-operation amongst the States.[1]

13.15 ANZFAS recommended the assumption of responsiblity by the Commonwealth Government for animal welfare in order to achieve a greater uniformity in the regulation of animal welfare among the States and Territories. As mentioned above, there are significant differences of approach among the States, although the establishment of JAWC is an acknowledgement of this problem and a realisation that a more uniform approach is desirable.

13.16 In its submission to the Committee in 1984, RSPCA Australia stated its belief that:

> ... to achieve a satisfactorily co-ordinated overview of animal welfare in this country, the Government, through the Minister of Primary Industry should be the controlling influence.[2]

13.17 RSPCA went on to recommend that it become a consultative body to the Minister, situated between the Minister and a proposed national animal welfare advisory committee in the flow chart in the submission.[3] The State Governments would be represented through the Australian Agricultural Council. Both the Council and the advisory committee would be served by the then Australian Bureau of Animal Health (ABAH) within the Department of Primary Industry.

13.18 At the time of the RSPCA's submission, there was a strong body within ABAH supportive of animal welfare. Since then, ABAH has undergone several metamorphoses and the animal welfare function of ABAH has disappeared. Such matters have been dealt with by one division or another as necessary, but no division has displayed any interest in handling animal welfare on a long-term basis.

13.19 The Australian Veterinary Association (AVA) also proposed the establishment of a national animal welfare advisory council in its submission to the Committee in 1984. In this proposal, the role of the advisory council would include the provision of a forum for discussing animal welfare issues; the identification and promotion of research into animal welfare matters and the supervision of the allocation of funds for that research and advice to governments on animal welfare and the need for legislation.

13.20 It should be remembered that these recommendations for the establishment of a national animal welfare advisory committee were made four or five years ago before three of the State Governments had revised animal welfare legislation and established or expanded animal welfare units within their administrations.

13.21 Until 1985, the States had kept a low profile in animal welfare matters. On the other hand, ABAH was playing a leading role in promoting animal welfare. It was natural, therefore, for organisations that sought change in animal welfare policies and practices to focus attention on ABAH and to formulate a structure for the administration of animal welfare with ABAH playing a central role.

13.22 With the demise of ABAH and the moves by State and Territory Governments to take control of animal welfare, the situation is now very different to that which prevailed in 1984.

13.23 In October 1988, following representations from RSPCA Australia, the Minister for Primary Industries and Energy proposed the appointment of a national animal welfare consultative council. The proposal was along the lines of the RSPCA's recommendations although it did not encompass the wider framework as contained in RSPCA's submission to the Committee. It also did not address the potential overlap of functions between the consultative council and SCAW.

13.24 There are major problems with the establishment of a national AWAC, given that constitutional responsibility for animal welfare rests largely with the States.

13.25 The problems can be most clearly identified by considering the lines of authority for implementing advice given by an advisory body. If the person to whom the advice is given has no authority to take action on that advice, it is questionable whether there is justification for that person having a body to advise him.

13.26 A national AWAC would obviously advise a Commonwealth minister on matters for which that minister had responsibility and authority. These are, as mentioned earlier, few in number.

13.27 It is incongruous for State Government representatives on a national AWAC to advise a Commonwealth minister on any matter for which responsibility and authority is vested in State and Territory ministers. For that advice to be implemented, the Commonwealth minister would have to approach the State and Territory ministers asking them to take action. If the State representatives on a national AWAC had assented to particular advice being given to the Commonwealth minister, they would, presumably, in most cases have already taken up the matter with their State AWACs and cleared it with their ministers beforehand. It would therefore be unnecessary for a Commonwealth minister to ask the State ministers to take action on a particular proposal because the State ministers would already have agreed to it.

13.28 With the States and Territories progressively moving to take up animal welfare responsibilities in an active way, there is no prospect of the State Governments voluntarily handing over their responsibilities to the Commonwealth Government. The Commonwealth Government has also shown no inclination to use indirect constitutional mechanisms, if in fact they exist, to usurp those responsiblities. Without a political willingness to transfer responsibility for animal welfare from the States and Territories to the Commonwealth, there is no point in pursuing an approach which is fraught with political and administrative difficulties.

13.29 Even if the Commonwealth were to take on responsibility for animal welfare, it would either depend on the States for much of the administration or it would have to assemble a large bureaucracy to oversee the administration of animal welfare. In the current economic climate of restraint on government spending, the latter is neither desirable nor practicable. If the Commonwealth were to devolve the administration of some of its animal welfare programmes to the States, the question might be asked as to why the States gave up the responsibility in the first place.

13.30 However, even if devolution occurred, there is no assurance that uniformity in approach by the participating States would continue. During its examination of the live sheep export industry, the Committee found significantly different approaches being taken among the State authorities acting on behalf of the Commonwealth Government. There was also a lack of will on the part of the Commonwealth authority to maintain a common approach or uphold uniform standards.

13.31 Without national responsibility for animal welfare in the hands of the Commonwealth Government, there is little point in having a national AWAC responsible to a Commonwealth minister. The minister would have no responsibility to take action on the advice of the AWAC, except in those matters where the Commonwealth has a constitutional responsibility, because responsibility is vested in the States.

13.32 Although the Committee does not see the point in the establishment of a national AWAC, it does acknowledge the need for the Commonwealth to have a source of advice on its own areas of responsibility and on those matters which arise in Commonwealth-State forums or are raised in international forums.

13.33 In a supplementary submission dated November 1988, the CSIRO recommended to the Committee that it support the establishment of a Commonwealth AWAC, the main function of which would be to provide advice to the Commonwealth Government. The AWAC would comprise representatives of several Commonwealth Government departments and authorities as well as a number of national organisations, such as ANZFAS, RSPCA Australia, the AVA, the NFF and so on. It also argued that it would be preferable for the AWAC to be responsible to a neutral minister who would not be placed in a position of a potential conflict of interest.

13.34 For a Commonwealth AWAC to be effective, the Minister to which it provides advice has to have responsibility and authority for animal welfare matters across the spectrum of Commonwealth interests. At present, responsibility is spread over a number of ministers. Therefore Cabinet would need to devolve responsibility for animal welfare to one minister.

Federal System

13.35 Having come to the conclusion that a system of animal welfare administration based on Commonwealth primacy is not practicable either politically or operationally, the Committee turned to a federal system.

13.36 An important principle has already been included in animal welfare arrangements in New South Wales, Victoria and South Australia - the participation of animal welfare, community and user representatives in the administrative and policy process. This is necessary if there is to be future co-operation and development of effective animal welfare policies which have broad community support. It cannot be emphasised enough the role which these representatives play. Without this community representation, polarisation of the interests in the debate will lead to more bitter confrontations which can only disrupt the progressive development of policies and programmes to enhance animal welfare in Australia.

13.37 Another essential element in an effective administrative system is extensive consultation and co-operation with other interested organisations which are not represented on the AWAC. By developing policies and practices in conjunction with interested bodies, there will be a greater likelihood of support and co-operation by the organisations and their members.

13.38 Over the period that they have been operational, the three State AWACs have already shown their value.

13.39 The Committee believes that each State and Territory should establish an AWAC along the lines of the three already in existence. Each should be responsible to a neutral minister and served by an animal welfare secretariat in the minister's department. For example, in New South Wales, the Minister for Local Government has responsibility for animal welfare matters while in South Australia, that responsibility is vested in the Minister for Lands.

13.40 Legislation in States and Territories other than New South Wales, Victoria and South Australia needs to be updated to cover the revised administrative arrangements and to provide for regulations which might also include codes of practice.

13.41 Although each State and Territory has responsibility for most animal welfare matters within its borders, there is a need for the States and Territories to achieve as much uniformity as possible in legislative and regulatory requirements and in animal practices. A similar approach should be taken even if identical requirements cannot be achieved because of different environmental and other factors prevailing among the States and Territories.

13.42 As responsibility for animal welfare is vested ultimately in ministers responsible for animal welfare in the States and Territories, questions of uniformity of approach should be considered by them. In many areas of Commonwealth/State relations, there are ministerial councils comprising Commonwealth, State and Territory ministers. It would be appropriate for a council of animal welfare ministers to be established when most States and Territories have appointed AWACs and have updated animal protection legislation.

13.43 If a ministerial council for animal welfare were formed, JAWC would become the standing committee to function along similar lines of standing committees associated with other ministerial councils.

13.44 Until such time as a ministerial council for animal welfare is formed, JAWC should continue to meet to discuss animal welfare matters at AWAC and officer level. Rather than meet annually as it has done, it should meet quarterly to enable more timely discussion of issues as they arise. Throughout the inquiry, the need for uniformity has continually been advocated. At least discussions within JAWC will increase the opportunity of similar or uniform approaches being taken among the States and Territories. Each State and Territory Government will still retain the right to implement policies and enact legislation which it thinks will best enhance animal welfare within its jurisdiction. However, any Government will at least have the benefit of broad advice, not only from its own advisory council but from experience obtained in other States and Territories, before it makes its decisions.

13.45 It is also hoped that JAWC will provide a continuing service distributing information about animal welfare matters among the States.

13.46 The Committee RECOMMENDS that all States and Territories upgrade animal welfare legislation, and establish animal welfare advisory councils and departmental animal welfare units as has been done in New South Wales, Victoria and South Australia.