



Ministry of Agriculture and Forestry

Te Manatu Ahuwhenua, Ngaherehere

Ref: AW-09

28 January 2000

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MAF POLICY

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Dear Neil

**ANIMAL WELFARE ACT: APPLICATION BY THE ANIMAL WELFARE
INSTITUTE OF NEW ZEALAND (AWINZ)**

1. Thank you for your e-mail of 5 January 2000 in which you respond to observations raised by MAF on the application by AWINZ at the meeting with MAF officials on 22 December 1999. They were also formally conveyed to you in a letter from the Minister of Agriculture.
2. This letter responds those points in your e-mail which appear to be pertinent to the application (statements which appear to be in the nature of "asides" have not been addressed).

Principal Purpose

3. MAF is placing the emphasis on the Trust Deed rather than the application in order to determine the purposes of the Institute. The Deed (section 4) states that the purpose of the Trust is "to promote the welfare of animals" and it could be argued that the Trust has only that one purpose. The balance of section 4 appear to be the means by which the trust will achieve its purpose.
4. MAF would appreciate clarification of the phrase "To provide animal welfare services" in section 4 of the Deed. What services might this include? How can this be reconciled with your statement that "The intention is that AWINZ will operate as a quality assurance body directly accountable for the performance of inspectors, rather than as an employer" which suggests that AWINZ will not be directly providing "animal welfare services?"

Employment arrangements

5. Your statement that AWINZ will operate as a quality assurance body directly accountable for the performance of inspectors rather than as an employer" has helped clarify the relationship between the main parties (AWINZ, the Waitakere and North Shore City

6. MAF does not agree with your statement that, when an inspector is performing a function under the Animal Welfare Act (the Act) 1999 he/she will be doing so on a voluntary basis, because they are still being paid by their employer.

Animal welfare and animal control

7. MAF notes your statement that New Zealand legislation does not make a distinction between animal welfare and animal control. MAF does not accept your view that "Parliament itself has inherently linked dog welfare and dog control". The links (for example, s. 174 of the Animal Welfare Act) are minor and, in our view, not sufficiently strong to support an argument that the two are inextricably linked. You will recall that the Primary Production Select Committee declined to support your submission for a greater link between the two pieces of legislation.
8. MAF agrees with your observation that section 126 (2) of the Act takes precedence if there appears to be a conflict between an inspector's obligations under the Act and the Dog Control Act 1996.

Rating

9. MAF's consideration of the legislative authority for the proposed arrangement between AWINZ and the Waitakere City Council suggests that it is unclear whether the City Council has the legal power to enter into the arrangement. Given this situation MAF believes that it is the responsibility of the Waitakere City Council, which should be knowledgeable about the legislation within which it operates, rather than MAF, to assure the Minister that the proposed arrangement with AWINZ is not ultra vires relevant legislation.
10. MAF would appreciate a written assurance from the Waitakere and North Shore City Councils that they have the legal power to spend money derived from rating on animal welfare (by paying inspectors when they undertake animal welfare work). This considered necessary as the evidence you have provided suggests that the Council's staff will be delivering animal welfare services at the Council's cost, with the Councils also providing facilities to meet the requirements of section 141 and 142 of the Act.

Geographical coverage

Awinz

11. MAF agrees that the Act does not allow the Minister to restrict the approval of an organisation geographically.

Inspectors

12. The Act is clear that inspectors warrants can be restricted to a particular district or part of New Zealand. MAF does not accept your submission that Waitakere and North Shore inspectors should be able to operate within the wider Auckland region.
13. The inspectors are employed by either the Waitakere and North Shore City Councils and their area of operation in the first instance, as animal control officers, is restricted to those cities. You have argued that when warranted inspectors come across an animal welfare situation in those cities then, in appropriate situations, they can exercise their powers under the Act. MAF accepts this point.

14. However, to argue that the inspectors should have the ability to exercise those powers in territorial authority areas which, in the normal course of business, they would not be working, has the obvious potential to create unnecessary tensions with those local authorities.
15. Should any warrants be issued MAF would propose to restrict them to the area of the territorial authority which employs the inspector.

Financial arrangements

16. MAF agrees that the Act uses the term "financial arrangements" rather than "financial robustness". However, the provision allows MAF to assess the financial robustness of the organisation because, in the end, the Minister has to be assured that "having regard to the interests of the public, then organisation is suitable to be declared to be an approved organisation". It would not be in the interests of the public to approve an organisation which was not obviously financially robust.
17. The income and expenditure statement you provided is "barebones". The income from linked organisations and inspectors can reasonably be expected. However, the budget for grants and donations (which amounts to 80% of the organisation's expected income) is completely untested. Could you please give more information to support the expected level of income from these sources. It is noted that the income from linked organisations will, however, cover administration of AWINZ (primarily the quality assurance role?).
18. MAF notes that most of the expected income is to be spent on consultants. This is a significant amount for a small organisation. MAF would appreciate more details on the nature of this expenditure and how it will contribute to the promotion of animal welfare.

Confirming letters to the Minister

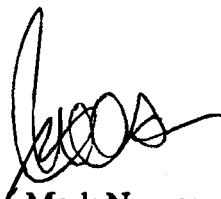
19. It is not appropriate for MAF to comment on the letters you have drafted for consideration by the Waitakere North Shore City Council and their inspectors. Accordingly, we have not reviewed those draft letters.

Legal status of the Trust

20. Could you please provide documentary evidence confirming that the Trust has been legally registered under the Charitable Trusts Act 1957.

MAF would appreciate your comments on the above points.

Yours sincerely



Mark Neeson
Senior Policy Analyst