

Memorandum of Understanding

Between

The Animal Welfare Institute of New Zealand

And the

Ministry of Agriculture and Forestry

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

FINAL

4 December 2003

Introduction

This Memorandum of Understanding between the Animal Welfare Institute of New Zealand (AWINZ) and the Ministry of Agriculture and Forestry (MAF) defines the requirements to be met by AWINZ in the area of selection and appointment and other matters relating to both Inspectors appointed by the Minister and Auxiliary Officers appointed by the Director-General under the Animal Welfare Act 1999 on the recommendation of AWINZ, and the enforcement of the provisions of the Animal Welfare Act 1999.

This Memorandum of Understanding has been prepared on the assumption that appropriate agreements have been put in place between AWINZ and its Linked Organisations and between Linked Organisations and individual Inspectors outlining the requirements to be mutually met to enable Inspectors to meet their obligations under this Memorandum of Understanding, the AWINZ Performance and Technical Standards, and the requirements of the Animal Welfare Act 1999.

Definitions

“Auxiliary Officer” means a person who is appointed as an Auxiliary Officer under the Animal Welfare Act 1999.

“Approved Organisation” means an organisation declared, under section 121 of the Animal Welfare Act 1999, to be an approved organisation for the purposes of the Act.

“AWINZ” means the Animal Welfare Institute of New Zealand.

“AWINZ Inspector” means a person appointed as an Inspector under the Animal Welfare Act 1999 on the recommendation of AWINZ.

“AWINZ Performance and Technical Standards” means the Performance and Technical Standards for Inspectors and Auxiliary Officers of the Animal Welfare Institute of New Zealand approved by the Minister of Agriculture on 1 April 2001.

“Director Animal Welfare, Biosecurity Authority” means the Director of the Animal Welfare Group, Biosecurity Authority.

“Director-General” means the chief executive of the Ministry of Agriculture & Forestry.

“Group Director, Biosecurity Authority” means the Group Director, Biosecurity Authority of the Ministry of Agriculture & Forestry.

“Inspector” means a person who is appointed as an Inspector under the Animal Welfare Act 1999.

“Linked Organisation” means an organisation that is linked to AWINZ pursuant to a memorandum of understanding.

“Minister” means the Minister of Agriculture.

“MAF” means Ministry of Agriculture & Forestry and incorporates both MAF Biosecurity Authority and the MAF Special Investigation Group.

“MAF Biosecurity Authority” means the management group of MAF responsible for facilitating the setting of standards by AWINZ for AWINZ Inspectors and Auxiliary Officers carrying out animal welfare enforcement, and monitoring compliance with these standards. The MAF Biosecurity Authority is also responsible for the appointment of Inspectors and Auxiliary Officers under the Animal Welfare Act 1999.

“MAF Special Investigation Group” means the management unit within the MAF Biosecurity Authority responsible for responding to, and investigating, complaints under the Animal Welfare Act 1999.

“Primary Investigation Agency” means the agency that received the initial complaint.

Role and responsibilities of the Minister, Director-General, and AWINZ

1. The Animal Welfare Act 1999 and its Regulations are administered by the Ministry of Agriculture & Forestry.
2. The Director-General, who is the person accountable for the administration of the Act, has delegated the powers of appointment of Inspectors to the Group Director, Biosecurity Authority who has sub-delegated this power to the Director Animal Welfare, Biosecurity Authority.
3. The Minister or his or her delegate may, on the recommendation of an approved organisation (which includes AWINZ), appoint persons to be Inspectors under the Animal Welfare Act 1999 for the purposes of enforcing the provisions of the Act. The Minister or his or her delegate may remove an Inspector from office.
4. The Director-General or his or her delegate may, on the recommendation of an approved organisation (which includes AWINZ), appoint persons to be Auxiliary Officers under the Animal Welfare Act 1999 and may remove Auxiliary Officers from office.
5. The Director-General is accountable to the Minister of Agriculture for the effective delivery of animal welfare enforcement services.
6. AWINZ has established performance and technical standards for AWINZ Inspectors and Auxiliary Officers which were approved by the Minister of Agriculture on 1 April 2001. AWINZ is responsible for ensuring that AWINZ Inspectors and Auxiliary Officers comply with AWINZ Performance and Technical Standards.
7. AWINZ is responsible for ensuring that a Memorandum of Understanding exists between a Linked Organisation and itself and that the terms and conditions of that agreement are both being met and are consistent with this Memorandum of Understanding and the Performance and Technical standards for AWINZ Inspectors and Auxiliary Officers.

8. AWINZ will ensure that the Memorandum of Understanding between a Linked Organisation and itself requires the Linked Organisation to have in place an agreement with the individual Inspector that will enable the Inspector to perform their responsibilities as required under the Animal Welfare Act 1999.
9. AWINZ agrees to consult with MAF prior to appointing an additional trustee or replacement trustee.
10. AWINZ agrees to consult and seek the agreement of MAF before making agreements with any new type of Linked Organisation.

Agreement between AWINZ and its Inspectors and Auxiliary Officers

11. AWINZ shall, with respect to each person who is to be appointed an Inspector or Auxiliary Officer on the recommendation of AWINZ, enter into a binding contract with that person prior to that person's appointment. Notwithstanding that this Memorandum of Understanding may not be legally binding on AWINZ or MAF, that contract shall be to the following effect:
 - (a) That person shall comply with all obligations pertaining to AWINZ Inspectors and Auxiliary Officers in this Memorandum of Understanding (including any modifications);
 - (b) That person acknowledges that AWINZ fully intends to fulfil the requirements of this Memorandum of Understanding (including any modifications);
 - (c) That person authorises AWINZ, MAF, and all other relevant persons to collect, use, and disclose personal information about that person in accordance with the provisions of this Memorandum of Understanding (including any modifications); and
 - (d) That person shall take all such steps as AWINZ reasonably considers necessary in order for AWINZ to fulfil these requirements.

Training Programme

12. No person shall be appointed as an Inspector or an Auxiliary Officer until training has been undertaken in accordance with an Inspector or Auxiliary Officer Training Programme that is approved by the Group Director, Biosecurity Authority. Currently, that programme is the National Certificate in Compliance and Regulatory Control (Animal Welfare). A short-term appointment may be made where the person has completed specified unit standards of the National Certificate, namely unit standards 14234 and 4223.
13. AWINZ shall provide to MAF Biosecurity evidence that training has been completed to an acceptable standard prior to appointment as an Inspector or Auxiliary Officer.

Approval of AWINZ Procedures For Inspectors

14. AWINZ shall, in consultation with its Linked Organisations, develop, and implement, AWINZ Procedures for Inspectors, which include:
- (a) A Quality Manual which contains:
- Written procedures for:
- (i) selection and recommendation of suitable people for appointment as Inspectors or Auxiliary Officers;
 - (ii) training of Inspectors and Auxiliary Officers;
 - (iii) recording investigations into complaints against Inspectors or Auxiliary Officers;
 - (iv) recording investigations into animal welfare complaints, and
 - (v) retention of investigation records for a period of five years (with the exception of retention under section 142)
- Statements relating to management roles and responsibilities:
- (i) AWINZ structure;
 - (ii) Levels of accountability;
 - (iii) Policy statements, e.g. euthanasia, prosecution; and
- (b) Internal monitoring (review) of adherence to the AWINZ Procedures For Inspectors.
15. AWINZ Procedures For Inspectors shall be approved by the AWINZ Board of Trustees. Modifications to the AWINZ Procedures For Inspectors shall be approved by AWINZ Board of Trustees prior to implementation.
16. AWINZ Procedures For Inspectors shall be approved by the Group Director, Biosecurity Authority. Modifications to the AWINZ Procedures For Inspectors shall also be approved by the Group Director, Biosecurity Authority prior to implementation.

Reporting

17. AWINZ shall furnish MAF Biosecurity with annual statistics pertaining to:
- (a) number of complaints received (nationally) by species
 - (b) number of prosecutions (nationally) including the number of successful prosecutions.
18. The reporting period shall be 1 January – 31 December of each year.
19. Statistics must be supplied to MAF Biosecurity (Animal Welfare Group) by 1 April of the following year.

20. AWINZ will inform MAF SPIG of any search warrants obtained and any prosecutions taken so as to enable MAF SPIG to maintain a current national database.
21. Should AWINZ wish to make an enquiry of the national database of prosecutions and search warrants, the enquiry must be made in writing and must be in relation to a current investigation. MAF SPIG will only release information from this database to an approved organisation where such a release is lawful in terms of the Privacy Act 1993.
22. AWINZ will provide MAF Biosecurity Authority with an annual report on the year's administration and performance of AWINZ by the 31st of March of the following year on the administration, performance and affairs of AWINZ.

AWINZ/MAF Liaison (National & Local)

23. Formal discussion between AWINZ, a representative of each Linked Organisation and MAF shall be held on policy issues, as and when required, at no less than two meetings a year.
24. Liaison between Linked Organisations and local MAF Special Investigation Group officers shall take place, as and when required, with no less than two meetings a year.
25. Unresolved issues shall be passed without delay to a more senior level of each respective organisation.

Procedures for Referral of Complaints against Inspectors and Auxiliary Officers

26. This section applies to complaints against AWINZ Inspectors and Auxiliary Officers.
27. All complaints against Inspectors and Auxiliary Officers shall, in the first instance, be forwarded to the AWINZ Board of Trustees and be dealt with according to the procedures for investigating complaints against Inspectors and Auxiliary Officers as published in the AWINZ Procedures For Inspectors.
28. AWINZ Board of Trustees, on receipt of written advice of a serious complaint against an Inspector or Auxiliary Officer in regard to his or her conduct in the exercise, or purported exercise, of powers under the Animal Welfare Act 1999, shall advise MAF Biosecurity Authority of the complaint and any current action being taken to investigate and resolve the complaint.
29. AWINZ shall consult with MAF Biosecurity Authority on the investigation and the resolution of the serious complaint.
30. Where requested by MAF Biosecurity Authority, AWINZ shall pass on all details concerning any complaint and the investigation to MAF Biosecurity Authority.
31. Where MAF Biosecurity Authority wishes to follow up a complaint itself in addition to AWINZ investigation:

- (a) It will do so only after consulting with the AWINZ Board of Trustees (AWINZ will also consult with the Linked Organisation involved).
 - (b) It will report its findings to the AWINZ Board of Trustees within five working days of completing its investigation. (The AWINZ Board of Trustees will convey the findings to the Linked Organisation within five working days of receiving them).
32. MAF Biosecurity Authority confirms that it will be governed by the provisions of the Privacy Act 1993 in respect of all information supplied to, or gathered by, MAF Biosecurity Authority.

Surrender and Retrieval of Instruments of Appointment

33. An AWINZ Inspector or Auxiliary Officer shall surrender his or her instruments of appointment and certificate of appointment to MAF Biosecurity Authority through AWINZ where:
- (a) The Inspector is removed from office by the Minister or his or her delegate under the Animal Welfare Act 1999 or the Auxiliary Officer is removed from office by the Director-General or his or her delegate under the Animal Welfare Act 1999;
 - (b) The Inspector or Auxiliary Officer ends his or her contract with AWINZ;
 - (c) The Inspector or Auxiliary Officer leaves the service of the Linked Organisation specified on the letter of appointment;
 - (d) The Inspector or Auxiliary Officer resigns from the office of Inspector or Auxiliary Officer respectively; and
 - (e) The Inspector or Auxiliary Officer's term of appointment otherwise expires.
34. AWINZ shall be responsible for recovering the instruments of appointment and forwarding it to MAF Biosecurity Authority on behalf of the former Inspector or Auxiliary Officer within six weeks of any of the events outlined in paragraph 33. If the Inspector or Auxiliary Officer fails to surrender his or her instruments of appointment within six weeks, MAF Biosecurity Authority is to be advised.
35. If the Inspector or Auxiliary Officer refuses to surrender his or her instruments of appointment, AWINZ shall advise MAF Biosecurity Authority immediately.

Supersession Policy

36. In the event that both the MAF Special Investigation Group and AWINZ have been advised separately of the same animal welfare complaint, the procedure as outlined in AWINZ Performance and Technical Standards for Inspectors and Auxiliary Officers and the MAF Special Investigation Group Performance and Technical Standards for Inspectors respectively will be followed.
37. If both agencies wish to pursue the same complaint, the matter is to be advised as soon as possible to the AWINZ Board of Trustees, in the case of AWINZ, and to the

National Manager, MAF Special Investigation Group, in the case of the MAF Special Investigation Group, for resolution by the Director Animal Welfare, MAF Biosecurity Authority in consultation with an AWINZ Trustee, the relevant Linked Organisation and local MAF staff.

38. Where a complaint is transferred from one agency to another, the agency accepting the transfer shall assume full responsibility for the investigation, including costs, thereafter. The transferring agency shall accept the decision made on any action taken in an investigation subsequent to the transfer.
39. The agency accepting the transfer of a complaint shall provide written feedback to the transferring agency on the outcome and/or progress of a complaint. The transfer of the job shall be made in writing by the transferring agency.

Assistance Policy

40. In the event that MAF Inspector(s) assistance is requested by an AWINZ Inspector(s) in an investigation or vice versa, any procedures relating to assistance in the AWINZ Performance and Technical Standards for Inspectors and Auxiliary Officers and the MAF Special Investigation Group Performance and Technical Standards for Inspectors, respectively, must be followed.
41. The Primary Investigation Agency shall retain full responsibility for any investigation in which it has requested assistance.
42. Both AWINZ and MAF Special Investigation Group staff must respect any decision(s) made by the Primary Investigation Agency in any investigation which requires assistance.

Media Policy

43. AWINZ shall ensure that Inspectors refrain from making any public comment on any specific animal welfare investigations that may jeopardise any legal proceedings, pending or current.
44. The animal welfare enforcement agencies agree to provide information copies of press releases, which are of relevance to the other animal welfare enforcement agency, at the time of distribution of the press release. It is envisaged that the animal welfare enforcement agencies may wish to express differing views from time to time and this provision is not intended to compromise either animal welfare enforcement agency's responsibilities.

Selection Procedures for Inspectors and Auxiliary Officers

45. Initial selection of Inspectors and Auxiliary Officers shall be undertaken by Linked Organisations in accordance with the procedures outlined in the AWINZ Procedures For Inspectors.

46. AWINZ shall be responsible for ensuring that written authorisation has been obtained from an applicant for the collection, use and disclosure by MAF Biosecurity Authority, AWINZ, the New Zealand Police or other persons of personal information about the applicant for the purposes of paragraphs 45 to 51 and 66.
47. AWINZ shall make every effort to ensure that only suitable persons are recommended to MAF Biosecurity Authority for appointment. Selection and recommendation shall be carried out in accordance with the AWINZ Procedures For Inspectors.
48. AWINZ shall supply to the MAF Biosecurity Authority the following information in relation to an application for appointment:
- (a) Inspector's/Auxiliary Officer's application form;
 - (b) An assessment of the applicant's ability to perform the role of an Inspector/Auxiliary Officer;
 - (c) Details of reference checks;
 - (d) Details of training completed and performance; and
 - (e) A passport size colour photograph of the applicant.
 - (f) A signed identity card to MAF's specification.
49. The policy of AWINZ is that candidates for appointment as Inspectors or Auxiliary Officers must be free of serious convictions.
50. MAF Biosecurity Authority reserves the right to interview any applicant who is recommended to become an Inspector or Auxiliary Officer. MAF Biosecurity Authority will bear the interview costs.
51. MAF Biosecurity Authority reserves the right to request additional information from the applicant or any other person regarding the applicant as may be required to approve an application.
52. MAF Biosecurity Authority shall process applications for appointment within five working days of receipt subject to the above information being in order.

Appointments

53. Subject to the terms of paragraph 33 and the suitability of the applicant, the general policy of MAF is that an initial appointment shall be issued to an Inspector or Auxiliary Officer for 12 months.
54. No person in the service of AWINZ or its Linked Organisations shall exercise, or purport to exercise, the powers of an Inspector or Auxiliary Officer without a current instrument of appointment.
55. A person who knowingly exercises the powers of an Inspector or Auxiliary Officer with an expired instrument of appointment shall be subject to a review by MAF Biosecurity Authority. This may affect the suitability of that person for re-appointment. This paragraph does not detract from section 160 of the Act.

Renewal of Appointments

56. AWINZ is responsible for ensuring that all AWINZ Inspectors and Auxiliary Officers hold a current appointment and carries evidence of appointment at all times in the course of performing enforcement activities under the Animal Welfare Act 1999.
57. An application for the renewal of an appointment must be accompanied by an assessment of the Inspector's or Auxiliary Officer's performance in the field by the respective Linked Organisation. All applications must be processed in accordance with the procedures outlined in the AWINZ Procedures for Inspectors.
58. Applicants for a renewal must sign a declaration on the application form stating that they have not been convicted of any serious offence during their previous period of appointment or stating details of any such convictions.
59. Applications for renewal of appointments are to be submitted to AWINZ 8 weeks prior to the expiry of the appointment. Late applications should be advised promptly to MAF Biosecurity Authority via AWINZ.
60. It is the general policy of MAF that a renewed appointment shall be issued to an Inspector or Auxiliary Officer for three years subject to the terms of paragraph 33 and a satisfactory assessment of the Inspector's or Auxiliary Officer's performance which has been carried out by the respective Linked Organisation, and the Inspector's or Auxiliary Officer's compliance with the provisions of this Memorandum of Understanding.
61. MAF Biosecurity Authority reserves the right to request additional information from the applicant, or any other person regarding the applicant, as may be required to approve an application for the renewal of the appointment.
62. MAF Biosecurity Authority reserves the right to interview any applicant who seeks a renewal of an appointment. MAF Biosecurity Authority will bear the interview costs.

Review Process

63. The following review process is available to an applicant/Inspector/Auxiliary Officer in the event of one of the following circumstances occurring:
 - (a) AWINZ declines to forward an application for appointment to MAF for approval.
 - (b) AWINZ declines to recommend to MAF the renewal of an Inspector or Auxiliary Officers appointment.
 - (c) AWINZ recommends to MAF the revocation of an Inspector's or Auxiliary Officer's appointment.
64. If, within 20 working days after written notification of the above event and of the applicant/Inspector/Auxiliary Officer's right of review, being posted to the applicant/Inspector/Auxiliary Officer, a request for review is received in writing by the AWINZ Board of Trustees from the applicant/Inspector/Auxiliary Officer, then:

- (i) A review hearing will take place at the next AWINZ Board of Trustees meeting.
- (ii) The review will be considered by the Board of Trustees.
- (iii) A majority decision of the Board of Trustees is required to overturn the event in question.
- (iv) The applicant (and/or their representative) can attend for part of the review hearing to speak to their case, and to answer any questions the Board of Trustees may have.
The applicant (and/or their representative) must pay their own expenses in relation to their attendance.
- (v) The decision of the Board of Trustees will be mailed to the applicant no later than 10 working days after the date of the review hearing.

Procedures for Animal Welfare Complaint Investigation

65. The procedures outlined in AWINZ Performance and Technical Standards for Inspectors and Auxiliary Officers must be followed in all animal welfare complaints investigated by AWINZ, and its Linked Organisations.
66. AWINZ shall provide to the MAF Biosecurity Authority any details of any animal welfare complaint investigation carried out by AWINZ or its Approved Organisations on written request.
67. Such a request by the MAF Biosecurity Authority must stipulate the reason(s) this information is required.
68. MAF Biosecurity Authority shall report to AWINZ on the outcomes of any actions it takes arising from such a request being fulfilled. Notification of the outcomes to a branch or member society shall be the responsibility of AWINZ.
69. MAF Biosecurity Authority will advise AWINZ of any lawful directions given to an Inspector specifically or Inspectors generally.

Prosecution Policy

70. AWINZ and its Linked Organisations, and their Inspectors shall adhere to the prosecution procedures outlined in the AWINZ Procedures For Inspectors and the AWINZ Performance and Technical Standards for Inspectors and Auxiliary Officers.

Areas of Jurisdiction

71. Inspectors or Auxiliary Officers must not operate outside the district under the jurisdiction of the Linked Organisation under which that Inspector or Auxiliary Officer is employed or belongs, unless there is an emergency, and then only if the Inspector's or Auxiliary Officer's appointment is not restricted to a particular district under section 124(3)(b) of the Act.

72. (a) On leaving a branch or member society an Inspector or Auxiliary Officer will forward his or her instruments of appointment to AWINZ.
- (b) AWINZ will forward the instruments of appointment to MAF Biosecurity Authority.
- (c) When an application is received from another Linked Organisation requesting appointment of that person as an Inspector or Auxiliary Officer, AWINZ will immediately forward a recommendation to MAF Biosecurity Authority for the issue of a replacement instruments of appointment unless there is good cause not to do so.
- (d) The general policy in such instances will be for the appointments to be issued for period of 12 months.
- (e) The instruments of appointment will be forwarded to the applicant through AWINZ.
73. Subject to paragraph 7, where an Inspector or Auxiliary Officer has operated in a district outside of their area of approval, the Inspector or Auxiliary Officer must notify the Linked Organisation of that area and the appropriate local authority in that area as soon as practicable.

Impartiality of Inspectors

74. Inspectors should be careful not to publicly participate in any activities that could be seen to jeopardise their impartiality when carrying out their inspectorate duties.

Annual Auditing of AWINZ Enforcement Activities

75. MAF Biosecurity Authority (Compliance Group) shall conduct an annual audit of selected Linked Organisations and/or AWINZ National Office relating to:
- (a) selection and recommendation of Inspectors and Auxiliary Officers for his or her appointment;
- (b) compliance with the Animal Welfare Act 1999;
- (c) documentation relating to animal welfare complaint investigations;
- (d) training of Inspectors and Auxiliary Officers.
76. MAF Biosecurity Authority shall give reasonable notice of its intention to audit selected Linked Organisations and AWINZ.
77. MAF Biosecurity Authority shall provide the opportunity for AWINZ and the Linked Organisations, to respond to the initial audit findings.
78. MAF Biosecurity Authority and AWINZ shall agree on the contents of the final audit report and AWINZ shall be responsible for ensuring that any issues in the agreed audit report are addressed.
79. MAF Biosecurity Authority shall supply to AWINZ written audit reports for each audit within two months of the audit being carried out. AWINZ will pass copies of audit reports to those Linked Organisations involved.

80. AWINZ shall provide MAF Biosecurity Authority with a progress report on compliance with the audit findings within four months of the final audit report being supplied.
81. All costs and expenses of auditors engaged by MAF will be the responsibility of MAF Biosecurity Authority.

Duration of Agreement

82. The provisions of this Memorandum of Understanding shall not be altered in any way without the written agreement of both parties.
83. This Memorandum of Understanding shall remain in force until terminated by either party by giving three months notice in writing to the other party or until replaced by a new Memorandum of Understanding under clause 84.
84. This Memorandum of Understanding shall be reviewed annually by both parties, or earlier at the request of either party.

Dated this 4th day of December 2003

At Auckland

Signed by Barry O'Neil, Group Director,
Biosecurity Authority, pursuant to authority
delegated by the Director-General of Agriculture
and Forestry

Signed by Neil Wells, Trustee of the
Animal Welfare Institute of New Zealand