



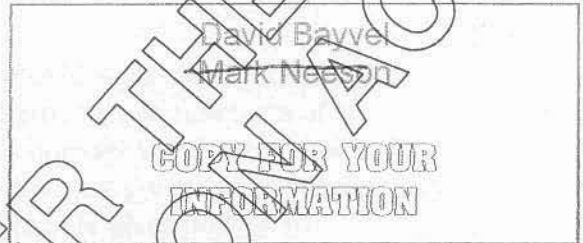
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## Animal Welfare Institute of New Zealand

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25 March 2000

Hon Jim Sutton  
Minister of Agriculture  
Parliament House  
WELLINGTON



Dear Minister

### Animal Welfare Institute of New Zealand

I refer to your letter of 24 December 1999.

We have met with MAF both in December and in February and new issues have been raised that have needed time to gather information.

This letter addresses the issues raised in your letter of 24 December and in a letter from MAF Policy of 28 January 2000, and other issues since raised by MAF Policy.

Further, a legal opinion has been obtained from Kensington Swan as suggested.

### Principal purpose and providing animal welfare services

While the principal purpose of AWINZ is "to promote the welfare of animals" this is a multi-facet function. AWINZ has not been established for the exclusive purpose of becoming an approved organisation although this is one of its early objectives.

In the Deed of Trust the term "provide animal welfare services" includes—

- Providing the services required of an approved organisation
- Engaging inspectors other than from territorial authorities
- Training and providing natural persons for accreditation as reviewers under section 109 of the Act
- Preparing animal welfare educational material for use by inspectors and others in school programmes and for community liaison
- Establishing an animal welfare monitoring unit for animals used in film, television and other entertainment industries
- Providing services to animal user groups for the drafting of Codes of Welfare
- Contracting to animal user groups for the provision of quality assurance services and monitoring of Codes of Welfare

1) David O'Neil — Policy / Legal MAF  
2) David O'Neil — Policy / Legal MAF  
3) 17-2 330-V11

- Promoting animal welfare aspects of conservation issues such as whaling
- Promoting public awareness of the link between animal abuse and child abuse.

### Distinction between powers

There will be situations where an officer who has powers under different legislation will face a conflict of powers.

Section 122 (1) (c) of the Animal Welfare Act 1999 provides that the functions and powers of the organisation must not conflict with the powers and functions of an approved organisation. It is not intended that AWINZ pursues any function unless it has a purpose of promoting animal welfare. The Act does not give the organisation any powers but duties are imposed by section 141. The Act only gives powers to individuals who are appointed inspectors. In the event of a conflict arising as to the powers, duties and functions of an inspector the Animal Welfare Act 1999 prevails. As soon as an inspector identifies a possible conflict between two pieces of legislation the resolution is clear—the inspector must proceed under the Animal Welfare Act 1999 or be in breach of section 126 (2).

Training emphasises how an inspector resolves this conflict. One of the unit standards of the National Certificate specifically deals with this conflict.

**Unit Standard 4223**—Describe the powers of a compliance officer.

*element 3*

*Identify situations in which compliance officer's powers change.*

*Range: power to act ceases, increases or transfers to a different agency, or changes to different legislation.*

### Employment arrangements

This area needs to be re-stated to clarify the employment arrangements between AWINZ and its inspectors.

Inspectors who operate within a territorial authority will do so under the terms of an individual memorandum of understanding between AWINZ and the inspector. This will provide that the inspector will—

- Carry out the powers, duties and functions of an Inspector in accordance with the Act
- Be available to act in a voluntary capacity outside hours of employment as and when required by AWINZ in an emergency
- Complete all training in accordance with the performance standards and technical standards in section 124 (1) (e) (ii) and as imposed by the Minister in accordance with section 124 (2) of the Act
- Act under the direction of the Director-General of Agriculture and Forestry in the exercise and performance of the powers, duties, and functions conferred or imposed under the Animal Welfare Act 1999

- (e) Adhere to the procedures set out in the AWINZ quality system.

Under a memorandum of understanding with AWINZ the employer will —

- (a) Provide the necessary funding to enable each inspector appointed to comply with the programme
- (b) Provide funds to meet hook-on fees with AWINZ
- (c) Provide support services and necessary equipment for inspectors
- (d) Adhere to a quality system provided by AWINZ for the administration of the programme
- (e) Permit the inspectors to carry out their powers, duties and functions in relation to each complaint or matter that arises from his or her performance as an inspector
- (f) Provide day to day supervision of inspectors
- (g) Facilitate auditing of the quality system by AWINZ and provide access to documentation as requested by AWINZ quality auditors
- (h) Advise AWINZ by facsimile or e-mail when an investigation is likely to result in a prosecution under the Animal Welfare Act 1999 and where necessary permit the investigating inspector to act under the direction of AWINZ
- (i) Advise AWINZ of each occasion a search warrant is obtained and executed
- (j) Advise AWINZ of any decision not to prosecute where the investigation reveals that an offence has been committed but the circumstances warrant that no further action be taken or that a warning be given
- (k) Refer to AWINZ any serious complaint made against an inspector and advise AWINZ of any trivial complaint made against an inspector and the manner in which it was dealt with.

Both Waitakere City and North Shore City have agreed that should an officer need to be called out after-hours to deal with a complaint that turns out to be animal welfare related, the officer will be paid a call out fee. Despite this, each officer has willingly agreed to operate outside normal hours on a voluntary basis should a major emergency arise.

The linked organisation will meet all employment-related costs. AWINZ will not directly employ an inspector on wages.

The quality assurance system that has been operating for the past 4 years and audited by the MAF Compliance Group on 3 occasions will form the basis of the AWINZ quality assurance system with appropriate amendments.

Those amendments will be negotiated and agreed with MAF Biosecurity Authority.

In the case of inspectors not operating in a territorial authority, adaptations of the memorandum of understanding will be negotiated and agreed with MAF Biosecurity Authority before being implemented.

Section 122 (1) (c) does not mean that an inspector must be employed under a contract of service. It can also include an arrangement for services in other than an employer/employee relationship.

Inspectors will not be employed directly by AWINZ but will remain employed by their principal employer. When an inspector is performing a function under the Animal Welfare Act 1999 he or she will be doing so under an arrangement detailed in a memorandum of understanding between the inspector and AWINZ and a further memorandum of understanding between the employer and AWINZ. The inspector will not be paid by AWINZ for performing that function.

### **Geographical coverage**

AWINZ accepts that appointments of inspectors should be limited to the districts of Waitakere and North Shore Cities. At present there are 14 officers who are qualified for appointment. As their duties may be interchangeable between the two cities it is proposed that all 14 appointments should be for the districts of both Waitakere and North Shore Cities.

### **Financial arrangements**

AWINZ will not be directly employing its inspectors. The financial arrangement with the employer of each inspector will be that the employer will meet the costs of the employee while performing animal welfare functions during the normal course of employment. Hence the budget of AWINZ does not need to provide for inspectors' wages.

Inspectors will also be expected to volunteer their services outside normal employment if necessary. This is not likely to arise other than in a major emergency situation.

AWINZ will not require a large budget. To ensure that AWINZ can adequately provide for the services it will provide under the proposed Memorandum of Understanding with MAF, a fee will be charged to each linked organisation based on—

- an annual hook-on fee of \$1250 plus GST per linked organisation
- an annual fee of \$350 plus GST for each inspector appointed
- a fee of \$95 an hour plus GST for each biannual audit of the linked organisation
- continuing education on a cost basis.

A budget is attached as Appendix II. This has previously been submitted to MAF Policy.

Comments of the specific items are:



## Income

**Fees** will be raised specifically from fees paid by the linked organisation. Each linked organisation will pay an annual hook-on fee of \$1250. In addition it will pay a fee of \$350 for each inspector. These fees will cover the costs of administering the system.

**Grants and donations.** There is no certainty of fundraising until AWINZ is approved.

**Community funding** will come from community funds administered by territorial authorities. AWINZ has recently been given a grant from the Waitakere Community Welfare Fund to assist in adapting Waitakere City's procedure manuals to a system.

**Key donors** will come from a personal letter appeal to known supporters.

**Public donations** will come from unsolicited donations for satisfactory services or simply from general giving. This funds runs at about \$5000 a year and is at present held in trust by Waitakere City.

**Sponsorships.** Discussions have been held with major sponsors but cannot be firmed up until there is certainty.

## Expenditure

**Consultants.** AWINZ does not intend to employ administrative staff. The budget for consultants is to provide for specific tasks that are carried out on behalf of AWINZ, including quality audits of linked organisations.

**Administration** is for telephone, printing and stationery, travel etc.

**Fundraising** will focus on funding for the promotion of animal welfare. This cannot start until AWINZ is fully functional. The budget is to cover specific fundraising costs such as printing, postage and processing.

## Accountability arrangements

Where an inspector is also a dog control officer the inspector will be accountable to AWINZ for his or her actions when acting under the powers, duties and functions imposed by the Animal Welfare Act 1999.

If the officer is functioning in an area where animal welfare is not an issue AWINZ will have no responsibility for the officer's actions.

Reports on any complaint that requires the exercise of any powers, duties or functions of the Act will be submitted to AWINZ through the inspector's supervisor.

AWINZ will be responsible to MAF Biosecurity Authority for the exercise of those powers, duties and functions.

The employer will be accountable to AWINZ by permitting the employee to exercise the powers, duties and functions of an inspector through a memorandum of

understanding and will be responsible for providing support but will have no role in the way the powers, duties and functions are carried out.

In the event of a failure to perform under the Animal Welfare Act 1999 the inspector will be accountable to AWINZ, not to the employer. If a breach by an inspector is also a breach of his or her contract of employment that will be a matter strictly between employer and employee.

Where an issue of neglect of duty or misconduct arises AWINZ will be responsible to account to MAF for the inquiry, not the employer. However, the employer's co-operation will be necessary in any inquiry.

The linked organisation will be accountable to AWINZ for providing funding, support, and equipment for the inspector, permitting the inspectors to operate, and facilitating compliance audits.

### **Technical competence and qualifications**

The training standard currently determined by the Group Director, MAF Biosecurity Authority is the National Certificate in Compliance and Regulatory Control (Animal Welfare).

All officers of both Waitakere and North Shore have completed the National Certificate and will graduate in April.

Continuing education was a requirement in the pilot programme and this will continue by each inspector undertaking a 4-hour workshop each 6 months that will include—

- legal problems
- legislation updates
- review of procedures
- case studies.

### **Duties of Approved Organisations**

AWINZ will comply with section 141 by designating an area of the animal welfare refuge at The Concourse, Lincoln, as an animal shelter that will provide for animals that come into the custody of AWINZ.

### **Trust documentation**

A signed copy of the Deed of Trust will follow. The original is being submitted to the Ministry of Commerce for registration as a charitable trust in accordance with clause 20 (a) of the Deed.

## Rating

Kensington Swan have provided an independent legal opinion that shows that the proposed arrangements are not *ultra vires*. This is Attachment 3 to the letter from Waitakere City dated 21 March 2000.

## Further assurances

At the request of MAF Policy Waitakere City has re-written their original letter to you and that is attached dated 21 March 2000.

You will recall that we hoped that there could be a seamless transition from the Waitakere City programme to a system under an approved organisation. This was not possible but you expressed a wish that your officials would provide you with a final recommendation on our application as soon as possible in the New Year.

Having provided all the additional information requested over the past 3 months we trust you are now in a position to provide the approval sought in our original application of November 1999.

If this is not the case we would like the opportunity to meet with you along with senior managers from Waitakere City to clarify any outstanding issues and to ensure the application is not subject to further delays and iterative requests for additional information.

Considerable resources have been expended to date. This application has the potential to make an important contribution to animal welfare in New Zealand but there are limits to the resources at our disposal.

We believe the application now complies with the policy envisaged by the Primary Production Select Committee when it was considering the Bill.

We look forward to hearing further.

Yours sincerely

Neil Wells  
Trustee

cc MAF Policy  
MAF Biosecurity Authority

## Appendix I

ANIMAL WELFARE INSTITUTE OF NEW ZEALAND  
Budget for Year 2000

## Income

## Fees

Linked organisations	2 @1250.00	2,500.00	
Inspectors	14 @350.00	4,900.00	
Audits	4 @760.00	3,040.00	10,440.00

## Grants and donations

Community	1,500.00	
Key donors	10,000.00	
Public donations	5,000.00	
Public appeals	12,000.00	
Sponsorships	15,000.00	43,500.00

Total income 53,940.00

## Expenditure

Consultants and contractors	36,000.00	
Administration	5,000.00	
Fundraising	4,000.00	45,000.00

Total expenditure

excess

\$ 8,940.00

GST exclusive