



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

Public Hearing - Meeting No AWG03  
Thursday the 30<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

Witnesses

**Department of Housing, Local Government & Regional Services**

Mr Ken Davies – Chief Executive  
Ms Catherine Weber – Deputy Chief Executive, Strategic Policy & Governance  
Ms Trish Angus – was Animal Welfare Authority & Executive Director, Strategic Policy Development and Coordination  
Mr Meguerditch Mikaelian – Director, Water Safety & Animal Welfare  
Ms Mel Frousheger – Senior Animal Welfare Inspector  
Ms Giovina D’Alessandro – Director Local Government & Community Services

**CHAIR:** ... Council of Territory Co-operation Sub-committee on animal welfare governance. I'm very pleased to welcome Ken Davies, CE of the Department of Housing, Local Government and Regional Services along with other witnesses from the Department who are appearing with him. And at the end of this statement, Ken, I'll just ask you to introduce your officers as well.

**Mr Ken DAVIES:** Sure.

**CHAIR:** 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 do wish to be heard in-camera or in private, 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. 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 and standing order number 290 reads, and I quote: "Protection of witnesses. All 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 and copies are available here today if you require them.

Paragraph 5 of the resolution reads, and I quote: "Where appropriate, reasonable opportunity shall be given for a witness to raise any matters of 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, and I quote: "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 disclose 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 then the Committee shall report the facts and its conclusions to the Assembly". And as I said, copies of those guidelines are available here this afternoon.

So Mr Davies, I'd ask you to introduce the other witnesses appearing with you today and if you have an opening statement that you'd like to make then we'd be very pleased to hear it.

**Mr Ken DAVIES:** Thank you Chair. I'll definitely introduce the witnesses. The other witnesses, and I'd certainly like to just do a short opening statement if that's okay with you. So just wanted to start off by saying good afternoon Committee Members, thank you for having us here today.

We're appearing before you today and I'm here as the Chief Executive of the Department of Housing Local Government and Regional Services and ultimately the person who's responsible for the performance of the Animal Welfare Authority and the Animal Welfare Branch.

Accompanying me are the following Departmental officers: Catherine Weber who's the Deputy Chief Executive, Strategic Policy and Governance; Trish Angus who's the Executive Director, Strategic Policy Development and Coordination; Giovina D'Alessandro who's over the back there who's the Director, Local Government and Community Services; Merg Mikaelian, Director of Water Safety and Animal Welfare Branch and Mel Frousheger who's the animal welfare inspector with the Animal Welfare Branch.

So if I can just go to the statement now, Chair. The Department of Housing Local Government and Regional Services is responsible for the administration of the Animal Welfare Act. From time to time we are assisted in that task by experts from other government agencies and other organisations.

We've furnished over 800 pages of documentation to the Committee relating to the Mataranka Station matter including records and correspondence between my agency and Charles Darwin University, the Department of Resources and the Minister's office. We have also provided internal communications considered relevant to the inquiry outlining actions taken relating to administration of the Mataranka matter as well as demonstrating extent of actions taken to redress the deficiencies identified as a result of the ensuing Ombudsman's inquiry and findings.

To further assist the Committee I'm tabling a submission today that explains the legislative framework for animal welfare in the Territory including a diagram to illustrate the relationship between the various components. The submission also outlines the governance and resourcing arrangements that support the legislative framework. A comparison of arrangements in other jurisdictions is also attached. Also provided in a chronology of events and actions taken in relation to the Mataranka matter drawn from our documents already provided to the Committee.

I'm keen to make the legislative framework and administrative arrangements as clear as possible and to explain my Department's role. Also keen to outline what we have learned as a result of this matter and what we have done to reposition the Animal Welfare Branch in the agency so that inadequacies of the past do not continue to occur into the future.

What occurred at Mataranka Station was not acceptable. The Department has implemented significant changes to staff resources, organisational structures and inter-agency arrangements to ensure that there is continual learning and improvement in the conduct of animal welfare investigations and in the administration of our responsibilities under the Animal Welfare Act. This inquiry offers us further opportunity to improve our processes, procedures and legislation and we're pleased

to appear before the Committee today and are wanting to co-operate fully to assist the inquiry. So thank you.

**CHAIR:** Thanks very much. Ken, you might just want to move that sign off the microphone.

**Mr Ken DAVIES:** Okay, sorry.

**Mr ELFERINK:** We know who you are. Madam Chair, if I may?

**CHAIR:** Have we introduced all the officers here?

**Mr ELFERINK:** Yes.

**CHAIR:** Yes, forgive me.

**Mr Ken DAVIES:** We have.

**Mr ELFERINK:** I'm going to take you back, Mr Davies, through a little bit of history here and I know that this will precede your existence as the CE of the Department so bear with me. Madam Chair, I seek to leave at the table a press release dated the 6<sup>th</sup> of October 2007 – Animal Welfare Act Under Review – released by the then Minister for Local Government, Elliott McAdam. Have you ever seen this document?

**Mr Ken DAVIES:** I haven't seen that particular press release, no.

**Mr ELFERINK:** The press release is nothing more than an announcement of a review of the Animal Welfare Act, it's self-explanatory and basically invites people to make comments. Are you aware of that review?

**Mr Ken DAVIES:** I am aware of the review, Mr Elferink, and for the detail around that I'll go to Trish Angus but definitely we are aware ...

**Mr ELFERINK:** No, don't have to go there yet. Just confirm for me then that the review of the Northern Territory Animal Welfare Act for the Department of Local Government Housing and Sport by David Coles of Kanzen & Partners, December 2007, was a product of that press release and that call for review. Can we confirm that much?

**Mr Ken DAVIES:** I would need to confirm it, Mr Elferink, you know, without sort of having time to quickly read this. Trish, can you assist at all?

**Ms Trish ANGUS:** That's correct.

**Mr Ken DAVIES:** Correct.

**Mr ELFERINK:** Can I table this document, Madam Chair?

**CHAIR:** Granted, yep.

**Mr ELFERINK:** Okay, thank you. Without running for the photocopier just yet I have to refer to it. Perhaps these questions should go to Trish then directly. Actually no, to you first ...

**Mr Ken DAVIES:** Sure.

**Mr ELFERINK:** I'm curious about a couple of things out of this 2007 ... Actually no, before I go to the document, do you want to ... because I will ask some preliminary questions in relation to it. What happened to the review after it was received ...

**Secretary Ms Helen CAMPBELL:** Do you want me to copy it?

**Ms PURICK:** Yes.

**Mr ELFERINK:** What happened to the review when it was received in 2007? Where did it go?

**Mr Ken DAVIES:** Trish?

**Ms Trish ANGUS:** I actually don't recall details of it. It was in a different area to me but I'm aware that that Kanzen report was for the previous local government division. They looked after that.

**Mr ELFERINK:** Do we know where it went or what happened with it? I mean, it arrived in 2007, in December of 2007 after the review was ... it was under review for a couple of months. Because ...

**Ms SCRYMGOUR:** You can pull another chair, if there's somebody ...

**Mr ELFERINK:** Is there somebody up the back there that can answer the questions?

**Mr Ken DAVIES:** Do you want to just pull a chair alongside Mel there, Giovanna. So Giovanna, just introduce yourself before you talk and then proceed, thanks.

**Ms Giovina D'ALESSANDRO:** Giovina D'Alessandro, Director of Local Government, Community Services. While not directly involved with the initial review I do understand that David Coles through Kanzen Partners did an original paper that went out end of 2007. That got initial feedback. I understand there was a second paper or second round of public consultations that happened in 2008/2009 and from there it's been worked on ...

**Mr ELFERINK:** In 2009?

**Ms Giovina D'ALESSANDRO:** 2008/2009, I don't have the exact dates.

**Mr ELFERINK:** Are you able to lay your hands on that document and present it to this Committee?

**Ms Giovina D'ALESSANDRO:** It possibly could be in the papers that were tabled. The Kanzen report.

**Mr ELFERINK:** The Kanzen review of 2007 we have. But there was a subsequent document and there was a recall ... I've just heard evidence that there was subsequent work done in relation to it and another piece of paper was generated. That subsequent piece of paperwork I'm now interested in.

**CHAIR:** We'll take that as a question on notice?

**Mr ELFERINK:** Yeah.

**Mr Ken DAVIES:** We can take that on notice, Chair, and ... yep.

**Mr ELFERINK:** The question is that subsequent to the Camsan review of December 2007, a further piece of work was done in relation to that review. That piece of work has not been made available to the Committee as far I'm aware, and could that be made available.

**Mr Ken DAVIES:** We will definitely of course make that available. The advice I've got here was that the review commenced in October 2007 and involved two separate rounds of public consultation: November 2007 and October 2009. So there's some logic to assume that there would have been ...

**Mr ELFERINK:** No, that's fine, that explains ...

**Mr Ken DAVIES:** ... produced.

**Mr ELFERINK:** ... where I'm about to go. November 2007 to October 2009 – two years. Why was it in the pipeline for two years?

**Mr Ken DAVIES:** Giovinna, can you assist there at all?

**Ms Giovina D'ALESSANDRO:** Giovina D'Alessandro. Whilst I wasn't there, I understand a few things that were happening in that sort of area at the time, especially on the national front, there were national standards and a whole sort of review happening with a view to push to uniform legislation across jurisdictions. As to why there was a delay of two years, I can't give you exact reasons or points and time and dates about what happened but yes, it has gone on and there has been delays since then, obviously waiting for certain things to come about before we finalised any amendments.

**Mr ELFERINK:** Because it next appears on the documentation that we have available to us in a Cabinet submission ... Sorry, no, I tell you a lie. In an internal memorandum for the Department of Local Government and Housing to the Minister for Local Government signed off by David Richie on the 9<sup>th</sup> of April 2009, and by the way, this internal memorandum refers to a Cabinet decision number which has been expunged. Why was that Cabinet decision number withheld?

**Mr Ken DAVIES:** The Cabinet decision number would be ... is not normally ... a Cabinet decision is referred to advice to a ministerial, the number is not normally referred to. So it might be referred to in ministerial advice. It's just a breach of confidentiality. Normally you would not refer to the specific number in advice to evidence.

**Mr ELFERINK:** Alright, because I'm going to come back to this particular issue of matters being withheld shortly.

So in 2007, as I understand it then, an initial report was received by government. In that initial report there are two particular elements which are of interest to me and I'm waiting for the report to come back. The first issue identified in the report which is of concern to me is that there is already identified clear confusion between the role of separate Ministers in relation to the operation of the Animal

Welfare Act and indeed a recommendation that get tidied up. Why was that recommendation not acted on, because it didn't really require legislative change that much as administrative issues to be dealt with? Why was that not sorted out?

**Mr Ken DAVIES:** Well again, we'd have to take that on notice and go back and look through the records and try ... We can certainly furnish whatever documentation we've got in that regard.

**CHAIR:** That's a rather lengthy question on notice, John, can you just summarise it?

**Mr ELFERINK:** Well, it's simply ... the answer's very straightforward, why ...

**CHAIR:** Just the question, yeah.

**Mr ELFERINK:** The question on notice is, why was the recommendations to clear up the lines of responsibilities to Ministers not acted upon after December 2007 when the issue was identified.

The second component of that particular review that is of concern to me is that in two places it makes a recommendation that the statutes of limitations pertaining to prosecutions being brought forward by the Department should be extended from the period of 12 months in the Act to a period of eight months so long as the evidence collected was within six months of the date of offence. Why was that not acted upon? Your reference number is DHLGRS-1514. If you don't have it I can ...

**Mr WOOD:** Are you able to let [inaudible 2.17.42].

**Mr ELFERINK:** Yeah. On page two of that document, and I will quote: "The advice sought was the Department asked DoJ legal advice on I, II, III and III". On my copy of the document they are blank.

**Mr Ken DAVIES:** That's correct.

**Mr ELFERINK:** The short answer to these questions provided by DoJ in question 1 is best left until last, 2, 3, 4 and 1 which are left blank. Why have we not been furnished with that information?

**Mr Ken DAVIES:** You haven't been furnished with that information. This was originally FOI, Mr Elferink, and at that point in time it is Department of Justice ... it is legal advice so it's privileged information and we have ... the Opposition has sought permission to access that advice. It's still privileged information so it hasn't been furnished because it's legal advice.

**Mr ELFERINK:** So you're saying lawyer/client privilege prevents you from ...

**Mr Ken DAVIES:** Absolutely. I mean, the Minister can waive that privilege if she so choose to do ...

**Mr ELFERINK:** Well, that's the point ...

**Mr Ken DAVIES:** ... as she has done with the advice that Ray Murphy provided around the findings on his assessments of the Ombudsman's report.

**Mr ELFERINK:** The Minister hasn't asked for the advice, the Department has.

**Mr Ken DAVIES:** That's correct.

**Mr ELFERINK:** So I'm asking you to breach the privilege because you as the client have every right to do so.

**Mr Ken DAVIES:** I wouldn't be prepared to do that without seeking permission of my Minister, Mr Elferink.

**Mr ELFERINK:** Alright, can we have that done forthwith?

**Mr Ken DAVIES:** You can certainly ask.

**Mr ELFERINK:** Somebody can organise it now, somebody can talk to the Minister.

Okay, whilst we're talking about it and whilst we're asking the Minister those questions can you provide copies in relation to what the form of the question asked of DoJ was? There's a reference to the Department having asked the advice, I wouldn't mind seeing the original documentation both in terms of the question that was asked by the Department and the answers received from the Department of Justice. Can we include those in the terms of the question we're putting to the Minister now?

**Mr Ken DAVIES:** We can ask. We can.

**Mr ELFERINK:** Alright. Okay, now I'd like to turn my attention to the decision to prosecute. We have heard evidence during the estimates process that it was the opinion of the Department that there was an insufficient evidence profile and that for that reason there was a decision not to proceed with a prosecution. When was that decision made? And more to the point, who made it or how was that decision made?

**Mr Ken DAVIES:** Okay, thank you, Mr Elferink for that question. Ray Murphy was instructed by us on 5 November 2010, post receipt of the Ombudsman's report in late October. He read the Ombudsman's report in its entirety to establish the timing of the various incidents in respect of which an offence may have been committed. On 23 November 2010 Ray Murphy confirmed in writing that offences committed in 2009 were not able to be pursued as the 12 month statute period had expired. His investigation subsequently concentrated on those incidents in respect of which prosecution was still possible. That is the ...

**Mr ELFERINK:** Yeah, I've read the Murphy report, we don't have to go down there.

**Mr Ken DAVIES:** So he provided his formal ... But this is important because it's a matter for the record. That is, the incidents in respect of which the 12 months time limit had not expired, he provided his formal advice in the form of two letters: one dated 22 January 2011 and the other dated 22 March 2011, copies both of which have been tabled in Parliament with the sensitive information concealed. Second opinion on Mr Murphy's advices, that is both advices, was obtained from a senior lawyer at Solicitor for the NT. That second opinion confirmed the recommendations made by Mr Murphy and a decision was made by the Animal Welfare Authority not to prosecute at the time that both Ray Murphy's advice and the Solicitor for the NT second opinion had been obtained ...

**Mr ELFERINK:** Now, back to the question I actually asked.



**CHAIR:** John, sorry, if Mr Davies has more to say you need to let him complete his answer.

**Mr ELFERINK:** Well ...

**CHAIR:** Well, yes, you do.

**Mr ELFERINK:** Alright, I can, but the thing is he's not answering the question I asked.

**CHAIR:** Well, other Members ...

**Ms SCRYMGOUR:** But you asked a question and he's attempting to answer it.

**CHAIR:** ... may have a different view.

**Mr ELFERINK:** Alright, well, he's answering a different question and I'll let him finish ...

**CHAIR:** So he's able to complete his answer ...

**Mr ELFERINK:** ... and then we'll go back to it.

**CHAIR:** ... thanks very much.

**Mr Ken DAVIES:** So, Mr Elferink, thank you, I've completed that.

**Mr ELFERINK:** Alright. The issue I have is the earlier determinations made in late November by the Department. Mr Murphy was quite correct, but he was quite correct in context of the fact that he was asked in late 2010. I'm talking about late 2009, 12 months earlier, where the Department made a determination that it was not going to pursue the matter. Could you tell me about how that decision was reached and who made that decision?

**Mr Ken DAVIES:** There was no ... and you can check this with my officers, Mr Elferink, but there is no determination made not to prosecute at any stage during this process. What actually happened was that we never, and I think I said it during estimates, that we did not have anything that was sitting in our Animal Welfare Branch in terms of a proper file that was substantive enough to put to either Solicitor for the NT or the DPP that would lead to a prosecution but at no time was there a decision made not to prosecute. We were waiting on the Ombudsman's report, we thought it would be coming to us in June which was within the statute timeframe, we had done some early work in 2009 which Mel and some of our other officers can talk about, but at no stage was there a formal decision made not to prosecute. Always the intent was that if we had an evidence file and the right advice, we would proceed to prosecute.

**Mr ELFERINK:** Mr Eccles of the Department of Resources on day one was, whilst I realise it's not your department, was advocating quite aggressively for a prosecution under the Animal Welfare Act. We heard evidence this morning that somewhere around late 2009/2010 the decision had been reached not to prosecute. Meryl Gowing from DHLGRS says in an email to Brett Brogan, and I will quote: "This will not become an animal welfare prosecution, there is no evidence trail so the best

outcome we can hope for is that the cattle regain condition". If you'd like I can table that particular email as well.

There are any number of references to material that I can lay my hands on that says we're not going to go down the path of a prosecution. Surely, however, there would have been an investigation, certainly the Ombudsman's investigation revealed sufficient evidence to commence a prosecution in the opinion of the Ombudsman. So anxious was she that on the 3<sup>rd</sup> of June 2010, being mindful of the expiration of the 12 months, she sought to have a meeting with the Minister which they had later on that month where she counselled a prosecution. Having received that advice from the Ombudsman as well as her offer to provide all of the evidence that she's received, why was there not a decision at that point to proceed with a prosecution or do you maintain that there was still insufficient evidence to proceed?

**Mr Ken DAVIES:** So there's a couple of elements to that question, Mr Elferink. One of them I'll just deal with. The Minister sought the meeting with the Ombudsman, so I'll just put that on the record. She sought it because she had been briefed, there was concern about the briefing that had been provided to her and sought immediately to seek a meeting with the Ombudsman to understand the issues that were on foot in her report.

In relation to the Ombudsman's report, we had, as I've said to you, running through from February through to June, we had no reports of specific animal welfare issues related to cattle come into our Animal Welfare Branch during that period. We were very aware that reports and witnesses were giving evidence to the Ombudsman during that time. We had no direct reports into our agency. We had done the 2009 work and Mel had visited, we had worked down there with DoR at Mataranka. So during that period we did not have a file that was building at that time and we were clearly anticipating because we had been given advice by the Ombudsman's Deputy that they were very concerned about what they were seeing and finding. We were very, very, you know, it was very clear that as soon as we got that Ombudsman's report we were going to engage an investigator to unpack what had been provided, given that the evidence that comes to us in an Ombudsman's report, as you know, doesn't mean it's a direct substantiated evidence file, so that's what we were waiting for in that context, Mr Elferink.

**Mr ELFERINK:** Yeah, yep. Did you attend the meeting with the Ombudsman and the Minister?

**Mr Ken DAVIES:** I did not but I can ...

**Mr ELFERINK:** Did one of your staff?

**Mr Ken DAVIES:** ... certainly ... not directly with the Minister but prior to that meeting Trish Angus and Fran Kilgariff met with Julie Carlsen and she can explain what transpired at that meeting.

**Mr ELFERINK:** Sure, Trish?

**Ms Trish ANGUS:** Yes. Trish Angus. Fran Kilgariff and I met with Julie Carlsen, the Deputy Ombudsman on the 18<sup>th</sup> of June in Julie's meeting room and the Ombudsman's office. At that meeting we discussed a number of things. Julie raised some concerns to us regarding what she saw as gaps and deficiencies in the Animal Welfare Act and made a number of suggestions that we might wish to ... what we should, not wish not, but what we should consider in amending and reviewing the

legislation. We have a whole list of those, and the other issues she raised was that she believed that their investigation, that's the Ombudsman's investigation, reveals damning and shocking situations at Mataranka that she did not think that we had on file, or we were aware of, and that she asked whether if we received her report, that's the Ombudsman's report, would we be willing to prosecute to which we replied if there was evidence that would help towards that. We would consider it. And she indicated that the report would be ready towards the end of June, she didn't give a date but she said about the end of June. We indicated back to Julie that we were already setting into train seeking legal advice to see how we would go about addressing the issues that might arise out of the Ombudsman's report once we got it to create a case, should that be the case.

And in addition, so there's one other point Ms Carlsen raised with us and that was it was also very clear in their investigation that there were poor processes and communication channels between our agency and the Department of Resources and at times that was quite confusing to us and them and we indicated that we had, at CEO level, commenced discussions to develop a memorandum of understanding to more clearly lay out the roles and responsibilities of both agencies.

**Mr ELFERINK:** More than commenced though, that memorandum of understanding had been under negotiation for several years, hadn't it?

**Ms Trish ANGUS:** It had. I understand, before my time, it was as well and it had fallen away but we reinstated.

**Mr ELFERINK:** So the 2007 report says that you've got poor communication between departments. There is a memorandum of understanding under discussion which has fallen away. In June the 3<sup>rd</sup> 2010, Mr Davies, did you receive a letter from Meryl Gowing ...

**Mr Ken DAVIES:** That's right, yes.

**Mr ELFERINK:** ... in relation to animal welfare at Mataranka Station. I quote from that letter, and it reads as follows: "I consequently requested copies of all photographs taken by DoR staff members to ensure the completeness of the database. A disk of over 100 photographs was delivered yesterday and contains many appalling shots of starving cattle, a large number which I understand were later destroyed. Ms Carlsen is adamant that 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 the CDU and possibly the manager of Mataranka Station if it is a recommendation by the Ombudsman."

It was a recommendation whilst a verbal one from the Ombudsman, and certainly the Deputy Ombudsman saying the matter must go to court. You were in possession of this material on the 3<sup>rd</sup> of June 2010. Why did you not immediately commence an investigation yourself or why did your Department not immediately commence an investigation when you'd received a disk of over 100 photographs of starving cattle, many of which were later shot?

**Mr Ken DAVIES:** Mr Elferink, I think I made it clear at the outset that this process hasn't been without its flaws. But I think I can say that those photos were not dated, so they came to us as a set of photos. We didn't have much else given to us other than those photos, as I understand it, and again, I'll repeat, we were waiting for the ... we had had no formal reports of cruelty to cattle at that station post-February 2010 directly to the Animal Welfare Branch. We were waiting for the

Ombudsman's report and investigation because clearly she was accessing witnesses and gathering evidence that we had not seen and weren't privy to, and all our plans were based on launching an immediate investigation as soon as that evidence was made available to us.

Now, Julie urged us to undertake the investigation and certainly our intention was to do that, but we needed to have some substantive information in front of us to do it.

**Mr ELFERINK:** Well, can I suggest to you that from ... you're a regulatory body, you have the carriage of this Act, it's your job to investigate these matters. You've got ... okay, so you say you don't have dates on those photographs, that's easy ...

**Mr Ken DAVIES:** As I understand it, is that correct ... ?

**Ms Giovina D'ALESSANDRO:** It's my understanding.

**Mr ELFERINK:** Okay, but I mean, it's easy, you go and get a statutory declaration from the person who took the ... I mean, they were ...

**Mr Ken DAVIES:** I don't know that, you know, and again, without being there I can't say exactly the context for how they were provided and whether witnesses were named ...

**Mr ELFERINK:** You understand why this is my problem, is that you have more than just simply a hint that something's going on, you are being told directly that there are major problems at this cattle station. As the regulatory overseer, it is then your job to do the investigation. Now, I understand the difficulties between yourself and DoR, but ultimately it falls upon you then to do the investigation. If the issue was insufficient investigators, ring the police. They'll fling a couple of coppers at you while they go and do it.

My concern is the following, and I quote from the same letter: "There would be ramifications not specific to this agency if CDU is prosecuted and convicted. These include possible embarrassment to the government if a prosecution was forced, reduced confidence of the NT primary production process, reluctance of primary producers to work with government and primary industry's officers. The Animal Welfare Authority would need to consider the suspension or cancellation of the CDU's license to teach or undertake research involving animals which would impact on students' degrees. CDU's national and international reputation would be affected, perhaps deterring potential students, a reaction of the animal activist groups." It concerns me that those motivations, in fact those motivations were later reproduced in a document to the Minister, is that correct?

**Mr Ken DAVIES:** Certainly some of those were repeated in a document to the Minister, that's correct.

**Mr ELFERINK:** So here we had a situation where the Department has received evidence, incomplete, but evidence, your Department has carriage of the animal welfare issues. You then say, well, we don't have an evidence trail, we're not going down that path. The purpose of an investigation is to create an evidence trail, or to see if there's one there, and then it's up to a court to determine whether or not there is guilt or innocence or otherwise. What concerns me is that the motivations as described in that letter from Meryl Gowing to you was that a prosecution for animal

cruelty was not a matter of high concern next to what are essentially political considerations such as possible embarrassment to the Northern Territory government, or embarrassment to the CDU.

**Mr Ken DAVIES:** Well, all I can say here, Mr Elferink, is that context is that was Meryl's advice to me but it certainly was not uppermost in my mind in terms of what we were going to do in this instance. What ...

**Mr ELFERINK:** Do you have a copy of the subsequent advice I just referred to, to the Minister available?

**Mr Ken DAVIES:** That's the one I think, Catherine, that you've signed through.

**Mr ELFERINK:** Who authored that advice to the Minister?

**Ms Catherine WEBER:** Catherine Weber. Meryl authored it and I signed it as Acting Chief Executive while Ken was interstate.

**Mr ELFERINK:** Okay. And does it include ... Can you table that so we can see it?

**Ms Catherine WEBER:** I can. It's in the folder that we've provided.

**Mr ELFERINK:** Yes, I know, but I've got it here somewhere but I can't immediately lay my hands on it which is why I'm taking this rather convenient route.

**Ms Catherine WEBER:** It's that page and those two pages.

**Mr ELFERINK:** Okay, this was forwarded on the 26<sup>th</sup> of June 2010 and I'll table it shortly, Madam Chair, and I note that under the sensitivities section that the issue of possible embarrassment to the Northern Territory government if prosecution was forced, reduced confidence in Territory primary production processes, reluctance of primary producers to work with government, in fact it's basically the same list. It's essentially, if not ...

**Mr Ken DAVIES:** Yes, Mr Elferink, that's correct.

**Mr ELFERINK:** Okay.

**Mr Ken DAVIES:** And, you know, the way you would interpret those are really, you know, I mean, the issue of possible embarrassment is in the context of not prosecuting or if you do prosecute reduce confidence. Clearly if there's an animal cruelty matter that hasn't been dealt with then that's going to be problematic, you know, so it was advice and this is advice that goes to the Minister and I think post this particular advice, this was noted, the Minister had at that stage had the meeting with the Ombudsman?

**Ms Catherine WEBER:** The next day.

**Mr Ken DAVIES:** The next day, the Minister ... Sorry, that was what prompted the Minister to call the Ombudsman across the next day to have the meeting with the Ombudsman.

**Mr ELFERINK:** So just recapping, in 2007, major flaws are identified in the Animal Welfare Act?

**Mr Ken DAVIES:** In 2007 a review was conducted of the Animal Welfare Act.

**Mr ELFERINK:** Which makes multiple recommendations.

**Mr Ken DAVIES:** That's correct, which built a profile of the sort of - and Mr Coles did the initial work – of the sort of amendments that the Act could be incorporated to modernise it. That was a national overlay going on at the same time.

**Mr ELFERINK:** But, of course, if that reviews two of those recommendations which I've referred to in that review had been followed up on, namely, getting the channels of communication clear between the Ministers, and in fact I've got it here, I can quote from it. Here we are. The number of additions to the review – this is in 2007 – noted that it was unclear which agency is responsible for the administration of the Act and thus it would be difficult to hold an agency or Minister accountable. That was known in 2007, it doesn't require necessarily a legislative change to deal with that particular issue, just a clearer description of the responsibilities of ministerial roles.

The second component of course is that on page 25 of that review: "It is recommended that the Act be amended to provide that proceedings may commence within 18 months provided that the proceedings are commenced within six months of the time line when the complaint was obtained and the evidence was considered sufficient to allow the prosecution to proceed". Essentially that the statute of limitations be increased to 18 months.

If either of those had been dealt with then you would have not only had a clear line of authority, and this is probably a matter for a Minister to consider through the administrative arrangements of the Northern Territory are a matter for Parliament, but the Minister never took it to Parliament. And if the other small amendment had been made, and it's simply a case of changing a two into an eight by way of an amendment, at least you could ... you could at least an 18 months statute of limitations would have applied, and much of the difficulty from June onwards in 2009 could have ... 2010 could have been avoided.

On top of that, going through the time line, up to the 3<sup>rd</sup> of June, there is clear indications that there are major problems at the station and that the animals are suffering. The DoR vet was moved – which is John Eccles – when he went out there, he was moved to the point of such irritation that his recommendation for prosecution was actually toned down. We got that from the paperwork ...

**Mr Ken DAVIES:** From paperwork we provided you?

**Mr ELFERINK:** From paperwork provided by DoR. And this is part of the confusion between the Departments because if you read, I think it was Susan Fitzpatrick talks about it in her record of interview with the Ombudsman's office and it gets several mentions in other places, in fact at one stage he writes on the bottom of his recommendation for prosecution, I presume it's his handwriting, "Notice, notice, notice!!!" He sees something clearly going wrong. You're being told by Julie Carlssen from the Ombudsman's office you've got major problem, here's a whole bunch of photos. The evidentiary issue of when the photos were taken can easily be covered off on. I asked you the question, why did you not immediately commence an investigation with such strong urgings from at least the Ombudsman's office but also I presume by that stage you were talking to the Department of Resources about this issue.

**Mr Ken DAVIES:** Yep. So, Mr Elferink, with the benefit of hindsight, I wish we had, in a nutshell. There is no doubt, there is no doubt given what we now know and our investigative capacity that we now have in our Animal Welfare Branch the situation like this, like has occurred there would not happen again. I can say to you that at that time, and I'll say it again, that we were anticipating that we would have the Ombudsman's report by June which would bring it within the statute, and that we would employ and engage immediately an investigator to look at that. If the statute bar had been 18 months, I don't think we'd be sitting here now ...

**Mr ELFERINK:** I agree.

**Mr Ken DAVIES:** ... unpacking it in the way we are. There is no doubt that improvements are needed but I do want to go to this point of cooperation between DoR and our agency. This situation at Mataranka Station and not having the MOU in place certainly meant that it was not as clear about who should be doing what in this situation as it could have been in 2009. There are examples where our agency work very, very effectively with DoR around other matters and one of them is in 2008 and that's around the prosecution in relation to some goats that were transported into Darwin for overseas live export and our agency inspectors, our investigators and with the DoR inspector cooperated very, very well to drive through a quick resolution and a quick successful prosecution.

**Mr ELFERINK:** Those goats came from New South Wales, didn't they?

**Mr Ken DAVIES:** Those goats came from Burke in New South Wales, for straight 53 hours on the road. The goats were here, wasn't, you know, there wasn't the distance involved and our officers cooperated very quickly with DoR to resolve that issue.

**Mr ELFERINK:** But also the New South Wales authorities, as I understand it, as well.

**Mr Ken DAVIES:** Mmm.

**Mr ELFERINK:** There was some input from New South Wales to perpetuate that.

**Mr Ken DAVIES:** There may have been but I'm saying it led to a successful prosecution. So all I'm just saying is that the Mataranka issue, there is no doubt, you know, in retrospect and looking back on it and particularly around that June time, there was a point at which we could have said we will launch and we will engage an investigator regardless of having the Ombudsman's report or not. We did not do that and all I can do is to say that the reason we didn't do it was because we didn't at that stage have enough evidence in front of us, hard evidence, and we were anticipating the Ombudsman's report would provide that. And I'll go back to the point that we had dealt with the 2009 matter, it moved from ... it was being dealt with as an animal management issue by DoR in particular, not an animal cruelty issue. Mel can talk a little bit more about that if there are specific questions around that matter, but we had no direct reports into our agency of animal cruelty occurring at Mataranka from February through until June. The reporting that was going on was going to the Ombudsman.

**Mr ELFERINK:** Mmm. But at what point did you guys, I mean, we know at least the 3<sup>rd</sup> of June you became aware, in fact the paper trail goes earlier than that.

At what point was your Department receiving information saying, look, there's something happening out at Mataranka? And protocols that need to be in place were the ones that say, hell, if we're getting some information and we're getting corroborating information from the Ombudsman's office there's something afoot here, we'd better go and have a look at it. Simply saying, well, you know, we've got 100 photographs but we don't have a date for them. That's a matter for investigation, and that will clearly form part of the recommendations we're talking about here.

**CHAIR:** John, we've been going for more than 45 minutes now ...

**Mr ELFERINK:** And I was just about to say ...

**CHAIR:** ... and we have less than 45 to go.

**Mr ELFERINK:** ... I had no further questions.

**CHAIR:** You can understand there are people who do.

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

**CHAIR:** Marion and ...

**Ms SCRYMGOUR:** Just one quick question, Gerry, and just following on from John's question and Ken ...

**Mr WOOD:** Questions.

**Ms SCRYMGOUR:** Questions. Some of them statements but some of them questions. Ken, just following on from that memo of the 3<sup>rd</sup> of June 2010 and when Julie Carlsen provided the photographs and shots of the cattle. Are you saying that within the Department, I mean, the Animal Welfare Branch made a decision within the Department not to maybe go and do the inspections themselves, get sworn statements from witnesses that could have assisted, I mean, pre-empted some of the, you know, further down the track and the report, that could have been used to assist with the prosecution so you gather that evidence before the actual report comes in but to mobilise your troops, get down there, have a look, substantiate the photos. I mean, I note that you said that the photographs didn't have any dates. Surely officers within the Animal Welfare Branch could have taken those photographs and gone and had a look for themselves. Are you saying that nobody took it upon themselves to do that or there just wasn't the capacity?

**Mr Ken DAVIES:** Well, the answer is there were definitely capacity issues around our capacity to investigate but just in relation to the detail, I'll need to go to Trish to just ... as the person responsible for the Animal Welfare Authority although that had transferred to Fran but, Trish, you might be able to assist there and then Mel, I don't know whether you've got anything you might want to add to that or not. Trish?

**Ms Trish ANGUS:** Prior to June, yes, we had sent Animal Welfare Branch staff directly in accompaniment with the Department of Resources to site inspect and I think Mel can give you the exact details of that but we did, both announced and unannounced visits. This was before June though we're talking about. Was your question around June?



**Ms SCRYMGOUR:** Yeah, no, I was just curious because, I mean, if the statute of limitation to prosecute, the Department was waiting for the Ombudsman's report to come in around June, we know that the report didn't get tabled until the 28<sup>th</sup> of October 2010 and the Ombudsman met with the Minister on the 22<sup>nd</sup> of June, the Deputy Ombudsman also wrote to you, Ken, on the 24<sup>th</sup> of October and there was a series of meetings, I think you said you and Fran had met with the Deputy Ombudsman. I mean, I'm just trying to ...

**Ms Trish ANGUS:** I can make comments on the site inspection prior to June, when we went to Mataranka, and Mel was the person, I mean, going down so she can tell you more explicitly, but at that stage, we thought we were looking at what is now a fixed problem, that the ... they were more in an animal management phase and that there was cattle that were being fed, the situation had been resolved. So I think going down in June, I don't know that there was anything more to inspect about that previous situation, because that would have been much earlier, six months earlier. Am I right, Mel? Is it about six months. Yes. So I might have gotten your question mixed up. I don't know if you're asking way back in 2009 or June.

**Mr Ken DAVIES:** No, I think I know exactly what you're saying, MLA Scrymgour. The issue was we had the photos ...

**Ms SCRYMGOUR:** You had the photos, you had discussions ...

**Mr Ken DAVIES:** Why didn't we turn it on and do an investigation there ...

**Ms Trish ANGUS:** In June, with the existing photos.

**Mr Ken DAVIES:** ... and I think I've explained that the issue was that at that point in time a decision wasn't made. We did not not intend to prosecute. What happened was that we didn't think at that point in time there was sufficient evidence there, we were waiting, we had been advised and it was only a verbal advice that the additional report for the Ombudsman would be to us by June. So we're talking in that June frame, we were waiting for that report and then that's when we were going to go. So it didn't happen and that is the point going back to my original comments to Mr Elferink where that was a point where we could have turned around and said, well, regardless of that, we're not going to wait for the report, we're going to go. We didn't make that decision.

**Ms SCRYMGOUR:** So there was no discussion between the Animal Welfare Branch or the authority, with CDU, with the Animal Ethics Committee, I mean, there was no discussion amongst all of these players involved to try and deal with this issue or to try and look at what was happening.

**Mr Ken DAVIES:** Again I'd have to defer to Mel and Trish there.

**Ms Trish ANGUS:** I'm not aware of that.

**Mr Ken DAVIES:** No. Mel?

**Ms Mel FROUSHEGER:** Not at my level, no.

**Mr Ken DAVIES:** No.

**CHAIR:** Okay. Questions from this end.

**Ms PURICK:** Mr Davies, given that the Animal Welfare Act's nearly 30 years old, isn't it time, not only for review but a complete overhaul, including possibly looking at changing the complete scope of it, where it physically sits in the government structure, and that probably needs to be done sooner than later? I mean, I just find it extraordinary that a piece of legislation hasn't been reviewed substantially for 30 years.

**Mr Ken DAVIES:** I don't think that's entirely correct, I think ...

**Ms PURICK:** '79?

**UNKNOWN:** No, no.

**Mr Ken DAVIES:** I think the Animal Welfare Act ...

**Ms PURICK:** Oh so sorry ...

**Mr Ken DAVIES:** ... was March 2000.

**Ms PURICK:** No, my mistake. Sorry, my mistake.

**Mr Ken DAVIES:** No, no, but the question is, so to answer your question, if you look at what we've presented in the submission today, there's quite a range of issues that we are talking about. If we go to the statute barring of 12 months, I can say, and it would have been great to have had 18 months in this instance, in the Mataranka instance there's no doubt, but four other jurisdictions run on a 12 month statute bar as well, you know, so we're not talking about an Animal Welfare Act that's totally out of sync with what's at play nationally here. The issue is ...

**Ms PURICK:** Where do you think our legislation sits when it comes to comparison ... I've seen the comparison list here, I mean, in your professional opinion, is our legislation the best in the country or is it the worst?

**Mr Ken DAVIES:** Oh ...

**CHAIR:** Keep in mind about seeking opinions.

**Mr Ken DAVIES:** ... can we give opinions on it. [Laughs]

**Mr WOOD:** No, you don't have to give an opinion.

**CHAIR:** You're not required to give an opinion.

**Ms PURICK:** We do have legislation in the Territory that is considered to be best practice and leads the country, particularly when it comes to various industries and various occupations so I guess my question is, do you believe that the legislation is up there with the best of them or is there a lot of work that we need to do? Perhaps I should rephrase it that way.

**Mr Ken DAVIES:** I think clearly we were doing the review of the Animal Welfare Act because it needed to be modernised. 2000 to 2011 makes it, you know, in 2007 the review started. Quite clearly we had some recommendations and they're outlined around some of the changes we might be thinking about in the submission to you today. We were waiting for additional advice from the Ombudsman in terms of

her report and what that might surface and clearly there's not much point in us pursuing it much further until the CTC inquiry has finished as well ...

**Ms PURICK:** Yeah, that's fair.

**Mr Ken DAVIES:** ... Kezia, but I can say we have done a jurisdictional comparison of regulation and licensing schemes for research and teaching involving animals by education institutions. I'd be happy to table that. That doesn't sort of make a definitive statement about what's the best but that does give comparisons between NT and WA, Victoria, South Australia and so on. So I'd be happy to table that ...

**Ms PURICK:** That'd be good.

**Mr Ken DAVIES:** ... for you to have a look at.

**Ms PURICK:** Okay, which leads to another question in reference to schools. Where is the Department of Education at in regards to their application for license for coming into the schools in the Northern Territory that use animals for teaching?

**Mr Ken DAVIES:** I thought you might ask that question or that somebody on the CTC might ask that question so I'd just like to go through it if I could, Kezia, to give you as accurate an answer as possible. So this advice specifically refers to Taminmin High School and the licensing of DET ...

**Ms PURICK:** But there are other schools that have a lot of animals with them.

**Mr Ken DAVIES:** Sure. So currently DET does not hold a licence under the Animal Welfare Act. The Ombudsman herself queried whether or not DET required a licence in respect to the use of animals at Taminmin High School. The Department, our department, the Department of Housing, Local Government and Regional Services has been liaising with DET staff in regard to this matter, specifically I've talked to the Chief Executive of DET as well. DET have very recently been advised or have advised us, that is the Department, that they recently obtained legal advice from the Solicitor for the NT, that is the Department of Justice that states they do not require a licence for use of animals at Taminmin High School. The uncertainty arises because educational institutions are exempt from having to obtain a licence unless animals are used for scientific teaching purposes, which is not defined in the Animal Welfare Act, and is open to differing interpretation. An amendment to this section of the Act is proposed to remove the uncertainty, and as this is only a very recent development, we're going to have further discussions with DET as to any interim measures that they may need to take before the Act is amended.

**Ms PURICK:** Thank you. Is it possible to have that tabled?

**Mr Ken DAVIES:** Sure.

**Ms PURICK:** Because that was a question I asked, I think, of previous witnesses and it was more in your area because it does actually just involve schools, it involves actually pastoral property areas because I was asked by cattle station and if I could just read it to you, this is something that came from your Department [inaudible 3.00.25] advice, "As per our conversation this afternoon I am of the understanding that you are using horses in a teaching environment to educate children on being responsible and how to behave around a horse" – doesn't say how old the children are though – "The teaching will include how to saddle up, how to trot,

canter, ride a horse, how to generally look after a horse including cleaning shoes, dentistry etcetera. On this basis due to the fact that the teaching is not scientific in nature, you don't need a license, etcetera, etcetera". But that's not actually in a school environment, that's in a pastoral property environment. So like you said, there seems to be some lack of definition within the legislation as to ...

**Mr Ken DAVIES:** I think it's something that definitely needs tightening up. Merg, do you want to comment and G, Giovanna? Giovanna first. Just state your name.

**Ms Giovina D'ALESSANDRO:** Giovina D'Alessandro, had recent discussions with CDU's AEC about the licensing framework. My background's as a lawyer in legislation and it's obvious that every so often you should always review legislation to see if it's up to date, best practice. I'm not saying that our legislation is by any means the worst. I think it's based on other jurisdictions and it has some good parts to it, it can be improved upon and we're looking at it. Part of your terms of reference is to look at the legislation and make some recommendations to it and so I would urge you to do that, especially looking at that grey area about scientific teaching purposes, I think there's a point where you can either go as something jurisdictions have done which is in that table that was tabled to you where you can go to fully regulate schools and however they use animals, whether they've got chipmunks in the classrooms or whatever they've got sitting there, or you can take the other view of not over-regulating and being sensible about it and just saying it's when it's used for scientific purposes.

**Ms PURICK:** Perhaps I can just have another couple of quick questions.

**Mr Ken DAVIES:** Sure.

**Ms PURICK:** In regards to the Animal Welfare Branch, before you issue a license, do you actually inspect the premises?

**Mr Ken DAVIES:** Merg, I'll go to you.

**Ms PURICK:** No? Should you inspect the premises before you issue a license?

**Mr Ken DAVIES:** Just state your name.

**Mr Merg MIKAELIAN:** Merg Mikaelian, Director of AWB. No, we don't. Probably we should and that's ... currently it's not part of the regulation that we need to or the legislation ...

**Ms PURICK:** So that might be something that's looked at in the review.

**Mr Merg MIKAELIAN:** Exactly, again. A part of the role of the AEC is to oversee the licensing and the teaching. The AEC is meant to by the code that they referred to in the Act, that they are meant to inspect the premises twice per year. So it's the responsibility ... But yeah, in terms of ...

**Ms PURICK:** But you're also issuing the license.

**Mr Merg MIKAELIAN:** That's correct. And in my thoughts I believe we should, but we don't.

**Ms PURICK:** Okay. That's all for now, thank you.

**CHAIR:** Gerry?

**Mr WOOD:** Three quarters of my questions went out the door, I think. I might just comment on ... I might ask for comment that I would hope that we don't go overboard in relation to schools. I have a couple of schools in my area that have gardens and they have chooks and they have some heifers, you know, you might even say they've got butterflies because they've got a butterfly garden there. So I hope we don't draw the line that we turn what is good for a school, that is educational for kids into something that becomes a bureaucratic nightmare. So if I had my say, I'd say err on the side of kids' enjoyment rather than whether we ... If you're going to cut up frogs or something that might be a different matter but if it's there for learning, that's where it should go.

I just want to go back to the beginning, you've given us a timetable there, Mr Davies, and said the 3<sup>rd</sup> of September on or about you had a report of neglected cattle made to ... that was to primary industry but was that report to you?

**Mr Ken DAVIES:** No.

**Mr WOOD:** Now, when did you first get a report because just to get my brain in order here, Greg's got John Eccles and Rob Wait, were they inspectors or officers? Or does it really matter?

**Mr Merg MIKAELIAN:** Merg Mikaelian. It does matter, the definition under the Act is inspector, it regulates. The officer is classed as the veterinarian and in terms of licensed premises and non-licensed premises it's in our submission there, describes it clearly, that an inspector can regulate on any premises, obviously with authority, but if they need to go to a licensed premises, they require an officer with them and if the roles are reversed, and so if an officer wants to go on a non-licensed area, he needs an inspector to go with him, or he or she needs an inspector to go with them.

**Mr WOOD:** So I've got this document called Guidelines for Animal Welfare Inspectors and Officers, and I suppose I wonder about the comment that there's some blurring of the roles of DoR as it is now and yourselves, but these guidelines have been around a while and I imagine they can read them, like anyone else. So it has here about inspectors versus officers and the difference between inspectors and officers and officers must be veterinarians, their powers of entry are slightly different, officers cannot enter an unlicensed premise without an inspector; inspectors cannot enter a licensed premise without an officer.

But in the case of Mataranka they were officers and they were entitled to ... Mataranka was licensed at that time? Because there's an issue over when ...

**Ms Giovina D'ALESSANDRO:** There is but there's some to-ing and fro-ing over though. I can't recall from the outset. Giovina D'Alessandro. But I can't recall at the time if they were but the DoR officers there were at Mataranka on the understanding that they had the power to be there.

**Mr WOOD:** Yeah. Now, because they're made officers under your Act, is that correct?

**Mr Merg MIKAELIAN:** Mmm.

**Mr WOOD:** So they have a responsibility, do they, if they see animal cruelty to inform you straight away?

**Mr Ken DAVIES:** That is correct.

**Mr WOOD:** And did that happen?

**Mr Ken DAVIES:** The first on our time line, the first that we heard the Animal Welfare Branch had a formal report about animal cruelty at Mataranka, and we were made aware of it was, Mr Wood, was on the 8<sup>th</sup> of October 2009, as I understand it. The AWB received a complaint from Susan Edwards through Minister Knight's office, it was referred directly to us.

**Mr WOOD:** Now, Susan Edwards was not a member of ... was not a department person as such, she was the wife of Toby Gorringer, so what I'm trying to find out is if these officers, we've got the forms here from the 4<sup>th</sup> and 5<sup>th</sup> and the 26<sup>th</sup> of ... 25<sup>th</sup> of September. Now, I'm not asking you to give us all the rundown of the previous Department so they were reported to someone, probably Sue Fitzpatrick.

**Mr Ken DAVIES:** That's correct.

**Mr WOOD:** There wasn't any sideways reporting to you, after all, these people are under your ... well, to some extent they're under your authority, you're the people that appoint them.

**Mr Ken DAVIES:** So in that earlier instance I talked about in relation to goats, it was an immediate interaction. This was not a situation where there was an immediate interaction with the Animal Welfare Branch. My sense of it, and again this is just me making a judgement call on it, is that it was being dealt with as an animal management issue and wasn't being seen necessarily as an animal welfare issue which didn't trigger the direct report to our agency.

**Mr WOOD:** How are you able to make that judgement? What information can be used, say ...

**Mr Ken DAVIES:** Just from reading the files, from looking at the information that I've been given in the context of what was happening in 2009. I wasn't the Chief Executive at the time, as you know, Mr Woods, but looking back on the information, there was obviously a view that DoR was looking at it from a perspective of animal management and sorting out the management issues and ensuring that the cattle were properly cared for and that the situation was being rectified on the ground, and there's a clear view, I think, that the Animal Welfare Branch was, in terms of animal cruelty, that it was the animal welfare area that had to deal with that. The normal interaction that would take place didn't occur. The first we got notice of it was 2008, October ... sorry, October 8, 2009 and out of that, the next day we sent somebody from our Animal Welfare Branch down to have a look at what was going on and Mel, I think that was yourself?

**Ms Mel FROUSHEGER:** Hmm hmm.

**CHAIR:** Marion?

**Ms SCRYMGOUR:** Gerry, can I just quickly, jump in there and ask one ... So Ken ...

**Mr WOOD:** I haven't given you permission yet. Okay.

**Ms SCRYMGOUR:** So what was the interpretation, I mean, when you went down and had a look at and inspected, you were saying that you thought, Ken, that they were looking at it from a management issue rather than a cruelty issue. So what's the interpretation of management, I mean, you had photos of, you know, dying cattle or ...

**Mr Ken DAVIES:** We didn't have the photos at that stage ...

**Ms SCRYMGOUR:** But you've must have had some evidence, well, you said you were looking at the files, so there were no photos or anything on the file, so it was just emails and other transcripts and letters. So from that, so you went and then inspected, so was it then deemed to go from management to cruelty, I mean, what's that next step, or what was the step taken then once you had a look at ...

**Ms Mel FROUSHEGER:** Mel Frousheger. When I went down there, being some time after the initial complaint had been investigated by DoR staff when I attended it was already in what we would say a recovery stage, I guess, for the animals, that they had made substantial improvement in condition by that stage. So we were looking at furthering that management to increase their welfare to an acceptable level. So basically at that stage it was already well into recovery mode.

**Mr WOOD:** Could I just ask a question on that?

**Ms SCRYMGOUR:** Yep.

**Mr WOOD:** What concerns me that your visit was on the ...

**Mr Ken DAVIES:** 9<sup>th</sup> of October.

**Mr WOOD:** 9<sup>th</sup> of October. So you're saying by the 25<sup>th</sup> of September to the 9<sup>th</sup> of October things had changed considerably because what Mr Eccles and Mr Scott put their name to was after their inspection on the 25<sup>th</sup> of September "the overall condition of the station stock is very poor and the current management of which is an animal welfare issue, inadequate amounts of supplementary lick or loose supplement are being provided. There are additional animal welfare issues [inaudible 3.11.15] radically dispose of [downers?], inadequate amounts of supplementary hay available for the starving stock. There is an immediate need for at least a road train of hay to be delivered to the station", and it goes on to say "there have been 18 animals shot due to the effects of starvation in the past 11 days and this does not include wieners. It is the collective view of the inspection team that unless management of stock, station stock drastically change immediately severe losses will occur in the next few weeks. It is in the interests of all the animals involved an immediate solution is required".

And I think there were two reports because I've got ... there's one on the 5<sup>th</sup> of the ninth from John Eccles which recommended that Gray and Sutter be held accountable. Now, obviously Eccles has looked at those so-called improvements and still said there's some major issues there. So was there a difference of opinion between the animal welfare board and DoR, or as my email says, Eccles was taken out of the discussions, as we know, and the animal welfare board's opinion was the one that was basically accepted that things were okay?

**Mr Ken DAVIES:** So do you want to answer that one?

**Ms Mel FROUSHEGER:** Yep, Mel Frousheger. My actual first inspection when I actually went down wasn't until the 8<sup>th</sup> of December, and prior to my attendance I had not actually seen any of the DoR reports from the previous inspections, so my first sighting of the cattle was actually in December, and by that stage I was advised by the stock inspector that attended with me that ...

**Mr WOOD:** That was Sue Fitzpatrick, is that right, or not?

**Ms Mel FROUSHEGER:** No, it was Rob Wait.

**Mr WOOD:** Who went down as a representative of the AWB on the 9<sup>th</sup> of October?

**Ms Mel FROUSHEGER:** There was no-one.

**Mr WOOD:** It's got here "9<sup>th</sup> of October, AWB accompanied DoR vet, Sue Fitzpatrick on inspection. Cattle had improved since earlier inspection but still progress can be made". And I suppose I'm raising the issue because four days before that John Eccles had said somebody should be held accountable. So I'm just sort of ...

**Ms Mel FROUSHEGER:** I think that's actually a mistake, because I was the first inspector from the Animal Welfare Branch to attend, and it was definitely on the 8<sup>th</sup> of December.

**Mr WOOD:** 8<sup>th</sup> of December.

**Ms PURICK:** So this must be incorrect then, this documentation?

**Ms Mel FROUSHEGER:** There possibly may have been some confusion as to the person that was there that was with the DoR staff. Perhaps it was another agency. I'm not sure.

**Mr Ken DAVIES:** We'll need to go back and check that, Mr Woods, and if we need to reframe that time line, we'll have to do it ...

**Ms SCRYMGOUR:** The 8<sup>th</sup> and the 9<sup>th</sup>.

**Mr WOOD:** What I suppose I'm concerned about, if it was the case that you didn't go down until the 8<sup>th</sup>, and I'm not ... that's not a criticism but the first reports were about the 4<sup>th</sup> of September, there was Sue Edwards who put an official complaint through Rob Knight's office on the 8<sup>th</sup> of October and he was the Minister, I think, at that time. From the AWB's perspective, now whether they were left out of the loop because DoR didn't tell them of the seriousness because certainly the three emails that we got certainly give the impression that things aren't good, they weren't mucking about, yet the people who had the power to prosecute really haven't gotten involved until it's just about too late, and then things are looking good. So is it a case also ... I don't know, missed the boat by, I'm not sure if you didn't know why but wasn't there any inkling that there was something happening down at Mataranka?

**Mr Ken DAVIES:** I think, Mr Wood, I know you're having a talk to the director at the time at some point in the future, Meryl Gowing, who'll be able to give you a bit more detail around what transpired in that space but Trish, can you assist, please?



**Ms Trish ANGUS:** I think yes, we got that complaint and thought there may have been but our communication and discussions with the DoR officers that we were working with didn't lead us to think that the situation still existed, that if there was whatever the situation was beforehand that measures had been put in by CDU and improvements to feeding and watering and care of the animals had been put in place.

**Mr WOOD:** Okay, so the information you've got will be post those first three ... you didn't see those first three reports from Mr Eccles and Mr Wait and Mr ...

**Ms Trish ANGUS:** I didn't.

**Mr WOOD:** So you would have got a response from the senior veterinary officer? At that time? So things were on the improve?

**Ms Trish ANGUS:** Yes, and conversation as well. I think there was conversations between Sue Fitzpatrick and Meryl.

**Mr WOOD:** Right. I need to think about that a bit. Just the other issue that's been raised with me was that basically there was only one and a half people that were available to do animal welfare inspections. Is that correct?

**Mr Ken DAVIES:** That's correct.

**Mr WOOD:** Has that gone up any higher than that now?

**Mr Ken DAVIES:** We've appointed ... In your submission, MLA Woods, there's a profile of the Animal Welfare Branch in July 2010, the new Animal Welfare Branch structures attached to that. We've substantially increased the resources and investigative capacity of that branch, there's an additional four new positions in there at least. Merg, you might explain just exactly what we've done in that regard.

**Mr Merg MIKAELIAN:** Merg Mikaelian. Basically the new structure we have in place at the moment was the first point of contact in the Department was myself with an investigative background as the director overseeing it. Since then we've put on an animal welfare manager of the branch now who's got more than 15 years experience from Department of NRETAS in parks and wildlife as a senior investigator, as well as being a former police officer. We've now hired two further, at an AO6 level which is a good level from Department of Justice, two licensing inspectors with more than ten years experience each in terms of investigating background so there's a further two new positions. We've still got the current position that was there originally which is an AO5 position and the part-time position that was shared previously is now a full-time position. We've also put in a ... budget for, or allowed for, a new position in Alice Springs as well, an AO6 inspector down there and we have down there currently a staff member who is a pool safety advisor as well as being trained in animal welfare to assist the AO6 as well. So there'll be two staff members down in Alice Springs.

So it has gone a long way from the very early days you speak about and the team that's in place at the moment is going to be very experienced. The Department has agreed now to put on a training course which is an outside consultant, Trellis Consultants, that will be doing a tailored specific to the Animal Welfare Act and our legislation, a Certificate IV in government which will be nationally recognised, and this course will also be offered to Department of Resource inspectors and officers,

the same with NRETAS and also if there's enough room and capacity on that course we'll be looking at further regions in Alice Springs, Tennant Creek, Katherine. So our reach in terms of investigating any terms of welfare or neglect cases in animal welfare in the Northern Territory, we'll be able to respond very quickly.

**Mr WOOD:** What about other sources like you used to have stock inspectors, so you're going to with police, and I gather they've disappeared off the map, they've gone into some ...

**Mr Ken DAVIES:** That would be a question not directly .

**Mr WOOD:** No, no, but I'm just interested, you have the power to give people powers, and I suppose when I look at this thing which says "officers cannot enter unlicensed premises without an inspector; inspectors cannot enter an unlicensed premises without an officer". It sounds like that makes it hard to go and find out whether is in ... got a problem.

**Mr Merg MIKAELIAN:** Merg Mikaelian again. Currently still on our current list there is 34 appointed officers and inspectors throughout the Northern Territory and they range from RSPCA, DoR, NRETAS as previously spoken, and again, all Northern Territory police officers as appointed as well under their powers and have the same powers as our inspectors. So we can call on those resources asif required. The Department is currently at the moment in the initial stages of doing an MOU with the NT Police as well.

**Mr WOOD:** Will those MOUs they get one with DoR?

**Mr Merg MIKAELIAN:** Yep.

**Mr WOOD:** You think they'll make a lot of difference or do you think they need ...

**Mr Merg MIKAELIAN:** I think, Mr Woods, from the Mataranka incident to where we are right now, I can clearly say the first point of contact with my agency and Department of Resources is working really well, and that's just come about even from current incidents at the moment with the cattle that are waiting in holding yards around from the export ban that we're working very closely, and that's on a daily basis and I think that MOU has helped, and I believe if we get it in place with NRETAS, NT Police, I think it's going to assist us even further.

**Ms PURICK:** Can I just ...

**Mr ELFERINK:** Can I just step in with one ...

**Ms PURICK:** Can I just jump in, just on the MOU ...

**CHAIR:** Kezia, and then John.

**Ms PURICK:** The MOU, immediately glad that it is working with DoR, but are the policies and procedures attached to it that articulate how it works, because if you take you out of the job and you take perhaps the CEO out of the DoR's job and get completely new people, how do you actually make it work? Have you got policies and procedures you can give us?

**Mr Merg MIKAELIAN:** Yes, there is, I'm not sure if we have them here. Merg Mikaelian, sorry. I'm not sure if we have them here right now ...

**Mr ELFERINK:** The MOU's been tabled.

**Ms PURICK:** The MOU's tabled, I'm asking about policies and how it actually makes it work.

**Mr Merg MIKAELIAN:** There is, and DoR have ... we have an agreed set of policies and procedures between both Departments attached to that MOU. The Department of Resources have theirs implemented and we have ours implemented as well.

**Ms PURICK:** Can we get a copy of those?

**Mr Merg MIKAELIAN:** We can. I'm not sure we've got them here.

**Mr Ken DAVIES:** We take that ...

**CHAIR:** John, you have ... Sorry, there's a question on notice?

**Ms PURICK:** To get copies of the policies and procedures as to how ...

**Ms Catherine WEBER:** It's in the documents that have been tabled.

**Secretary Ms Helen CAMPBELL:** MOU ...

**Ms PURICK:** No, not the MOU.

**Mr Ken DAVIES:** Policies and procedures.

**Ms PURICK:** What makes this actually work.

**Ms Catherine WEBER:** On the documents that we've provided ... Section B. No. In the folder ...

**Mr Ken DAVIES:** We'll furnish them as a question on notice separately so we will do that.

**CHAIR:** Thanks Ken. John, you had a question and then Gerry, it's back to you.

**Mr ELFERINK:** Yeah. Very quickly, Mr Davies, in relation to Merg's answer. I'm [inaudible 3.23.34] for you, Merg, quite frankly. The 2007 report said: "Those inspectors ..." this is 2007, "Those inspectors who may not routinely have level of skills and qualifications necessary to investigate and prosecute offenses are those who deal primarily with cases relating to companion animals. While it is the case that even with access to expert advice and investigation and prosecution it is quite possible for prosecutions to fail. There is little doubt that an increase in skills, knowledge and experience on the part of inspectors would have a positive effect on both the level of success in the Act and achieving its purposes and the confidence of the public in the administration of the system." In 2009, what was the rank, level and training of your animal welfare inspector?

**Mr Ken DAVIES:** Okay, I'll need to take that on notice, but Trish, would you like to ... Can you provide the advice.

**Ms Trish ANGUS:** No, I don't know.

**Mr ELFERINK:** Sue Fitzpatrick makes it clear in her statements, whilst I realise she's DoR, that training was busy, quite frankly.

**Mr Ken DAVIES:** We are not ... and it's fair to say, I think, what Merg has shown, when you're starting to talk to people about new staff that have got police investigative background and long experience and that sort thing ...

**Mr ELFERINK:** Sure. My point ...

**CHAIR:** Do you want to put that as a question on notice?

**Mr ELFERINK:** No, not really ...

**Mr Ken DAVIES:** ... it was very different in 2009.

**Mr ELFERINK:** ... because she was about an AO5, if memory serves me, would that be about right? AN AO5, there's the answer. The part that concerns me ...

**Mr Ken DAVIES:** Merg can answer that, sorry, sorry ...

**Mr Merg MIKAELIAN:** I can answer that, Mr Elferink. Merg Mikaelian. You are correct, it was an AO5, which is ... that person's still currently employed with us, but again, in terms of specific skills, probably wouldn't have the experience as the staff we have on board now, but she has done ... and had done a Certificate IV, a different type of Certificate IV in investigation training, so she had to have some skills, yep.

**Mr ELFERINK:** No, I appreciate that, I mean, the point I'm making is that she's skilled to possibly have a look at the pet Chihuahua being locked in the wheelie bin. We're talking about the death and maltreatment of hundreds of cattle on a cattle station. The 2007 report was signalling that there were problems coming and they were recommending that, quote: "There are training courses available that could be utilised to provide the knowledge and skills for people who are to be appointed. These vary in length and intensity, given the desirability of having inspectors with skills in place at the earliest opportunity, the need to maintain currency of the requirements of the competency requirements there is an argument for the maintenance of flexibility in the specification of these requirements". It's a bit wordy but in essence it says, "get trained people in place". Why does it, you know, this was in 2007. Nothing happens between 2007 and 2009, then we have Mataranka and then we have a response. It's more of a statement than a question but it disappoints me ...

**Mr WOOD:** Could I ask a question?

**Mr ELFERINK:** ... it disappoints me that this had to sit on a shelf for two years.

**CHAIR:** Thanks, John. Gerry, and we are finished in two minutes.

**Mr WOOD:** This is a little bit of a hypothetical, but Mataranka today, someone rings up and says, you know, I'll send you some pictures of some cattle dying, they're not being fed. What would happen today that would be different to before?

**Mr Ken DAVIES:** Perhaps the best way to answer that is to refer to ... in the submission we've given to you today, Mr Woods, there are three examples: one that Merg has just mentioned in relation to the cattle in holding yards that have been in there in relation to the export issue, but there's another couple of instances of where we've worked with DoR very, very closely around that MOU to activate the policy framework that's contained within in. So what would be different now is (a) we would have the higher level investigative experience to go in and do it properly and to build a case file that we hope would stand up for prosecution and we would be connecting very closely with DoR immediately around the sort of support we would need in terms of their expert advice.

**Mr WOOD:** And if a policeman at Mataranka saw those cattle, he was the first one to see them, what would be the process for him? Would he act on his own or would he go straight to animal welfare?

**Mr Merg MIKAELIAN:** Merg Mikaelian. Again at the moment, because there's no formal MOU in place but you would have to take the perception of a police officer having the smarts to contact the Animal Welfare Branch, let's presume he has, we would then liaise with that officer and we would send our inspectors down, and also, and this is where the misconception is under the Act how we are appointed as inspectors, the vets are the experts under the Act in terms of the welfare of an animal. The inspectors are more the investigator role. We would then liaise with the Department of Resources or an outsourced vet as well and we would send our staff down as a combined effort to at least start an initial consultation to see what's going on.

**Mr WOOD:** I think we've run out of time now.

**CHAIR:** We have. Mr Davies, on behalf of the Committee, thank you to you and your officers for appearing today. Thank you also for meeting our request to have a number of documents supplied and also for the submission that you've provided today.

**Mr Ken DAVIES:** Thanks Lynne, just a quick question, in terms of the turnaround on the questions on notice, as quickly as we can?

**CHAIR:** If you could, we haven't actually set a timeframe and ...

**Mr ELFERINK:** The issue of the legal privilege, can we get an answer like when I said now I sort of meant somebody pick up the phone and ring up the Minister. As soon as possible.

**Mr Ken DAVIES:** We'll certainly advise her that you've asked. Certainly.

**CHAIR:** And by way of process a copy of the transcript will be made available to you to check before it is posted on our website.

**Mr Ken DAVIES:** Okay, thanks.

**END OF TRANSCRIPT**