



**LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY**  
**COUNCIL OF TERRITORY CO-OPERATION**  
**SUB-COMMITTEE – ANIMAL WELFARE GOVERNANCE**

Public Hearing - Meeting No AWG03  
Wednesday the 29<sup>th</sup> of June 2011

Members:

Ms Lynne Walker, MLA, Member for Nhulunbuy – CHAIR  
Mr Gerry Wood, MLA, Member for Nelson  
Ms Marion Scrymgour, MLA, Member for Arafura  
Ms Kezia Purick, MLA, Member for Goyder  
Mr John Elferink, MLA, Member for Port Darwin

Witness

Ms Carolyn Richards – NT Ombudsman

**CHAIR:** Welcome to Carolyn Richards, Ombudsman, providing evidence to us today. Welcome to other members who may be here of the public or perhaps public servants.

So I declare open this first public hearing of the Council of Territory Co-operation's Sub-Committee on Animal Welfare Governance.

Although the Committee does not require witnesses to give evidence under oath, these hearings are formal proceedings of the Parliament and consequently they warrant the same respect as proceedings of the House itself. I remind witnesses that giving false or misleading evidence is a serious matter and may be regarded as contempt of parliament.

Whilst this hearing is public witnesses have the right to request to be heard in private session. If you wish to be heard in-camera please advise the Committee prior to commencing your answer.

Today's proceedings are being electronically recorded. Witnesses are asked to state their full name and position before commencing their evidence. You probably need to do that just once, Ms Richards. As soon as practicable following this hearing the transcript of proceedings will be uploaded to the Committee's website but not before witnesses have had the opportunity to proof and correct their evidence.

I remind Members that personal opinions should not be sought from public servants appearing in a professional capacity. I remind Members, witnesses and members of the public that there are legal protections which apply to witnesses appearing before this sub-committee.

Parliamentary privilege is derived from the Legislative Assembly Powers and Privileges Act. Legislative Assembly standing order number 290 reads, and I quote: "Protection of witnesses or witnesses examined before the Assembly or any committee thereof are entitled to the protection of the Assembly in respect of anything that may be said by them in their evidence. Further, the Assembly adopted a resolution of continuing effect on 20<sup>th</sup> of August 1992. That resolution deals with guidelines for witnesses appearing before committees and can be found in the Assembly's sessional orders on the Legislative Assembly website". Copies of the guidelines are available here today.

Paragraph 5 of the resolution reads: "Where appropriate, reasonable opportunity shall be given for a witness to raise any matters or concern to the witness relating to the witness' submission or the evidence the witness is to give before the witness appears at a meeting". And paragraph 20 reads: "Where the Committee has any reason to believe that any person has been improperly influenced in respect of evidence which may be given before the Committee or has been subjected to or threatened with any penalty or injury in respect of any evidence given, the Committee shall take all reasonable steps to ascertain the facts of the matter. Where the Committee considers that the facts disclosed that a person may have been improperly influenced or subjected to or threatened with penalty or injury in respect of evidence which may be or has been given before the Committee the Committee shall report the facts and its conclusions to the Assembly". So copies of those guidelines are available here this afternoon.

Ms Richards, I take it you probably know who all the Members of the Council of Territory Co-operation ...

**Ms Carolyn RICHARDS:** Yes, I do.

**CHAIR:** ... here today are so we'd invite you to make an opening statement, if you wish to do so, and then we will invite Members to ask questions.

**Ms Carolyn RICHARDS:** Thank you. So my name is Carolyn, C-A-R-O-L-Y-N, Anne, N-N-E, Richards and I'm the Ombudsman for the Northern Territory. I think I already made my opening statement in a report I delivered on the management of Mataranka Station by Charles Darwin University and I'm here under summons to answer any questions that the Committee might have.

I've delivered, prior to the hearing today, all of my original records. They were too extensive to photocopy so if I'm asked questions that require me to look at the actual source material I may have to ask you to hand those to me.

**CHAIR:** Thanks very much, Ms Richards.

**Mr ELFERINK:** Well, I'm ready with a couple of questions. Ms Richards, thanks for coming along today, and I do appreciate it. I've got a frog in my throat, by the way, so I apologise if I get all hoarse on you.

I think I'll just go to the heart of the matter. Having read your report, it is comprehensive, and I'm grateful to you for that, and you've done a great deal of work. Naturally one of the ... what we discovered in reading the report and the supplementary material that you provided is clearly based on the documentary evidence, there was substantial shortcomings in the animal husbandry practices of the Mataranka Station, particularly falling on the shoulders of Mr Ian Gray who was then the station manager. Mr Gray received special mention in your report on numerous occasions, as the station manager and ultimately as the person responsible.

You will be aware that you were in the estimates process recently, the Auditor-General who we'll be speaking to later on this afternoon, has come to a different conclusion about the number of cattle which have died as a result of the animal husbandry practices on the Station during the period in question. The issue of the number of animals that have died has probably been the most contentious issue at a public level and there are further questions I'll be asking you shortly in relation to animal suffering as a general principle.

But first going to the number of animals that died. Your report refers in page 62 to the number of dead animals, and I refer you to the Ombudsman's note, or Ombudsman note on the bottom of page 62 where you say, and I quote: "Mr Stockwell elaborated" – and you're referring to the Stockwell report, 17<sup>th</sup> of September 2010 – "that his estimation of loss from 100 head at \$400 and 200 head at \$500 in July 2010 the estimate of dead cattle in addition to this 100 to 200 probable was approximately 800". Mr Stockwell calculates 800 dead would amount to a loss of approximately \$320,000 to \$400,000.

Going back to your observation in July 2010, the estimate of dead cattle in addition to this 100 to 200 probable was approximately 800. How did you arrive at that figure?

**Ms Carolyn RICHARDS:** I think by that stage we had the number of cattle that were mustered in April 2010, because the mustering hadn't been completed in 2009 whereas it normally would have occurred in October, November. So we had the number of cattle that were recorded as mustered and there'll always be a few that aren't mustered.

We started with a stock valuation of stock on the Station at the end of 2008. Now that valuation appears at page ... volume 2, page ... I think that's 163. No. I haven't made notes of this. I'll give you the page numbers. Yes, it's page 136 of volume 2 and there was a stock record of the number of cows and cattle as at 31<sup>st</sup> of December 2008. So we took the number of cattle and the number of cows at 31<sup>st</sup> December 2008. The number of cattle was 1468; the number of cows was 2656. We used 35% as the average reproductive rate of cows which is a figure we got from the Stockmen's' Association and we arrived at a figure of 5054. We deducted from that the cattle that had been sold and that number was 663 and that appears from evidence that was given to us by Charles Darwin University which is at page 278 of the report. And then we deducted 3% because we had been told by Charles Darwin University, and other experts, that 3% is your natural attrition rate that you will have of any particular herd. And that left a figure that at the end of 2009 there should have been approximately 4239 cattle based on that figure. The difference between what was there and what was mustered was roughly 800 cattle.

And then to double-check that we referred to the actual evidence of the witnesses. Nicola Walters, and this appears at page 90 of volume 1, she had actually kept records and she had recorded 50 dead cattle between the 10<sup>th</sup> of September and the 8<sup>th</sup> of October 2009.

**Mr ELFERINK:** Can I just stop you there, is that the notebooks?

**Ms Carolyn RICHARDS:** Yes, she kept them in a ...

**Mr ELFERINK:** Handwritten notebook?

**Ms Carolyn RICHARDS:** Handwritten notebooks.

**Mr ELFERINK:** Were they, those notebooks, the property of the cattle station or were they here personal ... ?

**Ms Carolyn RICHARDS:** No, they were her personal notes.

**Mr ELFERINK:** Okay, thank you, go on.

**Ms Carolyn RICHARDS:** The University had advised us in March when we asked for records of dead animals that they had no such records.

So using 50 dead over a four week period we calculated that it was 12.5 per week, and if you extrapolate that over to a five month period, you end up with approximately just over 800.

**Mr ELFERINK:** So it would be then correct to say that your figure of 800 was an extrapolation of the available data available to you?

**Ms Carolyn RICHARDS:** Yes, that's right.

**Mr ELFERINK:** Okay, that's cool.

**Ms Carolyn RICHARDS:** If I can just go on. There was also evidence from a man called Spud Thomas. He was brought in to educate the wieners, that is to make them suitable to deal with human beings He was there for a period of two weeks in late October. His evidence was that during his two weeks there, there were three cattle dying a day, and that gave a figure of 42 over two weeks. Which is 21 a week.

**Mr ELFERINK:** So there was other subjective evidence to support the extrapolation?

**Ms Carolyn RICHARDS:** Yes. The Department of Resources when they first went there on their very first visit on the 5<sup>th</sup> of September 2009, they've shot 18 cattle.

**Mr ELFERINK:** This was the Eccles visit?

**Ms Carolyn RICHARDS:** No, this is the very first inspection by the Department of Resources. You may be right, it may be Mr Eccles but ...

**Mr ELFERINK:** Okay, it's not important, just carry on.

**Ms Carolyn RICHARDS:** It was the first inspection anyway. I'm pretty certain it was either the 4<sup>th</sup> or the 5<sup>th</sup> of September. And then at page ... that's at page 170 of the report. And then at page 171 on the 16<sup>th</sup> of November, a witness, I think it was Mr Jenkins, had recorded that ten had been shot that week. Now that's as late as November, when [ supplementary feeding had been going on at least since September. We didn't have any evidence of how many had died before early September but we extrapolated that when the Department first visited the first week of September there were 464 emaciated cattle that were nearly on death's door. So we figured that with that evidence all put together, and the absence of any records, that 800 was a fair estimate.

After we published that estimate, and you'll find that in the buff coloured folders, we were contacted by Mr Jenkins who had been involved in the management, who was the acting manager up until April 2009, and he, I think, heard on the radio a dispute between myself and CDU about the number of cattle. No, in fact I think it was Ian Gray went on the radio saying it was no more than 200, and he contacted us and said, look, in his opinion, and he was there the whole time, it had to be a minimum of a thousand. So that's basically the evidence on the number.

**Mr ELFERINK:** What was the quality of record-keeping on the cattle station during the period in question?

**Ms Carolyn RICHARDS:** There were none. There were no records kept of animals being born, of animals being ... of dying, there were no records of the stock, in which particular paddock they were, what they were being fed.

**Ms PURICK:** No paddock summary, to your knowledge?

**Ms Carolyn RICHARDS:** No. We did specifically ask for a paddock summary and you'll find that in our original notice where we wrote to the University and said we want these particular documents. And we were told that there was no paperwork.

**Mr WOOD:** Can I ...

**CHAIR:** Just through the Chair please. John, did you just want to finish your question then and then I'll go to the Members.

**Mr ELFERINK:** There's a line of questions here, and I'm just wondering if I could follow it through and if there are any other questions ...

**Ms SCRYMGOUR:** Yeah, some of us do have.

**Mr ELFERINK:** ... that have ... if you can ... because I may well go to those places.

**CHAIR:** So we're still talking about extrapolation of numbers here?

**Mr ELFERINK:** Well, about the numbers of cattle which have died, because ...

**CHAIR:** I'll give you one last question and then ...

**Mr ELFERINK:** Well, there's a line of questioning that needs to be followed, Madam Chair. I mean, I can come back to it, it's just it will become disjointed if we do.

**Mr WOOD:** Maybe let it go through.

**CHAIR:** Is that ... Gerry ...

**Mr ELFERINK:** Alright. Ombudsman, are you aware of the Science Matters review of operations at Mataranka Station final report, December 2010, so we're talking 13 months after the November period that you've just referred to, that was commissioned ...

**Ms Carolyn RICHARDS:** Yes, I was, I was ... I think I received a copy of that via Professor Glover.

**Mr ELFERINK:** You were ... yes, he ...

**Ms Carolyn RICHARDS:** It was carried out to implement one of the recommendations I made.

**Mr ELFERINK:** There's a couple of different copies in the ether. Some copies have this, some copies don't, but I'll quote from page 22 of that report. I've got November 2010 here. Quote: "The 2010 Ombudsman's report estimates deaths in 2009 closer to 800. Acting manager Riggs" – this is the manager who succeeded Mr Gray and was basically brought in to ...

**Ms Carolyn RICHARDS:** Yep. He owned the property next door.

**Mr ELFERINK:** Yep. "...remains convinced that such a high number was not the case because a lack of evidence found on his inspections of the paddocks." To continue: "Mataranka Station lacks a reliable system of collecting data that report stock numbers or processing data to predict natural growth in AE. Available stock number data is fragmented and does not comprise a verifiable method of assessing numbers over time that" - is consistent with what you said. Nevertheless, there appears in this document a death rate for the year ... for that year, 2009, of 216 or 4.7%. Did you, when you received a copy of that report, enquire from the University as to how they came up with a figure of 216?

**Ms Carolyn RICHARDS:** No, once I'd delivered my report I no longer have any jurisdiction to ask any questions about anything. The report was sent to me to indicate that the University was taking steps to implement recommendations that I made which was that they should review the operations.

**Mr ELFERINK:** There is reference in the report, and I'll just see if I can lay my hands on it, to fire management practices and you'll know why I'm going here. Page 89 from memory. Quote: "Ms Walters said that she had no faith in Mr Gray's fire mitigation skills stating in her view he was responsible for an accidental fire in the Wire Hill Paddock 2009 after he moved dead cattle there for burning". Are you aware from Ms Walters, the evidence you collected from Ms Walters, how many cattle were moved for the purposes of burning?

**Ms Carolyn RICHARDS:** No, I don't know that but it may be in her statement, and as I say, I haven't seen it for some eight months now, I wouldn't remember it.

**Mr ELFERINK:** Because there's an email exchange between yourself and Mr Glover where you assert in that exchange, quote: "We have a witness who saw the bodies being bulldozed into pits and burned". This witness reported that Ian Gray caused the fire on the property while doing that at a place far away from the houses and yards. There was reference in the media to a mass grave, is that a reference to this idea of a mass grave on the property?

**Ms Carolyn RICHARDS:** Yes.

**Mr ELFERINK:** Okay. One of the issues that were raised by Mr Riggs of course was the lack of skeletal remains and other remains, which then of course refers ... starts this exchange, if you like, between yourself and Mr Glover. What efforts have been made to locate this mass grave?

**Ms Carolyn RICHARDS:** Well, this didn't arise as an issue until after the report was delivered. You have to understand that once my report was delivered, I no longer have jurisdiction to do anything. But that exchange of emails between myself and Professor Glover was because there was a report in one of the newspapers who had misinterpreted something I had said and I'd been reported as saying there was a new witness just came forward and Professor Glover was asking me, well, who is this new witness and I was simply saying, well, it's in the original report. It's the ...

**Mr ELFERINK:** Which is the Walters evidence.

**Ms Carolyn RICHARDS:** Yes. And if you look at the statement given by Ian Gray, he also refers to it. He doesn't mention that he was there burning cattle but he complains bitterly that Nicola Walters and one other staff member stood by and would have happily seen him burnt to death.

**Mr ELFERINK:** Yeah. Ms Walters is quoted on page 203 of your report in relation to this particular matter of burning, and I quote: "He lighting and me putting out any jumps the grader was taken to Katherine for repairs and was never repaired so there was no grader there for backup. On one occasion after the still mill area was lit up due to a camp fire I had to return home and fill it up with water. When I got back the fire was jumping the Stuart Highway. I realised Ian had not stopped lighting the road verge while I was gone and he had no backup water nor did he have anyone watching the road. He was also lighting" ... sorry, "lighting with the wind. The result

was the horse paddocks below house one were alight and fire was heading for two houses. I called for Ian to stop and then rushed back and called for help and the paddocks on our side of the road were all at risk. Ian said later that it was not a big deal and it wasn't as bad as I thought. I had worked with DDUBB for six years" – I'm not sure what that acronym means – "the visibility on the Stuart Highway would have been zero". Are there any other references to fire management practices in the report that I've missed?

**Ms Carolyn RICHARDS:** Not with respect to 2009. But there was a very serious fire at the end of 2008 ...

**Mr ELFERINK:** That's correct.

**Ms Carolyn RICHARDS:** ... when they lost nearly 400 cattle and the fence had never been repaired but the fact the insurance company had agreed to pay for it. And that's the only other reference to fire.

**Mr ELFERINK:** Yeah, the earlier fire, I understand, to have lost more than 400 cattle. The CDU according to their report, say that they lost 668 the year before.

**Ms Carolyn RICHARDS:** Well, if you look at page 137 of volume 2 of my report, you'll see a page of a Mataranka paddock book as at the 1<sup>st</sup> of December 2008 and it's there, as I understand, that scribble on the bottom right hand side of the page, indicating there were 440 lost in fire and that's the only evidence I have. Because of course we weren't examining 2008 except for historical purposes.

**Mr ELFERINK:** That's why I went to this count in 2009 because the 440 that you've just described which the only evidence you had is what you've got in front of you, the CDU says 668 in the 2008 fire were lost. Is it conceivable or possible, considering the state of the record keeping, that cattle losses in the fire of 2008 were included in the 800 figure that you came up with?

**Ms Carolyn RICHARDS:** No, it's not. Because we were well aware the difference between the two years.

**Mr ELFERINK:** Okay. No problems.

**Ms Carolyn RICHARDS:** And Mr Gray wasn't there in 2008. It was a totally different issue.

**Mr ELFERINK:** Yeah, the fire losses are something quite different, I'm not making any assertions other than those cattle were lost in fire. But there's a figure of 440 which you have; the University figure provides 668. They lost, according to that year, the death rate was 11.6%, but it's that ...

**Ms Carolyn RICHARDS:** Well, they'd also had a complaint and the Department of Resources had investigated and there were starving cattle there at that stage and you'll find that in the statements from the Department of Resource inspectors. That should be with the files.

**Mr ELFERINK:** So the loss of 668 in 2008 does not include any losses in the 800 that you extrapolate?

**Ms Carolyn RICHARDS:** That's right.



**Mr ELFERINK:** Okay, so 668 one year and then 800 possibly, or thereabouts, for the next year based on the extrapolation you explained before.

According to the evidence you've just given then, Ms Walters indicated that there was burning of cattle occurring. The references that I can find to that on burning practices are on page 203. Whereabouts in the report can I find the actual references from Ms Walters in relation to cattle actually being burnt, buried and burnt?

**Ms Carolyn RICHARDS:** You won't find it in the report, because at the time it was considered not be to a thing of any moment, but you'll certainly find it in her record of interview when she was interviewed by our office.

**Mr ELFERINK:** Right, okay, I have her statement, I don't have her record of interview in front of me. Okay. How long according to her had these practices been going on?

**Ms Carolyn RICHARDS:** Well, she started at the property in March 2009, I think, and she left either late September, early October. And I can't answer your question. It may be in the papers but it's been such a long time since I saw them I ... If it's not in the report I'm afraid I'd be just guessing.

**Mr ELFERINK:** Did you attempt during her time of the investigation seeing that your investigation was on foot at the time you became aware of this material, seek or endeavour to find these pits?

**Ms Carolyn RICHARDS:** No.

**Mr ELFERINK:** Why not, I may ask?

**Ms Carolyn RICHARDS:** We would have had to go out there and either get a helicopter or a 4 wheel drive and we're not resourced to do that sort of thing.

**Mr ELFERINK:** Alright, so the evidence then we do have for the existence of these pits are essentially Ms Walters' evidence in her record of interview between you and your staff?

**Ms Carolyn RICHARDS:** Yes, and there was another staff member with her at the time but I'm afraid without going back to the original statement I can't think of the name.

**Mr ELFERINK:** Okay.

**Ms Carolyn RICHARDS:** But you'll find it in Mr Gray's interview as well.

**Mr ELFERINK:** Did Mr Gray indicate in his interview how many cattle were burned in the pit?

**Ms Carolyn RICHARDS:** He wasn't asked about cattle being burnt in pits. I think he was asked about the number of cattle that died.

**Mr ELFERINK:** Alright, no worries, that's that line of questioning done for the moment, Madam Chair.

**CHAIR:** Gerry?

**Mr WOOD:** Yeah, mine's ... some of it's in a similar vein, Ms Richards. I've got the final report that was given to the CDU May 2011 prepared by Science Matters, and that has an appendix 2 on page 55. It has a sort of a combined total so it's got number of cattle that existed on the station 2008/2009 stud cattle, number of cattle that existed on the station just as the ordinary cattle. They had figures that I would imagine as they're not rounded up someone must have been able to collate the, you know, a reasonably accurate number. For instance, they said there were 494 stud cattle in 2008, 466 in 2009 and in just the general herd 5264 in 2008 and 4124 in 2009 which is about 1100 less. They then have recorded the sale, the deaths, and they also record the sales. In the case of the number of cattle, of stud cattle that died. There were 15 died in 2008 and 64 in 2009 which they recorded as a high number for stud cattle, and for deaths in 2008 653 and 2009 152. That made it ...

**Ms Carolyn RICHARDS:** Sorry, what was that number?

**Mr WOOD:** One hundred and 52. That made a total of 668 deaths recorded in 2008 and 216 for 2009. Now, my problem is, I suppose, there's a figure of 800 out there which has been bandied around quite a bit. The difficulty I have now is a report that was asked for to be prepared by a company called Science Matters on behalf of the University which without, you know, me being able to sort of question the people who put it together seems ... it seems that it looks scientific, they've put it out into document there along with other sort of figures about calves producers, wieners, wieners going to breeders and all those sorts of things, they give percentage of the death at an annual rate of livestock units to the year end 2.2%. So there's obviously a fair bit of work gone into this particular document.

So do you still believe that the figure you produced has any scientific basis or is it more on hearsay, considering Stockwell didn't say ... he said between 100 and 300. I think Gray said around that figure, and here's a report, the latest one for this year saying a total of 216.

**Ms Carolyn RICHARDS:** Well, all I can say is to give a report with that sort of accuracy there has to be records, and if there are records then the University has committed an offence under the Ombudsman's Act. I would refer you to page 169 and 170 of my report where the University was sent a subpoena and was specifically asked: "What was the number of cattle at Mataranka Station on each of the following dates: 1<sup>st</sup> of January 2009, 30<sup>th</sup> of June 2009, 31<sup>st</sup> of December 2009 and 1<sup>st</sup> of February 2010". Next question. "During the period 1<sup>st</sup> of January 2009 to 1<sup>st</sup> of February 2010 how many cattle at Mataranka were euthanised, died or sold, gave birth to calves or were brought to Mataranka from elsewhere". Now if the University had that information to enable that document you are holding to be accurate, then their answer to me is that they have no records to tell me that information, is in fact breach of the Ombudsman's Act. So that's all I can say.

**Mr WOOD:** I don't know either but what I need to read then is, to clarify, it says here: "For 2009 the best sourced data appears to be the value appraisal signed by Douglas Jenkins, licensed livestock auctioneer, Jenkins Cattle Trust Katherine NT dated 29<sup>th</sup> of December 2009. This document an appendix 12.1 can be used to disaggregate the stud and the station figures from the 2008 and 2009 years". So those figures may have been from someone else, of course, who had some way of working out the number of cattle.

**Ms Carolyn RICHARDS:** That may very well be correct but all I can say is that we went to every effort to ask for records, we asked several witnesses what records

existed and we were told there were no paddock records, there were no stock records of what was being born and what was dying so if in fact the records did come from someone else then I can't comment on their accuracy but all I can say is that the University did not produce them to the Ombudsman.

**Mr WOOD:** Well, I did see a note, been going through lots of notes lately, but I did see a note recently saying that a ... I don't know whether it was through the Auditor-General but a green slip had been found that had been lost and so it may of course have been a case that records were around but no-one knew where they were because obviously, as you see from some of the reports, perhaps that the station wasn't being run as well as a station should be run and records might have been part of that issue as well. But I just say that I think it needs to be put on record that a company has brought these figures out which are quite a bit different than the 800. Of course, I think that is not the main reason we're here today of course, the issue is about animal cruelty and neglect but I still that as there's been a lot of emphasis placed on the number of cattle and this report has come out, I think at least it needs to be put on record that it does not appear to be from this record as higher number as quoted in the newspapers and by yourself. So ...

**Ms Carolyn RICHARDS:** All I can say is I can't comment on why information has been brought to light a year or so later, which when I was doing my investigation the University was summonsed to provide this information and they didn't do so. In fact they actively responded that the records did not exist.

**Mr WOOD:** Well I gather this is a second ... there was a draft report, it says here: "Revision of final report presented to Charles Darwin University in December 2010. This is provided to the Northern Territory Ombudsman. Subsequently additional information became available and this has resulted in changes in May 2011 represented in table 3, appendix 2 and on page 26 of the report". It may be a case, of course, that information came to light after your report was finished, so ...

**Ms Carolyn RICHARDS:** That's right, very convenient.

**CHAIR:** And so Member for Nelson, there's nothing that prevents the Committee calling on the author of that report to provide ... to appear as a witness to provide evidence.

**Mr WOOD:** Yep.

**Mr ELFERINK:** Might as well leave the auth ... not so much the author but it's the person who provided the information to the author of the report will already ... is already on the witness list. Namely the Vice Chancellor.

**CHAIR:** One more question, Gerry?

**Mr WOOD:** Mine was more ... I needed sort of one global question about the report itself. The report has no date on it, and what concerned me was, of course, I needed to get some idea on history as to when you first started your report and when it was actually finished. Because I looked on the front cover and I could not find a signed page at the end, and when I looked up the website other reports have got like a month and a date. This one hasn't so I've got no indication when this started so I have a sort of historical understanding of where this fits in with things like the Stockwell report and some of the interviews that ...

**Ms Carolyn RICHARDS:** Well, I'm fairly certain that somewhere in the report it indicates that people approached us in February 2010 and the report ... you are right, it is an error, normally they are dated, but it would have been given to the Minister and within a couple of days or ... sitting days, within six sitting days, of when it was tabled.

**Secretary Ms Helen CAMPBELL:** A preliminary was tabled in October.

**CHAIR:** My date here says tabled the 28<sup>th</sup> of October 2010.

**Mr WOOD:** Right, but if I picked up the document off the web or something, isn't it? That's because it's been tabled, but I just needed to know the date you formally started the report and the date you would have completed it.

**Ms Carolyn RICHARDS:** We start writing the report as the information comes in and the information is recorded as each piece of information comes in and then when we finish what we consider to be a draft we sent it to Charles Darwin University and asked them to give us their comments. They asked for extra time so they had it for six weeks and then we incorporated into it any of the comments that they had put to us, then it went to the printer and then it went to the Minister. So would have been finished a good two months before it was tabled.

**Ms SCRYMGOUR:** Can I just ... have you ...

**Mr WOOD:** Yeah, I've got a coup ... I'll try and be brief. Alright, I need to get a few things clear in my head. When do you believe an action of cruelty or neglect occurred? Date wise? Because ...

**Ms Carolyn RICHARDS:** Certainly the first provable one was the 4<sup>th</sup> to 5<sup>th</sup> of September 2009, and the last evidence available was in respect to the horses and I think that was January/February 2010.

**Mr WOOD:** Why I ask this and this is the bit that I'm probably trying to get to the heart of, when you do your investigation and you come across a statement like from the Department of Resources which ... especially the second report, the 25<sup>th</sup> of September I think was the more fierce, it says there's a case, you know, of neglect and all this, there's starvation occurring, so when you're going through your report or you're putting your report together and you find that, do you have a responsibility to report what is clearly seen by a departmental officer as an offence to report that to the police or someone else? For instance, I'll give another example, say you were doing something on child abuse, and in your ... as you got through some of the paperwork you found out there's a kids here, there's a statement made by someone that someone was abused or attacked or whatever, physically attacked, and that hadn't been reported anywhere else but in a document to you. Are you required then to pass that information on to someone straight away or would it be normal to wait till the end of a report?

**Ms Carolyn RICHARDS:** Well, you picked a bad example, I'm afraid. With child protection you would pass it on immediately because of section 26 of the Act which says we have to pass it on.

**Mr WOOD:** Well, say about a bank robbery or something.

**Ms Carolyn RICHARDS:** Let's take this case. There was an animal welfare issue. We started investigating in February 2010. It became apparent to us by early

June 2010 that there was clear evidence that offences might have been committed, so we went to the appropriate authority whose job it is to prepare the brief for the prosecution. We also spoke to the NT Solicitor about who had to prepare the brief, what do they want in it. We were of the view that we had already collected enough evidence that was in admissible form to be used in a court. So we went to the Animal Welfare Authority and said you have to prosecute, there's a time limit, here's some of the evidence, we've got the rest, you know, anything else that you need from us we're prepared to release to you for the purpose of prosecution.

**Mr WOOD:** So is that paper trail available because there's a lot of paper trails here and I ...

**Ms Carolyn RICHARDS:** Yes, it should be in our buff coloured files.

**Mr ELFERINK:** Moreover, just to help you, Member for Nelson, the files provided by the Department clearly indicate that they received those approaches and indeed the Minister herself, Malarndirri McCarthy, received those approaches from the Ombudsman.

**Mr WOOD:** Well, I haven't yet come across them, there's a lot of files I've been going through.

**Ms Carolyn RICHARDS:** There's a lot of paperwork you've got, yes.

**Mr WOOD:** That's right, so to cut it a little bit ... I might ask the Secretariat maybe if they can mark that down as some files that we would like to see.

**Mr ELFERINK:** Got them here if you want them.

**Mr WOOD:** Okay. So you're saying that you did notify Animal Welfare and Department of Justice that there were cases of animal cruelty, and did you get a response from any of those people?

**Ms Carolyn RICHARDS:** I'd have to check the file. I certainly did get a response from the Minister but you'll appreciate I wasn't personally dealing with this. I would have to ask my deputy who's on leave at the moment but if we did get a response it will be on the file.

**Mr ELFERINK:** Perhaps I can, if it assists, the notations received from the Department state that the reason that the Department was advising the Minister of what was going on was because of the direct contacts received from the Ombudsman.

**Mr WOOD:** Right. Well, yes, well, I'll have to follow that up at this stage.

**Mr ELFERINK:** They're in the Ministerial briefs.

**Mr WOOD:** Okay. That's my line of questioning at the moment, I have some more questioning but anyway, I'll let someone else have a ...

**Ms PURICK:** Okay.

**Ms SCRYMGOUR:** Can I just follow on from ... if that's alright, Kezia, from what the Member for Nelson. How are you, Carolyn?

**Ms Carolyn RICHARDS:** Fine, how are you?

**Ms SCRYMGOUR:** One, when did you form the view of the need for a prosecution under the Animal Welfare Act when you were doing the investigation? If you could just pinpoint ...

**Ms Carolyn RICHARDS:** Well, I think I probably formed it when it first read the Department of Resources' report which would have been about March 2010 and I first formed the view that we have sufficient evidence collected in June. Probably around ... shortly before I saw the Minister.

**Ms SCRYMGOUR:** Okay. Being concerned that the time limitation, I suppose the statute time of the limitation for prosecution was fast approaching, could you explain whether you planned to refer this matter to DPP and if not your reasons for not doing so, even though ...

**Ms Carolyn RICHARDS:** Well, I'm not allowed to refer to DPP. What I have to do, DPP will not accept a brief from me. What I have to do is I have to send it to the person whose responsibility it is do the prosecution, which I did, and say I've got all this evidence, you can have it and I urge you to prepare a brief for the DPP, and that's what happened. And having made that recommendation to the Department, bearing in mind I wasn't investigating the Animal Welfare Authority, I was only investigating CDU and what happened with the Department I thought was something that I should do before the report came out. And it never occurred to me to follow up ...

**Ms SCRYMGOUR:** The processes between the Department or the communication between the Department to ...

**Ms Carolyn RICHARDS:** Well, having made a recommendation to the Animal Welfare Authority whose responsibility it is to prepare the brief for the DPP, having given them some evidence and said that if they need any more just ask for it, and having made a recommendation to the Minister that this was a serious matter and there should be prosecution, it never occurred to me to follow it up because that was not part of my investigation brief.

If I can take you right back to the beginning. We had complaints about Charles Darwin University. The Ombudsman's required to send a notice of what we're investigating and we sent a notice saying that we would be investigating Charles Darwin University and its role at Mataranka. When we started investigating we discovered that, in our view, some action should have been taken by the Department and the Animal Welfare Authority.

By that time, however, it was I think May and in order for us to then start investigating the Department's role, we would have had to serve another notice on the Department by which ... and if we'd done that the report probably would have taken another 12 months so we elected not to do that, we elected to make a recommendation and then at the end, I wrote a letter to the CEO of the Department saying we haven't actually investigated you but during our investigation we have found what we see are these flaws in the process and just send it to the CEO with a rider that this is not an official recommendation by the Ombudsman, there is no obligation to do it, but however, you should be aware that this is what's happening in your Department.

**Ms SCRYMGOUR:** So are you confirming, Ombudsman, that the key trigger that led you to believe that you needed to undertake your own investigation then following from that, and what date was that again, you were saying in 2009?

**Ms Carolyn RICHARDS:** 2010.

**Ms SCRYMGOUR:** That original ... so your original investigation was into the manner of which CDU managed its livestock and conducted its operations in Mataranka Station that that was instigated on your own motion. So the key trigger that led you to believe that you needed to investigate then, you know, undertake an investigation into all of these issues with this operation, what was that key trigger, was it someone approached ... got reports?

**Ms Carolyn RICHARDS:** I didn't extend my investigation beyond an investigation into CDU and its actions and omissions. But during the course of investigating that, it came to my attention that there should have been some earlier action taken, in my opinion, by the Department. So rather than delay the finalisation of the report and start a new investigation against the Department and follow the notice process prescribed by the Ombudsman's Act, I contacted ... I arranged for my deputy to contact the Animal Welfare Authority, give them all the information that we had collected between February 2010 and end of May 2010 and urge them to use this information to institute prosecution. But because it wasn't something that I was doing as authorised by the processes of the Ombudsman's Act, I thought that would be sufficient that if I handed over this information, that'd be the ...

**Mr ELFERINK:** Perhaps I can shine a light on this, because ...

**Ms SCRYMGOUR:** Well, with all respects, Member for Port Darwin, we have the Ombudsman and I would like to hear it from the Ombudsman rather than seek your counsel ...

**Mr ELFERINK:** It's all written there.

**Ms SCRYMGOUR:** ... I would like to ... Yeah, that's okay.

**Mr ELFERINK:** Well, read the documentation first ...

**CHAIR:** Thank you.

**Mr ELFERINK:** ... and save yourself ...

**CHAIR:** Thanks. Marion, you've got some further questions and then Kezia's got a question.

**Ms SCRYMGOUR:** You might think that ... but, I mean, you've been allowed to have a number of questions, I think the rest of us are allowed our questions as well.

**CHAIR:** Thanks Marion, your question ...

**Mr ELFERINK:** Give people the courtesy of reading the material so ...

**CHAIR:** Thank you.

**Ms SCRYMGOUR:** So, Ombudsman, sorry. So the key trigger, that was in early 2010 you were saying?

**Ms PURICK:** March.

**Ms SCRYMGOUR:** March 2010?

**Ms Carolyn RICHARDS:** Perhaps I need to explain that although this report was done on my own motion, doing a report on own motion is a way of protecting the identity of people who make complaints and don't want to be named. And the people who made complaints to me wish to remain anonymous, and the only way you can do an investigation under those circumstances is to do it on your own motion. So the trigger was people approaching me and making complaints about their concerns.

**Ms SCRYMGOUR:** And so that was the trigger that you used to do your own motion to protect ...

**Ms Carolyn RICHARDS:** That's right.

**Ms SCRYMGOUR:** Kezia, I'll pursue those other ones after this.

**Ms PURICK:** Just one preliminary question, Ombudsman. I understand that under the ...

[Member for Arafura and Member for Port Darwin whispering]

**CHAIR:** Excuse me, sorry. We've just got a question here.

**Ms PURICK:** The code of practice in regards to animal ethics and the use of animals for training or research is written into or attached to the Animal Welfare Act and I understand it ... these are not the exact words but my words. Those who teach with animals are also responsible for care and wellbeing of animals. So I interpret from that that every person on Mataranka Station or associated with the Katherine Rural College who used the animals in their teachings other than the station manager, is therefore responsible for the wellbeing and caring of animals.

So my question is, why was only one person appears to have been singled out for would be prosecution, let's say the station manager, Ian Gray, and I understand ultimately he's the manager so he's responsible for the management of the station but I'm also understanding that those who used the animals to teach have also got a responsibility for the care and wellbeing of animals. So if they didn't think that the animals were at a particular level and I understand it's in their body condition, there's five body conditions and they should be number three which is good. So if those people were using animals that weren't at a level where they were basically healthy and good condition, why weren't they also pulled in with possible prosecution charges? Does that make sense?

**Ms Carolyn RICHARDS:** Well, I didn't go into that but what you're stating really needs clarification.

**Ms PURICK:** Yes, well see, in your ...

**Ms Carolyn RICHARDS:** Every person has an obligation if they are aware of an offence being committed to report it to the appropriate authority ...

**Ms PURICK:** But on your page 21 of the report, you just recommended Ian Gray be prosecuted for breaches of the Animal Welfare Act. So my question is, there



were other people associated with training and teaching at that station who possibly potentially could have also been liable for the welfare of those animals. According to the Code of Practice that's attached to our Animal Welfare Act of the Northern Territory.

**Mr WOOD:** Can I just get clarification? Were they recommendations?

**Ms Carolyn RICHARDS:** No.

**Mr WOOD:** I didn't think so.

**Ms PURICK:** Which ones?

**Mr WOOD:** The one you refer to.

**Ms PURICK:** Ah, sorry.

**Ms Carolyn RICHARDS:** What I said was I would have recommended that Ian Gray as station manager ...

**Ms PURICK:** I would, okay.

**Ms Carolyn RICHARDS:** But to answer your question ...

**Ms PURICK:** Well my question is ... would other people ...

**Ms Carolyn RICHARDS:** ... under the Animal Welfare Act, there were other people who could have been prosecuted. There's specific provisions there that says if something like this happens, if an offence is committed by a station manager then certain executive level staff at CDU, and in this case it was Barney Glover, can also be prosecuted. That's set out in the Animal Welfare Act. They they have a defence to show that the management who were employing Ian Gray did everything possible they could to make certain it didn't happen. Now, that was not an issue I had explored. At all.

**Mr WOOD:** Can I just say? Does that include public servants in departments who might have known as well?

**Ms Carolyn RICHARDS:** No. Because they're not responsible. Could very well have been ... It's got to be someone who's in a position to control what's happening.

**Ms PURICK:** Yeah, so it's the lecturer or the trainer, that's, as I understand it, they're the ones who also have a responsibility for animal welfare and care.

**Ms Carolyn RICHARDS:** Well, I'm sorry, I don't have the Animal Welfare Act with me.

**Ms PURICK:** That's my understanding.

**Ms Carolyn RICHARDS:** But this is not unusual. It's very much like the director of a company being responsible for what the CEO does or what's done at a lower level. It's corporate responsibility for the acts of the people they employ or engage.

**Ms PURICK:** Okay. So it could have been – and obviously it's academic now because the time line's passed – but it could have been that there was a number of people who could have been up for prosecution?

**Ms Carolyn RICHARDS:** If they were in fact responsible for the cruelty but ... Sorry, I see the cruelty in this case as not feeding these animals and not giving them water and when they did get in extremis, not shooting them.

**Ms PURICK:** I'm sorry, Ombudsman, I should have said at the beginning of this and I said to Madam Chairman I would but I place on the record that I have a family member associated with this matter at the University who's now on leave so if I ask questions that are inappropriate please tell me and I'll obviously withdraw them.

But the other just brief question, Madam Chairman, if that's okay?

**CHAIR:** Of course.

**Ms PURICK:** I know that you said in your reports that your charge was just to look at the University and how it went about its business but the role of the departments was outside your investigation, is that correct? Even though there's things ...

**Ms Carolyn RICHARDS:** I'm bound by, in effect, what is my terms of reference which I set, and I send them in a notice to investigate. Now I'm free at any stage to do another set of terms of reference. But in this case I chose not to because (A) I didn't want the further delay, and (B) the solution to what happened in the Department was not something that was really my role, it was a role for the head of the Department of Local Government and Resources to whom I wrote saying these are the problems I've identified, and also the problem of the Minister to whose attention I brought them. I mean, even now I could do another investigation but there wouldn't be any point because the solution will be in someone else's hands. And I've got the information, I've pointed it out, as far as I'm concerned I've gone as far as I can with improving public administration which is basically my job.

**Ms PURICK:** Okay, that's it for now.

**Ms SCRYMGOUR:** Can I just go back to, Ombudsman, the report was or your investigation into the management and the practices of Mataranka Station, the trigger and I accept that the trigger that you said that you used as a means to do this investigation. And if you're only doing or looking at CDU, if you were looking across the management of that, surely that would have taken a broader analysis or a view across that, wouldn't it?

**Ms Carolyn RICHARDS:** Across CDU management?

**Ms SCRYMGOUR:** Not just CDU but, I mean, CDU holds the license but wouldn't you have also had to have looked at, well, what's the regulatory or monitoring of that licence to make sure that the holder of that licence is actually abiding by the licence conditions?

**Ms Carolyn RICHARDS:** Well, that's the job of the Animal Welfare Authority to do that under the Animal Welfare Act. And as I say, I was not aware when I started the investigation in February 2010 they had done anything other than they were supposed to do. When I discovered that, I decided not to pursue the Department by doing an investigation into them and a report but to take a more

informal approach to get things changed and improved by writing to the CEO and saying, I'm not going to do a public report on you, they wanted my word on that to co-operate[ but here's the problems that you have, I suggest you seriously address them.

**Ms SCRYMGOUR:** But one of the issues of concern that you identified was the lack of understanding amongst staff of the Animal Welfare branch so you would have, as part of your investigation into this issue you would have looked at, I mean, and you highlighted that concern, you did look at it then ...

**Ms Carolyn RICHARDS:** Oh yes ...

**Ms SCRYMGOUR:** ... I mean, you were saying that you ...

**Ms Carolyn RICHARDS:** We looked at it enough to know that it was a serious matter and that we thought there were flaws in the way it was operating, and we reported that to the head of the Department and to the Minister with a recommendation that really they should get their house in order because us doing the investigat ... My thinking was, that us doing the investigation was not going to be as effective as them getting their house in order.

**Ms SCRYMGOUR:** Right, so your discussions then with the Minister, and I suppose other stakeholders, the Department and others, that your report would be ready in June 2010?

**Ms Carolyn RICHARDS:** Yes, that's right.

**Ms SCRYMGOUR:** Can you explain that when it was released, I think we received it 28<sup>th</sup> of October 2010. July, August, September, October, so what's that? Four months. Can you explain, Ombudsman, the reason for the delay in the report being finalised, in that report given that your meeting with the Minister was ...

**Ms Carolyn RICHARDS:** There were two reasons.

**Ms SCRYMGOUR:** ... in June.

**Ms Carolyn RICHARDS:** By the time ... A report was almost finalised at the end of May, and what we'd seen was a series of problems during 2009, assurances from the University, assurances by way of reports that things were improving and it would never happen again, and then early June, somebody sent us some photos of the state of the cattle in May/June 2010, and it was apparent from the photographs that we were ... CDU was in fact heading for a repeat of what had happened in 2009. So at that stage I went to see the Vice Chancellor and the Chancellor and said, "This is really serious. I don't want to be just castigating CDU in public in a report. You've got to do something about this". Two days later Ian Gray was removed from his position. And from that point on, things started to improve.

**Ms SCRYMGOUR:** On Mataranka?

**Ms Carolyn RICHARDS:** On Mataranka. But as long as Ian Gray was there, in my view, things weren't going to improve, and because it's an industrial relations issue I couldn't recommend that they sack him in a report. However, discussing it with the Chancellor and the Vice Chancellor, I made them see, well, this is the problem you've got, it's happening again. What's it going to look like if you've got a

report about something that went badly wrong in 2009 and it's being repeated in 2010. So that's what happened. And that was part of the delay.

And then at the end of ... sorry, mid July, we started getting reports from Charles Darwin University, who by that time had set up a Mataranka Advisory Council, and I spoke with the chairperson of that, whose name I forget but a talented woman and with a long experience in the cattle industry. You may have her name, is it Debra?

**Ms PURICK:** Elaine Gardiner.

**Ms Carolyn RICHARDS:** Elaine Gardiner, that's right. And my conversations with her were very comforting, I thought, that at that stage CDU had actually taken steps to start improving things. So I finalised the report, I sent it to Charles Darwin University, they had it for at least six week, studying the draft and then when it came back, modified the draft and taking into account what they said at that point ...

**Ms SCRYMGOUR:** Their responses to that.

**Ms Carolyn RICHARDS:** ... and then it went to the printer and then it went to Parliament. So more or less we didn't do any active work on it from probably late July which is when we more or less finished our part.

**Ms PURICK:** Can I just get a clarification? In fact it's not clarification. The way I see it is that there was multitude contributing factors to what happened at Mataranka Station. Now, if the systems and the procedures and the management within Charles Darwin University associated with the rural college Mataranka Station were very good, then Mataranka, if they were very good, the Mataranka incident would probably have only been a small problem. I'm suggesting that because things weren't right within the University in regards to that station and the personnel and how they went about their business that Mataranka became a huge problem. And I know the University has done a lot of work since it became public and wants to move on and I accept that and the reasons why, but what I'm concerned about is getting to the heart of why their systems and the procedures and policies failed. It's all very well saying we've moved on and let's not worry about what happened behind us, we've fixed it up, cows aren't dying anymore.

I mean, it's quite simple why the cows died, they didn't have enough food and they didn't have enough water, but is getting behind the situation at the scene to say why did it get to that position that it got to and for one person to be responsible and that's the station manager, I just don't accept it. Because there was a huge institution, actually probably three institutions, three organisations: the station, the rural college and the University and probably government to some extent. So to say it's just a person's fault I think ... well, I can't accept that, and I think that what, from my point of view, trying to work on this Committee is working out where the systems and the procedures did fail and whether they were acknowledged that there was failure. And yes, put processes, put systems in place to ensure it never happens again but I don't see that coming out of a lot of the dialogue from the University. They just want to move on and get over with it.

**CHAIR:** Kezia, with all due respect, that's [premature] at this stage.

**Ms PURICK:** Have you got a comment on that?

**Ms Carolyn RICHARDS:** Well, I agree with you, I think that's a misreading of what I did find and I can take you to page 4 of my report. You've been looking at my statement at the end on page 21 that I would have recommended the prosecution of Mr Gray. Prosecutions are a very different thing from what I've actually found, and what I found is that the manner in which CDU had done its operations ...

**Ms PURICK:** Yes, I understand that.

**Ms Carolyn RICHARDS:** ... the adequacy in standard of the University's plans, budget allocations, staff, supervision monitoring was not sufficient. The quality of the University's management process and practice work, blah, blah. The capacity of those responsible wasn't up to it. The standard and the practice of CDU's risk management strategy blah, blah, blah. They're all recommendations, and right at the end I said I would have recommended the ... if the time limit hadn't expired, the prosecution of Mr Gray. I nonetheless, and I maintain this, CDU are in Darwin. They put in charge as the supervisor of the running of a cattle station, is it 800 kilometres away? Something like that.

**Mr WOOD:** No, about 400.

**Ms Carolyn RICHARDS:** The Animal Ethics Committee were not even aware that CDU and the Katherine campus were in different places. You know, so, I mean, that's one of the reasons they thought the licence they had to do teaching and scientific teaching ... yes, scientific or teaching work with animals, because Katherine campus had a licence and it was not recognised that in fact Katherine and Mataranka were a long way from each other. And they were actually separate facilities. And the problem was the person who Ian Gray was supposed to answer to was an accountant sitting in the asset office in CDU. I mean, that was the real problem, and I think that it was a problem with not just getting the licence, it was the problem for poor record keeping, it was the reason that these animals could go on dying for so long without anyone picking it up. There were no monthly records on what was happening, there were no paddock records that should have been provided monthly and that clearly, I think, is the responsibility of Charles Darwin University, and I thought I kind of made that clear. And that's one of the reasons I asked that ... sorry, what was the name of that organisation, Gerry, that you were ... Sorry, Member for Nelson.

**Mr WOOD:** Science Matters.

**Ms Carolyn RICHARDS:** Yes. One of the reasons that Science Matters came in was because I thought that CDU were out of their depth in doing an appropriate plan and management plan and all of that, and that was one of my recommendations and that report which I think is a very good blueprint for going ahead and fixing things up, emanated from that. I mean, my real grief is that CDU are out of their depth. Not their core business to run a cattle station.

**Mr WOOD:** Well, could I say something?

**CHAIR:** You can.

**Mr WOOD:** I actually came out publicly when I heard they were going to sell it and there was mention about, I think in the Science Matters, because coming from a horticultural science background where the University took my old college over, I always felt that sometimes university's places are not in those specialist colleges but that ... That's when I made a comment and they asked me to go down and they gave

me a tour around the station. One of the things that was said to me I thought at that stage, and you've got to remember, before Charles Darwin took it over it was a training college, my daughter learnt to be a jackaroo there, a 13 week course, so it was used as a training college. So cattle station it is but it was always ... well, not say always but for a long time it was an education facility.

My understanding is that the University would have selected through a selection process Mr Gray, and again my understanding is that from the ... from what I've been told, a certain well-known person there who had a lot to do with the station said that it would have put that person under seven on the list that seven people and the University still picked them. So whether there was a lack of knowledge of getting the right person to work there in the first place from the University's perspective I don't know but they obviously would have gone through a selection process, looked at the person's record and to some extent they do have some responsibility picking a person. So I think they can't sort of, you know, they need to certainly look at the way they employed people.

By why I'm saying that also, we can go back to what's happened, and it's terrible, we can go back and say this should have happened, that should have happened. Is it fair – I'm not trying to one minute downplay what happened, I think it's terrible what happened – but you can say on one hand the University or Mr Gray some such should have been prosecuted for cruelty and neglect. But, does someone make a judgement as to whether the University – and I know you say they acted slowly and that's, you know, they might say we acted as quick as we can – but is there a chance that someone is allowed to recover from the position where they've been told that there's a problem, they've set in play procedures to try and overcome that problem, but then one would say, well, we don't prosecute because they've heard what we had to say, they've taken the situation seriously and they've done things to turn it round. Is that a fair sort of, I suppose, analysis of the situation?

**Ms Carolyn RICHARDS:** Well, I think that's what's happened and in a lot of cases that's good. But I think what happened with Mataranka was that that was a bad decision.

**Mr ELFERINK:** Absolutely.

**Ms Carolyn RICHARDS:** Because it was clear that there had been neglect and mismanagement in 2008. And there had been a complaint and it had been looked at. Nothing improved in 2009. Mr Gray was selected without disclosing several matters in his background and about his previous employment that he should have, and I do refer to that in the ... you'll find it in the papers, I can't remember whether I put it in the report. And when it all blew up in September 2009, the University's response was to produce these papers and these plans and do inspections and say, we're moving, we're fixing it up. Now that was reasonable, until late May 2010 it was apparent that despite all their efforts, all their reports, all their plans, the animals in 2010, in June, there were a large number of them with a body score of one, which means they're virtually emaciated.

**Ms PURICK:** Mmm, almost dead.

**Ms Carolyn RICHARDS:** So what you're saying, yes, I agree with as a matter of principle. And it's preferable to fix things up rather than punish people.

**Mr WOOD:** But you're saying basically they had a chance, because they were told in 2008 there was a problem ...

**Ms Carolyn RICHARDS:** Yes.

**Ms PURICK:** Yeah, it was, there was a complaint.

**Mr WOOD:** ... and had opportunities to put in systems that would have overcome the problem.

**Ms Carolyn RICHARDS:** You see, it goes back further than that. Talking about your daughter, it was a training facility but it didn't run a commercial cattle herd of the size of four or 5000 cattle. It kept enough animals to just use for training and teaching purposes. But then in 2005, a decision was made, I don't know whether it was by the Council or Vice Chancellor, to turn it into a commercial property. In other words, that would make money. So they started raising the herd, multiplying it, selling it and trying to run it as a commercial property. They didn't do a study of the capacity of that land to carry it or not, they just let them go on breeding, and they ended up at one stage towards the end of 2008, before they had the fire, and before they ... some of them died from starvation, they had nearly 6000 cattle on that property, and they hadn't improved the infrastructure so that these cattle were in paddocks where the water was inaccessible. Although they had tons of water underground, and that's what I mean by saying it's not the core business of a university to do that. They're doing it now and they have to because even if they want to sell it, people will expect that to be there.

**Mr WOOD:** Were you able to find Dr Dione Walsh's report? I haven't been able to find it. I think it was either the CDU or somebody asked for that report to be done on the carrying capacity of Mataranka ...

**Ms Carolyn RICHARDS:** Yes, that's actually in volume 2 of my report, and I think what it says is that as at February 2010 the actual carrying capacity was about 2,500, but then it goes on to say that with proper management, more water and it describes all of that it could be brought up to a property that was quite profitable and capable of carrying between five and 6000. And yes, you'll find that in volume 2.

**Mr WOOD:** Did you also investigate how much hay would be required to treat a number of cattle there, because there are stock reports, there are reports on how much hay was bought from Landmark ...

**Ms Carolyn RICHARDS:** That's also in volume 2 and it's a guide that's issued by the Department of Resources and it tells you. And in fact that carrying capacity report from the Department of Resources actually calculates it for the Mataranka property paddock by paddock.

**Mr ELFERINK:** Perhaps I can help with some of these issues. The first question is, is there anything in the Animal Welfare Act that places a vicarious criminal liability on a third party such as a management upline?

**Ms Carolyn RICHARDS:** Yes, there is.

**Mr ELFERINK:** There is. Okay, so it is conceivable then that people like Heim, Wasson and possibly even the Vice Chancellor himself could have carried a criminal liability for their third party mismanagement?

**Ms Carolyn RICHARDS:** Yes.

**Mr ELFERINK:** Would you consider it that it would have been ... that that vicarious liability would then have carried an element of intent with it to make out the offense or is it a ...

**Ms Carolyn RICHARDS:** No, I think it's ... it's a strict liability subject to a defence that the people in charge, and it refers to a corporate entity, can prove and the onus is on them to prove it that they did not know and could not reasonably expect to know that whatever was done and that they had taken all possible steps to prevent it from happening. Which is a standard defence for any director of any company or corporate entity.

**Mr ELFERINK:** Okay, so notwithstanding the expiration of the statute of limitations, had that statute of limitations not been exceeded then the criminal liability for what occurred on Mataranka Station could have extended beyond Ian Gray to Mr Heim, to Mr Wasson and to Mr ... was Mr Glover the Vice Chancellor at this time? And to Mr Glover?

**Ms Carolyn RICHARDS:** Yes, it could have. Potentially, yes.

**Mr ELFERINK:** Thank you. Just a couple of things about Mr Gray. Did you do much background work into Mr Gray at all?

**Ms Carolyn RICHARDS:** My office staff did, yes.

**Mr ELFERINK:** Okay, so were you aware of Mr Gray's departure from Liveringa Station?

**Ms Carolyn RICHARDS:** Yes.

**Mr ELFERINK:** What were the circumstances of Mr Gray's departure of Liveringa Station?

**Ms Carolyn RICHARDS:** I would have to check the records to be precise. I know it's in a document somewhere which you probably have. So if you'd like to refresh my memory I can tell you whether or not that's the information we received.

**Mr ELFERINK:** The problem I have is that it's a file note which is not from your office. Oh yes it is, composed by Julie Carlson, she's from your office. In which case I can present it to you. Sorry, I'll get there in a second. For the record, Madam Chair, file note D100200002 you will note some highlighted areas. I specifically refer you to the second page of that document. First thing, can you confirm that that's a file note generated by your office?

**Ms Carolyn RICHARDS:** Yes, that's correct.

**Mr ELFERINK:** I refer you to the second page of that file note. There are some highlighted areas there – does that refresh your memory?

**Ms Carolyn RICHARDS:** Yes, it does.

**Mr ELFERINK:** So are you now able to answer the question in terms of the circumstances of the departure of Mr Gray from Liveringa Station?

**Ms Carolyn RICHARDS:** Well, we weren't able to verify it but we were informed that he left Liveringa Station because he was about to be terminated for



poor cattle management. I think I said that when he was recruited there were several previous employers that he didn't refer to on his application on his CV, and I think Liveringa Station is one of them.

**Mr ELFERINK:** Does that file note make any other observations in relation to how he got the job?

**Ms Carolyn RICHARDS:** [Pause]

**Mr ELFERINK:** Perhaps I can draw your attention to the second highlighted area on the second last paragraph. Second last paragraph of the file note.

**Ms Carolyn RICHARDS:** Oh, yes, according to the witness that this note records a conversation. He has stated that he got his job through his friendship with Brian Heim

**Mr ELFERINK:** Was there any process of ..

**Ms SCRYMGOUR:** Talk about leading.

**Mr ELFERINK:** Yeah, they're leading questions. This is not a court of law.

**Ms SCRYMGOUR:** No, that's right, you should remember that.

**Mr ELFERINK:** Okay, so I'm leading the witness, is there a problem with that?

**Ms SCRYMGOUR:** No.

**Mr ELFERINK:** Okay. So the question I had now, was there ever any evidence that you were aware of that any form appropriate employment interview process was pursued by the University or was Mr Gray merely an appointment?

**Ms Carolyn RICHARDS:** No, it was advertised, and he was asked to apply and he did go through an interview.

**Mr ELFERINK:** Who asked him to apply, do you know?

**Ms Carolyn RICHARDS:** No, I'm sorry, it's in the records but I can't remember.

**Mr ELFERINK:** And was Mr Heim part of the interview panel?

**Ms Carolyn RICHARDS:** I'll have to check, I'm sorry, I don't recall.

**Mr ELFERINK:** Could you get back to us on that particular issue?

**Ms Carolyn RICHARDS:** Alright.

**Mr ELFERINK:** Who was the source of that information?

**Ms Carolyn RICHARDS:** About the ... ?

**Mr ELFERINK:** On that file note? Who was the source of the information?

**Ms Carolyn RICHARDS:** You'll find a statement from him in the interview records. Doug Jenkins.

**Mr ELFERINK:** Doug Jenkins, the gentleman you referred to before who preceded Mr Ian Gray?

**Ms Carolyn RICHARDS:** That's right, he was the manager from end of 2008 until April 2009.

**Mr ELFERINK:** Alright. Madam Chair, I seek leave to table that document.

**Mr WOOD:** Is that the same Doug Jenkins was the licensed livestock auctioneer at Jenkins Cattle Trust, Katherine?

**Ms Carolyn RICHARDS:** Well, I did notice a similarity in name but I wasn't aware that it's the same person.

**Ms PURICK:** It is.

**Ms Carolyn RICHARDS:** This Mr Jenkins now teaches agricultural, animal husbandry at Taminmin High.

**Ms SCRYMGOUR:** And following on from your leading questions then, if I can lead with a question, Madam Chair. If, I mean, following on from the file note that was put down, Ombudsman, the Deputy Ombudsman would have, I suppose, verified the information as to the relationship between Mr Gray and Mr Heim, or was that just done on the hearsay of another individual who gave evidence? Was there any ...

**Ms Carolyn RICHARDS:** No. Both Dr Heim and Mr Gray were interviewed, and my memory of that interview was they were asked about it, and I think it would be a fair inference if you look at what happened that Dr Heim was, in effect, on receiving complaints about Mr Gray from students and other staff, he did not pass them on to the upper level. So it's open to the inference, I think, that that may indicate a friendship. This is not in the report which would indicate that we weren't able to verify it by contacting the previous employers. Either because we couldn't contact them or they wouldn't give us information because it was confidential. But if this speaks ...

**Mr ELFERINK:** I haven't quite finished my ...

**Ms Carolyn RICHARDS:** If we'd been able to prove or verify what is in that note that Mr Jenkins told them, it would be in the report.

**Ms SCRYMGOUR:** And reading the report and a lot of the documents and just the breakdown and animals have died and there should have been a number of procedures put back. During the ... and I suppose I go to your meeting, bringing it to the attention of government ministers and government. With your investigation, during the investigation, did it produce any sworn statements from witnesses that could have been used for prosecution even though you had said that. So was any of that then transferred or provided to government to pursue prosecution given that I know CDU's one entity but whether, you know, for government to maybe pursue that. Was that ... ?

**Ms Carolyn RICHARDS:** It's more ... Yes, it's a very good question. The answer to it is yes, and in fact what had happened was there was a lawyer on the Animal Ethics Committee and in February 2010 she had, in effect, prepared statements and affidavits and statutory declarations and you'll find them in the papers, and they actually have the Magistrate's Court format and they were prepared and sworn and they were taken from people who worked at Mataranka and it's clear that they were prepared ready for prosecution in February 2010.

Now, I don't know whether they were sent to somebody by that member of the Animal Ethics Committee, but clearly there was an anticipation back then by this member of the Animal Ethics Committee that there would be a prosecution. So that was all there. I mean, all that the Animal Welfare Authority had to do was put those in a brief and send it off to the DPP and say 'is this enough?' That was all that was needed. So the work was all done, the statements ... The witnesses had been interviewed, the statements were there, the documents had all been collected by the Ombudsman, we gave what we thought was enough to enable a brief to be prepared and for an opinion to be given on whether a prosecution would succeed. And we gave that not to the Minister but to the Animal Welfare Authority. And we urged the Animal Welfare Authority to institute a prosecution and then a day or so later the Minister asked to meet with me and under the Ombudsman's Act I'm to consult with the relevant Minister if asked. So that's what happened.

**Ms SCRYMGOUR:** Yeah, so you briefed the Minister for Local Government as I understand on the 26<sup>th</sup> of June to have discussions. What were your expectations, Ombudsman, of the Minister in terms of animal welfare issues at Mataranka after this briefing, and then I've just got another question following that because you met with the Minister in June, you met with the Department in October so I just want to ...

**Ms Carolyn RICHARDS:** No, we met with the Minister ... Sorry, we met with the Department before we met with the Minister, a couple of days before.

**Ms SCRYMGOUR:** Yeah, you met with the Minister on the 22<sup>nd</sup> of June. Sorry, you wrote to the Department in a letter dated ... Sorry, I'll clarify that. You wrote, you're right, you wrote to the Department dated the 24<sup>th</sup> of October to the Chief Executive of the Department, Ken Davies, regarding the results of your inquiry. You commenced improvements in the way the departments work together but didn't stress at that time, so October 2010, that prosecution should be undertaken as quickly as possible. Was there a reason for that? I mean, given that ...

**Ms Carolyn RICHARDS:** I had already done it.

**Ms SCRYMGOUR:** ... your investigation had established some serious breaches and, you know, animals had died and if this station manager, CDU should have taken ... It's clear that CDU management should have acted and they did by removing this person but prosecution is still wanting here. So you met with the Minister in June, you send a letter to the Chief Executive in October and still no prosecution. Is there any reason for ... ?

**Ms Carolyn RICHARDS:** Oh yes, there is.

**Ms SCRYMGOUR:** Would you like to elaborate?

**Ms Carolyn RICHARDS:** As the Ombudsman, I don't have the power to make anybody do anything. I was not investigating the Department or its inaction. In order to have done that I would have had to follow a particular process. So I thought that

by telling the Animal Welfare Authority whose job it was to brief the DPP to take prosecution in June, giving them all the evidence, that they would take some action. The Minister asked to see me, I told the Minister that a strong recommendation had been made to her Department that prosecution be taken, I showed her all of the various photos and explained what the issues were and said that this is something that she should personally be aware of. And that's what happened.

So in October I wrote to the CEO of the Department, not about prosecution because by that time it was really too late to [ instigate a prosecution for cruelty. I mean, we might have scraped in by a couple of weeks but that would have meant, you know, preparing a brief, getting to the DPP, issuing a summons and realistically, if they hadn't done anything between June and October, it's unlikely they would have got their act together to do anything before the end of October which in my mind was the absolute cut-off date.

So what I wrote to the CEO about was the wider issues of what they needed to do to increase the resources, give proper training and have proper governance, work out who was going to do the work, is it going to be the Department of Resources or is the Animal Welfare Authority going to stay under Local Government. They're the sorts of governance issues that I put to the CEO because as far as I was concerned by that stage the question of prosecution was gone. Realistically.

**CHAIR:** John, you've got a few questions and then Gerry has some.

**Mr ELFERINK:** Yeah, there are two lines of questions I've got to do very quickly. The first one will perhaps jog your memory, Ombudsman. There was an internal memorandum within the Department of Local Government and Housing which Ken Davies prepared by Meryl Gowing which reads, amongst other things, quote: "Ms Carlsen is adamant on the evidence obtained from ..." – Ms Carlsen being your employee, I presume?

**Ms Carolyn RICHARDS:** She's the Deputy Ombudsman.

**Mr ELFERINK:** Deputy Ombudsman. "... is adamant on the evidence obtained from CDU, DOR and Mataranka staff this matter must go to court. She continues to ask if the Department will prosecute CDU and possibly the manager of Mataranka Station if it is recommended by the Ombudsman. The response then remains that a prosecution will be considered if it is recommended by the Department of Resources or the Ombudsman and evidence is available to sustain a credible case in the Department of Justice. The Ombudsman views this case so seriously that the draft report will be released mid-June to ensure the final is available to inform a prosecution within the time frame of lodgement within 12 months date of offense ie. the 25<sup>th</sup> of September 2009. The Ombudsman's report cannot be used as evidence ...". Sorry, "... the Ombudsman's report cannot be used as evidence but would identify willing witnesses and documents that would need to be subpoenaed." That is your memory of about what was happening on the 23<sup>rd</sup> of June 2010?

**Ms Carolyn RICHARDS:** I have no idea what was passing between them what the Department was thinking. All I know is that the Deputy ...

**Mr ELFERINK:** That your office was ...

**Ms Carolyn RICHARDS:** ... the Deputy had made several approaches saying they really should prosecute and you can have our evidence to do it.

**Mr ELFERINK:** Okay. Getting back to the matters that I raised earlier in terms of Mr Gray's employment and Mr Jenkins' opinion as to why Mr Gray got the job, I just want to go up the food chain here in the University structure. So Mr Gray was the station manager, Dr Heim was then the head of the VET – Vocational Education and Training section of the Katherine Rural College. Who was next up in the food chain above Mr Heim?

**Ms Carolyn RICHARDS:** I think the Pro Vice ... It was Bob Wasson and I think he was the Pro Vice Chancellor.

**Mr ELFERINK:** So Bob Wasson. Bob Wasson, if my memory serves me correctly, is that the same Bob Wasson who was serving on the Animal Ethics Committee?

**Ms Carolyn RICHARDS:** He was the chairman, yes.

**Mr ELFERINK:** He was the chairman of the Animal Ethics Committee, and also the direct upline to the station management?

**Ms Carolyn RICHARDS:** No, Dr Heim.

**Mr ELFERINK:** To Dr Heim?

**Ms Carolyn RICHARDS:** The station manager reported directly to a chap called Sutter, S-U-T-T-E-R who was the Director of asset management and was an accountant at CDU.

**Mr ELFERINK:** For all practical purposes Mr Gray and Mr Heim would have been working with each other closely, in spite of the fact of the distance between the rural college and Mataranka?

**Ms Carolyn RICHARDS:** Oh yes.

**Mr ELFERINK:** And so Mr Heim's superior, Dr Wasson, was also the head of the Animal Ethics Committee attached to the University?

**Ms Carolyn RICHARDS:** That's right.

**Mr ELFERINK:** The same organisation which was doing the investigation into Mataranka Station?

**Ms Carolyn RICHARDS:** Yes.

**Mr ELFERINK:** That strikes me as being a straight-forward conflict of interest. Would you care to make an observation in relation to ...

**Ms Carolyn RICHARDS:** I've said so in my report that the University disagrees with me even now.

**Ms SCRYMGOUR:** This [confuses management responsibility with the AEC role and sets up a framework for conflict of interest has occurred with Professor Wasson. I think the Ombudsman pointed that out very clearly.

**Mr WOOD:** Mr Murphy says the same thing in his report

**Mr ELFERINK:** Yes, I just want to make sure that we understand each other that this is the case. Now I'd like the Ombudsman to answer the question as you see fit, not how the honourable Member next to me can see you have answered.

**Ms Carolyn RICHARDS:** Mmm. Well, I did make recommendations about that and it was not accepted because I do recall seeing a report sent to me by the Vice Chancellor probably just before Christmas in which somebody ...

**Mr ELFERINK:** And why wasn't ...

**Ms Carolyn RICHARDS:** ... to whom the matter ... my recommendation had been referred disagreed that there was a conflict of interest. And I can't take it any further, I mean, I've made my recommendation.

**Mr ELFERINK:** Did you get anything in writing back from the University as to why they said it wasn't a conflict of interest?

**Ms Carolyn RICHARDS:** Well, Professor Wasson was asked during his interview and he just said, "No, I don't have a conflict of interest."

**Mr ELFERINK:** Was there any other correspondence entered into between yourself and CDU in relation to this particular issue?

**Ms Carolyn RICHARDS:** I'd have to see the file to refresh my memory.

**Mr ELFERINK:** Alright. Perhaps we could ask you then, Madam Ombudsman, that you could refresh your memory from the file at some point, and if there is some sort of correspondence between yourself and CDU on this topic that you could make it available to this Committee please.

**Ms Carolyn RICHARDS:** You've got my files, I have to make arrangements to get access to them.

**Mr ELFERINK:** Yes, several boxes. I'm just basically wondering if I've missed something.

**CHAIR:** So John, are we done there for the moment?

**Mr ELFERINK:** Yep, I'm done for the moment.

**CHAIR:** Gerry?

**Mr WOOD:** Just quickly, Ombudsman, I forgot his name now – Jenkins. He doesn't work for Taminmin, I just made sure.

**Ms Carolyn RICHARDS:** Oh right.

**Mr WOOD:** So we don't have that on the record. A couple of questions. You said that you thought that you couldn't ... the time of when something could be prosecuted would have been October 2009 but you also ...

**Ms PURICK:** Ten.

**Mr WOOD:** Pardon?

**Ms PURICK:** No, ten.

**Ms Carolyn RICHARDS:** Ten.

**Mr WOOD:** Ten, no, but to do that you would have had to base your belief that no acts of cruelty occurred after October 2009.

**Ms Carolyn RICHARDS:** Yes, that's right.

**Mr WOOD:** But this was a long dry season from memory and might have even been a late wet season. I know it wasn't the best wet season we'd had. Also weren't there some complaints in 2010?

**Ms Carolyn RICHARDS:** There were. Major ...

**Mr WOOD:** So technically, if they'd perhaps been investigated there might have been more time to put forward a prosecution, because Mr Gray was actually reinstated for a period there.

**Ms Carolyn RICHARDS:** He was stood down for a three weeks in November and then he was reinstated.

**Mr WOOD:** And do you know what ... it hasn't got it here but can you remember when he was sacked from the job?

**Ms Carolyn RICHARDS:** Yes. Mid-June 2010.

**Mr WOOD:** So possibly .

**Ms Carolyn RICHARDS:** He wasn't sacked. His contract was paid out.

**Mr WOOD:** Okay, alright. Now the other issue was the role of the Animal Welfare Authority and you've mentioned it a couple of times but ever since I had read ... the times I've read the Animal Welfare Act, I'm not sure what the Animal Welfare Authority is. I know it's a person but if you read the Act it just tells that there's the establishment of the Authority, it tells you the Minister made point an employee is defined in the public sector employment management act from time to time as the authority during the absence from the Territory of the person appointed to be the authority – fair enough. It talks about delegation, talks about approval of fees. It has absolutely nothing about what the role of the Animal Welfare Authority is or the power of the Animal Welfare Authority is. So when you speak .

**Ms Carolyn RICHARDS:** Well, the Animal Welfare Authority issues the licenses, assesses the application for a licence ..license .

**Mr WOOD:** That's right.

**Ms Carolyn RICHARDS:** and then you'll find that once a licence is issued there is reference to incorporating into the Territory legislation the code of conduct or the code of practice which is a national code and it is that code that sets up the requirement to have the Animal Ethics Committee and sets out how the Animal Ethics Committee should operate. So by reading the Act you won't find it.

**Mr WOOD:** We're also looking at animal welfare governance and if a person was to pick up the Act and ask what does the Animal Welfare Authority do they wouldn't really have any idea at all.

**Ms Carolyn RICHARDS:** That's right. You have to have the code of practice.

**Mr WOOD:** Yeah. And maybe that's an area that ...

**Ms Carolyn RICHARDS:** Which I think is adopted by the regulations under the Animal Welfare Act, not by the Act itself.

**Mr WOOD:** But again you'd think you'd see some reference to the code of conduct and the regulations so that you can go and look elsewhere but this doesn't say that.

**Ms Carolyn RICHARDS:** Well, I must say, like you, I had some trouble working it out so it's not surprising that the AO5 who otherwise look at swimming pool fences hadn't worked it out.

**Mr WOOD:** So the AWA when you first notified that person was who? What was the ... ?

**Ms Carolyn RICHARDS:** Meryl ...

**Mr WOOD:** Gowing?

**Ms Carolyn RICHARDS:** Yes, I think so.

**Mr WOOD:** And then later on that changed to?

**Ms Carolyn RICHARDS:** I think Fran ... Somebody called Kilgariff, I don't know whether it's Fran.

**Mr WOOD:** Yeah, Fran.

**Secretary Ms Helen CAMPBELL:** Can I make a comment, Madam Chair?

**CHAIR:** Thanks.

**Secretary Ms Helen CAMPBELL:** There's the animal welfare branch in the Department of Housing, Local Government Regional Services and then there is another person who undertakes a number of roles including [inaudible 2.33.56] Animal Welfare Authority ...

**Ms SCRYMGOUR:** Yeah, which is Fran Kilgariff.

**Secretary Ms Helen CAMPBELL:** Presently Fran Kilgariff, it was at the time ...

**Ms SCRYMGOUR:** Yeah, we understand that.

**Secretary Ms Helen CAMPBELL:** ... I presume.

**Mr WOOD:** Yeah, that's alright. And then you have the Animal Welfare Advisory Board. Now, do they ...



**Ms Carolyn RICHARDS:** That's the board of which Bob Wasson was also a member

**Mr WOOD:** .... as you see it, do they have a role to play in matters of animal cruelty?

**Ms Carolyn RICHARDS:** They're entirely an advisory body, as I understand it, to the Minister.

**Mr WOOD:** So if someone reported an act of cruelty they could report it to that body?

**Ms Carolyn RICHARDS:** Well, they could, yes.

**Mr WOOD:** I'm just trying to work out ...

**Ms Carolyn RICHARDS:** But they wouldn't be able to take any action.

**Mr WOOD:** No, alright. It sometimes gets a bit, sort of, you know, got a board authority and an advisory committee.

**Ms Carolyn RICHARDS:** Well, particularly when you have the same person here, on the Ethics Committee and the Advisory Committee.

**Mr WOOD:** So I know I probably asked this for the Vice Chancellor but would you have expected, as soon as a matter related to animal cruelty at Mataranka was raised, should there have been an automatic, nearly a requirement that that complaint go straight also to the Animal Ethics Committee at the time? Say on the 4<sup>th</sup> or 5<sup>th</sup> of September? So the Department went down there, did inspections, came back and said these cattle are pretty terrible, they're in a terrible state. That's what you see in the departmental report. Did you see any link between that report saying things out to the Animal Ethics Committee at ...

**Ms Carolyn RICHARDS:** Well, I think what I've said in my report is there was a confusion caused by Mr Wasson, Professor Wasson, being (A) the Pro Vice Chancellor who was in charge and also the chairman of the Animal Ethics Committee. It's not the role of the Animal Ethics Committee to do anything operational or to have any management role. But it was Bob Wasson who as the Pro Vice Chancellor had that responsibility.

And of course what was happening was these complaints, some of which were employment disputes in that grievances needed to be addressed for staff. Some of them were Animal Ethics issues, quite rightly so, but mostly they were management issues about what has caused this, what can we do to stop it, should Mr Gray stay there, how much money do we need to spend to fix it up, and that sort of thing. And of course what actually happened was that the whole of those functions got left to Bob Wasson in his capacity as chairman of the Ethics Committee.

Now he was in a terrible conflict of interest because in order for him to make a decision, he couldn't make it on his own as the chairman, he had to consult the committee. Now the committee was about 18 people and for a decision to be made, the information had to be collected. Now that was actually collected by the chairman of the Ethics Committee and a couple of other members and the executive officer of the Ethics Committee. Now that was not their job. That job was a management

function of Charles Darwin University, and it was given to the Animal Ethics Committee and they were confused as to what they should do because it was their job to advise the Vice Chancellor about whether any law or any ethical matter was untoward or there was a breach of any ethical mores [but at the same time, they were dealing with the Department of Resources and the Animal Welfare Authority to keep them at bay, deciding what should be done on an operational level and the whole chain of command and the jobs, who should do what, became terribly confused.

**Mr WOOD:** Well, just taking up what John said about, you know, who ... I'm not sure of the fancy legal term, vicarious or something, that he was looking at who could be liable and who couldn't be but obviously on one hand it would be the Vice Chancellor, on the other hand it would be Ian Gray. If you put the two sides of the picture. If the information coming out of the Animal Ethics Committee, for whatever reason, I'm not blaming them in particular but if the information they were getting was confusing, they were dealing with a role that wasn't their role, then much as it might sound good in headlines to say the Vice Chancellor should be charged with a criminal activity and these people should be the same, isn't part of the problem we've had is that no-one really knew their role, therefore very difficult to blame some people simply because if they'd known their role, they might have been able to do something because they had the right to ... Do the Animal Ethics Committee have the right to pull someone's permit?

**Ms Carolyn RICHARDS:** Yes. They have an obligation to pull a permit

**Mr WOOD:** So they could have done that straight away. But ...

**Ms Carolyn RICHARDS:** And they did in fact do it.

**Mr WOOD:** Alright. But the Animal Welfare Authority had the right to pull the license?

**Ms Carolyn RICHARDS:** Yes.

**Mr WOOD:** They could have done that straight away?

**Ms Carolyn RICHARDS:** Yes.

**Mr WOOD:** And they didn't do that.

**Ms Carolyn RICHARDS:** Nope.

**Ms PURICK:** That's a systematic failure.

**Mr WOOD:** That's right, and, I mean, I suppose I'm hoping out of this that, alright, you can't bring the cows back. Hopefully what we're going to do is make sure it doesn't happen again, but we also want to see whether there's some clarification and satisfaction for some of those people who I ... one person I spoke to this morning, for many of them it's affected them personally, marriages have broken up they're scarred for life from what they saw and the lack of response, so on one hand I think those people, at least, I think warrant a good, I think, outcome from this Council to at least say what they think was the intrinsic failings of the system and why things occurred.

But on the other hand say, right, we've taken all that into account, we've heard what people had to say, we need to put in processes now which will not 100%

guaranteed, you never do that, but we'll make sure this sort of thing doesn't happen again, especially in a teaching facility which I think is what makes this worse. Cattle stations have deaths all the time, but in this case this was the place where you taught kids how to do the right thing.

So yeah, I suppose we can make it simplistic, but in actual fact you're saying there are some fairly fuzzy areas that it would be difficult to say who was to blame and who wasn't. Would that be a fair comment? It isn't quite that simple.

**Ms Carolyn RICHARDS:** There's two issues and I think they're getting confused and welded together here. My report is about what happened, why it happened and the role of CDU. In the course of that I have discovered there's systemic issues with the way the Department of Resource interacts with the Animal Welfare Authority, the way, as you say, the legislation doesn't give you any idea of what the Animal Welfare Act really says and what they do; it doesn't describe the role of an animal ethics committee. Now they're two separate issues. I investigated one and reported on one, during the course of which when those other issues arose, I referred them to the Animal Welfare Authority to prosecute and offered to give them the evidence, and when it was all over, I then referred them to the CEO of the Department of Local Government saying this happened at CDU. You have an obligation to make certain that you did something about it, because you knew about it. No doubt about that.

So to answer your question, it's not about blame and it's not about prosecutions when you talk about the departments, because I haven't investigated them. I haven't made a comment, I haven't given them an opportunity to talk to me about why the things were the way they were. So I haven't given them natural justice. So that's why I did not put in my report what I thought was wrong with them and what they should do. I put it in a private letter to the CEO.

**Mr ELFERINK:** Gerry, these issues will come up for the departmental questions tomorrow.

**Mr WOOD:** They will, yeah. I suppose I was trying to look at ...

**Mr ELFERINK:** Look, it's clear ...

**Mr WOOD:** ... there's cruelty here, there's a group up here that probably could have acted, for reasons, you know, the way it's set up ...

**Ms Carolyn RICHARDS:** And I could have looked into it and it would have taken me another ten months.

**CHAIR:** Can I just suggest we take a quick break for 15 minutes? We've been going since one o'clock and we're due to finish at four. So if we can just take a 15 minute break and grab a cuppa.

**[Adjournment]**

**Ms PURICK:** Are we ready?

**CHAIR:** Yep.

**Ms PURICK:** Ombudsman, from my understanding, in talking with my colleague, Member for Nelson, the University took over Mataranka Station about 2005?

**Mr WOOD:** I'm not sure I ...

**Ms Carolyn RICHARDS:** What? From ...

**Ms PURICK:** Well, when they purchased it or took over the lease. But it wasn't until, from our documentation, that they realised they didn't have an animal ethics permit to do training there, does that surprise you that it's a university with an Animal Ethics Committee, and yet they didn't know that they would need a permit to do their own training?

**Ms Carolyn RICHARDS:** Well, I think I explained that the distance was a real problem, and they didn't ... a number of staff who were meant to do this didn't actually realise that the Mataranka campus was not part of the Katherine campus.

**Ms PURICK:** But wouldn't that be a higher management matter that animal ethics committees that charge with ...

**Ms Carolyn RICHARDS:** I would have thought so, yes. And I also would have thought it would be the job of the Animal Welfare Authority to follow up.

**Ms PURICK:** Yes.

**Ms Carolyn RICHARDS:** But that's one of the problems in the animal welfare legislation. Unless someone applies for permits ... Sorry, permit's the wrong word, a license, to use animals for teaching and scientific purposes, there's no way the Department's going to know whether it's happening.

**Ms PURICK:** I understand, and you are probably aware from discussions internal and external, that as a consequence of your report, and subsequent reports and Science Matters reports and Mr Ray Murphy's investigations that the 220 people and the 95 projects associated with animal training and animal research have all been invalid. I think what we're trying to work out here is how do we get it to a better system that animal governance is ... And maybe that's a deficiency of the legislation.

**Mr WOOD:** I think Mr Murphy coming ...

**Ms Carolyn RICHARDS:** Are you talking about licenses or permits?

**Ms PURICK:** Both.

**Ms Carolyn RICHARDS:** Right, because it's an organisation that has the license ...

**Ms PURICK:** Correct. And ...

**Ms Carolyn RICHARDS:** ... and then once that license is given it's a condition of that license that there's an Animal Ethics Committee, and then that Animal Ethics Committee has to give a permit to each individual.

**Ms PURICK:** That's correct, and there's about 220 people in the Territory that we are aware of, at this point in time, who either research with animals, including

places like Territory Wildlife Park, Taminmin College, and there's 95 projects, and there could be more out there that we aren't aware of who are going about their business in an orderly way but don't realise that they should have this documentation. So do you see there's an issue with the legislation, is my question.

**Ms Carolyn RICHARDS:** Definitely. The implementation of it, yes.

**Ms PURICK:** One more question. In regards to the Animal Ethics Committee or an Animal Ethics Committee do you ... and it might not be the right kind of question for yourself. Do you think the Animal Ethics Committee should be somewhere other than associated with the University?

**Ms Carolyn RICHARDS:** I do personally, yes. But unfortunately those that design the code of practice don't because it is actually embedded in the code of practice which is adopted by the regulations under the Animal Welfare Act that the chairman of the Animal Ethics Committee actually has to be a member of the staff of the organisation that they're overseeing. I think that's a flaw in the whole legislation but that's Australia wide. So there's a gentleman at the Department of Resources, a veterinarian, Brian Radunz. Now Brian has been sitting on a national committee who are working out all of these sorts of issues and have been for some time.

**Ms PURICK:** Okay, that's all for now.

**Mr WOOD:** I've got a bit of a miscellaneous bunch of questions so they're not ...

**Mr ELFERINK:** Okay, after you, Gerry.

**Mr WOOD:** Ombudsman, in your report there's no chapter specifically to Mr Gray, Mr Sutter or Dr Heim. Is there a reason why they haven't got a specific chapter because there's quite a few people that have got their own section. Is that ...

**Ms Carolyn RICHARDS:** Sounds to me like a flaw in the index. If you look ...

**Mr WOOD:** Maybe I missed it because there's Douglas Jenkins, Grant Parker, Spud Thomas ...

**Ms Carolyn RICHARDS:** Well if you go down. The way it's organised is the first part of those people who made complaints to us; the second part is the response by various people, and you will see Dr Brian Heim at 239 ...

**Mr WOOD:** Ian Gray ... Have I ...

**Ms Carolyn RICHARDS:** And Ian Gray's got quite a large section because he made two responses, first of all he made a response to the Stockwell report and then he made a response to us, and that is included just ... it's just bad indexing, I'm sorry.

**Mr WOOD:** Okay, when I read it, I was looking for it, because I'd seen his response to Stockwell's report, then I wondered why you hadn't had a specific section on him there ...

**Ms Carolyn RICHARDS:** It's an indexing error. I'm sorry.

**Mr WOOD:** Okay. The other one is the one you've raised which is the recommendation ... Well, first of all, has there been a ... the CDU, did they respond

formally? I've been trying to find the CDU response on the website, for instance. Do you know if they response to your, one is you had some recommendations and two is you had some notes that they should look at, if you know what I mean. And in fact you ask them to respond. Was there a public document from Charles Darwin University addressing those ... ?

**Ms Carolyn RICHARDS:** No, it's not required under the Ombudsman's Act and they responded by sending me the various reports and things they've done that I've recommended. But it's not, I mean, once my report is published it's only recommendations. And that's the end of it, it's really up to the organisation concerned to follow up the recommendations.

**Mr WOOD:** Because there was another report, I can't remember the other report, where they did actually address all the recommendations you had put forward except the one where the chair of the Animal Ethics Committee, they supported his right, I think, to override the EO ...

**Ms Carolyn RICHARDS:** Yes.

**Mr WOOD:** ... of the Animal Ethics Committee and you're saying that hasn't changed yet?

**Ms Carolyn RICHARDS:** That's not public, no. That was a recommendation that they review how the ... Well, the recommendation that the executive officer in the Animal Ethics Committee in this particular case was being directed by the chairman to keep information out that she thought ought to be given to the other members of the Animal Ethics Committee. Which was another example of the chairman of the Animal Ethics Committee also being in an operational management position as an executive of CDU which caused the problem.

**Mr WOOD:** So that's a bit like, if I took an ordinary committee, I don't know, the apple growers, keep it away from the Territory, but the Apple Growers' Association, so if correspondence came in to the secretary, basically, which the EO, I suppose, fulfils that sort of role, you expect the secretary to notate all the correspondence in and at the next meeting the correspondence in would be available if anyone wanted to read it. So you're saying that in this case, you might say the correspondence in was being filtered before it got to the meeting.

**Ms Carolyn RICHARDS:** It wasn't correspondence. This was the problem. The Animal Ethics Committee was meant to look at reports done by somebody else and coming to them, weren't doing that. The inspections of the property, the conclusions drawn, the information gathered was actually being done by – and one or two of them – the chairman of the ethics committee and one other member of the committee. So when it came to writing up what would go into the report about the inspection, that was then going to be given to the other members of the ethics committee so that they could make a decision, the executive officer was saying to the chairman, "We've got this information. One of the members has asked that this goes into the minutes etcetera." And that chairman would say, "No, do not put that in." So the chairman was in a position to direct the executive officer who of course as an employee of CDU she can't disobey instructions, not to put information to the rest of the ethics committee.

And that's what I mean ... that why I made a recommenda ... Well, first of all I made a recommendation, the chairman of the ethics committee be separate from ... a separate person or not employed by CDU. And then it was pointed out to me that

that can't happen because the code of practice requires the chair of the ethics committee to be an officer or employee of the University. So I thought the best way then to ameliorate the possibility of the chairman telling the executive officer to keep things away from the other members of the ethics committee was to make this recommendation.

Now, I realise it was radical for an executive officer not to be subject in all respect to the control of the chairman of the board, and I'm not surprised they rejected it. The other alternative was to have the executive officer reporting direct to either the Vice Chancellor or someone else. But it's a real dilemma and I think it needs to be thought through.

**Mr WOOD:** And have they responded to that dilemma to show a way around it?

**Ms Carolyn RICHARDS:** They've said we're not going to do it. But as I say, once my report is done I don't do any further investigation. If they send me information, I look at it and, you know, my authority is defunct.

**Mr WOOD:** We can always ask the Vice Chancellor. Now the other one's a more legal question. The issue of when a prosecution can finish is based on this sort of 12 months period.

**Ms Carolyn RICHARDS:** That's the time limit set, yes.

**Mr WOOD:** Does that apply to everything? Like, if I robbed a bank 12 months ago and no-one catches me, then you can't prosecute me or is that only for certain offenses?

**Ms Carolyn RICHARDS:** No, there are time limits for various things. If you get a speeding fine, for instance, or have a telephone conversation while driving... let's say you have an accident. There's six months to charge you with driving without due care. If you are a trustee and you steal money from a trust, the time limit's 15 years to do something against you. If you're a police officer, there's a six month time limit to take disciplinary action against you.

**Mr WOOD:** So where is that found, is that a separate Act which has those limitations?

**Ms Carolyn RICHARDS:** No, it's usually in the specific Act that creates the offence.

**Mr WOOD:** So are there any, you might say, can exceptions be made to that within the Act?

**Ms Carolyn RICHARDS:** It can be, yes.

**Mr WOOD:** And who would make that exception?

**Ms Carolyn RICHARDS:** Well, Parliament when it sets up the legislation.

**Mr WOOD:** Could it do something like that after the event in the sense now we've been told there can't be any prosecution?

**Ms Carolyn RICHARDS:** No, because then you'd have a retrospective legislation and that's very well frowned ... that's frowned on.

**Mr WOOD:** So put it into plain language, nothing can be done in regards to prosecutions?

**Ms PURICK:** Full stop.

**Mr WOOD:** Full stop.

**Ms Carolyn RICHARDS:** Well, if you have what's called a continuing offence, and a continuing offence is one that you've got to have a permit for instance to have it so that's a continuing offence. So effectively there's a new offence every day, so ...

**Mr WOOD:** That's right. So basically there's nothing we can do about that.

**Ms Carolyn RICHARDS:** No.

**Mr WOOD:** Okay. That's alright, just so we're clear out there.

**Ms PURICK:** Can I just clarify a point? When does the 12 months actually start?

**Ms Carolyn RICHARDS:** From when the offence was committed.

**Ms SCRYMGOUR:** Which was 2009.

**Ms PURICK:** So that September date?

**Mr ELFERINK:** September the 25<sup>th</sup> 2009.

**Mr WOOD:** That's why I asked there's a [inaudible 3.03.47].

**Ms PURICK:** But a cow doesn't suddenly become starving, so why has that date been selected when the cow could well have been deteriorated and an offence is committed? Is that when it's reported?

**Ms Carolyn RICHARDS:** It's a matter of proof. See, in this case, I thought in terms of the evidence put forward, up till the end of October, we didn't actually have any evidence beyond that, because then the wet came and ... except for the horses.

**Ms PURICK:** Okay.

**Ms SCRYMGOUR:** But so it start, Ombudsman, you received the complaint September 2009, so ...

**Ms Carolyn RICHARDS:** No, I received a complaint 2010, February.

**Ms SCRYMGOUR:** February 2010.

**Ms Carolyn RICHARDS:** About events that had happened in September 2009.



**Ms SCRYMGOUR:** Okay, so did the inquiry ... does it retrospectively go back to September 2009 so your statute of limitation period goes to September 2010 or do you take it from February 2010 when you started or used the ...

**Ms Carolyn RICHARDS:** No, it's from when the event happened.

**Ms SCRYMGOUR:** Okay. September 2009 is when the supposed ...

**Ms Carolyn RICHARDS:** Well, we took the view that these animals ... we had evidence that these animals were dying from malnutrition, and that was first discovered and provable from the 5<sup>th</sup> of September 2009. And it was provable in a court with appropriate evidence right up until the end of October 2009. So the very latest to prosecute would have been the end of October 2010. Because of course at the end of ... Sorry, in October 2009, Ian Gray was stood down for three weeks. Another manager came in, he fed all the animals, they were improving considerably and then the wet came, and they didn't need supplementary feeding.

**Ms SCRYMGOUR:** That was interesting, I was just listening to your response in terms of that we can't do anything. Legislation can and is often changed on the floor of Parliament, that's I suppose ...

**Mr ELFERINK:** Generally where it happens.

**Ms SCRYMGOUR:** ... what happens. You're saying that, and I think the Member for Nelson said, well, retrospectively, would that do anything, I mean, if prosecution needed to be had, couldn't legislation ... wouldn't it be, I suppose, one of the areas that could be looked at that you could retrospectively amend legislation so it looks at the prosecution to be able to go back over to look at who ...

**Ms Carolyn RICHARDS:** Gosh, you can do an amendment to the Animal Welfare Act to say that prosecution against this Act can occur any time up until two years or three years, after the event constituting the offence occurred. Or you can do what South Australia's done. They consider that one year is never enough to prosecute so they've passed a general Act called the Limitation of Actions Act which simply says, where in any piece of legislation the time limit is 12 months, it is automatically extended to two years, or three years.

**Ms SCRYMGOUR:** Okay.

**Mr ELFERINK:** During your travels in relation to your investigation, did you ever come across a document called The Review of the Northern Territory Animal Welfare Act for the Department of Local Government Housing and Sport by David Coles of Camsen and Partners?

**Ms Carolyn RICHARDS:** It's not familiar to me at all. What date is it?

**Mr ELFERINK:** December 2007.

**Ms Carolyn RICHARDS:** No, I don't recall ever been made aware of it.

**Mr ELFERINK:** No. Okay, I'm not surprised, by the way, that this isn't ... the questions that flow from it are not for you. I just wanted to know if you'd ever stumbled across it during your investigations.

**Ms Carolyn RICHARDS:** No, as I say, I didn't do a formal investigation of the Department or the legislation. They just came in incidentally to what happened at the CDU.

**Mr ELFERINK:** Clearly from your evidence here today you sent messages to the Department, your Deputy Ombudsman sent messages to the Department, I was wondering whether within that mix or not they had offered you access to this particular report and clearly they haven't, as far as you are aware.

**Ms Carolyn RICHARDS:** If they had it would be within the paper that was delivered to you.

**Mr ELFERINK:** Yes, well in that case it's not. Thank you. That's about me done, Madam Chairman.

**CHAIR:** Marion, further questions?

**Ms SCRYMGOUR:** No.

**CHAIR:** Gerry?

**Mr WOOD:** No, I need time to think.

**Ms SCRYMGOUR:** Yeah, so do I.

**CHAIR:** Kezia?

**Ms PURICK:** No, I don't think so.

**CHAIR:** So on behalf of the Committee thank you very much for appearing before us today. As I said at the outset, a transcript of the proceedings will be made available to you to check. Given that it's a public hearing, once you've checked that will then be going onto our website. Thank you very much for appearing before us today and for all your hard work associated with this investigation.

**Ms Carolyn RICHARDS:** Thanks.