

## Commentary from Neil Wells

NB. Deletions are shown with a strike-through. New wording is shown in italics and underlined. Comments are in a box.

**DRAFT 30 June 2000**

**JULY 2000**

**OFFICE OF HON JIM SUTTON**

## MEMORANDUM TO CAUCUS

### ROLE OF LOCAL GOVERNMENT IN FUNDING ANIMAL WELFARE SERVICES

#### Purpose

Caucus is invited to consider whether territorial authorities (TAs) should have the power to ~~deliver and/or~~ fund animal welfare services, including enforcement.

*The issue to go to caucus is the principle behind the AWINZ proposal, i.e. TA funding for an approved organisation. There is no proposal that TAs should themselves be "approved organisations".*

#### Background

The Animal Welfare Act 1999 (the Act) provides for "approved organisation" to recommend the appointment of non-state sector persons as animal welfare inspectors. Inspectors have considerable powers of enforcement under the Act, including search and seizure and destruction of animals. It is important that an organisation from outside of the Government which is supporting these persons has appropriate accountability, financial and management arrangements.

Currently, the RNZSPCA (SPCA) is the only approved organisation. It undertakes almost 90% of the enforcement work under the Act. Any organisation whose principal purpose is the promotion of the welfare of animals can apply to me for approval as an "approved organisation" but specific criteria must be met (sections 121 and 122 of 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. *AWINZ* ~~The trust~~ would enter into an arrangement with a TA whereby the dog control staff of the TA would become animal welfare inspectors and undertake both animal welfare and dog control services. The dog control staff would continue to be employed by the TA. The TA would fund the trust to undertake supervision and quality control work of the TA staff *and allow staff to undertake animal welfare compliance work in the normal course of their employment.*

I am advised by Crown Law Office that this arrangement is *ultra vires* the Local Government Act 1974 (LGA). According to Crown Law animal welfare is not a statutory function of TAs and, accordingly, they not have the power to spend ratepayer funds on this work. The dog control responsibilities of a TA are found in the Dog Control Act 1996.

*This is not conclusive yet. Further input from Kensington Swan, including sections of the LGA and a line of cases not considered by Crown Law, may re-open the "ultra vires" question.*

### **Previous consideration of this issue**

#### *Waitakere City Council pilot programme*

In 1995 MAF and the Waitakere City initiated a pilot programme to assess the effectiveness and acceptability of local government dog 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 which would not require funding. In addition, the pilot would assess whether:

- a quality service could be provided;
- efficiencies and better animal welfare outcomes might be achieved if dog 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
- the SPCA would experience a decline in funding contributions and assistance as the community became aware that the service was being 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 continued for 5 years up until the Animals Protection Act 1960 was repealed on 1 January 2000. AWINZ submitted its application to be an approved organisation before the Animal Welfare Act 1999 commenced and had discussed drafts of its proposal with MAF in the 2 year period leading up to the enactment of the Animal Welfare Act.*

The programme was audited regularly by MAF and considered to be successful. It showed that dog 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. A major factor in the trial's success was that the Waitakere City Council already had facilities which could be readily utilised for animal welfare activities. The person seeking approval for the trust to become an approved organisation was involved in establishing the pilot programme.

*Seven officers of WCC have graduated with the National Certificate in Compliance and Regulatory Control (Animal Welfare), the new standard required under the Animal Welfare Act 1999 that meets the requirement for technical competence.*

#### *Consultation paper*

~~Concurrent with the trial, and as part of the policy development process for the new animal welfare legislation, MAF issued a discussion paper in December 1997, covering the nature of the provisions that would be needed in the Bill to provide for TA involvement and invited comment. The paper was developed in consultation with the Department of Internal Affairs~~

whose preference, at that stage, was for the function to be located in the specialist piece of legislation (the Animal Welfare Act) rather than in the Local Government Act.

The key elements of the proposal were:

- TA involvement be discretionary and self funded through rates
- the functions would not be devolved to local government in the same way as dog control. The Government would remain ultimately accountable for enforcement and would retain responsibility for setting standards and monitoring performance;
- a TA would be required to consult with the community through the annual planning process to seek a mandate to become involved, but otherwise the council's accountability would be to the government.
- Councils would appoint staff as inspectors under the Act but the Minister's concurrence would be required.

The development of the policy was extensive including assessing appropriate mechanisms for ensuring accountability of TAs to both the Minister and ratepayers. Advice from the Department of Internal Affairs was that, should this policy be pursued, legislation would be needed to remove any doubt that TAs had the power to fund or deliver animal welfare activity.

#### *Response*

Around 35 submissions were received on the discussion paper, the majority from TAs. A follow up telephone survey was conducted in August 1998 of all TAs. Only Waitakere, which had been involved in the initial trial, said that it would definitely want to be involved in such a proposal. Several TAs indicated that they were not opposed to the scheme, provided it was not a mandatory function.

Concerns raised included:

- *That it blurred the boundaries between central and local government* (this was the key concern);
- *That it was not a core function of local government.* The proposal was seen as contrary to messages that local government should be closely examining options for increased efficiencies and divesting non-core functions;
- *financial implications*, especially as the activity would be funded through rates. The concern was that this might be "the thin end of the wedge" in that the function might, in time, be completely devolved without any accompanying funding;
- *lack of appropriate facilities to house a wide range of animals other than dogs.* Waitakere City already had facilities which were utilised in the trial programme while others were concerned about the need for capital investment;
- *lack of expertise:* TA inspectors may not have the required expertise to make informed judgements about animal welfare in farm situations (TAs have a historical responsibility for the control of stock under the Impounding Act).
- *Potential negative impact on the viability of some SPCAs.* Although the trial did not show an impact on the Auckland SPCA, a significant concern is the involvement that a large number of TAs might have on the SPCA nationally. Support for animal welfare

through rates would become much more visible with the risk that people would not want to contribute through both rates and donations.; and

This is not the view of the National Council of the RNZSPCA nor of the Auckland SPCA. So where did this come from.

- ~~the public consultation process was onerous~~ would be required prior to considering undertaking animal welfare activities. The process would necessarily involve both ratepayers (the Council) and the Minister (as the standards setter).

This preceding section is historical and not relevant to the current application. If it is to be included then questions would need to be asked about the manner in which the survey was framed, the timing of the survey and the amount of time allowed for responses. It was conducted over December/January at a time when no Council committees were sitting. The short time did not allow many animal control managers to comment and most of the responses came from administrative staff who were unable to make a commitment to a new venture without input from Council committees. A review of that process would not stand up to critical analysis. Thus this whole section is an historical irrelevancy.

#### Decision by the previous government

In light of the lack of interest by TAs in becoming involved, and concerns noted above, The former government decided that TAs should not become involved in the delivery or funding of animal welfare services. Its preference was for central government to address the problem of funding shortfalls in MAF funding. This has been subsequently resolved. The Primary Production Select Committee also rejected a submission for tighter links between animal welfare legislation and the Dog Control Act.

MAF cannot provide full compliance coverage for the Animal Welfare Act 1999 without considerable involvement from the voluntary sector. MAF is currently dependent on just one organisation, the RNZSPCA, for compliance activity. If for any reason the RNZSPCA is no longer able or willing to have inspectors, MAF estimates that it would need an appropriation of \$5,000,000 to provide a full Government animal welfare compliance service.

The principle behind the concept of approved organisations other than the SPCA was that it is in the Government's interests to have a diversity of approved organisations, all operating on a level playing field.

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. MAF was in possession of a pro forma application from AWINZ when the 2 Animal Welfare 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 favoured the wording that inspectors must be properly answerable. MAF officials assured the Select Committee that the AWINZ proposal would not be prejudiced by the proposed criteria for approved organisations.

The Act implements that decision through providing that an organisation may apply to be an "approved organisation" only if its *principal purpose* is to promote the welfare of animals. The effect is that although TAs could not be approved organisation and could itself themselves deliver animal welfare services. Following the Crown Law opinion it is now

unclear whether the legislation allows a TA to could fund an approved organisation, whether financially or in kind.

The AWINZ proposal meets all of the criteria of the Act. The only outstanding issue is the question of TA funding for animal welfare.

### **Matters to be taken into account in a review of the existing policy.**

#### ***Possible mechanisms for allocating the function to TAs***

In order to authorise the spending of rates in Waitakere City Council an amendment to legislation is may be needed to specify animal welfare as a function of TAs.

This could be achieved in the following ways:

#### **(i) — *Devolution***

~~Many functions have been progressively devolved from central to local government. The process has tended to be based on the principle that functions and their associated funding should be moved closest to the community of interest.~~

~~The recent review of the animal welfare legislation retained responsibility and accountability for animal welfare enforcement at the central government level. This was because expectations for standards of animal welfare do not tend to vary across the country. The community of interest is a national one with standards set nationally.~~

~~This would require a major legislative exercise including local government, animal welfare and associated legislation.~~

<i>Devolution is not proposed so why raise it.</i>
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#### **(ii) Legislation to empower TAs to deliver or fund animal welfare activity**

Such a proposal would:

- ~~allow the discretionary involvement of TAs (and ratepayer funding) by providing TAs with a statutory animal welfare function;~~
- ~~meet the requirements of the LGA with respect to community consultation (this would cover the initial decision as to whether a council became involved, and periodic reviews of that decision); and~~
- ~~provide that Government retained accountability for setting and monitoring standards of performance.~~

~~This would create the unusual, dual accountability arrangement as proposed in the MAF 1997 discussion document, the response to which was covered earlier in this paper.~~

~~Should Caucus decide to support TAs having an animal welfare function, given the possible major review of the Local Government Act, it might be desirable to clarify the issue in a new~~

~~local government reform bill. The allocation of the function could also be considered in the context of discussions about the possible "power of general competence" for local authorities.~~

### *Issues for Caucus consideration*

~~In previous consultation by MAF on this issue, TAs demonstrated little enthusiasm to become involved in animal welfare work. The exception is Waitakere City which is in a unique situation as it has developed effective working arrangements through the MAF pilot programme.~~

### **Options which could be pursued:**

- ~~i — allow TAs to become approved organisations under the Animal Welfare Act;~~

*This is not at issue currently under consideration so why raise it*

- ~~ii — permit TAs to fund an approved organisation whether financially and/or "in kind," such as allowing TA staff and resources to be used to deliver animal welfare services; and~~

- ~~iii — not permitting TAs to be involved in either funding or delivering animal welfare activities.~~

*This is contrary to what the two Ministers are wanting to achieve so why raise it.*

If it was decided to enable TAs to fund or deliver animal welfare services, there are some additional issues to consider:

- ~~the need for legislation to empower what, in the long term, may amount to involvement by only a handful of TAs (this may not be an issue if TAs are given the power of general competence);~~

*Can you explain "the power of general competence".*

- ~~the effects of wider TA involvement on SPCA revenue generation and volunteer support. Increased visibility of TA involvement could lead to ratepayers opting to pay only once (through rates) for the service rather than supporting the SPCA through donations.~~

*This is not the view of the National Council of the RNZSPCA nor of the Auckland SPCA. There is no opposition from the RNZSPCA to the AWINZ proposal. So where did this statement come from.*

- ~~the proposal may meet significant opposition particularly from the farming sector. They believe that animal welfare is not a core function of local government and would lead to an increase in rates. They were concerned that it may set an unwelcome signal for further services to be devolved from central government without accompanying funding.~~

*Federated Farmers view related to an older proposal that TAs be directly involved in animal welfare. The Primary Production Select Committee considered the Fed's submission and still supported the concept of approved organisations with the knowledge of the AWINZ proposal. So this is not in issue here.*

- ~~a strategic review of animal welfare service delivery in 1998 concluded that it would be appropriate for this work to continue to be undertaken by MAF and the voluntary sector.~~

It noted that although there may be a case for involving TAs, especially when a voluntary agency has long been entrusted with the use of coercive powers, it is not conclusive.

Whose opinion is it that this is not conclusive—how relevant is the 1998 review in 2000.

- The fact that significant policy and operational issues, including the concerns outlined in para ?? above, lead to the conclusion that TA involvement was not appropriate.

This statement cannot be supported. Three successive Ministers supported the principle of the WCC programme right to the end of the Animals Protection Act 1960 and the last Minister supported the concept of a seamless transition from the pilot programme to the Animal Welfare Act despite MAF Policy's opposition..

#### 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 and the Government will be less vulnerable should the SPCA not continue to deliver a compliance service.
3. The alternative to having no voluntary sector involvement would cost Government about \$5,000,000
4. The cost to Government of the AWINZ proposal would be negligible.
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 approved organisation if there is a serious failure to meet the criteria of the Act.
7. The public interest would be served by having trained inspectors working at the community level and thus detecting and mitigating animal welfare problems at a lower level than even the SPCA can.
8. By providing a broadly based animal welfare and control service ratepayers in Waitakere City have expressed satisfaction that issues are handled 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 an election issue.
9. The pilot programme clearing demonstrated the synergy of an approved organisation working with the SPCA.

#### Disadvantages

1. There may be a public perception that the boundaries between dog registration and animal welfare will be blurred. This has not proven to be the case in the 5 year pilot programme.
2. 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 initial misgivings about the Waitakere City pilot programme but now supports it without qualification.
3. The public may be concerned that there will be proliferation of animal welfare organisations. However, MAF will have the responsibility for ensuring that approved organisations are in the public interest.

4. 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 actual expense other than an increased level of training. The TA contribution has largely been in time spent by staff rather than by expenditure of funds.
5. 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 ~~either:~~

- ~~i agrees that TAs should have the power to become approved organisations under the Animal Welfare Act; or~~
- ii **agrees** that TAs be allowed to fund an approved organisation, whether financially and/or "in kind," such as allowing TA staff and resources to be used to deliver animal welfare services; **or**
- ~~iii agrees that, if it is found to be necessary, a suitable amendment be included in the next round of amendments to the Local Government Act~~
- ~~iii agrees that TAs should not be involved in either funding or delivering animal welfare activities; or~~
- ~~iv agrees that the question whether TAs should have the power to apply to become approved organisations under the Animal Welfare Act or be allowed to fund an approved organisation issue be addressed in the review of the Local Government Act.~~

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| <ol style="list-style-type: none"> <li>i. AWINZ is not proposing that TAs become approved organisations.</li> <li>iii. That is not a proposition that is related to the AWINZ proposal.</li> <li>iv. The question of whether or not TAs have the power to fund an approved organisation has not been established. MAF Policy is presuming that an amendment to the LGA would be necessary. That is contrary to the advice given to the Select Committee. Was MAF Policy's advice to the Select Committee last year erroneous, as implied by Pete Hodgson?</li> </ol> |
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