



Ministry of Agriculture and Forestry

Te Manatu Ahuwhenua, Ngaherehere

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Minister of Agriculture

MAF POLICY

ASB Bank House
101-103 The Terrace
PO Box 2826, Wellington
New Zealand
Telephone: 64-4-474 4100
Facsimile: 64-4-473 0118

APPLICATION TO BE AN "APPROVED ORGANISATION": ANIMAL WELFARE INSTITUTE OF NEW ZEALAND

Purpose

- 1 *Mr Neil Wells, on behalf of the Animal Welfare Institute of New Zealand (AWINZ) has applied to you for a declaration to be an approved organisation under section 121 of the Animal Welfare Act 1999 (the Act). The application meets all the criteria in the Act apart from the financial arrangements which incorporate funding from territorial authorities.*
- 2 *Before you make a final decision it is recommended that you invite Mr Wells, on behalf of AWINZ, to discuss this recommendation with you and invite AWINZ to consider submitting an amended application.*

The Application

- 3 Any organisation whose principal purpose is the promotion of the welfare of animals can apply to you, as the Minister responsible for the Animal Welfare Act 1999, to be an "approved organisation" under section 121 of the Act. Apart from MAF inspectors and police officers, only inspectors and auxiliary officers appointed on the recommendation of approved organisations can exercise enforcement powers under the Act. Your predecessor received a formal¹ application from Mr Neil Wells on behalf of AWINZ, on 22 November 1999, to become an approved organisation under the Act. If its application is successful, AWINZ will be able to deliver animal welfare services.
- 4 In order to approve the application you must be satisfied that the application meets all the requirements provided in sections 121 and 122 of the Act. The requirements set a high threshold as inspectors (in particular), and auxiliary officers, have considerable powers under the Act. For example, inspectors may search premises or seize or destroy an animal. The organisation supporting these persons must have appropriate accountability, financial and management arrangements.

¹ Mr Wells discussed an early draft of his proposal with MAF in late 1998.

- 5 A report evaluating AWINZ's application against the requirements of these sections of the Act is attached as Appendix 1.

Approved Organisations

- 6 Currently the RNZSPCA (SPCA) is the only approved organisation through a transitional provision in the Act. It undertakes almost 90% of the enforcement of animal welfare legislation. In 1999 the Primary Production Select Committee (PPSC) questioned the high degree of dependence on the SPCA. The provision enabling an organisation to apply for approval as an "approved organisation" is explicitly designed to lessen the reliance on MAF and the SPCA.

Assessment of the Application

- 7 The MAF analysis concludes that AWINZ's application meets all but one of the requirements of the Act. It considers that the AWINZ application does not meet the financial arrangements requirement in the Act (section 122(1)(b)). The key issue is the legal ability of territorial authorities to fund animal welfare services.
- 8 In the budget provided by AWINZ as part of its application, funding from territorial authorities (TAs) represents 20% of its projected annual income and is the only assured source of revenue. The other 80% would come from donations, fund raising and sponsorships. The proposal states that AWINZ would enter into an "arrangement" with the Waitakere City Council (WCC). Staff employed by the WCC, chiefly in animal control work, would sign an individual memorandum of understanding (MoU) with AWINZ to enable them to become animal welfare inspectors.
- 9 The WCC would enter into a MoU² with AWINZ whereby AWINZ would provide animal welfare and control services in both that city and in North Shore City (NSCC)³. They would pay fees to AWINZ for quality control and assurance purposes. The TAs would continue to employ and provide support services for the inspectors. They would also supply all necessary equipment and undertake prosecutions (with AWINZ authorisation), and other "employer related" activities. AWINZ would be responsible for overseeing the inspectors' animal welfare work and be responsible to MAF and to the Minister for the performance of the inspectors.
- 10 In January this year MAF asked Mr Wells to obtain an assurance from the WCC that the WCC had the legal power to spend funds on animal welfare work as envisaged in the proposed arrangement with AWINZ.
- 11 The WCC obtained a legal opinion which concluded that sufficient authority could be found in the Local Government Act 1974 (LGA) to support the proposed arrangement. MAF was not satisfied that the opinion covered all the relevant issues and sought a Crown Law Office opinion.

² The WCC and the NSCC are referred to as "linked organisations"

³ The WCC currently carries out animal control work under contract to the NSCC

- 14 Additional aspects of this application that you should note are:

Views of the RNZSPCA

- 15 Although the pilot programme has meant that the SPCA is no longer the only organisation outside of MAF and the Police involved in animal welfare enforcement, there is no evidence that it objects to competition in this area although it expressed some concerns initially. It is not clear whether this state of affairs would continue if AWINZ became an approved organisation and began wider more public operations, including public fund raising. It could possibly result in some confusion amongst members of the public as animal welfare has traditionally been the domain of the SPCA.

Policy relating to "approved organisations"

- 16 Section 122(1)(a) of the Act makes it clear that an approved organisation must have the promotion of animal welfare as its principal purpose. This requirement has the effect of excluding TAs from applying to be approved organisations. It reflects the policy position of the previous government and was considered and accepted by the PPSC. If you believe that the Act should be amended to allow TAs to undertake such activities, MAF would need a specific direction from you to seek the necessary policy approvals from Cabinet and legislative priority.
- 17 Such a change could be effected by amending either the Animal Welfare Act or the Local Government Act. The former could be initiated by yourself whereas the latter would become the responsibility of the Minister of Local Government and would require you to approach that Minister.

Conclusion

- 18 AWINZ's application meets all but one of the requirements of the Act. Under the Act, however, you must, as the responsible Minister, be satisfied that the application meets all the requirements.

- 20 MAF notes, however, that if the application was amended so that it was clear that the TAs were neither funding animal welfare work nor employing animal welfare inspectors, then this application might more closely meet the requirements of the Act.
- 21 Following passage of the Act, MAF prepared a set of guidelines to assist the analysis of applications to become an approved organisations under the Act. The guidelines state that "the applicant will be provided with a draft copy of the recommendation and given a reasonable period of time (60 days) to present a submission to the Minister in response to the proposed decision".
- 22 To meet this undertaking, MAF recommends that you provide AWINZ with a copy of this briefing, the MAF report and the Crown Law Office opinion. A draft letter, which reiterates your invitation to Mr Wells contained in your letter of 12 May 2000 to meet after receipt of this briefing, is attached for your signature, if you agree. The letter invites Mr Wells to make a submission on the MAF report and to consider making an amended application.
- 23 Given the possible interest of your colleague, the Hon Pete Hodgson, in this issue, MAF proposes that you write advising him of your interim position and enclosing a copy of the MAF report.

Recommendation

24 MAF recommends that you:

(a) **note** that the application from AWINZ meets all but one of the criteria in sections 121 and 122 of the Animal Welfare Act 1999;

noted

(b) **note** that you, as the Minister responsible for the Act, must be satisfied that the application meets all the requirements of the Act;

noted

- (d) **agree** to sign the attached letter to Mr Wells inviting him to consider and make a submission on the MAF report prior to you making a final decision;

agreed/not agreed

- (e) **note** that the letter also invites Mr Wells, on behalf of AWINZ, to consider whether to submit an amended application; and

noted

- (f) **agree** to sign the attached letter to the Hon Pete Hodgson advising him of the advice you have received from MAF.

agreed/not agreed

P R Kettle
for Director-General

Hon Jim Sutton
Minister of Agriculture

Encls: 3

/ /2000

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APPLICATION BY THE ANIMAL WELFARE INSTITUTE OF NEW ZEALAND TO BE AN APPROVED ORGANISATION UNDER SECTION 121 OF THE ANIMAL WELFARE ACT 1999

Summary

- 1 On 22 November 1999 Mr Neil Wells, on behalf of the Animal Welfare Institute of New Zealand (AWINZ), applied to the then Minister for Food, Fibre, Biosecurity and Border Control for a declaration that AWINZ be an approved organisation under section 121(1) of the Animal Welfare Act 1999 (the Act).
- 2 MAF believes that AWINZ's application meets all but one of the matters in sections 121 and 122 of the Act.

The Application

- 4 On 22 November 1999, Mr Wells applied on behalf of the Animal Welfare Institute of New Zealand (AWINZ) for AWINZ to be declared to be an approved organisation under section 121 of the Animal Welfare Act 1999 (the Act). Such a declaration would enable AWINZ to deliver animal welfare services, including enforcement. The application is attached as Appendix 1.
- 5 The AWINZ application was made in two parts: an "application" and appendices including a proposed Deed of Trust. Where there is any conflict or ambiguity between the two parts of the application, MAF has placed the emphasis on the Deed of Trust in order to determine the purposes of AWINZ. AWINZ is in the process of being registered as a charitable trust.
- 6 On 24 December 1999 the Minister sought additional information and Mr Wells replied on 25 March 2000. Mr Wells and MAF officials met on two occasions and also exchanged correspondence to clarify aspects of the application.
- 7 In order to approve the application the Minister must be satisfied that it meets the matters set out in sections 121 and 122 of the Act (Appendix 2). This report evaluates the application against all those matters.

Approved organisations

- 8 Any organisation whose principal purpose is the promotion of the welfare of animals can apply to the Minister for approval as an "approved organisation" under section 121

of the Act. Apart from MAF inspectors and police officers, only inspectors and auxiliary officers appointed on the recommendation of approved organisations can exercise enforcement powers under the Act. Currently, the RNZSPCA (SPCA) is the only approved organisation through a transitional provision in the Act. The SPCA, a voluntary organisation, undertakes almost 90% of the enforcement work under the Act.

- 9 The provision enabling an organisation to apply for approval as an "approved organisation" is explicitly designed to lessen the dependence on MAF and the SPCA for enforcement activity under the Act. An applicant must, however, meet the matters in sections 121 and 122 of the Act. Inspectors (in particular), and auxiliary officers, have considerable powers under the Act. For example, inspectors may search premises or seize or destroy an animal. The organisation supporting these persons must have appropriate accountability, financial and management arrangements.

ASSESSMENT OF THE AWINZ APPLICATION AGAINST THE ACT

THE APPLICATION: (S.121)(2)

- 10 AWINZ's application meets the requirements of section 121(2)(a), (b) and (c) of the Act in that it contains the full name, contact address of AWINZ, and the area in which the organisation proposes to operate. AWINZ seeks to operate nationally.

PRINCIPAL PURPOSE (S. 122(1)(a))

- 11 The principal purpose of an organisation seeking to become an approved organisation under the Act must be to promote the welfare of animals. Clause 4 of the AWINZ Trust Deed states that the purpose of the Trust is to promote the welfare of animals. The balance of clause 4 appears to be the means by which AWINZ will achieve its purpose.
- 12 As well as providing the services required of an approved organisation, AWINZ proposes to operate in a number of ways including providing the services required of a quality assurance body directly accountable for the performance of inspectors rather than employing the inspectors itself. "To attain the objects of the Trust", AWINZ may employ staff, including inspectors.

- 13 *Conclusion:* the application meets this requirement.

ACCOUNTABILITY AND FINANCIAL ARRANGEMENTS AND MANAGEMENT OF THE ORGANISATION (SECTION 122(1)(b))

- 14 This provision requires that the accountability and financial arrangements and management of the organisation are such that, having regard to the interests of the public, the organisation is suitable to be declared to be an approved organisation.

Accountability arrangements

- 15 The proposal states that AWINZ would enter into an "arrangement" with the Waitakere City Council (WCC). Staff employed by the WCC, chiefly in animal control work, would sign individual memoranda of understanding (MoU) with AWINZ to enable them to undertake animal welfare work should they be appointed as animal welfare inspectors under the Act. There is potential for the accountability processes associated

with such a complex arrangement to breakdown. A complaint against an inspector, for example, may need to be investigated by both AWINZ and the WCC. The organisations may reach different conclusions and, as a result, take conflicting action.

- 16 The WCC would enter into a MoU¹ with AWINZ whereby AWINZ would provide animal welfare and control services in both the WCC and North Shore City Council (NSCC) areas². They would pay fees to AWINZ for quality control and assurance purposes. The territorial authorities (TAs) would continue to employ and provide support services for the inspectors. They would also supply all the necessary equipment and undertake prosecutions (with AWINZ authorisation), and other "employer related" activities. AWINZ would be responsible for overseeing the inspectors' animal welfare work and would be responsible to MAF and to the Minister for the performance of the inspectors.
- 17 The arrangement means that if an animal control officer attends an incident that they believe is effectively an animal welfare issue, then they must proceed under section 126(2) of the Act, that is, proceed as an animal welfare inspector. While doing so the inspector would continue to be employed by a TA but would be accountable to AWINZ for any decisions they make and the actions they take.
- 18 *Conclusion:* the proposed arrangement with the WCC is complex and is marginally satisfactory in terms of the requirements of the Act. It would, however, need to be tested in practice and subject to audit by MAF before the success (or otherwise) of the proposed arrangement could be measured with any degree of certainty.

Financial arrangements

- 19 The assessment of the proposed financial arrangements of AWINZ raises two matters.

Financial robustness

- 20 The long-term financial robustness of AWINZ cannot be fully assessed as AWINZ is not presently in operation. The veracity of its draft budget can only be tested over time. The projected level of fundraising, grants and donations is dependent on AWINZ becoming an approved organisation. MAF notes that this income stream is 80% of AWINZ's projected income but that it is not guaranteed. However, the SPCA and its member societies, which have existed since the 1800s, operate under similar circumstances.
- 21 As with any new organisation, especially one with charitable purposes, it is difficult to ascertain whether the projected financial arrangements will prove to be robust in the long term. MAF believes that AWINZ should have the opportunity to prove that it can generate sufficient funds to enable it to function successfully. This conclusion is, however, subject to the conclusion reached below on funding from TAs.

¹ The WCC and the NSCC are referred to as "linked organisations"

² The WCC currently carries out animal control work under contract to the NSCC.

Legitimacy of funding

- 22 The second, and more critical aspect of AWINZ's proposed financial arrangements, is the legitimacy of provided by the TAs. AWINZ projects that the remaining 20% of income would come from fees paid for by linked organisations, initially the WCC and NSCC. The question as to whether TAs have the ability to fund animal welfare activities has been canvassed by MAF and the TAs themselves.

Background

- 23 In 1995 MAF entered into an arrangement with the WCC whereby the WCC was given permission to run a pilot programme to ascertain whether TAs could successfully provide animal welfare enforcement services. The programme was subject to regular audits and was found to work well. Despite some initial reservations about how the arrangement would be received by the Auckland SPCA in particular, the pilot programme did not appear to create friction or result in confusion amongst the public. It appeared that the two organisations focused on different animal welfare matters.
- 24 The legal basis of the programme was reviewed in 1998/99 as part of the policy development process for the Animal Welfare Bill No.2 (the Bill). MAF believed that the WCC was not empowered to fund the programme out of its rates and was operating in a manner that was contrary to the Local Government Act 1974 (LGA). This concern was raised with Mr Wells in 1998 when he invited MAF to review a draft of the AWINZ proposal.
- 25 The Department of Internal Affairs (as administrator of the LGA) advised³ MAF that the LGA probably did not give TAs the authority to fund animal welfare enforcement. The Department felt this problem could be managed while the pilot programme was operating but if the arrangement was to become more permanent the position should be clarified in legislation.
- 26 The then government decided that, as a matter of policy, TAs should not be able to undertake animal welfare enforcement work. It concluded that such a situation would lead to a blurring of the responsibilities and functions of central and local government. This is because animal welfare work would be funded by local rates while performance accountability would be to central government rather than to the ratepayers. There was also a concern that central government would be seen to be delegating some of its functions to local government (albeit on a voluntary basis), without any accompanying funding.
- 27 This decision was incorporated into the Animal Welfare Bill (No.2). The principal purpose of an organisation seeking to become an approved organisation under the Act must be to promote the welfare of animals. This policy was debated by the PPSC which, after hearing evidence from MAF, agreed with the policy as expressed in the Bill. That is, the PPSC agreed that TAs should not be able to be approved organisations under the Act.

³ This was primarily verbal advice during telephone conversations between MAF and the Department of Internal Affairs.

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Management

- 36 AWINZ will be managed by a Trust Board. The terms of reference are established in the Deed of Trust. There will be at least four but not more than seven Trust Board members. The Board may appoint a chief executive who will be responsible for the day

to day management of the Trust. It is understood that Mr Wells will be the chief executive.

- 37 *Conclusion:* MAF believes that the management arrangements described in the AWINZ Deed of Trust are satisfactory.

CONFLICT OF INTEREST (SECTION 122(1)(c))

- 38 Under this section of the Act, an applicant must not have functions and powers that may result in a conflict of interest should it become an approved organisation. AWINZ states in its application that it will not adopt policies on animal welfare issues that are aligned with animal rights strategies and that its inspectors will not be actively involved with any animal rights organisation.
- 39 It is noted in the application that AWINZ will be registered under the Charitable Trusts Act and not the Incorporated Societies Act and that it will not have "ordinary members". The mechanisms used to replace a trustee are quite different for a charitable trust compared to organisations registered as incorporated societies. Thus, the Board of Trustees will always be in control.
- 40 No information is provided on the trustees and whether their personal or business interests might conflict with the purposes of AWINZ. MAF notes, however, that the trustees have a legal duty to further the objectives of the Trust (clause 9 of the Trust Deed).
- 41 Prior to receiving the AWINZ application, MAF and Mr Wells canvassed the question as to whether there is a distinction in law between animal control and animal welfare activities. This point is relevant because those animal control officers, who have appointments under both this Act and the Dog Control Act 1996, investigate incidents that could fall within either the Animal Welfare Act or the Dog Control Act. Animal welfare inspectors have significantly wider powers than animal control officers have under the Dog Control Act.
- 42 Mr Wells believes that there is no distinction and that "Parliament itself has inherently linked dog welfare and dog control". MAF does not agree. MAF believes that any links between the two activities are minor (for example, an offence against section 54 of the Dog Control Act is deemed to be an offence under Part 1 of the Act) and not sufficiently strong to support an argument that the two are inextricably linked. MAF notes that the PPSC declined to support Mr Wells's personal submission on the Animal Welfare Bill (No.2) for a greater link between the two pieces of legislation.
- 43 Despite the different views, MAF notes that section 126 (2) of the Act requires that where there is a conflict between the powers, duties and functions of an inspector under that Act and the powers, duties and functions of an inspector under another Act, then the Animal Welfare Act prevails. The formal training given to an animal welfare inspector/animal control officer would assist them in identifying which piece of legislation is appropriate for a particular incident.
- 44 *Conclusion:* There do not appear to be any other conflicts of interest in the AWINZ application. The application complies with this requirement.

EMPLOYMENT CONTRACTS OR ARRANGEMENTS BETWEEN THE ORGANISATION AND ITS INSPECTORS AND AUXILIARY OFFICERS (SECTION 122(1)(d))

- 45 Having regard to the interests of the public, under this requirement the Minister must consider whether the proposed employment contracts or arrangements are such that the applicant is suitable to be declared to be an approved organisation. AWINZ's application includes draft memoranda of understanding between AWINZ and "linked organisations" (being TAs initially) and inspectors. At this stage AWINZ does not intend to employ inspectors directly and there are no employment contracts to be considered.
- 46 The question then is whether the proposed arrangements between AWINZ and the TAs, and between AWINZ and the animal welfare inspectors proposed to be employed by the TAs, are "such that the organisation is suitable to be declared an approved organisation."
- 47 An inspector will be accountable to AWINZ for his or her actions when acting under the powers, duties and functions imposed by the Act. If an inspector fails to perform as required under the Act, they will be accountable to AWINZ (and thence to MAF and the Minister), not the employer (in this case the TA). If the failure by an inspector is also a breach of an employment contract, the employment aspect of the breach will be a matter strictly between the TA and the inspector.
- 48 Where an issue of neglect or misconduct arises in respect of the exercise of a power, duty or function under the Act, AWINZ will be responsible to MAF for any initial investigation, not the employer. The animal control officers presently employed by the WCC and the NSCC have written to the Minister stating that if they were to be appointed inspectors under the Act, they would enter into a formal arrangement with AWINZ for the purposes of this requirement.
- 49 *Conclusion:* The proposed arrangements between AWINZ, the TAs and the inspectors are complex and could result in confusion as to roles and responsibilities between the various parties. MAF accepts, however, that this approach could work in practice but would need close monitoring by MAF.

TECHNICAL COMPETENCE AND EXPERTISE (SECTION 122(1)(e)(i))

- 50 MAF currently requires inspectors appointed under the Act to hold the National Certificate in Compliance and Regulatory Control (Animal Welfare). The UNITEC Institute of Technology in Auckland provides the training for this qualification. AWINZ has undertaken to ensure that each inspector will undertake a 4-hour refresher workshop every six months.
- 51 *Conclusion:* The proposed arrangement is satisfactory to MAF.

INSPECTORS AND AUXILIARY OFFICERS MUST BE PROPERLY ANSWERABLE TO THE ORGANISATION (SECTION 122(1)(e)(ii))

- 52 This provision provides for situations where inspectors and auxiliary officers are not employees of an approved organisation; for example, they may be volunteers. In these

situations there needs to be strong accountability links between the inspector, the organisation, MAF and the Minister.

- 53 AWINZ proposes that it would be responsible for the performance of inspectors when they are carrying out the powers, duties and functions of an animal welfare inspector through a MoU. A further MoU would link AWINZ to MAF. To ensure compliance with the respective arrangements and agreements MAF would undertake periodic audits of the performance of AWINZ.
- 54 Should an audit find the arrangements are not being complied with, the Minister could revoke the declaration that AWINZ is an approved organisation. Such a revocation would, however, have to be on the basis that the organisation no longer meets one or more of the matters in section 122 or has failed to comply with any condition imposed on it under section 122(2) of the Act.
- 55 *Conclusion:* Again, the proposed accountability arrangements are complex but, taken as a whole, MAF believes that any inspectors and auxiliary officers would be "properly answerable".

OTHER ISSUES

- 56 There are a number of additional points relating to this application which MAF believes are relevant to its assessment.
- 57 MAF considered whether it might be possible to declare AWINZ to be an approved organisation, but not appoint persons employed by TAs as animal welfare inspectors or auxiliary officers. This option would, at first glance, appear to resolve the question of how to enable AWINZ to commence operations while separating out the legal difficulties associated with TA funding and involvement. The difficulty with this approach, however, is that the Minister could not refuse to appoint a person to be an inspector solely on the basis that the person was employed by a TA and because the arrangement between AWINZ and the TA is ultra vires the LGA. As this would not overcome the inherent problem of TA funding and involvement, MAF did not pursue this option further.

Geographical coverage

- 58 If the application was approved, AWINZ would recommend suitable persons to be appointed as animal welfare inspectors⁴. AWINZ proposes to operate nationally but with the initial area of its activity being in the greater Auckland area. MAF notes that as the inspectors will be using the equipment and facilities of the WCC and NSCC this might create some confusion amongst the local authorities and public outside of those cities. MAF notes that the potential for conflict with the work of other local authorities will need to be carefully managed by AWINZ and the WCC and NSCC.

Other "linked organisations"

- 59 The concept proposed by AWINZ would enable organisations or persons not associated with MAF or the SPCA to be nominated as animal welfare inspectors. Organisations

⁴ The power of appointment has been delegated to persons holding certain positions in MAF.

with an interest in animal welfare could recommend persons for appointment as inspectors under the auspices of AWINZ without incurring the obligations of being an approved organisation. AWINZ could be an umbrella organisation and be the link between the inspectors and MAF. The concept would also accommodate individuals wanting to provide the services of an inspector; examples may include veterinarians and officials of kennel or pony clubs.

Duties of approved organisations

- 60 Section 141 of the Act enables an approved organisation to take an animal into custody. The approved organisation may then sell, rehome or destroy or otherwise dispose of the animal. If AWINZ becomes an approved organisation it is desirable that it has a place where inspectors can receive animals. Mr Wells has advised that animal shelter facilities owned by the WCC will be made available to AWINZ at a nominal rent of \$1.00 per year. MAF notes that an inspector can, however, take animals that have been seized to a place chosen by the inspector; it does not have to be an animal shelter.
- 61 MAF considers this to be an appropriate arrangement.

CONCLUSION

- 62 The Animal Welfare Act 1999 requires that the Minister must be satisfied that the application meets all the requirements of the Act. MAF believes that AWINZ's application to become an approved organisation under the Act meets all but one of the requirements in sections 121 and 122 of the Act.
- 63 MAF has reservations about the proposed accountability arrangements because of their complexity. Nevertheless, it appears that they could work in practice but with regular auditing by MAF. MAF also has a reservation about the forecast level of non-TA income but acknowledges that this could only be tested if AWINZ's application was approved.
- 65 MAF concludes, therefore, that the application by AWINZ should be declined.
- 66 MAF notes, however, that if the application was amended so that it was clear that TAs were neither funding animal welfare work nor employing animal welfare inspectors then this application might more closely meet the requirements of the Act.