

From: Mark Neeson
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Subject: File: AW-09

Lin da,

In order to assist the discussion on Wednesday I have drafted the attached briefing. It takes a position and presumes the outcome of the discussion. It may be that our discussion on the three points you raise means that we reach a different conclusion. However, much of the other analysis will remain valid. I have done this to save time as I will run out of time if left it until Thursday to do a draft briefing.

I would like to send this out early on Tuesday afternoon and would greatly appreciate your comments before noon if possible. When I send it I will attach your three questions as well.

I will not be available between 10.00 and noon.\\

Please give me a call.

Thanks

Mark

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OFFICIAL INFORMATION ACT

File: AW-09

Brf:

Minister of Agriculture

Application to be an "Approved Organisation": Animal Welfare Institute of New Zealand

Purpose

1. *This briefing canvasses assess an application by the Animal Welfare Institute of New Zealand (AWINZ) for a declaration to be an approved organisation under section 121 of the Animal Welfare Act 1999 (the Act).*
2. *It is recommended that agree, in principal, to declare AWINZ to be an approved organisation under section 121(1) of the Animal Welfare Act 1999.*

Background

3. Enforcement of the Act is unusual, in terms of MAF legislation, as 90% of the enforcement activity is undertaken by a voluntary organisation, the RNZSPCA (SPCA). In 1998/99 the Primary Production Select Committee (PPSC) gave considerable attention to the enforcement provisions for the Act. It wanted to be assured that enforcement arrangements were sufficiently robust given the high degree of reliance on the SPCA.
4. A particular aspect of the debate was whether territorial authorities (TAs) should have the ability to undertake animal welfare enforcement work. MAF advised that the proposal blurred responsibilities and functions between central and local government. This was because the work would be funded by rates and yet accountability for performance would be to central government rather than to ratepayers. There was also concern about potential criticism that central government was delegating functions to local government (albeit on a voluntary basis) without any accompanying funding.
5. The PPSC agreed that TAs would not be involved. A copy of the briefing paper to the Committee, which covers the policy issues in detail, is attached for information.
6. To maintain the status quo while the time the Bill was being considered by the Committee your predecessor agreed that the warrants for animal welfare inspectors employed by the Waitakere City Council (WCC), issued as part of a pilot programme arrangement with MAF, should continue until the Bill came into force (subsequently 1 January 2000).
7. In a parallel development Mr Neil Wells established an animal welfare organisation, 'the Animal Welfare Institute of New Zealand' (AWINZ). Mr Wells is a barrister and well-respected animal welfare consultant and adviser. He also co-ordinates the national certificate in compliance (animal welfare) at UNITEC. He was also an independent advisor to the Committee on the new animal welfare legislation. Mr Wells discussed an early draft of his proposal with MAF in October 1998.

The Application

8. Your predecessor received a formal application from AWINZ on 22 November 1999. The application is in two parts: an "application" and appendices including a proposed Deed of Trust. Where there is conflict between them MAF has placed the emphasis on the Trust Deed in order to determine the purposes of AWINZ. MAF made an initial assessment of the application and, in a letter of 24 December 1999 you sought additional information from Mr Wells. Mr Wells responded in detail on 25 March 2000 although he and MAF had been in contact on a number of occasions to clarify aspects of the application.
9. It is proposed that AWINZ becomes an "approved organisation" under section 121 of the Animal Welfare Act 1999 and deliver animal welfare services. AWINZ is in the process of being registered as a charitable trust. Any organisation whose principal purpose is the promotion of the welfare of animals can apply to the Minister for approval as an "approved organisation" under section 121 of the Act.
10. Apart from MAF inspectors and police officers, only inspectors appointed on the recommendation of approved organisations can exercise enforcement powers under the Act. Currently only the RNZSPCA is an approved organisation through a transitional provision in the Act.
11. You must be satisfied that the application meets the criteria in sections 121 and 122 of the Act. These are considered below.

The Application: (s.121)(2)

12. The application meets the requirements of section 121(2)(a) and (b). It contains the full name, contact address, and the area in which the organisation proposes to operate.
13. The initial application did not meet the requirements of section 121(2)(c). Additional information was provided in Mr Well's letter of 25 March 2000 and the application is now considered to meet the requirements of this section.

Principal Purpose (s. 122(1)(a))

14. The principal purpose of the organisation must be to promote the welfare of animals. Clause 4 of the Trust Deed states that the purpose of the Trust is to promote the welfare of animals. The balance of section 4 appears to be the means by which the AWINZ will achieve its purpose.
15. AWINZ will operate in a number of ways including providing the services required of an approved organisation and as a quality assurance body directly accountable for the performance of inspectors rather than employing them itself. It may, however, also employ staff "to attain the objects of the Trust" including inspectors.
16. *Conclusion:* the application meets this criterion.

Accountability and financial arrangements and management of the organisation (section 122(1)(b))

Accountability arrangements

17. At the outset it is intended that AWINZ will enter into an "arrangement" with the WCC whereby staff employed by a territorial authority but who warrants as animal welfare inspectors will do so under terms of an individual memorandum of understanding between AWINZ and the inspector. This arrangement would appear to conflict with section 122(1)(a) in that it could be argued that the local authority is itself employing animal welfare inspectors. After further information was obtained the nature of the arrangement appears to be (there is an overlap here with section 122(1)(d)):
18. The WCC will enter into a Memorandum of Understanding (MoU) with AWINZ whereby AWINZ will provide animal welfare/control services in both that city and in North Shore City (NSCC). The WCC carries out animal control work under contract to the NSCC. They are termed "linked organisations" and will pay AWINZ fees for quality control and assurance purposes. Animal welfare. The local authorities will continue to employ the inspectors and provide support services for inspectors, all necessary equipment, undertake prosecutions (with AWINZ authorisation), and undertake other "employer related" activities.
19. It is MAF's view that this arrangement appears to be designed to 'get around' the fact that local authorities cannot become "approved organisations" in their own right. The local authorities will still be paying and supporting their staff although AWINZ will be responsible for overseeing the inspectors' animal welfare work. AWINZ will, in turn, be responsible to MAF and you for the performance of the inspectors.
20. In practice, the arrangement means that if an animal control officer attends an incident and believes that it is effectively an animal welfare issue then the inspector must proceed under section 126(2) of the Act; that is, proceed as an animal welfare inspector. While doing so the inspector will be remains employed by the local authority but is accountable to AWINZ for actions and decisions taken.

Financial arrangements

21. The long-term financial robustness of AWINZ cannot be fully assessed as it has yet to begin operations. The veracity of its draft budget its veracity can only be tested over time. Mr Wells notes that the projected level of fundraising, grants and donations is dependent on AWINZ being approved; this income stream is 80% of projected income but is not guaranteed.
22. The remaining 20% of income will come from fees paid by the linked organisations. Initially this will come from the WCC and NSCC. The question whether local authorities have the ability to pay for animal welfare activities has been canvassed in depth by MAF, Mr Wells and the local authorities. This aspect is discussed separately later in this paper.

Management

23. AWINZ will be managed by a Trust Board with terms of reference established in the terms of the Deed of Trust. There are to be at least 4 but not more than 7 members. The Board may appoint a chief executive who will be responsible for the day to day management of the Trust. In total, these arrangements appear to be satisfactory.
24. *Conclusion:* the accountability arrangements with the local authorities are complex and will need to be tested in practice. The financial arrangements are heavily dependent on funding from the public and can only be tested over time. As with any new organisation, especially a charitable one, it is difficult to ascertain whether its projected financial arrangements are robust. It is an issue that will need to be carefully assessed by MAF through regular audits. For the first 2 to 3 years these audits might need to be at 6 monthly intervals rather than the annual audits that apply to randomly chosen SPCA branches and societies. Financial arrangements with the local authorities are discussed below.

Conflict of interest (section 122(1)(c))

25. This criterion requires that the functions and powers of the organisation are not such that the organisation could face a conflict of interest if it is an approved organisation. The application states that AWINZ will not adopt policies on animal welfare issues that are aligned with animal rights strategies and nor will inspectors be actively involved with any animal rights organisation. To this extent the application is clear.
26. There remains, however, a concern over the boundary between the animal control and animal welfare activities, particularly the role of animal control officers under the Dog Control Act 1996. Inspectors have wider powers under the Animal Welfare Act than animal control officers under the Dog Control Act.
27. Mr Wells states that New Zealand legislation does not make a distinction between animal welfare and animal control and that "Parliament itself has inherently linked dog welfare and dog control". MAF believes that any links (for example, s. 174 of the Animal Welfare Act) are minor and not sufficiently strong to support an argument that the two are inextricably linked. The Primary Production Select Committee also declined to support Mr Wells's personal submission for a greater link between the two pieces of legislation.
28. MAF agrees, however, 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. In many cases it will be apparent to an animal control officer where an incident falls within one statute of the other and act accordingly.
29. *Conclusion:* the application appears to comply with this criterion.

Employment contracts or arrangements between the organisation and its inspectors and auxiliary officers (section 122(1)(d))

30. The requirement is that having regard to the interests of the public, these contracts or arrangements are such that the organisation is suitable to be declared an approved organisation. The application includes some draft memoranda of understanding between

AWINZ, "linked organisations" and inspectors. The animal control officers in both the WCC and NSCC wrote to you stating that would enter into a formal agreement with AWINZ for the purposes of this criterion.

31. Where an inspector who is also an animal control officer the inspector will be accountable to AWINZ for his or her actions when acting under the powers, duties and functions imposed by the Act. In the event of a failure to perform under the Act the inspector will be accountable to AWINZ, not the employer. If the breach by an inspector is also a breach of their contract of employment that will be a matter strictly between the employer and the employee.
32. Where an issue of neglect or misconduct arises in respect of the exercise of a power, duty of function under the Act AWINZ will be responsible to MAF for the inquiry, not the employer.
33. *Conclusion:* the use of memoranda of understanding to manage the arrangements between AWINZ and linked organisations and inspectors is reasonable. At this stage there are no inspectors directly employed by AWINZ.

Technical competence and expertise (section 122(1)(e)(i))

34. The training standard currently required of inspectors is the National certificate in Compliance and Regulatory Control (Animal Welfare) provided by UNITEC. Only animal control officers in the WCC and NSCC who have completed this course will be nominated for appointment as animal welfare inspectors.
35. AWINZ has undertaken to ensure that each inspector will undertake a 4-hour refresher workshop each six months.
36. *Conclusion:* This arrangement is satisfactory to MAF.

Inspectors and auxiliary officers must be properly answerable to the organisation (section 122(1)(e)(ii))

37. This provision was inserted in the Act, as it was known that many inspectors and auxiliary officers would not be employees of an approved organisation. Rather many would be volunteers and perhaps already employed elsewhere. MAF believed that in these situations there needed to be a strong accountability link between the inspector, the organisation, MAF and you.
38. As noted above, AWINZ will be responsible for the performance of inspectors when they are carrying out the powers, duties and functions of an animal welfare inspector. A MoU will also link AWINZ to MAF. MAF will undertake periodic audits of AWINZ's performance.

39. You have delegated to MAF officers the power to appoint or withdraw warrants of animal welfare inspectors. You retain the power revoke the approval given to AWINZ if you believe that it no longer meets one or more of the criteria in section 122 or has failed to comply with any condition imposed under section 122(2).

40. *Conclusion:* MAF believes that, taken as a whole these accountability arrangements in respect of AWINZ means that the inspectors and auxiliary officers are "properly answerable".

Other issues

41. There are a number of associated issues relating to this application of which you should be aware.

Implications of local government legislation

42. The policy in the Act relating to "principal purpose" reflects the view of the previous government that local authorities should not, as a matter of policy, be involved in delivering animal welfare services. Animal welfare was regarded as a central government responsibility. The Department of Internal Affairs (as administrators of the Local Government Act (LGA)) advised MAF that it was doubtful that the LGA authorised local authorities to spend rates on animal welfare services.

43. This was discussed with Mr Wells and the WCC was asked to provide an assurance that the WCC had the legal ability to spend money on animal welfare work as envisaged in the arrangement with AWINZ. MAF sought this assurance because it is not familiar with the intricacies of the LGA.

44. The WCC obtained a legal opinion which concluded that sufficient authority could be found in the LGA to support the proposed arrangement. MAF was not satisfied that the opinion was sufficiently comprehensive as it appeared to miss some crucial aspects of the LGA. Consequently MAF sought a Crown Law opinion on the same issue.

Geographical coverage

46. If approved, AWINZ will recommend suitable persons to be appointed animal welfare inspectors. The power of appointment has been delegated to MAF officers. The initial area of operation of AWINZ will be the WCC and NSCC areas. It is desirable that any warrants issued to inspectors recommended by AWINZ be restricted to these local authority areas. This will provide time for AWINZ to prove itself and avoid any potential conflict with the animal control work of other local authorities.

Other "linked organisations"

47. An advantage of the AWINZ concept is that it will enable organisations or persons not associated with MAF or the SPCA to become animal welfare inspectors. Organisations with an interest in animal welfare could recommend suitable persons for appointment as inspectors under the auspices of AWINZ without incurring the costs of becoming an

approved organisation. It would also accommodate individuals. Examples include individual veterinarians and officials of kennel clubs and similar organisations.

48. This arrangement will reduce the potential for fragmentation in the delivery and enforcement of animal welfare services. AWINZ would, in effect, act as an umbrella organisation and be the central link/quality assurance authority between the inspectors and MAF.

Longer term strategy of AWINZ

49. In the medium term AWINZ expects that the animal control activities of the WCC will be vested in AWINZ. Longer term, AWINZ will compete for local authority animal control contracts anywhere in New Zealand but only if the activity include animal welfare. As noted above, MAF has reservations about this link but believes that the boundaries between the two are fluid and that it will be obvious where an incident is clearly an animal control one and the powers of the Act cannot be used.

Duties of approved organisations

50. Section 141 of the Act enables an approved organisation to take an animal into custody and may sell, rehome or destroy or otherwise dispose of the animal. If AWINZ is approved, it rather than the WCC or the NSCC, must have a place where inspectors can receive animals, such as stray cats. Mr Wells has advised that facilities owned by the WCC will be made available to AWINZ at a nominal rent of \$1.00 per year. It is noted that an inspector can take animals which have been seized to a place chosen by the inspector; it does not have to be an animal shelter.

Registration as an incorporated body

51. AWINZ is presently in the process of being registered under the Charitable Trusts Act 1957 for the purposes of registration as charitable trust. The Act does not require that the applicant be an incorporated body. It is not essential that registration be obtained before it can be approved under the Act.

CONCLUSION

52. On balance, MAF considers it appropriate to approve AWINZ being an approved organisation under section 122 of the Animal Welfare Act 1999. This conclusion is reached with some reservations:
- the financial robustness of AWINZ will need to be carefully monitored. It is a new organisation and needs time to show that it can fulfil its objectives;
 - the legality of the financial support of the local authorities for AWINZ. This concern should be brought to the attention of AWINZ and the WCC; and
 - the complexity of the accountability arrangements between AWINZ, the local authorities and inspectors employed by the local authorities.
53. None of these concerns is considered fatal to the application. You should direct MAF to:
- restrict appointments of animal welfare inspectors nominated by AWINZ to the WCC and NSCC local authority areas;
 - carefully monitor the financial robustness of AWINZ; and
 - undertake compliance and audit checks at six-monthly intervals for the first three years.
54. The Act allows you to impose, as conditions of your approval, conditions relating to the establishment by then organisation of performance standards and technical standards for inspectors and auxiliary officers. MAF has not considered what, if any standards should

be imposed pending your final consideration of this application. MAF proposes that you invite Mr Wells to this be issue with MAF before a final decision is made.

55. MAF notes that a considerable advantage of the AWINZ concept is that it can act as an umbrella organisation for other organisations and individuals who might wish to become inspectors under the Act. It has the advantage of reducing compliance costs to all involved and reducing fragmentation of animal welfare enforcement.

56. MAF has drafted a letter (attached) to Mr Wells for your consideration if you agree with this conclusion. It invites him to discuss the conclusion with you if he wishes.

Recommendations

57. MAF recommends that you:

- (a) **note** that MAF has assessed the application by AWINZ and believes that, on balance, it meets the criteria set out in the Animal Welfare Act 1999.
- (b) **agree**, in principal, to declare AWINZ to be an approved organisation under section 121 (1) of the Animal Welfare Act 1999.
- (c) **agree** to sign the attached letter to Mr Wells advising him of this decision and the conclusions reached in this assessment.
- (d) **note** that this decision will enable the Waitakere City Council animal welfare service delivery pilot programme to continue but that Mr Wells be advised that MAF has reservations about whether local authorities can fund AWINZ as proposed;
- (e) **direct** MAF to monitor the activities of AWINZ at six monthly intervals for the first three years.