

From: Larry Fergusson
To: Mark Neeson
Date: 13/10/2000 13:22:09
Subject: Re: AWINZ papers

Sorry I have taken so long to get to this - I have included some amendments in the attached papers. If you have any problems with them give me a call.

Larry

>>> Mark Neeson 10/10/2000 10:58:33 >>>

Larry,

Attached for your consideration and comment are two papers on AWINZ.

The first is a briefing for the Minister on our reassessment of the application. It notes developments since he met Neil Wells, describes the legal issues, risks and implications. It invites him to consider approving the application 'in principle' and to submit a paper to Caucus.

The second is the Caucus paper which reflects the discussion you, Barry and Bruce had with Neil. Neil agrees with this paper.

The briefing endeavours to scope the issues while pointing the minister in a particular direction if he so wishes.

Please feel free to change as you see fit; I appreciate the wording will be quite important in this case. After receiving your comments I will send onto Barry for his concurrence.

Neil rang me early last week to check on progress. I told him that I was completing a briefing and that it would be ready this week, hopefully. Happy to discuss the papers if necessary.

Thanks

Mark

33

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Draft 10 October 2000

AW-09

Brf:

Minister of Agriculture

ANIMAL WELFARE INSTITUTE OF NEW ZEALAND: PAPER FOR CAUCUS

Purpose

As requested by you, MAF has prepared the attached paper for you to take to Caucus on the role of territorial authorities in funding the delivery of animal welfare services. This briefing discusses some background aspects from a MAF perspective.

Background

On 15 June 2000 you met with Mr Neil Wells to discuss his application for the Animal Welfare Institute of New Zealand (AWINZ), to be declared an approved organisation under the Animal Welfare Act 1999. The key question to be decided was whether territorial authorities (TAs) can legally fund the delivery of animal welfare services.

During the meeting you noted that the Government did not have a policy on the point but you were prepared to take the matter to Caucus for its view. You asked MAF to prepare a paper for you to take to Caucus. The requested paper is attached. It has been drafted following discussions and correspondence with Mr Wells; he agrees with it.

Review of Issues

Possible use of "section 37T" arrangement

As foreshadowed at the meeting in your office both MAF and Mr Wells sought further legal advice on whether the legal stalemate could be resolved by recourse to an arrangement under section 37T of the LGA. This section enables the Crown to enter into agreements with a TA whereby the TA may exercise any function or provide any service on "for and on behalf of the Crown".

The function to be delegated would be that of the Crown and not that of an approved organisation. The Crown is authorised to employ inspectors only; it cannot be an approved organisation. Legal opinions agree that a section 37T arrangement could be used, however the policy implications of doing so are considerable. The function to be delegated would be that of appointing inspectors which would mean that the TA would itself appoint inspectors, rather than employ inspectors appointed by the Minister. Further, the TA is seeking to support AWINZ, not undertake a function on behalf of the Crown. If the Crown were to enter into an agreement with the TA and with AWINZ, that would amount to recognition that work was being undertaken on behalf of the Crown.

Both MAF and Mr Wells agree that using section 37T would not be appropriate in the present circumstances.

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MAF proposes that, on balance, you might wish to consider approving the AWINZ application *in principle* although there are risks in doing so. An 'in principle' decision is desirable as MAF would propose that a final decision attach conditions relating to AWINZ establishing performance and technical standards for inspectors and auxiliary officers. These conditions are nearing completion and can only be imposed at the time of approval.

Consultation with other Ministers

MAF has not discussed this paper with other government departments. You may wish to consider however, whether to discuss the situation with the Minister of Local Government before taking the matter to Caucus. If the Caucus supports the paper a possible solution would be to amend the LGA which would require that Ministers' agreement. The Minister of Local Government is also considering a comprehensive review of the LGA and may wish to consider this particular issue.

Rural sector concern

The role of TAs in animal welfare was discussed in a workshop on a strategic review of animal welfare service delivery in July 1998. Federated Farmers firmly opposed TAs having such a role. It believes that the rural community would oppose TAs having an additional function, even if optional, especially as it would have to be funded from rates.

Possible legislative vehicle

If you decide to approve the application it would be desirable that a specific empowering provision be included in the LGA to clarify the legal situation. MAF does not propose to seek legislative priority for an animal welfare amendment bill in the near future nor is the issue appropriate for a statutes amendment bill as it is a substantial policy initiative.

There is a Local Government Reform Bill (No.2) on the Order Paper which seeks to amend to the Dog Control Act and provide for further controls over dangerous dogs. The Department of Internal Affairs has advised that it does not expect the Bill to proceed this year.

There is no other appropriate bill on the Order Paper that could be used to effect a legislative change this year. MAF believes that as the risks of a challenge are low it would be reasonable to wait for an appropriate legislative vehicle. You may wish to consider seeking legislative

priority for an animal welfare amendment bill in 2001 or awaiting a review of the Local Government Act.

Whether MAF "maladvised" the Select Committee

At the June meeting there was a discussion on the nature of the advice MAF tendered to the Primary Production Select Committee on the relationship between TAs and AWINZ. The Hon. Pete Hodgson questioned whether MAF had "maladvised" the Committee when giving advice on the relationship between TAs and AWINZ.

MAF believes that a genuine misunderstanding occurred when this issue was discussed. MAF understood that the Committee wished to be assured that organisations such as AWINZ could "engage" inspectors and that inspectors did not have to be directly employed by an approved organisation. This led to the inclusion of the word "arrangement" after "employment contracts" in section 122(1)(d) of the Act.

MAF understands that Mr Hodgson was seeking an assurance from MAF that the AWINZ application would not be affected by this amendment. This was indeed the case. MAF now believes that Mr Hodgson may also have been seeking an assurance that the proposed funding arrangements between TAs and AWINZ would not be affected. If so, it was not clear to MAF that that was the intention. Hence MAF believes that a genuine misunderstanding arose rather than MAF "maladvising" the Committee.

As noted above, following discussions with Mr Wells, the attached Caucus paper has been drafted in a definitive manner. It describes the legal and policy issues while noting your intention to approve the application. You are invited to consider submitting the paper to Caucus.

Recommendations

It is recommended that you:

Note that the Animal Welfare Act 1999 requires that you be satisfied that the financial arrangements of AWINZ are such that, having regard to the interests of the public, the organisation is suitable to be declared to be an approved organisation;

Noted

Note that if the application were approved, there would be the risk of a challenge but, in the event that it was successful, it would be unlikely that the welfare of animals would adversely affected. Approval might also be seen as tacit recognition that animal welfare and animal control services are synonymous;

Noted

Note that amending legislation would be desirable to clarify the legal position;

Noted

Note that MAF and Mr Wells agree that it is not appropriate to rely on a solution based on section 37T of the Local Government Act Act 1976

Noted

Note that the issue may be of interest to the Minister of Local Government; and

Noted

Advise whether you propose, *in principle*, to approve the application submitted by Mr Wells on behalf of the Animal Welfare Institute of New Zealand (Inc.).

Approved/ not approved

Consider submitting the attached paper to Caucus which notes that you:

- propose to approve the application from AWINZ;
- note the conflicting legal views and potential risks; and
- will seek amending legislation at an appropriate time.

Agree/ not agree

Larry Fergusson
Assistant Director-General

Hon Jim Sutton
Minister of Agriculture
/ /2000