

RE-DRAFT 18 September 2000

OFFICE OF HON JIM SUTTON

MEMORANDUM TO CAUCUS

ROLE OF TERRITORIAL AUTHORITIES IN FUNDING ANIMAL WELFARE SERVICES

PURPOSE

I am seeking Caucus approval to:

Allow the approval of the Animal Welfare Institute (AWINZ) as an approved organisation under the Animal Welfare Act 1999, which will have the effect of Territorial Authorities ("TAs") funding the approved organisation directly or indirectly by allowing TA staff and resources to be used to deliver animal welfare services.

BACKGROUND

The Animal Welfare Act 1999 provides for any "approved organisation" to recommend the appointment of non-State sector persons as animal welfare inspectors. Inspectors have powers of enforcement under the Act, including the power to search for, seize and destroy animals.

Inspectors are required to comply with performance standards and technical standards established by the Director-General of Agriculture and Forestry and all inspectors must act under the direction of the D-G.

Any organisation whose principal purpose is the promotion of the welfare of animals can apply to me as Minister of Agriculture for approval as an "approved organisation" but specific criteria must be met (sections 121 and 122 of the Act).

Currently, the Royal New Zealand SPCA is the only approved organisation having been granted that status in the transitional provisions of the Act. It undertakes almost 90% of the enforcement work under the Act.

APPLICATION

I have received an application from the Animal Welfare Institute of New Zealand (AWINZ), a charitable trust, to become an approved organisation. It is proposed that AWINZ would enter into arrangements with TAs whereby suitable animal control officers of the TA would become animal welfare inspectors and undertake both animal welfare and animal control services. The animal control staff would continue to be employed by the TA. The TA would fund AWINZ to undertake supervision and quality control work of the TA staff and allow them to undertake animal welfare compliance work in the normal course of their employment. It is proposed that AWINZ would also nominate for appointment as inspectors

people who are not employed by TAs, e.g. veterinarian, retired MAF inspectors, and persons employed by organisations contracted to provide animal control services to TAs.

Crown Law Office advised me that this arrangement is *ultra vires* the Local Government Act 1974 (LGA). Crown Law considered that animal welfare is not a statutory function of TAs and, accordingly, they do not have the power to spend ratepayer funds on this work. However, a contrary legal opinion from KPMG Legal is of the view that the funding of animal welfare services is not *ultra vires* the powers of a territorial authority.

I have been advised by MAF that while this question is not settled the relative risk to Government is minor. In the remote event of a successful challenge the liability would be the TA's, not Government's. There may be a need to tidy up the legislation in this respect but my advice is that the AWINZ application should proceed.

PREVIOUS CONSIDERATION OF THIS ISSUE

Waitakere City Council pilot programme

In 1995 MAF and the Waitakere City Council (WCC) initiated a pilot programme to assess the effectiveness and acceptability of TA animal control officers undertaking animal welfare enforcement. MAF's primary motivating factor was the progressive decline in Government funding for animal welfare and a desire by MAF to evaluate the possibility of using complementary resources that would not require funding.

In addition, the pilot assessed—

1. Whether a quality service could be provided;
2. Whether efficiencies and better animal welfare outcomes might be achieved if animal control officers could deal immediately with any welfare concerns encountered in their work rather than having to call in a MAF or SPCA inspector; and
3. Whether the SPCA would experience a decline in funding contributions and assistance as the community became aware that the service was being partly funded by rates.

The programme was also developed with other concerns in mind such as the existing heavy reliance on the SPCA enabling other appropriate persons to become involved in animal welfare enforcement (e.g. veterinarians) and who wished to remain independent of the SPCA.

The programme was audited regularly by MAF and showed that animal control officers could deliver a quality service that relates to all animals (not just dogs) and meet pre-agreed performance criteria. There was no discernible effect on voluntary contributions to the SPCA.

All TA officers involved in the pilot were warranted under the Animals Protection Act 1960 and have gained the National Certificate in Compliance and Regulatory Control (Animal Welfare), which is now the required technical standard for all inspectors.

Ratepayers in Waitakere City have expressed satisfaction that animal issues are handled by a broadly based animal welfare and control service more expeditiously and satisfactorily. Waitakere City Councillors have expressed their complete satisfaction in the pilot programme

and this has been reflected in two local body elections (1995 and 1998) in which, for the first time, dog nuisances and animal welfare problems were not a major election issue.

The programme continued for 5 years until the Animals Protection Act 1960 was repealed. AWINZ submitted its application to be an approved organisation under the Animal Welfare Act 1999 before the Act commenced and had discussed drafts of its proposal with MAF in the 2 years leading up to the enactment of the Animal Welfare Act.

DECISION BY THE PREVIOUS GOVERNMENT

The previous Government decided that TAs should not themselves become involved in the delivery of animal welfare services. However, it left open the question of whether or not animal control officers employed by TAs could be inspectors under the Act.

MAF cannot provide full compliance coverage for the Animal Welfare Act without considerable involvement from the voluntary sector. MAF is currently dependent on just one organisation, the RNZSPCA and its branches, for compliance activity. If for any reason the SPCA is no longer able or prepared to have inspectors MAF estimates that it would need an appropriation of \$5 million to provide a full animal welfare compliance service.

The principle behind the concept of approved organisations in addition to the SPCA is that it is in the public interest to have a diversity of approved organisations.

PRIMARY PRODUCTION SELECT COMMITTEE CONSIDERATION

The Primary Production Select Committee did not consider that it was appropriate that TAs themselves should be approved organisations but was aware of the proposed application from AWINZ. The Committee sought an assurance that the proposal would fall within the criteria of the Act.

MAF had a pro-forma application from AWINZ when the Bills were under consideration by the Primary Production Select Committee. The Select Committee did not accept a recommendation from MAF that inspectors must be directly employed by the approved organisation but instead approved that inspectors must be "properly answerable" to an approved organisation. MAF officials assured the Select Committee that the AWINZ proposal would not be prejudiced by the proposed criteria for approved organisations.

The Act implements the decision to provide for a diversity of approved organisations by providing that an organisation may apply to be an "approved organisation" if its *principal purpose* is to promote the welfare of animals. The effect is that although a TA could not be an approved organisation and deliver animal welfare services itself, individual employees of a TA could be eligible for appointment as an inspector.

The AWINZ proposal meets all the criteria of the Act.

AWINZ has agreed that it will enter into a tripartite memorandum of understanding between MAF, the TA and AWINZ for the TA to provide animal welfare services.

The Government would retain accountability through the D-G for setting and monitoring technical and performance standards.

Advantages

- 1. The AWINZ proposal would provide an umbrella organisation that would provide for a diversity of inspectors and their respective organisations.*
- 2. MAF will not be dependent on one organisation in the voluntary sector.*
- 3. The cost to Government would be negligible.*
- 4. The alternative to having no voluntary sector involvement would cost Government about \$5 million.*
- 5. MAF would exercise control over the standards and competency of inspectors and the approved organisation through compliance audits.*
- 6. The Minister has the power to revoke an organisation's approval if there is a serious lapse in meeting the criteria of the Act.*
- 7. Having trained inspectors working at the community level and thus detecting and mitigating animal welfare problems at an earlier level than even the SPCA can achieve will serve the public interest.*

Disadvantages

- 1. Whether or not the programme is within the powers of a TA to fund is not completely resolved. However, the risk is minor and can be managed.*
- 2. There may be a public perception that the boundaries between animal control and animal welfare will be blurred. This has not proven to be the case in the pilot programme.*
- 3. There may be a perception that AWINZ is in competition with the SPCA. The pilot programme has shown that the 2 services are complementary. The Auckland SPCA had misgivings about the Waitakere City pilot programme but now supports it without qualification, as does the Royal New Zealand SPCA.*
- 4. The public may be concerned that there will be proliferation of animal welfare organisations. However, MAF will have the responsibility for ensuring that the establishment of approved organisations are in the public interest.*
- 5. There may be a concern that rates may be affected by TA involvement in animal welfare compliance. The experience of Waitakere City is that it has not involved any significant expense other than an increased level of training, which is of benefit to the general level of competency. The WCC contribution has largely been in time spent by staff rather than by expenditure of funds.*
- 6. MAF will have additional responsibilities in compliance audits of a wider range of approved organisations. That was anticipated when the Select Committee accepted MAF's recommended policy to widen the numbers and types of approved organisation.*

Recommendation

I recommend that Caucus:

Agrees that AWINZ be an approved organisation and that suitable animal control officers from territorial authorities be appointed inspectors under the Animal Welfare Act 1999 provided they are properly answerable to AWINZ and accept that they are subject to the direction of the D-G.