

George

MARK / CAROLE / PETER

(7)

✓ DRAFT OF BRIEFING NO 2, AS AGREED

✓ A. LAB / THURSDAY'S MEETING.

✓ WOULD APPRECIATE ORDER BY. ^{TRY TO BE}

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✓ ON WEDNESDAY.

File No: 330-W1
22 February, 1999

Minister for Food, Fibre, Biosecurity and Border Control

INVOLVEMENT OF TERRITORIAL AUTHORITY STAFF IN THE ENFORCEMENT OF ANIMAL WELFARE LEGISLATION

1. This summary briefing has been prepared to provide background information, and a status report, on the Waitakere City Council pilot programme to involve Territorial Authority staff in animal welfare law enforcement. The implications, both short and medium term, of recent Government policy decisions and the proposed new Animal Welfare Act, plus the options for managing change in this sensitive area, are outlined.

Background

- ✓ 2. Enforcement of the Animals Protection Act 1960 is unusual, in terms of MAF legislation, due to the importance of non Crown-funded enforcement activity and the historical involvement of the voluntary sector, through the RNZSPCA.
- ✓ 3. Up until 1995, the RNZSPCA was the only organisation permitted to recommend suitably trained staff to be appointed as honorary Inspectors under section 9(2)(b) of the Animals Protection Act 1960.
- 4. In 1995, in keeping with animal welfare policy developed in 1990/92, ministerial approval was sought for a pilot programme involving the appointment of 7 animal control staff employed by the Waitakere City Council. These staff were approved as part time Inspectors, under section 9(2)(a) of the Animals Protection Act, after complying with CVO approved training standards.
- ✓ 5. This initiative also reflected a response to reducing Government appropriations for animal welfare service delivery and a concomitant increase in demand level.
- ✓ 6. Initially, the Auckland SPCA strongly opposed the Waitakere pilot programme and their opposition was the subject of ministerial correspondence. An assurance was

was granted

given that any negative impact on the Auckland SPCA would be carefully noted in the review of the pilot programme.

7. Since 1995, the Waitakere pilot has been the subject of 3 separate, and successful, MAF compliance group audits. A synergistic relationship has been developed with the Auckland SPCA and the MAF Enforcement Unit and synergies have also become evident in terms of the enforcement of the Dog Control Act 1996.
8. During 1997, after discussions with Internal Affairs, MAF developed a policy which would permit Territorial Authorities to operate under the Animal Welfare Bill provided a set of basic criteria was met. This proposal was put to the Cabinet Economic Committee on 25 February 1998. The Committee expressed reservations and deferred consideration.
9. At a meeting on June 2 1998, the Minister agreed to a MAF proposal that the Bill not provide expressly for TA involvement in the administration of the law (albeit voluntary involvement). This was to be the case until a wider strategic review had been undertaken.
10. The result of the wider strategic view was that TAs should not be involved in the enforcement of the Animal Welfare legislation. MAF recommended to the Minister that a paper seeking confirmation of this policy be submitted to Cabinet (so that a clear Government position could be established and this could be presented to the Select Committee during the processing of the Animal Welfare Bill). The Minister considered such confirmation not to be necessary and directed the matter not to be pursued any further at that stage.
11. MAF has addressed the Select Committee on the issue of TA involvement in enforcement of the Animal Welfare Act in its local area. MAF's advice was that it was not proposed that this would occur and adopting the HSNO approach would not assist. MAF understands that the Select Committee accepts that it is intended for TAs not to be involved. It is anticipated that a final Select Committee position will be agreed during March. ?
12. MAF has been in discussions with Mr Neil Wells regarding the possibility of him establishing an organisation (tentatively called 'the Animal Welfare Institute of New Zealand' (AWINZ). The intention appears to be one which assists in the administration of the Animal Welfare Act when it is enacted. AWINZ would seek to become an "approved organisation" under clause 105 of the Animal Welfare Act. Under the aegis of AWINZ, it is proposed that a range of non Crown staff, with the appropriate NZQA qualification, could be appointed as Animal Welfare Act Inspectors.
13. In these discussions with Mr Wells, MAF has made no commitments, has created no expectation and would provide similar advice to any other individual or organisation interested in being proactive in preparing an application under Clause 105. This approach is consistent with the strategic objective to facilitate the involvement of other non Crown-funded enforcement agencies. This was one of the outcomes of a

strategic review undertaken during 1997 and 1998 and implemented on 1 November 1998.

14. As a direct result of the success of the pilot programme, Waitakere City Council has trained an additional 7 members of staff to enable it to undertake similar work on behalf of the North Shore Council. A formal application was received on 15 February 1999 to have these staff also appointed under s.9(2)(a) of the Animals Protection Act.
15. The original Waitakere City Council appointments were renewed for a 3 month period only, on 12 December 1998, on the basis that the final policy content of legislation would be agreed prior to the Animal Welfare Bill being reported back to the House during March 1999 and it would be disruptive to abruptly terminate the successful programme.

Discussion

16. In managing this situation MAF has been conscious of the investment made by the Waitakere City Council, the initial concerns of the Auckland SPCA, the current "monopoly" position of the RNZSPCA, the likely provisions of new legislation and particularly the roles of "approved organisations" and benefits to the Crown. The latter involve both the direct financial benefits of ongoing funding of enforcement activity by the voluntary sector and reduced vulnerability arising from total dependence on the SPCA. It was envisaged that the enactment of the Animal Welfare Act on 1 October 1999 would be the formal end point for the Waitakere programme.
17. Although the original appointments of Waitakere staff and the short term roll-over of appointments in December 1998 were carried out in accordance with the existing legislation and under appropriate delegated authority, MAF is conscious of the perception that this, and related actions, might be interpreted to be in contravention of Government policy.
18. In recognition of this risk MAF seeks your endorsement of both actions taken to date and recommendations made regarding future change management.
19. In its actions, to date, MAF has been conscious that the success of the pilot programme has created a situation where MAF and the Auckland SPCA could not immediately assume the work currently being undertaken by Waitakere City Council.
20. An initial, indicative legal opinion on confidential material provided by Mr Wells, in respect of his AWINZ proposal has been obtained. This indicated that, provided a number of accountability and local government legislation compatibility issues are addressed, the proposal may well be presented in a final form that would comply with the requirements of Clause 105 of the Animal Welfare Bill, as currently drafted.

Options

21. Future MAF actions on this issue will be influenced by decisions on a number of key options. These include:
- i) Immediate termination of WCC appointments or renewal of WCC appointments from 12 March 1999 to date of enactment of the Animal Welfare Act on 1 October 1999. As indicated, the former option would create significant short term operational problems for MAF and the Auckland SPCA.
 - ii) Approve appointment of additional WCC staff for period until enactment of the Animal Welfare Act, or decline applications for appointment. The former option could be interpreted as being incompatible with Government policy developed during 1998 while the first option in i) is a controlled, short term extension of the existing pilot programme.
 - (v) Consideration of the merits of early enactment of Clause 105 of the Animal Welfare Act at the time of Royal assent, to permit formal review and public consultation in respect of applications for approved organisation status or no such early enactment.
 - iv) Amend draft legislation to specifically exclude Territorial Authority staff from participating in a proposal such as A WINZ or accept that although new legislation would preclude involvement of Territorial Authorities as "approved organisations" it would not preclude Territorial Authority staff participating in an AWINZ like proposal where funding was not provided via rates and appropriate accountability mechanisms were agreed.

Recommendations

22. In support of MAF's action to date on this issue, and to ensure that change continues to be managed in accordance with both current and future legislation, it is recommended that you:
- (i) note that the actions taken by MAF, since 1995, have been designed to both be innovative in line with Government funding policy and to manage change carefully in an area with a number of competing interests
 - (ii) agree that the 1995 appointments of WCC inspectors under s.9(2)(a) of the Animals Protection Act be terminated on the date that the Animal Welfare Act is enacted
 - (iii) agree that MAF should decline WCC applications for appointment of additional inspectors pending agreement on the final content of the Animal Welfare Act and pending application by an organisation seeking "approved organisation" status

Agree / Disagree

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option up.
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provide in the leg
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account of current
govt policy.

Agree / Disagree

- (iv) instruct MAF to work with Neil Wells over the period between now and 1 October 1999, to evaluate the legal and policy acceptability of the AWINZ proposal but on a clear no commitment/no expectation basis

Agree / Disagree

or

Instruct MAF staff to recommend to the Primary Production Select Committee that consideration be given to the enactment of Clause 105 of the Animal Welfare Act at the time of Royal assent

Agree / Disagree

- No
} (v) instruct MAF to prepare a briefing for Cabinet Economic Committee advising, and seeking acceptance, of a scenario whereby TA staff, rather than TAs per se, might become involved in animal welfare law enforcement along with other suitably qualified individuals such as non practising veterinarians or off duty Police officers

Agree / Disagree

- (vi) note that MAF will develop a contingency plan to ensure ongoing provision of animal welfare enforcement services in the Waitakere area on a permanent basis, if the AWINZ proposal does not prove viable, or an inter-regnum basis between the time of enactment of the Animal Welfare Act and the attainment of "approved organisation" status by AWINZ. This will ensure minimum disruption to animal welfare enforcement activities in the Waitakere City Council area

- (vii) note that, pending the enactment of new legislation, MAF will continue to provide general advice to all parties interested in applying to become "approved organisations" on a no commitment/no expectation created basis

- (viii) note that advice on formal applications for approval under Clause 105 of the Animal Welfare Act, after 1 October 1999, will include both MAF Regulatory Authority and MAF Policy inputs and perspectives.

Barry O'Neil
Chief Veterinary Officer

Minister for Food, Fibre, Biosecurity &
Border Control

12 / 1999