

# MHKC

Michael Heron KC • Barrister

## Review of investigation into Oxbow Dairies Limited and related matters

**13 December 2022**

Michael Heron KC

Erin McGill



**BRITOMART**  
CHAMBERS

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## Executive Summary

- A. Following the prosecution of Tony Kuriger and Oxbow by MPI, Mrs Barbara Kuriger complained to MPI about the conduct of the investigation and prosecution including why other persons were not prosecuted alongside Tony and Oxbow.
- B. MPI considered these complaints and, after receiving external legal advice, determined that no further investigation was necessary.
- C. We have been asked to review:
- MPI's investigation in 2017 of Oxbow and others in relation to alleged offending against the Animal Welfare Act 1999;
  - MPI's response to Mrs Kuriger's allegations in 2020 of offending by others; and
  - MPI's handling of correspondence with Mrs Kuriger and Tony since 2018.
- D. Having considered these matters, we have determined that:
- the MPI investigation was adequate, was conducted in accordance with the MPI Prosecution Policy and Solicitor-General's Prosecution Guidelines, and was not motivated by any improper purpose.
  - Mrs Kuriger's complaints about the investigation are not made out and, in any event, did not impact on the adequacy of the investigation.
  - MPI's response to Mrs Kuriger's June 2020 complaint that no further investigation was required was appropriate.
  - MPI's correspondence with the Kurigers following the June 2020 complaint was handled appropriately and respectfully.
- E. Despite our findings above, we acknowledge the situation Tony faced was complex and seemingly intractable. We can understand the sentiment of unfairness, expressed to us in the course of this review, and the feeling that Tony was not getting support from those who could be expected to assist. These matters are outside the Terms of Reference and do not affect our overall views about the adequacy of the MPI investigation but we acknowledge (as did the sentencing Judge) how difficult this period was for Tony and the apparent unfairness of broader farm problems being vested upon him as manager. Ultimately, these matters were considered by MPI and the Crown Solicitor but prosecution was still determined to be in the public interest. We see no error in that approach.

# Introduction

1. In 2017, MPI undertook an investigation into animal welfare issues affecting dairy cows on an Eketahuna dairy farm (the farm). The cows were owned by Oxbow Dairies Limited (Oxbow) and the farm was managed by Mr Tony Kuriger (Tony).
2. The investigation resulted in the filing of 11 identical charges against Oxbow and its three directors, Tony, Louis Kuriger and Lloyd Harris under the Animal Welfare Act 1999 (AWA). The alleged offending spanned the period October 2016 – April 2017.
3. In summary, the charges alleged:
  - a. 1 x failing to provide for an animal's physical, health and behavioural needs by failing to protect 74 cows from, and rapidly diagnose, lameness – ss 12(a) & 25 AWA;
  - b. 2 x ill-treatment of cows by failing to provide appropriate and timely health interventions (cow numbers #235 and #629) - ss 29(a) & 37 AWA;
  - c. 1 x reckless ill-treatment of 54 cows suffering from chronic and severe lameness, resulting in serious injury or impairment – ss 28A(1)(d) & 28A(3)(a) AWA;
  - d. 1 x reckless ill-treatment of 25 cows suffering from chronic and severe lameness, resulting in the cows being euthanised to end their suffering – ss 28A(1)(c) & 28A(3)(a) AWA;
  - e. 5 x wilful ill-treatment of a cow by failing to remove its surgical bandage, resulting in serious injury or impairment (cow numbers #526, #303, #577, #484, #799) – ss 28(1)(d) & 28(3)(a) AWA; and
  - f. 1 x wilful ill-treatment of cow number #55 by failing to remove its surgical bandage, resulting in the cow being euthanised to end its suffering – ss 28(1)(c) & 28(3)(a) AWA.
4. The charges against Mr Harris were dismissed prior to trial.
5. Tony, Louis Kuriger and Oxbow defended the charges and the trial commenced in the Palmerston North District Court on 27 January 2020 before his Honour Judge Rowe. Following the calling of two Crown veterinarian witnesses, the defendants' lawyer approached the Crown and the parties agreed to resolve the matter on the basis that guilty pleas were entered to the following charges:
  - a. Tony:
    - 6 x wilful ill-treatment by failing to remove surgical bandages (the charges noted in paragraphs 3(e) and (f) above);
    - 1 x ill-treatment of 22 dairy cows presenting with chronicity;

- b. Oxbow:
- 1 x wilful ill-treatment of 6 dairy cows by failing to remove surgical bandages (a representative charge covering the charges noted in paragraphs 3(e) and (f) above);
  - 1 x ill-treatment of 22 dairy cows presenting with chronicity.
6. All of the charges against Louis Kuriger were withdrawn as part of the plea arrangement, as were the remaining charges against Tony and Oxbow.
7. Both Oxbow and Tony were sentenced on 12 June 2020 by his Honour Judge Rowe. Oxbow was fined \$30,000. Tony was convicted and ordered to pay veterinary costs of \$3,600 and expert witness report fees of \$460.
8. On 25 June 2020, a complaint was made to MPI by the mother of Tony and wife of Louis Kuriger, Mrs Barbara Kuriger (the June 2020 complaint). The complaint stated as follows:
- a. I write to make a formal complaint under section 12(a) of the AWA against [the farm owners] for failing to provide infrastructure suitable for farming dairy animals as defined by the Dairy Cattle Code of Welfare, resulting in lameness for the herds of successive sharemilkers for a period of 16 years.
  - b. I write to make a formal complaint under section 29 of the AWA against [the farm consultant] for aiding and abetting [the farm owners] to refrain from attending to race surfaces causing animals to suffer unnecessary pain and distress over a period of 14 years.
  - c. I write to make a formal complaint under sections 12 and 28 of the AWA against [the] Veterinarian for leaving treatment of 7 dairy cows for a period of 14 days, after a diagnosis of chronic lameness, requiring amputation "due to the time of year" (i.e. Christmas and New Year) and repeatedly failing to treat animals presented for veterinary care.
  - d. I write to make a formal complaint under sections 12 and 29 of the AWA against [the Animal Welfare Inspector] for citing and documenting the cause of lameness and failing to exercise his powers as an Animal Welfare Inspector to remedy the cause, resulting in dairy cows continuing to go lame.
9. MPI made a decision not to investigate the allegations raised by Mrs Kuriger. It then requested that the office of the Wellington Crown Solicitor review that decision.
10. The office of the Wellington Crown Solicitor gave written advice to MPI on 16 December 2020. Following receipt of that advice, MPI confirmed its decision not to investigate.
11. After further correspondence, on 20 December 2021, MPI referred Mrs Kuriger's

complaint to the Chief Ombudsman and requested that he undertake an investigation into the matters which form the Terms of Reference for this review.

12. On 28 February 2022, the Chief Ombudsman declined to self-initiate such an investigation and suggested that MPI consider engaging an independent person to review MPI's processes.
13. On 6 July 2022, the Hon Mr Finlayson KC requested that MPI appoint an independent reviewer.
14. On 26 August 2022, I was asked to independently review the investigation by MPI into Oxbow and Tony and the matters raised by Mrs Kuriger in relation to that investigation and prosecution.
15. I have conducted this review with assistance from Erin McGill, Barrister. Where practicable, we have used descriptive titles rather than names to protect the privacy of those not central to this review.

## Terms of Reference

16. The Terms of Reference (TOR) for this review are included at Appendix 1.
17. The purpose of the review is to provide an independent view on the matters raised by Mrs Kuriger, in particular whether the MPI investigation in relation to Oxbow and others was adequate and whether it was affected by improper motivation.<sup>1</sup>
18. The scope of review, in broad terms, is to consider the following matters:<sup>2</sup>
  - a. MPI's investigation in 2017 of Oxbow and others in relation to alleged offending against the AWA;
  - b. MPI's response to Mrs Kuriger's allegations in 2020 of offending by others; and
  - c. MPI's handling of correspondence with Mrs Kuriger and Tony since 2018.

## Review process

19. The documents considered in this review are those provided by MPI, being:
  - a. Summary chronology;
  - b. MPI's investigation file;
  - c. Legal advice from the Palmerston North Crown Solicitor about proposed charges against Tony and others (1 September 2017);
  - d. Agreed Summary of Facts used for sentencing of Oxbow and Tony;
  - e. Notes of Judge Rowe on sentencing (12 June 2020);
  - f. Legal advice from the Wellington Crown Solicitor in review of the recommendation not to investigate Mrs Kuriger's allegations (16 December 2020);
  - g. Letter to the Chief Ombudsman (20 December 2021);
  - h. Reply from the Chief Ombudsman (28 February 2022);
  - i. Letter from Hon Christopher Finlayson KC (6 July 2022);
  - j. MPI's Organisational Policy – Prosecutions and Infringements, published 14 December 2016 (MPI Prosecution Policy);<sup>3</sup>

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1 TOR paragraph 10.

2 TOR paragraph 9. We have referred to these matters in this report as Issue 1, 2 and 3.

3 <https://www.mpi.govt.nz/legal/paying-your-fine/prosecutions-and-infringements/>

- k. The Notes of Evidence from trial;
  - l. Reporting letter from the Palmerston North Crown Solicitor after trial (5 February 2020);
  - m. Letter from the Chairperson, Federated Farmers Sharemilker Section (8 May 2020);
  - n. Complaint from Mrs Kuriger on 15 June 2020 and acknowledgment from MPI;
  - o. Internal MPI memorandum relating to Mrs Kuriger's complaint (23 June 2020);
  - p. Email from the Palmerston North Crown Solicitor to the Napier Crown Solicitor referring Mrs Kuriger's complaint for independent review (23 November 2020);
  - q. Referral letter from MPI to the Wellington Crown Solicitor (30 November 2020);
  - r. An email folder of MPI's correspondence between MPI and the Kurigers from 4 June 2018 to 12 August 2022.
20. On 27 September 2022, we met with Mrs Kuriger, Tony and their lawyer, the Hon Christopher Finlayson KC. At the meeting Mrs Kuriger explained her complaint in detail and Tony was also given an opportunity to explain his grievances.
21. Mrs Kuriger provided us with three Eastlight folders of material<sup>4</sup> and a complete copy of information that she had sent to the Ombudsman on 11 January 2022. We have reviewed all of the material provided by Mrs Kuriger.
22. During the meeting Mrs Kuriger outlined a number of complaints in addition to those formally made to MPI in the June 2020 complaint. Those complaints were also reflected in the folders of material she asked us to consider.
23. Most of these complaints have been considered as part of the three categories outlined in paragraph 18 above and are addressed below. In broad terms, the Kurigers' complaint can be summarised as wanting to be assured that they and others have been treated fairly, justly and without any irrelevant matters influencing the decisions made (specifically the status of Mrs Kuriger as a sitting MP). In addition, there was a strong sense of unfairness in that Tony was singled out for prosecution rather than given assistance and support.
24. Further complaints/allegations that were made by Mrs Kuriger but which fall outside the scope of review and therefore have not been considered by us are:
- a. the farm consultant failed to provide Mrs Kuriger with copies of his notes/reports;

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<sup>4</sup> Mrs Kuriger had previously provided these to MPI and they had been considered by the Wellington Crown Solicitor when they gave their advice on 16 December 2020.



- b. inappropriate internal email correspondence and comments from Fonterra employees. We note that this has been addressed by Fonterra commissioning its own independent review; and
  - c. the alteration of the Fonterra Area Manager's summary of the 8 November 2017 meeting between the farm worker and the Animal Welfare Inspector. There is no evidence that MPI was involved in the alleged alteration of this email.
25. A draft of this report was circulated to MPI and the Kurigers for comment on 19 October.
26. Mr Heron KC met with the Animal Welfare Inspector on 27 October and sought his response to the complaints made by Mrs Kuriger about the conduct of his investigation and his comments on the draft report. The Animal Welfare Inspector sent a summary email setting out his views the same day.
27. We received letters commenting on the draft report from Mr Finlayson KC on 4 and 15 November<sup>5</sup> and from MPI on 1 December. We also sought further documents from the Kurigers that related to their feedback.
28. We have considered the comments from all parties and where appropriate they are reflected in this final report.

## Issue 1: the adequacy of MPI's investigation

### Factual background

29. The ownership/management structure on the farm was as follows:
- a. The farm owners owned the farm.
  - b. On 23 November 2013, the farm owners entered into a five-year sharemilking agreement with Oxbow to commence on 1 June 2014.<sup>6</sup>
  - c. Oxbow was to provide the cattle and operate the farm. The farm owners and Oxbow were to share the profits in a 50:50 proportion.
  - d. At the relevant time (2016/2017), Oxbow had three directors – Tony, Louis Kuriger and Lloyd Harris.

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5 We have considered Mr Finlayson KC's letter of 15 November 2022 which refers to internal MPI emails from May - August 2022. We do not consider the matters in those emails are relevant to the Terms of Reference and therefore we make no further comment on those matters.

6 The parties terminated the agreement on 31 May 2017- two years before the contracted end date.

- e. Oxbow made a supplementary agreement with the Coirebhreacain Trust for Tony to be the variable/lower order sharemilker of the farm. The Coirebhreacain Trust is Tony's family trust of which he is a trustee.
  - f. Under this agreement Oxbow subcontracted the day-to-day running of the farm to Tony, who in turn was to receive 25% of the milk income (or 50% of Oxbow's share).
  - g. Tony was the farm manager in 2016 and 2017.
30. Between October 2016 and April 2017, a serious lameness issue arose in respect of the dairy cows on the farm.<sup>7</sup>
  31. During this period, a number of veterinarians were involved in treating the lame cows. As a result of their attendances, the veterinarians treated 74 cows for lameness; 54 of which were classified as severe or chronically lame.
  32. Of the 54 cows treated for chronic or severe lameness, 22 were so advanced in severity and chronicity that euthanasia was recommended to end the animals' suffering. Tony accepted the veterinary advice as to the euthanasia of these animals.
  33. On 6 January 2017, veterinarians attended the farm to conduct claw amputations on six cows that had severe lameness.
  34. On 12 January 2017, veterinarians conducted a final bandage change on the cattle and the attending veterinarian advised Tony that he needed to remove the bandages in three to four days' time. On at least two occasions Tony was advised to remove the bandages including on 16 February 2017, when a veterinarian attended the property to discuss lameness issues. Whilst viewing the herd, the veterinarian noticed that the cows that had previously received claw amputations, still had their bandages on. The veterinarian advised Tony that the bandages needed to be removed immediately as they should have been removed a week after surgery, approximately a month and half earlier.
  35. On 24 February 2017, the same veterinarian attended the farm. Again she saw that the amputee cows still had their bandages on.
  36. The cows were subject to prolonged pain and suffering as a result of the bandages, which were self-tightening, having not been removed.
  37. One of the cows, tag number 55, had a severe infection and maggot infestation in its foot. The cause of this was determined to be the surgery bandage cutting into the remaining claw after it had been left on too long. This cow was euthanised as a result.

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<sup>7</sup> The facts outlined in paragraphs 30 - 37 of this report have been taken from the Agreed Summary of Facts used for sentencing of Oxbow and Tony.

## Investigation process

38. We have reviewed the MPI investigation file with a view to considering whether the investigation was adequate and whether it was affected by any improper motivation.
39. All MPI investigations and any subsequent prosecutions are governed by the MPI Prosecution Policy.
40. The MPI Prosecution Policy states that it is subject to and should be read in conjunction with the Solicitor-General's Prosecution Guidelines (S-G's Guidelines), as amended or replaced from time to time.<sup>8</sup> It also states that if any inconsistency arises between the MPI Prosecution Policy and the S-G's Guidelines, the S-G's Guidelines prevail.<sup>9</sup>
41. The MPI Prosecution Policy applies to all MPI staff dealing with potential prosecutions, making prosecution decisions and conducting prosecutions.<sup>10</sup>
42. The MPI investigator that commenced and managed the investigation into Oxbow and Tony was an Animal Welfare Inspector. He was therefore required to follow the MPI Prosecution Policy.
43. We have reviewed MPI's investigation file against the MPI Prosecution Policy.
44. At page 4 of the MPI Prosecution Policy is the section headed "Prosecution Decision Making". It states there that a prosecution decision must be made in every case where a breach of any Act, regulation, or other legislative instrument has been investigated and there is an offence provision available. If an investigation has been initiated by a warranted officer outside the Compliance Services directorate, the investigation file must be forwarded to Compliance Services and the prosecution decision made by an authorised manager within the Compliance Services directorate (unless the offence is an infringement offence).
45. The Animal Welfare Inspector was part of MPI's Compliance Services directorate. Once he had completed his investigation, he forwarded the file to an authorised manager in his directorate to make the prosecution decision in accordance with MPI Prosecution Policy. This occurred on 6 June 2017 by way of an internal report addressed from the Animal Welfare Inspector to the Team Manager.
46. At the end of that report, the Animal Welfare Inspector included the following note:

"NB: It is recommended that this file be progressed through the Crown from the legal opinion stage to ensure a completely independent review.

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8 <http://www.crownlaw.govt.nz/assets/Uploads/Prosecution-Guidelines/ProsecutionGuidelines2013.pdf>

9 MPI Prosecution Policy, above n 3, page 1.

10 At page 2.

This should avoid any perception of political pressure/interference due to Barbara Kuriger's (National MP, mother of Tony and wife of Louis) family and shareholder connection. The matter has also attracted considerable interest from a number of quarters making independent advice/oversight advisable."

47. On 9 August 2017, the Team Manager instructed the office of the Palmerston North Crown Solicitor, BVA The Practice (BVA), to advise MPI whether, in accordance with the S-G's Guidelines, there was sufficient evidence and it was in the public interest to prosecute Tony, Oxbow and its directors for alleged breaches of the AWA.

48. The Team Manager stated in her cover letter to BVA:

"The matter is being referred to you in accordance with MPI's prosecution policy and referral criteria, because it involves fairly serious animal welfare offending and particularly given the timing and the fact that the proposed defendant is the son of a sitting MP.

We would appreciate your review of the file and advice on whether charges should be laid, in accordance with the Solicitor-General's Prosecution Guidelines. Potential offending is discussed in the enclosed report of our Officer in Charge of the file [...] with further questions about the potential liability of other parties than Mr Kuriger detailed in the memorandum of today's date in the file."

49. The MPI Prosecution Policy requires all preliminary recommendations concerning a prosecution decision to be independently reviewed by an experienced solicitor. Advice may also be sought from Crown Solicitors with the prior consent of the Manager Prosecutions or the Chief Legal Adviser.<sup>11</sup>

50. The Team Manager's referral to BVA satisfied this requirement. The MPI Prosecution Policy states that the referral is to include copies of (or a full description of) the evidence available, including exonerating evidence, and clearly identify any issues that may go toward weight (including credibility) or admissibility. The file should also include all relevant information as to matters going to the public interest assessment. The Team Manager's referral included a detailed memorandum by the Animal Welfare Inspector covering these matters.

51. The MPI Prosecution Policy states that no prosecution may be commenced unless it meets the two part test set out in the S-G's Guidelines:

- a. Evidential sufficiency: there is available and admissible evidence sufficient to provide a reasonable prospect of conviction; and

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11 At page 4.

- b. Public interest: Prosecution is required in the public interest.<sup>12</sup>
52. It is ultimately the MPI prosecution decision-maker's role to decide whether it is in the public interest to take a prosecution after having received advice on those factors by a prosecutor.<sup>13</sup>
53. It is the responsibility of the prosecutor to determine what charges are appropriate. The relevant Crown Solicitor should be consulted in particularly complex or serious cases likely to result in Crown prosecutions.<sup>14</sup>
54. BVA was consulted on both the decision to prosecute and the charges to be filed. The terms of reference preclude us from including any privileged material. We simply note that it is exceptional for a prosecution to be commenced against Crown Solicitor advice and were that to occur, it would have led us to make more detailed inquiry on this point.
55. We have reviewed the file for any evidence of improper motivation in the investigation and/or prosecution as a result of Mrs Kuriger's position. We have found no evidence that her position influenced any decision-making at any stage. The Animal Welfare Inspector and the Team Manager were aware of Mrs Kuriger's profile during the investigation but there is no suggestion that it impacted their decision-making. As noted above, one of the reasons the file was referred for independent advice from BVA was because of Mrs Kuriger's position.
56. There is no evidence that Mrs Kuriger's position influenced or impacted the advice provided by BVA either.

### Evidential sufficiency

57. The MPI Prosecution Policy states the following in relation to evidential sufficiency (or what is otherwise referred to as "the Evidential Test"):
- It is the responsibility of the Prosecutor reviewing the file to determine whether there is evidential sufficiency for the proposed charges selected or alternatives having regard to the evidence available and the evidential test detailed in the Solicitor-General's Guidelines.<sup>15</sup>
58. The S-G's Guidelines provide that the Evidential Test is whether there is available and admissible evidence sufficient to provide a reasonable prospect of conviction.

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12 At page 5.

13 At page 6.

14 At page 7.

15 At page 6.

They further state that:

A reasonable prospect of conviction exists if, in relation to an identifiable person (whether natural or legal), there is credible evidence which the prosecution can adduce before a court and upon which evidence an impartial jury (or Judge), properly directed in accordance with the law, could reasonably be expected to be satisfied beyond reasonable doubt that the individual who is prosecuted has committed a criminal offence.<sup>16</sup>

59. We have reviewed the evidence for the charges on the MPI file and the conclusions reached in relation to evidential sufficiency by both MPI and BVA. We are satisfied that for each of the charges filed against Oxbow, Louis Kuriger and Tony that there was credible evidence that MPI could have adduced to satisfy a court beyond reasonable doubt that those persons had committed the offences for which they were charged.
60. Tony was liable for the offending as farm manager and therefore as a "person in charge of the animals". Oxbow was liable as the owner of the cows and for the acts/omissions of its agent, Tony. The Oxbow directors were personally liable as they were aware (or should have been aware) of the issues yet failed to take reasonable steps to prevent them. While there appears to be a reasonable basis for also charging Lloyd Harris in his role as an Oxbow director, the evidence against him was more limited and it appears this was recognised by the court later dismissing the charges against him.<sup>17</sup>
61. We also note that Oxbow and Tony ultimately entered guilty pleas to some offending (which included the most serious of the alleged offending) which demonstrates they accepted that at least some of the charges were appropriate and able to be proven against them. They were represented by senior counsel at the time and had her legal advice in respect of their decisions to enter pleas.

### Public interest factors

62. Having been satisfied that the Evidential Test was met, the second consideration for MPI was whether prosecution was in the public interest.
63. The MPI Prosecution Policy provides that all of the public interest factors set out in the SG's Guidelines will be taken into consideration, as applicable in any given case, as well as any other relevant public interest factors. Some further MPI-specific public interest factors that must be taken into account are then listed at page 5.
64. In the Animal Welfare Inspector's memorandum attached to the Team Manager's referral was a summary by him of the factors that he considered were engaged in this case. He

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16 S-G's Guidelines, above n 8, clause 5.3.

17 We have not been provided with a copy of the court's decision.

identified that the following public interest factors in favour of prosecution were engaged:

- a. Severity – there was prolonged pain and suffering caused to the animals. This was so severe that 24 cows needed to be euthanised.
  - b. Scale – the veterinarians had to provide considerable and repeated treatment to 74 cows. 54 of these had suffered chronic and severe lesions resulting from a lack of early diagnosis and treatment by the farmer.
  - c. There were aggravating factors of wilful and reckless conduct.
  - d. Tony failed to comply fully with veterinary instructions when issued and the s 130 notice issued by MPI;<sup>18</sup>
  - e. The Animal Welfare Inspector's view was that there was an ongoing risk to the animals on this farm and a medium/high risk that similar circumstances could unfold again when Tony is in charge of any large dairy operation.
65. In relation to this last factor, we question this assessment when there was no evidence of any previous significant lameness issues on farms managed by Tony. Further, at the time of the offending he was also managing a second farm in Woodville that did not have any of these issues. We note that Judge Rowe declined to make an order at sentencing disqualifying Tony from owning or caring for cows or other animals in the future on the basis that what occurred on this farm was down to "extreme circumstances [that Tony found himself] in at the time". His Honour commented that he doubted such a situation would occur again.<sup>19</sup>
66. When BVA reviewed the file, they noted that the following public interest factors in favour of prosecution were engaged:
- a. Where the offence is likely to be continued or repeated;
  - b. Where the offence is prevalent;
  - c. Where the offender has created a serious risk of harm;
  - d. Where the offender was in a position of authority or trust and the offence is an abuse of that position – both in terms of the trust from, and authority over, the cattle, but also the trust imposed by the other Directors of Oxbow;
  - e. Commerciality – the cows continued to be milked despite their severe injuries and veterinary direction to rest them and dry them off;

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18 A section 130 notice is an instruction given by MPI pursuant to section 130 AWA requiring certain action to be taken in order to prevent or mitigate the suffering of animals.

19 His Honour's sentencing notes at [49].

- f. Scale of offending – the offending concerned 74 cows, with a significant number requiring euthanasia;
  - g. Reputation – preservation of the New Zealand dairy farming industry’s international reputation is relevant; and
  - h. Lack of remorse – one of the veterinarians stated that ordinarily when situations of lameness arise farmers are typically upset and angry with themselves, however, Tony did not appear to display any remorse.
67. They also noted the following public interest factors against prosecution:
- a. The defendants had no previous convictions;
  - b. Where the defendant was at the time of the offence or trial suffering from significant mental or physical ill-health;
  - c. Where the offender is elderly (Lloyd Harris).
68. BVA gave MPI advice on the balancing of the public interest factors.
69. The crux of Mrs Kuriger’s complaint as we understand it is that Tony asked for help from Fonterra’s Early Response Service and instead of being helped, he was prosecuted by MPI. This in the context of previous sharemilkers on the farm having also experienced lameness issues as a result of inadequate races and further issues occurring on the farm currently. Her view is that the only obvious inference to Tony being targeted is that the prosecution was politically motivated.
70. We are satisfied that the identification and balancing of the relevant public interest factors by MPI (after advice from BVA) that resulted in the decision to prosecute was a judgment call that was reasonable. We cannot comment on any other investigations or decisions that may have been made in relation to potential AWA offending on the farm during other time periods (pre or post Oxbow’s contract). It may also have been the case that another prosecutor would weigh up the factors differently in this case and come to a different view on the decision to prosecute or on the charges to be filed. However, as it is a prosecutorial discretion, all we can do is assess whether the decisions made were within the bounds of reason which is the conclusion we have reached.
71. While it is clear that MPI and the Crown solicitors were aware of Mrs Kuriger’s position at the time of the investigation and prosecution (and that has been noted in various emails), there is no evidence in our view that the prosecutors took that into account to Tony or Oxbow’s detriment. In fact, on several occasions it was internally mentioned that the file should be treated in the same way as any other matter. We are conscious that it is unlikely that such considerations would be expressly documented, but in our view, there is nothing



in the overall process which points to Mrs Kuriger's position being a relevant factor in the prosecution decision making.

72. Mr Finlayson KC points to five documents which he says show examples of the Animal Welfare Inspector being motivated by an improper purpose.<sup>20</sup> We have considered each of these documents and, in our view, they do not demonstrate any improper purpose (either individually or collectively).
73. The first example, which was a chat stream from 27 March 2017, was between Fonterra employees and did not therefore originate from MPI. The other examples show that MPI was conscious of Mrs Kuriger's position but do not show any influence or improper motivation as a result of her position. In fact, the second document appears to be an example of MPI ensuring those within the Ministry are aware of Mrs Kuriger's relationship to the file for sensitivity purposes.<sup>21</sup> The third email notes that MPI had instructed the Crown solicitor for legal review due to the seriousness of the offending and timing (close to a General Election, with one of the proposed defendants being the son of a sitting MP).<sup>22</sup> To us, this demonstrates a desire for independence in the prosecutorial decision-making and negates the idea of any improper purpose.
74. The fourth email relates to the profiles that were created of the Kurigers during the investigation process.<sup>23</sup> This is dealt with below in paragraph 82. It does not show any improper motivation. We note that on the same email chain, the comment is made "Obviously approach the matter the same as any other job and your recommendation etc". This suggests MPI was carrying out its investigation in the same manner as any other. Finally, the fifth document was part of an email between MPI employees discussing a change of manager.<sup>24</sup> The comment by the writer that they would have been keen for the former manager to still be there when the Kuriger file was pulled together due to the potential problems/risks raised and particularly if Mrs Kuriger was drawn into it as a defendant were likely comments on the challenges that may be posed by the investigation. They do not, in our view, show any improper motivation to prosecute Tony.
75. In response to Mrs Kuriger's view that the only obvious inference to Tony being targeted is that the prosecution was politically motivated, we note that when MPI first became involved in this matter, there were serious animal welfare issues on the farm. Having determined that Tony and Oxbow were the persons in charge of the animals and that there had been failures to deal with the lameness issues, it is not surprising that a prosecution

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20 Letter from Mr Finlayson KC dated 4 November 2022, paragraph 8.

21 Email between two Deputy Directors-General, dated 8 March 2017.

22 Draft summary by the Team Manager, dated 24 May 2021.

23 MPI internal emails of 7 March 2017.

24 MPI internal emails of 19 April 2017.

resulted. To say that the only reason they were prosecuted was because of Mrs Kuriger's position is to ignore the fact that there had been multiple occasions of wilful ill-treatment with respect to the cows that Tony and Oxbow were responsible for.

### Additional complaints

76. We now address the additional complaints by Mrs Kuriger that relate to the MPI investigation.

*The inappropriateness of informal communications between Fonterra and MPI before 6 March 2017 and the fact that these were not disclosed by MPI as part of the prosecution*

77. This complaint relates to the fact that the Animal Welfare Inspector's witness statement filed in the prosecution states that he was forwarded an animal welfare job in relation to the farm by his manager on 6 March 2017 and that he responded to that by calling Fonterra (the complainant) to establish some perspective and background. The inference here, according to Mrs Kuriger, is that the Animal Welfare Inspector's statement suggests that 6 March 2017 was the first time MPI became aware of the matter when there are emails that show Fonterra advising the Animal Welfare Inspector of this matter in an informal manner on 16 February 2017.
78. The email from Fonterra to the Animal Welfare Inspector of 16 February 2017 states at the end "Before I call any oil? Beers." There is then reference in emails on 23 March 2017 to having some discussions over "a few beers" at the Celtic Inn. Mrs Kuriger also has an issue with the case being dealt with in such an informal manner (over beers at the pub).
79. We can understand the concern here in that the wording of the statement may infer to the reader that 6 March 2017 was the Animal Welfare Inspector's first interaction with Fonterra. However, it was our inference, now confirmed by the Animal Welfare Inspector, that he was intending to refer in his statement to the first formal referral of the file to him.
80. In any event, nothing turns on this in terms of the framing of the charges and the subsequent guilty pleas. The nature of the relationship and discussions between the Animal Welfare Inspector and Fonterra again, while informal, do not appear to have had any impact on the adequacy of the investigation or the charges filed.

*The investigative conduct of the Animal Welfare Inspector*

81. Mrs Kuriger makes several complaints about the Animal Welfare Inspector's investigative conduct.
82. Her first complaint is that the Animal Welfare Inspector had a personal profile created of her as part of the investigation. This has been dealt with by the MPI Director General. He issued an apology for its creation and advised Mrs Kuriger he was taking appropriate steps

to review the matter. We consider this was the appropriate response and that the matter has therefore been dealt with.

83. Her second complaint is that the Animal Welfare Inspector appeared to make light of Tony's health in emails. One example of this is Fonterra forwarding the Animal Welfare Inspector an article written by Tony for Farmers Weekly on 9 September 2016 where he discussed his challenges and the Animal Welfare Inspector responding "...makes for interesting reading doesn't it!!!". There is at least one other similar example.
84. Related to this is her third complaint that the Animal Welfare Inspector made light of Tony with references to "his" vets in emails which infer that Tony thought they were his vets when in fact they were MPI's vets.<sup>25</sup>
85. We acknowledge that the Animal Welfare Inspector could have framed his wording better in these emails as one interpretation is that his words were disrespectful to Tony. However, our view is that comments such as these did not go so far so as to impact on the overall adequacy of the investigation.
86. Mrs Kuriger makes a fourth complaint about the Animal Welfare Inspector engaging in separately paying Oxbow's vets for reports without Oxbow's/Tony's knowledge. We note that in paragraph [5] of Ms Hughes KC's sentencing submissions she stated that MPI were unaware that there were different vet reports and that Tony was not receiving the reports that the vets were sending MPI.
87. We requested comment on this from MPI. They advise that the last report the vets provided to the Animal Welfare Inspector on lameness covered their attendance on 4 May 2017. The vets reported to the Animal Welfare Inspector in parallel with their reporting to Oxbow/Tony. The vets completed their work for Oxbow on lameness on 12 May 2017 and made a further visit for pregnancy testing on 19 May.<sup>26</sup> The Animal Welfare Inspector then asked the vets to work on evidence for the investigation from 18 May – 8 June 2017, after the vet's lameness work for Oxbow had ceased. MPI advise that they paid the vets separately for the reports received from 18 May and they were not double-charged to Oxbow.
88. As this is a desktop review, we have not sought an explanation from the vets but we do note there was cross-examination on this point at trial and the veterinarian who was cross-examined denied that a number of reports were not sent to Oxbow. We have considered whether this might have impacted on the independence of the veterinarian(s) concerned or the quality of the evidence they offered. We consider that is unlikely. It also appears

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25 An example is the email from the Animal Welfare Inspector to the Team Manager dated 26 May 2017: "Might give you an insight into the ongoing saga and frustration "his" vets had in trying to deal with the lameness problem at Kurigers."

26 Email from the veterinarian to the Animal Welfare Inspector, dated 4 July 2017.

from Ms Hughes KC's submissions that it is accepted that MPI did not attempt to conceal information from Tony in this regard.

89. Fifthly, Mrs Kuriger alleges that the Animal Welfare Inspector bullied two witnesses, namely the farm worker and the Woodville farm manager.
90. Mrs Kuriger has provided a (unsigned) statement from the Woodville farm manager, dated 12 October 2017 which states that he was visited by the Animal Welfare Inspector on 13 March 2017 and the Animal Welfare Inspector seemed agitated that there weren't many lame cows on the property as compared to the Eketahuna farm.
91. The Woodville farm manager states that the Animal Welfare Inspector said his job was to make sure Tony paid for the treatment of stock on the [Eketahuna farm]. Among other things, he states that he felt the Animal Welfare Inspector had a very negative attitude and an intention to persecute Tony.
92. Mrs Kuriger has also provided a signed statement from the farm worker dated 18 December 2018. This statement complains about the Animal Welfare Inspector's harassment of him. He states that the Animal Welfare Inspector said "when this case has finished in court, Tony will probably relieve you from your job!". The farm worker states he felt this comment was bullying him into taking the Animal Welfare Inspector's side on the case. He also said he felt pressured to sign his statement and was not given sufficient time to read it or have it looked over by a lawyer or peer. He referred to the Animal Welfare Inspector refusing to talk to him properly about the case previously because the farm worker had a support person present and that he felt that this visit was an attempt to catch him without a support person.
93. Further to this, there is also an email on Mrs Kuriger's file from the Fonterra Area Manager, dated 9 November 2017 where a meeting between the Animal Welfare Inspector and the farm worker is referred to. That email states the Fonterra Area Manager's perspective that the Animal Welfare Inspector was taken back by his presence at the meeting. The allegations here are that the Animal Welfare Inspector refused to allow the farm worker to have the Fonterra Area Manager present at his interview as a support person and that the farm worker was offered the option of being questioned alone or not questioned at all. We note here that the farm worker was first interviewed by the Animal Welfare Inspector on 22 March 2017 so this must have been a second request to interview him.
94. We have sought the Animal Welfare Inspector's response to these allegations and they are denied. This is the first time the Animal Welfare Inspector has heard this complaint.<sup>27</sup> His recollection and notes of the conversations mentioned above differ from that set out by those witnesses.

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27 MPI advises that these allegations have not been raised with the Palmerston North Crown Solicitor previously either.

95. Given there is a factual dispute as to the allegations and our review has been completed on a desktop basis, we cannot find the allegations established.
96. We note that Oxbow and Tony pleaded guilty after the calling of two Crown vet witnesses and prior to the farm worker or Woodville farm manager having the opportunity to give evidence at trial. The defendants could have opted to cross-examine the farm worker if he was to be called as a Crown witness and/or called the farm worker and the Woodville farm manager as defence witnesses. They chose not to do this by entering guilty pleas. Therefore, ultimately this evidence that was allegedly unfairly obtained was not heard by the court, was not taken into account at sentencing, and did not impact the outcome for the defendants.
97. Finally, Mrs Kuriger complains about the Animal Welfare Inspector's approach to interviewing Tony and his refusal to provide information and a written list of questions in writing to Tony's lawyer so that Tony could provide a written response to the questions. The Animal Welfare Inspector's response to this suggestion was that the proposed course seemed unusual, was not amenable to MPI, and would not be amenable to any other prosecuting agency.
98. We can understand the Animal Welfare Inspector's desire to interview Tony in person and without prepared questions and answers so that his spontaneous answers to the questions could be assessed. That is orthodox investigative process. However, assuming Tony was unwilling to attend such an interview in that manner (which he clearly was) then we cannot see any reason why the Animal Welfare Inspector could not have still sought Tony's responses to his questions in writing (noting such a method would lack the benefit of candid responses). He could also have provided his own written statement at any stage. Ultimately, the prosecution proceeded without a statement from Tony and he did not elect to give evidence at trial (instead pleading guilty) as was his right.

*The incorrect reference in the 16 June 2017 internal MPI email about the numbers of lame cows on the property as of "yesterday", the fact that this wasn't dealt with properly and was detrimental to Tony.*

99. On 16 June 2017, an email was sent internally within MPI which included the following:

"It is looking likely we will be heading for multiple charges under the act.

A vet treated 74 animals out of a herd of 500 yesterday, 54 of which had chronic severe lameness and 24 of these needed euthanasia. The vet described this as "very unusual for this amount of severe lameness and suffering".

It is likely there will be charges against Tony Kuriger and also the Directors of the company."

100. The issue Mrs Kuriger has with this email is that it was incorrect that there were lame cows on the farm on 15 June 2017 as all Oxbow's cattle had been removed by then. She complained to MPI about this email once she had seen it and after some backwards and forwards and investigation, on 27 November 2018, MPI's Chief Legal Adviser confirmed in writing to Mrs Kuriger that the reference to "yesterday" in the email was incorrect. He confirmed that the vets attended the herd over 23 December 2016 to 20 April 2017 and treated 74 cows for lameness. He advised that he had not been able to work out why the email referred to "yesterday" but it appears that had resulted from a miscommunication. He apologised for not identifying the error earlier.
101. We are satisfied that the incorrect nature of this email has now been identified and dealt with appropriately with a written acknowledgment and apology. We do not consider that this error has caused any detriment to Tony. The alleged offending in the charges spanned the dates October 2016 – April 2017. The error in this email did not influence the charges. Further, Tony subsequently pleaded guilty to charges that related to 22 dairy cows presenting with chronicity.

*Mrs Kuriger's family members' information was given to the media after she had requested it not be*

102. When we distributed this report in draft to Mrs Kuriger, we advised that we did not have sufficient detail on this complaint to reach any conclusion. We requested further information on this complaint if it was to be pursued. We have not received any information in support of this complaint and therefore treat it as not pursued.

*Additional complaints raised by way of letter dated 4 November 2022*

103. Mr Finlayson KC posed three questions in his letter of 4 November that he requested be asked of the Animal Welfare Inspector, namely:<sup>28</sup>
- a. Why is it that Tony reported the long-term lameness on the farm and requested a visit by MPI to fix the issue?
  - b. Why did the Animal Welfare Inspector ignore the history on the farm?
  - c. Why did the Animal Welfare Inspector fail to find a sustainable solution for the animals on the farm?
104. MPI has responded to these questions and we address them below.
105. MPI advises (and this is consistent with our understanding) that Tony contacted the Fonterra Early Response Service in February 2017 asking for help with farm races and lameness issues. Fonterra then involved MPI. As we understand it, Tony did not request a

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28 Letter dated 4 November 2022, paragraph 9.

visit by MPI to fix the issue. In addition, the farm worker's evidence was that it was he that first contacted the vet, not Tony.

106. It does not appear as though the Animal Welfare Inspector ignored the history of the farm. He spoke to those previously involved with the property (e.g. Fonterra and the farm consultant) and attempted to contact the previous farm worker/manager. The focus of the MPI investigation however was on the actions (or inactions) taken by Tony and Oxbow once the lameness arose. The history of the farm was therefore only peripherally relevant.
107. We are not sure what is meant by the last question regarding why MPI failed to find a sustainable solution for the animals on the farm. MPI was involved in a regulatory capacity. MPI was not in charge of the farm. However, MPI did take steps to mitigate/remedy the situation in that they issued a s 130 AWA notice and received updates from the vets about the animals' progress. It was not MPI's role to find a sustainable solution for the animals on the farm.
108. Mr Finlayson KC also questioned why the problem on the farm continues to this day. We are advised that MPI have made visits to the farm since the Kurigers left it and have found that no compliance action needed to be taken. It is beyond our scope to make an assessment of that issue. The state of the farm at present is outside the Terms of Reference for this review.
109. Another concern that has been raised by the Kurigers is summarised as follows:
- ...the Animal Welfare Inspector went out of his way to "stalk" Tony's address and used surveillance within MPI to follow Tony's wife's social media. All of this was during the period for which Production Orders were sought and Tony's wife was pregnant and unwell. Their baby was then born early and both Tony's wife and their baby were hospitalised for periods. This was a very worrying and stressful time for the family....
110. The stalking allegation is denied by the Animal Welfare Inspector and so we sought supporting evidence of this from Mr Finlayson KC. In response we were provided with the report from the Private Investigator who was engaged by the Crown Solicitor to serve the Production Order dated 19 December 2017. It outlines the steps that were taken to locate Tony to enable service. These steps included visiting two addresses and a Facebook search which identified the recent birth of Tony's baby. Ultimately, the document was served.
111. As a first point we note that the Private Investigator was not engaged by MPI. The file was in the conduct of the Crown Solicitor by this stage and so any allegations relating to the Private Investigator cannot be attributed to the Animal Welfare Inspector or MPI. Secondly, based on the evidence we have received, it is an overstatement to say the Private Investigator was "stalking" the address. It is common for Private Investigators to use a variety of investigatory methods to locate persons. Presumably Tony's wife's

Facebook account also had an open profile which allowed the Private Investigator to view it. There does not appear to be anything sinister in the method employed.

## Conclusion

112. In conclusion, it is our view that the investigation and subsequent prosecution carried out by MPI was adequate, was conducted in accordance with the MPI Prosecution Policy and S-G's Guidelines, and was not motivated by any improper purpose.

113. Further, Mrs Kuriger's complaints are not made out as far as we can determine, nor did they have any impact on the adequacy of the investigation.

## Issue 2: MPI's response to Mrs Kuriger's complaint

114. The second aspect we have been asked to review is MPI's response to Mrs Kuriger's complaint in 2020 of offending by others (the June 2020 complaint). As detailed above, her complaint was as follows:

- a. under s 12(a) AWA against the farm owners for failing to provide infrastructure suitable for farming dairy animals as defined by the Dairy Cattle Code of Welfare, resulting in lameness for the herds of successive sharemilkers for a period of 16 years;
- b. under s 29 AWA against the farm consultant for aiding and abetting the farm owners to refrain from attending to race surfaces causing animals to suffer unnecessary pain and distress over a period of 14 years;
- c. under ss 12 and 28 AWA against the Veterinarian for leaving treatment of 7 dairy cows for a period of 14 days, after a diagnosis of chronic lameness, requiring amputation "due to the time of year" i.e. Christmas and New Year and repeatedly failing to treat animals presented for veterinary care; and
- d. under ss 12 and 29 AWA against the Animal Welfare Inspector for citing and documenting the cause of lameness and failing to exercise his powers as an Animal Welfare Inspector to remedy the cause, resulting in dairy cows continuing to go lame.

115. Having received and reviewed this complaint, MPI determined that no further investigation was required. MPI also sought the independent opinion of the Wellington Crown Solicitor and then confirmed its decision not to investigate.

116. Our view on these complaints is as follows:

- a. The farm owners were the owners of the land. Oxbow was the owner of the cattle. Section 12 AWA sets out offences for those persons who are owners of, or persons in charge of, animals. The farm owners could not be held liable under s 12 as owners as



they did not own or control the cattle. The sharemilking agreement also made it clear that the persons in charge of the cattle was Oxbow, not the farm owners.

- b. The farm consultant cannot be held liable under section 29 of the AWA for aiding and abetting the farm owners in committing an offence under s 12. In order to be liable for aiding and abetting a principal offender, the principal must be capable of being held liable. As we have found that the farm owners cannot be held liable under s 12, the farm consultant cannot be held liable under s 29 for aiding and abetting them.
- c. While it may be possible to allege that a vet who has been tasked with treating an animal is “in charge of it” during that period, we have not seen any evidence to support the allegation that the veterinarian ill-treated the cattle or failed in any way in delaying amputation over the Christmas – New Year period. Her evidence was that she prescribed the cows pain relief and anti-biotics to carry them through this period<sup>29</sup> and there was no evidence from either the veterinarian or a defence vet witness to support the allegation that the choice to treat in this way was a failure on her part. In our view, there is no evidential basis to this allegation.
- d. With respect to the complaint about the Animal Welfare Inspector having committed an offence against the AWA, our view is that he was not a person in charge of an animal. The Animal Welfare Inspector’s involvement with the animals was in his role as an MPI investigator. It would take an exceptional set of facts to charge an investigator for failing to appropriately remedy already lame cows. Further, s 158 of the AWA limits liability for acts or omissions carried out by inspectors in good faith. We have seen no evidence of bad faith on the part of the Animal Welfare Inspector.

117. As a result, we agree with MPI’s conclusion that no further investigation of the June 2020 complaint was required. MPI’s response to that complaint was therefore appropriate.

### Additional complaints

118. Mrs Kuriger complains that there was a lack of independence in the investigations of this matter carried out by senior MPI managers. Our understanding of this allegation is that the investigations were not independent because these managers corresponded with other MPI employees who had previous involvement in this matter.

119. We presume that some correspondence with those previously involved, at the least to get the facts and their position on matters, was required as part of the independent review. It is not clear to us the extent to which it is alleged that these previously involved employees influenced the outcomes of the independent review. We stated in our draft report that we would need more information to make a finding on this. We have not been provided any

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29 Notes of Evidence, pages 106 – 107.

further information to assist us to understand this complaint. MPI has explained the investigation undertaken by the first manager and there is nothing in that to suggest a lack of independence (obviously, it was an internal investigation so could never be truly independent). MPI advise that the second manager was not tasked to undertake an investigation. He met with the Kurigers on several occasions in 2021, noted the matters and initiated the approach to the Ombudsman. We do not identify any concerns with the explanation MPI has provided so consider that this complaint has not been made out.

120. Mrs Kuriger complains that MPI was incorrect to assert that it had no power to direct owners of farms to repair races. She states that MPI's Vet Pack resource shows it can direct owners. She also refers to the case of *MPI v Castlerock Dairies Limited*<sup>80</sup> which she says demonstrates that MPI can and has prosecuted farm owners under the AWA for inadequate races causing lameness.
121. We cannot recall seeing any correspondence whereby MPI advised the Kurigers that it had no power to direct owners to fix races. It may be that this was an oral statement. Whether or not MPI had the power to direct owners however, falls outside the scope of this review. What is clear is that the owners were not liable for AWA offending which was the subject of the MPI investigation.
122. We have reviewed the *Castlerock Dairies* case. In that case, the company appears to have been both the owner of the land and the cattle. Therefore they were liable for omitting to repair the races which ultimately led to the suffering of the animals they owned. The ownership structure in that case was therefore different to the current case and does not support the Kurigers' position that MPI has the power to direct owners to repair races.
123. Mrs Kuriger complains about the informal communications referred upwards within MPI but not recorded in writing because this creates a lack of transparency. In support of this, she provides an internal MPI email dated 12 July 2019 which refers to the upcoming Oxbow trial, states that it will likely attract media attention and then states "Perhaps we discuss how best we might inform up on this rather than in a formal report?".
124. MPI has commented on this email and advise that this comment recognised the potential sensitivity of the prosecution and sought guidance on what sort of reporting was appropriate. The prosecution was in the conduct of the Crown by this stage. MPI was no longer the prosecuting agency. There was therefore no risk of the formality of reporting having any influence on the conduct of the prosecution.
125. We agree with MPI's comments on this and note that as this occurred subsequent to the MPI investigation, it falls outside of the Terms of Reference.

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30 *MPI v Castlerock Dairies Limited & Ors* [2017] NZDC 18237.

## Overall Fairness

126. We acknowledge the Kurigers' complaint around the feeling that the prosecution was an unfair response to Tony seeking help. He was in a difficult position at the time with many challenges. We can understand that a prosecution felt unfair when he considered he was not getting support from those around him who could be expected to assist. We note this is outside the Terms of Reference and does not affect our overall views about the adequacy of the investigation and prosecution but we acknowledge how difficult this period must have been for Tony and the apparent unfairness of some of the problems with the farm races being vested upon him as manager. Ultimately, all these matters were considered by MPI and the Crown Solicitor's office but prosecution was still determined to be in the public interest. We see no error in that approach.
127. When we met, Mrs Kuriger described the situation Tony was in at the time as a "perfect storm". Tony's lawyer, Ms Susan Hughes KC, stated the same in paragraph 43.3 of her sentencing submissions:
- ...the lameness occurred in circumstances of a "perfect storm" – an unknown but extensive history of lameness on the property, with a consistent identification of poor tracks as a cause for such lameness, refusal of owners to address the state of the tracks, exceptionally wet winter, senior staff leaving the farm because of the stresses of lameness thereby leaving the farm undermanned, problem overwhelming remaining staff, vets only being prepared to see 10 cows at a time, actively seeking assistance from vets, ERS [Early Response Service], Fonterra and MPI, following instructions given in writing, failure of marriage, difficulties with access to children,...health problems.
128. Mrs Kuriger also referred at the meeting to other matters such as the fact that instructions given by vets were not relayed to Tony by his workers, the farm consultant not identifying or assisting with the issue enough, and Fonterra having informal meetings at bars with the MPI investigator instead of assisting Tony.
129. While we are unable to make any factual findings about these matters and they are outside the scope of our review, we do acknowledge the difficult situation existing on the farm and with Tony at the time of the investigation.

## Issue 3: MPI's handling of correspondence with Mrs Kuriger and Tony

130. We have reviewed the email folder provided by MPI which contains correspondence between MPI and the Kurigers from 4 June 2018 to 12 August 2022.

131. Our view of that correspondence is that it MPI handled that correspondence appropriately and respectfully.

132. We note that paragraph 11 of the Terms of Reference states as follows:

In the course of considering issues raised by Mrs Kuriger, MPI has identified two emails that were not consistent with MPI's Code of Conduct and addressed them with the staff member who authored them. That matter has therefore been resolved and is out of scope.

133. These emails fall outside the scope of this review so are not matters for us to consider. However, when we met with the Kurigers they noted that they had not been told about these emails or that they were investigated by MPI. The Kurigers requested to be advised of the outcome of the MPI investigation into these emails.

134. MPI's response to this is that they have told Mrs Kuriger all that they can in respect of this investigation (as far as confidentiality allows), and that is as follows:

- a. The emails were included in a response to a Privacy Act request by Tony in February 2022 (which was how MPI noticed the emails);
- b. MPI advised by email of 4 April 2022 that an investigation was underway;
- c. MPI advised orally that some matters had been identified which had been dealt with in accordance with MPI policies;
- d. The particular emails were sent to Mr Finlayson KC on 1 September 2022, in response to a request that was prompted by the Terms of Reference. Some contact details were redacted, but the author, recipients and text of the emails were not redacted.

135. MPI advise that the disciplinary process that is referred to in Mr Finlayson KC's letter of 15 November as never having been disclosed to the Kurigers, is in fact the same disciplinary process as that mentioned above.

# Appendix 1 – Terms of Reference

## Terms of Reference

Review of Investigation into Oxbow Dairies and related matters

### To: Michael Heron QC

1. I request you to undertake a desktop review into some matters that have been raised with me by Barbara Kuriger, regarding an investigation by MPI and prosecution of her family company (Oxbow Dairies Limited), her son Tony Kuriger and others.

### Background

2. From March to September 2017 MPI undertook an investigation into animal welfare issues affecting dairy cows owned by Oxbow, on a farm managed by Tony Kuriger.
3. Following a review of MPI's investigation file by the office of the Palmerston North Crown Solicitor, MPI commenced a prosecution. This became a Crown prosecution when the defendants elected trial by jury (although they later sought a Judge-alone trial instead). Oxbow and Mr Kuriger ultimately pleaded guilty to several charges, and were sentenced in June 2020.
4. In June 2020 Mr Kuriger made a complaint to MPI against several people who were not prosecuted, including owners of the farm. MPI decided not to undertake an investigation of those complaints; and submitted that decision for review by the office of the Wellington Crown Solicitor.
5. Mrs Kuriger and Tony Kuriger have raised a number of issues with MPI since 2018. Central concerns include that Mr Kuriger and Oxbow were not responsible for lameness in their dairy herd; that MPI should have investigated the owner of the farm where the cows were and/or the vets who advised Tony Kuriger; and that the investigation and prosecution were politically motivated.
6. MPI earlier referred this matter to the Chief Ombudsman for investigation. The Chief Ombudsman declined to investigate and suggested that MPI instead consider appointing an independent reviewer.

### Purpose of review

7. MPI seeks to maintain the highest professional standards in its investigations and prosecutions, including both effective enforcement of the legislation that it administers and fairness to people who are affected by its investigations and prosecutions.

8. I wish to obtain an independent view on the matters raised by Mrs Kuriger, especially whether the investigation in relation to Oxbow and others was adequate, and whether it was affected by any improper motivation.

### Scope of review

9. In broad terms, I request you to consider the following matters:
  - MPI's investigation in 2017 of Oxbow Dairies Limited and others in relation to offending against the Animal Welfare Act 1999;
  - MPI's response to Mrs Kuriger's complaint in 2020 of offending by others;
  - MPI's handling of correspondence with Mrs Kuriger and her son Tony since 2018.
10. The focus of the review should nevertheless be on whether the investigation in relation to Oxbow and others was adequate, and whether it was affected by any improper motivation.
11. In the course of considering issues raised by Mrs Kuriger, MPI has identified two emails that were not consistent with MPI's Code of Conduct and addressed them with the staff member who authored them. That matter has therefore been resolved and is out of scope.
12. This is not an employment investigation. You should avoid any conclusions on the ability of any individuals to perform their roles.
13. Information gathered through this review may be subsequently used by MPI to assess the performance of any of its employees. If appropriate, any such assessment or process would occur after this review has been completed. MPI will provide a statement to any MPI employees involved in the review to this effect.

### Process

14. Deputy Solicitor-General Aaron Martin will provide you with an initial set of documents. After you have considered those documents, we will provide such other information as you consider necessary for the review.
15. The initial set of documents is:
  - Summary chronology;
  - MPI's investigation file;
  - Advice from the Palmerston North Crown Solicitor about proposed charges against Tony Kuriger and others (1 September 2017);
  - Agreed summary of facts used for sentencing of Oxbow Dairies and Tony Kuriger;
  - Note of Judge Rowe on sentencing (12 June 2020);

- Review by the Wellington Crown Solicitor of the recommendation not to investigate Mrs Kuriger's allegations (16 December 2020);
  - Letter to the Chief Ombudsman (20 December 2021);
  - Reply from the Chief Ombudsman (28 February 2022);
  - Letter from the Hon Christopher Finlayson QC (6 July 2022).
16. You should also request a meeting with Mrs Kuriger and her counsel, Christopher Finlayson QC, so she can outline her concerns to you directly. If you think it necessary to confirm Mrs Kuriger's concerns with her in writing, through her counsel, please do that.
17. Apart from meeting with Mrs Kuriger and Mr Finlayson, it is intended that this will be a desktop review. MPI staff will however be available to assist you if you consider that would be useful.

## Report

18. You are requested to provide a draft report to Mr Martin for legal review before submitting the final report. A draft report is requested by Friday 30 September 2022.
19. In making your report:
- a. you should assume that the report itself may be made public;
  - b. all legal advice provided is released to you solely for the purpose of undertaking your report, in order to provide me with your advice. However, the legal privilege applying to all the legal advice must be protected and therefore you are to complete your report in a way that does not quote or summarise the legal advice or refer to it in a way that might be inconsistent with the privilege attaching to the legal advice.
19. Should you wish to provide privileged legal advice based on any material provided to you, in relation to any matter covered by your report, this should be dealt with in a separate letter which is subject to legal professional privilege.
20. Mr Martin is available to assist with access to documentation, or otherwise as required.

Dated at Wellington this 26th day of August 2022

Ray Smith  
Director-General

**Ministry of Primary Industries**