

MINISTRY OF AGRICULTURE
TE MANATU AHUWHENUA



WAITAKERE CITY COUNCIL

22 DEC 1997

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Tom Didsbury

Ref: 10/4/1/2

19 December 1997

Mr Mark Dacombe
Chief Executive
Waitakere City Council
Private Bag 93109
Henderson
WAITAKERE CITY

Dear Mr Mark Dacombe

The Minister of Agriculture recently announced that he intends to introduce a Government Animal Welfare Bill in March 1998 to be considered alongside the Private Member's Bill introduced by Pete Hodgson MP this year.

This decision was made following advice that the Hodgson Bill would require substantial redrafting. The Government considered that it would be easier for those making submissions and for the law drafters if the wording and format of the Bill was closer to that which will be enacted.

The Government Bill will not replace the Hodgson Bill. Parliamentary standing orders require that the Select Committee give full consideration to both bills. Given the policy similarities, the Select Committee has decided that the most efficient process would be for it to hear and consider submissions on both bills together. This would then enable it to select the policy features that it considers best from each and incorporate these into a report to Parliament.

The Select Committee has been granted an extension of time to report back the Hodgson Bill to coincide with the report back date of the Government Bill, likely to be around 30 September 1998.

Over the next 3 months work will be proceeding to complete the Government Bill. This includes the need to obtain Cabinet approval for certain policy which is additional to that already approved for the Bill. The principal decisions on the content of the Government Bill were made in 1992 following extensive public consultation. However, developments since then have indicated a need to consider the addition of further provisions.

One of these relates to the approval and operation of codes of ethical conduct which cover the use of animals in research, testing and teaching. There has already been consultation on these proposals and they have broad support.

MAF Policy

ASB Bank House, 101-103 The Terrace, PO Box 2526, Wellington, New Zealand,
Telephone 0-4-474 4100, Facsimile 0-4-473 0118.

A second area relates to a proposal that the legislation provide a mechanism for territorial authorities to be approved as animal welfare agencies responsible for administering animal welfare legislation. The attached paper sets out proposed policy for your comment.

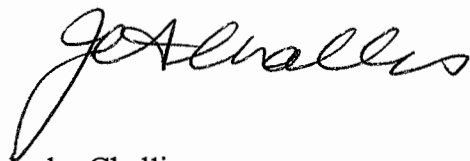
It would be appreciated if comment could be provided to:

Jacky Challis
MAF Policy
P O Box 2526
Wellington
Phone: (DDI) 474-4232

by 26 January 1998.

We realise that this request comes at a difficult time of the year when many staff will be on leave. Some organisations may not meet during January and thus be unable to make a formal response. We apologise for this. Unfortunately the time line is outside our control. Provision for the involvement of local authorities is included in the Hodgson Bill, however, and you may already have made a submission. There will also be an opportunity to make further submissions at the Select Committee stage if the provisions relating to territorial authority involvement are included in the Government Bill.

Yours sincerely



Jacky Challis
Senior Policy Analyst
Resources Policy

Encl

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**PROPOSAL TO PROVIDE A MECHANISM
FOR TERRITORIAL AUTHORITIES TO BE APPROVED AS
ANIMAL WELFARE AGENCIES**

Introduction

- 1 This paper proposes that new animal welfare legislation provide for territorial authorities to be approved as animal welfare agencies. Such involvement would be discretionary and self-funded. It is proposed that an authority would need to consult with its community to assist it in deciding whether to enter into an agreement with the Director-General of Agriculture. The proposal follows from the successful implementation of a pilot scheme in Waitakere City Council.

Background

- 2 The Animals Protection Act 1960 provides that suitable persons may be appointed by the Minister in either a part time or honorary capacity as animal welfare inspectors. The Act makes no reference to the type of organisations that may employ such inspectors nor does it provide for any formal 'approval' or 'recognition' of such organisations. Until a pilot programme commenced in Waitakere City Council in 1995, inspectors had been appointed on the recommendation of the Royal New Zealand Society for the Protection of Animals only.
- 3 In policy decisions on the proposed Animal Welfare Bill made in 1992 the Government agreed that the Bill should expressly provide that any society may be recognised by the Minister (provided it meets certain criteria) for the purpose of recommending suitable persons to be appointed as inspectors. At the time it was envisaged that involvement in animal welfare outside of MAF and the Police would be restricted to voluntary groups. However in 1995 the MAF Regulatory Authority considered further thought should be given to whether provision should be extended to territorial authorities. A number of local authorities had expressed interest to MAF in becoming involved. In addition:
 - the Dog Control Bill was under consideration by Parliament at the time and it was recognised that there were synergies between animal welfare and dog control activity. It was thought that efficiencies might be achieved if dog control officers could deal with any animal welfare concerns encountered in their work rather than having to call in a SPCA or MAF inspector;
 - improved animal welfare outcomes might result given that dog control officers would be working in the community and able to act in a preventive role, anticipating animal welfare problems before they became critical; and
 - the involvement of an additional agency working within communities would help to ensure better cover if the voluntary service experienced occasional resourcing problems. It may also allow for greater efficiencies in the use of facilities.

- 4 In 1995 a pilot programme was commenced in Waitakere City Council. The aim was to assess whether a quality service could be provided and to assess the impacts, both positive and negative, on existing service providers. Full training was given to inspectors in accordance with MAF approved standards, a quality manual was developed and an audit system put in place to assess whether standards were being met.
- 5 From the MAF viewpoint the pilot has been considered very successful. It has demonstrated that local authority officers can deliver a quality service 24 hours a day that relates to all animals not just dogs and that meets pre-agreed performance criteria.

The Waitakere City Council holds regular meetings with other service providers (SPCA, MAF Quality Management and the Police). In spite of some initial reservations, these organisations are all supportive of the service being provided and have developed good working relationships. MAF audits have not assessed whether Council involvement in animal welfare has had any negative effects on the delivery of dog control functions. MAF is also not aware of whether there have been any client/community satisfaction surveys and, if so, what the response has been. We understand that comment in the media has been generally positive however.

- 6 The legal basis for the Waitakere trial is provided by section 37T(2) of the Local Government Act 1974. This section provides that territorial authorities may, if they so wish, enter into an agreement with the Crown to exercise any function or provide any service for and on behalf of the Crown. While section 37T(2) is adequate for the pilot scheme, the Department of Internal Affairs advises that it should not be relied on permanently. This is because section 37T would normally cover situations where a local authority is being funded by the Crown to provide services. The Waitakere pilot is funded by rates. Given that it is proposed that future territorial authority involvement will also be funded locally (and undertaken as a matter of choice) individual authorities should be required to consult with their community before undertaking this function. Furthermore, while the activities may be undertaken by Dog Control Officers, they cannot be funded by dog control fees.

Policy Proposals

- 7 The following outlines the key aspects of the proposed policy:
- New animal welfare legislation will provide a mechanism for territorial authorities to undertake animal welfare activities;
 - Territorial authorities would be empowered to carry out a range of activities in addition to having access to enforcement powers. Such activities could include education, monitoring and surveillance. This would provide councils with a range of tools to achieve the purpose of animal welfare legislation;

- Animal welfare legislation would expressly provide for territorial authorities to take prosecutions. This would enable Councils to receive the whole or any part of any fine ordered by the Courts in respect of an offence;
- Powers of enforcement could be exercised by territorial authority inspectors only within the geographical boundaries of their district;
- Any territorial authority with an interest in being involved in animal welfare enforcement must develop a written proposal for consultation with the community. It is anticipated that a council would have first carried out informal consultation with stakeholders and gauged the level of community support. Councils may have initially developed an interest in becoming involved as a result of representations from interest groups;
- The written proposal would be required to cover :
 - (i) matters relating to the administration of animal welfare legislation.
 - (ii) financial planning and funding issues to meet the requirements of the Local Government Act 1974.
- With respect to the administration of animal welfare legislation, a territorial authority would be required to indicate in its proposal how it would meet a number of criteria set by MAF including:
 - resourcing (to the extent that it influences the quality of service provided. Financial provision and reporting to meet Local Government Act requirements would be covered under the second part of the proposal);
 - training of inspectors;
 - establishment and maintenance of quality systems;
 - performance measures and reporting to MAF;
 - liaison and communication with other agencies involved in animal welfare;
 - prosecution policy;
 - the period of involvement.
- Councils would be required to use the special consultative procedure specified in section 716A of the Local Government Act. This provides for a public submission process. This consultation could occur as part of the annual plan process. The Bill could expressly require consultation with existing voluntary service providers such as the SPCA.

- If following public consultation a territorial authority considered it had a mandate to proceed, it would then amend the proposal to take account of relevant matters raised in submissions. The component of the proposal relating to the MAF criteria would then be submitted to the Minister of Agriculture. Provided the Minister was satisfied that the MAF criteria were met, the Minister would approve the authority as an animal welfare agency to administer animal welfare legislation in its area. This would be publicly notified in the *Gazette*.
- Councils would then appoint staff to be inspectors under the Act. It is proposed that the Director - General of Agriculture's concurrence to these appointments would be required.
- The legislation would provide for a Council's approval to be revoked if the Council no longer complied with MAF criteria.

Potential Issues

Possible impacts on the voluntary sector

- 8 A key consideration with the Waitakere City Council pilot scheme has been the impact on the SPCA. There were initial concerns that a local authority service funded through rates might impact on SPCA revenue which comes principally from donations. The RNZSPCA was also concerned that its branch and member societies might be left with the difficult and less publicly visible work such as providing a night-time service.
- 9 However, such fears do not appear to have been borne out. The Council has provided a 24 hour service for all species and it has been viewed in a very positive light by other service providers. Generally the view has been that the Council service complements the work of the SPCA, MAF and the Police.
- 10 The proposed consultation provisions will ensure that any concerns held by voluntary agencies about the potential negative impact on their work would be taken into account when a Council was considering whether to be involved in animal welfare enforcement.

Potential conflict of interest

- 11 Some public concerns have been expressed about the enforcement of animal welfare and dog control legislation by the same staff. This is based on the view that the two responsibilities may conflict. For example if a dog has attacked a person an inspector has to make a decision about whether to prosecute. If the inspector also has animal welfare responsibilities it is suggested that the decision may be a difficult one. This is because the court is likely to order the dog to be destroyed.

- 12 Counter arguments are also expressed however. It is suggested, for example, that in cases where a dog attacks another animal, that animal welfare would be a valid consideration in a decision to prosecute. It has also been noted that there is not a clear jurisdictional boundary between the Animals Protection Act and the Dog Control Act. An overlap exists between the two statutes with respect to the care of dogs (e.g. proper housing and feeding). If a dog has not been properly cared for then this may be a factor considered under the Dog Control Act in any response to dangerous or nuisance behaviour by that dog.
- 13 Comment on this issue from Wellington City Council (where dog control is contracted to the SPCA) and Waitakere City Council would be particularly welcomed. Should it be considered that a problem exists, it might be desirable to include a statutory direction in the legislation that would indicate that public safety would have priority over the welfare of animals in cases of conflict. A further statutory direction may be necessary to indicate that where there was a conflict between the welfare of animals owned or under the control of people and native wildlife, the latter has priority.

Provisions in the Private Member's Bill

- 14 Clause 21 of the Hodgson Private Member's Bill provides that the Director-General may appoint inter alia "Any territorial authority to be a compliance body".
- 15 Before appointing a compliance body the Director-General shall be satisfied that the --
----- territorial authority:
- (a) Has as part of its function or objects the promotion of animal welfare and the enforcement of animal welfare legislation;
 - (b) Is competent to provide for the training of its inspectors and assistant inspectors to standards determined by the Director-General;
 - (c) Has quality assurance systems in place that ensure the control of compliance and law enforcement activities and the activities of any inspector or assistant inspector appointed under this part.
- 16 The above provisions do not provide consultation provisions considered necessary by the Department of Internal Affairs. The requirement that a territorial authority have the promotion of animal welfare as one of its functions would also not apply. The function would be a discretionary one contained in the Animal Welfare Act rather than being contained in the Local Government Act.
- 17 If the policy proposals in this paper are agreed to by the Government and included in the Government Animal Welfare Bill, the Select Committee will consider all available advice and views raised in submissions on both Bills before making recommendations on the final form of the legislation.