

CHAPTER 9

REGULATION

Introduction

9.1 Responsibility for good sheep husbandry rests largely with the producers and the industry. The welfare of the sheep is in their hands. It is their investment which is at risk if production is reduced through undue stress being placed on the sheep through neglect or abuse. However, they also have a moral responsibility and a legal obligation to maintain proper care of their animals.

9.2 Evidence received by the Committee was unanimous on the point that the majority of sheep producers are responsible people who do not maltreat their animals. Although industry sources could be expected to take this line, and did,¹ groups with no vested interest supported them. Dr Brennan, representing the RSPCA (Australia), stated "most producers are abiding by good husbandry standards; it is a small proportion that is not".²

9.3 In good times, there is probably little neglect or abuse of sheep by producers; it would only impact on production. However, in a drought or in the aftermath of bushfires or floods, welfare may be at odds with economics. As discussed in Chapter 8, some producers have delayed taking action in the hope of improvements in the weather or in their circumstances and thereby causing increased distress to sheep already in a poor condition.

9.4 The Committee's concern is twofold: firstly, to ensure that the ground rules for good sheep husbandry are precisely and unambiguously laid down so that everyone understands the framework within which they are operating; and secondly, to ensure that incidences of malpractice are dealt with as swiftly as possible to protect the animals in question from further suffering, and to deter further neglect or abuse.

9.5 In this chapter, the Committee examines the controls which operate in the industry to prevent abuse or neglect of sheep.

The present regulatory situation

9.6 All Australian States and Territories have legislation for the prevention of cruelty to animals. Although legislation varies in detail, penalties and enforcement provisions among the States and Territories, it outlines to some extent the type of conduct towards animals that is generally regarded as unacceptable, namely ill-treatment, failure to feed, water or shelter adequately, abandonment, needless mutilation and so forth. The acts, or their regulations, specifically exclude from their provisions surgical operations on livestock such as tail docking and castration.

9.7 The State and Territory legislation provide for inspectors who are usually specified RSPCA or other animal welfare personnel or departmental officers. The inspectors normally conduct investigations following complaints about offences which have allegedly been committed under the legislation. Most inspectors are based in the capital cities and consequently most investigations are carried out in or around those cities. The RSPCAs and other specified non-government organisations do not have the resources to appoint more inspectors to carry out inspections more widely in country areas.

9.8 In Queensland, for example, the RSPCA in 1983-84 had four inspectors to cover most of the State. Sometimes, the RSPCA asked the police in country towns to make initial inquiries to find out whether the case warranted an inspector travelling to the town.³

9.9 Inspectors usually try to solve problems through advice or persuasion rather than by taking legal action. Prosecuting people can be time-consuming and expensive. In Victoria, for example, in 1987-88, of 419 cases involving sheep which were investigated by RSPCA inspectors, only 23 needed to be prosecuted.⁴ The intervention of the inspectors was generally sufficient to obtain the requisite remedial action in the other instances of neglect.

9.10 Sometimes, attempts to resolve a problem by negotiation go on for too long to the detriment of the animal. In the case described in paragraph 6.3 above, the sheep which had not been shorn for four years were in a terrible state when they were eventually confiscated by the RSPCA. Many attempts by various people and organisations to persuade the owner to shear the sheep were to no avail.

9.11 When cases have been taken to court, and convictions recorded, the penalties imposed do not always reflect the gravity of the offence. A Tasmanian case of failure to treat flystruck sheep, which resulted in the deaths of 20 of them, attracted a \$50 fine for cruelty and a \$25 fine for failure to remove carcasses.⁵

9.12 The RSPCAs take action on the receipt of complaints. If there are no complaints, then there are no inquiries. Most cases of neglect or abuse of sheep only come to the attention of neighbours or other people working in the area. As there is a reluctance within the rural community to inform members of that community, it is difficult for cases of neglect or abuse of sheep to come to the notice of the authorities.

9.13 Given the difficulties in detecting neglect or abuse and in getting action to resolve it, the Committee believes that every effort should be made to try to prevent neglect or abuse of sheep in the first place. The industry has an important role to play through dissemination of information and in encouraging producers to care for their sheep at all times. The industry must be pro-active in its approach to the development of good animal husbandry practices. If innovative methods of sheep production evolve from research, methods which benefit both sheep and producer, they must be embraced and be seen to be willingly embraced by a forward-looking, caring industry. If, on the other hand, research findings are not presented to producers, or are not acted upon, the industry will stand condemned in the eyes of a public which has become more alerted to welfare issues in recent times. If the sheep and wool industry fails to present a humane face to its consumers, it may be faced with a boycott of its products.

9.14 Developments elsewhere in the world may provide useful pointers to what can be done to show concern for animal welfare issues. To maintain the reputation of its industry, the Iowa Cattlemen's Association has issued a public statement to the effect that any cattle producer in the State who finds himself unable to care for his animals, for whatever reason, can contact the Association, which will assist in agisting the stock or selling them.⁶ The sheep industry in Australia should think about the adoption of a similar policy.

Codes of Practice

9.15 The development of codes of practice for animal husbandry has been underway in Australia over the last decade. Victoria developed a code of accepted farming practice for the welfare of sheep in 1982. Dr Crossing of the Victorian Department of Agriculture and Rural Affairs described its evolution to the Committee, through consultations with animal welfare and industry

interests and public comment. In Victoria, following ministerial approval of a code of practice, it has to lie on the tables of both Houses of Parliament for 14 sitting days before it is gazetted under the Prevention of Cruelty to Animals Act. The code's status was outlined by Dr Crossing as follows:

... the code ... is a standard. ... It can be used by a person in his defence against a charge of cruelty. If a person is operating in accordance with this code of practice he is exempted from legal action under the Prevention of Cruelty to Animals Act. So what this code of practice does is to encourage people ... to adopt animal husbandry practices that are specified in the code.⁷

9.16 A national draft model code of practice for the welfare of sheep is still being revised by the Sub-committee on Animal Welfare of the Animal Health Committee of the Australian Agricultural Council.

Rationale behind codes of practice

9.17 The development of codes of practice has come about not to resolve specific welfare issues, but to "provide an expression of an acceptable level of husbandry and so establish a basis for further legislative, educative or extension activity".⁸ Codes of practice provide the benchmark against which an individual's treatment of his sheep can be measured; a guide to the state of the science of sheep husbandry.

9.18 Codes of practice work on the assumption that it is preferable to encourage, rather than to mandate, considerate treatment of animals. To their supporters, codes of practice which encourage voluntary compliance with their provisions are preferable to "eternal litigation".⁹

9.19 A number of witnesses stressed that part of the value of the codes lay in the process of consultation among the interested parties during their development.¹⁰ The detailed discussion of issues amongst industry, welfare and research groups, veterinarians and departmental officers helps reach a consensus in the codes, without which their acceptance by the farming community would be in jeopardy.

9.20 Codes of practice, as opposed to legislation, provide flexible guidelines which allow for changes brought about by technological developments.

Limitations of codes of practice

9.21 Codes of practice have been criticised as being "motherhood statements", merely representing the lowest common denominator of acceptable practice, and as such, irrelevant for the vast majority of producers who more than comply with the standards.¹¹

9.22 Further, concern has been expressed that codes of practice can never be highly specific or relevant to all the differing husbandry situations which occur throughout Australia.

9.23 The difficulty of enforcing the provisions of codes of practice was noted by many welfare groups¹² and the question then arose as to whether they should be incorporated in legislation or be attached to legislation as regulations or annexes.

Increased monitoring

9.24 Self-regulation alone has been insufficient to eliminate sheep welfare problems in the past. Although it is an important first step, it must be supplemented, in the view of the Committee, by regular external monitoring. The persons with

inspectorial powers under the prevention of cruelty to animals legislation, generally RSPCA inspectors, can act only on a complaint. Further, they are few in number and primarily based in urban areas.

9.25 RSPCA officers report that in the majority of sheep cruelty cases which they investigate, remedial action is taken by the producer without the need for the RSPCA to prosecute. This is obviously the preferred way to deal with the situation. Were there to be more inspectors, it would seem likely that they could forestall more cases of either inadvertent or deliberate cruelty or neglect more quickly, particularly if they had the active co-operation of State department of agriculture officers and local sheep producers.

9.26 The Committee recommends that State and Territory Governments increase the number of RSPCA inspectors authorised under the relevant State prevention of cruelty to animals legislation and provide additional funding to support them.

9.27 Cases of blatant cruelty to animals are covered under existing prevention of cruelty legislation. There are other cases, however, where unnecessary suffering by sheep has occurred, and where the owners have ignored advice or requests by authorities. In some of these cases, proving cruelty under existing legislation has been difficult. Prevention of cruelty to animals legislation has been revamped in recent years in New South Wales, Victoria and South Australia. In Queensland and the Australian Capital Territory, legislation is in the process of being updated. The Committee believes that the States and Territories which do not have revised prevention of cruelty legislation should in fact carry out a revision. This matter is dealt with in more depth in the Committee's report on animal experimentation.

9.28 The Committee believes that State and Territory Governments should include in or attach to regulations a code of practice for sheep husbandry which sets standards against which cases brought to court for neglect or abuse under the legislation may be judged. In other words, a breach of the code of practice cannot be used to launch a prosecution, but when a prosecution is launched under the provisions of the Act itself, the code of practice becomes the standard to assist in determining whether a breach of the Act has occurred. The Committee emphasises that it sees legal action as the last resort except where blatant cruelty has occurred.

9.29 The inclusion of a code of practice for sheep husbandry in regulations as in Victoria is also a protection for the grazier. The grazier just has to show that he is complying with the code of practice to be successful in defending a case brought against him. As the RSPCA or other body bringing an action against a grazier is responsible for its legal costs in unsuccessful cases, it has to be careful as to which cases it proceeds with legal action. It would be rare for the RSPCA or other body with statutory responsibilities to launch a prosecution without a strong case.