# THE OMBUDSMAN VICTORIA QUARTERLY REPORT

30 SEPTEMBER 1981

VICTORIA

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# *Quarterly Report*

of the

# OMBUDSMAN

1 July 1981

to

30 September 1981

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*Ordered by the Legislative Assembly to be printed*

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# REPORT
# OF
# THE OMBUDSMAN

For the Quarter Ending 30 September, 1981

The Honourable the President of the Legislative Council

and

The Honourable the Speaker of the Legislative Assembly

I have the honour to present my Report on the operations of the Office of Ombudsman for the period 1 July, 1981 to 30 September, 1981. This Report includes case notes of those investigations which are thought worthy of special mention and statistical information relevant to the exercise of my functions.

(C.N. Geschke)
OMBUDSMAN

INTRODUCTION

Complaints for the year 1980/81 increased over those for the year 1979/80. In addition, the office now has to review Police Bureau of Internal Investigation files and at the beginning of this period, there were some 3,800 files to be examined.

In an effort to meet this increased commitment within the resources of the current staff, a number of measures have been adopted to reduce the workload. These measures followed a review of the operations of the office.

This Report reflects some of the changes made in that the statistical summary of complaints, showing complaints by Departments or Statutory Authorities, has been dropped and, after this Report, it is not intended to include statistics on personal and telephone enquiries.

In relation to statistics a further change has been made by referring to files raised in the quarter rather than individual complaints received. This approach has been taken, because often one complaint letter may include a number of complaints or during an initial enquiry what appeared to be a single complaint becomes a series of multiple complaints. In the initial registration and investigatory stage it is simpler and more accurate to record files. The additional entry "Complaint letters received" out of jurisdiction or referred to another department refers to those complaints which are dealt with on general files rather than raising an individual file. However, when a file is completed then complaints are recorded by their functional nature and by their finalisation classification.

Initially this new method of compiling statistics could indicate an apparent drop in the number of complaints received but the Complaints Finalisation Classifications, and Functional Classification tables used in the Annual Reports, will indicate the actual number of complaints dealt with and not just files finalised.

Apart from the complaints files raised and complaint letters received it will still be possible to make statistical comparisons with the same quarters in previous years.

Although this Report relates to the quarter ending 30 September, 1981, I have decided to include a report of an investigation which was not completed until March 1982. This full report at Appendix A relates to numerous complaints over a prolonged period of obnoxious odours emanating from a factory in Murrumbeena, and the reaction of the Environment Protection Authority.

## INDEX OF CASE NOTES AND SUMMARIES

Case No. 12065 Page No. 17

This case serves as a warning to persons who may buy unserviced land in under-developed areas. A building permit could be refused until the area was developed with water supply, sewerage and drainage facilities. A land owner and intending house builder could be saddled with paying rates and other charges without benefit for a considerable time.

Case No. 12080 Page No. 25

In some areas of Victoria, particularly "environmentally sensitive" areas, building permits will not be issued, unless certain conditions are met.

The Ministry of Planning has stated its willingness to assist such effected landowners overcoming their problems.

Case No. 11898 Page No. 26

A complaint relating to a Shire "buyback" scheme of blocks of land located in an old subdivision which required restructuring showed that the complainant's case for priority in order of purchase had not been considered. When brought to the attention of the General Manager of the Shire the matter was quickly rectified.

Case No. 10809 Page No. 27

Without warning a person's electricity supply failed. Two hours later she learnt that the power had been disconnected by the Commission. A more thorough enquiry by the State Electricity Commission would have resulted in no disconnection of power to the complainant's property.

Case No. 11096 Page No. 29

Should the Commission be liable for damage caused to residents' properties following an Act of vandalism to Commission property? This investigation showed that there was no evidence of negligence on the part of the Commission, nor had it acted unreasonably in refusing to compensate those residents affected.

Case No. 11727 Page No. 32

An employee transferring from the province of one government superannuation body to that of another was unable to transfer his contributions. Arrangements were made to preserve his benefits.

Case No. 10349 Page No. 33

A recently retired teacher complained concerning her reclassification from "full" to "limited" superannuation benefits and of having to repay arrears of contributions.

Whilst the intentions of the Board were not unreasonable the manner in which the Board sought to fulfill these intentions was considered unreasonable.

Case No. 12408 Page No. 36

Should Government Bodies assist pensioners to become eligible for Social Security "fringe benefits"? The State Superannuation Board claims it is unable to assist because the complainant's statutory entitlement to pension prevented him from receiving the "fringe benefits".

Case No. 12156 Page No. 36

Alleged bias against Australians for positions in the Ministry's Scientific Section. A preliminary enquiry by the Ombudsman revealed that there was no evidence to support the complainant's allegation.

Case No. 10921 Page No. 37

A school Principal's refusal to return certain completed test papers led to a parent's complaint. As a result the school's procedures in such matters were reviewed.

Case No. 11946 Page No. 39

Departments and Authorities can only go so far in advising citizens of their rights. There has to be a limit where citizens must accept responsibility for finding out what action they must take and this case is of that type.

Case No. 12127 Page No. 40

A Shire auctioned some impounded horses unbeknown to the owner who believed that her horses had been wrongly sold. Investigation showed that the horses had been lawfully impounded and all proper steps taken before the animals were eventually sold.

Case No. 10646 Page No. 41

Following a formal enquiry into a complaint by a City of Footscray resident involving parking fines, the Council agreed to re-consider the case.

Case No. 11334 Page No. 43

A shopkeeper upon complaining of what he believed was an incorrect charge made for electricity supplied, was not given sufficient opportunity to pursue his complaint. This complaint was sustained, and the City Council concerned agreed to make an ex-gratia payment to the complainant.

Case No. 11266 Page No. 44

The likelihood of contamination of meat being processed had caused a processing company to complain of the failure of the Health Commission to police the Sand Blasting Regulations. Investigation resulted in a Crown Solicitor's opinion being given that the sand blasting firm should be registered and that the Commission was responsible for the policing of the Regulations.

Case No. 11244 Page No. 46

Public bodies should ensure that staff are given a fair hearing in respect of matters which might lead to their dismissal. In this case the procedure was unreasonable.

Case No. 12027 Page No. 47

The complaint by a prisoner from Jika Jika section of Pentridge Prison of lack of medical treatment was found to be established. As a consequence of this, new medical arrangments concerning the section were introduced.

Case No. 10488 Page No. 48

In circumstances where prisoners are not permitted to pack their own property when moving from one prison to another, complaints of missing property often arise. In this case it was not possible to determine who was responsible for an alleged loss.

Case No. 12543 Page No. 49

The relativity of prisoners' earnings to postal charges is a matter to be borne in mind. Following investigation, the Department decided that the extra cost involved in sending letters by certified mail should be borne by the prison if such requirement was imposed by the prison.

Case No. 12213 Page No. 50

Refusal by an authority to release information which it claimed was confidential. Following an inquiry by the Ombudsman the information was released.

Case No. 12261 Page No. 50

As a result of the Ombudsman's enquiry into the refusal of the Melbourne and Metropolitan Tramways Board to grant travel concessions to students attending an educational institution, the institution was included on the list of "approved schools".

Case No. 10066 Page No. 51

An allegation of harassment followed three drug raids on a private home. Investigation failed to show who had carried out the first raid, that search warrants were not recorded and there was some lack of co-ordination resulting in the two further raids. Drugs were not detected on any of the raids.

APPENDIX A

Case No. 10439 Page No. 54

Report into Uncontrolled Odours From Factory

For several years complaints had been made concerning obnoxious smells believed to be coming from a factory situated in Murrumbeena. Despite these complaints, nothing was allegedly done and finally the complainants wrote to the Ombudsman inferring that the Environment Protection Authority was taking no action to enforce suitable control over the factory.

## WRITTEN COMPLAINTS RECEIVED

## 1st July, 1981 to 30th September, 1981

| | | | |
|---|---|---|---|
| Complaint files raised during the quarter | | | 429** |
| Complaint letters received on matters outside jurisdiction, or which were referred to another authority | | | 163** (588)** |
| Number of complaints dealt with during the quarter | | | 641 (469) |
| **Disposition :-** | | | |
| Lack of jurisdiction | 111 (127) | | |
| Trivial, Stale etc. | - ( 1) | | |
| Referred initially to appropriate authority | 106 ( 41) | | |
| Withdrawn prior to enquiry | 26* | 243 | |
| **Preliminary/Substantial enquiry, prior to formal investigation :-** | ( 94)* | | |
| Discontinued/withdrawn or treated as withdrawn | 24* | | |
| Clarified/rectified or partially rectified | 96 ( 30) | | |
| Not sustained on facts or facts indeterminable | 216 (102) | | |
| Sustained but not remedial | 5 ( - ) | 341 | |
| **Investigated :-** | | | |
| Withdrawn | - ( - ) | | |
| Clarified/rectified or partially rectified | 17 ( 7) | | |
| Not sustained on facts or facts indeterminable | 21 ( 54) | | |
| Sustained | 9 ( 3) | | |
| Sustained and sufficiently recti-fied no recommendation made | 6 ( 4) | | |
| Sustained recommendation made and complied with | 4 ( 6) | | |
| Sustained recommendation made and not yet complied with | - ( - ) | | |
| Sustained recommendation made and not complied with | - ( - ) | | |
| Complaint not sustained but recommendation made | - ( - ) | 57 | 641 (469) |

( ) Figures in brackets relate to quarter ending 30 September, 1980

* The (94) in 1980 is related to the 26 and 24 of 1981 combined.

** The 1980 figure is complaints received. For explanation see introduction

LACK OF JURISDICTION - Particulars

| | |
|---|---|
| Not an administrative action | 5 |
| Respondent not a Government Department of Public Statutory Body | 46 |
| Action taken in consequence of Government Policy or Minister | 7 |
| Respondent not a Victorian Authority | 20 |
| Governor's Office | - |
| Decision made by Court of Law | 4 |
| Decision made by Tribunal presided over by Judge, Magistrate or Barrister | 9 |
| Decision made after obtaining legal advice from Crown | 1 |
| Decision made by Trustee of an Estate | 1 |
| Decision made by Auditor-General | - |
| Decision made by the Council of a municipality or by a councillor of a municipality acting as such | 2 |
| Ombudsman satisfied that the aggrieved person has or had a right of appeal to a tribunal | 2 |
| Ombudsman satisfied that the aggrieved person has or had a remedy by way or proceedings in a court of law | 3 |
| Personnel matters - Ombudsman satisfied that matter does not merit investigation in order to avoid an injustice | 5 |
| Complainant not affected | 5 |
| Trivial | - |
| Frivolous or vexatious or not made in good faith | - |
| Delay in making complaint | 1 |

## JURISDICTION - Particulars

**Withdrawn**

| | |
|---|---|
| Reason being given | 8 |
| Treated as withdrawn | 18 |
| Complaint referred initially to appropriate authority | 106 |
| **After preliminary enquiry finalised as :-** | |
| discontinued | 12 |
| clarified | 13 |
| rectified/resolved fully | 23 |
| rectified/resolved partially | 2 |
| withdrawn | 2 |
| treated as withdrawn | - |
| not sustained on facts | 46 |
| not sustained - facts indeterminable | 2 |
| accepted by authority as sustained but not remediable | 2 |
| **After substantial inquiry finalised as :-** | |
| discontinued | 5 |
| clarified | 16 |
| rectified/resolved fully | 35 |
| rectified/resolved partially | 7 |
| withdrawn | 5 |
| treated as withdrawn | - |
| not sustained on facts | 164 |
| not sustained - facts indeterminable | 4 |
| accepted by authority as sustained but not remediable | 3 |

After investigation finalised as :-

| | |
|---|---|
| withdrawn | - |
| treated as withdrawn | - |
| discontinued after full rectification | 2 |
| discontinued after partial rectification | 13 |
| complaint clarified | 2 |
| complaint not sustained on facts | 21 |
| complaint not sustained - facts indeterminable | - |
| complaint sustained | 9 |
| complaint sustained and sufficiently rectified. No recommendation necessary | 6 |
| complaint sustained and recommendation made and complied with | 4 |
| complaint sustained and recommendation made and not yet complied with | - |
| recommendation made and not complied with | - |
| complaint not sustained but recommendation made | - |

# PERSONAL, TELEPHONE ENQUIRIES

## Personal Enquiries

### Complaints:

| | | | |
|---|---|---|---|
| Statement of complaints taken | 22 | | |
| Advice given | 2 | | |
| Referred to another organization | 32 | 56 (95) | |

### Requests for Assistance:

| | | | |
|---|---|---|---|
| Advice given | 9 | | |
| Referred to another organization | 28 | 37 (16) | 93 (111) |

## Telephone Calls

### Complaints:

| | | | |
|---|---|---|---|
| Advised written complaint may be lodged | 369 | | |
| Advice given | 106 | | |
| Referred to another organization | 317 | 792 (817) | |

### Requests for Assistance:

| | | | |
|---|---|---|---|
| Advice given | 105 | | |
| Referred to another organization | 512 | 617 (356) | 1409 (1173) |

| | | | |
|---|---|---|---|
| Letters not treated as complaints: | | | 0 ( 9) |
| | | Total | 1502 (1275) |

( ) Figures in brackets relate to quarter ending 30 September, 1980

## CASE NOTES

### SHIRE OF MELTON

Case No. 12065

This case serves as a warning to persons who buy land which is not properly serviced. It could mean that no building permit would be issued until the development of the area involved with the provision of reticulated water supply, sewerage and drainage services.

The concerned owner of a residential block of land at Rosedale Estate Chartwell wrote to the Ombudsman stating -

*"My wife and I are owners of a residential block of land at Rosedale Estate Chartwell which is in the Rockbank Riding of the Shire of Melton. We purchased the land ten years ago with the idea of building our own home on that land when next I was posted to the Melbourne area (I am a member of the RAAF). We came back to Melbourne in January of this year eager to build on our land only to find that the Melton Shire Council will not issue building permits and any attempt by us to secure a permit would be opposed by the MMBW. For the past ten years we have paid our rates and it seems we will be expected to carry on paying rates even though we are refused building permits.*

*If the Melton Shire Council cannot be forced to provide facilities and issue buiding permits could they be forced to buy the land from us thus enabling us to build elsewhere."*

In commenting on this complaint Mr. M.B. Watson, Shire Secretary, Shire of Melton stated :-

*"The Rosedale Estate, at Chartwell, was subdivided about 20 years ago and contains 491 lots. It is about 8 miles by road from Melton and Rockbank, the nearest centres of population. The Council of the day apparently did not require the subdivider to construct the streets. There seems to have been an arrangement whereby the subdivider was to provide water supply from underground sources, but the water proved to be unsuitable, both as to quality and quantity. Fourteen houses have been erected on the subdivision, and the owners are dependent on rainwater for their supply. Over the years some gravelling and minor maintenance of the streets has been provided to give the residents access to their properties. Electricity and telephone services are available, but the Estate is otherwise unserviced. Several years ago the Council tried to interest the then residents in a "self help" water supply scheme, but found that the majority were unwilling to participate in a scheme which would improve conditions for themselves and allow*

*others to build there.*

*The Council, as a planning authority in its own right, has granted permits for the erection of houses on various lots in the Estate, but similar applications to the Melbourne and Metropolitan Board of Works, as the regional planning authority have met with refusals. One or two house permits have been obtained on appeal, but other applicants have not persued the matter following refusal.*

*The Council is certainly in sympathy with owners who wish to build on their land, but now feels that the Estate should be treated as an "old and inappropriate" subdivision. A joint study into the future of the Estate has been commenced with the Melbourne and Metropolitan Board of Works, in the hope that various parcels of lots can be consolidated into a very much smaller number of larger "rural residential" allotments. The study is only in its initial stages but, when it is sufficiently advanced, all property owners affected will be consulted to ascertain their views and perhaps suggest a range of alternative futures for the area.*

*To develop the Estate as it stands, to a normal residential standard, would require the expenditure of millions of dollars on the construction of the private streets, drains, sewers, and the provision of water supply. Much of this would be a direct cost to the owners of the properties. It would be many years, if ever, before the development of the Estate had a sufficient priority in the eyes of the State Rivers and Water Supply Commission to qualify for Government assistance in the provision of water supply and sewerage.*

*In his letter, the complainant referred to payment of rates and the possibility of the Council buying his land. The land cannot be exempted from rating, and the Council has no need of the land for any municipal purpose. In the event of a restructuring scheme proceeding, as outlined earlier in this letter, there would presumable be an opportunity of selling the land to whichever authority may have the responsibility for implementing such a scheme or, alternatively of purchasing additional adjoining land to create a larger allotment.*

*I enclose for your information a copy of a recent decision by the Town Planning Appeals Tribunal in connection with an appeal against the refusal of the Board of Works to grant a permit for a house on another lot on the Rosedale Estate. There may be something in the Tribunal's decision to suggest to the complainant some other possible course of action."*

The extremely helpful decision of the Town Planning Appeals Tribunal to which Mr. Watson referred was in the following terms -

"*Heard at Melbourne May 26, 1981*

*An appeal against a determination of the Melbourne and Metropolitan Board of Works as Responsible Authority administering the Melbourne Metropolitan Planning Scheme refusing to grant a planning permit for the erection of a detached house on Lot ... Lodged Plan No .... being land situate in The Mall, Chartwell, Shire of Melton.*

*The grounds of refusal were stated to be :-*

> *'The development of the land without the provisions of reticulated water supply, sewerage and drainage services would be premature and contrary to orderly and proper town planning and the absence of adequate provision for sewerage and drainage would increase pollution and be detrimental to the environment.'*

*The land is situated in a Reserved Living Zone under the provisions of the Melbourne Metropolitan Planning Scheme. The proposed use of the land is specified in Column 4 of Section 8 of the Table to Clause 7 of the Scheme and the permission of the Responsible Authority is therefore required.*

*The Shire of Melton issued Planning Permit No .... in December, 1980 under its Interim Development Order for the erection of a detached house on the subject land subject to the following two conditions :-*

> *'1. All buildings and works shall conform with the requirements of the Uniform Building Regulations.*
>
> *2. All domestic effluent shall be contained within each lot and this shall include the installation of an all-system waste disposal unit to the satisfaction of the Chief Health Surveyor.'*

*The allotments are part of a 491 Lot Estate known as the Rosedale Estate. We were informed that approximately 14 houses have been erected on 18 lots out of the total 464 residential lots contained in the Estate.*

*If fully developed, the estate is capable of containing a population of about 1500 people.*

*The estate is situated about 7 km. south of Rockbank on the Western Highway and about 10 km. north of Werribee on the Princes Highway. The only access to the area is via Boundary Road which is not made and is in poor condition. In fact no roads in the estate have been made. Downing Road, north of the estate is a dry weather road*

*only. Reticulated water supply, sewerage and drainage services are not available to the lots.*

*During the hearing which took place on September 5, 1977, of two previous appeals (Fuller v MMBW (Appeal No. 77/413) and Moulden v MMBW (Appeal No. 77/787B)) concerning similar applications for the erection of detached houses on allotments within this estate, we were told that on July 26, 1977 the Board's Planning Committee resolved that the area had been accepted for ultimate development and that to achieve that it would be necessary to provide water supply and sewerage facilities.*

*This approval, however, appears to have fallen by the wayside because in February 1981 the Board and the Council commenced a joint study into the future of the estate with a view to restructuring it and ultimately issuing permits for detached houses on the restructured lots.*

*We were informed that the possible sources of water for a reticulated town supply have been investigated. The first was by connection to the Board's main at Cowies Hill. Preliminary estimates indicated that such a service would cost in the vicinity of $1,000,000. A second alterative was the provision of a main extending from Rockbank. Cost estimates in respect of this service are likely to be in excess of $500,000.*

*The alternative to a reticulated water supply would be the provision of water storage tanks to each house. Chartwell has the lowest rainfall in the Melbourne region with an average annual rainfall of 400-500 mm. Assuming a roof area of 150 spare metres the maximum amount of water that could be collected in one year is 75,000 litres (16,500 gallons). Not allowing for leakage and evaporation, this would permit 205 litres to be used per day. For a house occupied by 4 persons this represents 51 litres (11 gallons) per person per day. The State Rivers and Water Supply Commission have advised that each person in a household requires 113 litre (25 gallons) per day minimum. In the metropolitan area the average per capita consumption is 160 litres per day (35 gallons). It appears then that a severe shortage of water is indicated if reliance were to be placed on roof fed tank supplies. It would not be possible to maintain gardens and the use of water for laundry purposes would be severely restricted. In addition to the inconvenience caused by continual water rationing and the necessity to have water delivered by truck at high cost in times of drought, the lack of means with which to fight fires is an especially serious concern due to the estate's isolation and restricted access.*

*A heavier use of the roads would exacerbate this poor condition due to the lack of drainage and the heavy impermeable soils which can cause roads to become impassable in this area.*

*In the absence of reticulated sewerage for the disposal of sewerage and household sullage, the usual system used is the septic tank. The heavy soils and poor drainage of this area therefore suggest that the disposal of effluent by soil absorption should desirably be carried out on much larger residential sites.*

*It also appears that other facilities normally associated with a residential development are lacking in this area. No shops exist at Chartwell, the closest being located at Rockbank. The shopping facilities available at Rockbank are very limited, being only a general store, and residents in the area are required to travel to Melton, Werribee or Sunshine to satisfy most of their shopping needs.*

*No school exists at Chartwell so children living in the area are taken by bus to schools at Werribee. Whilst the Education Department has reserved a site within the Rosedale Estate for a school, the maximum development potential of the subdivision is well below that required to support a full primary school.*

*Public open space in the estate has not been developed.*

*The Board therefore submitted that development at Chartwell would not be in accordance with the orderly and proper planning of the area or the western sector of Melbourne generally.*

*It intended that if development were to be permitted at Chartwell, a corresponding pressure and demand for the provision of water, sewerage and drainage services, upgrading of access, provision of educational facilities and other community services to the township would follow. The high capital cost of servicing Chartwell compared with its relatively low development potential under existing policies would be likely to lead to increased pressure for further urban zoning to justify such a large expenditure on them. The Board therefore submitted that it would be preferable to prevent any development which may dissipate resources from the designated growth centres for the time being.*

*This problem has been recognised in a report to the Melton-Sunbury Interim Co-ordinating Committee. ("Melton-Sunbury Peripeheral Towns" by Earl and Partners in association with Loder and Bayly, October 1976.) On page 118 the report states :-*

> *'WE RECOMMEND THAT no public effort be made to improve the services of water or sewerage to Chartwell and that any further building be subject to satisfactory sewerage, drainage and water being provided on the site. It is expected that this will require a degree of site amalgamation and could result in a total population of 300-400 people.*

> *Here is something of a dilemma: if services are provided for the existing population (e.g. a reticulated water supply) then there will be more pressure for further development. With present Government policies such extension to this area would be undesirable and likely to prejudice development in Melton and Sunbury.'*

*It further appeared that some of the residents at Chartwell are concerned about the possibility of further development occurring in the estate under present conditions. The Board received a letter signed by ten residents on November 16, 1977 stating that they considered that 'any further development would create unbearable living conditions for those already living on the estate'. The letter noted the problem of roads being 'impassable for long periods during wet weather', and the general lack of facilities. The residents were particularly concerned about the lack of sewerage and drainage and believe that a health hazard will result if further development occurs.*

*Since 1971 when the Melbourne Metropolitan Interim Development Order (Extension Area No. 1) came into force the Board has refused 18 applications for detached houses in the Rosedale estate. The Tribunal has heard three appeals concerning applications for detached houses on the estate.*

*Appeal No. 74/1412 against the Board's refusal was upheld by the Tribunal which felt that there were special circumstances in the case. The evidence was that there was a possibility of amalgamating the site with an adjoining block. The Tribunal stated :-*

> *'This decision does not constitute a precedent in regard to any other allotments in the Estate which might come forward.'*

*The earlier mentioned appeals of Fuller and Moulden against the Board's failure to determine applications were heard together. Both appeals were adjourned to a date to be fixed. The appellants in both cases contemplated selling the land. The Tribunal noted, inter alia :-*

> *'There is nothing to prevent the Appellants from selling their land to potential residents "subject to the issue of a planning permit" and renewing their appeals before the Tribunal in the presence of and with the attendance of such purchasers. We would then probably be prepared to direct the issue of a planning permit providing we were satisfied that special circumstances existed to the extent that those intending residence knew and accepted the disadvantages thereof.'*

*The reason for taking such a course in these appeals was stated as follows:-*

> *'It is clear from the previous decision of the Tribunal in Dennison v. Melbourne and Metropolitan Board of Works (1975) 2.V.P.A.56 that in isolated situations the issue of a permit can be allowed. We think though that the persons who wish to undergo the hardships and inconvenience of residence in such circumstances should be well aware of the situation under which they propose to live. The appellants here, however, contemplate selling the subject allotments. It was submitted by Mr. Morris who appeared on behalf of Mr. and Mrs. Moulden that our concern about these matters could be overcome by the specification of a condition requiring that prospective purchasers be given notice of these matters and, if necessary, a copy of any decision of the Tribunal in these appeals, before the execution of any contract of sale. Whilst this type of condition has on occasions been adopted with a view to safeguarding the position of unwary purchasers, we do not think that is the answer here. We believe that the proper course for us to take is to reject the submissions of the Appellants at this stage as being premature and to adjourn the hearing of these appeals to a date to be fixed.'*

*The situation is then that there appears to be good reason for the change in course taken by the Board and the restructuring of the estate. It is to be noted however that this proposal is only in its infancy stages.*

*Mr. Atkins of Counsel, who appeared on behalf of the Applicants stressed the fact that when they purchased the land had been held out as a residential site and reasonable enquiries would not have led to any different view being formed by a prospective purchaser at that time and the original sales promotion material which was produced tended to confirm this. He emphasised and relied on the principles expressed in Dennison v. MMBW (Supra) and submitted that his clients should be granted a permit in the circumstances.*

*Mr. Atkins, in reply to the Tribunal's enquiries very properly informed us that his clients intended to sell if a permit were granted. The frankness of such a disclosure must be attributed to his clients and goes some distance in showing that they were reasonable people who are faced with a change of direction so far as the planning of the area is concerned. The unfortunate situation of the residential estate being advertised and sold to unsuspecting members of the public and later being found impractical need not be expanded.*

*The conclusion we have reached is that, bearing in mind planning controls are not intended to be harsh and oppressive in individual operation, this seems to us a case where the approach in Dennison v. MMBW (supra) should be followed.*

*We do, however, believe that the appeal hearing should be adjourned on a similar basis to the adjournments in Fuller and Moulden appeals so that the precise development proposal (if, and when, it eventuates in the form of a prospective purchaser buying 'subject to the grant of a planning permit for the use and development of the land for the purposes of a detached house') can be measured and evaluated so as to ensure that proper precautions and management take place in relation to matters of drainage, waste disposal and the like.*

*It should perhaps be noted by the Applicants that should no prospective purchaser come up in the near future, the restructuring proposals, may with the passage of time, overtake this approval to the extent that they are either introduced in a statutory form as operational planning controls or at least get to the point where they must be heeded as 'seriously entertained planning proposals, in which instance the Applicants will have lost their opportunity to have their application treated as 'an isolated instance'. Otherwise then at the resumed hearing we would probably be prepared to direct the issue of a planning permit providing we were satisfied that circumstances existed to the extent that those intending residence knew and accepted the disadvantages thereof. It should be noted that the appeal could also be brought on for further hearing if the Appellants proposed to build and reside on the allotment themselves. In either instance any permit that we would contemplate directing to be issued would of necessity have to contain conditions, inter alia, requiring the provision by tank or other means of a sufficient supply of water, the provision of adequate means of waste disposal and sewerage treatment and the provision of adequate drainage arrangments.*

*The decision of the Tribunal is then that the appeal is adjourned sine die ( to a date to be fixed) and it is directed that the appeal may be brought on for further hearing by the giving of a written request to the Registrar to such effect."*

The Ombudsman had little alternative but to advise the complainant of the material put before him by Mr. Watson and leave it to him to determine what was the most appropriate course of action for him to take. Previously the use of "stocks" in the City Square for irresponsible and unscrupulous land developers and agents might be useful until other appropriate punishment is prescribed.

PLANNING

Case No. 12080

The unfortunate plight of some landowners and a possible solution. In some areas of Victoria, particularly "environmentally sensitive" areas, building permits will not be issued, unless certain conditions are met.

The Ministry of Planning has stated its willingness to assist such effected landowners overcoming their problems.

During the past twelve months a number of complaints have been received from owners of residential land who have been refused a permit to build and who are as a consequence unable to sell their land at a reasonable price. The following complaint is one of those -

*"About 8 years ago I bought a block of land on the 90 Mile Beach intending it for a small holiday house or perhaps to leave to my son. The rest is history -the blanket stoppage of building permits, the environmental studies and the pile of correspondence with bureaucratic bodies, the interviews with tribunals. The fact that I am one of thousands is little consolation. However, there has been a resolution of a sort. My block which is situated in the Surfside Beach Estate which has been designated as a low density area in order to prevent Lake Reeves from becoming a smelly swamp. Building permits will be issued on the basis of one dwelling on 4 blocks. We are expected to acquire three adjoining blocks in order to qualify for a permit. I have approached the owners of these blocks and made offers but without success. Help with sales or purchasers, surveying of blocks conveyancing of titles etc. was promised by the Department, but nothing has happened so far. I feel that I am trying to attack an elephant with a pin. Time seems of no consequence. I have pointed out on several occaions that I am not a young man. Before I joined the P.M.G. in 1950 I was in the R.A.F. My son is a returned serviceman having been called up for the Vietnam War - if that means anything these days. In short, I have to accept a situation to which I see no end. Why can't the Government buy the land from us and be done with it? If I die my widow will not be able to keep up the rates and the land will be forfeited. I might add that I approached your predecessor Sir John Dillon, some years ago, but the matter was under investigation then, I quite understood. I only wish there is some way out now. To put it bluntly, I wish to resolve this matter before my demise."*

In commenting and offering a solution to this complaint Mr. N.G. Haynes, Secretary for Planning wrote to the Ombudsman in the following terms -

*"Unfortunately the Government does not wish to purchase the land and a solution to the complainant's problem will not be along these lines.*

*I understand, from the letter enclosed by you, that the situation has been fully explained to him and he understands the current conditions to be met prior to the issue of any permits. I also note that, from a recent search of the Office of Titles, the land would appear to have been purchased in 1974, after the introduction of the Gippsland Lakes Planning Scheme Interim Development Order in August 1973. A permit may not have been available when the sale was effected.*

*However if the complainant contacts this Department I will try to gain the co-operation of all owners in the grouping and will offer the normal assistance package to these owners so they may buy, sell or build as they decide.*

*Perhaps the complainant could be directed to the section of my Department responsible for assistance to such owners as himself, telephone 6029267."*

The complainant later wrote to the Ombudsman expressing his appreciation of the information provided by Mr. Haynes to resolve his complaint and, as it appeared that he would now receive assistance from the Department of Planning with his problem, the Ombudsman determined to take no further action in the matter.

SHIRE OF SHERBROOKE

Case No. 11898

Some of the most disturbing complaints received by the Ombudsman relate to conservation, zoning and restructuring of subdivisons. This complaint was similar to the previous complaints.

The complaint concerning restructuring arose from a situation where two owners could not agree to consolidate their blocks and as a result Council was forced to proceed with acquisition. In such cases acquisitions are often made in order of priority on a needs basis because of the limit on funds available to Councils and in many instances Councils are reliant upon sales of consolidated blocks to finance the purchase of others.

The complainant said however, that he had been told by the Shire's Planning Officer on more than one occasion that his block was to be included on the next list of five blocks to be purchased. He was later told he said, that rather than being included in a group of five, a group of two blocks was to be recommended to the Council for purchase,

one of which was his. He said that over the next few years he had continually contacted or tried to contact the Planning Officer and was finally told by him that he was no longer on the "short list" and that compensation for his block might be twelve months away.

The Planning Officer for his part said that he recognised that he was extremely difficult to contact but he said that in the past eighteen months he and the complainant had discussed the matter on a number of occasions. He believed he said that the frequency of communication between himself and the complainant was more than satisfactory to keep the complainant aware of progress and to keep himself aware of the complainant's wish to reach a conclusion to the matter. In relation to the advice that the complainant would not be put on the short list for twelve months the Planning Officer said that this was his estimate of the time it would take and that he had by giving that advice tried to ensure that the complainant was not misled.

The General Manager of the Shire in his letter to the Ombudsman pointed out that the complainant had said "no one has ever enquired into my needs". This statement had been made because he (the complainant) had been told that hardship was one of the factors which determined priority as far as the Council was concerned. The General Manager stated that if the complainant cared to make an appointment he would be happy to submit the case to Council for determination, but he stressed that the case would be considered along with others.

In the circumstances the Ombudsman advised the complainant that this offer seemed to remedy his major cause of concern and told him that he could see no point therefore in further investigation. However, he wrote to the General Manager and emphasised the necessity for planning staff not to make statements which could be construed in such a way as to mislead. He suggested that the complainant's case should be used as a example for the Planning Office.

The General Manager subsequently sent the Ombudsman a copy of a memorandum to planning staff which indicated that his suggestion had been carried out.

## STATE ELECTRICITY COMMISSION

Case No. 10809

> It is not uncommon for the Ombudsman to receive complaints from persons complaining that public utility services have been disconnected even though they have forwarded payment for the accounts in question.

One such complaint came from a woman who stated that she was a pensioner and had asked if she could pay her S.E.C. security deposit in two fortnightly instalments. She said that with the letter in which she made the request

she sent a cheque for $30, leaving a balance of $40 to pay.

Approximately two weeks later she said, she received a response from the S.E.C. accepting her offer and indicating that it had extended the time period of a fortnight by a further week. She said that on the day on which the original fortnight expired she sent the cheque for the balance of her deposit. However, six days later without warning her electricity "failed". Two hours later, she said, she found that her power had been disconnected by the Commission.

On telephoning the Commission she was told that as her cheque for $40 had not been received the power was disconnected. She said she explained that she had sent the letter and cheque a week previously and quoted the cheque number and she said she also explained that the Commission had accepted her offer. In spite of this she said that she was told by the officer to whom she spoke that he was sorry but that there was nothing he could do because the Commission had not received the payment. At her request she said she first spoke to a Manager and later a Supervisor and explained the sequence of events, emphasising that she had sent her cheque. Again she was told that it had not been received and was also told that power would not be restored until she had paid the $40 owing plus $6 re-connection fee.

The complainant said that in the circumstances she had to borrow money for her fares to the City and the reconnection fee, go to her bank for a second cheque to pay the account.

The Ombudsman found that the cheque had evidently been held up in the post but had arrived on 29 September. It was not until 30 September that the power was disconnected. The advice of officers that payment had not been received was therefore incorrect. The reason subsequently given for such advice being in error was that at the time the complainant rang the incoming mail had not been processed through the computer, although the letter with the cheque had certainly been received.

The Ombudsman advised the Chairman of the State Electricity Commission that he felt that in the circumstances the action of the Commission was unreasonable in that, as the complainant had informed it that she was a pensioner and had to wait another fortnight for her cheque, the Commission could not have expected the balance of the security deposit to be paid any earlier than when pension cheques would be received. But in fact the disconnection had been carried out sixteen days after receipt of the initial payment and without a reasonable check.

The Ombudsman said that had no attempt been made to pay the deposit he could accept that the action was reasonable but could not do so in the circumstances as they existed. He went on to say that had enquiry been made it would have been an easy matter to confirm that payment had been sent and so avoid the disconnection of power. Having expressed that opinion the Ombudsman did not make any recommendation because the Commission had credited the reconnection fee and he believed that the Commission's system in general was satisfactory, but that the problem in this case was failure to exercise common sense rather than any organizational fault.

Case No. 11096

Should the Commission be liable for damage caused to residents' properties following an act of vandalism to Commission property. This investigation showed that there was no evidence of negligence on the part of the Commission, nor had it acted unreasonably in refusing to compensate those residents affected.

At the direction of Council for the City of Broadmeadows Mr. B.D. McGregor, Town Clerk, City of Broadmeadows wrote in the following terms -

*"The Council has been acting on behalf of the residents of Housing Commission Flats at Westmeadows Heights, in an endeavour to obtain compensation for damage caused to electricial appliances and installations resulting from an act of vandalism as a result of high voltage injections into the low voltage system.*

*The State Electricity Commission has indicated in a letter dated 26 September 1980 that it is unable to assist with compensation in respect to damage caused as a result of vandalism. However, the Council considers that as the lines in this location are so close to ground level from abutting land the Commission should accept responsibility.*

*Following futher representations, the Commission has not indicated in a letter dated 22nd October 1980, a copy of which is enclosed, in response to Council's request as to whether it has Public Liability Insurance, and has failed to answer the question put to it.*

*The Council has requested your Office to investigate this matter on behalf of the residents of the Housing Commission Estate at Westmeadows Heights."*

The documentation accompanying Mr. McGregor's letter indicated that on 16 April, 1980 and the 25th June, 1980 a power surge resulted from youths throwing wires over the S.E.C. power lines in front of two Housing Commission units. This caused severe damage to a number of items, of equipment owned by the residents. Television sets fused and one caught fire, freezers, refrigerators, clock radios, radiograms, washing machines and other electrical appliances were rendered unuseable.

A petition circulated and forwarded to the State Electricity Commission requesting the undergrounding of the Commission's electricity wires to remove the possibility of a repetition of the problem met with the refusal by the Commission which considered the relevant cost to be unacceptable.

The State Electricity Commission's reply dated 26 September, 1980 referred to by Mr. McGregor in this complaint was in the following terms -

*"I refer to your letter of 19 August, 1980 on behalf of residents of the flats at Westmeadows Heights, concerning damage caused to electrical appliances as a result of high voltage injections into the low voltage system.*

*I advise that on two occasions recently high voltage injections occurred. The first at approximately 8.30 pm on Wednesday 16 April 1980 when two pieces of wire were thrown over the lines, resulting in damage to 13 customers' appliances and/or electrical installations. On Wednesday 25 June 1980 a similar occurrence resulted in damage to 15 customers' appliances and/or electrical installations.*

*The Commission's investigations have revealed that on each occasion the wire was thrown from the grounds of the high school which is considerably higher than street level (approximately 1.5 metres). The wire used was found and is similar to that used in building construction work which was being carried out at the school and, on each occasion, the Commission personnel searched the area and removed a number of lengths of wire.*

*Those residents affected on the first occasion were not affected on the second occasion; however, there appears little likelihood that the offenders will be traced.*

*With regard to the suggestion that the overhead lines be relocated underground, it is advised that this would involve a considerable cost which the Commission could not consider unless the residents were prepared to meet this cost. The Commission's distribution system comprises mainly overhead reticulation and its tariffs are based on this form of construction. The Commission's policy is to require those enjoying the benefits of underground reticulation to*

*meet the additional costs involved as it is not considered equitable for electricity customers generally (who receive no such benefits) to subsidise underground residential distribution.*

*The Commission cannot be held liable for damage to customers' installations resulting from acts of vandalism and, as stated above, the Commission does not regard the undergrounding of the supply lines in Westmeadows Heights as a practical proposition.*

*However, if the residents are prepared to meet the costs involved Mr. K. Culley, Manager, Metropolitan Electricity Supply Region, 238 Flinders Street, Melbourne, will be pleased to assist."*

Upon receipt of that letter Mr. McGregor again wrote to the S.E.C. at the direction of Council enquiring whether the Commission's Public Liability Insurance covered the damage to people's property as a consequence of high voltage injection into the low voltage system.

That enquiry of the Commission was met with a short reply reiterating that the Commission could not in all the circumstances be held liable for damages to customers installations resulting from acts of vandalism and other circumstances outside the Commission's control.

The material put before the Ombudsman by Mr. McGregor did call for enquiry and he sought the comment of Mr. J.C. Trethowan, Chairman of the State Electricity Commission upon this matter which he provided and is set out below -

*"As detailed in the Commission's letter of 26 September 1980 to Mr McGregor (a copy of which Mr. McGregor sent to you) high voltage injections occurred twice and on each occasion the Commission's investigations revealed that the cause was wire thrown onto the line, presumably from the grounds of the high school.*

*Mr. McGregor claims that because the Commission's lines are so close to ground level from abutting land, the Commission should accept responsibility. In this regard it should be understood that the high school grounds are on the other side of the road from the Commission's lines and that the distance from the high school grounds to the actual conductors of the line is greater than the distance to the conductors from the ground directly beneath the line. The enclosed three photographs may assist in illustrating this point.*

*The lines have been constructed according to the Commission's normal engineering standards and the clearances conform to statutory requirements.*

*Mr McGregor also complained that the Commission refused to reveal whether or not it has public liability insurance and, if so, whether it covers damage caused in situations such as the one under investigation. As you would be aware, public liability insurance, as with most types of insurance is a private arrangement by which a person or organisation protects itself from the financial burden of compensation payments in cases where it is legally liable; the question of liability is determined independently of whether or not the organisation or person concerned is covered by insurance. The issue of whether or not the Commission has public liability insurance is, therefore, irrelevant and the case in question does not necessitate the divulgence of this information, which the Commission considers confidential.*

*In summary, the Commission considered that in this situation it has not acted negligently and that the damage to the customers' installations resulted from factors outside its control - namely acts of vandalism. It, therefore, could not accept liability for the payment of compensation in this case. Needless to say, the Commission does meet claims by customers for damage caused by high voltage injections where it is established that the injection resulted from the Commission's negligence."*

It was clear from the material put before the Ombudsman by Mr. McIntyre that it could not be established that there was any fault on the part of the Commission in carrying out its statutory duties pursuant to the legislation under which it operated.

As there was no evidence of negligence on the part of the Commission the Ombudsman could not see that it had acted unreasonably in refusing to compensate those residents who had their electrical goods damaged by the high voltage injection into the low voltage system supplying their homes. With regard to Mr. McGregor's query as to whether the Commission had public liability insurance, Mr. McIntyre had, quite properly pointed out that it is a matter confidential to the Commission and one that was not relevant to the complaint, if the Commission was not at law liable for damages.

## STATE SUPERANNUATION BOARD
## STATE EMPLOYEES RETIREMENT BENEFITS BOARD

Case No. 11727

Non-transferability between government superannuation funds.

Superannuation is a benefit which often causes concern amongst public servants. In this case a complainant had been employed for seven years at R.M.I.T. and was a contributor to the State Superannuation Fund. He accepted a position at Box Hill Technical College and his position made

him eligible to contribute to the State Employees Retirement Benefits Fund. He complained that his contributions were not transferable and that he would have to accept a refund without interest from the State Superannuation Fund and that he would not be eligible for a full pension from the Retirement Benefits Fund because had did not have the necessary thirty years prospective service.

The Ombudsman was advised that there was no statutory provision for the automatic transfer of membership from the State Superannuation Fund to the State Employees Retirement Benefits Fund. The Ombudsman was also advised that the complainant would become eligible to contribute to the Retirement Benefits Fund on becoming a "permanent employee".

The Superannuation Benefits Act 1977 provides for deferred benefits in situations similar to that involving the complainant provided that the complainant was now employed by a "public authority". However, school councils had not, at that time, been designated as "public authorities".

During the course of the Ombudsman's enquiries school councils were prescribed as "public authorities" and the complainant became a permanent officer of Box Hill Technical College. This meant that his benefits with the State Superannuation Board were preserved and that he became a contributor to the State Employees Retirement Benefits Fund.

The Chairman of the State Employees Retirement Benefits Board, Mr. G.M. Fry, commented that he and the Chairman of the State Superannuation Board, Mr. V.H. Arnold, shared the opinion that transfer between the two funds should be provided for as soon as possible "culminating probably in an amalgamation of the two schemes". Whilst the Ombudsman appreciates that there may be difficulties in combining all State Government superannuation schemes he believes that this is the desirable objective as it should provide the fairest and best method of superannuation benefits for Government employees.

## STATE SUPERANNUATION BOARD

Case No. 10349

> A recently retired teacher complained concerning the reclassification from "full" to "limited" superannuation benefits and of having to repay arrears of contributions.
>
> Whilst the intentions of the Board were not unreasonable the manner in which the Board sought to fulfill its intentions was unreasonable.

A teacher who had retired on the grounds of ill health and in the belief that she was eligible for full superannuation benefits was informed by the State Superannuation Board that she would be eligible for limited

benefits only and her pension would be two-thirds of a "full-benefit" pension.

The complainant also said she had been informed that due to a mistake made by the Board, contributions made by her amounted to $2996 less than should have been paid. The Board she said had required her to pay that amount prior to any pension being paid to her.

The Superannuation Board alleged that the teacher when medically examined for admission to the Superannuation Fund had not fully disclosed her medical history.

The complaints were summarised as being -

1. Her allegedly unreasonable re-classification from the status of full-benefit contributor to that of limited-benefit contributor.

2. The allegedly unreasonable requirement that she pay the Board the sum of $2996.

The Superannuation Act provides that where the Board is satisfied that an officer has failed to fully and honestly disclose information requested it may reclassify the contributor concerned; but the contributor may appeal to a Judge of the County Court.

When advising the Chairman of the Board, Mr. V.A. Arnold, of the complaints the Ombudsman asked to be told whether the Board had given the complainant any opportunity to be heard prior to the Board reclassifying her status; he also asked whether, if the Board had not done so, it was then prepared to do so.

Mr. Arnold replied that the Board had reclassified the contributor without giving her an opportunity to be heard. He said she had now been contacted and that the Board had offered to consider any evidence she may wish to put before it.

In relation to the underpayment of contributions Mr. Arnold confirmed that the sum of $2996.60 had been outstanding and that the Board had deducted that amount from her pension prior to any payment being made to her.

The Superannuation Act at Section 71(3) provides -

> *"(3) ....the Board may deduct from any moneys payable out of the Fund to any person in respect of any pension or benefit under the Act any moneys which are due to the Fund in respect of such pension or benefit or which are owing to the Board by that pension."*

In the course of the investigations the Chairman said -

(i) the Board had always adopted a firm policy that contributions must be paid in full prior to benefits being paid;

(ii) no enquiry as to the possibility of hardship had been raised or considered by the Board;

(iii) even if the contributor had claimed hardship the Board was likely to have insisted upon full payment before any pension payment commenced;

(iv) in the event of an early death of the pensioner the Board had no guarantee that her estate would be substantal enough to repay the amount owed; and

(v) any deviation from the Board's present policy would immediately result in an uncontrollable situation in the case of optional units.

It seemed that responsibility for the fact of contributions being in arrears rested solely with the Board itself; yet the Board, without any enquiry whatsoever as to possible hardship, had relied upon a "firm policy" in determining that payment of a pension should be deferred until monies owing had been recouped.

In the course of this investigation it became evident that there was in fact no risk involved to the Board if repayment of the amount owed had been allowed by instalments. The Ombudsman advised the Board that he considered -

(1) That the Board had rectified the first arm of the ex-teacher's complaint -the allegedly unreasonable reclassification of her status - by providing her with an opportunity to present her evidence in that matter.

(2) The Board's requirements that a sum of $2996.60 be paid by the contributor to pick up the short-fall in her contributions was justified but the Board had acted most unreasonably, if only in terms of normal human compassion, in -

  (i) failing to pay the pension until short-fall had been paid in full.

  (ii) not giving consideration as to how this short-fall could be repaid over a period.

Case No. 12408

When can income be too much?

Social Security Pension "fringe benefits" are often very attractive to retired people.

In this case a retired public servant complained that the State Superannuation Board refused to reduce his pension by $9.40 per week which would enable him to receive the "fringe benefits".

The Chairman of the State Superannuation Board advised that the Board had agreed to the complainant's request to withhold any pension increases. However, the Board was not able to pay him less than his pension entitlement as at his date of retirement. As it was this entitlement which rendered the complainant ineligible for "fringe benefits", there was nothing that the Superannuation Board could do for him. In these circumstances the Ombudsman could not criticise the Board for its actions.

In considering this matter the Ombudsman did not canvass the morality of the Board withholding payments in order to render pensioners eligible for additional Social Security benefits. However, the Ombudsman is aware that this case is not an isolated one and that a number of persons have found that an increase in superannuation has been more than offset by a greater loss in pensioner benefits.

CONSERVATION

Case No. 12156

Alleged bias against Australians for positions in the Ministry's Scientific Section. A preliminary enquiry by the Ombudsman revealed that there was no evidence to support the complainant's allegation.

Section 32(1) of the Public Service Act, 1974, provides -

*"Notwithstanding anything in this Act where the Board is satisfied that there is no available officer in the public service who is as capable of filling a vacant office as a person who is not an officer, the Board may appoint a person who is not an officer to that vacant office."*

Should the Board appoint a person who is not an officer to a vacant office, neither officers of the public service or persons who are not officers, have the right of appeal.

An unsuccessful applicant, for one of eleven highly sought-after advertised positions for marine scientists with the Ministry of Conservation, complained to the Ombudsman of alleged bias by the Ministry against Australians in the selection of scientists to fill those positions which were advertised throughout Australia and world wide.

From 512 applicantions received, a "short list" of 62 was drawn up by the Ministry. Interviews were held with 52 of those applicants on the short list - over half of them within Australia and the remainder overseas but including Australians.

Of the 11 advertised positions 5 were filled by Australians, 1 from Papua New Guinea, 2 from the United States of America, 1 from New Zealand, 1 from within the Branch and one remained vacant.

Two Australians offered positions declined them - one wishing to remain in New South Wales (Queenscliffe being too remote) while the other one earned in excess of the maximum salary available.

Although several overseas applicants were appointed to fill positions, this was because no suitable Australian applicant was available.

The Ombudsman was satisfied from the material before him that there were no grounds whatsoever for the complainant's allegation that there was a bias against the appointment of Australian scientists in preference to overseas scientists.

## EDUCATION

Case No. 10921

> A school Principal's refusal to return certain completed test papers led to a parent's complaint. As a result the school's procedures in such matters were reviewed.

A parent complained that despite repeated requests, the Principal of a Technical School had refused to permit a student to have and keep the chemistry test papers submitted by him during the year. The parent said that it was his understanding that the papers in question were to be destroyed by the school.

The Director-General of Education, Dr. L.W. Shears, in commenting upon the complaint said that the Principal of the school had advised him -

"1. *The procedures of keeping exam papers and tests is the usual practice e.g. University exams, H.S.C. papers, Leaving Technical exams etc.*

2. *At the school, papers are returned to students for their perusal and checking and so that they can see where they made mistakes. This immediate, on-the-spot communication is carried out so that students get maximum value from their testing.*

3. *The school needs to keep, during any one year, a cumulative record of all of a students test materials as an aid to counselling students and parents on choice of subjects and promotion for the following year.*

4. *By the end of the year there would be very few students who would have any interest at all in receiving all of their test papers in all of their subjects. It is doubtful, too, whether there is any real educational or communication value in such a process.*

5. *If papers were distributed wholeseale to everyone, most of them would never get home but would be scattered around the school and environs.*

6. *Selective distribution of papers only to those students who want them would be administratively cumbersome and would not have an educational benefit to warrant the time and effort involved."*

Dr. Shears added that both he and the then Acting Director of Technical Education accepted the remarks of the Principal and agreed that -

"(i) *the school needs to keep these papers during the year;*

(ii) *the educational benefit to students in receiving the papers back at the end of the year would be minimal; and*

(iii) *the current procedures offer maximum educational value for students."*

The Ombudsman wrote to the parent to say that it seemed the actions taken by the school were motivated by a need to facilitate administration and that, as there was no demonstrable disability upon students, those actions should not be criticized. But he replied to say that, in fact, test papers in other subjects, physics, maths, social science and graphics, had been progressively returned to his son during the year.

In view of this the Ombudsman again wrote to Dr. Shears to say that, if what the parent claimed was true, then not only did the return of papers to students appear as a matter left to individual teachers, but the reasons already advanced for retention of the chemistry papers were just not valid.

On 23 February Dr. Shears replied saying simply that the test papers still held by the school would now be returned to the student.

The Ombudsman did not consider that action sufficient to resolve a complaint which concerned, basically, the reasonableness of a refusal by the School Principal of two requests by a parent for the return of the papers and he asked Dr. Shears to comment upon the existing policies or practices within schools.

Dr. Shears replied saying he had been assured that there was no reason for instruction that schools generally, or this particular school, should change existing practices.

Upon being advised that the Ombudsman did not consider any firm policy existed in the matter and that the reasons tendered by the School Principal in support of his action were not tenable Dr. Shears wrote to say that a revision of the school's procedures had been conducted and he believed they were now adequate.

The Parent had twice requested the school to return his son's test papers and the reason given for refusing those requests were -

1. It was not normal practice; and
2. It was not seen as serving any useful purpose.

As a result of his enquiries the Ombudsman considered that despite action taken to rectify the matter the reasons given for refusing the parent's request were not valid and that the Principal had acted unreasonably.

Case No. 11946

Non-payment of conveyance allowance.

Conveyance allowances are payable by the Education Department in certain circumstances where children have to travel significant distances to school.

In this particular case the complainants had for some years received a conveyance allowance for their child's travel to the primary classes of a private school. This payment continued each year without further application. However, no payment was received for first term 1980 and on enquiring the complainant was advised that as his son was now a secondary student at the same school, a new claim was required. He submitted such a claim and payment commenced from second term 1980, but the Department refused to back date the claim to cover first term.

The Director-General of Education advised that primary conveyance allowances continue until, inter-alia, the student enters the secondary grades, in which case an application for a secondary allowance must be made. Allowances are payable from a date not earlier than the first school day of the term during which application is made. He added that these conditions were printed on the application form for the primary allowances completed by the complainants. The Director-General also pointed out that the conditions governing conveyance allowances have been published in the Education Gazette for many years and the Department felt that it was appropriate for schools to aquaint parents with the provisions. He said that the policy that allowances are not back dated further than commencement of the term during which application is made has been re-affirmed by Ministers on several occasions.

The Ombudsman considered that, as the Department advertises the conditions each year, the Department's attitude that the notification to parents concerning the conditions was the responsibility of schools, was a reasonable approach. It was clear that the Department's policies concerning allowances has the approval of the Minister and as the Ombudsman has no jurisdiction to investigate the actions of Ministers, he was unable to criticise such policies.

## SHIRE OF UPPER YARRA

Case No. 12127

> The loss of a child's horse is a matter of great concern to a family and the Ombudsman received a letter of complaint from a woman in which she complained that her three horses, one of which was her child's pony, had been taken from their paddock and wrongly sold at a Shire Pound. She further complained that she suspected that, as the local policeman's wife had purchased one of the horses, the policeman was involved with the ranger in the wrongful impounding and sale.

Accompanying the letter of complaint were copies of letters from the Australian Legal Aid Office to the Shire Secretary querying whether Section 20 of the Pounds Act had been complied with and to the complainant advising that the Shire Secretary had informed it that one of the complainants horses, a stallion, had injured a mare on a neighbouring property to such a degree that the mare had to be destroyed.

Investigation of the complaint revealed that local police had been informed by a mushroomer that a mare had been injured in a paddock and required veterinary attention. Police therefore contacted the ranger who when he inspected the mare had to destroy her. At that time he said the complainant's stallion was in the paddock chasing the mares. Her other two horses were, he said, also in the neighbour's paddock.

After contacting the owner of the mare, the ranger, impounded the complainant's three horses and arranged for them to be transported to the Shire Pound on 8 April, 1981. Subsequently, because he did not know who leased the paddock where the horses had originally been situated, and as the managing estate agents had just gone out of business, the ranger was unable to ascertain the ownership of the horses.

At interview, the complainant had stated that a friend had seen the horses in their paddock on 8 or 9 April. However a check of Shire records indicated that the carrier's account was included for approval for payment in Council minutes compiled and distributed on 9 or 10 April and that the police report book indicated that the report relating to the injured mare had been made on 6 April. In addition the advertisement relating to the impounding and proposed sale of the horses was received by the newspaper on 9 April as indicated by a "date received" stamp on the order held by the paper.

The complainant had also indicated that she had found the horses to be missing on 19 April, but when she had gone to the police station and found it unmanned on that day she had, because of illness of her husband, taken no steps to contact the ranger for a further week.

Although as stated a friend of the complainant had indicated that he had seen the horses in their paddock a day or so after the ranger claimed to have impounded them, the Ombudsman was of the opinion that the weight of evidence indicated that the horses were impounded on 8 April, 1981 as claimed by the ranger. He also pointed out that the complainant had delayed a further week after she had found the animals to be missing before attempting to contact the ranger, but he stated that there was no doubt that the Shire Officers had complied with the provisions of the Pounds Act, and he therefore could make no criticism of them. The horses had been legally and correctly impounded, the auction advertised as required, and the buyers including the policeman's wife had in purchasing the animals, simply done what they or any other citizen had a right to do.

Whilst the complainant's concern at the loss of the "family pet" horses, was understandable, the Ombudsman found that a complaint against the actions taken by Officers of the Shire, and the actions of the local policeman could not be sustained.

## CITY OF FOOTSCRAY

Case No. 10646

A Footscray motorist complained that he had not been reasonably dealt with in connection with parking fines. Investigation led the City to agree to re-consider his case and the Ombudsman to suggest changes in Footscray's publicity and administration of its Residents' Parking Permit Scheme.

A Footscray resident complained that, after having parked his family's cars outside his residence for some years without incurring any penalty, he had suddenly been given two parking infringement notices and that, upon visiting the Municipal Offices to discuss the situation, he had been told :

1. There was a Residents' Parking Permit Scheme.

2. After submitting an application, the issue of a permit would take some weeks and, during that time, the applicant was subject to the same parking restrictions as visitors to the area.

3. If the complainant did not pay the fines, the City would take him to court.

The Ombudsman made a series of enquiries of the Town Clerk at Footscray, and also the Mayor, and then notified them of his intention to investigate the complaint that the responsible officers of the City of Footscray had failed to deal with the complainant reasonably and dispassionately in connection with the parking of his family's cars. In doing so, the Ombudsman put the following views :-

1. It was not disputed that parking restrictions had been infringed, and the Ombudsman concluded that it had been reasonable of the responsible officer to issue infringement notices.

2. Because the complainant had for some years breached parking restrictions without incurring penalties and because the Town Clerk had informed the Ombudsman that new residents were not informed of the existence of the Residents' Parking Permit Scheme and no information was available as to any publicity which may have attended that Scheme's introduction some years previously, there were circumstances which may upon consideration have mitigated the requirement for the complainant to pay the penalties incurred.

3. Although the Mayor and Town Clerk had informed the Ombudsman of the role of Council's By-Laws Committee which examines written requests for consideration of mitigating circumstances, the role of that Committee had not been publicised and when the complainant called at the Municipal Offices he had not been told of the Committee's role nor invited to put his grievance in writing, but instead only been given the options of paying the penalties or seeing the case go to court, and the Ombudsman thought that the complainant may have been unjustly treated.

4. It seemed unreasonable that, even after having applied for a Resident's Parking Permit, a family such as the complainant's, living in a dwelling without off-street parking facilities and including at least three shift workers, should while waiting for two or three weeks while their permit application was being processed have no immunity against the penalties intended for visitors to the area who parked without regard for restrictions.

Following further correspondence the Ombudsman formed the view that the complaint was established and following further exchanges of correspondence the Town Clerk notified the Ombudsman that, if the complainant wished to write a letter concerning the infringement notices, the City Engineer would put it to the By-Laws Committee. The Ombudsman notified the complainant accordingly and finalised his Report with the following statement :

> "In those streets where there are parking limitations which do not apply to the holders of a Resident's Parking Permit, there should be on, adjacent to, or within the parking limitation sign, a reference to Residents' Parking Permits. This would alert persons like the complainant to the exercise of residents' privileges in this matter and may be more effective than publicity through the media or any other way.
>
> If a delay of three weeks is believed reasonable in order to make investigations and consider the issuing of a parking permit, a temporary Resident's Parking Permit sticker should be issued to cover the period of delay."

## CITY OF BOX HILL

Case No. 11334

> A shopkeeper upon complaining of what he believed an incorrect charge made for electricity supplied was not given sufficient opportunity to pursue his complaint.

A shopkeeper wrote to complain that the City of Box Hill Electric Supply Department had failed to deal reasonably with him following his complaint as to the amount of electricity recorded as having been used at his shop.

Enquiries showed that the shopkeeper had protested that the electricity usage charged against him was almost five times the amount usually used in that same quarter in other years.

Following the initial protest a meter-reader called and left a note to say that the reading shown was correct. Two days later an electrician called at the shop and changed both meters. The shopkeeper believed the meters had been taken away to be checked whereas, in fact, they had been renewed simply as part of a renewal policy and following the meter-reader having reported one of the meters (but not the one in question) as being an "older 4-dial type".

It seemed unfortunate that the Electric Supply Department removed the meter so soon after the check reading had been made, for it appeared to the Ombudsman that only after that reading would the shopkeeper be in a position to doubt the meter itself.

One of the Ombudsman's Investigation Officers interviewed the meter-reader and the electrician involved and was quite satisfied as to the good faith and motives of those officers; indeed he was able to accept without reservation the statements made by them when they were interviewed. Nevertheless it seemed that the shopkeeper did not have a reasonable opportunity to consider his situation following the check reading of his meter.

It seemed that whilst the complaint was sustained the situation could be rectified by some reasonable adjustment of the charge made for that particular quarter and it was suggested to Council that adjustment could be related to usage registered in the same quarter in both the previous and the succeeding year.

The Town Clerk advised that Council would make an ex gratia payment of $89.10 representing the excess over what Council believed was a "normal" quarterly charge. That payment represented a refund of some 76% of the charge complained of and in the Ombudsman's view the matter was rectified.

## HEALTH COMMISSION

Case No. 11266

> A meat processing company complained to the Ombudsman that the Health Commission of Victoria had, to the company's detriment, not enforced the Sand Blasting Regulations.

In its letter of complaint the company explained that its property had a sand blasting operation as its immediate neighbour on one side and although there was a vacant block on the other side, another sand blasting company was situated on the far side of the vacant allotment.

The complainant company explained that it had built its meat processing plant after making substantial enquiry as to the likelihood of problems arising from the proximity of the sand blasting but had been assured that the Regulations would preclude such problems. It also stated that

when it had lodged complaints with the Health Commission the Commission had advised the neighbouring sand blasting company that it did not propose registering the company beyond 31 December, 1980, unless its operation was enclosed

In the meantime the proprietor of the sand blasting company notified the complainant that he would be selling his land at the end of 1980 and that the nuisance would then cease. In such circumstances said the complainant, no further complaint was made and the company proceeded with plans to expand its own operation including applying for a meat export licence.

Upon contacting the Commission again, however, the complainant stated that the Health Commission advised that it no longer intended the action previously advised and that the sand blasting company had been given a verbal assurance of its right to continue operations, particularly as those operations had been moved to the rear of the property. That assurance said the complainant company vitally affected the likelihood of its being granted a meat export licence.

The Ombudsman in deciding to investigate the complaint requested that the Commission delay registering the sand blasting company until he had investigated the complaint.

Two inspections revealed that certainly when a north wind was blowing, grit from the sand blasting company's operations did blow onto the property of the meat processors and it was likely, as claimed by the complainant company, that if its trucks were left with the rear doors open grit would be deposited in the trucks.

In making a complaint to the Health Commission the meat processor's legal representatives had requested that the Commission enforce the Sand Blasting Regulations to the extent that it order that any blasting be conducted in an enclosed environment and pointed out that the Regulations provided for control where sand blasting <u>may</u> cause a nuisance.

Having examined the situation the Ombudsman enquired of the Commonwealth Department of Primary Industry and was informed that a meat export licence would not be issued until the risk of contamination of meat was removed. He therefore wrote to Dr. G. Trevaks, Chairman of the Health Commission of Victoria and stated that as a result of his inquiry he had tentatively concluded that the complainant company had suffered a nuisance from the sand blasting activities. He said that whilst the basic problem may well have been the location of a meat processing plant in the area, it was approved and a very considerable investment made in the business. He said that he believed that the company was being unjustly restricted in its operation because of the failure of the Commission to enforce the Sand Blasting Regulations.

In response the Commission advised that it had sought the opinion of the Crown Solicitor on the applicability of the particular Regulation (Regulation 6 of the Sand Blasting Regulations) and had been advised that it had not acted properly in failing to register the sand blasting company. Dr. Trevaks said that he had therefore directed the Commission officers to immediately register that company. In doing so however, he said that he had advised the company that the provisions of the Sand Blasting Regulations would be strictly policed by the Commission.

The Department of Primary Industry had in the meantime told the Ombudsman that it did not require that the sand blasting operation be housed indoors in order for a meat export licence to be issued to the complainant but that the risk of contamination of meat be removed as much as possible by enclosing the operation. The Ombudsman therefore told the meat processors that he felt that the action proposed by Dr. Trevaks would solve the problem and stressed that the legal situation was that, having licensed the sand blasting operation, the Commission must police the Regulations. He also pointed out that should the complainant desire further action it had a right to pursue the matter in Court.

## WIMMERA BASE HOSPITAL

Case No. 11244

### Unreasonable dismissal procedures

Many public statutory bodies have no particular limitations imposed on them concerning dismissal of staff. However it is the Ombudsman's view that authorities within his jurisdiction should comply with the principles of natural justice, when dismissing staff. In particular he believes that :-

1. an employee should be advised of all matters which might lead to his dismissal;

2. he must be given an opportunity of providing his comment on those matters; and

3. he must be afforded a fair hearing <u>before</u> any decision is made.

In this particular case a person who had been dismissed by the Wimmera Base Hospital Board complained of that dismissal. Insofar as the first aspect is concerned the President of the Hospital Board maintained that the complainant had been advised of the reasons for his dismissal. However, it was clear that he had not been given a copy of a written complaint made against him. The Ombudsman believed that the failure to provide a copy of that complaint was wrong and he was not satisfied that the full details of allegations against him had been put to the complainant.

Insofar as the second aspect is concerned, as the Ombudsman was not satisfied that the complainant had been advised of all allegations against him, the Ombudsman was unable to conclude that he was in a position to provide an answer to those allegations.

Insofar as the third aspect is concerned there was no doubt that the Hospital Board had failed to comply with natural justice, as the decision to dismiss the complainant was clearly made before any discussion was held with him. The complainant had been called into the Manager's Office and after a discussion he had been handed a typed and signed letter of dismissal and a salary cheque. In the Ombudsman's view it is impossible to provide a fair hearing where the letter of dismissal and the termination salary cheque had already been prepared.

Accordingly, the Ombudsman concluded that the complaint of the unreasonable manner of his dismissal was established. As the complainant was not seeking reinstatement the Ombudsman could do no more than advise the complainant, the President of the Hospital Board, the Chairman of the Health Commission and the Minister of Health of his finding.

HEALTH COMMISSION

Case No. 12027

> Medical treatment was a frequent cause of complaint from prisoners when the Ombudsman's Office was first established and the trend has continued into the current year. In the last year (1980/81) the medical/dental treatment category had the largest number of complaints recorded from prisoners.

A prisoner complained that he had reported to the sister that blood was discharging from his ear but that he had not received medical attention for some days. At that time Jika Jika had just opened and it was found necessary to establish a special system for handling reports of medical treatment required for prisoners in that division. The high security nature of the division and the design and conditions existing, combined to present special difficulties where treatment was concerned.

In this particular case it was found that there was no record of the prisoner having complained to the sister. However, when interviewed she said that it may have been that the prisoner did see her and that she had just passed a hand written note to the doctor.

The Governor confirmed that the prisoner had complained to him, that in spite of his requests no medical treatment had been forthcoming. As the Governor considered that it was essential that the prisoner receive treatment for his ear, arrangements were made for this treatment.

The complaint was found to be established, and Dr. G. Trevaks, Chairman of the Health Commission of Victoria has now advised the Ombudsman that as a consequence of the difficulties being faced at Jika Jika, a medical register had been introduced and medical arrangements modified. He said that a situation such as had occurred in this instance was unlikely to recur.

In the light of the action taken the Ombudsman did not believe that it was necessary for him to make a recommendation.

COMMUNITY WELFARE SERVICES

Case No. 10488

Prisoners lost property.

One problem which regularly comes to the Ombudsman's notice is that concerning prisoners' lost property. In this particular case a prisoner wrote to the Ombudsman from Beechworth Prison complaining that property which he had had at Geelong Prison, prior to having been transferred from there, had not been returned to him. The items which concerned him were a mattress, a knife, a lamp and a ring.

The Director-General of Community Welfare Services advised that the prisoner had been taken from Geelong to appear at the Melbourne County Court. As he had stated that he was pleading guilty it was believed that he would be returning to the prison and no effort was made to send his property with him. However, the prisoner had been sent to Beechworth instead of being returned to Geelong. His effects at Geelong were collected by a prison officer and transferred to Beechworth. The mattress and the lamp were located and the property sheet included a quantity of leather work tools, which may well have included the knife referred to by the complainant.

The inwards property book at Geelong Prison recorded that the prisoner had received various amounts of property on 67 different occasions. However, there was no entry of a ring.

The Ombudsman found that he was unable to conclude with any certainty as to what had occurred in this case. The prisoner clearly had a very large amount of property and this made accounting for all of it a very difficult task. As he had 48 leather work tools, the knife might well have been amongst them or he may have lent it to someone else. It appeared likely that the prisoner did have a ring with him at Geelong Prison at some time. However, he could have given it to a visitor or another prisoner, or it could have been taken from his cell whilst he was at the prison or after he left. As the ring did not appear on the inward property records, the Ombudsman did not feel able to conclude that the Community Welfare Services Department was responsible for its loss.

Clearly one of the problems in this case was that the prisoner had not been allowed to pack his own belongings. The Ombudsman had previously criticised this practice and he reminded the Director-General of this point. The Director-General stated that procedures had been adopted whereby such matters would be better handled in future. He conceded that from the point of view of better management in prisons, prisoners should be permitted to be more responsible for their own effects. The Director-General also advised that a proposal by the Governor of Geelong Prison that prisoners on trial at Melbourne be permitted to return to Geelong and pack and collect their property had been adopted. In addition the Classification Committee had ceased to regularly use Geelong Prison as a holding centre for prisoners requiring further trials.

Case No. 12543

A tax on complaints - (a certified tithe)

It was noticed that letters of complaint sent by prisoners at a particular country prison were invariably sent as "certified mail". This required payment of an additional 60 cents over and above the normal postage charge of 24 cents.

Enquiry revealed that the Prison Governor insisted that mail addressed to the Ombudsman be sent as certified mail, the prisoner bearing the cost of the certification. The system was intended to ensure that mail to the Ombudsman was given adequate protection and to prevent dispute as to the receipt or the dispatch of any such letter.

As the maximum daily earning by a prisoner was then $1.35 (now $1.45) it seemed that a prisoner might well claim that such a policy severely restricted his ability to contact the Ombudsman. Whilst a prisoner wishing to write to the Ombudsman should have a right to have the letter sent as certified mail, if he wishes to pay the fee, there should be no compulsion upon him to have such letters sent other than as ordinary mail.

The matter was drawn to the attention of the Director-General of Community Welfare Services and after consideration by the Department it was decided that there would be no requirement by the Department for letters to be sent by certified mail unless the Governor of a prison deemed it necessary in a particular circumstance, in which case the Department would meet the cost.

Should a prisoner wish to send a letter by certified mail then he could do so but this would be at the prisoner's cost.

## ENVIRONMENT PROTECTION AUTHORITY

Case No. 12213

Refusal by the Authority to release information which it claimed was confidential. Following an inquiry by the Ombudsman the information was released.

Enamel paint fallout from an unknown factory in a Melbourne suburb on to motor vehicles owned by a solicitor and his employees which were parked at the rear of the solicitor's office, caused the solicitor to contact the Environment Protection Authority for assistance and information as to the offending factory as he and his employees wished to claim compensation for the damage to their vehicles.

That complaint resulted in the solicitor receiving the following reply, to which he took exception, as it appeared that he and his employees would be unable to pursue their claim for damages -

*"I confirm the information given to you by an officer of this Authority that the likely source is an uncontrolled spray booth in the area and that action has been taken to have the company install proper control equipment.*

*I regret that the name of the company cannot be given as the Authority's investigation files are confidential."*

At the time this letter was written the Environment Protection Authority was currently investigating the complaint, but after the spray painting booth was located by the Authority and it was satisfied that the company would cease its operations, the solicitor was advised by the Authority of the name of the offending company.

## MELBOURNE & METROPOLITAN TRAMWAYS BOARD

Case No. 12261

The refusal by the Melbourne and Metropolitan Tramways Board to grant a student attending the Australian Academy of Hairdressing a student travel concession, notwithstanding that the Victorian Railways Board accepted the Academy as an educational institution for which it would grant the concession, was brought to the Ombudsman's attention by a parent of a fifteen year old student of the Academy, and referred to the Melbourne and Metropolitan Tramways Board.

In reply, the Chairman of the Board, Mr. F.D. Snell, advised that the Board had provided Scholars' Concession Tickets for students travelling to and from registered schools since 1920, and that this concession originally applied to children under the age of 17 years.

The arrangements and changes to the concession system have varied over the years, but it has always been a condition applied by the Board, that the schools attended by the students, must be registered with the appropriate Schools Registration Board. The cost of providing these concessions was carried by the Melbourne and Metropolitan Tramways Board from its own finances until the financial year 1970/71. Since then, the Board has been recouped the cost by the State Government through the Education Department, for the difference between the Concession Tickets and the equivalent cash fares.

After considering the complaint forwarded by the Ombudsman, the Board agreed to amend its conditions govening the issue of Scholars' Concession Tickets. Schools which previously failed to comply with the Board's registration requirements were added to the list of "approved" schools provided courses taught at the school complied with all of the following -

(a) They were full time courses.

(b) The duration was at least one year.

(c) They were designed to meet criteria set by a Board or other controlling body authorised by an appropriate Government Department.

When a school was added to the list of "approved" schools the students from that school would be able to apply to purchase Scholars' Concession Tickets under the conditions applying to the issue of those tickets.

The amended conditions enabled the Australian Academy of Hairdressing to be added to the list of "approved" schools for Scholars' Concession Tickets, and the complaint was resolved.

## POLICE

Case No. 10066

> Drugs present a problem only too well known to the community. However the difficulties confronting police and members of the public alike are well illustrated in a complaint that the Ombudsman received relating to raids conducted on a private home.

A man and his wife complained that over a period of 12 months police had made three raids on their home in search of drugs. The raids, they said, had been unsuccessful and they had no idea at the time why their

home should have been singled out. They stressed that they recognised that the police had a job to do, however, they said that the raids had occurred in this order. The first had taken place approximately 12 months previously when three policemen had arrived, one well dressed and in plain clothes and the other two very casually dressed. The policemen said they had a warrant, showed identification and searched the house. Nothing was found in the house. On the second occasion a visit was received from the Caulfield Crime Car Squad. Again a warrant was produced and when the complainant explained that they had been visited only a month previously, the officers seemed surprised but searched the house again without finding drugs. Almost 12 months later they received a third visit from two policemen from the Nunawading Crime Car Squad, again in possession of a search warrant, but on this occasion the visit took place when the complainants were leaving to travel to Sydney, and on explaining about the earlier visits no search was conducted.

From enquiries made after the first visit by the complainant wife's father, a high ranking officer in the New South Wales police force, it was ascertained that the first visit was made following police finding the address concerned in a note book and on a piece of paper in raids on two drug related premises.

When the Ombudsman sought comment from the Chief Commissioner of Police about the complaint, the Chief Commissioner had already commenced an investigation because he had received a similar complaint from the complainant wife's father. As a result of this investigation, the Chief Commissioner told the Ombudsman that he could find no record of which officers were involved in the first visit, but he confirmed the reason given for the second visit and stated that the third followed an anonymous telephone call advising that drugs were being used on the premises.

The Ombudsman agreed that the evidence upon which the raids were based justified at least the first one, but he could not understand why it was that police would make two raids in a month and not be able to identify the officers concerned in one of them, particularly when that information and knowledge of the raid had been available at the time. He therefore referred that aspect of the complaint back to the Chief Commissioner for further enquiry. Considerable investigation was undertaken but without success.

In commenting on the problems involving police investigating drug offences, the Chief Commissioner advised that he had directed that records being kept in relation to raids etc. be improved and said that he had directed that returns be obtained showing the number of drug related search warrants issued in the past 12 months; the number of warrants executed and as a result of which drugs were found; and the number of

warrants executed where no drugs were found. The purpose of that information would be to provide an indication of the accuracy of information on which warrants were based. He also said that when this information was analysed, consideration would be given to the necessity or otherwise of a centralised recording system at the C.I.B. Drug Bureau, and also the desirability of issuing specific instructions on the subject for the guidance of members. In relation to this specific complaint he said that he had arranged for some of the officers involved to be counselled on the need to establish whether there was substance to information received, before deciding whether or not to swear out warrants, and for other officers involved to be counselled for operating out of their designated districts.

It was also decided that the system of recording and issuing search warrants would be improved to avoid confusion and to allow the overall situation in a locality to be readily evident.

The Ombudsman, inspite of the inability of the Chief Commissioner to determine whether or not the first visit was made by State Police, (the Commonwealth Police had denied involvement) believed that in fact it was, because the information relating to the visit had been obtained from the Victoria Police Force soon after it occurred. He explained the results of the investigation to the complainants who informed him that identity of the officers was not a matter which they wished to pursue as they did not wish to be vindictive. They said that as they had stated in their letter of complaint they recognised the difficulty that faced police and the fact that they had their duties to carry out.

Having considered whether any recommendation was necessary, the Ombudsman determined that it was not because the Chief Commissioner had already acted to prevent the recurrence of such a situation. However, the Ombudsman believed that a written apology, recommended by the Superintendent who investigated the complaint for the Chief Commissioner, should be sent from the Chief Commissioner to the complainant. This was done and the file closed.

## APPENDIX A

## REPORT OF INVESTIGATION INTO UNCONTROLLED ODOURS FROM FACTORY

Case No. 10439

### The Complaint

In August 1980 Mr. T.A. Neesham, who was then the Acting Ombudsman, received a complaint from 78 residents who live in five streets in Murrumbeena. The complainants wrote thus -

> *"We have complained to the E.P.A. about the nauseating smell which comes from this (previously nominated) factory. On damp, wet days it is most distressing and permeates into every room, even with all doors and windows closed. Although a man has been out from the E.P.A. to look at the situation, nothing has resulted so far."*

Mr. Neesham defined the administrative action complained of as the E.P.A.'s alleged failure to take any sufficient action following complaints to it of the smell emanating from the factory concerned.

Mr. Neesham informed the complainants and the Minister for Conservation, the Honourable W.V. Houghton, M.L.C., accordingly and also informed the Chairman of the Environment Protection Authority, Mr. J.C. Fraser, and sought his comments.

Mr. S.C. Archer, a member of the Authority, replied, explaining that the factory concerned was occupied by a company which prints textiles for the clothing and furnishing industries. He continued -

> *"A licence, for the emission of waste to air, EA 703/2 was issued to the company on 24 January 1975, and subsequently amended on 12 December 1975, and 29 February, 1980.*
>
> *One of the licence conditions required the installation of a fume incinerator to control the emission of organic solvents from the printing process.*
>
> *In April 1975 the Company began to use a printing paste which contained a smaller quantity of organic solvent. The Company also submitted test results to verify the reduced emissions and requested that the fume incinerator condition be removed. The compliance date for the fitting of the fume incinerator was amended so that the Company was given time to experiment with non-solvent printing paste.*

*From September 1973 to November 1975 a total of 31 complaints of smoke and odour were lodged against these premises, but apart from three isolated complaints of odour which were received in March 1976, January 1979 and September 1979, it appeared that the problem had been largely overcome by the use of the lower solvent printing paste.*

*In March of this year complaints of solvent odour recommenced and investigations indicated that these complaints were justified.*

*Adjacent to the factory in question is another factory where plastic floor covering is manufactured, and it was thought that the malfunction of an oil-fired unit was responsible for the recent spate of odour complaints due to the emission of unburnt fuel oil.*

*In June and July of this year a period of surveillance of both premises established that the odour was due to emissions from the first factory.*

*A programme of testing to establish the source and strength of these emissions will be carried out so that appropriate control measures can be instituted. The company will be required to establish the effectiveness of alternative control measures open to it.*

*The Authority's files relevant to these premises are available to you if required."*

## The Investigation

I availed myself of Mr. Archer's offer and requested the relevant files. Mr. Fraser provided three files: one dealing with investigations of complaints about the factory in question, the second dealing with investigations of complaints about the adjacent factory; and the third dealing with the licensing of the factory in question.

Upon examining the files, it appeared to me that the complaint made to me in 1980 came as the culmination to a series of events which stretched back at least to 1973. Upon consideration I concluded that it would be unjust and artificial to consider the matter now being complained of in isolation from the earlier incidents recorded on the files provided by the Authority. It is for that reason that in this Report I set down in some detail an account of those incidents.

In that respect, my view was reinforced by my receipt in mid-October, 1980 of a separate complaint about the same matter. The complainant's documentation showed that she had been making representations to various State and local government bodies about the problem since November 1970. I notified her that the matter was already under investigation and that she would be notified of the outcome of that investigation. Later in this Report, I refer to the lady making the separate complaint as the "other complainant".

Having examined the Authority's files, I formed several impressions which I put to the Chairman of the Authority for comment. After examining that comment, I asked one of my Investigation Officers, Mr. C.F. Bare, to have discussions with officers of the Authority early in 1981 and to examine any material which might have been added to the Authority's files since 26 September, 1980 when those files were first sent to me for examination.

The Record

On 27 July, 1973 the company which operates the factory in question applied for a licence to discharge waste to air. It made that application after having gained from the Authority two extensions of time: one because of difficulties the company had experienced in obtaining from its suppliers data about the composition of the inks being used at the factory and the other because the company had not received results of tests which it had had made of discharges from the factory. In applying for the licence the Plant Engineer wrote of isolating the factory's pollution problems to one area and added:

> *"We are currently investigating equipment for solvent fume control and also the possibilities of low solvent print pastes to remove the problem altogether. However developments in this area are not in the production stage yet."*

On 26 September, 1973 a resident living near the factory complained to the Authority of a brown rusty staining which had appeared on his patio and the surrounds of his swimming pool. In referring the matter for investigation, the officer of the Authority who received the complaint commented that there was a "long history of complaints" about pollution allegedly caused by the factory in question.

On 5 October, 1973 Mr. E.W. Perkins, an officer of the Authority, interviewed the complainant and made an inspection. His report conlcuded thus:

*"Conclusion*

*Soot fall probably due to work done on boilers and clean out of stacks disturbing accumulated soot especially in view of the nature of complaint.*

*The odour problem can be cured by correct treatment of odour sources in licence application or by change of inks used as proposed by company.*

*Recommend*

*Licence be reviewed for solvents, emissions and proper control of sources. Soot fall thought not likely to recur."*

Mr. Perkins' report was endorsed, *"Solvent emission to be noted for licence application."*

On 22 November, 1973 another resident complained of odour and haze emanating from the factory. The complainant was interviewed on 28 November and, on the basis of the earlier inspection, the complaint was found to be justified.

On 20 December, 1973 the same resident complained again of odour. The matter was referred to Mr. Perkins. There is no record of any action having been taken.

On 13 February, 1974 another resident complained of odour and noise emanating from the factory. A further complaint of odour was received by the Authority on 19 February, 1974.

On 20 February, 1974 the company operating the factory wrote to the Authority in the following terms -

*"We have been discussing with consulting chemists and analysts what steps should be taken to control our exhausts, if any, at our Murrumbeena Plant. They have conducted tests and made analyses of our exhausts and came up with several ideas.*

*Their figures have confirmed the general level of emissions submitted in our E.P.A. licence application and we now await a reply to this application before continuing any further with this project, as the cost of this work is necessarily very expensive and we wish to be sure we are proceeding in the right direction.*

> *A further complication exists with this work. As we replaced an existing stenter in April/May last year we submitted details of the likely exhaust from the replacement unit and this appeared to be in excess of your requirements. Consequently we undertook to suitably correct any offensive discharge within 12 months. Here again we are awaiting the response to licence application so that we can be sure that we are doing things the right way. As time is now running out on this undertaking we are concerned that we may not be able to comply with your wishes in the given time if some action on equipment or change of discharge is not instigated immediately.*
>
> *We would appreciate your comments on the above and any details you can forward on the state of the licence application."*

On 26 February Mr. Perkins made his inspection in response to the complaints made on 13 and 19 February at a time when weather conditions were reported conductive to the spread of odours. Mr Perkins' report concluded:

> *"No doubt now that the factory in question is the source of odours. No odours have been noted by myself or the complainants which would implicate the adjacent factory. The company operating the factory in question has applied for a licence. Licence conditions should be applied to mitigate odours from printing and print drying operations which are the main source."*

Mr. Perkins recommended that the matter be referred to the Licence Section.

On 1 March Mr. I. Cowdell of the Authority inspected the premises and informed the company that some modifications would be required. He asked that the modifications be made and an amended application for licence be submitted by 29 March. An amended application was made by the company on 26 April.

On 3 July 1974 a resident complained of the odour emanating from the factory and on 31 July Mr. Perkins made an inspection on the basis of which he concluded:

> *"Large volumes of white spirit are discharged from both printers and the stenter. The licence has been assessed and is due to be issued. The plant engineer has been advised to apply for the additional points within 14 days."*

At 5 p.m. on 27 September, 1974 an anonymous complaint was received by the Authority of odour coming from the factory. An hour later another anonymous complaint was received and Mr. Perkins noted, "*Getting hostile. Children coughing.*" Mr. R. Anderson of the Authority conducted an inspection at 6.30 and detected an odour so slight and inconstant that he could not identify it. At the foot of Mr. Anderson's report Mr. Perkins commented:

> "*Licence still not settled. There are a number of unsatisfactory emission points which down wind from the building will cause this type of trouble. However the complainants against this company all seem to have a 'thing' about the factory.*"

On 29 October, 1974 four residents separately complained of fumes emanating from the factory and affecting their eyes. Mr. K. Taylor of the Authority made an inspection that afternoon and detected a strong odour in the back garden of one of the complainants, Mr. Taylor reported that he felt his own eyes affected. He took statements from two of the complainants. He inspected the factory and identified a stenter as a source of fumes. He strongly advised the Production Manager to take remedial action as the company could be the subject of civil action. Mr. Taylor reported that the Production Manager had replied:

> "*We have not got a licence yet, so we don't know what the (Emission) limits are.*"

Mr. Taylor's report concluded:

> "*The management appear to be unwilling to do something constructive to limit the odours until the licence compels them to. It should be issued without delay. A notice of contravention (E.P.A. Clean Air) should be immediately issued, effective till the licence schedule B conditions date.*"

During his inspection, Mr. Taylor collected a sample of fine white particles which covered almost everything in the backyard of one complainant and which Mr. Taylor thought came from the adjacent factory. Mr. Taylor's report was endorsed: "*We are still awaiting licence for this company. Can this be expedited? Note there is also another file for this company.*"

On 31 October 1974 the company notified the E.P.A. that a new dyestuff would have a solvent content of about 10% as compared to the 50% content in the dyestuffs then being used by the company. The company expected that it would be able to operate fully on the basis of the new dyestuff by March, 1975.

Also on 31 October, 1974 a further complaint of odour was received. Another complaint was received on 1 November. A further complaint on 4 November said that her daughter had spent 4 days in hospital being treated for an allergy after an odour had been particularly strong about a month previously. Mr. Taylor interviewed the complainant and a doctor who had practised locally and who said that he had earlier treated patients with similar complaints when a nearby factory had been emitting strong odours of a nature similar to that of the odours now being emitted by the factory in question. Mr. Taylor concluded:

> *"The complaint is justified. The Department of Health should be notified of the situation and requested to immediately stop the company from discharging objectionable amounts of pollutants to the atmosphere, which are a danger to public health."*

Mr. Taylor's report was endorsed by Mr. Perkins: *"D. Monsborough has been asked to expedite this licence a.s.a.p. so that control measures can be placed on the company."* There is no record to show that the matter was referred to the Department of Health.

On 18 November Mr. A. Monsborough of the Authority filed the following note:

> *"Mr. Perkins of the E.P.A. investigations branch today pointed out that there were more complaints against these premises.*
>
> *On checking the file there is no idication of any correspondence having been received since 26th April, 1974.*
>
> *On checking the registry a letter was registered on 31st October, 1974 and directed to the E.P.A. Licensing Section. As yet this letter is not on the EA File. The matter is being checked. When the letter is available the assessment will be concluded."*

Between 20 and 29 November the Authority made an assessment of the company's application for a licence.

Separate complaints were made of odour emanating from the factory on 19 and 29 November and 3 December, 1974. On 3 December Mr. Taylor and Mr. Anderson interviewed one of the complainants and made an inspection. They concluded:

> *"The complaint is justified. The investigation has shown that even small scale production of light weight fabrics printed by the company gives rise to offensive odours affecting residents in the neighbourhood."*

On 4 December the Authority received two separate complaints of odour and soot emanating from the factory. On 10 December a complaint was made to the Authority that there had been no abatement of the odour despite earlier complaints.

On 24 January, 1975 the Authority issued a licence to discharge waste to air subject to the company making certain emission measurements by 28 February, installing specified sampling points for the future measurement of emissions, ensuring that all waste is discharged vertically upwards and without obstruction and increasing the height of one stack on the factory. On 6 February the company sought an extension of the dated condition from 28 February to 31 March.

On 7 and again on 20 February complaints were received from different residents about night-time odour emanating from the factory.

On 2 April 1975 Mr. Taylor made an inspection of the factory, one of the licence conditions not having been complied with. Mr. Taylor reported that the Engineer at the factory had explained that, although the measurements had been taken and the figures received, they had not been sent to the Authority because they showed emission figures higher than those provided to the Authority at the time of application for the licence. Mr. Taylor reported that the cowling which had been installed on the stacks obstructed the vertical discharge of waste. He also reported that the measurement of emissions had been conducted by the Australian Environmental Consultants Pty. Ltd. whose report dated 27 February, 1975 concluded:

> *"In most of the tests the results were above the estimated values quoted on the original licence application. Therefore it is recommended that when submitting this report to the E.P.A. this point should be emphasised  Since the actual velocity was measured at each point and the flow rate calculated from this, a check should also be made to the Authority to change all these details on the original licence application."*

At the foot of Mr. Taylor's report, Mr. Perkins commented:

> *"Licence awaiting decision of A.Q. (Air Quality) on letter attached to report. We have asked for figures and got them. Why cannot the licence be amended now with suitable conditions for the figures submitted with the alternative of changing to a low solvent dye and specify a time - not ask the company."*

The file is then noted:

> *"In a conversation between L. Auff and D. Monsborough of Air Quality and A.J. Brown and K. Taylor of Investigations Branch on 24 June, the following was established.*

*The factory's licence is to be re-assessed on the basis of a new application which reveals higher figures for solvents.*

*The new licence conditions will probably require lower mass rate concentrations for solvents and may include provision for an afterburner."*

On 9 April, 1975 the company's Engineer called on the Authority for discussions which were noted by Mr. Monsborough who wrote, in part:

*"The Engineer was informed that the company was in breach of their licence limitation that complaints had been received and that the Authority must be informed by mail of the current situation outlining the stack tests, a date for completion of the changeover to the new dyestuffs and should include an application to vary the existing licence showing estimated emissions resulting from a change in solvent content of the dyestuffs."*

On 1 May 1975 the company applied to vary the existing licence by adjusting emission figures upwards and by allowing for two additional discharge points. On 24 June officers of the Authority's Investigation Branch and Air Quality Section discussed the case. The intention was to reassess the conditions attaching to the initial licence.

On 11 July a further complaint was received and Mr. Perkins noted:

*"This licence is still in semi-limbo and (this) is unsatisfactory. Could be a possible prosecution."*

On 14 July and again on 6 August complaints were received of the odour emanating from the factory and also about the alleged inaction in response to earlier complaints.

On 25 July, 1975 the company Engineer visited the Authority and his discussions were reported by Mrs. L. Auff. Mrs. Auff reported that she had pointed out to the Engineer "that regardless of the figures on the application, the problem still exists and the E.P.A. is receiving complaints from the residents every week." Mrs. Auff also reported in the following terms:

*"The Engineer was informed that their application will be reassessed and new conditions will be imposed. The afterburner installation will be one of the conditions.*

*The Engineer said that the company had a quotation for the afterburner two years ago for $80,000, this included all 3 exhausts from the ovens and one from the Stenter.*

> *The Engineer was informed that the company will be given 3 months to submit all plans to the E.P.A. and another 3 months to finalize the afterburner installation.*
>
> *The Engineer said that the company would like to experiment with new solvents rather than installing an afterburner, and he was informed that alternative conditions could be given."*

On 8 August, 1975 Mr. K.V. Wilkins of the Authority made an inspection and interviewed the complainant of 6 August. Mr. Wilkins reported that he had informed the complainant that *"the licence was being reassessed and the problem would be overcome"*. Mr. Wilkins' report concluded:

> *"Still awaiting A.Q. reassessment of revised application form the company, and subsequent licence conditions."*

A further complaint was received about odour and vapour on 8 August and on 15 August another complainant spoke of odour which, the E.P.A. officer receiving the complaint reported, *"makes him feel sick"* each morning. On 25 August Mr. Wilkins again inspected the area and at the conclusion of his report commented:

> *"Still awaiting A.Q. Reassessment of licence. Martin Arnold who is working on the reassessment is on holiday and expected back on 1.9.75."*

On 3 September Mr. Perkins asked Mr. Wilkins to follow up the matter with Mr. Arnold. There then follows on the file an undated note over the initials, K.T.:

> *"D. Schulberg is assessing licence. He said that one afterburner is going to be necessary. There is a delay (again) in info. Required for further assessing Licence still along way off from issue."*

The assessment prepared by Mr. Shulberg is dated both 3 September and 9 October, 1975. Mr. Schulberg found that that emission of hydro-carbon solvents *"requires to be drastically reduced"* and concluded:

> *"It is considered that because of the frequency of complaints received that there should be an absolute minimum of delay in re-issuing this licence specifying the afterburner (as a condition to reduce emission of hydro-carbon solvents)."*

On 24 November, 1975 a resident complained of smoke and odour emanating from the factory and of oily spots which pitted the finish on his motor car. He also complained that there had been no abatement of the problems caused by the factory for at least two years and demanded to know what the Authority had been doing. Mr. Wilkins noted:

> *"The complainant informed on the telephone that additional control equipment is to be installed by the company but it will take a little time before that is done."*

Earlier Mr. Wilkins had noted that the required afterburner was to be installed by 1 August, 1976.

On 12 December, 1975 the Authority amended the conditions on the licence to provide for the installation of a fume incinerator by 1 August 1976, for specifications of the fume incinerator and related equipment to be sent to the Authority by 1 February 1976, for the height of one stack to be increased by the same date and also by that date for the Authority to be provided with readings of the emissions at a specified discharge point. On 7 January 1976 the company sought an extension of the time in which it was to provide specifications of the fume incinerator and related equipment.

On 16 January a note was made listing some details of the complaints which had been made and concluding:

> *"Total 31 complaints to date, all justified."*

The list was endorsed, *"Noted"*.

On 27 January 1976 the company sought an extension until the end of February of the time in which it was to provide to the Authority readings of emissions.

On 2 February the Authority agreed to extend until 1 April the time in which the company was to provide specifications of the fume incinerator and related equipment. On 13 February Mr. Chiodo of the Authority spoke to the company Engineer who informed Mr Chiodo that the emission readings which were to have been provided to the Authority on 1 February would probably be available by the end of February. Mr. Chiodo noted that varying the licence could probably not be done before the end of February and that it would therefore be advisable simply to await results. In the event, the company provided readings on 18 March and gave notice of its wish to discuss with the Authority the means of meeting the Authority's emission requirements. Mr. Chiodo received the company representatives on 24 March and was informed of successful experiments which had been undertaken in the interests of reducing the solvent content of dyestuffs from the new level of approximately 15% to a level of approximately 1%. A paste was being used instead of an ink. Mr. Chiodo was told by the company representatives that the paste could be in full use by October. Mr. Chiodo therefore suggested that the company seek an extension of the time in the licence condition relating to fume incineration. On the following day Mr. Chiodo verified with the company's supplier the availability of paste by June. In conformity with Mr.

Chiodo's suggestion, the company formally requested that in view of its impending change to the use of no-solvent emulsion, the licence requirement for fume incineration be reviewed. In explaination, the company added:

> *"Following discussion with the Authority a change was made to B.A.S.F. Uniprint LSH which has 15% added solvent with an aromatic content of less than 0.5%. Due to the necessity of exhausting stocks of Uniprint A already in store or on order, the change over was not effected until April, 1975, when made, resulted in a 70% reduction from our initial level of hydrocarbon emission.*
>
> *We are currently running on Uniprint LSH but, since being advised by the Authority in December, 1975, that fume incinerators would be required to further reduce our emissions, we have been working with B.A.S.F. to determine the practicability of using one of their recently developed range of no solvent emulsions. These tests have established that Uniprint NS/5 no solvent emulsion is acceptable from a quality point of view, although it necessitates lower running speeds through our equipment.*
>
> *As on the previous occasion, the necessity to exhaust stocks in our supply pipeline will prevent the changeover before the end of October, 1976. However, from that date the total hydrocarbon emissions from our plant will have been reduced by approximately 98% from the levels of 1974."*

The company added that its hydro-carbon emissions had averaged 550 kilograms daily in 1974, had since been reducted to 165 kilograms per day and, with the introduction of Uniprint NS/5, would fall to less than 10 kilograms per day. The company also submitted to the Authority a Report on the Treatment of Printer and Stenter Exhausts dated 18 February, 1976 and prepared by Process Design Fabrication Pty. Ltd. of Box Hill. That Report concerns the design and costs of fume incineration equipment and provides to the company a range of options with initial costs ranging from $157,000 to $397,000 and additional fuel costs of up to $104,000 per annum. In relation to the Report, the company commented:

> *"Clearly these costs could not be borne in a business the size of our company. In any case, we firmly believe that the better environmental solution is to eliminate the source of objectionable emissions rather than to invest in costly clean-up equipment."*

The company nevertheless conceded that, although the new emulsion to be used contained no solvent, "our tests indicated a very low level of hydro-carbon emission. This stems from a certain irreducible volatile content of the pigment paste...."

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On 7 July, 1976 Mr. Chiodo summarised the situation in the following way:

"*(a) All licence conditions have been complied with except afterburner condition which expires in August.*

*(b) Since November 1975, no complaints have been registered against the Company by the E.P.A.*

*(c) The Company intends to replace their printing pastes with non-solvent pastes. This will have the effect of reducing solvent emissions from the current level of 100 kg/day to 10 kg/day on the Company's estimates.*

*(d) Clearly it is more desirable to reduce emissions than to afterburn. Hence proposals made by the Company should be given a fair trial. At this stage, however, it is not certain whether the non-solvent pastes would lead to 100% odour free operations since the material may degrade in the ovens, which are direct fired. However it is unlikely that odour problems will be encountered because of the low quantities of emissions envisaged.*

*(e) The best method of proceeding at this stage is to*

*(1) extend the time of compliance for the afterburner installation by 12 months*

*(2) request that the Company measure and supply emission data for operating with solvent free pastes.*

*(3) the situation should be reviewed within 12 months and, provided no justified complaints are received in that period, the licence should then be amended to remove the afterburner condition and to include the lower emissions in schedule A. A condition should then also be imposed to limit the company to the use of solvent free pastes only.*

*Clearly if justified complaints continue to be registered, the afterburner installation must be insisted upon.*"

The Authority subsequently notified the company of two variations in the licence conditions. The first was that the requirement for installation of fume incineration equipment was varied from 1 August 1976 to 1 August 1977. The second was that the requirement for the provision of specifications relating to that equipment was varied from 1 April 1976 to 1 June 1977. The Authority explained those variations to the company in the following terms:

*"The course of action will permit your company to implement the changeover to non-solvent printing pastes. It will also allow the Auhority's officers to assess the effects of the proposed lowered emissions and to determine whether condition 5 will still be necessary. For this purpose, it is expected that your company will supply, prior to 1st April, 1977, measured emission data for discharge points 3, 4(a), 4(b) and 5, together with paste and solvent consumptions. It is also expected that changeover to non-solvent pastes will be completed by 1st October 1976 and be permanent.*

*Should the Authority resolve to delete condition 5 of the above licence, the licence will also be amended to incorporate the lower emissions associated with non-solvent pastes, and thenceforth only these printing materials may be used."*

On 4 April 1977 the company sought from the Authority an extension from the time and the licence condition relating to the provision of emission figures. Those figures were to have been provided on 1 April 1977 and in requesting an extension to 1 June 1977 the company wrote:

*"This extension is required because we are finding extreme difficulty in running a production program that will enable satisfactory sampling to be carried out.*

*Because of the state of the textile industry at present, we are experiencing production requirements for printing on lightweight fabrics requiring little print past coverage with the added factor of work load on the 1850 printing machine being very considerably reduced.*

*We feel that for us to supply the Authority with a meaningful analysis of our emissions, we would have to do so on fabrics which are heavier and contain more print coverage than those running at present, so as to give a likely maximum emission rate.*

*Our commitments in this area indicate that we should be producing the heavier type of fabrics within the next two months. Obviously the consultants will need some time after the sampling to make out the necessary anaylsis."*

On 7 July 1977 Mr. Chiodo enquired of the company as to the whereabouts of the results of the emission tests. He was informed that the tests were to be completed the following day and the results were to be with the Authority by mid July. On 25 July Mr. Chiodo had discussions with company representatives and their consulting chemists whose report was provided to him. Mr. Chiodo recorded those discussions in the following terms:

*"(a) It was originally envisaged that 100% non-solvent pastes could be used. For technical reasons this is not achievable. The company can run satisfactorily however with 50% of their production on nonsolvent pastes and 50% on low solvent (15%) pastes.*

*(b) If the Company were to be required to instal afterburners then the cost of $300,000 installation plus $100,000 p.a. running costs would mean that the Company could not operate and would therefore shut down.*

*(c) The emissions quoted in the submission by the consultants, represent 75% printing cover and heavy duty cloths. This represents therefore a maximum emission rate and can be compared with a costing figure overall based on 50% coverage. A mass balance indicated that the measured emissions as quoted represent 80% of the solvent on paste used. The balance would be associated with paste losses to liquid effluent.*

*(d) The Company has standardized on one non-solvent paste (Bayer emulsion HO) and one low solvent paste (BASF-LSU).*

*(e) The solvent in the low solvent paste is predominantly non-aromatic (white spirit or 150 per H.). A conforming solvent (under L.A. rule 66) will be supplied by the manufacturers when the solvent Regs so require.*

*(f) There have been no odour complaints that the Company are aware of in the last 12 months, during which time the Company has operated on Low Solvent and Non-solvent pastes exclusively.*

*(g) A minor faint fuming problem has been noted by the consultant on one occasion and this was attributed to lubricant oil on the cloth. It is a normal requirement that cloths to be printed be made oil free.*

*(h) The operating temperatures are 190$^{o}$C approx for stenter and 120$^{o}$C on drier.*

*(i) The emission rates as quoted are maximum. However emissions occur for only 50% of the normal working day. The paste usage per day is of the order of 1000 kg. Production increases would mean increased length of production time rather than increased emission rates per hour.*

*(j) Only 1 of stacks 4(a) and 4(b) will be normally used. If both stacks are used, the emission rate for one stack will be divided between the stacks."*

On 30 January 1979 a resident complained to the Authority of odour emanating from the factory and of an oily deposit which was being left on house windows and pitting exposed enamels. An officer of the Authority interviewed the complainant and the company manager on that day. The officer concluded that the odour may have been caused by the processing of an unusually large batch of unbleached linen. Mr. Wilkins decided that no further action should be taken in relation to the complaint.

On 12 September, 1979 a resident complained to the Authority about smoke and an odourous emission from the factory. On that day Mr. Taylor interviewed the complainant and made a local inspection. His report concluded:

> "*Complaint justified as a nuisance. The licence may need some amendments calling for increased stack heights for solvent emission points.*"

The report was endorsed, "*Noted*".

On 29 February 1980 the Authority amended the company's licence to delete anachronistic references to the discharge points in the context of the requirement for emission sampling provisions.

On 24 March 1980 a further complaint of odour emanating from the factory was received by the Authority. Mr. Taylor conducted a local inspection that day and interviewed the complainant. His report concluded:

> "*Complaint justified. Recommend amendment to the licence to control the pollution.*"

On 27 and 31 March 1980 there were further complaints of odour which, on the second occasion, was described by the complainant as "*a frequent occurrence.*" On 15 April a further complaint of odour was received and on that day Mr. A. Scicluna interviewed the complainant. Mr. Scicluna inspected the factory itself on 17 April and reported that the Production Manager "*said that negotiations have been in process with the E.P.A. re an afterburner condition and the use of low solvent printing pastes.*" Mr. Scicluna concluded:

> "*I subsequently arranged a licence inspection to clarify the licence conditons.*"

The Auhority received a further complaint of odour from a resident on 21 April. On 7 May Mr. Scicluna conducted an inspection and noted that, the company's negotiations with the Authority notwithstanding, the licence required the installation of fume incineration equipment by 1 August, 1976 and that that condition had not been met Mr. Scicluna added that "*No decision has been made whether the fume incinerator should be*

*installed or not despite the use of low solvent printing pastes."* Mr. Scicluna also found an undeclared lacquering fume extraction stack and advised the Production Manager to make prompt application for licencing that discharge. On 14 May the company enquired of the Authority what its commitments were under the licence conditions relating to fume incineration.

On 24 May, 1980 Mr. Scicluna interviewed the resident who had complained on 21 April and noted, *"Complaint justified. Licence under review."* Two further complaints of odour were received in May and one of the complainants added that the offensive odour was frequently felt in the area and nothing was done despite repeated complaints. Mr. Taylor interviewed that complainant on the day and the complaint was made and also inspected the area. His report concludes:

> *"Complaint justified. Licence position of this company needs clarifying."*

The report was endorsed, *"Company has recently written to the Authority re clarification of conditions 5 (afterburner)."*

A week later on 26 May, another resident complained that the odour emanating from the factory had been present in the area for weeks. Mr. Taylor conducted an inspection that day and found the complaint justified. He interviewed the complainant who said that the odour had been bothersome since March and that it had affected her breathing.

On 9 June, 1980 an Air Quality officer, Mr. M. Neylon, inspected the factory and in the course of his report wrote:

> *"It appeared that by way of low solvent paste adequate control was being employed.*
>
> *The source of the 'kerosene' odour could be fugitive emissions from the factory.*
>
> *The Plant Engineer advised me that he would submit a further application form for the new discharge point."*

On 12 June the company applied to have the new discharge point licenced and all previous conditions relating to fume incineration struck out.

On 8 July a resident complained of odour emanating from the factory and of the Authority's alleged inaction in response to earlier complaints. On 10 July Mr. Scicluna inspected the factory and agreed to notify the Works Manager when complaints were received so that they might be matched with production schedules. Mr. Scicluna added that "a survey will be carried out in order to isolate the source of odour." He

interviewed the complainant, informed the complainant that the investigation was continuing and reported, *"strong odour in the complainant's street between 1200-1220 hrs during odour surveillance. Complaint justified."* On 11 July a further complaint of odour was received from different street. Mr. Scicluna inspected the area and the Works Manager noted the complaint. Mr. Scicluna informed the complainant of the continuing investigation.

On 15 July Mr. Scicluna reported on odour surveillance in the following terms:

*"COMPLAINT HISTORY*

*42 complaints have been received, the majority alleging odours emanating from the factory concerned. Of these 3 were found to be unjustified. The history of complaints stretches back to 26.9.73 as recorded on File no. 74/3566. Residents have indicated that complaints have been made to other authorities prior to this date.*

*The complaints lodged have been from many different complainants living on all sides of the factory. All justified complaints have co-incided with wind directions. This in itself indicates that a problem does exist in the area with regard to a kerosene odour.*

*REPORT*

*The odour surveillance carried out around the premises of the two adjacent factories over the past month has conclusively revealed that a 'kerosene' solvent type odour does exist in the vicinity, although it should be pointed out that this odour is more concentrated on some occasions than others. Inspections of the factory in question has shown that the odour present in the factory is similar to that experienced outside the factory. No point source could be established. Odours in the factory itself indicate that some odour may be associated with fugitive emissions discharging through roof vents. Both factories were inspected by K. Wilkins and myself. The only other possible contributing source in the immediate area to the kerosene type odour is one of the boilers used at the adjacent factory. The inspection carried out on the 10.7.80 showed that this boiler was operating satisfactorily. It was felt that this source did not contribute largely to the odour particularly as the stack is low and that emissions would need to arch over the roof of the factory in question to initiate complaints from the south side of that factory. Indications are that this unit will be converted to N.A.G. (Natural Gas) shortly.*

*The inspection carried out on Saturday 12.7.80 showed that an odour problem was associated with the factory in question only as the adjacent factory was shut down. The odour on this day was only a slight kerosene type conc (presumable concentration) varies according to amount of production, linen cover and an amount of printing pastes used.*

*Recommendation*

*STACK TESTING BE CARRIED OUT AT THE FACTORY IN QUESTION IN ORDER TO ESTABLISH THE SOURCE OF THE ODOUR AND IMPLEMENT CONTROL MEASURES."*

Mr. Scicluna's report was accompanied by a detailed record of observations made on 19 June and 15 July. Upon examing the report Mr. Wilkins suggested that after discussions with the Air Quality Section tests be made of emissions from the factory. However, Mr. Monsborough expressed the view that tests should be conducted by the licensee:

> *"I am not happy with using the stack testing team to measure these rates to prove something we already know i.e. that there is a 'kero' odour which is causing complaints."*

In relation to a complaint made on 6 August of odour emanating from the factory, the following day Mr. Scicluna noted, *"stack test requested"*. Further complaints of odour were received on 12 and 13 August and on the second day Mr. Scicluna made an inspection. On 19 August Mr. Taylor investigated the complaint made on 12 August and reported:

> *"Complaint justified. It is recommended that the factory's solvent emissions be reduced."*

This report was marked for Mr. Neylon's attention.

In relation to Mr. Monsborough's view, during September examination proceeded of the cost of testing the emissions from the factory.

Testing impressions

It was at that point that the Authority's files had been sent to me so it was on the basis of the information which I have summarised in this Report, as well as one other matter, that I formed certain impressions.

The other matter was a telephone call received at my office by Mr. Bare from one of the complainants. Mr. Bare reported the relevant portions of the call in the following terms:

*"The complainant said that the odour from the factory was particularly pungent that morning (13 October) and it was impossible to keep the odour out even though she had attempted to block spaces under doors and around windows.*

*I asked the complainant whether she had on this occasion complained to the E.P.A. She said that she had not as over the years she and her neighbours had found such complaints to be ineffective. I asked her whether she was saying that the E.P.A. did not investigate her and her neighbours' complaints. She said that E.P.A. inspectors did arrive in response to complaints but after the inspections nothing seemed to be done to eradicate the problem. She added that she and her neighbours were reaching a point of desperation and it was not fair that because of the odour created by the factory residents were driven to the point of selling their houses. I said to the complainant that, despite her complaints to the Ombudsman, she should, if she felt the need, complain of the odour to the E.P.A. as the responsible authority."*

Given the rate and nature of complaints from nearby residents, its seemed to me that the Authority's record reflected a high degree of responsiveness among its investigation officers, a lack of support for their findings and recommendations from within the Authority, a series of repeated delays on the company's part in meeting licence conditions and an apparently casual attitude to the problem on the part of the Authority's licencing officers.

However, I was conscious of the possibility that other records at the Authority, the Authority's resources and staffing situation or problems as to its powers may have given rise to evidence which would properly mitigate the impressions which I had gained from the records provided. I also had it in mind that the Environment Protection Act 1970 provides for the creation of State Environment Protection Policy which may be generally applicable or applicable only to designated parts of Victoria or of the environment and for the advertising of, and hearing of objections to, such policy as it may be proposed and to any proposal the Authority may make to vary or add to conditions attaching to a licence which the Authority has issued.

On 13 November, 1980 I therefore wrote to Mr. Fraser the following terms:

*"I have examined the files which you sent me under cover of your letter (74/3566) dated 26 September, 1980.*

*As a result of that examination I have formed several impressions:*

1. *Acting of Investigation Officers*

*The Authority's investigation officers appear to me to have worked most diligently: their inspections were in prompt response to complaints, their reporting was candid and their recommendations were positive.*

2. *Authority's response to investigations*

*Responses within the Authority to the investigation officers' findings seem to me to have been of a different order. For example, following an inspection in November 1975, Mr. Taylor recommended recourse to the then Department of Health in an attempt to prevent continued emissions prejudicial to public health, but the record shows no response to that recommendation. From the record, I have gained the impression that the Authority's consideration of licensing questions proceeds almost completely independently from the findings of its investigation officers.*

3. *Actions of Licensing officers*

*The Authority's licensing or Air Quality Section seems to me to have been unhurried in considering the Murrumbeena problem. I draw to your attention the following examples.*

*(a) Although the company applied for a licence in July 1973, in February 1974 it wrote to the Authority that it was still waiting to hear again from the Authority of the steps which it should then take.*

*(b) On 26 April, 1974 the company applied for variation of some licence conditions. On 31 October, 1974 it notified the Authority that by March the following year it would be able to bring on stream a lower solvent dyestuff, thereby reducing hydrocarbon emissions. Yet on 18 November, 1974 Mr. Monsborough noted that the most recent item of correspondence filed was the company's letter dated 26 April and that its 31 October letter could not be found. In the event the application submitted on 26 April, 1974 was assessed between 20 and 29 November, 1974.*

*(c) No action appears from the record to have been taken in response to Mr. Taylor's recommendation on 27 October, 1974 that a Notice of Contravention be issued as an immediate, interim, controlling measure pending the issue of a licence with minimum delay.*

*(d) On 1 May, 1975 the company applied for a further variation to licence conditions but its application was assessed only in September-October of that year.*

4. *Enforcement of Licence Conditions*

*The company has seemed to me slow to respond to the Authority's requirements as they have been embodied in succeeding sets of licence conditions. In October, 1974 Mr. Taylor commented on the factory management's apparent unwillingness to take effective action to solve the pollution problem. With most of the conditions attaching to the successive or varied licences issued, the company requested extensions of time and even then sometimes failed to make timely responses. In none of those instances does the Authority appear from the record to have taken action to secure prompt and timely responses from the company.*

*I appreciate that you may have other records which may serve to place into a different and possibly more appropriate context the impressions which I have gained. If that is so, I will be pleased if you provide those records for my examination.*

*In the interests of setting the Authority's treatment of the Murrumbeena problem in the broader context of the Authority's work, could you please let me know whether there are provisions, relevant to this case, for the Authority to advertise its intentions to issue or vary a licence and, if there are, how those provisions have been applied. It would also assist me to know whether there is any State environment protection policy which is in any way relevant to this case."*

On 3 December, 1980 Mr. Fraser replied as follows:

*"In answer to your specific queries, there is no State Environment Protection Policy relevant to this case. The provisions for the Authority to advertise its intentions to issue or vary a licence came into force on 1 August 1978 and relate only to the most recent amendment of the company's licence on 29 February 1980. That amendment was administrative only and was not advertised. However, the Authority has voluntarily advertised grants and variations of licences since licensing began in 1973.*

*Although it is true that a licence application form was received from the Company on 20 August 1973, it was not until 19 November 1974 that sufficient information became available on which a licence document could be drafted by technical staff in our Air Quality Branch. We regretted these delays but similar problems*

*were experienced with many applications. This led to a considerable backlog, which was reduced only after we received funds from Treasury to appoint a special task force of temporary staff in 1977.*

*On 12 December 1975 the licence was amended, in accordance with the recommendation of the Air Quality Branch, to require installation of a fume incinerator to destroy the odours in the discharge. That requirement still stands.*

*Within the E.P.A. the findings of Investigations Officers are evaluated in the Investigations Branch, which is responsible for enforcement of licence conditions. Mr. Taylor's recommendations, including one of September 1979 that the condition requiring the fume incinerator be removed, were made to senior officers in that Branch, who considered them inapplicable or unsupported by convincing evidence.*

*Third party appeal provisions have been available since licensing began, but unfortunately complainants in this case did not take advantage of them."*

As I subsequently notified Mr. Fraser, his respnse did not deal to my satisfaction with the matters which I had put to him for his comment. In addition, his response raised new matters for enquiry. At that point, it seemed to me that the following matters demanded consideration:

1. The absence in the files provided to me of any record of the consideration given to recommendations made by investigation officers.

2. The apparent segregation of consideration given by the Authority's officers to licensing questions from their consideration of complaints.

3. The delays in handling the company's applications in connection with its licence.

4. The company's apparent procrastination and the absence of any record of a response to that procastination by the Authority.

5. The company's failure to adhere to the licence conditions relating to fume incineration and the apparent absence of any effective response on the Authority's part.

I therefore asked Mr. Bare to hold discussions with the appropriate officers of the Authority with a view to acquiring the information necessary for proper consideration to be given to those matters.

By arrangement, Mr. Bare visited the offices of the Authority for discussions on 7 January, 1981.

Because by that time it had been over three months since the Authority had provided its files for my examination, at the beginning of the discussion Mr. Bare requested that the files again be provided. As the officers involved in the discussion were familiar with the additional information recorded, it is appropriate that I account for that information before turning to the discussions held at the Authority's office.

The Further Record

The record shows that at 10.45 a.m. on 9 October, 1980 the other complainant, to whom I have referred earlier in this Report, telephoned Mr. Fraser and that Mr. Fraser noted:

> *"She and others have complained many times without results and they are now reporting it to the Ombudsman.*
>
> *The odour penetrates the house even with doors and windows closed. She noticed the odour starting today at 10.00 a.m. The odour is mainly during the day - not at night and not on Saturdays and Sundays. (The noise problem continues at night with grinding and banging noises.)*
>
> *She said she called the EPA complaints number several times starting at 10.30 a.m. without being able to get through - the line was busy. (I called the complaints number at 10.50 am and got through to Mike Davies without delay.)"*

From 12.15 to 2.00 p.m. on 9 October Mr. Scicluna inspected the area, interviewed the other complainant and one of her neighbours and also inspected the factory and interviewed the factory manager. Mr. Scicluna concluded that the complaint was justified. On the day of the other complainant's call to Mr. Fraser, he asked Mr. Monsborough for *"a brief report on the background of this matter"* and Mr. Monsborough wrote to Mr. Fraser that Mr. Scicluna had not yet returned from the area but that *"the background of the matter is best outlined in a previous encounter with the Ombudsman approximately four weeks ago."* Mr. Monsborough's reference would doubtless have been to Mr. Archer's letter to Mr. Neesham which I quoted early in this Report. The files show no record either of any further action having been taken in response to Mr. Fraser's request or of Mr. Fraser having sought additional information.

On the following day Mr. Scicluna informed Mr. Neylon in the Air Quality Branch of the results of his inspection. At 4 o'clock on the afternoon of the same day, however, the other complainant telephoned the Authority again to say that, that morning's inspection notwithstanding, the odour

persisted and she was told according to the record that *"we were looking at the problem and that it would be given some priority."*

Also on 10 October, 1980 the other complainant wrote to the Honourable W.V. Houghton, the Minister for Conservation, in the following terms:

> *"As Minister for Conservation the EPA is part of your portfolio. We at (two named streets) in Murrumbeena have had dealings with the EPA for a number of years. We are subjected to the most nauseating smell inside our homes and we have to put up with noise day and night and on weekends. Although inspectors follow up complaints, nothing is ever done about it. (It would be of interest to all of us if we could be re-imbursed for our high telephone bills due to the constant ringing up the EPA). The suspicion is with many of us that it is more a situation where 'DO NOT UPSET THE INDUSTRY; THE PEOPLE WILL CALM DOWN'!*
>
> *Should this be your opinion, may I humbly suggest that the EPA be abandoned and the taxpayers' money be put to a better more constructive use. At this stage it looks that we are on a 'merry-go-round' and there seems to be no way out, because one section is blaming another! What precisely is the authority of the Chairman of the EPA?*
>
> *In desperation, Sir, would you please advise the Chairman of the EPA to finally do something about such an unbearable situation. And last but not least, please may I point out that the people in this area too had part in electing the State Government.*
>
> *I look forward to your action."*

On 16 October the Minister acknowledged that letter and referred the matter to Mr. Fraser.

On 14 October 1980 one of the original complainants to me telephoned the Authority complaining of a *"bad smell"* which, she said, was *"present most of the time."* Within 15 minutes Mr. Taylor detected the odour at the scene. He spoke to the factory manager and to two of the original complainants, one of whom said that the odour had been present on 13 October as well, and he concluded:

> *"The complaint about odours was fully justified. The odours were found to be fumigating the street. These were the kerosene-like odours. The large printer at the factory appears to be the main odour source. Diffuse odours from the general factory area leave via the many roof ridge vents. The Arioli steamer emits a strong 'bread' - like odour.*

*The Factory Manager said that production was normal and low solvent pastes are still being used.*

*It is recommended that this report be brought to the attention of P.I.O. A&N."*

On the following day Mr. Taylor recorded a formal statement of his observations on 14 October.

On 15 October Mr. Monsborough wrote to the Air Quality Branch in the following terms:

> "*Weight of complaints prompts me to make a recommendation that the condtion of the licence for these premises requiring an afterburner be pursued. However, the attached report (that made by Mr. Taylor the previous day) recognises two separate odour sources and two which may not result in an afterburner (incinerator) being the best method of control on its own.*
>
> *Therefore, may I suggest that in your assessment of the real problem of odour abatement, the concept of high level discharge be considered as well as incineration."*

Also on 15 October, the Honourable C.R.T. Mathews, the M.L.A. for Oakleigh, wrote to the Minister for Conservation that the other complainant and "*residents of nearby streets*" had expressed concern over the nuisance caused by the odours coming from the factory in question. Mr. Mathews asked the Minister whether enquiries had been conducted and, if so, what the results of those enquiries had been.

On 16 October the Authority received telephone complaints that the odour from the factory had been bad for weeks, that it had that day started at 7.00 a.m. and that it "*has been going until 8.00 p.m. lately.*" Mr. Taylor inspected the area, spoke to the complainant's wife and concluded that the complaint was justified. At 7.00 p.m. on the same day, the other complainant telephoned the Authority complaining of odour which had been present when she had returned home at about 5.00 p.m. Mr. Perkins was in the area 10 minutes after the call had been received and could detect no odour. The other complainant agreed with Mr. Perkins that the odour had gone but she expressed her dissatisfaction with the Authority's alleged inaction.

On the morning of 21 October, 1980 Mr. Taylor again reported strong odour in the area. He entered the factory.

*"The factory manager was advised of my intentions to obtain printing paste samples and to take photographs of the stacks. He expressed some hesitation because an appointment was not made and requested information on E.P.A. Inspector Powers.*

*(He was later given photocopies of E.P. Act sections.)"*

A colourist at the factory gave Mr. Taylor additional data about the subtance being used by the company in its processing and three days later Mr. Taylor made further enquiries of the manufacturers of some of those substances. Mr. Taylor concluded:

*"Conclusion: It was found that two printing emulsions used by the company contain several chemicals besides hydrocarbon solvents. These other chemicals may accentuate odour problems.*

*An aqueous based printing emulsion system is available as an alternative to the hydrocarbon containing system which requires the use of a fume incinerator.*

*However, there are presently product quality/quantity and equipment problems associated with the use of aqueous printing systems. The company management say that aqueous systems will not be used as they are not competitive."*

The other complainant again telephoned the Authority on 23 October complaining of obnoxious smells. On the scene 80 minutes later, Mr. Taylor detected no such smells but concluded that the complaint was *"probably justified"*.

On 24 October the Authority received five telephone complaints of noisome odour in the area. Messrs. Taylor and Scicluna made an inspection. Two of the complainants said that they had never noticed such an odour before and a third said that *"the odour was the worst she had detected."* Mr. Taylor reported in the following terms:

*"The factory was inspected in company with the Manager.*

*It was found that upon entering the printing room, strong acrid kerosene type odours were present. A light blue smoke was blowing out of both ends of the large printer.*

*A fabric with mixed light and dark colours was being heavily covered. The black was still present in the second stack. It is to be removed at the weekend.*

*The factory manager said that a heavily covered fabric such as the one being processed, would be done about twice every three months.*

*When questioned about the installation of a fume incinerator, he said that they would fight such a requirement. ......*

*He said that the use of water based printing emulsion was not acceptable to them.*

*He also emphasized that they do not dilute emulsions with extra solvent.*

*Complaint justified.*

*Conclusion: Complaints were received about odours. The source was the large printer at the factory which was applying and drying a particulary heavy coat of emulsion, giving rise to greater than usual solvent emissions."*

Two further complaints of odour were received on 27 October and Mr. Scicluna inspected the factory, sourced the odour, informed the factory manager that the matter would be reported, spoke with both complainant and concluded that the complaints were justified. Another complaint of odour was received on the following day and Mr. Scicluna inspected the area and interviewed the complainant and concluded that the complaint was justified.

On 30 October, 1980 the Minister for Conservation acknowledged Mr. Mathews' letter and Mr. J.D. Brookes, the Director of Conservation, referred Mr. Mathews' letter to Mr. Fraser for preparation of a ministerial reply.

On the following day, Mr. J.H. Jenkin, the Secretary to the Authority, wrote to the Secretary to the company which operates the factory about condition 5 of the company's licence, that condition being the one requiring the company to have installed fume incineration equipment by 1 August, 1977:

*"I refer to your company's letters of 14 May 1980 and 12 June 1980 wherein you request clarification of your company's commitment to condition 5 of its licence to discharge waste to air (EA 703/2).*

*In response to a previous request from your company on 24 March, 1976 for deletion of condition 5 of the licence, the Authority resolved to vary the licence from extending the dates of compliance with condition 5 from 1 August 1976 to 1 June 1977, and licence condition 5(g) from 1 April 1976 to 1 June 1977. You were advised that this course of action would permit your company to implement the change-over to non-solvent printing pastes and that it would also allow the Authority's officers to assess the effects of the proposed lowered emissions, and to determine whether condition 5 was still necessary. Also, our letter of 13 July 1976 conveyed our*

*expectation that measured emission data for discharge point 3, 4 (b) and 5 submitted before 1 April 1977.*

*Your company then submitted test results in July 1977 which indicated that lower emissions had been achieved by the use of low solvent pastes. However in view of the present continuing justified complaints relating to solvent odours emanating from your premises, it is considered that the removal of condition 5 from your licence would be inappropriate.*

*You are therefore requested to take immediate steps to comply with condition 5 of the licence and to this end complete plans and specifications of the fume collection system and fume incinerator required by this condition should be lodged at this office on or before 30 November 1980.*

*I would point out that waste discharge is authorized only from the nominated discharge points in condition 1 of your licence and that your company should ensure compliance with licence conditions to avoid creating a state of pollution in the environment."*

Also on 31 October, a further complaint of odour was received but on inspection Mr. Scicluna was unable to detect an odour. On 6 November the other complainant claimed to the Authority that the odour was penetrating her home. Mr. Taylor inspected the area and concluded that the complaint was justified.

On 7 November the Minister for Conservation wrote to the other complainant in the following terms and at the same time copied his letter to Mr. Mathews:

*"Further to your letter of 10 October 1980, I have now received advice from the Deputy Chairman, Environment Protection Authority, on the matters raised by you.*

*The Company which is the source of the odour, the subject of your complaints, has been issued with a licence to discharge waste to air by the Environment Protection Authority. The licence required the Company to destroy the odour by the installation of an after-burner. Such units are not only expensive to install and operate, but also do not conserve energy.*

*The Company negotiated with the Authority and attempted to overcome the odour problem by reducing the amount of solvent used in the process, and the installation of the afterburner was subsequently delayed.*

*For a time, it appeared that the low solvent inks had indeed been successful as there were no complaints received between March 1976 and January 1970. Now that complaints are again occurring, the Authority is acting to ensure that the source of the problem at the premises is determined and the required control equipment installed."*

Two telephone complaints of odour were received on the morning of 7 November, 1980 an inspection was made shortly afterwards, the complainants were interviewed and the complaints were found to be jusitifed. On 10 November the other complainant again telephoned the Authority about odours coming from the factory. When spoken to ten mintues later by telephone she said that the odour had gone. Two further complaints of odour were made on 10 November. On 13 November Mr. Taylor was in the area and reported that there was no odour at 3.30 p.m. On 19 November the other complainant again telephoned about very strong odours. On 19 November there was a telephone complaint about a strong odour on that and the previous day and Mr. Taylor reported that *"strong smouldering kerosene type odours were present outside the complainant's home. An unpleasant taste was left in one's mouth."* At 7.40 a.m. on 21 November the other complainant reported odours which were detected by Mr. Taylor when he inspected the area 40 minutes later. On 22 November the other complainant twice telephoned the Authority about odours and Mr. Taylor detected slight odours and concluded that the complaints may have been justified. The other complainant made further complaints of odour on 24 and 25 November.

On 26 November two separate complaints of odour were received and they were investigated by Mr. Taylor who detected slight odour. He recorded that one of the complainants *"said that the odours .... permeated clothing on her clothesline and the clothing has to be re-washed as a result."* Mr. Taylor concluded that the complaints were probably justified. Mr. Taylor also reported:

*"Both complainants said that the strong odours they had detected had come in short periods through the day. This coincides with the practice of the co. of running small batches through the printers."*

Later on the same day the other complainant telephoned the Authority and complained of strong odour *"which appeared to come over in bursts."* The subsequent inspection report reads in part as follows:

*"The other complainant said that she felt reluctant to complain each time she detected the kerosene odour but felt if she didn't complain to E.P.A. then the Authority might assume that the problem no longer existed.*

*I informed her of the current position with regard to that company - viz that the Authority would require an afterburner to be installed to incinerate the fume nuisance, but obviously it would take some work before it would be installed."*

On 24 November 1980 a company representative telephoned the Authoity and enquired as to the nature of the complaints being made by the factory. He was told that they concerned odour. Two days later, the General Manager of the company wrote to Mr. Jenkin in the following terms:

*"We have received your letter of November 11th and believe the current situation needs clarification.*

*Since our submission of July 1977, continued improvements have been incorporated, with one or two recent exceptions.*

*Following discussions with our dyestaff suppliers we believe there is an effective alternative which would eliminate the need for Condition five and in fact that the enforcement of Condition five would not resolve the supposed problems.*

*We wish to discuss developments we believe will resolve the situation albeit with the requirement of a sufficient extension of time to demonstrate, read-out and resubmit data showing acceptable levels of odour emissions.*

*Could you advise a time after 9.00 am Tuesday 2nd December when we could visit you for discussions on the subject."*

Arrangements were subsequently made for company representatives to meet for consultation at the Authorities offices on 2 December. On 1 December Mr. Taylor visited an unrelated textile printing plant in Brunswick and he reported as follows:

*"On 1/12/80 the ... premises at Brunswick was visited.*

*This company does screen printing of fabrics. The company originally used a solvent based printing emulsion until the E.P.A. licence no EA 2719/3 required the installation of a fume incinerator or cessation of organic solvents in the printing process.*

*The company was using aqueous based printing pastes (emulsion) in July 1978.*

*The Managing Director said during an interview that:*

1. *There have been no significant problems in using water based emulsion.*

2. *Earlier this year there was some trouble with colours running across the fabric. This was corrected by using Natrasol.*

3. *We have not had to slow production rates in printing/drying.*

4. *Customers have not commented on any adverse change in product quality.*

5. *It did not cost us thousands of dollars to perfect the emulsion composition.*

6. *We have adopted formulations, sold by the major suppliers, to keep costs down.*

7. *Our printing emulsions are cheaper now than solvent based types.*

8. *Any company could formulate their own successful and cheap printing emulsions if they have someone who knows what they are doing.*

*The plant was inspected. On a large screen printer and a roller screen printer no odours were detected around the respective ovens when in use.*

*The large 'Buser' 2490 roller screen printer/oven was of a similar size to that of the Murrumbeena factory's large printer/oven. The Buser however is steam heated not NAG fired as is the Murrumbeena unit. This Buser is normally operated at 25 metres per minute speed. It is designed to operate up to 65m/min.*

*There was only a slight acrid odour downwind of the factory on a hot day with a light wind.*

*Conclusion: The Brunswick company has demonstrated that water based roller screen printing is a viable commercial proposition. This is a small company which does not have the resources of a company like.... behind it (as the Murrumbeena factory has)."*

On 2 December three company representatives conferred for one and a half hours with officers of the Air Quality and Investigation Branches and the text of the document headed, "Minutes", read thus:

"(a) *White spirits content of pastes had been reducted stepwise from 80% (1972), 50%, 35% 25% to 15%. The solids point of view was acceptable but still odour problems.*

*(b) Bayer and BASF are the suppliers. Bayer supplies inks at 15%. BASF has recently supplied inks of 5% white spirit.*

*(c) Total solvent emission in 1972 was 1.75 tons per day. Current solvent emission is 125 kg/day.*

*(d) Intention is to convert to aqueous based inks with 2 % solvent content. Adoption of these types of pastes is claimed to be technically difficult and Company would like to delay change over until new equipment is installed. Target date for equipment is end of 1981.*

*(e) Company claimed it was not the only odour source in the area. Mr. Taylor advised this was true but complaints were directly attributed to the factory. It was clear that the reason for the excessive odour and hence the complaints could be due to experimental pastes being employed. No correlation of complaints and plant operations has been made.*

*(f) One source of odour other than printing pastes is the scotchguard process. The Company will be using a new formulation from 19 January 1981 (start-up date after Christmas closure) and this will eliminate odours from the Scotchguard process.*

*(g) Pastes containing 5% white spirit will be used exclusively from 19 January 1981.*

*(h) Company will attempt to determine community reactions from the change in pastes by circularized newsletter.*

*(i) Afterburner condition will remain on the licence, but there may be an alternative condition, e.g. maximum hydrocarbon emission. Licence review will be necessary."*

Following the meeting, Mr. F.A. Smith, the Principal Air Quality Officer (Stationary Sources), notified Mr. Fraser as follows:

> *"Company representatives stated (and we did not contest) that their solvent emissions are and have for some time been well below the limits set in their licence. They are continuing their endeavours to reduce suppliers and suspect that the formulations contain an undue amount of odorous substances, despite being low in total solvent.*
>
> *They have also been 'experimenting' and agreed they should have been keeping us apprised of these efforts, and will do so in future.*
>
> *They were unable to demonstrate that an afterburner would not solve the problem.*

*Surveillance will be increased and factory operations checked at the time of complaint.*

*A similar operation in Brunswick uses water based formulations and causes no complaints.*

*The company will therefore be pressed to improve on their forecast of the end of 1981 for the use of water based formulations which may render the use of control equipment unnecessary."*

Four telephone complaints of odour were made to the Authority on 4 December. The factory was inspected as was the area on three occasions. Three of the complaints were found to be justified and the fourth was probably justified. On 5 December one of the four complainants of the previous day complained that the odour was *"as bad as yesterday"* but two inspectors had not detected the odour when in the area 55 minutes before the complaint had been made.

The other complainant telephoned the Authority about strong odours on 15 December. On the following day a nearby resident complained of "sickening odours" and the same two complainants again complained separately to the Authority on 17 December. Mr. Taylor inspected the area and factory and interviewed the factory manager. He concluded that the complaints on 17 December were justified and noted that the factory manager had said *"that they were operating on Tuesday 16th at the time the other complaints were lodged."*

On 19 December Mr. Smith wrote in the following terms to Mr. D.G. Irvine, Deputy Air Quality Officer (Stationary Sources):

> *"It looks as though factory operations are still not being checked for correlation with complaints. Please take this up with Investigations."*

On 22 December Mr. Irvine noted that Mr. Taylor *"has arranged for copies of production schedule for complaint days."* On the same day, elsewhere on the file, Mr. Irvine also wrote:

> *"Product schedule corresponding to complaints is being correlated by the factory manager to Ken Taylor."*

It was in the knowledge of that record, then, that officers of the Authority meet Mr. Bare for discussions on 7 January.

The Discussions

It will be recalled that one of the matters which Mr. Bare was to discuss with officers of the Authority was the absence in the files provided to me of any record of the consideration given to recommendations made by investigation officers. In that connection, Mr. Bare reported his discussions in the following terms:

> *"I said that, in relation to the recommendations made by investigation officers, the Chairman had said in his letter to the Ombudsman dated 3 December that those recommendations were considered by senior officers of the Investigations Branch to see whether they were applicable or could be supported.*
>
> *I said that on the files provided to the Ombudsman there was no record of any such consideration having been given to the 10 explicit recommendations which investigation officers had made on the case in question. I was told that it was not the practice at the Authority to deal with the recommendations in writing and that, if the records show that no prosecution and no licence issue or variation to a licence condition followed the recommendation, then it was reasonable to assume that the recommendation had been discussed and rejected. Mr. Monsborough said that there was no reason for a lot of documentation in relation to the reasoning for the rejection of recommendations and that such documentation could lead to unneccessary personnel difficulties."*

It seemed to me to be a haphazard style of operation for a lack of record to be left as grounds for assuming that a recommendation had been discussed and rejected or, as Mr. Fraser had put to it to me, had been found *"inapplicable or unsupported by convincing evidence."* It also seemed to me that those responsible for determining recommendations may have been failing properly to account for their discharge of that responsibility. I appreciate that many such recommendations may well be inappropriate, but it seemed to me to betoken unsound management practice to leave for the guidance of the recommending officer and his peers no retrievable record of the reasons for which recommendations were rejected. To suggest that copious documentation is necessary seemed to me to be fallacious; to suggest that documentation could lead to personnel difficulties seemed both to imply that some recommendations may have been rejected for personal reasons and not for the types of reasons described by Mr. Fraser and also to reflect a personalised, unprofessional management technique.

In any event, it remained clear and was not contested during Mr. Bare's discussions that the Authority's investigation officers had found that almost all the numerous neighbourhood complaints of noisome odours emanating from the Murrumbeena factory were substantiated. That is directly relevant to the apparent segregation of consideration given by the Authority's officers to licencing questions from their consideration of complaints. In this case, licencing questions have been considered by the Stationery Sources Section of the Air Quality Branch which is in the Division of Waste and Noise Management, and complaints have been handled by the Air Section of the Investigations Branch of the Division of Special Services. Mr. Bare reported the related parts of his discussions in the following terms:

> *"On several occasions during the interview, reference was made to the informal discussion which frequently occurs between officers of the Air Quality Branch and the Investigations Branch but also at different times during the interview each of the three officers said that there were problems in communication between the two Branches. Mr. Smith and Mr. Monsborough agreed that that situation had improved in the relatively recent past but Mr. Smith said that it still takes often up to a fortnight for information to pass from the appropriate level in one of the Branches to the appropriate level in the other.*
>
> ..........
>
> *Mr. Monsborough and Mr. Smith agreed that the filing system does create difficulties and Mr. Monsborough said that the principal objection to the creation of unitary files was the need to protect from public inspection the names of complainants to the Authority while at the same time making the Authority's records otherwise publicly accessible."*

In the light of what Mr. Bare had been told, it seemed to me that the apparent segregation, which I had detected in the record, was real and may have gone some way to explain why such a large number of sustained complaints accumulated over so protracted a period had apparently impinged so little on the work of the Stationary Sources Section of the Air Quality Branch.

Mr. Bare also discussed at the Authority's office the delays which had occurred and in handling the company's applications in connection with its licence, the company's apparent procastination, the absence of any record of the Authority having responded to that procrastination the complainant's failure to adhere to the licence conditions relating to fume incineration and the apparent absence of any effective response on the Authority's part. Mr. Bare reported in the following terms:

*"I said to the officers that it seemed from the files that the Authority had not in this case made any attempt to enforce deadlines imposed on the form of licence conditions. I added that on two occasions in 1973, on one in 1974 on two in 1975, on four in 1976 and on a further two in 1977 the company had not abided by licence condition deadlines or had sought an extension of such deadlines and then not met the extended deadlines. I added that one investigation officer had in 1974 observed that the management of the company appeared unwilling to act constructively unless compelled to do so and that in 1975 it had been found that the figures originally submitted by the company in support of its licence application had been faulty and that the company proposed blandly to change the figures and proceed unaffected. Mr. Smith readily agreed that the Authority does not enforce deadlines. There was an almost constant willingness to extend deadlines in the interests of getting something done. Mr. Smith said that the Air Quality Branch is under instructions to give applicants every assistance in making their applications. He added that very many applicants have frequent difficulty in understanding the application form and need a great deal of help and frequently officers go almost to the stage of filling in the form for the applicants. The advice which officers in those circumstances includes estimating emission figures, those estimates being based upon information given to the E.P.A. by the applicant and concerning the materials and processes giving rise to the emissions.*

*The three officers agreed that the policy of the Authority was to achieve its objectives primarily, and indeed almost exclusively, by means of co-operation and negotiation and that unless there was a clear and blatant infringement -whether it be by conspicuous unlicensed discharge or by a discharge which conspicuously exceeded the limits imposed by a licence - the 'soft' policy was followed.*

*I thereupon drew to the attention of the officers my understanding that the licence for the company in question required the installation of fume incineration equipment by 1 August 1976. That, I said had been varied to 1 August 1977 and appeared still to be in the licence when, on 14 May 1980, the company had asked the Authority what its fume incineration obligations were. Indeed, I concluded, the condition remained on the licence even on 12 June 1980 when the company asked the Authority to have the requirement struck out. I ascertained from the officers that the requirement remained in the licence. Mr. Monsborough said that he was not in the Investigations Branch at the time when the fume incineration requirement was included in the licence. He said that he surmised that prosecution for failing to comply with the condition would probably not have been approved by the Authority because it contravened the Authority's policy of achieving results through co-operation and negotiation. Additionally, he said, the Authority*

*tended not to favour licence conditions which specified the results which were to be achieved. Mr. Smith nevertheless agreed that the condition was clearly in the licence and had not been enforced. All officers agreed that in this case the policy of negotiation and co-operation had meant that the condition had in fact been shown to be ineffective over a period of four years. Mr. Taylor said that investigation officers at the Authority were often frustrated by the 'soft' negotiating approach.*

*I then turned to the long period which seemed to have elapsed between the time when the company applied for its licence or for licence variations on the one hand and the time when the Authority took action in response on the other. I said that in the first instance the company had applied for its licence on 1 July 1973 and a resultant inspection had been made on 1 March 1974. A further application had been made by the company on 26 April 1974, the application had been assessed on 29 November 1974 and a licence issued on 24 January 1975. The company had again made application on 1 May 1975, the application was assessed by 9 October 1975 and and amendment was made to the licence on 12 December 1975. Mr. Monsborough said that in the period 1974/1975 the Air Quality Branch had establishment provision for 12 assessing officers and had a strength of approximately nine during that period. He said that in the 12 months to 30 June 1975, 3,224 licence applications had been received and of those 2,806 had been registered as satisfactory for processing. In the period 1,083 licences had been issued and 258 licences had been amended. Mr. Smith also said in relation to the periods of time to which I had referred that his earlier comments about the assistance given to applicant companies by officers of the Authority were relevant. I said that I wondered whether that was so in this case and Mr. Smith then examined the Authority's file. The subject was not raised again during our discussion.*

*I was informed that investigation officers were not able to make inspections in order to see how companies were progressing in order to meet licence condition deadlines. Mr. Monsborough said that it would be feasible to introduce such a system but pointed out that it was only in the last 12 months that a file resubmit system had been introduced in the office of the Authority."*

I accept that in the mid-1970's the Authority had pressing resource problems. Mr. Fraser had referred to them and to the use in 1977 of a special task force of temporary staff to overcome those problems. However, from the following extract of Mr. Bare's report of his discussions it emerged that the resource problems were not permanently overcome by that temporary expedient or had recurred in serious form since that adoption of that expedient:

*"Mr. Smith added that the Authority does not have the resources to police compliance will all licence conditions. He said that there are in Victoria approximately 12,000 licensed discharge points and that inspection of all of those discharge points, as well as fulfillment of the Authority's other obligations to be aware of unlicensed discharges, was beyond the Authority's capacity."*

It therefore seemed to me that the Authority may well lack the resources necessary for it to discharge its statutory responsibilities. In that connection I had in mind particularly the following provisions of the Environment Protection Act 1970:

*"13. (1) The powers duties and functions of the Authority shall be ;-*

*(b) To be responsible for and to co-ordinate all activities relating to the discharge of wastes into the environment and the emission of noise and for preventing or controlling pollution and noise and protecting and improving the quality of the environment;*

*(d) By the issue of licences to control the volume, types, constituents and effects of waste discharges, emissions, deposits, or other sources of pollutants and of substances which are of danger or a potential danger to the quality of the environment or any segment of the environment and to control the volume intensity and quality of noise;*

*(k) To undertake investigations and inspections to ensure compliance with this Act and to investigate complaints relating to breaches of this Act.*

*41. (1) No person shall pollute the atmosphere or cause or permit the atmosphere to be polluted so that the physical, chemical, or biological condition of the atmosphere is so changed as to make or reasonable be expected to make the atmosphere or any part thereof unclean, noxious, poisonous, or impure, detrimental to the health, welfare, safety, or property of human beings, poisonous or harmful to animals, birds, wildlife or plants or so as to be detrimental to any beneficial use of the atmosphere.*

*(2) Without in any way limiting the generality of sub-section (1) a person contravenes that sub-section if -*

*(b) he causes or permits the discharge of odours which may virtue of their nature, concentration, volume, or extent are obnoxious or unduly offensive to the senses of human beings."*

It also seemed to me that, although what the Authority's officers themselves described as the "soft" policy of attaining objectives through co-operation and negotiation might constitute a policy response to the need for continued operation despite serious resource weakness, it was a policy which had been demonstrably ineffective in this case and was, in any event, a policy which did not relate complaints received on the one hand to licensing and enforcement activities on the other. I appreciated the Authority's preference, as stated by Mr. Monsborough, for licence conditions which specify emission objectives rhather than control equipment, but the fact of the present case is that the Authority had specified as a licence condition the general type of control equipment to be used, the condition had not been met and the Authority had taken no effective action to enforce the provisions of the condition.

Mr. Fraser had notified me that the Investigations Branch was responsible for the enforcement of licensing conditions and it seemed to me therefore to be a matter of some concern that investigation officers were not able to make inspection to see how companies were progressing in order to meet licence condition deadlines. It seemed to me, on the one hand, that was inconsistent with the policy of negotiation and co-operation described to Mr. Bare and, on the other, that it further diminished the Authority's capacity to enforce licensing conditions.

From those matters which, despite their generality, seemed to me to place in an essential context the Authority's licencing and enforcement responses to the complaints which it had received about the Murrumbeena factory, Mr. Bare's discussion turned to the Murrumbeena case and he reported as follows:

> *"At a number of points during the discussion, reference was made by Mr. Smith and Mr. Monsborough to the need to relate the significance of the discharges in the particular case in question to other, implicitly more serious cases with which the Authority had to deal. I turned to that point and asked whether my understanding was correct that the Authority had at no stage measured the emissions created by the factory in question. The officers agreed that that was so. I asked why, given the number of complaints which had been made over a protracted period, no such measurements had been made and Mr. Monsborough agreed that measurements probably should have been taken. However, it was pointed out to me that the complaints being made were complaints about the odour emanating from the factory and that testing in relation to the licence conditions would be testing for the toxicity of the discharges. Mr. Monsborough mentioned that a new appropriation of $45,000 had recently been provided for stack testing purposes and that, notwithstanding his own statement in 1980 opposing stack testing of the factory, he had included the factory on the programme to be conducted with the new appropriation. Mr. Smith said that that programme was likely to be completed during 1981.*

*I asked whether stack testing in that way was material to the matters being complained of and the opinions of Mr. Monsborough and Mr. Taylor differed: Mr. Monsborough was of the view that the odours complained of originated from diffuse sources whereas Mr. Taylor was of the view that they originated from stacks. Both officers agreed with me, however, that stack testing was designed to measure toxicity and not odour and that the stack testing may therefore not have been relevant to satisfaction of the complaints.*

*Mr. Smith said that there were no objective criteria in Victoria for measuring odours. There were techniques for measuring odours and the requirement was for the Authority to demonstrate that odours created were unreasonably disturbing before action could be taken. I asked why it was that odour tests had not been made earlier and Mr. Smith explained that odour measuring techniques had been developed by the Authority, with the assistance of a laboratory in England, only very recently. I asked Mr. Smith whether he could tell me precisely when the Authority began using those techniques and he said that he would have to make enquiries. While the discussion proceeded on other matters Mr. Smith made his enquiries and at the end of the discussion informed me that the Authority had first used its odour testing equipment in early to mid-1975. He agreed that that was considerably earlier than he had previously thought.*

*Mr. Smith said that the Authority nevertheless faced problems in taking action to resolve the complaints. The Authority was unaware of what actually is discharged from the factory, no measurements having been made by the Authority. Mr. Smith explained that the Authority's previous legal officer had been of the view that no prosecution could be launched while the Authority continued to deal with the company in question in connection with the fume incineration requirement and the possibility of it using dyestuffs with a lower solvent content. In addition, the Authority did not know, and could not know until measurements were taken, whether the odour derived from licensed emissions or unlicensed emissions or whether it derived from licensed discharge points or diffuse sources."*

## Consideration

Notwithstanding the explanations given to Mr. Bare, it seemed clear that the Authority's failure to document the reasons for the rejection of recommendations made by its Investigation Officers had been in significant measure relevant to the repetition of similar recommendations over a period of years and the consequent failure of the problem solving process to assume a linear course as distinct from its persistently circular orbit and to approach the adoption of effective remedial action.

Also in significant measure, that failure seemed to me to have been explicable in terms of the administrative segregation of the investigation officers and those responsible for considering licensing matters and in terms of the failure of the Authority's management system effectively to surmount the communications difficulties created by that segregation.

I appreciated the need which arose from time to time for officers of the Authority to assist licence applicants to make their applications and understood that that could be a time-consuming task. None of the evidence before me, however, suggested that that need had been directly relevant to this case. I remained of the view that there had been unreasonably extended delays in assessing various of the licence-related applications made by the factory and those delays and the Authority's information management difficulties allowed the problems to continue for a period of years.

I appreciated that, by virtue of the sharp decline in the number of neighbourhood complaints, the Authority may have had reason to conclude between November 1975 and March 1980 that those difficulties had been alleviated. Yet, even during that period, the factory was able to avoid compliance with licence conditions in a manner which could reasonably have left its managers with no impression other than that the Authority was unlikely to seek to enforce those conditions.

It also seemed to me that the factory's managers could have been reasonably excused for gaining a similar impression in relation to the eminently purposeful proposal to relate complaints to production schedules because, although that proposal had been made by the Authority to the Works Manager on 10 July, 1980, an officer of the Authority was able to note over five months later that that co-ordination of information was still not being undertaken.

I appreciated the reasons for which the Authority prefers to solve such problems as those posed by the present case by negotiation rather than confrontation. If that is a policy for the enforcement of conditions, however, it seemed to me that it could be an effective one only if there were a constant and proper recognition of those circumstances in which negotiation was likely to be effective and those in which it was not. I did not think that in this case it required the benefit of hindsight after a period to have concluded that negotiation was not likely to be effective.

I also appreciated that the Authority's reported resource shortage may have led it to adopt a policy of negotiation but, if, as it appeared, that policy was unlikely to be effective in circumstances like those of the present case, then I would be reinforced in my view that it was the responsibility of the Chairman of the Authority to draw forcefully to

the Government's attention the significance of the Authority's resource problems to the effective discharge of its statutory function. No evidence had been put before me to show that such steps had been taken.

I thought there may also have been cause for questioning whether the resource problems were of resource shortage or resource distribution as between the different tasks required to be performed by the Authority's officers, for the decision to use part of the supplementary stack testing appropriation at the Murrumbeena factory seemed ill-conceived as it appeared that there was still no certainty as to whether the malodorous emissions came from the stacks or diffuse sources and as I had been given to understand that stack testing would in any event detect toxicity but not the odour giving rise to the complaints. It seemed to me unaccountable, but possibly relevant to the same matter of resource deployment, that since 1975 the Authority had had at its disposal the facilities for measuring odours but they had not been used in this case.

It also seemed that, resource problems notwithstanding, the Authority had devoted quite considerable resources to the matter at issue, and that too raised the question as to whether the problem was one of resource shortage or resource management.

Given that the complaint history surrounding the Murrumbeena factory stretched back for at least seven years and involved over eighty complaints having been made to the Authority, almost all of them being, according to the responsible officers of the Authority, justified complaints, it seemed to me most unsatisfactory that in 1981 the Authority was still unsure of precisely what was giving rise to the complaints, that it did not know with any degree of reliability what the factory was emitting and what the quantities of its emissions were, that it was contemplating the use of the costly and scarce resource of stack testing for a purpose now deemed to be possibly irrelevant to the cause for the complaints, that it had for five years had access to odour testing facilities it had not used and that it had accepted legal advice which in effect hamstrung the Authority in responding properly to the numerous complaints which it had received. In sum, it seemed to me that there was an essentially disfunctional relationship between the Authority's statutory responsibilities on the one hand and its treatment of the Murrumbeena complaints on the other and that, underpinning that relationship, there lay a lack of adequate communication within the Authority and a questionable claim as to a shortage of the resources necessary to measure emissions and odours and to gather the data essential to the observation and, if necessary, enforcement of licence conditions.

I am therefore of the view that the complaint is established.

(C.N. Geschke)
OMBUDSMAN

## FIRST ADDENDUM TO REPORT OF INVESTIGATION INTO UNCONTROLLED ODOURS FROM FACTORY

It was thus that I concluded my Intended Report which, on 17 June, 1981, I sent to Mr. Fraser for his examination and comment and also to the Honourable Minister for Conservation, Mr. W.V. Houghton, M.L.C., inviting his comment and offering to consult him if he wished.

The Minister notified me that he had called for a report from Mr. Fraser and later wrote that, *"As Mr. Fraser has given his own account of the matter directly to you, I will not be making any further comment."* In connection with my offer to consult the Minister, he wrote that *"I feel that the matter has been adequately handled by Mr. Fraser."*

Mr. Fraser had written to me on 30 July commenting on on my Intended Report in the following terms -

> *"Your findings highlight several points of tardy administration in the general handling of this case including the time taken to resolve a problem, the lack of direct approach, failure to pursue fume incineration options and failure to carry out emission analysis.*
>
> *With some of these findings I concur. However, if in hindsight this course of action has been long in resolution, I would like to bring you up to date with the actions taken since your enquiry.*
>
> *After many years the suppliers of dyestuffs to this industry have now provided low aromatic dye carriers and it was this course of action which the Authority was encouraging. On 11 May 1981, the company commenced using this new material and it has also carried out work to eliminate a secondary odour which has always been prevalent. As the result of these changes, odour levels have significantly decreased and the emissions testing which is currently being carried out, should confirm a substantial improvement.*
>
> *Provided that the company continues to operate as it is now, I believe considerable progress has been made. If the new materials and other new controls are not sufficient, then it may become necessary to press the company to install fume incineration, and on this account the condition of licence calling for this must remain.*
>
> *You have raised a number of issues in your letter which I feel need to be commented upon. Firstly, I can agree with you that the Authority has devoted considerable resources to this matter over the years, but I believe this reflected the seriousness of how*

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*problem was viewed. The problem that confronted us was a complex technical one to which a solution, short of closing the factory down by revoking its licence, was not immediately clear. It is true that up until a few months ago we were unsure of the precise source of much of the odour, however this was one of the principal reasons for not insisting on the installation of expensive control equipment which may not have completely overcome the odours.*

*Secondly, you mention that there has been a failure of the problem-solving process to achieve effective remedial action. You indicate that an explanation for this could lie in the administrative segregation of the investigation officers and those responsible for licensing matters. Despite the functional separation, this management system has worked well throughout the life of the Authority. I believe it would be a mistake to condemn it on an isolated example. The regionalisation of air quality matters which has been implemented during the last two years has overcome a number of the administrative problems you have referred to. However, I expect that problems such as that experienced with this company will continue to give the Authority a great deal of concern, no matter what management structure exists to solve them.*

*Lastly, you have questioned the claim made by us regarding lack of resources. Although I would concede that in this matter there was considerable room for improvement in the management of available resources, there nevertheless existed a lack of resources to properly assess the magnitude and quality of emissions from the factory. Stack testing and odour measurement facilities are not readily available and have in the past been needed in other priority areas. The Authority will continue to press for a greater allocation of resources in this area.*

*Thank you again for allowing me the opportunity to comment on your report."*

On 7 August I wrote again to Mr. Fraser -

*"I note that you concur with some of the findings put in that Report but I am uncertain as to what action the Authority now intends in respect of those findings in order to prevent a recurrence of the circumstances giving rise to the findings, and I will be pleased to have your comments in that connection.*

*I was pleased to learn that progress may have been made in resolving the local problem caused by the factory and, in assessing the significance of recent developments, it will assist me if you are able to let me know whether local complaints of odour have been received since 11 May and, if they have, what was revealed by site inspections and what action was taken.*

*You comment on the Authority's deployment of considerable resources over the years and add that the problem has been a complex one, exacerbated by the Authority's lack of certainty as to the precise source of the odour. On the basis of the information before me, I think that I appreciate the complexities of the problem but, with all due respect, I must say that I do not think that your comment addresses the points which I made in my intended Report (pp.58-62). In the absence of further comment from you, I would find it difficult to accept the relationship which you suggest between considerable resource deployment on the one hand and a lack of certainty as to the precise source of the odour on the other, and I would remain of the view which I put in my Report that mismanagement was a key factor in the Authority's failure to handle the problem promptly, purposefully and effectively. If that were the case then it would seem to me to raise serious questions as to the Authority's relationship with government (p.60).*

*You have not commented on my tentative findings concerning the treatment of recommendations made by Investigation Officers but you have suggested that it would be wrong, on the basis of the one example before me, to criticise the segregation of Investigation Officers and those responsible for licensing matters. With the exception of the example before me, I accept your assurance that, despite the segregation, the Authority's management system has in that respect worked well and been improved in recent years. I appreciate your comment about the limited availability of stack testing and odour measurement facilities. You add that they have in the past been needed in other priority areas, but I find it a little difficult to understand how, given the extent of complaint history in this complaint, the Authority's uncertainty as to what was giving rise to the complaints and the resultant possibility that the cause of the complaints may in fact have been a serious one in terms of pollution, the Authority was in a position to allot relative priorities to this and other tasks, and I take it that you are referring to that when you say that, in this case, the available resources could have been better managed.*

*I will be grateful if you are able, by 26 August, to let me have the information which I have requested as well as any further comments you may wish to make on matters raised in my intended Report and in this letter."*

On 25 August, Mr. Fraser wrote to me thus:-

*"In relation to your question regarding complaints received since 11 May, and details of action taken, I have provided the attached summary.*

*In my previous letter to you, when I concurred with several of your findings, I went on further to mention that regionalisation of the Authority's air quality management had been implemented. I would like to add that this new approach to air quality matters, when coupled with the new Environment Protection (Clean Air) Act, 1981, which came into force on 27 July, allows the Authority to place greater emphasis on those premises whose discharges are having the greatest effect on the environment. Proposed exemption schedules will effect a reduction in the administrative and licensing workload of Authority staff since the number of air licences will reduce from around 1600 to around 250. This will free staff to concentrate on following up on discharges which need priority control.*

*I would like to reiterate comments made in my previous letter concerning the use of resources. Stack testing and odour measurement facilities were not able to be assigned to these premises because they were needed in more pressing areas. An examination of the complaint history surrounding this company shows that from early 1976 to 1979, no complaints were received by the Authority and it was considered that the control strategy was effective. It was only in mid 1980 that the problem really resurfaced to an extent which indicated that a more forceful approach to controlling odours would have to be taken. Since that time, both the Inspectorial and Air Quality staff have spent considerable time and effort to both act on complaints received and to effect an end to the odours. These efforts appear to have eventually been successful.*

*The solution to this environmental problem has been a complex, technical one and a lot has been learned. When it was recognised that extra stack testing and measurement facilities were required to deal with an increasing number of priority air emissions, the Authority's submission to obtain extra resources in this area was communicated to Government, and the need subsequently met. The Authority has the capacity to seek additional resources in areas of high priority, however approaches to Government are subject to the normal budgetary process and are assessed along with competing priorities of this, and other departments.*

*The setting of priorities by the Authority and within its branches will no doubt be capable of further improvement. With the benefit of hindsight it is obvious that in this case a sufficiently high priority was not set in mid 1980 despite the continuation of complaints.*

*What needs to be said in this case however, is that since mid 1980 the complaints have been investigated promptly and reported on, a technical solution albeit complex has been sought, the odours have, as a result, diminished, and the Authority is still in the position to instigate further control measures, as called for in the licence, should the company fail to limit odours from the site to our satisfaction.*

*I have no additional comment at this stage except that it may prove useful to have a further discussion with Authority officers to clear up some of the difficulties that embody the resolution of this complex problem. Thank you again for the opportunity to comment."*

The summary which Mr. Fraser provided read as follows:-

| "*Date/Time* | *Nature of Complaint/ Name of Complainant* | *Comments* |
|---|---|---|
| *14/5/81 1100 Hours* | *Odour - 'really been bad for 18 months'. Complainant named.* | *Investigation substantiated the complaint. Company management was contacted and advised of complaint. The company's small printer was in operation at the time of the complaint, and low odour emulsion was not yet in use.* |
| *15/5/81 1100 hours* | *Odour - 'strong kerosene smell this morning. Complainant named.* | *Complainant did not identify the source. Investigator at 1300 hours suggested the probable source as the factory, and the complaint substantiated. Current EPA action was explained to complainant. Company informed of complaint.* |
| *2/6/81 (on tape* | *Odour - 'kerosene smell' The other complainant.* | *Company informed of complaint. The* |

| | | |
|---|---|---|
| *at 0730 hours)* | | *large printer was operating at the time of complaint.* |
| *24/6/81 1120 hrs.* | *Odour from 0800-0845 hrs. 'strong kerosene type': One of the original complainants.* | *The area was checked at 0827 hours. Odour was slight. Complainant informed of current EPA action. Company officer interviewed during earlier visit at about 0830 hours to ascertain progress towards odour reduction.* |
| *4/8/81 1100 hrs.* | *'Bad acid odours': One of the original complainants.* | *Complainant not at home and did not respond to calling card. )815 hrs/ - slight chemical odour. 1425 hrs. - no odour. 1510 hrs. - no odour. Factory inspected at 1445 hours. Company representative reported light work during morning and low odour emulsion being used. New stacks had been installed.* |
| *4/8/81 1100 hrs.* | *'Smell like burning kerosene': Name given as that of complainant.* | *When interviewed the complainant denied having made the complaint and stated - 'no solvent type odours' and 'odours not as bad as they used to be'.* |

*Since 11 May, the Investigations Branch of the Authority has carried out almost daily surveillance and has been able to respond at times very close to the time of complaint. Complainants have been interviewed and the type of production and*

> *the type of printing emulsion being used at the time have been established. During the period to 26 June 1981, the company had been raising stacks, preparing sampling facilities and generally operating normally with low odour emulsions where possible. For a time during the transport strike the company used high odour emulsion as no low odour emulsion was available. New stacks which had the effect of dispersing and thus reducing odours, were in operation from 26 June 1981."*

Notwithstanding the opening statement of the Authority's initial comments, I thought that, as a result of his comments, there were two matters requiring consideration.

1. The Authority's claims of resource shortage and the evidence of its mismanagement of resources.

2. The Authority's ineffectiveness in dealing with the licensee company.

Insofar as the matter of resource mismanagement is concerned, I accepted that there were other demands on the Authority's odour measurement facilities, but I was offered no explanation as to how the relative priorities of those demands and this case could have been properly assessed in the light of the Authority's lack of knowledge of what was being emitted from the factory and giving rise to the complaints. Those demands and that difficulty notwithstanding, the Authority had concluded that, with the benefit of hindsight, it is obvious that in this case a sufficiently high priority was not set in mid-1980 despite the continuation of the complaints.

The comments in my intended Report (pp.60-1) about the decision to use the Authority's sparse stack-testing resources in circumstances where it had not been established, and was indeed open to doubt, that stack tests were relevant to the problems at hand were not commented upon. Nor were the weaknesses to which I had drawn attention (pp.57-8) in the handling of reports and recommendations made by the Authority's Investigation Officers and the consequently wasteful duplication of resources discussed.

I had accepted the Chairman's assurances that the administrative segregation of Investigation Officers from those responsible for considering licensing matters, the related communication difficulties in the Authority's office and the deleterious effect of those factors on the problem-solving capacity of the Authority were not generally applicable, but the Authority did not contest my view that those factors had inhibited problem-solving in this case (p.60). Similarly, I had accepted the Chairman's assurance that, in the preceding two years, the Authority had *"overcome a number of the administrative problems"* referred to in my

report but the evidence before me indicated that those problems had inhibited the Authority in its handling of this case.

Although the Chairman accepted that the problems had been "long in resolution" his comments did not persuade me to alter my view that resource mismanagement in this case had contributed to the Authority's failure to take any sufficient action following the complaints made to it of the odour emanating from the factory and a perceptive management supported by adequate systems and receiving proper technical advice could have resolved the problem well before any complaint was made to me.

In my Intended Report, I had related the questions of resource mismanagement and claimed resource shortage and raised as a matter relevant to that relationship the fact that the Authority had *"devoted quite considerable resources to the matter at issue."* (p.61). The Authority confirmed that that was so, added that it reflected *"the seriousness of how this problem was viewed"* but did not address the apparent paradox to which I had drawn attention. Indeed, the Authority referred to *"a lack of resources to properly assess the magnitude and quality of emissions from this factory,"* but I could not reconcile this reference to *"the seriousness"* with which the case was regarded and the statement that the case had been allotted insufficient priority, and I thought that, in this case, the evidence pointed not to resource shortage but to the mismanagement of resources.

Had the question been one of resource shortage, then I thought it clear that the Authority would for that reason have found itself inhibited in the discharge of its statutory function and that the Chairman of the Authority would have been responsible for drawing that forcefully to the Government's attention. I said so in my Intended Report (p.60).

In respect of this, the Chairman said:-

> *"When it was recognised that extra stack testing and measurement facilities were required to deal with an increasing number of priority air emissions, the Authority's submission to obtain extra resources in this area was communicated to Government, and the need subsequently met. The Authority has the capacity to seek additional resources in areas of high priority, however, approaches to Government are subject to the normal budgetary processed and are assessed along with competing priorities of this, and other departments."*

From that statement, I concluded that the only resource component in respect of which the Authority perceived a relationship between resource shortage and the discharge of its statutory function in this case was the stack-testing component. My views were that, at the time that shortage was recognised, the application of stack-testing to this case

had not been proved relevant and it followed that, if it were resource shortage which had inhibited the Authority in discharging its statutory function in this case, then that was a matter which appeared not to have been put to the Government.

From that it followed that, while I appreciated the possible advantages to the Authority in terms of the deployment of some of its resources of the proclamation of the Environment Protection (Clean Air) Act 1981, it seemed that the effect of that proclamation would be a quantitive one and I could not accept that it had relevance to a problem where resource shortage had not been shown to be a key factor.

The second matter requiring consideration was the Authority's apparent ineffectiveness in dealing with the licensee company. In that connection, I expressed my tentative conclusions in my intended Report (pp.58-60) and I thought that those tentative conclusions were relevant to the complaint in that they seemed to me in part to account for the unreasonably extended length of the problem-solving process.

In neither of his sets of comments did the Chairman address my tentative conclusion that the Authority's repeated delays in assessing the company's licence-related applications and its failure to relate complaints to production schedules, in a case where the Authority's officers had noted intransigence on the part of the factory's operators, contributed to circumstances in which negotiation was continued long after it could reasonably have been expected to have been effective. I therefore confirmed those conclusions.

In July 1981, the Authority commented that it was not in a position to enforce the fume incineration condition in the company's licence because *"until a few months ago,"* the Authority had remained uncertain as to the precise source of the odours giving rise to the complaints. The Authority also commented that in mid-1980 it became evident that *"a more forceful approach"* would have to be adopted, but the problem confronting the Authority was a *"complex technical one to which a solution, short of closing the factory down by revoking its licence, was not immediately clear."* I thought that none of the evidence before me showed that anyone expected the Authority to find an immediate solution, and the Chairman had agreed that the solution was, as the complainants had alleged, not a timely one. I accepted that the decline in neighbourhood complaints of odour pollution between 1975 and 1980 may have given the Authority reason for believing that the problem had been over overcome. The resurgence of complaints in 1980, however, was sufficient to dissipate any such impression. My investigation revealed that the Chairman had been briefed on 2 December, 1980 by Mr. Smith, the Principal Air Quality Officer (Stationary Sources) at the Authority, that a Brunswick operation similar to that in Murrumbeena *"uses water based (printing paste) formulations and causes no complaints"* and that the company would

be *"pressed to improve on their forecast at the end of 1981 for the use of waterbased formulation,"* but none of the evidence before me showed that such pressure had been exerted on the company to make this change.

In short, I remained of the view that, because of the Authority's deficiency in the problem-solving process of this case, the Authority continued over an extended period to consider negotiating positions instead of seeking an effective and timely response to the complaints of odour made by the factory's neighbours.

In regards to the suggestion that *"it may prove useful to have a further discussion with Authority officers to clear up some of the difficulties that embody the resolution of this complex problem,"* although the technical complexities of the problem were unquestionably material to its satisfactory resolution, it had not been put to me and the evidence before me did not show that those complexities were such as to have contributed either to the Authority's resource mismanagement or its ineffectiveness in dealing with the licensee, those being in my opinion the principal contributory factors to the Authority's failure to take any sufficient action in response to the complaints which it had received.

As I wrote to Mr. Fraser, I was pleased that at the time progress appeared to have been made in solving the problem and that odour levels and local complaints appeared to have significantly reduced. I appreciated that, if that reduction had not occurred, it remained open to the Authority to enforce the fume incineration condition of the company's licence and, as the possible enforcement of that condition was not an administrative action which had, or was alleged to have, occurred, I thought I should not comment on the relevance of the Authority's approaches in this case to the likelihood of enforcement occurring if the current apparent reductions were found either to lack substance or to be only temporary. However, the apparent solution reached in mid-1981 did not affect the evidence before me concerning the administrative action which had previously occurred, and I thought that the apparent solution could not affect my conclusion that, for the reasons traversed in this Report, the complaint to me was established. I therefore concluded that on both these issues a discussion of the technical complexities of the problem would not advance my investigation.

I refer to the apparent solution of the problem for, from mid-October 1981, various of the factory's neighbours have telephoned my office complaining of the odour created by the factory and of what they regard as the Authority's failure to take appropriate and timely action to solve the problem. In December, the matter received attention in the local press. In January 1982, Mr. G.K. Calder, the City Manager at Caulfield, notified me that his Council had decided itself to investigate the matter with a view to possible proceedings under the Health Act. My enquiries of a sample of the complainants to me led me to the conclusions that:

1. The Authority's apparent failure to take prompt action sufficient to solve their problem had discouraged some of the residents and led them to the view that complaining to the Authority was futile.

2. As a result of a letter sent to the factory's neighbours by its General Manager early in 1981, a proportion of the complaints which might otherwise have been made to the Authority. were at least for a time made instead to the factory.

3. Whereas the complaint details provided to me by the Authority were for the period from May to August 1981, when they were sent to me, there seemed to be indications that the problem might have assumed more significant and bothersome proportion against subsequently.

I considered whether I should write again to the Authority in connection with these more recent developments, and there seemed to me to be two key factors:

1. The complaint to me had been of an administrative action which had occurred before August 1980 and, for the reasons which I have traversed in this Report, I had concluded that the complaint was established.

2. In large measure, the dissatisfaction of the 79 complainants to me had arisen because of delay, and I thought that further correspondence leading inevitably to further delay would therefore not be reasonable on my part.

3. As I had notified the Authority on 27 February 1981, I had suspended my examination of a number of evidently similar complaints against the Authority pending the conclusion of this investigation, and I therefore thought that the complainants in those instances may be disadvantaged by any unnecessary protraction of this investigation.

At the same time, I was mindful of the view of the Murrumbeena complainants that they still suffered as a result of what they believed to be failings on the Authority's part and of the fact that, although when he wrote to me on 20 August 1981 the Minister for Conservation had said that he did not wish to comment on my Intended Report or confer with me in connection with it, there had been significant developments since that time of which he should be informed, and I therefore sent him this Supplement to my Intended Report, again inviting his comment and offering to consult him in connection with the complaint.

(C.N. Geschke)
OMBUDSMAN

SECOND ADDENDUM TO REPORT OF INVESTIGATION INTO UNCONTROLLED

ODOURS FROM FACTORY

In sending the First Addendum of my Intended Report to the Minister on 8 January, 1982, I commented:

*"From that Addendum you will note that I have confirmed my view that the complaint is established.*

*You will also note that the local problems caused by the factory seem to persist and, in that connection, I enclose copies of an article from "The Chadstone Progress" of 16 December 1981 and of a letter sent to me on 16 December by Mr. G.K. Calder, the City Manager at Caulfield.*

*I am concerned at the indication reportedly given by the factory's General Manager that a solution to the problem is expected in the first half of 1982, for that assurance seems to me to parallel a number of previous, similar assurances given to the Authority by the factory but ineffective in terms of solving the local problem.*

*I am also concerned at the absence of a solution to the problem because, as I notified Mr. Fraser on 27 February 1981, I have suspended my examination of other complaints of an evidently similar nature against the Authority pending the outcome of this investigation, in the hope that the problems giving rise to this complaint might be solved and solved by action on the Authority's part relevant to resolution of the other outstanding matters.*

*Moreover, in this case there were 79 complainants to me, and I therefore think that the matter is one with significant ramifications.*

*Accordingly, I am inviting your attention to the matter again and again offering to confer with you about it if you so wish. "*

On 26 January, the Minister accepted my invitation to confer with him and suggested that I first examine documents which he had received from Mr. J.A. Alder,the Acting Chairman of the E.P.A., concerning local developments since 1 December, 1981.

One of the factors central to those developments was that ownership of the company operating the factory had changed and it had therefore become necessary that the Authority approve the transfer of the licence to the new operator company. The documents provided to the Minister by the Authority were covered by the following summary:-

*"1 December 1981*

*A meeting was held between company representatives and E.P.A. to discuss technical matters and licence No. EA 703/2. The company was asked to submit a detailed report to the E.P.A. by 11 December 1981 setting out proposed action and time scale to control odour from the plant to an acceptable level. A copy of the minutes of the meeting is attached.*

*11 December 1981*

*The company put forward a submission based on a report by its consultants in which a study would be carried out on existing plant and a further report submitted to the company by 1 February 1982. The company undertook to submit its proposals to the E.P.A. by 15 February 1982. In its submission of 11 December the company made a commitment to instal afterburners as a last resort if no other abatement technique was found to be satisfacory. A copy of the consultant's report is attached.*

*16 December 1981*

*A letter was sent to the company stating that the decision to transfer the licence into its name would be held in abeyance subject to the company's undertakings. The letter also asked for the company's permission to release the contents of its proposal of 11 December for the information of complainants. (This was later granted) Copy of letter attached.*

*About 29 December 1981*

*Letters were sent to the principal complainants explaining the action to be taken by the company and E.P.A. on the matter of controlling odour from the subject plant. Copies are attached.*

*31 December 1981*

*A letter was sent to Race Mathews Esq., M.P., in answer to his request for information concerning the operations of the factory. Copy attached.*

*14 January 1982*

*A letter was sent to another principal complainant in much the same terms as those of 29 December 1981. Also on this date a letter was sent to the City of Caulfield in reply to its enquiry on the operations of the factory. Copies are attached.*

*Regular inspections have been carried out at the factory to determine what progress the company has made. The consultants have carried out tests on plant using a wet scrubber, carbon absorption and ozoniser. Testing is continuing on site. (written reports not as yet received).*

*Odour observations and complaint investigations are being carried out currently by inspectors to assess odour level in areas.*

*Since 1 December 1981, 24 complaints have been received regarding odour allegedly from the factory.*

*In the majority of complaints the odour level determined at the time of investigation was slight to noticeable, however the surveillance of the area gives a more accurate indication and investigators report that there is still a continuing problem.*

*Odour emissions from the neighbouring factory continue to confound this problem. This company operates on adjacent premises and produces vinyl floor coverings. Operations at this plant are limited to the coating and shaping of vinyl materials. The operator company has indicated that it will vacate the premises in about April 1982.*

*Regarding noise problems at the two factories the Authority has commenced a monitoring programme but cannot complete its study until a decision is made on what equipment will be installed or removed from the factories in the near future."*

After carefully examining the accompanying documents, on Wednesday, 10 February and in company with Mr. Bare, I conferred with the Minister and Mr. Alder and subsequently made the following note of our discussion:

*"I summarised briefly the tentative conclusions which I had reached as a result of my investigation, emphasising particularly my concern that, even with the interruption to complaints between 1976 and 1979, complaints about odours emanating from the factory had been made to the Authority for so long a period that it seemed to me unreasonable that the Authority had not brought a solution to the problem in that time.*

*Mr. Alder agreed that the Authority had taken an unreasonably long time to deal satisfactorily with the problem. He added, however, that the Authority had now given a firm deadline by which the company was to have solved the problem by a means short of fume incineration. If such a solution had not been attained by 15th February, then the Authority would insist upon the company's compliance with the fume incineration condition of the licence under which the factory was operating.*

*In respect of the aspect of my Report which suggested that there was a lack of communication between the inspectorial and licensing staff, Mr. Alder claimed that this was, not the case and there was generally close liaison. Mr. Bare emphasised that my Report was concerned with this one case and it was evident from examining the Authority's two sets of files that certainly the licensing staff did not have the same concern on the matter as did the inspectorial staff. As to whether this was generally the case in other areas I had not attempted to determine.*

*There was some discussion of the technical difficulties involved in the problem and the lack of objective criteria for the measurement of offensive odours. Mr. Alder agreed, however, that there was no question but that the odours emanating from the factory were offensive and that the Murrumbeena residents concerned had just cause for complaint. I pointed out that my investigation had not been of the technical difficulties in finding a solution to the problem but of the length of time which the Authority had taken satisfactorily to respond to the many complaints which it had received. It was in the sense that the length of time to take effective action and resolve the complaint had been unreasonable, that I thought the complaint was established.*

*Mr. Alder argued, however, that the company's switching to another formula printing paste from 1976 to 1979, with a resulting stopping of complaints, led the Authority into believing the problem was corrected. Mr. Houghton stated that the current problem appeared then to be just two years old.*

*I agreed to include in my report a summary of the action taken by the Authority and the company since the 1st December, 1981, to resolve this complaint."*

Given the Authority's firm decision now to require a resolution of the problem by the 15th February, 1982 or, alternatively, the installation of fume incineration equipment within ten weeks of 15 February, 1982, I thought that no further action by me was required in relation to the complaint against the Authority unless the problem was not solved within the Authority's time-scale.

(C.N. Geschke)
OMBUDSMAN

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