

**Neil Edward Wells**, of Auckland, barrister sole and territorial authority manager swear...

1. I am employed by the Waitakere City Council as Manager: Animal Welfare. I am also a barrister sole.
2. I am swearing this affidavit in response to queries raised by Grace Haden, the first defendant in the matter of Wells and Ors v Haden and Ors, CIV-06-004-1784
3. I have a long history of involvement in animal welfare over a period spanning 30 years and have been involved in both governmental and non-governmental organisations associated with animal welfare nationally and internationally.
4. In particular I was a member of the National Animal Ethics Advisory Committee and the Animal Welfare Advisory Committee (deputy chairman) from 1984 to 1999.
5. As a member of AWAC and as a legal consultant to the Ministry of Agriculture and Forestry I was intimately involved in preparing Cabinet papers for a proposed Animal Welfare Bill.
6. In particular I wrote Cabinet papers for the Bill leading up to 1997.
7. In that year the Animal Behaviour and Welfare Consultative Committee ("ABWCC") contacted every Member of Parliament lobbying for early consideration of an Animal Welfare Bill.
8. Pete Hodgson MP contacted the Secretary of the ABWCC and offered to introduce a Private Members Bill in his name if someone could write it.
9. I was contracted to ABWCC to write the first Animal Welfare Bill in 1997 and it was balloted for a first reading in 1997, whereupon it was referred to the Primary Production Select Committee for consideration.



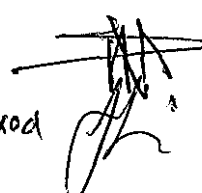
10. In 1998 the Minister of Agriculture introduced a second Animal Welfare Bill as a Government measure and that too was referred to the Primary Production Select Committee.
11. The two Bills were heard together, public submissions were called for and hearings conducted.
12. During the Consideration stage of the Bills in 1999 I was engaged by Parliament to act as an Independent Specialist Adviser and in that capacity I advised the Committee along with officials of the Ministry of Agriculture and Forestry.
13. Elements of both Bills were merged and formed the Bill that the Select Committee reported back to Parliament in May 1999. Comments on my contribution are recorded in the Committee report tabled in Parliament.
14. In 1995 I acted as the intermediary between the Ministry of Agriculture and Forestry and the Waitakere City Council and set up a pilot programme whereby animal control officers of Waitakere City were warranted as Inspectors under the Animals Protection Act 1960.
15. The objective of the pilot programme was to test the synergies between animal control and animal welfare.
16. Prior to this only people from SPCAs had been warranted outside Government Departments.
17. The pilot programme was set up for 6 months in the expectation that an Animal Welfare Bill would be introduced in 1995.
18. With each delay to the introduction of the Animal Welfare Bill the Waitakere Pilot Programme was rolled over.
19. The MAF compliance team audited the performance of the pilot programme on an annual basis.

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20. The pilot programme ceased on the same day the Animals Protection Act 1960 ceased (31<sup>st</sup> December 1999) and the Animal Welfare Act 1999 commenced (1<sup>st</sup> January 2000).
21. Section 121 of the Animal Welfare Act 1999 provides that the Minister may declare any organisation, on application, to be an approved organisation and the criteria for approved organisations are set out in section 122.
22. In 1998, in anticipation of the passing of the Animal Welfare Act, the founding trustees, Nuala Grove, Sarah Giltrap, Graeme Coutts and myself, met and decided to form a trust, the Animal Welfare Institute of New Zealand ( "the Trust").
23. This action had previously been discussed with senior officials of the Ministry of Agriculture and Forestry.
24. The first draft of the Deed of Trust was written in 1998 but not signed as the Bill had not been passed and the criteria for approved status were still under review.
25. On 22 August 1999 I wrote to the Group Director of MAF Biosecurity Authority giving notice of intent that the Trust will apply for approved status on the Animal Welfare Act being given it Royal assent.
26. The Animal Welfare Act was assented to by the Governor-General on 14 October 1999 and commenced on 1 January 2000.
27. A formal application for approved status was made by the Trust on 22 November 1999 and the application included the final draft of the deed of trust unexecuted.
28. Once the formal process of applying to the Minister for approved organisation status had some certainty it was agreed that the trust deed would be executed.

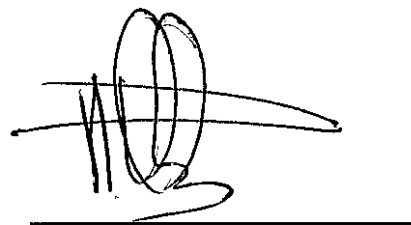
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29. Tom Didovich, who was then Manager of Animal Welfare Services, Waitakere City, picked up the two original copies from me on or about 28 February 2000 and took them to each of the other three trustees for signing. He was the witness to each of the three signatures.
30. Mr Didovich returned the two signed copies to me on or about 1 March 2000 and I signed the deed in duplicate in the presence of Dianne Fraser.
31. I inserted the date "1<sup>st</sup>" by hand. The rest of the date "March 2000" was already in the deed. *A copy of the executed deed is annexed hereto marked Exhibit "A".*
32. Initially the application was rejected by the Minister of Agriculture on the grounds that not all the criteria of the Act had been met but after a robust dialogue with the Ministry of Agriculture and Forestry the Minister of Agriculture approved the Trust and the approval was Gazetted on 18<sup>th</sup> January 2001.
33. The Gazette Notice drafted by a MAF policy analyst contained an error in that it referred to the Trust as (Inc). I drew MAF's attention to the error and an amendment to the approval was Gazetted on 8 March 2001.
34. Subsequent to the Gazetting of the Trust as an approved organisation the animal welfare officers employed by Waitakere and North Shore Cities were appointed inspectors under section 124 of the Animal Welfare Act 1999.
35. Despite the original intention the trustees did not immediately seek to register the trust under the provisions of the Charitable Trusts Act 1957 nor did they seek Inland Revenue Department approval for exemption from filing tax returns as there was no active business activity at that time that would have given the trust any tax advantages.
36. On 9 March 2005 application was made to Inland Revenue as an employer and for an IRD number and this was granted on 21 March 2005. Employer registration became necessary so that the Trust could pay independent animal monitors working on movie productions.



37. Meanwhile, the criteria for organisations applying for tax exempt status changed when the Charities Act 2005 was enacted in that it was no longer a pre-requisite that organisations needed to be either an incorporated society or registered under the Charitable Trusts Act 1957.
38. On 22 May 2006 I wrote to the Inland Revenue Department foreshadowing an intention to apply for tax exempt status and provided a copy of the trust deed dated 1 March 2000 for verification that the clauses relating to tax status were appropriate.
39. Formal application was made on 25 July 2006 and after the applicable clauses were amended to reflect 2004 tax law changes the IRD gave approval on 21 December 2006 for tax exempt status of the Trust under the Income Tax Act 2004.

SWORN at AUCKLAND this 31<sup>st</sup> day )  
 of May 2007 )



before me:



JAIMEE RENEE KIRBY  
 SOLICITOR  
 AUCKLAND

A Solicitor of the High Court of New Zealand  
 Justice of the Peace  
 Registrar