



P O Box 60-208 Titirangi
Auckland New Zealand
Tel: +64 9 811 8722

7 October 2009

Hon David Carter
Minister of Agriculture
Parliament Building
Wellington

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Dear Minister

We write to formally request that you, as the responsible Minister, revoke the accreditation of The Animal Welfare Institute of New Zealand as an approved organisation under section 123 of the Animal Welfare Act 1999.

The uncompromising and highhanded manner in which the MAF Assurance and Risk Directorate has pursued its investigation of AWINZ is unacceptable to an organisation which is entirely voluntary and was established to enable the continuation of animal welfare enforcement at Waitakere City at a time in 1999 when MAF was struggling to provide an enforcement response following the privatisation of its Animal Health Division.

To avoid any doubt, none of our comments are directed at MAF Animal Welfare Group, with whom our relationship has always been positive, transparent and objective.

The Trustees have not taken the decision to seek revocation lightly but we are no longer willing to be subjected to the intrusion to which MAF Assurance and Risk Directorate has subjected AWINZ over the past 16 months or so, nor are we able or willing to meet the standards that MAF Assurance and Risk now seeks to impose 10 years after we came in existence. Further, we are not prepared to continue to provide information to MAF on our operations only to find that MAF will readily hand that information to Grace Haden, a litigant that the Court has found to be vindictive, only to be used by her in violation of Court injunctions, as has already occurred.

We do not accept the contents of the report or the findings. It still contains irrelevancies; it still makes references to fraud, when the Court has found that Grace Haden's allegations were completely unfounded; and still makes reference to taxation matters which we believe is a breach of the Privacy Act and breaches the rule of confidentiality of matters between a taxpayer and the IRD.

We are in discussion with Waitakere City Council concerning our intention to ask you to revoke our status as an approved organisation. This will undoubtedly have an impact as, unless some other arrangement can be put in place, the 8 full-time salaried inspectors operating in Waitakere City and attending to all animal welfare incidents in the district will cease to be able to do so and all those matters will be referred to the Ministry of Agriculture and Forestry's Compliance Unit. We know, because MAF officers have told us, MAF does not have the resources to do this work. The alternative is that all animal welfare calls to Waitakere City are referred to the SPCA who have also advised that there is no way they can take over that degree of workload with their existing and diminishing resources.

While this is a matter for Waitakere City we understand that discussions are taking place with the Royal New Zealand SPCA to ensure that their operation is not compromised.

This whole experience is more than you can ask of a voluntary organisation hence our request that we be relieved of that responsibility and that you revoke our appointment as an approved organisation with effect from a mutually agreed date to enable Waitakere City Council and the SPCA to reorganise themselves to take account of the impact of our decision.

In short Minister — we've had enough.

We have set out our reasons for our decision in the attached document.

Yours sincerely

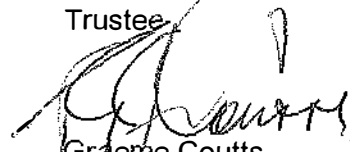


Wyn Hoadley
Trustee (chair)

Neil Wells
Trustee



Tom Didovich
Trustee



Graeme Coutts
Trustee

RELEASED UNDER THE OFFICIAL INFORMATION ACT

REASONS FOR DECISION OF THE ANIMAL WELFARE INSTITUTE OF NEW ZEALAND TO REQUEST THAT THE MINISTER REVOKES ITS ACCREDITATION AS AN APPROVED ORGANISATION

Background

In 1995 a pilot programme was established between MAF and Waitakere City Council to determine whether it was feasible for animal control officers to act competently as animal welfare inspectors.

That pilot programme continued for 5 years and was audited by MAF Compliance almost annually.

The programme resulted in the appointment of, at times, up to 11 salaried and qualified warranted inspectors, one of the largest, if not the largest, team of salaried full-time animal welfare inspectors in New Zealand. There are currently 8 salaried warranted inspectors in the programme. The programme was supported by your predecessors, John Falloon, Lockwood Smith, John Luxton and Jim Sutton and was such a success that MAF and Waitakere City Council were eager that it continued under the Animal Welfare Act 1999.

In mid-1999, for reasons known only to MAF Policy, and opposed by MAF Biosecurity (as it was then known), a new provision was inserted in the latter stages of the consideration by the Primary Production Select Committee of the Animal Welfare Bill that required an approved organisation to have animal welfare as its principal purpose. That one word would have disenfranchised the Waitakere animal welfare programme at a time when MAF Biosecurity Authority was seeking to expand the NGO sector of animal welfare enforcement. With the full knowledge of senior MAF officers, and fully disclosed to the Primary Production Select Committee, notice of intent was given that a charitable trust be formed to be an approved organisation thus enabling the Waitakere animal welfare compliance programme to continue. Feedback to one of our Trustees directly from the Minister's office at the time confirmed that MAF Policy officials were at odds with MAF Biosecurity officials and it was based on MAF Policy's determination that local authorities should not be involved in animal welfare. That was never Government policy – it was a view held by individual MAF Policy advisers.

The process of approval of AWINZ through 2000 was robust and involved extensive and often conflicting legal input from both Crown Law and KPMG Legal (as they were then known). The Director-General, Professor Bruce Ross, intervened and cleared the way for AWINZ to be approved at the end of 2000.

The only other approved organisations, the RNZSPCA and its member societies and branches, continued in the transition period of 3 years but AWINZ needed to draft both Performance and Technical Standards and a Memorandum of Understanding prior to becoming an approved organisation. MAF was fully involved in the preparation of these documents and had every opportunity to establish their expectations of the performance standards in those documents.

It is totally unacceptable for MAF Assurance and Risk Directorate to say 10 years later that they were relying on undertakings given in a proposal document when the proper place for those standards was in the statutory Performance and Technical Standards. In the 15 years that the Waitakere animal welfare programme has been in existence it has been subjected to compliance audits almost annually. No MAF compliance audit since 2001 has made any reference to those earlier documents that were part of a notice of intent.

Court proceedings

In 2006 one of our trustees ran afoul of Grace Haden and a distressing series of legal actions ensued. A copy of the judgment is attached for your information.

We asked MAF Assurance and Risk repeatedly about why they were taking the extraordinary steps of investigating AWINZ. We asked if the audit could be delayed until the court findings were available but MAF refused on the grounds that this had nothing to do with the court proceedings. We received numerous conflicting answers about why MAF mounted its investigation but not until April 2009, 16 months later, did MAF Assurance and Risk say in writing that the audit was triggered solely on the complaint of one person, the very person who had already been severely chastised by 4 judges. Yet MAF Assurance and Risk make no reference at all to the Court judgments in their draft report.

MAF was fully informed of the progress of those legal proceedings. MAF Assurance and Risk has had access to every judgment issued by the Court but MAF Assurance and Risk has chosen to make no reference to any of the Court decisions in its draft audit report.

When a member of MAF Assurance and Risk team contacted a Trustee early in 2008 and said they wanted to do an extended audit with only a couple of days notice there had been no prior contact and no reasons behind it were given other than "the Minister has asked for the audit". We now know that this was not true; the Minister did not initiate the audit. MAF Assurance and Risk officers were disingenuous about what the agenda was.

The report does not identify the complainant by name, yet it was she who was the cause of MAF initiating this investigation in the first place, and is the defendant in the Court proceedings. Further, MAF Assurance and Risk make no reference to the Court findings in relation to Haden's complaints, particularly in regard to alleged fraud. That omission is, in our view, evasive.

For your information we include some of the findings of Judge Joyce QC in his judgment:

[322] Focusing now on the compensatory elements, what would provide some real solatium for the wrongs that have been done to Mr. Wells by Mrs Haden and Versure?

[323] And what would signal both to Mr. Wells and the public at large (in particular those many individuals and organisations in and amongst that public with whom Mr. Wells has worked, and continues to work) that his reputation has been vindicated?

[339] For no good reason at all Mrs Haden – using all the resources at her command – embarked upon and has persisted with a relentless and vindictive campaign to destroy Mr Wells' good reputation.

[340] I thus have no hesitation in concluding that there should be an award of exemplary damages against Mrs Haden as the architect and originator of it all.

[341] Such an award is not, of course, designed to increase the level of compensation for Mr Wells, but rather to punish and, in so punishing, to discourage and deter Mrs Haden.

Even after the Court found in July 2008 that not only was there no evidence of fraud, but also that MAF's sole complainant (Haden) had embarked on a path of vindictive destruction, MAF continued to pursue the allegation, took no account of the Court proceedings and continued to copy documents to Haden. When we asked MAF for information about the documents Haden had sent, MAF wanted to charge us something in excess of \$7000. Our understanding is that only in recent times has MAF asked Haden to pay for documents under the OIA.

Allegations of fraud

MAF is not competent to investigate fraud. From the outset MAF should have told Haden to report her allegations to the Police or the Serious Fraud Office. And that should have been the end of it instead of spending thousands of dollars of taxpayer funds on this investigation. It had already come out in evidence from Haden in the court proceedings that she had tried to complain to the Police and the Serious Fraud Office but neither would take her complaint. What right then did MAF have to investigate an allegation of fraud with no competency nor mandate to do so. The allegations of fraud were already before the Court. There was no need for MAF to separately mount an inquiry into that allegation when that issue was central to the Court proceedings that commenced in 2006 – and MAF Assurance and Risk knew that. From the outset we objected to the reference to fraud in the terms of reference but the MAF auditor refused to take that term out on the grounds that the terms of reference were not negotiable and it was the Minister who had approved the terms of reference. We learned later that that was yet another misrepresentation by a MAF official.

As already noted we have only recently been informed that the original allegation of Haden to MAF was that some fraud had been perpetrated. The Court found that not only was that false, it was so defamatory that she has been ordered to pay \$57,500 in damages plus costs of \$60,000+. MAF Assurance and Risk is unable to say there was ever any evidence of fraud but leaves innuendo in the report that there may have been but they could not find evidence of it.

We wondered at times whether they actually knew what the consequences might be of their actions – or were they simply on a fishing expedition determined to find fault to justify an action that should never have started in the first place.

MAF Investigation

MAF Assurance and Risk officers took great pains to say that it was not an investigation – it was an audit. The investigation was never a normal audit. AWINZ/Animal Welfare Waitakere has experienced audits carried out by MAF compliance officers over the past 15 years. They were all positive, transparent and helpful interchanges. The MAF Assurance and Risk audit was anything but and no protestation from MAF Assurance and Risk will convince us that it was anything but an investigation carried out incompetently.

The investigation took on the nature of an accusatorial process that has been justified in the mind of MAF's officials with innuendo cloaked in terms like "perception" or "we could not find evidence that ...".

When we suggested that it was an investigation, the response was that the audit was so that MAF could report to the Minister on the criteria set out in the Act and that MAF had no way of knowing that the criteria were being complied with – that after 10 years of annual audits! If that is the case MAF has no way of knowing if any of the 50 approved organisations (SPCAs) are also meeting the criteria of the Act. Nonetheless, in none of the compliance audits of AWINZ/Waitakere Animal Welfare has there been a significant compliance requirement that impacted on the operational aspects of the programme. There were non-compliance recommendations concerning the frequency of liaison meetings and concerning the filing of statistical reports and the keeping of records, all of which have been corrected.

At no stage has MAF indicated that AWINZ was not performing to their expectation. Indeed, although not held as regularly as anticipated, liaison meetings with MAF Animal Welfare Group have been positive and transparent and at no stage has MAF expressed any concerns at those meetings. It had been acknowledged though that the Performance and Technical Standards and the Memorandum of Understanding needed review with the advantage of experience and hindsight. That process had started but

was then suspended for something like 18 months while MAF's investigation was in progress.

Overall, Minister, we found the activities and attitudes of the MAF Assurance and Risk team to be highhanded, aggressive, unresponsive, and unsympathetic and pursued with a vigour unbecoming an arm of government.

Compliance audits

If the compliance audits did not reveal an area of concern to MAF it suggests one of two things – either the audits were inadequate or MAF had no concerns. We understand that 10 years after the Act was passed there are still some SPCAs that have never been audited. In comparison with the annual audit of AWINZ only 2 or 3 of the 50 or so SPCAs are audited in any one year which on that turnover means that an SPCA would be audited once in 15 or so years.

For MAF Assurance and Risk to now retrospectively put aside the findings of its own compliance audits and Ministerial approved Performance and Technical Standards, and fall back to a proposal written before the Act was even passed, suggests that MAF auditors are trying to protect their own past errors irrespective of the cost of doing so. For this programme to continue for 10 years and then for MAF Assurance and Risk to change its expectations must call into question the value of MAF's compliance audits of any approved organisation.

Draft report

The draft audit report itself was a litany of trivial minutiae. The draft audit report contained errors of fact which led us to believe that there was little attention given to the conversations and comments that we had with MAF's audit team – after 3 extensive face-to-face meetings. We are weary of our dealings with MAF Assurance and Risk and do not intend to spend any more time on it when it is clear that MAF Assurance and Risk have closed their minds. We do not accept the report or its findings.

We objected to MAF Assurance and Risk pursuing operation matters that were not relevant to the operations of an approved organisation, that is, taxation and monitoring film productions. We were completely dissatisfied with the defensive response from Teresa Williams concerning our objection to MAF Assurance and Risk auditing areas not associated with the role of an approved organisation. The decision to do that was taken by MAF Assurance and Risk Group and not independently reviewed. A decision on our objection should be unbiased and made in good faith but the same officials made the decision to uphold their own decision without reference to any other authority, in breach of one of the rules of natural justice: "no man is permitted to be judge in his own cause".

We also objected to MAF Assurance and Risk including matters relating to taxation. MAF has no jurisdiction in tax matters – they are confidential between the tax payer and IRD. In spite of our protest, MAF Assurance and Risk have continued to include confidential tax matters in a document of public record. We believe that is a breach of privacy.

Impact on SPCAs

The conditions which MAF Assurance and Risk now seek to impose as conditions for an approved organisation can only be seen as setting standards that no voluntary organisation could reasonably achieve. Further, there had been no consultation with other approved organisations who will be affected. On more than one occasion when we met the Assurance and Risk Team we had made the point that there needs to be transparency and equity across all approved organisations and that any attempt by MAF to establish standards on AWINZ must also be imposed equally on all SPCAs.

Only in the last few months did MAF start discussions with the RNZSPCA about the future of compliance audits of its Branches.

Financial audits

We have made it clear to MAF Assurance and Risk that the New Zealand Law Society has recommended that, in the wake of the Charities Act, any lawyer acting for small and medium charities recommend amending the requirement for financial audits and instead require financial review in accordance with the New Zealand Society of Accountants standards. Yet MAF still insists that audits are carried out to the audit standards of the NZSA. Small voluntary organisations can't afford that.

Improper use of the OIA

We believe that MAF has paid scant regard to protecting the interests of AWINZ, as a statutory approved organisation. In particular MAF has failed to have regard to Section 9 of the OIA, by not protecting the privacy of persons (s 9(2)(a)); failed to protect members of an organisation, officers, and employees from improper pressure or harassment (s 9(2)(g)); and failed to prevent the disclosure or use of official information for improper gain or improper advantage (s 29(2)(k)). MAF will of course say that AWINZ is not an organisation envisaged by the OIA. But in the past MAF Legal have tried to assert that approved organisations are subject to the OIA. Whether that is legally correct or not, MAF had a moral obligation to protect AWINZ and failed to do so.

MAF know full well that Haden will seek a copy of their report under the OIA and even ventured to say that she will automatically be given a copy. Where in the OIA can a department of state make a commitment to release a document before the document even exists. Knowing that Haden will get a copy of their report MAF Assurance and Risk has in a cavalier fashion continued to use innuendo and errors of fact that serve no purpose other than to feed an already vindictive mind – yet they know that Haden will get their report.

Asking us to put documents in MAF's hands on a regular basis on every aspect of our operation and thus within the continuing reach of Grace Haden under the OIA, or any other crackpot, is too much to ask.

We were taken aback to hear that MAF Legal had decided that Grace Haden would be allowed to read the entire AWINZ file, with some exceptions of what we don't know. Our concern was confirmed when we saw what malicious and vexatious use Haden put that information to, including the launch of a new website in violation of Court injunctions. MAF enabled this by feeding her more documents which were inevitably going to be the basis for a breach of Court injunctions. Where in the OIA is that provided for?

We have recently had to take a separate action to the Domain Names Commission at some cost to get a website taken down that contained documents supplied by MAF and then used in a manner that contravene injunctions issued by Judge Joyce.

The only way we can protect ourselves from this continuing harassment is to remove ourselves from the grips of the OIA and not be an approved organisation at all. That way when we deal with confidential work such as film monitoring we won't be exposing ourselves, nor our clients, to the prying eyes of MAF auditors who then make records that will be released under the OIA.

We understand that the Ombudsman Office may have a different view.

We would suggest that the Government should be concerned about the State resources that are being expended on meeting the demands of querulous and vexatious OIA requests. It is time the Government looked at enabling the Ombudsman to declare a person vexatious.

MAF's perception of conflicts of interest

MAF Assurance and Risk's comments about their perceived conflict of interest shows that they have no concept that a major part of service delivery of animal welfare enforcement is carried out by voluntary inspectors who welcome the opportunity, limited though it is, to become independent film monitors to at least get a little income to help them with their voluntary SPCA activities. And yet MAF Assurance and Risk is prepared to judge as a perceived conflict of interest if an appointed Inspector occasionally acts as an independent film monitor. There was one instance only over the last 8 years of a voluntary SPCA Inspector in the South Island being engaged as an independent film monitor and it was only for a few days.

This is absurd. Is MAF Assurance and Risk saying that just in case there is a perception, as obscure as it might be, that there is a perceived conflict of interest in being a voluntary inspector and also being:

- a career farmer or farm worker,
- a veterinarian,
- a lab technician,
- an animal wrangler.

If MAF forces voluntary inspectors to deny themselves the opportunity of occasionally being able to accept some paid casual work to support their unpaid voluntary work, then the possibility is that some will say that they will give up their warrants. New Zealand is too small a country not to have these cross-skills.

Impact on voluntary approved organisations

Even though the SPCA is the main contributor to the non-governmental delivery of animal welfare enforcement there was no attempt by the MAF audit team to discuss service delivery with the SPCA to determine how it really does operate in the field and thus establish a bench mark. The result being that MAF Assurance and Risk has made assumptions that bear no relationship to reality. We are aware that MAF is now discussing with RSPCA a different auditing regime for branches but that's too late for AWINZ. It is a pity that AWINZ had to be the victim in order for this change to happen.

We know that MAF cannot provide animal welfare enforcement functions without the NGO sector as it has only 5 or 6 full-time dedicated animal welfare inspectors nationally. It is totally dependent on the support of NGOs.

We are also concerned, and we expressed this to the MAF audit team, that MAF has exceeded its authority in auditing and commenting on activities of AWINZ that fall outside its scope as an approved organisation. We made the point that if MAF does this in respect of AWINZ it must also do this in respect of the other 50 approved organisations. Instead, we understand that other approved organisations (namely branches of the RNZSPCA) will no longer be subjected to direct MAF audits.

While it is not a matter that the trustees of AWINZ need to consider any more, as Minister you will need to consider whether MAF is actually setting up a path that could result in the collapse of the voluntary sector of animal welfare compliance, and in so doing impose on the government an expenditure in excess of \$12 million a year to set up a government organisation that can have any hope of taking over the 24/7 voluntary non-governmental enforcement of the Animal Welfare Act.

Cost to the Taxpayer

Surely MAF could have approached this in a different manner without so much angst, particularly if it is prepared to initiate an investigation on the complaint of one person who has already been declared by the court to be relentless and vindictive. This, when MAF Animal Welfare Directorate is currently trying to engage with the voluntary sector on enhancing the NGO role in animal welfare compliance.

We would expect the Auditor General might question whether the cost of this investigation was wise expenditure of taxpayer funds. However, we do not intend to pursue this any further. We have spent more personal time on this distasteful affair than we can afford. We all have full-time careers and not only has this affair had a major impact on the mental health and well-being of the trustees but also it has intruded on our mainstream careers. We cannot and will not allow this intrusion to continue.

Conclusion

It is reprehensible that the audit report continues to use innuendo and misstatements, with the full knowledge that Haden will one way or the other get a copy of that report. This is unbecoming of a department of state.

We ask you as the responsible Minister:

- Is this the sort of work Government policy analysts and Assurance and Risk auditors should be engaged in when Government is trying to impose a cap on government expenditure and staffing?
- How does this meet the Government's desire for reduced bureaucracy?
- Shouldn't MAF be focussing on how to get the most out of the non-government sector and increase the effectiveness of animal welfare law enforcement?

While this will now be of no direct concern to us of Trustees of AWINZ, we feel that the Auditor General's office should audit the audit team and ask the question whether taxpayer money is being spent in a way the current Government would feel comfortable with and do they act in a professional manner that one would expect of government officials.

We know of course that MAF Assurance and Risk will justify every action they have taken. And you as Minister will have no option but to accept whatever MAF tells you because you cannot get independent information yourself.

We are no longer prepared to put our voluntary time into supporting MAF's animal welfare enforcement responsibilities and thus continue the inevitable risk of this personal harassment continuing.

Hence, our request that you revoke AWINZ's accreditation as an approved organisation.