

1058



9 June 1995

Mr Peter Blomkamp
Chief Executive Officer
RNZSPCA
P O Box 15349
New Lynn
AUCKLAND 1232

Dear Peter

REF: WARRANTS AT WAITAKERE

This Society views with considerable dismay and concern the proposal of the Waitakere City to Warrant their Dog Control Officers under the Animals Protection Act under a 'trial scheme'.

As this activity is occurring in the region covered by the Auckland SPCA and its eight Warranted Inspectors we feel duty-bound to express our total opposition to this project and, as there are serious National implications involved, refer this matter to you for firm and positive action.

We would raise the following points:

1. We understand this proposal was promoted by Neil Wells in consultation with Waitakere City. We find this to be curious. Whilst in the employ of the RNZSPCA Mr Wells was adamantly opposed to the issue of Warrants to any party outside of MAF, the SPCA and the authority held by the NZ Police, a principle which is totally supported.

We note that Mr Wells is, by arrangement, training these people, presumably at some cost, and we wonder whether the loyalty to the Society and the expediency of the previous policy has been overtaken by the perceived personal financial rewards.

2. The proposed 'trial' in Waitakere sets a precedent which will undoubtedly spread quickly in Auckland to the two animal control companies who are contracted by other Auckland region Councils, both of whom have independently expressed a desire to provide more power to their Dog Control Officers. Further we would see the Auckland model extending Nationally in the very near future.

THE SOCIETY FOR THE PREVENTION
OF CRUELTY TO ANIMALS, AUCKLAND (INC)

AUCKLAND ANIMAL VILLAGE
WESTNEY ROAD, MANGERE, AUCKLAND, N.Z.
P.O. BOX 43-221, AUCKLAND.
PHONE (09) 275 0749. FAX (09) 275 1405.



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3. We assume that this arrangement has been made with the co-operation of someone with such authority within MAF, however in discussion with MAF Officers in Auckland we understand that they were not made aware of it, neither do they approve of it.

The lack of courtesy of consultation between MAF and yourselves (RNZSPCA) on this matter is deplorable and should be questioned.

4. Local Body Dog Control Officers, whether directly employed or under contract, enforce the Dog Control Act which gives powers to local authorities to establish various by-laws affecting dog control which are inconsistent Council to Council.

In this regard Control Officers are species specific both in their training and their authority. Councils are reluctant and generally unwilling to enter into animal control areas outside that of dog control.

5. The issuing of a Warrant under the Animals Protection Act to Dog Control Officers quite clearly extends their obligations to enforce that Act for all species of animal as defined in the Act. As a result they cannot be 'species specific' and as such would be extending their activities outside of that range for which they are employed to the overall detriment of the dogs for which they are responsible.
6. Additional powers for Dog Control Officers has been addressed and incorporated within the proposed dog control legislation which is currently entering its final stages of Parliamentary approval. When this is enacted Officers will, through their Act, have sufficient powers to enforce, and will not require additional powers granted through the Animals Protection Act in the wider sense.
7. This Society is justifiably proud of its Warranted Inspectorate both as to training and experience and we devote time and care in the selection and development of this personnel. We believe this would apply Nationwide. The high standard established by SPCA and MAF Officers will undoubtedly suffer through this system, as would the activities of the Society which is Internationally established as an animal welfare and enforcement agency.



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Given the foregoing, we would ask that your Council take swift, firm and positive action in this matter at Ministerial level, for we are of the view that should this pilot scheme be allowed to proceed the efficiency and authority of the Society will be undermined and the relationship and understanding between MAF and ourselves will be seriously eroded.

Yours sincerely

Bob Kerridge
EXECUTIVE DIRECTOR

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OFFICIAL INFORMATION ACT



ROYAL NEW ZEALAND SOCIETY
FOR THE PREVENTION OF CRUELTY
TO ANIMALS, INCORPORATED

P O Box 15 349, New Lynn, Auckland

Ph: (09) 827 6094

Fax: (09) 827 0784

FACSIMILE TRANSMISSION

TO: BOB KERRIDGE
AUCKLAND SPCA

FAX No: (0) 7-275 1105

FROM: Peter Blomkamp
Chief Executive
RNZSPCA National Office

FAX No: (09) 827 0784

DATE: 9TH JUNE 1995

Number of Pages: (7) INCLUDING
THIS ONE

DEAR BOB,

AS DISCUSSED EARLIER I HAVE
ATTACHED COPIES OF LETTER FROM OUR
SOLICITORS & WILL AWAIT YOUR LETTER.

REGARDS

Peter

OFFICIAL INFORMATION ACT

15 Gaze Burt

Barristers, Solicitors and Notaries

7th Floor, Reserve Bank Building, Car Gate and Customs Sts. Auckland City
P.O. Box 2222 Auckland 1, New Zealand
Telephone 0-9-303 3764 DX 2034 Facsimile 0-9-309 3114

CONFIRMATION OF
FACSIMILE SENT

25 May 1995

The Chief Executive Officer
Royal New Zealand Society for the Prevention
of Cruelty to Animals Inc
P O Box 15-349
NEW LYNN

FAX NO: 827 0784

Dear Sir/Madam

Re: APPOINTMENT OF INSPECTORS - ANIMALS PROTECTION ACT 1960

You have referred to us on Wednesday of last week, a summary opinion written by your National Co-ordinator, Mr Boyd and asked for our comment on the opinion.

1. First, we note that there appears to be an errant use of the word "specious" at the following points in his opinion:

In the last line of the first section (under the heading "Current appointment provisions").

At the end of the penultimate paragraph on page 1.

At the end of the first section on page 2 (under the heading "Inspector appointments as proposed for future law").

At the end of the fourth paragraph on page 3.

We understand that Mr Boyd intends to use the word in the sense "species - specific". Unfortunately, it has a more usual alternative meaning: "false, or without reasoned foundation". It may be better to in each case use a phrase such as "species specific" or "limited species groups" - or where appropriate use the words "species - specific appointments".

2. Mr Boyd has set out a definition of "Animal" which was, however, amended in 1987. The definition which is currently contained in the Animals Protection Act 1960 is:

Other Offices at
Mt Eden and
North Shore City

Partners:
Lok Allen, B.Com. LL.B. M.T.S. No. Pub.
David Burt, B.A. LL.M., B.D., M.C.S.
Rodney Dechic, B.A. LL.B.
Ross Dillon, LL.B. (Hons)

Stuart Gaze, LL.B.
Michael Hockly, LL.B.
David Munn, LL.B.

Consultant:
Neville Goold, LL.B., K.D., Not. Pub.
Associates:
Francis Chai, LL.B.
Alan Broadbent, LL.B.
Clayton Kington, LL.B.

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"Animal" means -

- (a) Any horse, cattle, sheep, pig, goat, dog, cat, mule, or ass, of whatever age or sex and whether in a domestic or wild state;
- (b) Any bird, whether in domestic or wild state;
- (c) Any marine mammal found on, or in the vicinity of, the seashore;
- (d) Any vertebrate animal that is kept in a state of captivity or is dependent upon man for its care and sustenance;
- (e) Any animal of a species that is declared by the Minister, by notice in the Gazette to be a species of animal for the purposes of this Act."

Now to our comments on the Act and its policies:

3. The provisions of section 9 of the existing Animals Protection Act refer to personal and individual appointments, and the section does not explicitly recognise any special status for your Society or inspectors appointed through it.

It is clear that the general policy of the Act is that inspectors (this being a criminal statute) shall have equal regard to all relevant animals and all categories of relevant cruelty, ill-treatment and offences.

Policy Issues

4. We understand the opinion was prepared in the light of concerns that the Ministry proposes to recommend to the Minister the appointment of local body staff as individual inspectors, with a view either to providing alternatives to inspectors appointed through your Society as honorary inspectors, or alternatively to supplanting the relationship with your national system of honorary inspectors and your training programme.

It seems to us that in relation to the present Act, some of the relevant arguments are not contained within the Act, but arise from a comparison of the advantages conferred on the Ministry by its present arrangements to questions of policy which might arise to the disadvantage of the policy of the Act under the alternative arrangements under consideration by the Ministry.

These matters might with advantage be canvassed after the material on page 1 of Mr Boyd's outline, which could be widened so that it was not restricted to being a legal opinion, but also a contribution in relation to policy issues.

That would require a change in the heading, or a further heading.

Some of the issues which we can foreshadow as being of potential relevance:

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Narrower focus of local body animal concerns

The local body framework involves persons retained by councils who have previously primarily concentrated on dog control, animal nuisance and escape problems. The continuing focus of local bodies and people under their effective management is likely to be on the avoidance of inconvenience or danger to residents and the avoidance of damage to property by animals.

This is likely to concentrate the activities and attentions of persons retained within a local body setting on the suburban and suburban fringes of territorial areas or, to a lesser extent, areas within which stock movements or fencing problems are at issue.

The Animal Welfare Bill is much wider in its scope and it is unlikely local body staff will address the wider policy issues envisaged by the discussion paper.

Broader experience of RNZSPCA inspectors

By contrast, persons selected by the RNZSPCA for nomination as honorary or part time inspectors, will tend to be persons who have already established a knowledge and interest in the welfare of a range of species and whose experience, in the view of the national co-ordinator and relevant council member is sufficiently broad to give them an understanding of the wide scope of animal welfare issues, and an ability to exercise mature and balanced judgment in the face of pressure, both from potential complainants and parties having the control of or responsibility for animals.

Established public role of RNZSPCA

The public tend to refer to RNZSPCA regarding animal welfare concerns, and to local body inspectors when concerned about dangerous animals. It is less likely that local body officials appointed as inspectors will receive from members of the public, enquiries or questions related to section 3(p) and (bb) and various other subsections of section 3 of the Act which relate to negligence in animal husbandry practice, home slaughtering and the like. Your Society has established a reputation with the general public of its role in such matters, and is the more natural initial point of enquiry by members of the public whose concern relates not so much to a danger to human convenience or property from animals, but to the welfare of particular animals. Control of human behaviour to enhance animal welfare (as distinct from control of animal behaviour) is stated to be the purpose of the new Bill (p5, paragraph 24 of the paper).

- * Local body appointments would require expenditure by the Ministry to adjust public perceptions of role.

Nationwide training, supervision and overview

In general, you can commend the previous practice of preceding ministers in retaining the RNZSPCA for national training purposes, and in taking account of its recommendations and internal discipline in the appointment, and review of competence, of inspectors.

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- * The requirement for your inspectors to be even handed and fair in the face of keen surveillance by farming and other groups poses a discipline nationwide, that would not be present in particular local body appointments, and that the fragmentation of appointments within local bodies would give rise to a need by the Ministry to commit funds to training, retraining and management, to obtain an even standard of enforcement and policy throughout the country - exposures to expenditure which do not currently arise.

Separation between advocacy of legislative and policy reform, and animal protection administration and enforcement

We suggest you consider plainly saying you understand that some figures in the primary sector are concerned, as a result of the battery hen petition, that the Society may become representative of groups unsympathetic to established aspects of intensive animal husbandry and that the appointment of inspectors from the local body sector is perceived as a way of avoiding interference to various established farming practices.

You should note that the conduct and policy of inspectors is governed by the relevant Act, and not by issues of legislative intent which might be raised as a matter of policy by the Society, and that there is no present foundation for comparing issues in the battery hen industry with other industries. Moreover, there is no record of prosecutions brought by inspectors of the Society directed to the battery hen industry, as change in the basic regulatory framework for that industry is perceived by the National Society as the appropriate means of addressing issues (rather than prosecutions which might unfairly single out particular individuals). The Society and its inspectors recognise the distinction between legislative reform and administration of existing statute law.

Contestability

- * It may well be that the concept of contestability for appointments to the position of inspector is behind the proposed initial appointments. One of the costs of contestability is that the Ministry would then become more directly involved in quality assessment and, because of the loss of a nationwide system co-ordinated through your Society, funding of the necessary training and retraining to achieve a comparable approach throughout the country. Contestability may be expected to have a cost

The proposed new legislation

As Mr Boyd observes, the reliance on national societies is much more clearly set out and explicitly recognised in the proposals for the animal welfare bill. We agree with Mr Boyd's observation that local bodies are not able to address the nationwide issues, or achieve the evenness of approach and contribution towards training available through your Society.

We consider some of the comments in the public discussion paper ("the Paper") support Mr Boyd's comments that Inspectors must be for all species of animals. In

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particular on page v of the Paper under the heading "Executive Summary", paragraph 4 notes that it is proposed the Bill will widen the scope of animal protection legislation by widening the definition of "Animal". This is reflected in the new definition set out on page 7 of the Paper. Under the new definition "Animal" would mean any:

mammal including marine mammal (but excluding a human being);
bird;
reptile;
amphibian;
fish;
cephalopod (octopus or squid), crab, lobster or cray fish; and
any other animal that is declared by the Minister to be an animal by notice in the *Gazette*.

The extension of the definition to include for example octopus or squid, crab, lobster or cray fish adds to the argument that local body officers do not have training to deal with all species of animals.

We note also the Ministry did receive a submission on the previous discussion paper MAF 103 that two types of warrants should be available for inspectors - general and species specific. (Page 44 of the Paper). The Ministry do not appear to have included the suggestion and this could be seen to support Mr Boyd's comments that inspectors need to be trained to address needs of all species of animals.

We agree that on the basis of the policy proposals in the public discussion paper, it is fair to raise questions as to how our territorial local bodies can as appropriately fulfil functions, which are of nationwide scope. Current local body practice in many areas - subdivisions, resource consents, rating and services - allow for wide variations in approach to policy and implementation. In this area a uniform consistent approach including all animals is required. Given the relatively lowly place of dog control officers in the Council pecking order, it is rather to be expected that the traditional and local policy foci of Councils will predominate over the policy of the current Act and of the proposed Bill.

We note that the Ministry intends in the new bill to include a section (set out at page 31 paragraph 7.10 of the Paper) to ensure Inspectors and Courts can continue to exercise powers under the proposed Act over offences in relation to the care of dogs without dog control officers assuming powers of Inspectors under the proposed Act. This suggests the Ministry recognises that dog control officers are not appropriate persons to take on the powers of Inspectors under the Animal Protection Act or the Animal Welfare Bill.

The primary focus of local bodies is on human welfare and the preservation from damage of human property, and animal nuisance issues, rather than the welfare of animals.

This inherently leads to a concentration on dog control, and cattle escape issues, with occasional instances around urban Auckland, of the home slaughtering of animals, particularly pigs.

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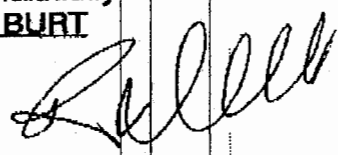
* If local body appointments are made, it is likely that callouts which are primarily of a "dog control" or escaped stock character, will be charged to Animal Protection and become a claim on MAF funds.

Expenditure Issues

Appointments of local body personnel have the expenditure implications noted in the asterixed passages above.

We trust this comment is useful to you. If you have any further queries, please do not hesitate to contact the writer.

Yours faithfully
GAZE BURT



R P DEEBLE

rpdl/m/9505.21

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ROYAL NEW ZEALAND SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS, INCORPORATED

NATIONAL OFFICE

3 Totara Avenue
PO Box 15-349
New Lynn
Auckland 1232
New Zealand

Telephone

National
0-9-827 6094

International
164 9 827 6094

Fax
0-827 0784

FAX 09-827 0784 International: 64-9-827 0784.

FACSIMILE MESSAGE

DATE: May 17, 1995

TO: Auckland SPCA. Attention Bob Keridge.

FAX NUMBER: 275-1405

THIS IS PAGE 1 OF 4 PAGES.

PLEASE PHONE 0-9-827-6094 (NATIONAL) IF INCOMPLETE.
OR 64-9-827-6094 (INTERNATIONAL)

MESSAGE (if any):

Bob,

Following document is an upgraded version of the one Peter sent you yesterday.

I now believe that the appointment of a Local Authority Dog Control Officer as an inspector is neither provided for in current law or proposed in future law.

Peter is seeing the Society's solicitor this afternoon relating to the matter.

Jim Boyd.

OFFICERS

President
Mrs Peg Langue JP


Chief Executive Officer
Mr Peter Blomkamp

ASSOCIATED WITH

AWAC
Animal Welfare
Advisory Committee

NARAC
National Animal Ethics
Advisory Committee

MEMBER


WSPA
World Society for the
Protection of Animals


Australian and New
Zealand Federation
of Animal Societies

AFFILIATED TO



Horslow, England

OFFICIAL INFORMATION ACT



ROYAL NEW ZEALAND SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS, INCORPORATED

NATIONAL OFFICE

3 Totara Avenue
PO Box 13-349
New Lynn
Auckland 1232
New Zealand

Telephone

National
0-9-827 6094

International
+64 9 827 6094

Facsimile
0-9-827 0784

OFFICERS

President
Mrs Peg Loague JP


Chief Executive Officer
Mr Peter Blomkamp

ASSOCIATED WITH

AWAC
Animal Welfare
Advisory Committee

NAEAC
National Animal Ethics
Advisory Committee

MEMBER


WSPA
World Society for the
Protection of Animals


Australian and New
Zealand Federation
of Animal Societies

AFFILIATED TO


RSPCA
Horsbani, England

APPOINTMENT OF INSPECTORS. ANIMALS PROTECTION ACT 1960.

RNZSPCA opinion relating to warranting of Dog Control Officers.

Current appointment provisions.

Section 9 of the Animals Protection Act 1960 allows for the appointment of inspectors.

Section 9(1) refers to the general appointment of inspectors who are employed by MAF through the State Services Act.

Section 9(2) (a) and (b) allow for the Ministerial appointment of part time, or honorary inspectors and it is through these sections that RSPCA inspectors are appointed.

There is no provision in the Act for the appointment of inspectors for a particular species of animal and it has always been the MAF policy that species appointments will not be made.

Purpose and spirit of existing Act is for all animals.

The Act is entitled "Animals Protection Act" and section 2 contains the legal definition of "Animal" for the purposes of the Act. The definition is:

"Animal" means-

- (a) Any horse, cattle, sheep, pig, goat, dog, cat, mule, or ass, or whatever age or sex and whether in a domestic or wild state;
- (b) Any bird, whether in a domestic or wild state;
- (c) Any marine mammal found on, or in the vicinity of, the seashore;
- (d) Any other species of animal which is dependent upon man for its care and sustenance, or which is kept by man in a state of captivity, or which is declared by the Minister, by notice in the Gazette, to be an animal for the purposes of this Act. [Bovine animal is further defined].

It must therefore follow that the intended appointment of inspectors is for all "animals" as defined in section 2, which in effect means all animals other than pests which do not have the protection of the Act.

No provision has been made in the Act for appointments for species purposes and MAF have, in the past, regularly turned down applications for the appointment of inspectors from species groups.

Although the "Appointment of Inspectors" provisions do not specifically prohibit the appointment of inspectors for species purposes, it becomes obvious that in keeping with the spirit of the Act, any appointment made under the existing provisions must be for all species of animal as described in Section 2 of the Act.

Inspector appointments as proposed for future law.

Appointment of inspectors and other officers, is discussed in the Public Discussion Paper; "Tentative Proposals for an Animal Welfare Bill".

This discussion paper (at the ultimate paragraph on page 24) proposes that other national societies, other than the RNZSPCA, may be declared a society by the Minister for the purposes of the Act, on the recommendation of the Animal Welfare Advisory Committee (AWAC).

This would allow organisations outside of Government, other than the RSPCA to hold warrants provided that such organisations are national based organisations with a mandate to deal with "all" animals. There is nothing in the discussion paper to suggest that the "spirit" of the new Act will be changed to allow for the appointment of inspectors for specious based organisations.

Would a Local Authority fit criteria of proposed law?

For Local Authorities to possess animal protection warrants under the proposed new law, they would firstly have to be declared a "Society" by the Minister. To be so declared, the Authority would have to be:

- (a) a "national" society;
- (b) recommended by AWAC; and
- (c) operating for the purposes of the proposed Act.

A Local Authority, is just that, local. Although linked by the Local Government Association, it could not be considered "National".

Neither could it be considered that the local Authority was operating "for the purposes of the proposed Act. The Local Authority is, after all, not a society and it is not formed for the welfare of animals, or for the purposes of the proposed Act.

Law is not specious and must apply to all animals.

In the past there have been a number of incidents where people acting for one particular species, have "rescued" an animal and have ignored other species which urgently required attention.

Throughout the existing Animals Protection Act there are references which make it quite clear that an inspector must be able and prepared to deal with "any" type of animal.

Section 10 of the Act makes a number of such references, for example;

- 10(1) line 4, "any animal";
- 10(3) lines 6 & 7, "any animal";
- 10(4) line 2, "any animal";
- 10(5) line 1, "any animal";
- 10(6) lines 2 & 11, "any animal".

Section 12 of the Act, which allows for the destruction of injured or suffering animals, takes this even further by stating in subsection (3) that "Where any Inspector finds any animal-

The words "any inspector" and "any animal" are clearly linked and the whole section places a duty on all inspectors to deal with "all" animals.

Inconsistent with existing and proposed law that dog control officers be appointed as inspectors.

It is therefore inconsistent with the existing Act and with MAF policy, that local authority dog control officers be appointed as inspectors, as firstly they do not have the training to deal with all species and secondly, although they do have a "stock control and impounding" function in rural areas, they are not backed by a philosophy of attending all animals such as cats, injured birds, marine mammals, or other animals which are in a state of captivity or dependent upon "man" for their care and sustenance.

The third measure of inconsistency is that while local authorities are linked through the Local Government Association, they are legally separate entities with their own by-laws and philosophies. They are under no obligation, constitutional or legal, to apply a nationally based policy to any enactment relating to animals, other than the Dog control laws, Stock Act etc.

Together with the concepts of "national training programmes", it is these arguments which MAF has consistently applied when denying the appointment of inspectors to specious organisations.

Under the provisions of the existing Animals Protection Act, there is no provision for specious appointments and neither is any such variation proposed in the Public Discussion Paper relating to the proposed Animal Welfare Bill.

The appointment of local authority dog control officers as inspectors is not provided for either in the "fact" or "spirit" of the law as it currently exists, or of proposed law.

Existing and future dog control laws sufficient for animal welfare purposes.

It should also be noted that the existing Dog Control & Hydatids Act contains adequate provisions in Section 53, for dealing with persons who fail to provide dog with proper care, attention, food, water, shelter or exercise. These provisions will also be included in the new Dog Control Act, which should become law around July 1995.

In the event the destruction of an impounded dog is deemed necessary, the provisions of Section 12(6) of the Animals Protection Act apply, by allowing destruction where a Justice, Inspector, or veterinarian certifies that any impounded animal is so diseased, injured, or disabled that it is in a state of continual suffering.

These powers and provisions are considered more than adequate for the purposes of dog control.

James Boyd
National Co-ordinator.