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PARLIAMENT OF NEW SOUTH WALES

REPORT

OF THE

OMBUDSMAN

OF

NEW SOUTH WALES

For the Year ended 30 June, 1979

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THE OMBUDSMAN OF NEW SOUTH WALES

The Honourable Neville Wran, Q.C., M.P.,
Premier of New South Wales.

Sir,

In accordance with section 30 of the Ombudsman Act, 1974, and section 56 of the Police Regulation (Allegations of Misconduct) Act, 1978, I submit herewith, to be laid before both Houses of Parliament, the Fourth Annual Report on the work and activities of the Ombudsman for the period from 1st July, 1978, to 30th June, 1979.

K. SMITHERS,
Ombudsman.

November, 1979.

THE OMBUDSMAN OF NEW SOUTH WALES

FOURTH ANNUAL REPORT

The year under review saw a substantial change in the function of the Ombudsman with regard to complaints as to the conduct of members of the police force. Under the Ombudsman Act the conduct which may be investigated is limited to action or inaction or alleged action or inaction relating to a matter of administration and this is further limited by the Schedule to the Act to exclude "conduct of a member of the police force when acting as a constable".

This situation altered during the year with the passing of the Police Regulation (Allegations of Misconduct) Act which commenced to operate as from 19th February, 1979. The existing provisions of the Ombudsman Act are preserved in respect of members of the police force, but any action or inaction, or alleged action or inaction of a member of the police force after 19th February, 1979, is subject to investigation in accordance with the provisions of the Police Regulation (Allegations of Misconduct) Act.

I deal separately in this Report with these matters.

Complaints

During the year a total of 3 298 new written complaints under the Ombudsman Act were received in respect of public authorities (including local government authorities) and the investigation of 656 carried over from the previous year was continued. Of this total of 3 954, 239 were completely outside my jurisdiction. A further 178 were excluded from investigation by virtue of the exclusions set out in Schedule 1 to the Act. In respect of 19 the conduct complained of took place prior to 18th October, 1974 or in respect of local government authorities, prior to 1st December, 1976.

I declined to investigate 353 complaints exercising the discretion contained in section 13 (4) of the Act. In 17 cases relating to local government authorities where there was a right of appeal or review and where there were no special circumstances I declined to investigate. In all 109 complaints were withdrawn at varying stages of my investigation.

Of those in which an investigation was completed, totalling 1 870, 299 were found to be sustained. In many of those cases that were discontinued which totalled 278, some action had taken place to remedy the matter complained of, although it may not have been clear that there had been wrong conduct by the authority. A number of these would have been found to be sustained if the investigation had proceeded further.

It should be pointed out that in many of the cases which I declined to investigate, I did so pending the outcome of concurrent approaches to the authority concerned. In the absence of a further approach from the complainant, I did not proceed further.

On five occasions I found it necessary to proceed to the stage of making formal reports under section 26 of the Act. One in respect of the Inverell Municipal Council involving charges for footpaving resulted in a report to Parliament under section 27 of the Act as the council did not accept my recommendation. I comment elsewhere on this. In a second matter in respect of the Port Stephens Shire Council and which is included in the Case Notes, I found the conduct of the council to have been wrong but made no recommendation. The remainder were in respect of government bodies. In two instances the recommendations made were accepted. The remaining case has not yet been finalized.

The total number of complaints for the year showed an increase of 369. In addition some 224 complaints were received in respect of the conduct of members of the police force under the Police Regulation (Allegations of Misconduct) Act. These are listed separately.

The figures relating to complaints against public authorities under the Ombudsman Act since my appointment are as follows:

	Within Jurisdiction		Bodies Outside Jurisdiction	Total
	Ordinary	Local Government		
12th May, 1975 to 30th June, 1976	1 928	.....	453	2 381
1st July, 1976 to 30th June, 1977	1 442	532	235	2 209
1st July, 1977 to 30th June, 1978	1 796	855	278	2 929
1st July, 1978 to 30th June, 1979	2 060	999	239	3 298

It should be pointed out that the figures for the period to 30th June, 1976, are expressed for the full period of 13½ months. In fact 436 complaints were received up to 30th June, 1975, and 1 945 for the full year to 30th June, 1976.

In addition to the written complaints a considerable number of telephone calls are received from persons wishing to make complaints or requesting information. Approximately 4 800 such calls were received during the year as compared with 4 000 last year. In many cases where the Ombudsman has no jurisdiction, the caller is assisted in finding the correct answer to his or her problem.

In the same way assistance was given to a number of persons who called at this office.

A breakdown of the type of telephone enquiries is as follows:	%
Australian Government Departments	5.9
Local Government Bodies	24.2
Preliminary Inquiries prior to writing	33.2
Private persons	1.4
General Inquiries re functions of the Office	1.6
Others, seeking General Information, Legal Advice, etc.	33.7

It is important to point out that in addition to the normal work carried out by the office the investigation was completed in respect of the numerous complaints made by prisoners to the Royal Commission which the Commission was unable to deal with. This investigation was the subject of a Special Report made under section 31 of the Act which was tabled in Parliament on 14th December, 1978.

Amendments to Ombudsman Act

On 26th January, 1979, an amendment was made to the Schedule to the Act omitting Item 5 of the Schedule. This removed from conduct excluded from investigation—

"The conduct of a public authority constituted pursuant to an arrangement between—

(a) the State of New South Wales and the Commonwealth;

(b) the State of New South Wales and any other State;

(c) the State of New South Wales, any other State and the Commonwealth."

The effect of this amendment has been to bring within the jurisdiction of the Ombudsman several bodies constituted by reason of such arrangements but in particular, the Albury-Wodonga (New South Wales) Corporation, where several complaints have been under investigation. The amendment brings this State into line with other States of Australia which do not have any such restrictions on the jurisdiction of the Ombudsman.

Apart from this, some amendments were made in conjunction with the passing of the Police Regulation (Allegations of Misconduct) Act, the principal being an amendment to part of the definition of wrong conduct in section 5 (2), paragraph (b) which reads—

(b) "unreasonable, unjust, oppressive or improperly discriminatory, whether or not it is in accordance with any law or established practice";

This has been amended to read—

(b) "unreasonable, unjust, oppressive or improperly discriminatory;

(c) in accordance with any law or established practice but the law or practice is, or may be, unreasonable, unjust, oppressive or improperly discriminatory;

This is in line with the definition contained in the Police Regulation (Allegations of Misconduct) Act.

Other matters which I have raised previously as to possible amendments to the Act are, in most cases, still under consideration by the Government. I am hopeful that some of these matters at least will be the subject of amending legislation in the near future.

Deputy Ombudsman

In June, 1979, notification was received that my Deputy Ombudsman, Paul Stein, had been appointed President of the Anti-Discrimination Board and he left me early in July, 1979, to take up this appointment. Applications were called immediately to fill the position but unfortunately some considerable time elapsed before a new appointment could be made.

In fact it was not until 15th October, 1979, that the new Deputy Ombudsman, Daryl Gunter, commenced duty. At the time of his appointment Mr Gunter was a Senior Law Reform Officer with the Australian Law Reform Commission in Sydney. I welcome him to the staff. I express my appreciation for the assistance that I was given by Paul Stein during the period of over two years during which he served as my Deputy. I was particularly sorry to lose him and wish him well in his new appointment.

Assistant Ombudsman

Following the introduction of the Police Regulation (Allegations of Misconduct) Act agreement was obtained to appoint additional staff including an Assistant Ombudsman. Applications were called and Roger T. Vincent was appointed as from 2nd April, 1979. Mr Vincent prior to his appointment was employed by the Solicitor General's Department in Hobart as a Crown Counsel and prior to that he had practised as a solicitor in Hobart.

In announcing the appointment the Premier stated—

> "It is proposed that within the Ombudsman's Office, Mr Vincent will deal with matters arising for attention pursuant to the recently enacted Police Regulation (Allegations of Misconduct) Act and will also have prime responsibility for the handling of complaints concerning prisoners.
>
> Consideration has been given to the proposal contained in the Report of the Royal Commission into Prisons that a special Prisons Ombudsman be appointed.
>
> However, I envisage that an early task of the new Corrective Services Commission will be to review the Visiting Justices System with the aim of establishing an effective system of regular inspections which will also provide an outlet for complaints by both prisoners and prison officers.
>
> I am of the view that the new Commission should be allowed a sufficient period of time to show that undue conflict between prison officers and prisoners can be reduced by effective and efficient administration and to alleviate the other problems referred to by Mr Justice Nagle.
>
> To appoint a special Prisons Ombudsman at this juncture would not be conducive to an amicable solution of the present problems.
>
> Mr Vincent's appointment strengthens the capacity of the Ombudsman's Office to deal with complaints by prisoners".

Mr Vincent's appointment did not take place until sometime after the commencement of the Police Regulation (Allegations of Misconduct) Act and it was necessary in the initial stages for his work to be concentrated upon complaints received in respect of police. However, as soon as it was possible his work was extended to cover supervision of the complaints made by prisoners. A separate section headed by Mr Vincent has now been established within the office to deal with complaints in respect of members of the police force and complaints made by prisoners.

Accommodation and Staff

As a result of the extension of jurisdiction to cover complaints in respect of police, it became necessary for some additional space adjoining my present accommodation to be taken and this additional area has now been occupied.

Involved in this has also been a small increase in the staff, involving, apart from the Assistant Ombudsman, a Senior Investigation Officer, a further Investigation Officer and three others.

My staff as at 30th June, 1979, apart from the Deputy Ombudsman, Assistant Ombudsman and myself, now totals 31, consisting of an Executive Officer, a Principal Investigation Officer, an Administrative Officer, five Senior Investigation Officers, 10 Investigation Officers, one Research Officer two Interviewing Officers, seven Stenographers, a Receptionist/Typist, one Service Officer and a Records Clerk.

I anticipate that unless there is a substantial increase in the flow of complaints, the existing staff is able to adequately handle the workload.

Local Government Authorities

I received a total of 999 complaints relating to 162 different councils during the year. This was an increase of 144 over the figure of 855 for last year. The percentage of such complaints has remained at 30 per cent of the total number of complaints received in respect of public authorities.

239 complaints had still been under investigation at the beginning of the year, making a combined total of 1 238. 329 were still under investigation at the end of the year. 108 complaints were declined for various reasons. 13 were outside jurisdiction and 28 were withdrawn. Investigations were completed in 658 matters and 67 found to be sustained. In addition in 102 cases which were discontinued for varying reasons during investigation, a number would have been found to have been sustained if the investigation had been completed.

During the course of the year I have found from time to time that matters have been raised by councils on which I have already expressed my views and which have been dealt with in previous annual reports.

In particular, I refer to the 1978 Annual Report where I dealt with, *inter alia*, the following matters:

My views as to what came within the definition of "special circumstances." under section 13 (5) of the Ombudsman Act, which would make it unreasonable to expect a right of appeal or review to be or have been exercised.

The question of provision of files to me when required under section 18 of the Act.

My views when approached by an individual councillor with a complaint relating to a decision taken by a council when the councillor concerned was in the minority on the council.

In that Report I also referred to the problems arising from the fact that the Minister for Local Government has not the same degree of ministerial responsibility in respect of councils as does a Minister in respect of government departments and authorities under his administration. Again this year a council was the subject of a report to Parliament under section 27 of the Act but although my views were strongly supported by the Minister, the council chose to ignore my recommendations. The complaint was that the council had acted unfairly in charging for half of the cost of footpaving constructed by council adjacent to their property. In the particular circumstances, following receipt of reports and an inspection, I came to the conclusion that the council had acted unreasonably and recommended that the council exercise its discretion under section 243 of the Local Government Act and impose a charge of less than 50 per cent of the cost. I suggested that 25 per cent of the cost would be reasonable. I can but express my disappointment at the council's failure to accept my recommendation.

I continue to receive many complaints which really relate to the actions of neighbours but which are directed at the alleged failure of councils to prevent the neighbours so acting. Most of these are matters where I can do little but ascertain that the council concerned has acted properly. I cannot resolve the problem. It may be that the proposed Community Justice Centres when established will help to resolve these matters and reduce the number of such complaints which I receive. Very often, however, the question in issue is whether the neighbour should be allowed to carry out a rebuilding or extensions or some other works to a property, which the complainant feels will be detrimental to him. Some of these complaints could be eliminated if councils generally could notify adjoining owners of building applications which might affect them and make available for inspection the plans. Some already do this.

With a view to considering whether I should make a general recommendation in this respect I carried out a survey of all councils to ascertain their views. There was an excellent response and I am at present having the results collated.

I still have problems arising from claims against councils where the council is insured. Many councils do little more than refer such claims to the insurance company or its brokers and take no further part. The claim is denied and as many of such claims are for small amounts, the claimant does not feel that the expense of suing for such amount is warranted.

My view is that this is wrong. The council itself should consider such claims and not leave them solely to be dealt with by the insurance company. One aspect which needs careful consideration is that the claim may be for some alleged action of the council which is not covered by the insurance contract and, therefore, liability is naturally denied by the insurer, although the council may still be liable. In addition the interests of the insurer and the council may be in conflict and the claimant may feel that the insurer is not impartial in dealing with his claim. A council should rely on its own advice and not solely on that of the insurer as to its liability. I consider that a council should make its own decision as to whether a claim should be met and not leave it in the hands of its insurers. It is, of course, entitled to and should receive such advice, legal or otherwise, as is necessary to enable it to determine the action to be taken. The council should deal directly with the claimant giving reasons for its decision.

The alleged unfairness of minimum rates imposed by councils continues to be raised with me. This particularly applies to areas such as the Blue Mountains where, because of zoning restrictions, land which when bought years ago could be used for residential purposes but which cannot now be so used. There is no market for such land and minimum rates of amounts such as $150 per annum become a substantial burden. Prior to the introduction of minimum rates the rates were based on value and were comparatively small. I was pleased to be advised by the Blue Mountains City Council

that a special committee of aldermen had been formed whose brief included, *inter alia*, an endeavour to achieve a solution to the problem of hardship imposed on the owners of adversely zoned lands. The possibility of exchanging council owned land for land so affected is one of the aspects suggested for consideration. I can but wish the council well in its task.

Police

Police Regulation (Allegations of Misconduct) Act

This Act was introduced in September, 1978, and commenced on 19th February, 1979. The Act is not retrospective in its operation. The conduct of a member of the police force which can be investigated under the Act is defined as any action or inaction, or alleged action or inaction, of a member of the police force that may not be made the subject of a complaint under the Ombudsman Act.

Provision is made for complaints to be lodged with the Ombudsman, a member of the police force, a Clerk of Petty Sessions, or through a Member of Parliament.

The Ombudsman in determining whether a complaint should be investigated is to have regard to a number of matters similar to those set out in the Ombudsman Act, for example, whether the complaint is regarded as frivolous, vexatious or not in good faith, or is trivial, or that it occurred at too remote a time, or that there is an alternate and satisfactory means of redress or that the complainant does not have a sufficient interest. If it is determined that the complaint be investigated, the Ombudsman is to notify the complainant and send a copy of the complaint to the Commissioner. The investigation is carried out by the Internal Affairs Branch, or in certain circumstances, by another member of the police force, and when the investigation is completed, the Commissioner sends to the Ombudsman a copy of the report. If the Ombudsman is not satisfied that the complaint has been properly investigated he is to report to the Commissioner specifying the deficiencies and the Commissioner is to cause a further investigation to be conducted.

When the investigation has been completed, the Ombudsman is to consider all the material and information and decide whether the complaint has been "sustained" or "not sustained". Provision is then made as to what is to occur in the event of the complaint being found as sustained.

I have experienced some feelings of frustration in carrying out my functions under the Act as the powers of investigation are very different to those under the Ombudsman Act. Under that Act I can obtain information from any public authority, inspect papers, obtain reports, enter premises and interview anyone and I can carry out a formal investigation if I think it warranted. None of these powers apply under the provisions of the Police Regulation (Allegations of Misconduct) Act. My function under that Act is restricted. I receive complaints, making a decision as to whether there should be an investigation or endeavour to conciliate if it might be appropriate. I then refer the complaint to the Commissioner for investigation, I receive a report from him, I decide whether it is properly investigated, and when the investigation is completed then decide whether the complaint has been sustained or not and report accordingly. Under this Act I do not investigate in the full sense, I merely act in a supervisory capacity and finally report to the complainant on the result of the investigation. I do not, of course, have to follow the police view as to the result of the investigation and in fact in some cases I have not agreed with the Commissioner's conclusion. However, it is somewhat difficult to find otherwise in most instances when there is only available the various statements made by the persons involved to consider and there is no opportunity to test the evidence.

I have seen in a number of the reports and statements made by the police in the course of an investigation, a tendency to denigrate the complainant and attribute to him some sinister motive. This may be correct in some cases but in many the complaints appear to be genuine ones. Such comments are quite unnecessary and do not help in the carrying out of an impartial investigation.

To 30th June, 1979, 224 complaints were received. As at that date, 160 were still under investigation. Of the balance, 13 were outside jurisdiction, 8 were declined for various reasons and 7 were not proceeded with. The investigation was completed in respect of 36 complaints, of which 6 were found to be sustained and 30 not sustained.

Complaints were lodged with this office either direct, through the Commissioner of Police or his officers, through Members of Parliament and a few through Clerks of Petty Sessions.

The 224 complaints received covered a wide range of allegations including the following:

Assault.

Discourtesy.

Threats.

Wrongful arrest.

Loss of property and/or money.

Neglect of duty.

Acceptance of bribe.

Conduct in issuing infringement notices.

Harassment and/or victimization.

Unseemly words.

Damage to property.

Condition of cells.

Possession of drugs.

Carrying-on outside business activities.

Misuse of police vehicles.

Unlawful destruction of dogs.

Attempted procuration of commission.

Short particulars of the six found to be sustained are—

(1) The complaint was that a Probationary Constable had threatened the complainant with a service pistol. The Constable was off duty at the time but was in uniform. The complaint was found to be sustained but as the Probationary Constable had tendered his resignation, no recommendation was made as to further action. As the complainant was not prepared to give evidence in any proceedings no recommendation was made as to the charging of the Constable with a criminal offence.

(2) A complaint was made as to the behaviour of a Constable followed by a subsequent wrongful arrest and as to the behaviour of a Sergeant in failing to intervene in the matter and attempt to resolve the dispute. The complaint arose out of the complainant being mistakingly identified as the person named in some warrants issued as the result of non-payment of traffic fines. The complaint in respect of both officers was found to be sustained and the recommendation of the Commissioner that the officers concerned be charged with neglect of duty concurred in. In addition, a recommendation was made that the Commissioner give consideration to the payment of proper and adequate compensation to the complainant. The charges against the police officers were subsequently dealt with by the Police Tribunal which found the charges to be made out. These are now the subject of appeal to the Review Division of the Police Tribunal.

(3) A complaint as to harassment by a police officer relating to the alleged unnecessary seeking of information from a widow was found to be sustained. As the constable concerned had been censured I agreed that no further action need be taken.

(4) A complaint that a bribe had been solicited and received arose out of the complainant who was the driver of a car being directed by the constable concerned to carry out a breath test following which it was alleged that a bribe was solicited and paid. The complaint was found to be sustained and the Commissioner's recommendation that two charges of misconduct be preferred against the constable concurred in. This matter was subsequently dealt with by the Police Tribunal which found the charges to be made out. An appeal was lodged to the Review Division of the Police Tribunal but subsequently withdrawn.

(5) A complaint as to alleged abusive conduct arising out of a traffic offence was found to be sustained and I agreed with the recommendation that the constable be advised as to his responsibility and that a notation of such action be recorded in his service register.

(6) A complaint which commenced as an alleged failure to respond to requests to contact a retailer in respect of a cheque, became a complaint as to the passing of a valueless cheque and was the subject of a criminal charge against the constable. The offence was found proved but the constable was discharged under the provisions of section 556A of the Crimes Act. The complaint was found to be sustained but in view of the constable's resignation from the police force, no further recommendation was made.

As mentioned earlier, only in 36 cases had the investigation been completed by 30th June, 1979. Therefore, it is not possible to give any clear indication at this stage as to the types of matters being dealt with. However, brief particulars of three other matters are included in the Case Notes.

Although the Act has only been in operation for a comparatively short period, several matters have emerged at this early stage that might warrant consideration being given at the proper time to appropriate amendments to the legislation.

As detailed earlier, the Ombudsman is limited in his powers under this Act, and has difficulties in making his own independent appraisal of the parties involved. There is no right to interview the various parties, other than perhaps the complainant, and any further investigation would be limited to determining whether the police investigation has been properly carried out.

Whilst I do not suggest for one moment that the Ombudsman should carry out a full scale investigation of these matters, I consider that at least there should be a right for him to investigate further if he considers that in the public interest he should do so coupled with the right to interview witnesses if he felt it to be necessary.

The members of the public generally are unaware of the limited function of the Ombudsman under the Act. An indication of this is given by an extract from a letter written to me by a complainant after he was advised as to the outcome of an investigation.

> "I am thoroughly disappointed that the result of "your" investigation was of such a nature as to make me dubious that I should have spent the time to correspond with you on the matter. I can only hope that if, on a later occasion you receive a complaint on the same officer by other parties that have been subjected to his treatment, that you remember this complaint and take it into consideration.
>
> I thank you for your interest and particularly for keeping me informed with your continuous correspondence."

The fact that a copy of the complaint is to be furnished to the Commissioner of Police, followed by, in the majority of cases, the police officer being given a copy of the complaint for his comment, has led to complainants being concerned, particularly when they are not given the opportunity in turn to comment on a police statement. The police view appears to be that police reports should not be available to the complainant and that at the most only selected extracts or summaries should be given to the complainants for their comments.

There is no doubt that where such statements include confidential information or are in fact part of a brief to be used in connection with a pending charge against the complainant, they should not be revealed but in most cases this is not the position. The right to make reports available for comment by a complainant should be clearly available.

A number of complaints relate to conduct where there is a dispute between the complainant and the police as to what was said or done. There is no independent evidence or evidence which can corroborate one version as against the other. In such cases it is impossible for an Ombudsman having the benefit only of written statements by the complainant and by the police to determine where the truth lies. He has no alternative but to determine that the complaint is not sustained.

Under the Act it is provided that where the conduct to which the complaint relates is of a class or kind that the Ombudsman or Commissioner have agreed should be not the subject of investigation by the Internal Affairs Branch for such investigation to be carried out by such member of the police force as the Commissioner directs. In discussions with the Commissioner it was not possible to settle guidelines as to "class or kind" but in practice it has been found possible in a number of cases which may be of a minor nature or which may not need the expertise of the Internal Affairs Branch to classify the complaints accordingly and have the investigations carried out by other than the Internal Affairs Branch.

Problems do occur however in the eyes of some members of the public where an investigation is carried out by a commissioned officer from the Police Station where the police, the subject of the complaint, are stationed. I do not doubt the ability of the commissioned officer to carry out the investigation impartially, but the member of the public involved is naturally concerned at this.

Amongst the discretions under this Act is the right to refuse to investigate a complaint if it is regarded as trivial. The right to do this appears to be limited to the Ombudsman. In some cases such complaints have been made direct to the Commissioner and an investigation is in progress before a copy of the complaint is received by the Ombudsman. In these cases the Ombudsman should be given a discretion to decline.

As is well known, a constant stream of representations are made to the Commissioner of Police in respect of traffic infringement notices, and in discussions with the Commissioner it was agreed that these should be dealt with as they have been in the past and not regarded as coming within the terms of the Act. Complaints that representations are not properly considered, of course, can still be subject to investigation but these would be so investigated under the provisions of the Ombudsman Act and not under the provisions of the Police Regulation (Allegations of Misconduct) Act. Should the representations involve in addition a complaint as to the conduct of the police officer, such as alleged rudeness, assault, etc., this aspect would be investigated under the latter Act.

The provisions with regard to conciliation have proved somewhat difficult to carry into effect and there are very few matters where the Ombudsman has been able to do anything effective. Whilst it is a useful provision to have in the Act, there are practical difficulties in getting the parties together and in finding the cases in which conciliation is possible.

There is no provision in the Act for withdrawal of complaints but in some cases advice is received during an investigation that a complainant has decided to withdraw. In such event, if possible, I

confirm this direct with the complainant but I do express concern that whilst I have no evidence that influence has been brought to bear on complainants to withdraw, this would be possible.

Under the Act any document brought into existence for the purpose of the Act, which would include reports, is not admissible in evidence in any proceedings other than proceedings with respect to the discipline of the police force before the Commissioner or the Tribunal. Where a complaint made is associated with a charge having been brought against a complainant, some of the statements obtained are relevant also to that charge. I have been concerned that the police involved in the charge may have access to such statements for the purpose of making reports in respect of a complaint with the ultimate result that the complainant could be prejudiced in his defence in respect of that charge. I have expressed my concern to the Commissioner and have been assured that such statements are not retained by the police involved.

I would be remiss if I did not express my thanks to the Commissioner of Police and to the officers of the Internal Affairs Branch for their co-operation in implementing this legislation.

Prisoners

Complaints were received from 409 individual prisoners. In some cases more than one complaint was made and the number of separate items of complaint totalled 547. Of these, 484 related to the Department of Corrective Services and 63 to other bodies mostly outside my jurisdiction. These compare with 439 complaints received from individual prisoners last year, involving 525 separate items of complaint.

In last year's report I provided a break-up of the types of complaints received in respect of the Department of Corrective Services but have not included it in this report as the percentage relating to the various types of complaint have remained somewhat the same.

Particulars of the numbers of complaints received since the commencement of the Act from prisoners are as follows:

	Corrective Services	Others	Total
12th May, 1975 to 30th June, 1976	249	23	272
Year ended 30th June, 1977	196	40	236
Year ended 30th June, 1978	443	82	525
Year ended 30th June, 1979	484	63	547

In addition to the 484 complaints in respect of the Department received during the year, 109 from the previous year were still under investigation. Of the total of 593, 5 were outside my jurisdiction, 109 were declined for various reasons, 57 were withdrawn or discontinued and 158 are still under investigation. Enquiries and investigations were completed in 264 cases, and 43 found to be justified.

Whilst the total number of complaints received for the year does not vary greatly from that of the previous year, there has been in fact a drop in the number received from prisoners during the months of March, April, May and June, 1979.

I have continued the practice adopted as formerly in dealing with complaints by prisoners and in many cases, in the first place, request the Department for a report. The general nature of many of the complaints received from prisoners continue not to warrant a special interview but it has been found possible with increased staff for more interviews to take place than formerly and some complaints have been satisfied without the need for further action.

The information supplied to me by the Department on many occasions during the year continued to leave a lot to be desired but the position has improved in recent times with the appointment of the new Commission and numerous discussions have taken place with the Commissioners with the result that it is hoped that the full information required will be available readily and consequently complaints dealt with more expeditiously.

In my last report I referred to a number of complaints received with regard to Cooma prison and set out a list of changes of benefit to the inmates which had taken place following an investigation.

My investigation was concluded in August, 1978, when I felt that I had achieved as much as I was able. I was aware, as was the Department, that shortcomings still existed, however, these mainly related to the physical nature of the prison, which is a small establishment surrounded by a fully built up residential area and lacking any space internally or externally to enable any extension of facilities.

Subsequent paucity of complaints from inmates of Cooma Prison as to the conditions appears to indicate that the matters carried out were quite effective.

As mentioned in my previous report, I do not agree with the recommendation by the Royal Commission that a special Ombudsman should be appointed. I am still of the same view and this is supported by my experience, particularly in the last few months of the year under review where I feel complaints can be more than adequately handled without the need for the appointment of a special Prisons Ombudsman.

During the year the investigation into the complaints made by way of submissions to the Royal Commission and which had not been dealt with by the Commission was completed.

These investigations were made the subject of a special report under section 31 of the Ombudsman Act, which report was tabled on 14th December, 1978. This covered matters raised by a considerable number of prisoners and also contained a special report regarding allegations made concerning evidence that occurred at Maitland Gaol on 29th October, 1975.

Parole Review Committee

By virtue of item 3 of the Schedule to the Ombudsman Act the Ombudsman is not able to investigate the conduct of the Parole Board but I have from time to time received a number of complaints from prisoners relating to the deferment or refusal of parole and other matters dealt with by the Board.

I had suggested that it might be considered appropriate to amend the item in the Schedule so that the Ombudsman could investigate complaints as to whether the Parole Board had acted properly in arriving at its decision to defer or refuse parole.

Following the setting up of the Parole Review Committee by the Government, I made a submission to the Committee on those lines. The Committee subsequently included in its report, a recommendation that—

> "In cases where material is withheld from a prisoner on the ground of security or confidentiality, the Ombudsman or Prison Ombudsman should be empowered at the request of the prisoner to investigate the accuracy and completeness of the information in the material."

Whilst not exactly what I had suggested, I consider that the recommendation would meet the situation quite adequately.

Commonwealth Ombudsman

The harmonious and co-operative relationship with the Commonwealth Ombudsman has continued. There is need on many occasions for complaints which are initially misdirected to one or other of us to be forwarded to the correct office.

Some complaints involve both State and Commonwealth organizations and collaboration between the two offices is necessary to ensure that a proper investigation is carried out.

With the deletion of the item in the Schedule to the Ombudsman Act which prevented me (*inter alia*) from investigating the conduct of bodies constituted pursuant to an arrangement between the State and the Commonwealth the way has been made clear to proceed with such other amendments to the Act as will ensure that in appropriate cases information can be supplied either to or by the Commonwealth Ombudsman in connection with a current investigation being carried out by one or other of us.

These matters were discussed at some length at the Australasian Ombudsmen Conference held in Brisbane in September, 1978, and general agreement arrived at between the Ombudsmen as to the course of action to be followed.

At this stage the only amendment to the Ombudsman Act which may be necessary is one to clarify the right to furnish information to another Ombudsman.

Publicity

In spite of the difficulties experienced by some in pronouncing and spelling the word "Ombudsman", an increasing number of people are becoming aware of the existence of the Ombudsman and have knowledge of his function.

However, many are still not aware and as a result I endeavour to publicize the Office from time to time by appearing on television and speaking on radio and where not prevented by the provisions

of the Act, being interviewed by and providing statements to the press. I have addressed over 25 different bodies and organizations during the year. In addition my then Deputy spoke to similar groups on 14 occasions and my Executive Officer and other members of the staff on 16 further occasions.

Visits

I continue to receive visits from other Ombudsmen and others seeking information about the Ombudsman.

During the International Bar Association Conference in Sydney in September, 1978, I was privileged to be able to have discussions with and entertain all the Australian Ombudsmen together with, amongst other visitors, Mr Ulf Lundvik, the Chief Ombudsman from Sweden; Messrs George Laking, Lester Castle and Eaton Hurley, Ombudsmen from New Zealand; Mr Justice Tikaram, Fiji Ombudsman; Mr Alex Weir, Assistant Ombudsman, Alberta, Canada; Mr A. I. Katsina, Secretary, Public Complaints Commission, Nigeria; and Professors Peter Freeman, Stanley Anderson, Larry Hill and Karl Friedman.

Overseas

As mentioned in previous reports, the First International Conference of Ombudsmen was held in Edmonton, Alberta, in September, 1976, and at that conference it was resolved that a further such conference would be held.

The next conference is to be held in Jerusalem, Israel, in October, 1980, and the necessary arrangements for such conference are now being completed. Such conferences are of inestimable value to practising Ombudsmen.

The International Ombudsman Institute is now well established in Alberta, Canada, and has produced some quite valuable material.

Australasian Ombudsmen

The Third Australasian Conference of Ombudsmen was held in Brisbane from 4th to 10th September, 1978. A wide range of topics relating to the work of Ombudsmen was dealt with. The conference was attended by all Australian Ombudsmen including the newly appointed Ombudsman from the Northern Territory, as well as Ombudsmen from New Zealand, Papua-New Guinea and Fiji. The Swedish Ombudsman, Mr Ulf Lundvik, was also present.

There have been some changes in the Australian scene during the year.

Mr Harry Giese was appointed as the first Northern Territory Ombudsman for a short term and he was succeeded by Mr Russell Watts.

The Tasmanian Ombudsman Act was passed and Mr C. R. Woodhouse was appointed as the first Ombudsman.

In Queensland, Sir David Longland, C.M.G., reached the statutory retiring age of 70 and was succeeded by Sir David Muir, C.M.G.

General Matters

(a) *Denial of Liability*

It has been of continuing concern to me that where an authority has denied liability in response to a claim, in most cases no reasons are given for the decision.

One of the grounds for a finding of wrong conduct under the Ombudsman Act is that it is "conduct for which reasons should be given but are not given."

In dealing with complaints as to denial of liability I appreciate that there may be circumstances where the authority concerned may be unfairly prejudiced by full disclosure of reasons but these would be very much in the minority.

I have therefore put it to several authorities that they should consider adopting as a general principle the giving of reasons for denial of liability. I feel sure that if this is done the need for further enquiries by claimants will be forestalled and the likelihood of legal action in some cases will be lessened. In addition, there should not be the necessity to complain to the Ombudsman.

I am pleased to report that three authorities have recently indicated their acceptance of the general principle. The Department of Main Roads has advised me that—

> "Having regard to the views you have stated, the Department will in future, where appropriate, include reasons in letters denying liability other than in exceptional cases where to do so might prejudice the Department in legal proceedings to recover substantial damages."

The Health Commission's reply was in the following terms:

> "I have noted your comments and will ensure that in the main, reasons for denying negligence will be supplied.
>
> Obviously each case must be considered on its merits. However, the wisdom and fairness of supplying fully explained reasons is acknowledged and reasons for rejecting claims will be given in future so far as it is considered possible without prejudicing the Commission's case in any action which may eventuate."

So far as the Public Transport Commission is concerned, I was advised that it had no objection to following the course outlined by me and appropriate instructions were being issued. My letter to the Commission had stated—

> "This problem has been the subject of complaints against several other government authorities in similar circumstances. It was acknowledged that there was wisdom and fairness in supplying fully explained reasons to claimants and in each instance agreement has now been reached that the reasons for rejection of a claim or denial of liability will be given in the future to the extent that after individual consideration of a claim the reasons do not prejudice the case for the authority in any action which may eventuate or in exceptional cases where to do so might prejudice the authority in legal proceedings to recover substantial damages."

(b) *Amendments to Legislation*

From time to time my investigations disclose apparent need for the amendment of legislation.

During an investigation into a matter relating to the Strata Titles Commissioner, the question of giving reasons for arriving at a decision was raised and, although the present legislation does not require reasons to be given, the Commission has advised that these are in fact recorded and are available on request by the parties to the application.

It also appeared that in terms of section 144 and 153 of the Strata Titles Act there could be difficulty in determining the exact date by which an appeal to the Strata Titles Board may be lodged where more than one party is to be served with notice of a decision. I suggested a possible amendment to the Act to clarify this and also that provision should be made to give the Board a discretion to receive appeals after the period of 21 days at presently allowed, where special circumstances were shown, somewhat along the lines of the recent amendment to section 122 of the Justices Act.

I understand that these matters are under consideration by a Committee which has been set up to review the Act generally and to recommend appropriate amendments.

A complaint was received relating to the attachment of wages which highlighted the problem created by the fact that there had been no amendment made to the appropriate legislation for some considerable period. The result is that the amount to be paid in respect of a Garnishment Order is still related to the basic wage and not to the minimum wage or lowest award wage which is considerably higher. The effect of this has been to reduce the amount which can be retained by a judgment debtor to a figure making it extremely difficult to retain a reasonable standard of living.

There are means by which a wage garnishment order can be limited by reference to the needs of the judgment debtor but it does appear to me that legislative amendments are required. I raised the matter with the Department of the Attorney General and of Justice, which referred it to the Law Reform Commission.

I understand from the Commission that it has before it a project for a reform of the law relating to the enforcement of money judgments which may take some time to complete. The suggestion has been made that it might be appropriate for this particular matter to be dealt with by the Commission separately.

Following a complaint as to the inadequacy of the amount of compensation recoverable against the Public Transport Commission in respect of damage by fire caused by the Commission or its servants, I raised the question with the Commission as to whether any increase in the statutory limitation of $4,000 was under consideration.

This figure had been inserted in the Government Railways Act in 1955.

I was informed that the question of an increase was under consideration by the Government.

I took the matter up with the Minister who subsequently informed me that Cabinet had approved an increase in the maximum amount to $20,000. The appropriate amendment to section 145 of the Act has now been passed.

I have referred in the Case Notes (under the heading "Sutherland Shire Council") to a proposed amendment to the Local Government Act, that councils be specifically empowered when considering building applications, to take into consideration measures to prevent development adversely affecting the drainage of adjoining property.

(c) *Delay in Replies*

There is still a tendency by some authorities to delay relpies to my inquiries until the last moment or until after the date asked for. Where there is good reason for an extension of time this is readily agreed to but in some cases there is unnecessary delay.

However, most authorities are most co-operative and supply me with the information required expeditiously. This helps to dispose of matters quickly.

(d) *Classification of Complaints*

I have given consideration during the year to altering the method of classification of the various complaints with which I have dealt and have decided to change these, bearing in mind particularly the words now included in the Police Regulation (Allegations of Misconduct) Act. In that Act provision is made for complaints to be found either to be "Sustained" or "Not Sustained".

There is no provision in the Ombudsman Act as to classification of complaints and, whilst I have previously adopted the words "Justified" or "Not Justified", these words are not in fact mentioned in the Act but are words which have been generally used by Ombudsmen in other parts of Australia and overseas. In my view the expressions may be misleading in describing the result of an investigation.

I feel that the change to "Sustained" or "Not Sustained" gives a more appropriate description of the finding in respect of Complaints. In the Schedule of Complaints I have as a result reduced the number of classifications and have in some instances combined previous classifications in an attempt to make such Schedule more easily understandable.

At the commencement of the Schedule I have provided a short summary describing the meaning of the terms used in each case.

(e) *On the Lighter Side*

There is in fact a lighter side to the work of the Ombudsman. Almost daily something occurs or is written which provides relief from the many problems raised.

For example, how could I resist this plea—

> "I look forward to what you have to offer as a guideline for the pilgrim searching the way through the reverberating labyrinths of an unnatural electronically computerized 20th Century world"?

Or the exhortation that I was to "adopt an unbiassed approach and not to be on both sides of the fence"?

The unintended use of words sometimes has an interesting result. Instances were the adjoining property owner who complained "about the discharge of affluence from the caravan park" and the concern expressed by a person charged as to the "prefabricated evidence" given against him.

(f) *Appendices*

A selected number of cases dealt with during the year are set out in summary form in Appendix "A". I have endeavoured to ensure that the identity of the complainant is not revealed. It has not been possible to include some matters of general interest as the identity of the parties involved would be readily apparent.

Appendix "B" is a statistical summary of complaints. I have omitted this year the somewhat lengthy Schedule of complaints and the extracts from the Ombudsman Act.

In conclusion I again thank my staff for the support given to me in carrying out the Ombudsman's functions.

APPENDIX A

CASE NOTES

CONTENTS

Appendix A

Case Notes

REGISTRY OF BIRTHS, DEATHS AND MARRIAGES

Shades of Moth and Rain

In my 1977 Report (at p. 61) I recorded a case note relating to the difficulties experienced by Moth and Rain in having registered the birth of their daughter Crystal Lark.

At about the same time I was approached by the unmarried parents of a child to help in resolving their difficulties in having the birth registered in the combined surname of the parents with a hyphen between.

At that stage, the Registrar had advised the parents as to his practice in the following terms:

> "The general rule which prevails elsewhere in the world and at common law is that the acquisition of a surname depends upon reputation alone. Reputation itself is affected by customs and conventions that have acquired the force of law. For example, a child of married parents acquires the surname of his father by reputation immediately at birth.
>
> In the case of an extra marital child it is the practice to show as the name of the child in the birth registration the mother's surname, except that where the father acknowledges paternity the mother may nominate the surname of the child as either her surname or the surname of the father and no other.
>
> This is not to say that the child cannot be allowed to use a name other than that of his parents and thus over a period acquire that name by reputation. The law of New South Wales recognizes this right and section 34 (1) (b) of the Act provides for the recording of a change of name against the registration of a birth.

This was not acceptable to the parents.

The Registrar on being further approached was prepared to register the birth in the surname of the father with the surname of the mother as one of the first names, but he was not prepared to take it any further.

My initial approach to the Registrar did not alter the position appreciably but he advised me in the following terms:

> "As Principal Registrar of Births, Deaths and Marriages I have a duty under section 11 of the Registration of Births, Deaths and Marriages Act, 1973, to cause to be registered each birth occurring in New South Wales. The established practice in relation to the recording of surnames of children is generally consistent with that adopted in other States of Australia and is supported by common law principles to which I have adverted in previous correspondence. For the purpose of recording the fact of the birth and to facilitate the subsequent identification by search of that fact, the present practice provides a logical and consistent system of registration.
>
> A lawful name, however, depends upon considerations other than the particulars recorded in a birth registration and, as has also been mentioned previously, the law of New South Wales recognizes the right of parents to allow their children to use and acquire a different surname. Procedures are available for the recording of a lawful change of name against a registration of a birth upon application in writing and upon submission of satisfactory evidence as to the fact of the change of name. While generally a certified copy of the original birth registration upon which such a change of name has been recorded would also show the surname originally registered, an extract certificate would show only the new name".

A further approach to find out the position in other States did not alter his view and he advised me that—

> "During 1977 there were only 43 recorded requests in New South Wales similar to that under consideration and in all but a very few cases the persons concerned have accepted the established practice after the matter has been explained to them.
>
> If any such variations from the standard procedure were to be permitted, cross-referencing in the indexes would, of course, be possible, but I am concerned that such a departure from the present consistent and orderly system of registration would give rise to problems in the future.
>
> When it is appreciated that proof of lawful name does not depend upon the birth registration record and that adequate provision exists under the Registration of Births, Deaths and Marriages Act for the recording on the registration of a lawful change of name—matters to which I have adverted in previous correspondence on this topic—I do not consider I should accede to the wishes of a small minority of persons and depart from the present system of registration of surnames".

Some time elapsed and I was then advised by the Registrar in the following terms:

"Although in all but a very few cases the persons concerned have accepted the established practice after the matter has been explained to them, a review of birth registration procedures has been undertaken to determine the extent to which the wishes of parents can be met without departing from principles which have been accepted by the courts.

As a result, the practice followed in the Registry of Births, Deaths and Marriages has been varied to the following extent. Subject to a joint request by parents whose surnames are different, whether or not married with each other, the birth of a child may now be recorded in the surname of either parent or in a surname formed by combining the whole surname of each parent, with or without a hyphen. This changed practice continues to recognize that the registration of a birth shall be identifiable by the surname of the parents and makes no distinction between a child of a marriage and an exnuptial child".

This resolved the complaint made by my complainants.

BUILDERS LICENSING BOARD

Failure to Recognize that Builder Insured

Many home owners who have recently built have difficulty in understanding what their rights are in respect of the Builders Licensing Board where they experience problems with their builder. The Board issues quite comprehensive brochures but they do not appear to be easily understood by some of those who complain to me.

A home was bought in August, 1976. The vendor who built the home was stated to have signed the contract with the builder in June, 1974. After a short while a building defect was found and a Board inspector confirmed that the builder was responsible. A claim was lodged with the Board in February, 1977. The owner proceeded to have the rectification work carried out and waited for a reply from the Board. It was not until June, 1978, that he was informed that the complaint was justified but that it had been decided to take no further action against the builder as the firm was no longer in existence. At the time of writing to me, no mention had been made of any reimbursement.

My enquiries disclosed that the Board had resolved on 10th July, 1978, to decline the claim under clause 1 of the House Purchasers Agreement in that from the Board's investigation it appeared that the original building contract had been entered into in March, 1973, prior to the commencement of the insurance provisions of the Builders Licensing Act 1971.

The Board informed me that at the time of lodgment of the claim a search of the Board's records for an insurance notice was carried out without success.

In my letter I had pointed out that the complainants stated that the previous owners had told them that the insurance had been paid in April, 1973. This resulted in a more successful search being carried out and an insurance notice relating to the building was located. The problem arose as the records related to the original builder and not the present owners and to lot numbers in the street but not the street number.

This having been established the claim was reconsidered and paid.

The complainants were naturally well pleased with the outcome but expressed concern at the failure of the Board to keep records adequate enough to identify the property involved readily, particularly as they had pointed out in their claim that they were not the original owners or builders.

DEPARTMENT OF CORRECTIVE SERVICES

Delay in Payment to Prisoner Poets

In May, 1978, the Department approved the official "launching" of an anthology of prison verse, "Walled Garden". I recall that the event received some coverage in the media. In July, 1978, I received complaints from three prisoners who claimed that, although promised payment for their contributions to the anthology by an officer of the Department, such payment had not been made despite, in two cases, written requests for same, one on 6th June and the other on 16th June.

One prisoner provided me with a copy of a note sent to him by the Departmental Officer who had been mainly responsible for planning the project to publish an anthology of prison verse. The note said, *inter alia*—

"Congrats on being in 'Walled Garden' so herewith your copies—Payment ($10 per poem) will be made ASAP".

The officer added that she was leaving the Department but said that another officer would be "looking after" her work. I took up the complaints with the Commissioner of Corrective Services and he later informed me that "a former officer of the Department" (obviously the person who had written to my complainant and to whom I shall henceforth refer as "Ms X") had, apparently, given undertakings to certain prisoners about payment "without ascertaining that the necessary funds would be immediately available". The Commissioner went on to say—

> "The matter was complicated by the intervention of the Auditor General who advised that royalties could not be paid, except out of sales of the book.
>
> After Treasury approval, payment has now been made by way of a fee from Departmental funds and it is anticipated that this will be recouped from a subsidy by the Arts Council of New South Wales".

I informed my complainants accordingly but decided that I should pursue my enquiries to determine whether there had been any untoward delay in the matter on the Department's part and, for this purpose, I asked for and examined the Department's file.

Perusal of the file revealed quite clearly that—

(a) "Ms X" had raised the problem of payment to contributors in the relatively early planning stages of the project. In a submission of 27th July, 1977, to the Director of Programmes she asked, specifically, that the Director "find out if it is legal or whatever . . . to *pay* prisoners this flat rate money". She even went on to talk of "accounting" procedures and asked for an "official ok" to the proposed payment arrangements. She repeated her request in a summary at the conclusion of her submission.

(b) However, it was quite evident that nobody had thought to approach the Department's Accountant to see if the proposed procedures were possible or if funds were available to permit payment to be made.

(c) Arrangements to print and "launch" the book went ahead. The Australian Copyright Council, on 10th February, 1978, informed "Ms X" that the *rate* of payment to contributors was "fair" and "reasonable". That was the only advice sought, apparently, regarding payment arrangements.

(d) The Director of Programmes made reference to proposed payments to prisoner authors in various letters and submissions, be sent to the Commissioner between 10th February, 1978 and 26th April, 1978. However, all of his references were to the effect that the Copyright Council considered payment procedures legal and correct.

(e) The book was "launched" on 11th May, 1978. Some time fairly soon thereafter, a list of contributing poets, and amounts due to them was prepared and referred to the Accountant for payment. On 7th June, 1978, in a personal minute to an Officer of Programmes Division, the Accountant said that the auditor had advised him that "the proposed payment to the authors of the 'Walled Garden' is not legal." He went on to outline what should happen.

(f) The application made by one of my complainants on 16th June, 1978, arrived in the Division on 19th June, 1978, and was referred to the Assistant Director for action on 20th June, 1978. Apparently nothing was done except that, on 10th June, 1978, the Assistant Director ascertained the whereabouts of my complainant. There was no trace at all on the file of the application made on 6th June by my other complainant.

(g) On 11th July, 1978, the Assistant Director referred the problem of payment of contributors to the Director. Thus over four weeks had elapsed before any "constructive" action was taken about the problem raised by the Accountant. On 14th July, 1978, the Director wrote to the Assistant Commissioner (Industries and Services); action then commenced to solve the problem of payment. It is not important to recount the steps taken; suffice to say that the matter had been sorted out by 1st August, 1978, and was referred back to Programmes Division to arrange payment. The first batch of cheques were sent out on 7th September, 1978, and the remainder went on 13th September, 1978.

It was interesting to see that, according to the Commissioner's earlier letter to me, the blame for the delay was, by inference at least, being laid fairly and squarely at the door of "Ms X". However, in my view, "Ms X" had very properly raised the matter of payment in July, 1977, almost 12 months before the book was "launched". Her queries were simply not followed up.

I concluded, and so informed the Commissioner and my complainants that—

(1) There had been delay in making payment to contributors to "Walled Garden", and that delay was, in the main, attributable to the failure of Officers of the Programmes Division to follow up the queries raised by "Ms X" to ensure that the payments proposed were possible and that funds existed to enable such payments to be made.

(2) Adding to this delay was the failure of the Programmes Division to take action for over four weeks after the Accountant sent his memo of 7th June, 1978.

(3) There was no evidence whatsoever that the Department (generally) or Programmes Division (particularly) had set out to deliberately withhold payments to contributors. In addition, once the problem was brought to notice by the Director of Programmes on 14th July, 1978, action was taken to overcome the procedural difficulties involved and contributors were paid. In the light of this, I decided that a finding of wrong conduct was not warranted. However, to the extent that the complaints made to me related to "delay", I regarded the complaints as "justified".

In writing to the Commissioner, I expressed the hope that Departmental officers in future involved in projects of a nature similar to "Walled Garden" would ensure that proper and prudent procedures were followed so that delay of the nature that occurred in this matter will be avoided.

Failure to correctly record date on which sentence commenced

I received a complaint from a young prisoner who was concerned that, although the Magistrate who had sentenced him to a period of 9 months imprisonment had ordered that his sentence be backdated, there appeared to be no record of the Magistrate's decision in this regard in the Department's records.

My complainant said that he had been sentenced at the Metropolitan Children's Court on 27th October, 1978, but the Magistrate had ordered his sentence to commence from 18th September, 1978.

By the time he complained to me, my complainant (if what he claimed was true) was getting close to release. I, therefore, arranged for enquiries to be made by telephone. The results are probably best expressed in the terms of a letter about the case that I later forwarded to the Commissioner of Corrective Services wherein I said, *inter alia*—

> "One of my officers made enquiries with Prisoner Index Section of your Department and with the Senior Clerk at (the) Gaol. He was informed, in both instances, that Departmental records showed (the prisoner's) sentence to commence on 27th October, 1978, and that there was nothing in the records to indicate that it was to be backdated.
>
> Enquiries were then made with the Clerk of the Children's Court who confirmed that (the prisoner's) sentence was ordered by Mr Blackmore, S.M., to date from 18th September, 1978. The Clerk of the Court added that he had written, some time ago, at the prisoner's request, to the Superintendent, (of another) Gaol, confirming this fact.
>
> The Senior Clerk at the Gaol subsequently searched the prisoner's file and discovered the letter from the Clerk of the Court thereon. Apparently, the authorities at (the previous gaol) had merely filed the letter without adjusting the prisoner's records or notifying the Department of the situation.
>
> I am concerned that this matter went undetected for so long and I am bringing it to your attention for this reason."

The Commissioner subsequently replied, saying—

> "I have ascertained that the commencing date of the prisoner's sentence has been altered to 18th September, 1978, and, as a result, (he) is now due for release on 12th March, 1979.
>
> I have also brought this matter to the attention of the Internal Auditor, with a view to obviating a recurrence of this type of error."

I determined the complaint to have been sustained but, as the matter had been rectified, took no further action.

Repressive nature of regimen at Training Centre and unhygienic conditions in kitchen

I received complaints from a prisoner at a Training Centre, a minimum security establishment, concerning what he regarded to be a repressive regimen in force there and allegedly dirty and unhygienic conditions in the Centre's kitchen.

So far as the first complaint was concerned, it seemed to me that it was comprised of the following elements:

(i) Alleged arbitrary removal of prisoners who complain to Superintendent.

(ii) Alleged unapproachable and bullying nature of Superintendent.

(iii) Unreasonable requirement that prisoners work in their lunch break.

The second complaint appeared to be concerned with dirty plates and dishes, dirty floors and alleged shortages of meat.

In view of the serious connotations inherent in the complaints I arranged for one of my officers to visit the Training Centre on 4th December, 1978, to investigate the allegations. The purpose of my officer's visit was not made known to the Superintendent prior to his arrival. As a result of his investigation and report to me, the situation in respect of the complaints was summarized as follows:

(1) *General*—

(a) My officer interviewed the Superintendent, the Nursing Sister, the acting Kitchen Officer and a number of other officers. In addition, he spoke to at least twenty individual prisoners, including the Head Cook, the inmates employed in the kitchen and four prisoners confined to cells.

(b) My officer carried out thorough inspections of the kitchen and dining areas, as well as most other areas of the camp.

(2) *Complaint re Superintendent*—

(a) There was no evidence to support the contention that the Superintendent acted arbitrarily, was unapproachable or behaved in a bullying manner. A considerable number of prisoners were observed in interview with the Superintendent. None appeared frightened or in any way apprehensive and they were attended to courteously and in an understanding manner by the Superintendent.

(b) The Superintendent told my officer that prisoners are continually coming "on request" to see him. So many avail themselves of their ability to approach the Superintendent that he does not bother to record such approaches. Prisoners' complaints and requests are dealt with expeditiously and as informally as practicable.

(c) None of the prisoners spoken to by my officer considered the regimen at the Training Centre to be harsh. None considered that the Superintendent was despotic, arbitrary or bullying. Even those prisoners undergoing punishment and confined to cell indicated that they wanted to stay at the Centre. All of the prisoners spoken to told my officer that they had no reservations about approaching the Superintendent or any of his senior officers.

(d) There was no evidence that the Superintendent arbitrarily transferred prisoners who complained or caused him problems. My officer actually checked the well documented transfer records for the period 1st October to 1st December, 1978. There were 27 transfers altogether during this period—

19 transferred for Court attendance or medical appointments.

1 transferred for protection.

4 transferred as security risks (threatened or attempted escapes).

2 transferred for serious breaches of local rules.

1 transferred for receiving drugs.

(e) The Superintendent admitted to my officer that, on occasions, he requires prisoners to clean up the area outside their huts, usually in the last ten minutes of their lunch break. The need for this arises from the conduct of some prisoners who throw rubbish onto the grassed area. I did not consider the Superintendent's actions in this regard to be unreasonable.

(3) *Complaints re kitchen*—

(a) My officer's inspection of this area (which was unannounced) revealed a very high standard of cleanliness. He observed the mid-day meal being dished out and noted that each prisoner received an ample portion of roast lamb. The crockery being used, as well as that in reserve, was seen to be quite clean. The food preparation and storage areas were very clean and tidy.

(b) All prisoners spoken to said that the quality of the food at the Centre was excellent and that there was never any shortage of meat or any other commodity. In fact, they all claimed that they had difficulty eating the quantity of food made available to them.

(c) My officer, at the insistence of the Kitchen Officer and the Head Cook (an inmate at the Centre who was quite upset at the inferred reflection on him), sampled the food which was to be provided to inmates for the evening meal that day. He reported that the meal was of excellent quality and was well presented.

(d) I perused reports submitted by the Assistant Supervisor of Catering Services in the Department of Corrective Services who visits and inspects the kitchen area at the Centre each month. His reports revealed no problems with cleanliness or food

preparation. In addition, I ascertained that Health Inspectors of the New South Wales Health Commission regularly monitor the standards of hygiene at the Centre.

(e) I noted, too, that the Centre prepares and provides meals to the local Meals-on-Wheels organization for distribution to aged pensioners in the local area. There had been no complaints about the meals from the pensioners and my officer confirmed this in interview with two of the local volunteer ladies who deliver the meals.

(f) Whilst flies were a problem in the area, they were a problem in many other areas of Sydney as well. In any case, the prison authorities had taken all possible measures (fly screens, insect traps, etc.) to minimize this problem which was, to a large extent, beyond their control.

After considering my officer's report and the documentary evidence provided by the prison authorities, I informed my complainant that I took the view that all of his complaints were completely without foundation and, in fact, could well be regarded as vexatious.

In the circumstances, I discontinued my enquiries.

Problems with Prisoners' Correspondence

During the year, I received a number of complaints from four different prisons relating to problems which had arisen in respect of prisoners' outgoing letters. My investigations in respect of each complaint revealed a somewhat disturbing situation in that, quite obviously, different practices were being followed at different prisons and different interpretations were being placed on Departmental instructions at different prisons. I am sorry to say that, in the case of one prison, the restrictions imposed on prisoners' correspondence were unfair.

The nature of the complaints made to me and the results achieved through my investigations are set out hereunder—

Prison No.	Nature of complaints	Results achieved
1	A "letter" was arbitrarily determined to consist of one page only; this was later "relaxed" to two pages. If a prisoner wrote a ten page letter, he was debited with five letters instead of one.	No limit placed on number of pages in each letter subject to the letter being able to pass through the franking machine.
2	Only permitted one page per letter; letters posted and letter sheets issued only on certain days; permitted to write to spouses also in prison once each week only.	Removal of the "one page per letter" restriction on the same basis as above. Daily collection and posting of prisoners' outgoing mail. Daily availability of letter sheets. Removal of "one letter per week" restriction in respect of letters to prisoner spouses.
3	Permitted only one page per letter. Incorrect procedure used to determine number of postage free letters to which inmates entitled (letter sheets issued counted, rather than letters actually sent).	Restriction removed. Correct procedure introduced (i.e., only letters actually sent now counted).
4	Prisoners permitted to send only 16 postage free letters (to which they were entitled) per month and no more, even if prepared to pay postage themselves.	Problem, due to misunderstanding of Departmental instructions, resolved. Prisoners now able to send as many letters as they wish but only 16 each month per prisoner are paid for at public expense; prisoner meets cost of any in excess of 16 per month.

Whilst the matters raised by my individual complainants were all satisfactorily resolved, I was concerned that the obvious inconsistencies between prisons, in such a fundamental matter as prisoners' correspondence, might be even more widespread. I, therefore, wrote to the then Commissioner of Corrective Services on 22nd January, 1979, and, *inter alia*, said—

"In my letter of 10th January, 1979, ... I expressed to you the view that, notwithstanding your reluctance to impose "uniform" procedures on your Superintendents, there were clearly some areas where, if not uniformity, then, at least, consistency is imperative and where the discretion of individual Superintendents ought to be tempered by clearly defined, uniform rules or guidelines formulated by your administration.

I indicated in my letter that I thought the area of prisoners' correspondence fell into this category and I reiterate that view. The series of problems that have arisen over recent weeks illustrates, I believe, the validity of my view.

I would, therefore, welcome your comments concerning the desirability of the Department (issuing a circular) in this matter for the guidance of all establishments."

In due course, the Commissioner issued an appropriately worded circular to all of his officers and I am pleased to say that I have not received any further complaints of the nature set out in these notes.

Unreasonable requirement to sign receipt containing a "Release" from liability

A prisoner complained that, when being issued with a copy of the Superintendent's local orders relating to discipline and behaviour within the prison, he had been asked to sign a form of receipt reading—

"I, the undersigned, acknowledge that I have this day been handed a copy of "Local Orders Applicable to Inmates at . . ." and a copy of the "General Information Sheet".

I further acknowledge that the Department of Corrective Services does not, nor does any officer in its employ, accept any responsibility whatsoever for the loss, damage or disrepair of any item which may be purchased through official channels, issued to me from my personal property, brought to the prison for me or forwarded to me by any means whatsoever."

It was clear from what my complainant said that he objected to the apparent attempt by the prison authorities to obtain a "release" from liability in respect of property not actually in a prisoner's possession. In this regard, he pointed out that the prison authorities would seek to deny any responsibility "for damaged goods either bought through the Department or brought in on visits, even though, at times, they could be at fault (e.g., a visitor could bring in a dozen eggs. If they (the authorities) broke them we have no recourse at all . . .)".

I received a report from the Commissioner wherein he outlined the philosophy of requiring prison inmates to accept responsibility for their property and he provided me with an "advising" about the matter from the Department's Legal Officer.

I wrote again to the Commissioner and said, *inter alia*—

"The tenor of your reply, and of the reports accompanying it, appear to relate to the Department's desire that inmates should clearly understand that they are responsible for property once it is issued to them. I have no quibble about that, except to the extent mentioned later.

However, the wording of the "form of indemnity" appears to me to go much further than that. The relevant paragraph on the receipt reads—

'I further acknowledge that the Department of Corrective Services does not, nor does any officer in its employ, accept any responsibility whatsoever for the loss, damage or disrepair of any item which may be purchased through official channels, issued to me from my personal property, brought to the prison for me or forwarded to me by any means whatsoever.'

It seems to me that this wording seeks to have the inmate "acknowledge"—(to own as genuine or valid in law; to avow or assent to in legal form; to admit as true—*Shorter Oxford English Dictionary*) that any item purchased by him, sent to him by any means or brought to the prison for him, *as well as* any item issued to him, which is damaged or lost, is solely his problem and, not the Department's; this is the aspect of the matter that, in my view, could be considered objectionable.

The real issues involved (one of which at least appeared to me to be clearly embodied in the simple example of the broken eggs given by (my complainant)), as I see them, are—

(a) the nature of the Department's responsibility where an item is purchased by or sent to a prisoner and, *after its receipt at the prison but before it is issued to the prisoner by the prison authorities*, the item is lost or broken; and

(b) the nature of the Department's responsibility where an item of property, issued to and in the possession of a prisoner, is lost or damaged and such loss or damage can be quite clearly attributed to the actions of an officer (e.g., an officer conducting a cell search who accidentally knocks over an item, such as a cassette recorder, breaking it).

It may well be the Department's intention, in requiring the "form of indemnity" to be signed, to stress its policy of declining liability once an item is actually issued to or otherwise (e.g., articles "made" by the inmate) comes into the possession of a prisoner. However, this is not clear from your reply. If this is the intention, then it seems to me that the wording of the "form of indemnity" is wrong and it should be changed to make the Department's intention perfectly clear.

I must confess that the aspect of the matter that most concerns me is that certain prisoners required to sign this or a similar form may believe they have no right to pursue a claim for compensation in circumstances in which the Department does have some legal and/or moral responsibility. I am sure the Department would not intend this to happen but an inmate having such a belief may well fail to exercise his right to seek redress.

The legal value of the 'form of indemnity', at best, must be regarded as dubious. I note that your reply and the former Legal Officer's report do not deal with this particular aspect.

If the Department is concerned to obtain a prisoner's written acknowledgment of his responsibility for property in his personal possession, might I suggest that the form of the acknowledgment, leaving aside the question of its legal value, ought to be amended.

"In the circumstances, I would ask that you clarify for me the purpose of requiring completion of the "form of indemnity", bearing in mind my foregoing comments. You might also let me know whether this "form of indemnity" is in use at other establishments or is only used at (– – – – prison).

In addition, I would ask that you reconsider this matter with a view to amending the wording of the "form of indemnity" so as to remove any suggestion that the prisoner alone bears responsibility for lost or damaged property, no matter what the circumstances."

The Commissioner replied, saying—

"The Superintendent, . . . , has been asked to review his methods of receipt and indemnity for prisoners property in line with the types of forms used at other institutions.

I will write to you again when the Superintendent forwards me his decision on the matter."

I was more than a little surprised at this response and, therefore, wrote to the Commissioner and said—

"Whilst I have noted the terms of your letter, it seems to me that the issues I raised with you in my letter of 28th August would be issues common throughout the prison system and, as such, issues with which the Department (rather than individual Superintendents) should concern itself. I must say I find it strange that, apparently, the Superintendent will make the final "decision" in this matter.

I am aware of (and, in most cases, can appreciate) the reluctance of your senior officers and yourself to impose "uniformity of action" on Superintendents, particularly where "uniformity" would fetter the discretion of the Superintendents in the day-to-day management of their institutions. Clearly, however, there are areas where, if not uniformity then, at least, consistency is imperative and where the discretion of individual Superintendents ought to be tempered by clearly defined, uniform rules or guidelines formulated by the administration. This particular matter raised by (my complainant) appears to me to be one such area.

I submit for your consideration that the Department should itself look into the issues I raised in my letter of 28th August with a view to informing all Superintendents of a suitable form of undertaking to be used."

The Commissioner subsequently advised me that the Department's Legal Officer had examined the matter and he provided me with a copy of the Legal Officer's report wherein it was said—

"The extent to which the Department is responsible in tort for damages is governed by section 46 of the Prisoners' Act. That section says—

"No action or claim for damages shall be against any person for or on account of anything done or commanded to be done by him and purporting to be done for the purpose of carrying out the provisions of this Act, unless it is proved that such act was done or commanded to be done maliciously and without reasonable and probable cause."

Taylor J. in VEZITIS — V — McGEECHAN N.S.W.L.R. (1974) 1 page 720 said—

"As a matter of construction it is my opinion that the words "no action or claim" in s. 46 are both directed to the recovery of damages and should be read as "No action for damages or claim for damages". It is to proceedings to recover damages that the prohibition is directed, unless it is proved that the act for which damages are sought was done maliciously and without reasonable and probable cause. These words are words familiarly used in actions for tort and are indeed singularly inappropriate to any other form of action".

The Ombudsman in the penultimate page of his letter of 28th August, 1978, to the Commissioner examples two situations in which the prisoner may have recourse to action. It appears at least to me, that unless the prisoner in those examples can prove that the Department and its officers acted maliciously and without reasonable and probable cause, his action would fail in tort. Palpably the prisoner may sue criminally if he could prove malice. Section 247 Crimes Act, 1909.

> The form of indemnity would seem, in light of section 46, to be superfluous and in its present form attempts to abrogate the prisoner's right to sue for damages where it is clear officers acted maliciously and without reasonable or probable cause—to that extent its effect is nullified."

The Legal Officer went on to recommend that an amended form of indemnity be forwarded to all Superintendents for use when a prisoner received property. The amended form read—

> "I wish to have the undermentioned item/s issued to me from my private property. I accept full responsibility for the care of such item/s and understand that the Department of Corrective Services does not, nor does any officer in its employ, accept responsibility whatsoever for the custody, loss, damage or otherwise disrepair of such item/s except where it is proved that the Department or its officers acted maliciously and without reasonable and probable cause. (Section 46 Prisons Act) I undertake not to allow such property to be used except for my own personal use."

After further considering the matter, I informed both my complainant and the Chairman of the Corrective Services Commission (which had come into being in the meantime) that, it seemed to me, the most objectionable feature of the original form of undertaking had been removed in that the amended form clearly restricted itself to property in the prisoner's possession. A prisoner whose property was lost or damaged after it arrived at the prison, but before it was issued to him, would be able to make a claim to the Department and, if need be (in the absence of satisfaction), raise the matter with me. The same situation would apply in respect of property damaged by an officer in the course of his duty (e.g., during a cell search). I considered it unlikely that the Department, in either of those situations, would fail to recompense a prisoner, as an act of grace, for any loss sustained. In any case, case, there would certainly be no restraint on a prisoner in that situation to prevent him making a complaint to me if his efforts to obtain satisfaction from the Department were unsuccessful.

As a result of my investigation, I considered the complaint to have been sustained but I took the view that the action taken by the Commissioner was sufficient to rectify the problem. Consequently, I did not pursue the matter any further in terms of the Ombudsman Act and I discontinued my enquiries.

The Saga of the Sunglasses

One of the interesting things about being an Ombudsman is the frequency with which one finds that a "simple" complaint is not so simple after all.

During late 1977 and early 1978, I received complaints from three different prisoners who had been refused permission, at two different gaols, to wear sunglasses. My initial feeling, when I commenced my investigation of those complaints, was that the matter would quickly and simply be resolved as, quite frankly, I could not see why there should be any great objection to a prisoner sporting a pair of dark glasses.

My enquiries, however, soon revealed that the problem of sunglasses in prison was anything but simple and led me to undertake a general investigation of the matter.

In this regard, the Superintendent of the Prison Medical Service told me that, so far as he and his officers understood, inmates were not allowed to wear sunglasses. He added that the exceptions to the general rule were those cases where sunglasses or tinted spectacles were authorized or prescribed by a medical officer or eye specialist in relation to a medical (eye) condition and ". . . cases in which the Gaol Superintendent may permit the wearing of sunglasses . . .".

At the same time, the Commissioner of Corrective Services wrote to me and said—

> "The general policy is for wearing of sunglasses to be permitted by Superintendents on the recommendation of the Medical Officer."

There seemed to me to be some discrepancy between the stated policy of the Department and the understanding under which the Prison Medical Service was operating and, in respect of my investigations of the individual complaints made to me, I asked the Commissioner certain further questions, particularly, why sunglasses were not permitted.

After considerable correspondence with the Department, the situation, as I saw it, could be summarized as follows:

> the question of the wearing of sunglasses had achieved the distinction of being discussed at a Conference of Prison Superintendents, attended also by senior officers of the Department. The "general consensus of opinion" expressed at the Conference was that sunglasses would not be permitted except on the recommendation of a medical officer;
>
> the Commissioner proposed to issue a Departmental Circular to "reinforce" the decision made at the Conference and to delineate "general policy in this and similar matters . . ." (letter of 20th February, 1978);

when I pressed for the reasons behind the decision and sought advice as to why sunglasses were so frowned upon, the Commissioner told me that—

(a) anything affecting the eyes of inmates should be a matter for the Medical Officer "in the first instance";

(b) it was not the practice for Superintendents to allow the use of sunglasses "other than for medical reasons";

(c) the fact that some prisoners in the past (including one of my complainants) had been allowed to wear sunglasses, without going anywhere near a Medical Officer, was possibly due to the fact that "at the major institutions, in particular Long Bay, many prisoners' requests are dealt with by Officers acting in positions at the rank of Principal and Chief Prison Officer";

(d) the Department did not now (8th March, 1978), intend to issue a "Departmental decision" (I presumed this was synonymous with a Circular) but to leave the matter to the discretion of local Superintendents;

(e) the Commissioner went on to stress the "health", aspect of prisoners' care and said—

"I can only reiterate that prisoners generally show great concern for their health when they are in prison and expect prompt and special treatment at all times. I think it would be fair to state that their expectations in this area, and the fulfilment of these expectations, would exceed that normally available to the general public.

I think you will agree that in regard to anything in connection with a prisoner's eye-sight, a Superintendent would be unwise to permit glasses of any kind without first seeking medical advice. Normal spectacles, if worn by an inmate on reception are, of course, permitted. Thereafter, issues from property on reception or by post or visit are subject to medical confirmation."

After all of this, I must confess that I was more confused about the matter than ever. Nevertheless, I felt that there were, essentially, two major questions to be resolved, namely—

(1) whether the Department's attitude to the use of sunglasses, based on the "protection of prisoners' health" aspect put forward by the Commissioner, was reasonable; and

(2) if so, whether the Department ought not publicize its policy to all custodial officers, bearing in mind the admitted problems occurring at major institutions.

With this in mind, my Investigation Officer undertook some "research" on the matter and, in due course, I wrote to the Commissioner in the following terms:

"I have carefully considered all that you have had to say in your various letters to me about the matter and the situation appears to be as follows:

(a) the Superintendents have decided, by reaching a "consensus of opinion" among themselves, that prisoners will not be permitted to wear sunglasses unless such glasses are recommended by a Medical Officer;

(b) the Department supports this decision on the grounds that the use of sunglasses, other than on medical advice or prescription, may be damaging to the eyes;

(c) the Department does not propose to issue any circular or "decision" about the matter but intends leaving it to the discretion of local Superintendents.

In order to determine whether the decision reached by the Superintendents was a reasonable one, I arranged for available ophthalmic literature dealing with the use of sunglasses to be examined and for the matter to be discussed with the School of Optometry at the University of New South Wales.

As a result of my enquiries in this regard, I am satisfied that considerable doubt exists as to the value of or effect of wearing tinted glasses and sunglasses without prescription and that, in view of this, the decision reached and now being practised by the Superintendents is a reasonable one and their conduct in this regard could not be found to be wrong in terms of the Ombudsman Act.

However, I am concerned that, despite the advice contained in your letter of 20th February, 1978, . . ., the Department now does not propose to issue any general policy direction in the matter. It seems clear from your letters to me that the Department's support for the decision reached by the Superintendents is based on an expressed concern to safeguard the eyesight of prisoners and the belief that any question involving considerations of eyesight should be determined by suitably qualified medical personnel and not by prison officers.

If this is, in fact, the case, then I am of the view that the Department should issue a definite instruction about the matter because of—

(a) the danger inherent in leaving a matter of this nature to the discretion of indivdiual Superintendents, with the attendant possibility of, in the long term, different Superintendents making different decisions;

(b) the need to communicate the present policy to officers below the rank of Superintendent, particularly at the larger institutions where (as you pointed out in your letter of 27th February), many prisoners' requests are dealt with by more junior officers; and

(c) the possibility that, in time, the "consensus of opinion", on which present policy is based, will change.

It seems to me, in fact, that the Superintendents are not really exercising any "discretion" in the matter at all but, rather, they appear to have placed the onus on the shoulders of the medical staff. The issue of a departmental instruction, therefore, would not in my view erode the Superintendents' discretionary powers but would merely serve to formalize the present practice and enable the dissemination of relevant and important information to junior officers.

I would, therefore, appreciate your further views on this particular question.

I note that, if a prisoner is wearing normal spectacles on reception into prison, he is permitted to retain and use such spectacles (your letter of 8th March). The Department apparently assumes, in such cases, that the prisoners' spectacles have been properly prescribed. I do not consider such an assumption to be at all unreasonable.

However, this brings me to the case of the prisoner who, on reception, is wearing sunglasses and raises one or two aspects in respect of which I would welcome your further advice, namely—

(i) Would it be assumed that his sunglasses had been medically prescribed or would some attempt be made to ascertain the position?

(ii) Would his sunglasses be taken from him?

(iii) If he claimed that he was using sunglasses on medical advice, would any effort be made to verify or refute his claims? (I note that the claims made by one of my complainants in this regard were not, apparently, investigated at all).

(iv) I presume that the question of whether sunglasses should be worn would need to be determined by a suitably qualified specialist (e.g., an ophthalmologist or optometrist) rather than by a Medical Officer. Is this, in fact, the case and, if so, have arrangements been made for this to be done?"

The Commissioner, in his reply, said—

"I note that you have considered the current attitudes in this matter to be not unreasonable. Whilst I am not in complete agreement with you that a departmental instruction would not fetter the discretion of the Superintendents in this matter, I am prepared, in order to avoid possible variations between establishments, to issue general guidelines within the department. It is hoped that the Special Inquiries Officer will have the benefit of the advice of your officers in the preparation of these.

In reference to the final paragraphs of your letter of 3rd April, 1978, I see little point in maintaining continued correspondence in speculating on what may occur if a prisoner may be received at some future date under certain circumstances. However, I am prepared to attempt to cover this possibility in the indicated set of guidelines."

Subsequently, following consultation between my officers and officers of the Department, a Circular was issued in the following terms:

"*Issue and wearing of sunglasses by inmates—*

The Department has adopted the recommendation made at a recent conference of Superintendents, that prisoners should not automatically be permitted to wear sunglasses unless the wearing of same is indicated by medical advice.

Medical reasons—

Where a prisoner, either on reception or otherwise, claims that a medical reason exists to support his request to wear sunglasses, arrangements should be made as soon as possible for the prisoner to be seen by a medical officer to establish whether or not medical grounds exist.

Pending the prisoner's medical examination, sunglasses should be permitted *but the prisoner should be clearly informed that a final decision will not be made until he has been medically examined.*

Where a medical officer recommends that, for medical reasons, a prisoner wear sunglasses, arrangements should be made as quickly as possible to ensure that the prisoner is appropriately supplied (either from his property, by purchase or, where appropriate, through the Prison Medical Service).

If a prisoner, on reception, is able to furnish evidence (such as a medical certificate), from a medical practitioner outside the service, that sunglasses are required for medical reasons, such evidence should be accepted as sufficient grounds to permit the wearing of sunglasses. In such circumstances, it will not be necessary to refer the prisoner to a medical officer.

Other cases—

Where a prisoner's request to wear sunglasses is not based on medical grounds or where a medical officer has advised that there is no medical reason for the prisoner to wear sunglasses, the decision as to whether the prisoner should be permitted to have sunglasses is in the discretion of the Superintendent.

However, unless there are exceptional or special circumstances which, in the Superintendent's opinion, warrant the granting of the request, the spirit of the decision take at the conference referred to above should be observed."

Those interested may refer to "The Fashion of Tinted Spectacles"
Hervouet, F.
(Klinomblaugenheilk—1973—162/1—pps 57/63).

"Potential Eye Hazards of Sunglasses"
McCullough, E. C. and Fullerton, G. D.
(Survey of Opthalmology—1971—16/2—pps 108/111).

"A Darker Side of Life"
Pockley, J. A.
(Medical Journal of Australia—2 —pps 379/381.

DEPARTMENT OF EDUCATION

Bus Passes

From time to time complaints come to me relating to the issue or non-issue of free bus passes for children to attend school.

If the school is within 1.6 kilometres of the home of the child such measured by the nearest practicable route, the child is expected to walk. Outside that area he can take a bus.

Disputes occur as to the accuracy of measurements and usually arise by reason of another child living within a short distance receiving a pass and the child of the complainant not.

The problem is further aggravated by the not unreasonable practice of the Department originally issuing passes on the basis of reference to radial maps and then when time is available making a more accurate measurement. Many hundreds of applications for free bus travel are processed each year and to avoid unnecessary delays and hardship, the Department issues passes in respect of marginal cases which appear to fall within the 1.6 kilometre limit and checks later.

In one particular case the above procedure was followed and when the measurement was taken it was under 1.6 kilometres measured from the school crossing to the child's front gate. The child therefore became ineligible for free bus travel.

After the complaint was referred to the Department a further check was carried out using a vehicle fitted with a specially calibrated odometer. With this the distance was measured at 1.53 kilometres.

In view of this I could not find the action of the Department in withdrawing the free pass to have been wrong and so informed my complainant.

The only consolation was that the child may therefore obtain some healthy exercise walking to and from school.

Refusal to place child at particular High School

In December, 1978, I received a complaint from a woman who wanted her son to attend North Sydney Boys High in 1979.

She had been attempting to buy a house in the North Sydney area so that she would comply with the necessary residential qualifications for her son to attend the school. Currently she was living in the Mosman area with her son eligible to attend Mosman High School.

When she approached the Department she was informed that they insisted on current residential status before they would consider her son's placement. She considers it an unnecessary disruption to her child's schooling to insist upon placing him in Mosman High which he would attend at the most for a month or so before moving to North Sydney Boys High.

She met with the Board of Review for Secondary School Placement to discuss the situation but they were not prepared to consider her son's application until she could prove residence in the required area. The Board rejected any suggestion that her son could stay with friends of hers in the area until she established residence. She maintained that when she requested a map of the required area her request was refused on the grounds that the boundaries were flexible and in a constant state of change and that the information was for their use only.

She maintained that this approach was unreasonably obstructive and she strongly resented the implication that her stated desire to purchase a house in the area was not genuine. Particularly as she was asked to produce Statutory Declarations from her Solicitors to substantiate any claim she made regarding the purchase of a house. She is not aware of anyone else being asked to do so.

As this stage she referred the complaint to me and I took the matter up with the Department of Education.

In reply, the Department of Education informed me, *inter alia*—

"Entry to that school is highly competitive within defined geographical boundaries. In justice to those living within the boundaries, no boy from outside the boundaries can be admitted solely upon a verbal undertaking that, at some time in the future, the parents will secure accommodation in the area.

It is standard practice in such cases to require a statement from a responsible authority that a house has been bought or rented, or land purhcased, with a declaration from a builder that the home will be available for occupation during the First Term of the school year.

The complainant has been unable to produce such a statement. When she can do so, her son's name will be placed on the waiting list for the school and he will be admitted in due order as vacancies occur.

Parents may not circumvent these procedures simply by having a child stay with friends in the area, as the complainant proposed to do at one stage.

She claims that a member of the Review Committee refused her permission to see a map of the required area. In fact, the maps have been available in Primary Schools for the perusal of interested parents since about June, 1978. The members of the Committee are aware of this and of the fact that the maps are no longer confidential documents. It does not seem likely that they would claim the maps are for their use only. Nor do I believe they were unreasonably obstructive. They were simply telling her what is detailed above. There was no question of doubting the genuineness of her intention to purchase a house in the area. The intention, however genuine, is simply insufficient residential qualification for admission to a selective high school.

She may be assured that, even though she may know of no one else being required to produce evidence of purchase or rental, it is standard procedure in all cases similar to hers."

After reviewing the information I advised the complainant that it did not appear to me that the Department had acted wrongly in terms of the Ombudsman Act and I did not propose to take the matter any further.

Failure to pay subsidy to provisionally certified non-government schools

Often, during my investigation of a particular complaint, an issue will arise which appears to me to call for an investigation as a quite separate issue. Of course, in terms of section 13 (1) of the Ombudsman Act, I can investigate conduct of a public authority, about which a complaint may be made, if it appears to me that such conduct may be wrong, even though I have not actually received a complaint about the conduct.

In this particular case, I was investigating a complaint made to me on behalf of a non-government school relating to the failure of the Education Department to pay a per capita subsidy to the school. During my investigation, it became plain that the Department's policy precluded the payment of subsidy to a non-government school unless the school had achieved full certification status in terms of the Public Instruction (Amendment) Act.

The steps involved are—

(i) registration;

(ii) provisional certification;

(iii) full certification.

It seemed to me that such conduct "may be wrong" and I decided, therefore, to pursue the matter with the Director-General of Education. I was already aware that circular instructions issued by the Department to its Regional Offices in 1967 and 1975 said, *inter alia*—

> "A school provisionally certified under the Act shall not be eligible for subsidy whilst provisional certification holds."

In response to my request for an explanation of the Department's policy, the Director-General informed me that the subsidy scheme had been introduced from the beginning of 1968 following a government decision to provide aid to finance the education of primary school children attending non-State schools. The initial rate of subsidy had been $12 per year per child and the government had decided that the subsidy should be paid half-yearly from 1st January, 1978.

The Director-General went on to say—

> "The provisional registration period is essentially a period of probation or consolidation to enable a school to demonstrate that efficient and regular instruction, as anticipated in section 10 (2) of the Act is, in fact, being given. Provisional registration may be extended or withdrawn as a result of the inspection for full certification and it would be incongruous for subsidy to be paid to a school until such time as it had been confirmed that the standard of education required by the Act had been reached."
>
> "As indicated in my letter of 29th November, 1976, the conditions of eligibility for subsidy were approved by the then Minister on 2nd January, 1968, and re-affirmed on 11th January, 1971."

In considering the views expressed by the Director-General, I perused the relevant Departmental file.

I found it difficult to accept that a provisionally certified non-State school would not be providing "education" to those primary school children attending it, and that it should not receive the financial assistance made available by the government to help finance the education of such children. There was no doubt in my mind that a provisionally certified school is still a school, and the definition of "Certified School" in the Public Instruction Act appeared to me, by including "a school registered under this Act" to give some support to my view.

I noted the Director-General's view that it would be incongruous to pay subsidy to a school that is serving a period of probation or until such time as the school has demonstrated that it is providing the standard of education required by the Act (i.e., regular and efficient instruction). However, it seemed to me that before provisional certification can occur, a school would already have been subject to close examination in regard to the standard of proposed instruction or education it would provide and the Minister or his delegate would be satisfied that this would be up to standard. Otherwise, in fact, the school should not be registered in terms of the Public Instruction Act at all. Once the Department permits children to attend a school for the purpose of receiving education, it seemed to me that the school should receive the financial aid available to assist in the provision of such education.

There was no doubt that the decision to exclude provisionally certified schools from eligibility for subsidy was taken by the then Minister on 2nd January, 1968. Unfortunately, the Departmental submission and recommendations which the Minister approved gave no information at all as to why this was to be the case or whether the reasons then were the same as the reasons advanced to me by the Director-General.

I felt it could be argued that, in respect to the purpose for which subsidy is payable, there was little difference between a provisionally certified and a certified school. Both would be providing an education that would otherwise need to be provided, by law, by the State in one of its schools. As well, even a certified school could find itself in a situation where its certification could be cancelled, in terms of the Public Instruction Act if the education being provided was not up to the required standard, and, upon cancellation of its certification, the school would no longer be entitled to a subsidy. In essence, I could see little difference between a provisionally certified school being able to receive a subsidy which would cease if it failed to achieve full certification and a certified school able to receive a subsidy which would cease if its certificate was cancelled. The reasons for cessation of eligibility for subsidy would be, essentially, the same.

I conveyed my views to the Director-General and, in doing so, said—

> "Whilst I note that the conditions of eligibility for subsidy were approved by the then Minister in January, 1968, and were re-affirmed in January, 1971, I am of the view that the continued failure of the Department to take action to correct what appears to be an anomalous situation concerning the ineligibility of provisionally certified non-State schools to receive subsidy in respect of primary age pupils is a matter that I am, in terms of the Ombudsman Act, able to investigate and I propose, therefore, to do so.
>
> In this regard, I am, at this stage, of the view that the Department's inaction in this particular regard may well constitute conduct that might be found to be wrong in terms of section

5 (2) (b), (e) and (f) of the Ombudsman Act. However, before I reach any definite conclusion in this regard, I would be pleased to receive your further submissions in the matter."

The Director-General subsequently replied in the following terms:

". . . I can see no merit in payment of subsidy to a school which has not clearly demonstrated, in terms of the Act, that 'efficient and regular instruction' is being given.

At the same time I am inclined to agree that, once having demonstrated to the satisfaction of the Regional Director that the criterion of 'efficient and regular instruction' has been met, there does not seem to be any justification for not paying subsidy immediately following the successful inspection of the school.

Taking this view a step further it could not be denied that the date of inspection of the school would then be a critical factor. In the case of a school about which considerable doubt existed as to whether it should be permitted to continue, it would be in the interests of the pupils to defer the final inspection until as late as possible. The same argument would not apply in the case of a school . . . where the decision (as to when) the school be inspected) . . . would be determined largely by the commitments of the local Inspector of Schools.

In these circumstances I propose to seek the Minister's approval to vary the conditions under which subsidy is payable to provide that, in those cases where a school clearly demonstrates a satisfactory standard of efficiency during the initial period of provisional certification and is recommended for full certification, subsidy shall be paid retrospectively for the final six months of provisional certification."

I must emphasize that I would not be prepared to make any concession to a school . . . which failed to meet the principal requirement of 'efficient and regular instruction' during the initial period of provisional certification.

I believe that this is a satisfactory solution to the problem which you raised and I appreciate your bringing the matter to my attention."

The Secretary of the Department shortly thereafter advised me as follows:

"The Minister has now approved of policy being varied along the lines indicated in the Director-General's earlier letter.

In terms of this approval if a school gains a recommendation for registration as a certified school during its initial period of provisional certification the subsidy will be paid retrospectively for six months from the date of full certification. This concession will not be granted to a school which fails to achieve a satisfactory standard during the period of provisional certification and schools in this category will receive subsidy only from the date on which full certification is granted."

I considered that the matter had been reasonably and satisfactorily resolved and I discontinued my enquiries.

HOUSING COMMISSION

Goodwill Payments

Until recently it was the policy of the Housing Commission to require the owners of retail businesses conducted in Commission premises to pay the Commission a percentage of the goodwill factor in the price received on the sale of the business. This was applicable only to those tenants who had been original tenants from the Commission and who had not paid any goodwill for their business premises. It was also open to retailers leasing Commission premises to pay an assessed sum and satisfy that requirement of their lease in advance of any intention to sell the business. In these latter circumstances the Commission established the sum payable by using an established and widely used formula.

The Commission's conduct in these matters appears to have been quite reasonable in the special circumstances, but a complaint was lodged with me by a former owner of a business conducted in Commission premises which, whilst it accepted the policies I have outlined, raised the point that the Commission was adhering to the use of its formula even when a *bona fide* sale figure was available which fixed the value of goodwill on the assessment made in open market conditions. In the complainant's case use of the formula, rather than the evidence of the actual sale, involved him in a payment to the Commission in excess of $2,000 more than that indicated as justified by the price obtained for the business.

The Commission has always been most co-operative in my investigation of any complaint against its conduct, and this case was no exception to that pattern. The circumstances were very thoroughly reviewed, but the Commission felt compelled to adhere to its decision.

Amongst other things, the Commission felt that the particular circumstances in which the decision to sell was reached raised some doubt as to whether the transaction reflected the true full market value of the business.

The Chairman and I were unable to agree and the complaint was made the subject of a report under section 26 of the Act.

Initially the Commission did not agree with my recommendation that it should reconsider the practice followed in obtaining a percentage of the goodwill attaching to the business developed by the first tenants of Commission's retail premises, and adjust it to allow the evidence of *bona fide* market determinations of goodwill to be accepted when available. It did not agree that the complainant's assessment should be revised along these lines. However, I did not proceed to make a report to Parliament under section 27 as I had further discussions with the then Minister and the Chairman of the Commission.

Ultimately arising from these discussions I attended a meeting of the Commission and put my views. I learnt that although it was not applicable to the present case, the Commission had now a different policy in regard to matters of this nature.

Following this meeting the Commission decided to accept my interpretation of the manner in which goodwill should be assessed, even though the Commissioners believed that having regard to all of the circumstances, the original assessment was reasonable and that as a Commission they had acted properly in all aspects of the matter.

Payment of a refund was made to the complainants and I therefore concluded my investigation.

Tendering Procedures

A local builder in a country area complained that the Housing Commission had been unfair in dealing with tenders called for the carrying out of six jobs in the area under six separate contracts.

The basis of his complaint was that although separate tenders were called for each job, some of the tenderers submitted prices on a bulk basis although this had not been asked for.

My complainant was the second lowest tenderer for one contract and when the lowest tenderer pulled out he expected to take his place. However, he was informed that the contract would probably go to one of the bulk tenderers whose prices were lower overall. From the figures quoted to me it appeared that if the lowest tenderer pulled out (he was the lowest in all six tenders) then the difference in price between the total of the second lowest in each case and the lowest of the bulk tenderers was only marginal, although in favour of the bulk tenderer.

As a result of my enquiries I found out that the Commission's practice was as follows:

> "When tenders for Commission construction works are advertised, tenderers are invited to submit prices for each advertised contract. However, it frequently happens that tenders for two or more contracts in the same locality, are invited concurrently and when this occurs, although not requested, it is quite common for builders to take the initiative and submit bulk prices as well as individual.
>
> As stated, the Commission did call public tenders for six individual contracts comprising 39 cottages. A total of eight contractors submitted prices for all or some of the contracts and four of them, apart from their individual tenders, submitted bulk prices for all or some combination of the jobs. All this meant was that various tenderers offered to do the work for a lesser amount, conditional upon them being awarded more than one of the contracts that were at tender simultaneously.
>
> The submission of bulk tenders has been a common practice for many years and quite a number of contracts has been won on that basis, as the Commission's normal practice is to accept the lowest price available, provided the builder is considered technically and financially capable of undertaking the particular work involved."

In the circumstances, I could not see that the Commission's conduct had been wrong and discontinued my investigation.

DEPARTMENT OF INDUSTRIAL RELATIONS AND TECHNOLOGY

Acceptance of instalments for underpayment of wages

I received a complaint concerning the decision of the Department of Labour and Industry (as it then was) to accept payments by way of instalments of moneys due to my complainant from a former employer without reference to my complainant. A period of 8½ months had elapsed at that stage from the time of her initial complaint to the Department alleging underpayment. This scheme of payment agreed to by the Department would allow a period of over 26 months to have elapsed from the time my complainant contacted the Department of Labour and Industry until she received the full amount of money owed to her, if it was adhered to by her former employer.

I wrote to the Under Secretary of the Department of Labour and Industry and provided him with the information which had been made available to me. This included the following:

my complainant's employment had been terminated towards the end of October, 1977, and she had then contacted the Department of Labour and Industry as she considered she should have been given reasonable notice of dismissal;

when the Department was contacted it was learnt that she had been paid less than the award rate;

she was also informed that the Department would examine her former employers' books;

my complainant stated that she rang the Department on numerous occasions and was given various reasons why her case was held up; and

on 12th July, 1978, she received a letter from the Department informing her that she had been underpaid the amount of $527.16 and that the Department had arranged that she would be paid this amount by way of monthly instalments of $30. A cheque for $30, representing the first of such monthly instalments, was enclosed with this letter.

I sought the Under Secretary's comments. He replied promptly and denied that there had been any delay and maintained that "all necessary and appropriate action has been taken on her behalf to endeavour to recover, in cash, all moneys that can be shown to be owing to her". With his letter there were forwarded a copy of a Departmental Inspector's report, a letter from the former employer, and a letter sent by the Department to my complainant on 12th July, 1978.

It was claimed that the above documents indicated that the issues were "by no means unequivocally in my complainant's favour"; and the letter concluded "Should Mrs . . . be dissatisfied with the Department's action, I will be only too happy to instruct my officers to discontinue action and so allow her to institute civil proceedings in her own right".

I found myself at variance with the position adopted by the Under Secretary.

I wrote again to the Under Secretary and informed him that his letter caused me some concern; and that I disputed his assertion that "there has been no delay in Mrs . . . case" and stated that this was not necessarily supported by the documents forwarded to me, and that an "allegation of delay is all the more important when a statutory time limit applies to the bringing of proceedings" as was the present situation.

I informed the Under Secretary that I did not agree with his statement that his letter of 12th July to my complainant indicates "that the issues are by no means unequivocally in her favour", and commented that "my perusal of that letter does not lead me to any such conclusion". I noted that that letter read, "The Department has investigated your complaint and is of the opinion that $527.16 is outstanding to you".

I also expressed my concern at the Department's attitude to the original complaint as apparently contained in the last paragraph of its previous letter. I further considered that this "take it or leave it" position that was implicit in what was said could be seen as "wrong conduct" in terms of section 5 (2) (b) of the Ombudsman Act as being "unreasonable conduct".

Concern was also expressed about the Department's apparent failure to consult my complainant before agreeing to the settlement of her claim by way of monthly instalments, as I considered that this also "could constitute 'wrong conduct' within section 5 (2) (b) and (e) of the Ombudsman Act".

I informed the Under Secretary that I was providing him "with the opportunity to amend or modify the situation and to comment on the matters raised by me prior to my consideration of any further action required".

The Under Secretary replied but made no mention as to the alleged delay in dealing with the complaint by the Department.

The Under Secretary however referred to my previous letter, where I had intimated that his letter to the complainant of 12th July, 1978, unequivocally informed her that "The Department has investigated your complaint, and is of the opinion that $527.16 is outstanding to you". The Under Secretary said "you indicate inability to reach a conclusion which you incorrectly allege was stated by me to flow from my letter of 12th July, 1978. If you care to check my letter of 17th August, 1978, you will see that that conclusion was stated to flow from *three* documents provided to you and is, in fact, a reasonable conclusion to reach". The other two documents referred to in the Under Secretary's letter of 17th August, 1978, were a Departmental Inspector's report dealing with his interview with the employer together with a letter to the Department from the employer dated 14th March, 1978.

From the Inspector's report it can be seen that the Inspector visited the employer on 28th November, 1977, and reported on 12th December, 1977, that "there are grounds for the lodging of this complaint. The employer has a huge persecution complex. None of her statements, nor the attempt at wage records produced, bore any coherency or supported each other. I personally feel not

much emphasis can be placed on any of the employer's statements and in the absence of correct time and wage records, as legally required, suggest the Department accept the hours outlined by the complainant and initiate action for the recovery of moneys outstanding". The ex-employer's letter disputed my complainant's claim and alleged she had been overpaid.

I therefore found it difficult to appreciate that I had made an incorrect conclusion or that the Under Secretary's conclusion was reasonable.

My interpretation of "wrong conduct" under the Ombudsman Act was disputed by the Under Secretary as being as follows:

> "I am intrigued by the extensiveness of interpretation you have adopted in suggesting that my attitude and actions by the Department in this case could be seen as "wrong conduct" in terms of the Ombudsman Act. Might I contend, with respect that for conduct to be "wrong", an essential element needed would be to show that the interests of a member of the public seeking assistance from the Department were unreasonably affected adversely".

The Ombudsman Act section 5 (2) provides—

"For the purpose of this Act, conduct of a public authority is wrong if it is—

(a) contrary to law;

(b) unreasonable, unjust, oppressive or improperly discriminatory, whether or not it is in accordance with any law or established practice;

(c) based wholly or partly on improper motives, irrelevant grounds or irrelevant considerations;

(d) based wholly or partly on a mistake of law or fact;

(e) conduct for which reasons should be given but are not given; or

(f) otherwise wrong".

Whilst I did not accept the Under Secretary's contention, it may be seen however, that in this particular matter the interest of a member of the public seeking assistance from the Department being adversely affected was involved.

The Under Secretary objected strongly to my description of the Department's (or his) attitude as "take it or leave it" in connection with the attitude expressed at the conclusion of his letter to me dated 17th August, 1978.

I did not accept what the Under Secretary said in his letter of 28th September, 1978, that "such an accusation is unwarranted, not supportable on a reasonable appreciation of the information tendered to you (the Ombudsman), and reflects an entirely erroneous interpretation of my indication to you of the Department's willingness to allow the complainant to choose whichever course of action she feels would best promote her claim". Unfortunately I could not in the light of the plain facts supplied to me by the Department, accept any of the assertions just referred to by the Under Secretary and I stood by my statement as clearly appropriate to the circumstances.

The Under Secretary sought to remind me that his Department's relationship to its complainant is not that of a solicitor/client relationship.

I have to comment that at no time was such a relationship with Mrs . . . implied. Nevertheless, it was clearly apparent that some consultation with the person most directly affected should take place before any arrangement or agreement concerning money owing to that person, be made.

The Under Secretary also informed me that "it is the prerogative of the Minister *and his alone* (Under Secretary's emphasis) to determine whether or not the circumstances of a particular case call for prosecution". This was irrelevant to this matter, as at no stage had the question of prosecution of the employer been raised by me.

The Department's papers were forwarded to me with its letter and an examination of them failed to materially add to any of the salient facts already known to me except to reinforce that it was the Department's considered conclusion that $527.16 was underpaid by the employer to the complainant —for example, the letter of 24th July, 1978, from the Department to employer's accountant said "The Department has, in the light of the evidence before it, calculated this figure as being the correct sum outstanding to the complainant". The Department's satisfaction with its conclusion as to the employer's liability was earlier expressly communicated to her. This opinion was also conveyed to the complainant by the Department's letter to her of 14th July, 1978.

The failure of the Under Secretary to alter or modify the Department's conduct after the receipt of my letter of 29th August, 1978, left me without any real alternative but to act in accordance with section 26 of the Ombudsman Act and bring the facts to the attention of the Minister. The Under

Secretary's reply of 28th September, 1978, was quite unsatisfactory and said nothing to answer what I had put to him.

I therefore made my finding that the conduct of the Department of Labour and Industry in this matter was wrong in terms of section 5 (2) of the Ombudsman Act, in that—

> the Department acted in an unreasonable manner in failing to contact or consult with the complainant before agreeing to the former employer's offer to pay off the moneys owing to the complaint by way of monthly instalments of $30; and I recommended that, in future cases, the Department should not agree to a compromise or instalment payments with an employer without first referring the matter to the employee for his views.

The Minister advised me that consultation with employees was the normal practice.

DEPARTMENT OF LANDS

The Problem of Possible Early Resumption

Problems arose in relation to a threatened resumption by the Department of Lands of part of the complainant's land for addition to a State Recreation Area.

The complainant stated that intermittent discussions had taken place for some time with regard to the acquisition of the land but exactly what lands were required was not known until August, 1978. There was a wide divergence as to the price which should be paid for the land and little prospect of a compromise being arrived at.

The land in question was part of a Home Selection Grant purchased as such by the complainant in 1973 and converted to an original Conditional Purchase in 1974. There was no indication at that stage that the Department was interested in acquiring the land.

The matter was not raised with me until April, 1979. A full report was received from the Department. The Department pointed out that as there had been failure to agree on value, the question of resumption arose and ordinarily the value could be determined by the Land and Valuation Court. However, a complication had arisen as that if the resumption was effected prior to 15th July, 1979 (that is, 5 years after the date of confirmation of the original Conditional Purchase), it would be governed by the provisions of section 125 of the Public Works Act.

This Section is as follows:

> "Notwithstanding anything in the last preceding section, the compensation to be paid for and in respect of any land acquired or taken under this Act, at any time within five years from the time when such land was alienated in fee by the Crown, whether absolutely or conditionally, shall be a sum of money, for each acre or portion of an acre of such land, equal to the amount of purchase money paid per acre by the grantee, or to the amount of deposit per acre paid by the conditional purchaser for such land (as the case may be), together with a sum not exceeding one hundred per centum on the amount of such purchase money or deposit, and, in addition thereto, the value of any improvements then being upon such land. The value of such improvements, together with compensation for damage (if any) by severance, shall be determined under the provisions of this Act."

In fairness it should be stated that the Department endeavoured to re-open negotiations and to acquire by agreement. It was not successful because of the divergence in valuations.

The Under Secretary, whilst expressing sympathy with the plight of the complainant, felt that he could not delay the resumption beyond 15th July.

He, however, pointed out to me that the repeal of this section was one of the subjects of a report by an interdepartmental committee on land acquisition procedures, on which the Minister was to submit a report to Cabinet in due course.

I discussed the matter with the Under Secretary and his officer, following which I wrote expressing the view that the Department should postpone the resumption until after 15th July and that the value, if not then agreed upon, could be determined by the Land and Valuation Court in the ordinary way. This would achieve in my view a proper result, namely that the proper market value would be paid unrestricted by the provisions of section 125 of the Land and Valuation Act.

In expressing my view to the Department I had in mind the following:

(1) The land in fact had not been in possession of the Crown since at least 1933. I understood it was originally the subject of a Home Selection Grant and was converted to an Original Conditional Purchase early in 1974 following an application by the present owners.

(2) Negotiations had been taking place for some time with a view to agreeing upon a purchase price upon the acquisition of the land but there had been considerable divergence between the parties with the result that the chance of agreement was slight and the only possible way of arriving at a figure was for the matter to be left to the Land and Valuation Court.

(3) The negotiations which have already taken place with a view to settlement of a purchase price appeared to involve offering a figure in excess of that which would be likely to be determined if the provisions of section 125 of the Public Works Act were applied.

(4) In my view it would be wrong under the Ombudsman Act for steps to be taken to resume the property prior to 15th July, 1979, thereby evoking the provisions of section 125 of the Public Works Act and restricting the amount of compensation payable.

(5) I was re-enforced in my view that the use of section 125 would be inequitable in the present circumstances by the report of the Inter-Departmental Committee of Land Acquisition Procedure made in January, 1978, and the report of the previous White Committee, both of which recommended in strong terms the complete repeal of section 125.

Following this I was advised that the Minister had agreed that the resumption be postponed until after 15th July, 1979.

I then discontinued my investigation.

DEPARTMENT OF MAIN ROADS

Use of Rural Road by Heavy Vehicles

The Department of Main Roads has, of course, an enormous task in its responsibilities for the State's road system, but amongst the complaints concluded this year there was one, in particular, which caused me a good deal of concern.

The complainant was primarily unhappy about the Department's conduct in detouring heavy vehicles from a major highway along an unsurfaced rural road in times of heavy rain when the highway was flooded. At the time of the complaint this position was made worse by the fact that vehicles in excess of 3.7 m loaded height could not pass beneath a railway bridge which crossed the highway, and therefore had little alternative, having reached that point, but to use the detour.

The Department had erected signs indicating that high vehicles should detour and this, over a period of time, ensured that the detour was in regular use. The effect on the road surface of multiple wheeled and heavily laden vehicles, some said to have 40 wheels and a laden weight of 40 tonnes, can be imagined. However, bad as this situation may be, the highway was a principle route between Sydney and an interstate capital and the detour was unavoidable pending the completion of upgrading work on the section of the highway which gave rise to the need for a by-pass.

What did raise my eyebrows was the fact that the Department, in directing these monsters of the highway onto the detour, was commiting them irrevocably to crossing a narrow timber decked bridge with a maximum load limit of just 13 tonnes, designed and constructed in 1919 to carry the local road traffic of that time across the major railway between Sydney and an interstate capital.

The complaint was raised immediately with the Department, and eventually it also become necessary to approach the Public Transport Commission. Neither authority displayed any sense of urgency in the matter. The Department in the first instance simply placed notices on the highway drawing attention to the load limit on the bridge, later informing me that it was the responsibility of the Commission to prosecute any breaches of the limit. The Commission for its part said that the bridge was "listed for renewal when funds become available. but any major strengthening of the existing structure must be at the cost of the road authority requesting the work". The Department was not prepared to bear that cost.

The situation was clearly unsatisfactory. My correspondence to the Department must have made it quite plain that I considered the use of the bridge by heavy vehicles to be dangerous to the drivers and, obviously, to the railway traffic which passed under the bridge on a very busy main line. It was also certain that the drivers who, at the Department's instigation, had become accustomed to using the detour and the bridge would not be deterred by the signs eventually placed at either end of the detour warning of the weight limit.

Something a little more positive was needed, and so I persisted. Fourteen months after I first raised the matter with the Department and four months after I raised it with the Commission, I was at last relieved to receive the Department's advice that the bridge had been strengthened to a degree which allowed the removal of the load limit. In addition, work had been completed which would allow a load clearance of 4.9 m under the railway bridge which crossed the highway.

I then discontinued my investigation.

Loss of Access

In December, 1976, I received a complaint from Mrs A, the occupant of one of three properties which bound the closed residue of a dead-end street, the major section of which was absorbed in the construction of a major expressway, resulting in the loss of vehicular and pedestrian access, except for a narrow footway bordered on one side by the residence of Mrs A's neighbour, Ms B, and on the other side by a large property owned and occupied by the complainant's son, Mr C., who also owns the complainant's residence.

The complainant alleged that the Department of Main Roads was discriminating against her by refusing to allow pedestrian access between the two properties owned by her son across the residual roadway now vested in the Department, thus requiring the complainant, who is elderly, to walk some distance down the rather unevenly surfaced and unlit footway and through a wide gate erected by and at the expense of the neighbour, Ms B, which the complainant contended was both unnecessary and difficult for her to negotiate.

The complainant was also unhappy that the Department intended to give the footway to Ms B as compensation for the loss of access through the closed road, allowing only right of way to her son as the owner of the property she occupied and excluding access to the property he occupied. This meant that although pedestrian and vehicular access was available through the footway to her residence, the boundary of the property occupied by her son was to remain closed.

A complaint was received some time later from the complainant's son Mr C., who also claimed he was being discriminated against inasmuch as the Department's intended transfer of the footway into the ownership of Ms B would disadvantage him by denying vehicular and pedestrian access to his residence from the residual street area via the footway.

The matter became a little more complicated when the third party in the case, Ms B, also lodged a complaint against the Department claiming that it was being dilatory in giving effect to a firm undertaking to give her the footway, and to deny access through the footway and residual street area to Mr C's property. The third complainant considered the gate to be essential to prevent nuisances from being committed in the footway by trespassers, and was rigidly opposed to any access being given to Mr C's property because of a fear that it would be used for large vans delivering and removing articles from a business carried out within the property he occupied.

My investigation soon established that Ms B was caught up in very worrying domestic circumstances involving serious illness in her family, and that the strain this caused, when combined with a large element of misunderstanding, had contributed to the development of a sense of grievance and apprehension towards Mr C and his mother.

Mr C owned all of the property surrounding Ms B, and had made it known that his long term plans envisaged acquisition of her property. This was interpreted by a very worried lady as a framework for pressure, and her ownership of the footway and the substantial exclusion of its use as access to Mr C's residence/business was seen by her as a security against that.

In short, the situation was a very human one of stress and misapprehension involving three charming people who might otherwise have enjoyed a good neighbourly relationship.

The Department, I soon discovered, had in fact overlooked an obligation to Mr C., which indicated to me that the prohibition of pedestrian and vehicular access to his property through the footway would be an injustice. At the same time, it seemed to me that ownership of the footway would be a burden to Ms B, who would, of course, have been responsible for its maintenance.

The three parties were interviewed and the assistance of the local Municipal Council was also sought. The end result was that the Department undertook to bring the surface of the footway to a standard acceptable to Council, having regard to its new role, whereupon it would be vested in Council's ownership. Council would then have the same responsibility for maintenance as it would have in the maintenance of vehicular and pedestrian access to any ratepayers' properties and ownership of the facility by a public authority would relieve Ms B of any such burden and also of her fear that the land might be acquired by Mr C as a prelude to increasing pressure on her.

The three complainants were given equal domestic vehicular and pedestrian right of way over the footway and residual road area, with Mr C happily assenting to a restriction preventing use of the access for commercial purposes. The gate was retained because in my view it was needed for security against nuisance, but as Mrs A now had direct access to her son's residence without any need to use the footway this was no longer a problem to her.

Ms B and Mr C were happy with the outcome of my actions, and Mrs A, although perhaps not quite so happy, accepted the position as reasonable.

MARITIME SERVICES BOARD

A Somewhat Dilapidated Boat

The owner of a vessel ran into problems with the Maritime Services Board when ordered to remove his vessel and mooring apparatus from its location in Sydney Harbour as "the vessel was unable to undertake a voyage under its own power". He admitted this but then detailed the steps he had taken to replace the engine and to have some repairs carried out to the vessel. Following the notice from the Board he made arrangements for the necessary work to be carried out but he was absent from Sydney for some time, and found on his return that the boatyard had not notified the Board as to the action it was taking and he received a summons for failure to remove the mooring. He was fined for this but endeavoured to retain the mooring pending repairs to the vessel being completed. The boat was inspected at the mooring after the repairs were stated to have been carried out. The Board was not happy with the appearance of the boat and the repairs carried out and considered that it was not capable of undertaking a voyage.

The Board's rather detailed reply to my enquiries was as follows:

"It is relevant to point out that in November, 1975, a routine inspection of the ... Bay area disclosed that a dilapidated vessel of questionable seaworthiness was attached to Mr L's mooring apparatus, contrary to the terms of the Occupation License issued in his name for the occupation of waters in that locality.

In accordance with normal procedure Mr L was requested to show cause why the Board should not terminate the license in the public interest. As he did not reply to the Board's request the license was terminated and a Notice pursuant to the Maritime Services Act was issued on 3 June, 1976, directing that both vessel and mooring apparatus be removed from the water within a period of 21 days.

Mr L subsequently advised that he had been unable to attend to the matter due to his having been interstate, but that he had a diesel engine being re-conditioned for the vessel and also had made arrangements for the craft to be renovated. In the circumstances Mr L requested the Board to re-consider its decision.

No action was taken at that time in regard to the Notice, but following an inspection on 23 August, 1976, which revealed the vessel to be still on the mooring buoy and with no work having been done, Mr L was requested to indicate his intentions. Mr L again failed to answer the Board's correspondence and a further inspection showed the vessel to be still located on its mooring in a very poor condition and obviously having not been slipped for several months.

The issue of a further Notice to Remove was approved on 25 November, 1976, and was served on Mr L by registered post on 14 April, 1977, following several unsuccessful attempts to serve the Notice personally at his stated place of abode. A subsequent inspection showed that the vessel had been removed, but the mooring buoy was still in evidence. Again the Board wrote to Mr L reminding him of his obligation to remove the mooring apparatus, but as it had not been removed by 18 July, 1977, the Board found it necessary to resort to prosecution for failure to comply with the terms of the Notice to Remove.

On 26 November, 1977, a Board's officer noted that the mooring device had been removed from the site, but following the receipt of a letter from Mr L dated 10 January, 1978, in which he advised, among other things, that the vessel would be returned to the mooring when repairs had been completed, the officer observed that the apparatus had been replaced without authority on its original site. Mr L was therefore advised to effect its removal from the water within 21 days from 10 February, 1978, and to lodge an application for a new Occupation License when the vessel was in such condition as to comply with the Board's requirements for the issue thereof.

In compliance with this advice, Mr L lodged an application for an Occupation License to re-accommodate the craft in ... Bay. At the same time he advised the Board that extensive repairs had been undertaken on the hull and that a reconditioned diesel engine had been installed.

An inspection by a Board's officer showed that the work effected by Mr L is mainly internal, consisting of a freshly painted motor with the electrical wiring not connected, the control panel not fitted out, and the cabin fittings, furnishings and linings not provided. The provision of bottom boards (decking) is also incomplete. Externally the boat continues to present a dilapidated appearance and considerable repair work is necessary to bring it up to an acceptable standard. The Board is of the opinion that the vessel, in its present state, could not be used on the waterways with safety and is not capable of undertaking a voyage. Mr L was therefore advised that the vessel does not comply with the Board's requirements.

Notwithstanding the above the Board is cognizant of the effort made by Mr L and the expense he has incurred in endeavouring to restore the vessel to a standard satisfactory for the occupation of navigable waters. In the event that he can satisfactorily demonstrate to the Board that the craft is watertight and able to be manoeuvred successfully to and from a mooring, the Board will be pleased to further consider his representations in the matter."

I accepted the Board's version of the events which had taken place and which did not vary much from those put to me by the complainant and considered that the complaint had not been sustained.

The facts presented to me showed the Board to have been most tolerant in the matter.

METROPOLITAN WATER, SEWERAGE AND DRAINAGE BOARD

Disconnection of a Joint Sewerage Service

In the older areas of Sydney it was the common practice many years ago for numbers of terrace-type houses to be connected by joint services to the water mains and sewers of the Metropolitan Water, Sewerage and Drainage Board. The Board's initial policy when application was made for a property involved in a joint service to the sewer to be disconnected and connected direct to the Board's sewer, was for it to afford a limited time to the adjoining owner or owners to arrange for another means of connection or, alternatively, to establish any legal right he or they may have to retain the existing connection. The Board stressed that it was unable to act as an arbitrator in these matters and that the responsibility of establishing their respective rights through the ordinary recourses to law, rested with the affected owners.

Following earlier enquiries from me in regard to some complaints received concerning the Board's proposed action in this respect, the Board gave further consideration to the procedure which it should follow. The procedure was altered but this was not in fact as the result of any recommendation which had been made by me.

I was informed by the Board that the change was brought about by a desire to reflect more properly the real legal position and to protect the existing rights, if any, of the party not desiring a change in the status quo without that party being put to unnecessary expense or inconvenience in having to initiate legal action.

I was informed that in regard to applications to have a joint sewerage service serving a property and adjoining properties altered so as to connect the service by a single connection to the Board's sewer, applicants were to be advised in the following terms:

> "The Board is not able to permit such action to proceed unless one of the following requirements is complied with—
>
> (a) All the properties are in the same ownership.
>
> (b) All property owners agree in writing to the work being carried out. The signature of the owners should be witnessed by either a Justice of the Peace, Commissioner of Affidavits, Solicitor, or Bank Manager, not being one of the property owners.
>
> (c) A Court Order is obtained and a copy produced to the Board confirming that the person or persons requiring the conversion have the entitlement to affect the other property owners' rights in respect of the joint service.
>
> Upon any one of the above conditions being satisfied, and subject to such conditions as there may be contained in the agreement or Court Order, the Board will allow the disconnection to proceed and a drainage diagram setting out the manner the disconnection will be prepared, for the use of the licensed Plumber who may apply to carry out the work by submitting a 'signature slip'."

I received a complaint arising out of the Board's change of policy and I took this matter up with the Board. The Board stressed that an unqualified right to disconnect a joint service was not recognized by what might be regarded as the old policy and it pointed out that the Board's earlier notifications referred to a question of considering an application for disconnection and raised the aspect that other parties who were affected may have some right to object. It stressed again that it is not in a position to arbitrate in these matters and that both policies have stressed this aspect.

The solicitors acting for this complainant took the view that the Board was not acting correctly and in particular its alleged change of policy had detrimentally affected those persons who had purchased properties prior to the change of policy and had been advised as to what the Board's then attitude was.

I was informed of a decision in the Equity Division of the Supreme Court of New South Wales in a matter of Australian Hi-Fi Publications Pty Limited *v.* Gehl and that this decision which related to the question of the alleged creation of a right of way to the rear of shops being created by continuous and apparent user, was relevant to the attitude of the Board.

Whilst of course it is not my position to give legal advice, I gave consideration to the particular decision and could not see that it affected my view that the Board's conduct in relation to these matters could be considered to be wrong.

I was informed by the Board that it was loathe to change its position in relation to these matters based upon the decision which, on the face of it, did not have any special application to the question of rights in relation to existing house service lines, but in any case enquiries had shown that the decision was now subject to appeal to the New South Wales Court of Appeal. In the circumstances I did not take my investigation further.

Review of Policy on Installation of Water Meters

A complaint was made to me concerning the Board's requirement that the property owner pay for the installation of a water meter on his property. The complainant did not object to paying for the water he used, but objected to paying for the installation of the equipment which the Board used, and which remained the Board's property, in order to levy that charge.

I made enquiries of other authorities similar to the Metropolitan Water, Sewerage and Drainage Board and found, with one exception, that meters are provided and installed free of charge to the customer. In the light of this, I suggested that the Board review its policy with regard to payment for meter installation.

The Board undertook a review which, because of the size of its operations, extended over a period of many months. As it would not have been practicable to backdate any policy change to benefit all property owners who had been affected, it was not possible to give any relief to the complainant.

The altered policy, however, will benefit a wide group of property owners in the future.

This policy was set out in a letter to me as follows:

"The Board resolved that in future it would be responsible for fixing a meter on an existing unmetered water service where there was no current proposal by the property owner to renew the service and where one could be fixed in an accessible position without costly rearrangement or alteration to the service. It was felt that where these circumstances existed, metering could be left until the service was being renewed or re-arranged in the normal course of events.

In the interests of economy, the Board intends to carry out its fix meter programme in two stages. The first will be to meter those properties where a meter preparation already exists and where the work will merely entail taking out the connector piece and replacing it with the meter. When all those properties have been metered then the Board will proceed with Stage 2 which will necessarily take much longer because of the need to carry out work on the service to provide a meter preparation in order that the meter can be fitted. Properties will be dealt with street by street on a district basis and the programming will probably be such that the work will need to be spread over a period of ten years or more.

Of course, on this basis the Board would not be able to arrange for meters to be fixed at individual property owners' request, unless its men happened to be working in the district involved. Consequently, where a property owner requires installation of a meter immediately to permit use of a fixed hose or sprinkler or has been required to fix a meter because he is in breach of the By-laws, he would have to himself arrange for a meter to be installed by a licensed plumber.

As from now the Board will no longer require that a meter be fitted on transfer of a property where an existing service is unmetered, and no further action will be taken against any property owner who to date has failed to comply with a request that a meter be fitted in such circumstances. In future, all that a new owner will receive is advice as to the basis on which he can use water for other than domestic purposes (i.e., watering-can or hose held in the hand) and it will then be up to him to decide whether this is sufficient for his requirements. If he decides that he wants to use a fixed hose or sprinkler, then he will need to have a meter fixed by a licensed plumber, unless of course his property is in an area where the Board's men engaged on fitting meters are currently working. In a case where a new property owner is prepared to wait until his area is programmed to be dealt with by the Board, the work would then be carried out at the Board's expense.

In connection with the metering of new services or existing services which are being renewed, the Board feels that its existing policy of having the licensed plumber working on the service fix the meter is the most practical way of achieving this purpose. This is in line with what applies in the case of the Hunter District Water Board and the Melbourne and Metropolitan Board of Works and this Board can see no reason why its existing policy should be varied. Put simply, it would not be in the overall interests of economy to have independent workforces working on the same service at the one time."

DEPARTMENT OF MINERAL RESOURCES AND DEVELOPMENT

The Unfortunate Fate of a Mining Lease Application

A complaint was received by me from Mr A in June, 1975, relating to the action of the Under Secretary of Mines in advising the complainant by letter of 6th January, 1975, that his application for a mining lease could not be granted as the area proposed was wholly within a mining lease granted to another company on 6th April, 1973, for a period of twenty years and that, therefore, action would have to proceed within the Department to refuse his application.

My investigation disclosed that the Under Secretary had written to the complainant on 6th January, 1975, advising him the area applied for under his application was wholly within a Mining Lease granted to "X" Pty Ltd on 6th April, 1973, for twenty (20) years.

The letter went on to set out the following matters:

(1) The Mining Lease was granted in satisfaction of a Mining Lease application which was lodged on 22nd February, 1972.

(2) Complaint was lodged by the complainant against a previous Mining Lease on 28th October, 1970. As a result of this complaint, the previous Mining Lease was cancelled, notice of such cancellation appearing in the Government Gazette dated 18th February, 1972.

(3) Section 124A of the Mining Act, 1906, as amended, provided in part that "upon the notification of the cancellation of the lease, the complainant shall, where he has made an application for a lease as is mentioned in subsection one of this section, be entitled, upon making all the prescribed payments, to the same rights and be subject to the same duties as are conferred or imposed by the provisions of this Act upon an applicant for a lease of the same class as the cancelled lease until such application is granted or refused."

(4) Legal advice had been received by the Department indicating that a complainant's application is not effective as an application until two conditions are fulfilled—a notification must have been published as to the cancellation of the old lease and all the prescribed payments must have been made. (The prescribed payments in this case are the rent and survey or inspection fee). It is only when these conditions have been fulfilled that rights as an applicant vest in the complainant.

(5) As the other Mining Lease Application was lodged on 22nd February, 1972, and the complainant did not make the prescribed payments in connection with his application until the 15th September, 1972, his application could not be considered as being prior to that of "X" Pty Limited.

(6) Therefore, as the area applied for is, as pointed out above, wholly within the area of a granted lease, it was not possible for the complainant's application to proceed. This being the case, action would now have to proceed to the refusal of this application.

The complaint to me was referred to the then Department of Mines for report and the relevant files were produced. In requesting the files, the Under Secretary's comments were invited in respect of the following matters:

(a) any reason that, although the Mining Lease was granted on 6th April, 1973, it was apparently not until 6th January, 1975, some 20 months later, that Mr A was notified of such grant.

(b) full particulars of any action taken between the 15th September, 1972, and the 6th April, 1973, to determine priorities between the two competing applications;

(c) whether in determining (b) either applicant was invited to make submissions or did make submissions or was given the opportunity to be heard before the Mining Lease was granted;

(d) when it was determined as to the precise amount of "prescribed payments" which Mr A would have to pay and when he was required to pay same.

In his reply the Under Secretary answered these various matters in the following terms:

(a) The delay in time between the granting of the Mining Lease and the notification to Mr A of the proposal to refuse his application was partly due to the fact that legal advise was sought from the Crown Solicitor during this period in regard to certain matters and partly because the papers dealing with Mr A's application were inadvertently placed with other papers. This inadvertence was not detected until 24th December, 1974.

(b) No action was taken to determine priorities in respect of the applications between 15th September, 1972, and 6th April, 1973, as it was not known that both applications embraced the same area until a re-mark survey of the area had been charted on Departmental maps on 5th June, 1973.

(c) No submissions were invited from the respective applicants as the Mining Lease had been granted in satisfaction of a Mining Lease Application before the Department was aware that identical areas had been applied for.

(d) The precise amount of the prescribed payment required to be lodged by Mr A was determined by section 36 (2AB) and Regulations 7 and 87 of the Mining Act, 1906, at the time he made his application, i.e., 28th October, 1970.

Mr A was notified on 29th December, 1971, of the Minister's recommendation that the old lease should be cancelled and he was further informed that upon notification of such cancellation in the Gazette he would be entitled, upon making all the prescribed payments, to the same rights and be subject to the same duties as are conferred or imposed by the Mining Act upon an applicant for a lease of the same class as the cancelled lease.

The lease was cancelled in the Gazette on 18th February, 1972, and Mr A, was advised of this fact on 24th March, 1972. Further advice from the Department was forwarded to him on 8th September, 1972, and he made the prescribed payments on 15th September, 1972.

On inspection of the files the position with regard to these leases appeared to be as follows:

On 4th June, 1969, a Mineral Lease had been granted over certain land and on 28th October, 1970, Mr A gave notice pursuant to section 124A of the Mining Act, 1906, of non-compliance with the labour conditions in this lease and applied for a lease of the land comprised in it. The Minister directed a warden to hear the complaint and after taking evidence he reported on 11th October, 1971, that he was satisfied that Mr A's complaint was established but made no recommendation as to the granting of a lease to Mr A. The Minister then recommended to the Governor that the lease should be cancelled.

Mr A was advised of this on 29th December, 1971, and informed that upon notification of the cancellation of the lease in the Government Gazette he would be entitled, upon making all the prescribed payments, to the same rights and be subject to the same duties as are conferred by the Mining Act upon an application for a lease of the same class as the cancelled lease until such application is granted or refused. He was further advised that he would be notified in the Gazette of 18th February, 1972, and on 22nd February, 1972, "X" Pty Limited lodged an application for a lease of the land.

On 24th March, 1972, the Under Secretary wrote to Mr A informing him of the cancellation of the lease. On 8th September, 1972, he wrote again referring to his mineral lease application and advised him of his obligation to forward at his earliest convenience the amount of $14 rent and $4 inspection fee and this sum was received from Mr A on 15th September, 1972.

On 23rd February, 1973, the Minister recommended to the Governor that a lease should be granted to "X" Pty Limited, which recommendation was approved and a lease executed by the Governor on 6th April, 1973.

It appeared that at the time of the making of the recommendation that a lease should be granted to "X" Pty Limited the existence of Mr A's application was overlooked.

The Crown Solicitor was asked by the Department for his opinion as to whether the Mineral Lease granted to "X" Pty Limited was a valid lease, and if not, whether the Crown was liable in respect of any loss or damage incurred by the company in exercising its rights purported to be granted under the lease. The Crown Solicitor in his advice was of the opinion that the lease was not invalid but went on to comment—

"I assume that in informing Mr A that a lease cannot be granted in satisfaction of his application you will make him aware of all the facts concerning the application made by "X" Pty Limited and the granting of a lease in satisfaction of that application. It may be that, upon being informed of what has happened, Mr A might seek to contend that the lease granted to "X" Pty Limited is invalid. If so, it will, of course, be a matter for him to institute legal proceedings and if any such proceedings should be contemplated it would be desirable, I think, that Mr A and his legal advisers should be aware of all the relevant facts."

Following perusal of the files, the Department of Mines was asked by me for further comments including an explanation for the delays that had occurred, particularly between the time that the lease was granted to "X" Pty Limited and Mr A being notified as to the position. It appears that on 5th June, 1973, the Department discovered that identical areas had been applied for by "X" Pty Limited and Mr A, and it was over 18 months before Mr A was notified of this position. In my view, no doubt delay had occurred in obtaining advice from the Crown Solicitor but when that advice was received, nothing was done with regard to it, the reason advanced being that—

"the papers dealing with Mr A's application being inadvertently placed with other papers."

This situation was not detected until 24th December, 1974. However, twelve months had then passed before Mr A was advised as to the position.

The Under Secretary in his letter of 25th November, 1975, set out the reasons for the delay and the steps taken with regard to the progress of the matter. The letter was in the following terms:

Mr A complained that the lessees of the previous Mineral Lease had failed to comply with the labour conditions for a certain period and at the same time applied for a lease of the whole of the land comprised in that Mineral Lease in the event of such lease being cancelled. When this lease was cancelled on 18th February, 1972, the complaint application was then regarded as an application for a mineral lease under the provisions of the then Mining Act, 1906, as amended.

The Warden's Clerk at "Y" Town, was requested on 28th March, 1972, to record the particulars of the complaint application and to notify the Department of the number allocated to the application. No reply was received to this request or to a number of subsequent reminders. The numbering procedure for applications of this nature followed the established practice, however, the Department erred in addressing its inquiry to the Warden's Clerk at "Y"

Town. The Mining Division of "Y" Town was abolished on 1st December, 1970, and included in the Mining Division of "Z" Town. On 2nd August, 1972, a similar request was made of the Warden's Clerk, "Z" Town, and advice was received on 8th August, 1972, that the application had been numbered. Had the initial request been made correctly, the application would have been numbered and its processing commenced at a much earlier date. The officer concerned at this stage was a junior officer who was relatively inexperienced. The error had far reaching consequences.

The identification of the land subject of the application by "X" Pty Limited was completed on 17th August, 1972. At that time the Department Files in respect of the Application by A had not been referred to the Identification Section for plotting on the maps and report as to availability. Consequently, the existence of this application was not reported. Had the earlier delay not occurred the conflict between the two applications would have been reported.

The Mining Lease Application by A was identified on 22nd January, 1973. No mention of the application by "X" Pty Limited was made by the Identification Section. This is understandable as it would have been assumed by the section that there was no need to report such application as it had been lodged subsequent to Mr A's application. The date of possession of "X" Pty Ltd's application being 22nd February, 1972, whilst the date of Mr A's application was regarded as 30th October, 1970, being the date upon which Mr A's complaint was lodged.

To the best of my knowledge and that of senior officers of the Department, no similar happening has occurred previously. In this case, an application for lease in adverse interests was lodged four days after the lease was cancelled and owing to the delay in the numbering of the complaint application and its identification, the conflict between the two applications for lease did not come to notice. The Mining Act, 1973, makes no provision for the lodgment of complaints of the nature of section 124A of the repealed Mining Act, 1906, as amended. Consequently this situation will not recur.

A Mineral Lease was granted to "X" Pty Limited on 6th April, 1973, in satisfaction of its application. On 5th June, 1973, a re-mark survey disclosed the total conflict between the lease area and the area sought by Mr A. It was the generally accepted view that the Mineral Lease was void and of no effect as the application from which it originated had not been dealt with in order of priority as required by the statute. In these circumstances, and in order to obtain legal opinion, advice to both parties was deferred at that time.

During the period between the re-mark survey and the reference to the Crown Solicitor's Office on 9th November, 1973, the Departmental papers passed through the hands of a number of senior officers. Whilst some delay occurred during this period, it is not considered that such delay was inordinate. The situation was most complex and each officer involved would have been required to spend some considerable time in understanding the problem and forming an opinion.

The Crown Solicitor's advice was received on 5th February, 1974, and Mr A was notified of the situation on 6th January, 1975. It must be accepted that this delay was excessive. However, there were a number of factors which contributed. These were, firstly, the new Mining Act, 1973, came into effect on 29th March, 1974, necessitating the institution of new proceedings, administrative practices, conditions and forms particularly in the processing of applications for leases. Much of this work was concentrated in the section of the Department which handled Mr A's application for lease. This section was also involved under the Mining Act, 1906, as amended, and the entire staff of the section was utilized for this purpose for a considerable period of time. Secondly, there was a period of some six months when the papers dealing with Mr A's application were inadvertently placed with other papers. There have been other occasions when unrelated files have been placed together and it can be accepted that other occasions will occur in the future. These are the result of nothing but human error and no ulterior motives can be attributed to such occurrences.

The previous Mineral Lease was cancelled on 18th February, 1972, and the Mining Lease Application was lodged by "X" Pty Limited on 22nd February, 1972. In this case, the Crown Solicitor has advised that an application for lease made in accordance with the provisions of section 124A of the Mining Act, 1906, as amended, would not be effective until two conditions had been fulfilled—

(a) the cancellation of the former lease had been notified; and

(b) the prescribed payments in respect of the application had been made.

He went on to say that it is only when these conditions have been fulfilled that the rights of an applicant vest in the complainant and it seemed to follow that if someone else made a valid application before these conditions were fulfilled, the complainant cannot claim that his application has priority over the other.

In view of the legal advice available to the Department and the short period of time between the cancellation of the lease and the application by "X" Pty Limited, viz., four days, it would have virtually been impossible for Mr A to have established an effective application even if a correct reference had been made regarding the numbering of the application.

After this report was received by me, I was informed by Mr A's legal advisers that it was proposed to take action to challenge the validity of the lease granted to "X" Pty Limited and application was being made to the Law Society for Legal Aid.

I informed the Under Secretary that in my view if Mr A or his legal advisers sought information from the Department, it was reasonable that such information should be supplied in accordance with the advice of the Crown Solicitor.

In view of the steps then taken, I was of the view that I should not conclude my investigation until the outsome of the application for legal aid was known and until the legal proceedings were completed, if aid was granted. I, therefore, deferred my investigation further for the time being.

Unfortunately there was delay on the part of the complainant in obtaining a certificate with regard to legal aid and this was not obtained until the end of 1976 and then there was further delay on his part in instituting proceedings. Since then, Mr A changed his solicitors and following advice that the matter was still with counsel to prepare the necessary Statement of Claim and that there were some difficulties involved with regard to this, I decided to conclude my investigations so far as the actions of the Department were concerned, and leave the question of any recommendation until such time as the legal proceedings were concluded one way or the other.

In my view the conduct of the Department was clearly wrong in that excessive delay occured in notifying Mr A as to the position with regard to the lease. The Department should have been aware of the circumstances involving the applications, both being in respect of the same area, but in view of the extraordinary confusion with regard to the Mining Division of "Y" Town having been abolished, the fact that the applications were in fact in respect of the same area was not established earlier.

Subsequently I was advised that it was not proposed to continue the legal proceedings.

After obtaining particulars from the complainant, Mr A, as to expenses incurred by him, I recommend to the Department that he be reimbursed to the extent of $500.00 and that the fees lodged with the application be refunded.

The Department agreed to this subject to execution of an appropriate form of release and payment was made. The complaint was clearly sustained.

DEPARTMENT OF MOTOR TRANSPORT

Interstate Registration

My complainant's son, who lives in New South Wales, purchased from a friend in another State a car having six months current registration in that State. As the registration could not be transferred to the purchaser in this State, it was left as it was until the purchaser was stopped by the police. After he satisfied them that the car was not stolen and was his, it was pointed out to him that as he was a resident of New South Wales and the car was unregistered in this State, it was not to be driven again until he had obtained a certificate of registration in New South Wales.

My complainant when informed was unaware of the situation and then raised these matters with me—

(a) The requirement for immediate registration in these circumstances received no publicity; that exceptions are made for persons who moved from State to State on business; the registration factor is of value in the sale of car and when it is sold over the border the new owner loses the benefit of a current registration; whilst registration fee can be recovered from the interstate authority it is not the full proportionate amount and is delayed.

(b) There is no period of grace. The new registration must be done immediately.

(c) For ease of administration the current interstate registration should be allowed to expire before a fresh registration was required in New South Wales. The complainant was aware that the Act and/or Regulation would need amendment to put this into effect.

I received the following explanation from the Department:

"The New South Wales Motor Traffic Act provides that, unless specifically exempted, every motor vehicle being used or driven on a public street shall be registered under that Act. The Motor Traffic Regulations however exempt a visiting motor vehicle which is registered in another State, Territory or country in which the owner of the vehicle ordinarily resides and this is in line with long-standing reciprocal interstate arrangements.

Once a person from another State, Territory or country takes up domicile in New South Wales, any other registration or driver's licence ceases to have effect and he must immediately register the vehicle and obtain a licence to drive in New South Wales. Similarly any other registration ceases to have effect in New South Wales if the vehicle concerned is acquired by a resident of this State.

There is no way I can exempt Mrs ... son from the foregoing requirements which, in any event, I feel are reasonable and in the best interest of the State's road users. In this regard these requirements ensure that the vast majority of vehicles using the State's roads can be readily identified and meet its roadworthiness standards.

On the matter of publicity about these matters, apart from copies of the Motor Traffic Act and Regulations, which are available from the Government Printer and until recently were also distributed by this Department, there are no documents available which outline general motor vehicle registration procedures.

However, the Motor Traffic Handbook, which to date has been confined to its primary purpose of imparting road and driving rules and responsibilities of drivers, is being expanded as a more general road user manual. A section is to be devoted to vehicle registration procedures and will cover situations such as outlined by Mrs ..."

In the light of this I decided to take the complaint no further. I was aware that my complainant had taken up the last matter through her local member. I am not aware of the result of this.

The Disintegration of a registration label

The motorist who follows the instructions on the back of the registration label for his motor vehicle normally anticipates the label to last for the full year. In fact some motorists experience considerable difficulty in removing the label at the end of the year to replace it with the new label. However, this is not always the case.

One motorist who complained to me had experienced problems not only with the first label issued to him but also with the replacement. The first disintegrated and the second had started to fall apart. The Department insisted on a $3 fee to replace the first but agreed to replace the second without charge. The complainant informed me that the Department had recognized the labels as being defective but although agreeing to replace the second label without charge, it would not refund the fee paid for replacement of the first label.

I took the matter up with the Department and received the following information in reply:

"The present manufacturer has been supplying labels to the Department for over fifteen years and, following the calling of competitive tenders, the contract has recently been renewed for a further three years. The contract requires the production of an average of 250 000 labels per month and during the past period of supply the company has a proven record of maintaining very satisfactory security and quality controls.

It is a fact that labels produced for issue in respect of registrations which expire in the months of May to August, 1979, were found to include some of lower quality than that required. Investigation and analysis by the manufacturer established that this was due to them having received a batch of sub-standard white ink. Although this fault was detected before general issue to motorists it could be that some labels issued for the months in question could have been slightly less robust than the normal label.

In these circumstances any excess of soaking time in water preparatory to affixing to the windscreen would probably weaken the label and make it more susceptible to damage. The advice given by telephone to Mr ... in response to his letter was to the effect that in this instance it is preferable to reduce the period of soaking rather than to comply exactly with the period recommended by the manufacturer.

In those cases where the Department is informed that a registration label issued for one of the abovementioned months had flaked from the windscreen the approved procedure is to issue a replacement label without charge. The majority of these transactions would be effected at Motor Registry Offices and, although known to be small, the exact number is not known. The number of written requests received at Head Office is also not recorded but would be less than ten in any particular month. That the total number of inferior quality labels issued was minimal is substantiated by the fact that additional supplies of labels, above the number ordered for each month, were not required.

As I have mentioned earlier the incidence of sub-standard labels has been very low and when they do come to notice the Department acts quickly to alert Motor Registry Office staff of the details so that the consequential inconvenience to the vehicle owner may be minimized.

I quite agree that the $3.00 fee which is payable for the issue of a replacement label, usually required as the result of windscreen damage, should not apply in the case of Mr ...'s experience and would appreciate that you forward the enclosed cheque for that amount, to him."

I found the complaint as to the quality of the labels and the failure to make a refund sustained. I can understand why the labels may have been defective but once this was recognized it is hard to understand why the refund was not made without recourse to me.

POLICE DEPARTMENT

Retention of Private Property

Late in July, 1978, I received a complaint that the Police had retained private property in their custody improperly.

A relative of the complainant had been charged and convicted for a criminal act, and the complainant had been charged as an accessory after the fact, suffering the confiscation of bank pass-books and a bank cheque in that connection. The accounts to which the books related were alleged to have been opened to "launder" the proceeds of the crime.

The passbooks and the bank cheques were originally seized in March, 1977. After a number of adjournments, charges against the complainant of having in her custody a sum of money reasonably suspected of having been stolen and of being an accessory after the fact, were not heard until 24th April, 1978.

Both charges were dismissed. Despite repeated representations by the complainant and repeated assurances that the passbooks would be returned at an early date, they were still retained in custody having now been held for over sixteen months. The funds in the accounts were effectively not available to the complainant for that period.

The complainant alleged to the Police that the money in the accounts had been needed to finance the defence of the complainant's relative. In the event the funds were not made available, and legal representation was arranged through the Public Solicitor.

The complainant alleged that she had been told that the books were being held for taxation purposes but that the Commonwealth Ombudsman, after making enquiries, disclaimed this. She further stated that she had been informed by the Department that it was open to the individual police officer to retain the books at his discretion.

In reply to my initial inquiry in August, 1978, the Commissioner informed me that it could be established that the accounts had been opened and/or used for the purpose of "laundering" the money which was the proceeds of an armed robbery. It was further stated that a Bank was contemplating action for the recovery of the moneys held in the accounts and that it had requested that the Department retain possession of the books.

I was not satisfied with this reply and I made the complaint the subject of an investigation in terms of section 13 (1) of the Act. I informed the Commissioner of Police of my decision to do so on the 29th September, asking at the same time for specific advice on the legal basis for the retention of the passbooks, and the reasons for which retention was seen to be justified.

Within a few days the Commissioner wrote telling me that the passbooks and cheque had been returned and this was confirmed by the complainant.

Subsequently after obtaining further evidence, including the transcript of the proceedings against the complainant, I informed the Commissioner that my investigation had been discontinued. However, having considered the matter in the light of all of the evidence made available to me, I was of the opinion that the complaint was sustained.

Serious oversights in handling Warrant

On 13th March, 1979, I received a complaint from a Member of Parliament on behalf of one of his constituents. The complaint arose as a result of the complainant not paying a parking fine which he felt was not his responsibility. Four years after the Parking Infringement Notice was issued he was arrested on Warrant, fingerprinted, handcuffed and taken to Maitland Gaol where he was imprisoned for two days.

Some time in 1974 the complainant disposed of his business in Newcastle which included a motor vehicle. Approximately two months after the completion of the transaction, the complainant was served with two Parking Infringement Notices or Summonses for offences which allegedly occurred in Sydney. He explained to the Police Officer who delivered the Notices that the car no longer belonged to him and at the time of the alleged offence he was in Newcastle. (The complainant admitted that he had not attended to the transfer of ownership of the motor vehicle at the time but it was subsequently done).

After several visits from the Police, the complainant signed a Statutory Declaration presented by a Police Officer stating the details of the transfer of ownership and that he was attending to his business in Newcastle at the time the offences occurred.

Nothing more was heard of the matter for approximately four years.

Just prior to Christmas, 1978, a Police Officer called at the complainant's home and advised him that there were "parking fines to be taken care of". The Officer was informed that the fines had been taken care of some years previous. The Police Officer, in the presence of the complainant, looked through his file, found the original Statutory Declaration and advised the complainant that he would "fix it up".

Approximately two months later a Police Officer again called at the complainant's home and informed his wife that the complainant was required at Wallsend Police Station. The complainant did not attend the Police Station as requested and on 27th February, 1979, at approximately 7.00 a.m. a Police Officer called at the complainant's home with a request for settlement of the outstanding fines. The complainant refused to pay the fines, was arrested forthwith and detained in Maitland Gaol until the following Thursday morning, 1st March, 1979.

As a result of the complainant's imprisonment he lost $160.00 in wages and expressed concern as to the result his period of incarceration may have on his directorship of a local sporting club and his membership of the board of a local technical college.

The matter was investigated initially under the provisions of the Police Regulation (Allegations of Misconduct) Act, 1978, and a report received in my office from the then Acting Commissioner of Police on 18th May, 1979.

I was apparent from the investigation that the constable who executed the warrant was not deserving of any censure as he was only carrying out directions which appeared to be directly from the Assistant Commissioner of Traffic. As the complaint carried no other allegations of misconduct against a Police Officer acting as a constable, I therefore treated the investigation as an investigation under the provisions of the Ombudsman Act and my report was prepared in accordance with that Act.

It was clear from the report of the investigation that there had been delay and negligence in the handling and process of the summons and warrants culminating in the issue of a directive by a junior public servant in the Police Department signing under the hand of the then Assistant Commissioner (Traffic) resulting in the arrest, fingerprinting, handcuffing and incarceration of a citizen for what was really only a failure to complete appropriate documentation.

There is little doubt that had the complainant strictly adhered to the provisions of the Motor Traffic Act by registering the transfer of ownership forthwith, there would have been no cause for complaint, however, the complainant's derelictions which, in the circumstances, were to a degree understandable as he had already lodged one Statutory Declaration, were really no excuse for the serious string of oversights within the Department that followed the receipt at Central Warrant Index on 8th April, 1976, of the returned warrant with the Statutory Declaration attached.

In my report dated the 25th June, 1979, made pursuant to section 26 of the Ombudsman Act, I strongly recommended that steps be taken to apply to the Attorney-General for the conviction to be annulled and further I expressed the opinion that subject to confirmation of the loss, the complainant should be compensated in the sum of at least $160.00 being his loss of wages occasioned by his imprisonment. The Acting Commissioner of Police was in accord with these recommendations.

I note from my file that on 26th October, 1979, I was advised by the Commissioner of Police relating to the annulment of the conviction "that the Under Secretary of Justice is in the process of preparing a submission to the Minister, for his consideration. It is understood that the delay in this action being taken was brought about by the fact that the relevant court papers were only recently made available to the Under Secretary."

I have not received, as yet, any advice as to whether or not the complainant has been compensated in any other way.

POLICE REGULATION (ALLEGATIONS OF MISCONDUCT) ACT

Alleged Actions of a Constable after he had Issued Traffic Infringement Notices

The complainant alleged that at about 9.55 a.m. on a day in March, he was crossing Victoria Street, Kings Cross, in a pedestrian crossing. He claimed that he saw a Police motor cyclist travelling towards him at a speed of approximately 50 mph. According to the complainant, the Police motor cyclist failed to give way to him. It was further claimed by the complainant that he was unable to note the full registration number of the motor cycle as it was travelling too quickly. However, he was successful in noting that there were two zeros at the start of the registration number followed by what he thought to be the numeral 9. Earlier that day the complainant had been spoken to by a constable and issued with two Traffic Infringement Notices and, on the Notices, he had written down the Constable's name and the registration number of the motor cycle which he recorded as 00-950. The complainant inferred that the motor cyclist was, in fact, the constable who had issued the Traffic Infringement Notices.

The complaint was investigated and after receiving a copy of the Police Department's file in the matter together with a report from the then Deputy Commissioner of Police, I informed the complainant that the constable who issued him with the Traffic Infringement Notices had reported that after he issued the Notices he then travelled down Macleay Street to Elizabeth Bay Road where he turned left and proceeded to the Bondi area. The Constable stated that at no stage during the day was he in the vicinity of Kings Cross Police Station. I also advised the complainant that enquiries made at the Police Transport Branch revealed that there were eleven Police motor cycles in the Metropolitan area with number plates commencing with the numerals "00-9". As there was no positive identification by the complainant, no other evidence to support his allegations and a strong denial by the constable, I advised the complainant that I had no alternative but to agree with the view of the Deputy Commissioner of Police that the complaint had not been sustained.

Following a further approach to me by the complainant, I wrote to the Deputy Commissioner of Police and asked him to provide me with details related to the following points:

> "There are eleven motor cycles with registered plates commencing with the numerals "00-9" in use in the Metropolitan area—
>
> (a) how many of these were being used at 9.45 a.m. to 10.00 a.m. on Sunday, 11th March, 1979? and
>
> (b) is it possible that any were in the vicinity of the Kings Cross Police Station at the date and time aforesaid?

I further advised the Deputy Commissioner that—

> "I am of the view that there was little doubt that a Police motor cycle was driven past (the complainant) near the Kings Cross Police Station . . . at approximately 9.55 a.m. If it was not Constable . . ., who was it?"

The then Acting Commissioner of Police informed me that there were ten Departmental motor cycles, including the one utilized by the Constable who was the subject of the complaint, with the registration number "00-9". Three of these motor cycles were on issue to the Highway Patrol, North Sydney, and the remainder on issue to Canterbury Highway Patrol, Gosford Highway Patrol, Cronulla Highway Patrol, Drug Squad, Hornsby Highway Patrol and Hurstville Highway Patrol. The Acting Commissioner further informed that he had obtained copies of entries made by the respective riders of the motor cycles for the period 9.45 a.m. to 10.00 a.m. on . . . and that the copies revealed that none of the motor cycles were in the vicinity of Victoria Road, Kings Cross.

I then wrote to the complainant again and pointed out to him that it was not a question of accepting the constable's statement in preference to his, it was simply that insufficient evidence existed to support a charge against the constable or to prove that the constable was untruthful. Under the circumstances I had no alternative in the absence of clear evidence one way or the other, but to find that the complaint had not been sustained.

Allegation that property stolen from house when Policemen present

It was alleged by the complainant that his house was broken into and money, as well as certain other property, was stolen. He inferred that the alleged theft occurred when his estranged wife and friends entered the house accompanied by a Policeman. He indicated that he considered his wife or her friends to be responsible for the theft but believed that a Policeman who allegedly entered the home through a side window would also have been in a position to steal the property.

The complaint was investigated and I subsequently received a copy of the Police Department's file in the matter together with a report from the then Deputy Commissioner of Police.

In my report to the complainant I informed him that the suggestion that Police assisted in any way with the entry into the house or the removal of his wife's clothes had been refuted by all those present at the time. I advised that according to the evidence I had, following a court hearing, he had agreed in the presence of his solicitor to allow his wife access to the home to collect her and her daughter's clothes. The wife apparently made an arrangement to collect the property but the complainant refused her entry on that occasion. Because of that refusal the wife obtained a Court Order to enter the house and remove her and her daughter's clothing. In the Court Order the Police were requested to assist the wife if necessary. I further advised the complainant that, at his wife's request, two constables attended the home to keep the peace if need be but both the Policemen remained on the footpath outside the house and never entered the premises at any time. The complainant's wife had stated that she gained entry to the house with a key she had in her possession for some years. The complainant was additionally informed that during the course of the Police investigation into the alleged crime, an examination of the side window of the premises revealed latent fingerprints the nature of which indicated that some person had, in fact, recently climbed in the window. The fingerprints were positively identified as not being the fingerprints of the two constables.

The complaint was not sustained.

Allegation that a Constable disregarded an Exemption Certificate for the wearing of a safety helmet by a motor cyclist.

My complainant alleged that when he was riding his motor cycle along a Lakemba street on a day in March he was pulled over by a Policeman in a Highway Patrol Car. At the time the complainant was not wearing a safety helmet but claimed that he produced an Exemption Certificate from the Department of Motor Transport. He further claimed that upon examining the Certificate the constable said that all such documents were "worthless" and "not worth a damn" and proceeded to issue a Traffic Infringement Notice. The complainant also alleged that the constable's attitude towards him was belligerent, aggressive and hardly conducive to good relations between the public and the Police Force.

The complaint was investigated and after receiving a copy of the Police Department's file in the matter, as well as a report from the then Acting Commissioner of Police, I informed the complainant that the constable who issued the Traffic Infringement Notice had denied the allegations made against him. According to the constable the complainant informed him that he (the complainant) held an Exemption Certificate in relation to the wearing of a safety helmet but that he had left the Certificate at home. The constable claimed that upon informing the complainant that Exemption Certificates are supposed to be carried by motor cyclists he proceeded to report the complainant for "not wear safety helmet". I further informed the complainant that the constable denied saying the Exemption Certificates were "worthless" and "not worth a damn" or that he was belligerent or aggressive. The version of the events given by the constable who issued the Infringement Notice was supported by another constable who was present at the time. I was satisfied that the complaint had not been sustained.

In addition, I indicated to the complainant that the Acting Commissioner of Police had advised me that as he (the complainant) did, in fact, hold an Exemption Certificate, the Acting Commissioner proposed to direct that the Infringement Notice be adjudicated "No Action". In a telephone conversation with one of my Senior Investigation Officers the complainant expressed his delight at the outcome of the matter.

PUBLIC TRANSPORT COMMISSION

Stigma on Firm Imposed in Error

I received a complaint from a retailer in a country area alleging non-delivery of a parcel sent by rail from a manufacturer in Sydney. This matter was fully investigated over a period of some months and was finally classified as a not sustained complaint. As it was possible to validate neither that the parcel was or was not delivered the classification "not sustained" was the only one at which I could arrive. However, as I stated to the complainant and to the Public Transport Commission, I felt the matter was "inconclusive".

During the course of this investigation, my officers had the opportunity and indeed required to look closely at the system and clerical work involved in deliveries by mail. There are, naturally enough, some shortcomings within this system but any obvious change that could be made would tend to make the paperwork somewhat unwieldy. When it is realized that some 30 000 parcels per day are processed and approximately 3 000 in the peak 45–60 minutes it can be seen that any slowing down of this process by any additional clerical requirement must be viewed closely regarding the economics of time and money.

One feature of this particular complaint that caused me some concern was an entry in Railway records which read "The records of this firm in the past have found to be unreliable . . .". On further investigation I could find nothing in the files I examined to substantiate this statement and took the matter up with the Chief Commissioner and was duly informed by the Secretary of the Department that "the statement which you query was unfortunately made in error and referred to another firm in the northwest with a name similar to the complainant". Later in reference to the same matter I was further informed that this error was found "not to have had any influence on the decision taken". However, one can but wonder if this endorsement had never appeared on the file whether the claim would have been met and the complaint not been necessary.

I was assured however that in regard to this unfortunate error "A suitable endorsement has been placed on this particular paper in order that no confusion should occur in the future".

Finally I feel that I was adequately rewarded by the complainant who, whilst not happy with the decision felt that my enquiries removed the stigma from his name and stated—

> "The one satisfying aspect, is that I, as an ordinary member of the public, have been given recourse to your services and consideration for which I am grateful."

Failure to Compensate for Minor Loss

One matter which did not, in my opinion, reach a satisfactory conclusion was that where an elderly lady complained that she sustained injury and a breakage of glasses whilst travelling as a passenger in a Public Transport Commission bus.

The driver had stated that "as I was about to turn right into Harbord Road a car coming in the opposite direction failed to stop at a give way sign and I had to brake suddenly to avoid a collision". There were no witnesses to this accident but there was no apparent reason to doubt the driver's version of the occurrence and this was accepted. On this basis however, the Commission denied legal liability and I suggested that, even though this was legally correct, there might be some moral responsibility and that the Commission might give consideration to an ex gratia payment to replace the damaged spectacles. The Commission then advised that it did not acknowledge any moral responsibility and, whilst being sympathetic towards the complainant did feel that a payment of this nature would be improper.

The complainant asked quite understandably "Does this mean that passengers are not insured in any way when travelling on public transport?"

In concluding what I feel was a rather unhappy matter, I remarked on my disappointment and put the following point of view to the Commission, whilst conceding that the Commission was correct legally in its attitude.

> "It is difficult to believe that by the making of an ex gratia payment in this matter the Commission would create a precedent that would, by its quantum or potential publicity, have any signficant ramifications. It seems to me that an elderly passenger on one of the Commission's buses suffered injury to her property and person; by an action of the driver, irrespective of the question of negligence, and that the replacement of her damaged spectacles, would have been well within the bounds of the Commission's responsibilities to its passengers. Enough special circumstances appeared to me to exist to justify payment of compensation as an act of grace."

A comparatively small amount was involved but the Commission was not responsible to my request for further consideration.

Insufficient Information as to Conditions Relating to Conveyance of Motor Vehicles

A claim made for alleged damage to a motor car conveyed by train from Melbourne to Sydney was not met. The claimant complained to me and in doing so made the following statements:

> "On Friday, 14th October, 1977, I sent my vehicle on the MOTORAIL service attached to the "Southern Aurora" to Sydney. During the trip the duco of my vehicle sustained damage caused by diesel residue from the locomotives. The service is run jointly by the P.T.C. and VICRAIL. The following log details the events as they occurred.
>
> 1. I purchased a ticket on the Southern Aurora for myself and my Fiat vehicle based on the information contained in the MOTORAIL leaflet. (Photostat attached as Exhibit 1.) In no part of this leaflet is there mention that:
>
> (a) it is not uncommon for cars to be damaged by diesel from the locomotives; or
>
> (b) the car will only be transported at my tisk.
>
> 2. On the evening of Friday, 14th October, 1977, I arrived at 7.15 p.m. at Spencer Street Station. I was told that I had to sign a certain form before they loaded my car on to the train. The form was a complete negation of the railways' liability for my car during the transportation between Melbourne and Sydney. I objected to signing the forms, and was told that "If you don't sign it the car won't be loaded". At this stage it was too late to alter my plans. I stated, however, that I objected to the lack of real notice being given to the clause of carriage in the loading document.
>
> 3. The train arrived late in Sydney, and it was not until 9.30 a.m. that my car was unloaded. I was committed to attend a meeting at 10 a.m. The P.T.C. official asked me if I wished to have my car washed, but pointed out that it would be at least a half hour before they could do it. They did not warn me about the possibility of diesel damage and I signed for the car without having it washed. (The surface of the car was filthy with dirt from the trip so no damage was observable).
>
> I subsequently washed the car on Saturday afternoon and noticed that damage had been caused to the duco. I tried tar remover, detergent and polish to attempt to remove the residue but this was not successful. On Monday morning, 17th of October, I rang the P.T.C. customer service in Sydney. The officer that I contacted said:
>
> (a) That this happened regularly and it was the usual P.T.C. policy to compensate for the damage caused even though they were under no legal liability.
>
> (b) That he did not want to inspect the vehicle.

(c) I should contact the Government Claims Agent in N.S.W. or Vic. and supply him with the details.

I informed him that the duco was badly damaged, particularly the bonnet, and that it had a perfect finish when I placed the car on the train. (I had polished the car on the previous Saturday).

I mentioned that I was being sent to Victoria again, and said I would probably take it up with VICRAIL's claims agent.

4. In Melbourne I rang VICRAIL Public Relations. The officer stated that:

(a) VICRAIL usually paid the claims;

(b) he pointed out that it happened a lot; and

(c) he disclosed that VICRAIL were considering the purchase of covered wagons.

Based on the joint statements made by VICRAIL and P.T.C.'s employees it seemed fairly clear that I would be reimbursed for the cost of a cut and polish to restore the duco.

5. I had the work completed. When I took delivery of the car I found that the bonnet was still somewhat damaged.

6. I received a letter on December 9th from VICRAIL stating that they could not be held liable for the claim. In that letter it was noted that the matter was referred to the Claims Officer of the Public Transport Commission of N.S.W. who had advised that no comment or complaint was made on delivery; that the offer of the car wash was declined and in view of the condition of carriage he has declined to accept any liability."

In reply to my enquiries the Department advised me as follows:

"The Motorail service was inaugurated by the Commission on the 10th March, 1973, between Sydney and Casino—Murwillumbah. This service was extended to Melbourne on 1st July, 1973, and is run conjointly by the Victorian and New South Wales Systems.

Brochures provided by both systems in respect of the Motorail service make no mention that vehicles are conveyed at the owner's risk, but this information is provided in both systems' respective Parcels and Luggage Rates Book, which are available to the public at all stations and booking offices, or upon inquiry at the time of booking.

On taking this matter up with the Customer Service Bureau, there is little doubt that the advice given by the officer who dealt with Mr.....'s enquiry was contrary to what Mr..... has stated. It is also mentioned that a letter written to the Claims Agent, Melbourne, on 4th November, 1977, was replied to on the 9th December.

In this instance although the car was apparently dirty on arrival at Sydney, an offer by the Commission's staff to wash it was declined as Mr..... was unable to wait for the cleaning to be performed. The time of the meeting he had to attend has not been mentioned, but records show the "Southern Aurora" arrived Sydney at 9.05 a.m. five minutes late, the Motorail wagon was placed for unloading at 9.15 a.m. and Mr..... took delivery of his car at 9.25 a.m.

The Commission provides a car-wash which includes chemicals to remove brake dust and diesel exhaust fallout effectively. However, when car owners decline to make use of this service, it is felt the Commission is not being unreasonable in declining to meet claims for damage to the duco on the cars."

Whilst I was unhappy with this reply, particularly the reference to the information being available in the Parcels and Luggage Rates Book (not a publication readily accessible to most members of the public) I considered that there was little further I could do in connection with this present complaint.

However, I took up with the Commission the question, of more adequate information being given as to the conditions under which the vehicles are accepted for conveyance.

Ultimately I received a reply from the Commission that my suggestion was being put into effect by both the Victorian and New South Wales Systems.

The Commission advised—

"The Secretary for the Victorian Railways has since advised that arrangements are in hand to include information concerning carriage of vehicles at the owner's risk in that System's Motorail brochure which is being reprinted at the present time.

This Commission's brochure is also being amended by altering the wording of the relevant paragraph as follows:

"*Fares quoted are single adult—return fares are double the single. MOTORAIL charges quoted earlier in this brochure are at owner's risk for single journey per car when accommodated on the same train. Carriage is subject to the provisions of the relevant Railway Acts and By-laws made thereunder. All fares are subject to change without notice."

In addition, mention will be made on the brochure that the Commission undertakes the washing of vehicles at all destinations.

This information should clarify the position concerning the Railways' liability for damage to vehicles conveyed by Motorail services."

DEPARTMENT OF SPORT AND RECREATION

Failure to Pay Swimming Instructors

My complainants had agreed with the Department to act as a swimming instructor and assistant respectively, to give special swimming lessons in a country area for a limited period.

Telephone and written approaches were made by the complainants seeking payment, including a letter to the Department's Head Office approximately 4½ months after the lessons were completed stating that neither the instructor nor the assistant had been paid.

Head Office then sought from its Regional Office, which was responsible for administering the scheme, verification as to hours worked. These details were not provided by the Regional Office and the matter was not followed up by the Head Office.

The complainants' local Member of Parliament wrote to the Department approximately seven to eight months after the lessons but no reply had been received when the complaint was referred to me some two months later, i.e., approximately ten months after the lessons had been given.

Upon the commencement of my enquiry the Department took immediate action to verify dates and hours worked and cheques in payment were then despatched to the complainants. The Acting Director apologized to the complainants for the delay in payment.

The complaint was obviously sustained. As action was taken to rectify the matter immediately my enquiry commenced I did not pursue it further and concluded my investigation. However, I regarded the delay as quite unjustifiable.

STATE POLLUTION CONTROL COMMISSION

Noise

Some complaints can only be dealt with on a long-term basis. This applies particularly to matters where noise abatement is involved.

One such complaint was from a resident of Rozelle who was affected by noise particularly from the Balmain Coal Loader and associated facilities. He felt that the State Pollution Control Commission was not taking sufficient action to prevent the constant noise.

My enquiries showed that the Commission had for some time been fully aware of the problem but was having considerable difficulty in finding a satisfactory solution. The concern was as to the possible dire consequences noise abatement measures would have on the efficient running of the coal loader.

An Environmental Impact Statement was received from the Maritime Services Board and placed on public display for comment. A proposed specification for acoustic enclosures to reduce the noise from refrigerated containers at the Australian National Line Terminal was received and subsequently approved.

The Environmental Impact Statement was revised and met the requirements of the Commission so far as noise control measures were concerned.

Whilst I was initially informed of the proposed acoustic enclosures in June, 1978, information given to me in February, 1979 was that tenders for these noise attentuators have now been evaluated and a prototype unit was to be manufactured. In July, 1979, I was informed that the prototype had been inspected but a quite extensive modification was necessary to achieve an appropriate reduction in the noise level. As the terminal was to be vacated in the near future, a slight modification was agreed to instead and a number of the attenuators have been installed.

In view of this and of the fact that I had not heard further from the complainant for some 22 months although I had regularly given him up-to-date reports, I decided to conclude my investigation. I only hope that the cause for complaint had been substantially reduced in the meantime.

BLUE MOUNTAINS CITY COUNCIL

Incorrect Pedestal Tax and Excess Water Accounts

I received a complaint about an alleged incorrect pedestal tax and excess water accounts levied by council.

Council had advised the complainant that according to information furnished to it by a trustee company part lot 1 (D) in a nominated deposited plan had been transferred to him and requested to be furnished with a notice of transfer. At the same time council enclosed an account for $30 for additional toilets in respect of the property.

My complainant wrote back to council advising that he was being charged for excess toilets in respect of a property not owned by him. At the same time he queried an account for excess water issued to him as it did not refer to the street address of the property charged and he felt that he had no assurance that it was not in error also.

Council apologized for the incorrect description of the property and indicated that it should have been shown as lot D in a different deposited plan to that originally nominated. However, although it amended the description by lot number and deposited plan reference council still sought payment of the original amounts.

In view of the fact that he owned a house divided into two flats with only two toilets on the premises, whereas the council pedestal tax was for toilets in excess of three per assessment, the complainant knew this levy to be in error. As the assessment number on the account for excess water was the same as that shown on the erroneous accounts for pedestal tax he considered that it could be wrong also.

On review of the matter following reference by me, council advised that the description of the property supplied to council both by the Valuer General's Department and the trustee company were incorrect and that lot D in the deposited plan according to the amended accounts was the correct description. However council conceded that it had confused the pedestal tax with regard to the complainant's property and that of an adjoining property owned by the Housing Commission. As a consequence the council then issued the account to the Housing Commission.

Futher enquiries were made of council to ensure that the excess water account had not been similarly confused.

These enquiries shown the following:

Council's Senior Water Meter Inspector checked the water meter in relation to both properties.

The inspector confirmed the meter number of the complainant's property and checked this back to the assessment number on the excess account issued to the complainant.

He confirmed that when a tap on the complainant's property was turned on it did in fact register on the complainant's meter.

The readings for both properties on inspection were checked against previous readings for to same properties as to consistency. This showed no relationship between the readings on the complainant's meter and the adjacent property.

Thus on the information presented I considered the complaint regarding the incorrect pedestal tax to be justified, but as this had been rectified I did not propose any further action.

I did not consider the complaint regarding the excess water billing to be wrong.

CANTERBURY MUNICIPAL COUNCIL

Unfair charge for reconstruction of driveway made necessary by council roadworks.

In early 1978 I received a complaint from a resident of Canterbury concerning Canterbury Municipal Council's proposed charge of $136.00 for alterations to the vehicular access to his property.

Several months earlier, council had reconstructed the kerbing and guttering in the complainant's street, and in conjunction with this project, the road was resurfaced, and thus its level was raised. As a result the complainant's driveway crossing became difficult for vehicles to enter without severe scraping of the undercarriage. An on-site inspection by one of my officers confirmed the details of the complaint. On the opposite side of the street the council evidently had reconstructed a number of crossings, at council's expense, and my complainant could see no reason why his driveway should not also be restored, at no expense to him. However, his approach to council on this basis had been unsuccessful.

Following my initial enquiry about the complaint, council indicated that its normal policy was to charge property owners for alterations to driveway crossings, and whilst the complainant's case had been reviewed, council was not prepared to change its position, despite its Chief Engineer's suggestion that it might reconsider its policy.

I then wrote to the council and informed them that I felt there could be grounds for adverse comment in respect of their decision, for the following reasons:

(1) The driveway crossing was installed at the expense of the ratepayer and the modifications to it which are now requested have been made necessary by council's alteration to the road level, not by any action of the ratepayer himself. It seems only reasonable that council should pay for modifications occasioned by its own work.

(2) Whilst council's Chief Engineer apparently considered that there was some doubt as to whether normal policy should be followed in this instance, council nevertheless decided not to vary its policy, in spite of what would appear to be good grounds for so doing.

(3) From an inspection of the street in question, it appears that council raised the level of the entire road; however on the opposite side to the complainant's residence, the gutter was also raised and almost all houses on that side provided with a new concrete layback, at council's expense. It would appear only fair to restore the complainant's access also.

A few weeks later, council notified me that the matter had been reconsidered, and it had been resolved to reconstruct the complainant's access without charge. I was pleased to be able to advise my complainant of council's reversed decision and he later wrote to me to advise that the driveway had been reconstructed, and that council had "done a first-class job".

GOSFORD SHIRE COUNCIL

Maintenance of drainage easements

Drainage easements, and their maintenance, continue to be a source of complaints against local government authorities. The perennial problem of priorities in the allocation by council of available funds for pressing capital works and improvements will probably result in complaints relating to easements continuing to be received by my successors for many years to come. I am very aware both of the extent of the very heavy burden of the maintenance of drainage easements which falls on some councils in particular, as well as the real problems and possible danger in some cases, to citizens by drainage easements which have not been properly maintained.

An example of this type of complaint concerns a property over which council had an easement of a width of six feet, one foot inside the boundary. In describing their complaint, my complainants stated, *inter alia*:

> "This easement and others in . . . Road are the only water outlets for drainage at the northern end of the Beach so, as you can imagine, it takes quite a large volume of water. The council have now put pipes under the road opening into our easement . . . These pipes are now practically full of silt and sand from the roads, there is only about a 4-in clearance in these pipes for water to get through and the easement is now level with our block of land. This water makes its way into a lagoon at the back of . . . Road, where the water goes into the lagoon the sand and silt has built up so much that no water can get into the lagoon. Therefore it is coming back onto our land and ruining our block. . . . We have complained several times to council and the Works Department, in person. . . . and we finally wrote them a letter."

A copy of the letter to council was attached to their letter to me, and it stated, *inter alia*:

> "Although drains and underground piping have recently been laid outside, due to incorrect grading of the actual road, water continues to wash onto our land from the road, after every rain squall. Furthermore due to the road not having been sealed, the entire road topping from the northern end of the road to our block at the bottom of a slight incline, gathers in the easement on the northern side of our land after each storm. We are continually having to manually clean the easement which even now is completely full of sand. . . .
>
> You will appreciate that if the easement is full of sand and rain suddenly sets in for a few days our land would in all probability be completely covered with water, and as you are well aware that lagoon is not quick in emptying when confronted with an excessive volume of water which is a known problem to the residents around the lagoon."

The matter was taken up with the appropriate council who informed me that they would carry out immediately maintenance work to the road pavement and the drainage easement. Council also stated that funds were not available either for the construction of a gravelled and sealed pavement or the piping of the easement, at that time, but that consideration would be given to including this work in a future works programme.

I informed the complainants of council's response and they replied as follows:

"We would like to thank you very much for having the drainage easement cleaned out . . . but we are afraid that this is not going to solve the problem as it has already started to fill in again from the rain we had between Christmas and New Year.

The fault lies with the two pipes the council have put into the easement to take all the water coming from the roadway and the mountain. This easement definitely needs to be piped to carry these waters out into the lagoon at the back of our block. If the council wasn't going to complete this work then why did they start it?

A neighbour in the next street up from us had the same problem and after complaining to the council numerous times they piped through her block."

I took the matter up with the council again, and my Principal Investigation Officer accompanied by an Investigation Officer inspected the site. My officers found the situation as described by council and the complainants.

A further letter from council again stated the lack of funds necessary for a long term solution of the problem by means of piping the easement but also stated that until funds become available maintenance work will be carried out on a regular basis to keep the open channel clear of all debris.

In these circumstances, although I found that the complaint was justified, I informed both the complainants and the council that as a result of council's action to alleviate the situation I proposed to discontinue my investigation.

HORNSBY SHIRE COUNCIL

Refund of building fees

The complainant contracted with a company of architect builders to prepare plans and call tenders for the building of a house.

Moneys paid to the company by the complainant included $146 council fees (evidenced by the company's receipt), and the company subsequently paid the fees to council.

However, the company made no further progress on the job and eventually closed down. The company executives were unable to be traced.

As the building did not proceed $50 of the amount paid for council fees was refundable. Because the money had been paid to council by the company it was refunded to the company, but returned unclaimed as the company had closed down.

My complainant explained the circumstances to council indicating that he had documents to prove that the money was rightfully his and requested its refund. However, council told him that the refund could only be made to the payer and failing that to Consolidated Revenue.

On my taking the matter up with council it was indicated that it had been council practice for many years, based on legal advice, to make refunds only to the person in whose name the receipt had been issued or to a person nominated in writing by the payer as entitled to receive the refund.

However, council informed me that in view of all the facts of this particular case it would consider a refund to my complainant on his indemnification of council in writing against any future claim for the money.

The complainant gave the necessary indemnity and council refunded the money to him.

As the option of paying on an indemnity was an avenue open to council I considered the complaint to be justified. However, as the matter was rectified I did not consider further action necessary.

Disposal of septic tank effluent

I received a complaint concerning a requirement by the local council that a pipe line from a septic tank be extended for approximately one hundred yards to a turning area suitable for the sewerage disposal tanker.

My complainants stated that, before the construction of their dwelling was begun, council had approved the plans and prior permission had been given for the installation of the septic tanks. When the house was ready for occupation, they were informed that the house could not be occupied because the disposal tankers could not turn in the street outside and drivers would not reverse the required distance.

It was suggested to them that they could overcome the problem by constructing (at their own expense) a driveway with a 30 to 40 feet turning apron. When they refused it was suggested that an alternative solution would be improving the council road and constructing a turning circle about 100 yards along the road where a disposal tanker could turn and to where a pipe line could be extended from the septic tank. (My complainants assumed that the latter solution would be at council expense).

They were allowed to occupy the house on condition that, in the intervening time, a smaller vehicle be used to empty the tank. Later they learnt that the alternate solution was to be constructed at their expense.

My complainants provided me with a copy of a Certificate from the Metropolitan Water Sewerage and Drainage Board stating that the sanitary plumbing and drainage at their property was in accordance with the Board's By-Laws and Regulations. They also provided me with a copy of the council's letter approving their application for the proposed septic tank installation. (It should be noted that it was explicitly stated in the "Conditions of Approval" No. 11—"The site has been inspected and is suitable for the collection of effluent by the removal vehicle").

The matter was taken up with council, who, after "long and careful consideration" at four separate council meetings resolved "that having regard to the difficulties and extenuating circumstances associated with the rendering of an effluent service at premises No. 19 Old Peats Ferry Road, Cowan, council negotiate with the owner with a view to sharing half costs to the extension of an effluent draw-off line along the public road to enable a normal service to be rendered".

Council informed me of their resolution and the matter was referred to the complainants for comment. My complainants were unable to accept council's offer and I informed council of their decision.

I was later pleased to inform my complainants that council had given further consideration to the matter and had now resolved to carry out the work and provide the necessary materials at its own expense to enable effluent to be removed from the subject premises.

In these circumstances, I found that the complaint was justified; but, because of council's action to rectify the problem, I did not pursue the matter any further.

INVERELL MUNICIPAL COUNCIL (now Inverell Shire Council)

Alleged unfair charge for cost of footpaving

I regret that on another occasion it has become necessary to present a report to Parliament under section 27 of the Act in relation to a council. This matter related to the Inverell Council. Unfortunately it would not accept my recommendation nor did it do so after the Report was tabled in Parliament and furnished to the Minister for Local Government. It was disappointing, particularly as in addition to my own recommendation, the Minister for Local Government indicated that he was in accord with my views.

Briefly the complaint was that the council was charging unfairly for half of the cost of footpaving constructed by it adjacent to the complainant's property. In making the complaint to me the complainants pointed out the following matters:

> The council with the assistance of a grant from the Commonwealth Government under the Regional Employment Development Scheme undertook a programme of construction of footpaving including in this 112 metres of footpaving adjoining land owned by the complainants and used by them as a cultivation paddock.
>
> It is rarely used by other pedestrians and there are few houses located in the immediate area.
>
> Whilst the council advised that the decision to construct the footpath was made following requests from the Parents and Citizens Association of the local High School, the complainants maintained that it was not in fact used by many pupils.
>
> That if it was constructed to provide safe passage for school pupils, it should have been constructed on the other side of the road.

After obtaining reports and carrying out an inspection of the site, the council was informed that in my view it was unreasonable for it to impose the full 50 per cent of the cost on the complainants for the following reasons:

> The footpath in relation to the location of their house is of no current benefit to them. Possibly in the future if the land is rezoned as urban land and subdivided into residential blocks they or their successors in title will derive some benefit.

Because of the location of their land and the fact that it is non-urban they are responsible for an area of footpath far in excess of the path one could expect on a normal residential frontage.

Section 243 of the Local Government Act provides that council may recover an amount not exceeding one half of the cost of so much of the work (and any other work incidental thereto) as is opposite and adjacent to the land. While there may be no provision in the Act for any distinction between residential and rural land in this respect council has discretion to impose a charge of less than 50 per cent of the cost and it appears to me that such a discretion ought to be exercised in this case.

In reply to this the council advised that it had taken into account the matters raised by me and all the circumstances involved but adhered to its previous decision. It pointed out, *inter alia*, that the footpath had been constructed in an area which probably would be considered for rezoning into residential lands in the reasonable future.

I was still of the same view and recommended that the council exercise the discretion provided by section 243 of the Local Government Act and impose a charge of less than 50 per cent of the cost of construction. I appreciated that at some time in the future, if the land was rezoned as residential land, some benefit would be derived from the presence of the footpaving and considered that it would be reasonable for the complainants to be responsible for 25 per cent of the cost.

Unfortunately the council did not accept my recommendation and although local publicity was given to the report, it refused to alter its view and confirmed its earlier decision.

KU-RING-GAI MUNICIPAL COUNCIL

Failure to reply to Correspondence

I received a complaint to the effect that a local municipal council had not replied to correspondence sent by the complainant and his solicitor about the management of council property beside his home.

It appeared that about eight months earlier, the complainant completed a formal complaint form at the council chambers in respect to the condition of a block of council land adjoining his home as well as an access road graded through it.

When he had received no response, he pursued the matter a number of times by telephone calls but, as he did not hear from council, he instructed his solicitor to write. Although an acknowledgement was received nothing further was heard until, after two months had elapsed, he instructed his solicitor to write again. Again no reply was received.

The subject raised was complex and involved council's negotiating with a church and a church school for a satisfactory solution to access problems for church goers and school children wishing to cross the land.

Accordingly, I took the subject up with council who promptly explained the steps being taken to satisfactorily conclude the issue which posed a concern for the safety of school children. However, although council gave an undertaking to write to the complainant, it did not refer to the basis of the complaint made to me that replies were not sent to the original formal complaint to council or the solicitor's two letters.

In the circumstances, I raised this aspect with council again while at the same time expressing thanks for the information provided. I was then informed of council's formal acknowledgement of one of the solicitor's letters and that council had since written to the complainant setting out explanation of points which I had referred to in my correspondence with council. This was of interest to me but still did not answer my question whether any reply had been sent to the other letter from the solicitor, nor did it explain why there had been no reply between the time the complaint was first lodged with council and the letter which had now been sent apparently arising out of my approach in the matter.

I, therefore, raised these points with council which responded by forwarding its file for my perusal with the hope that I could glean from it the answers I was seeking from council. It was mentioned that, in the meantime, discussions of the problem of concern to my complainant were proceeding.

I took council at its word and, after examination and return of its file, I put the following five specific questions to council on the 28th February, 1979:

(1) The reasons why no reply was sent to the complainant's written complaint of 20th January, 1977.

(2) The reasons why no written reply, other than the acknowledgement of 14th June, 1977, was sent to his solicitor, even though he was promised a reply at that time.

(3) The reason why no reply was sent to the solicitor in view of his reminder of 24th August, 1977.

(4) The reasons why my requests for answers to these questions are still outstanding despite their having been raised specifically on 24th October and 20th December, 1977, and 3rd February, 1978.

(5) The steps proposed to be taken by council to ensure that the apparent lack of replies in the case do not occur in other cases.

As no reply had been furnished to me to this letter, I again wrote on 14th April, 1978, pointing out that the subject of my complaint was that council appeared to have failed to reply to correspondence from my complainant and seemed now to be failing to reply to the points I had raised. In accordance with section 18 of the Ombudsman Act, I then asked that council provide the comment sought by a set date. Council did write to me in good time making the point that council did not ordinarily reply to written complaints lodged at its counter, but it did not mention that my complainant had subsequently requested such a reply and, because he had not been able to obtain it, he asked his solicitor to take it up on two occasions.

Council also stated as a reason for not replying to these two requests from the solicitor that there was no point in informing the solicitor when council was in contact direct with the client. This answer was not considered to be satisfactory as the client who was seeking answers and could not get them from council, had asked his solicitor to seek the information. To say that no reply was sent to the solicitor in these circumstances was, in my opinion, merely begging the question.

Nevertheless, council did indicate that experience from the matter would lead to an improvement in the future of the position relating to delays and failure to reply to correspondence. I was also told that, in the meantime, council's negotiations with the church authorities had been finalized so that my complainant's problems were finally alleviated.

I was thus able to inform my complainant that I considered that his complaint about the delay he and his solicitor had experienced in obtaining replies to their correspondence had been sustained. Because I was of the view that the original problems about the condition of the land in question were capable of being resolved, I told my complainant that I was going to conclude my inquiries as there did not appear to be anything further I was able to do at that stage.

I concluded my investigation by similarly informing the council concerned.

LEICHHARDT MUNICIPAL COUNCIL

Failure to Reply to Correspondence Related to the Proposed Use of Adjoining Property as a Club

By letter dated 9th January, 1979, my complainant informed me that he had not received any satisfactory reply to his correspondence with council related to his concern about premises adjoining his property being renovated for use as club premises without council's consent.

He explained that he had written to council about this matter on 20th October and 4th December 1978, and had only received an acknowledgment card in respect of his first letter.

An examination of council's records revealed that an inspection of the subject premises by council's staff was carried out on 30th November, 5 weeks after my complainant first brought the matter to council's attention. This inspection revealed that in fact unauthorized work was being carried out and a report was made to council recommending the issue of a "stop work" order.

This report was not referred to the council's Building Department for appropriate action until 15th January, 1979.

By a letter to council dated 15th January, 1979, the Department of Local Government informed the council that representations had been made to the Minister in respect of the unauthorized work and requested council's comments.

Council replied to Department of Local Government by letter dated 26th January, 1979, and advised that premises had been inspected and that the unauthorized work had ceased. There is no reason why a similar reply could not have been sent to my complainant at the same time.

In fact the council did not reply to my complainant until 12th February, 1979, even though a direction was given on the file on 13th December, 1978, for a suitable reply to be prepared.

In replying to me council stated that "Under the circumstances, it is considered that council dealt with the complaint with reasonable expedition".

I informed council that I could not agree with that statement and I regarded the complaint to me as having been sustained.

NORTH SYDNEY MUNICIPAL COUNCIL

Construction of a Boat Ramp in a Public Reserve

In August, 1978, I received several complaints from concerned local residents about the construction of a concrete boat ramp to replace an old wooden ramp in Milson Park near the Sydney Flying Squadron Club house. The ramp was being constructed in the centre of the park some distance from the existing wooden ramp which protruded into the harbour. The complaints were written following a public meeting held in that park, at which over three hundred people had been in attendance.

My complainants were concerned that the excavation for the ramp had been commenced not in the position originally approved by the council some eighteen months previously, and that council had not adequately considered the objections of the local residents nor obtained the formal approval of the Maritime Services Board before commencing work.

My preliminary enquiries revealed that the area of land on which the ramp was proposed, was the subject of a lease between the Sydney Harbourside Trust Commissioners and the North Sydney Council for a period of fifty years from 1st January, 1926. Prior to the expiration of that lease the council had requested the Maritime Services Board to enter into a fresh lease or to consider the sale of the land to the council.

On 22nd March, 1976, the Maritime Services Board advised that it was prepared to divest itself of the land with the intent that it be placed under the control of the council for purposes of public recreation.

Council on 20th July, 1976, agreed to accept the control of the land for public recreation. The council also agreed that it be bound by the terms and conditions of the recently expired leases in respect of the land in question until the divestment and declaration of it had been effected.

In November, 1977, the Maritime Services Board advised that action was in train to place the land under council's control. However, at the time the work was commenced on the boat ramp by council the land was still in the possession of the Maritime Services Board and final action had not been taken to vest the land in the council. Therefore council did not have title to the subject land. The subsequent transfer of the land did not take place until 18th May, 1979, when the notice appeared in the Government Gazette.

As work was well advanced on the project the Deputy Ombudsman in a conversation with the Town Clerk, requested that work be stopped pending my preliminary investigation of the complaint.

The request was formally followed up in writing and at the same time I asked pertinent questions of council and called for its file relating to the ramp and its location in the park. The site was inspected and several photographs taken of the area.

Council agreed to my request that work cease for the time being and replies were provided to the questions I raised. As the ramp was to replace an old wooden one protruding into the harbour and which was used almost exclusively by the Sydney Flying Squadron, I also called for council's files and plans relative to that Club's Development Applications for its premises and in particular its then proposed extensions to the club house.

Also, at the stage of the inquiries I interviewed the Municipal Engineer and his Senior Assistant relating to the decision to move the position of the ramp in the park from that approved by council.

It appeared that the position of the boat ramp was altered from its originally approved position just south of the existing wooden ramp without reference back to council for decision and work commenced on 1st August, 1978, in a position not then approved by council. The alteration of the position was subsequently ratified by council on 15th August, 1978.

Council on 2nd May, 1978, had adopted resolution 270 which set out in part that the Sydney Flying Squadron was prepared to contribute towards the cost of the construction of the proposed relocated ramp on a 50-50 basis up to an amount of $2,000. Council accepted the offer of a 50 per cent contribution (but made no mention of an upper limit); agreed that an amount of $4,000 be voted for the work and agreed to advise the Maritime Services Board of the proposed installation.

Following the interviews with the Engineer and the Senior Assistant and after a close study of the papers and reports, I wrote to council on 19th September, 1978, stating that it appeared that there were grounds for adverse comment. I listed my reasons for saying this and gave council the opportunity to make any submission to me by 19th October, 1978.

My view was that the conduct listed below could be seen to be "wrong" conduct within section 5 (2) of the Ombudsman Act for a number of reasons—

(1) In failing to give written advice of the proposed development and of council's resolution 270 of 2nd May, 1978, to the Maritime Services Board.

(2) In failing to obtain the approval of the Maritime Services Board (as owner of the land) to the development prior to the commencement of work on 1st August, 1978.

(3) In commencing and carrying on work on the development without the consent of the Maritme Services Board as owner of the land.

(4) In commencing work on the development on 1st August, 1978, in a position in Milson Park other than that approved by council on 2nd May, 1978, and by the Land Board Office on 28th July, 1978.

(5) In recommencing work on the development on 21st August, 1978, without obtaining the approval of the Maritime Services Board as owner of the land.

(6) In failing to promptly notify the Sydney Flying Squadron of the terms of council's resolution 270 of 2nd May, 1978, in so far as it related to the sharing of cost of the development.

(7) In failing, when writing to the Sydney Flying Squadron on 1st August, 1978, to advise of the terms of its resolution 270 of 2nd May, 1978, relating to the cost sharing of the development.

I also questioned the conduct of the Municipal Engineer in altering the position of the construction of the ramp without referring the matter back to council and in allowing the construction to commence on 1st August, 1978, in a position other than that approved by council and the Land Board Office. I also asked him why he had allowed work to be commenced without having available a location plan indicating the position as to where the ramp was to be constructed or why he did not inform the Senior Assistant Engineer as to the position in which the ramp was to be constructed. Finally I asked why he had not informed council as to the full facts relating to the alteration of position of the ramp in his report to it of 4th August, 1978.

From my enquiries it seemed clear that there were three proposed positions of the boat ramp and not two. These were—

(1) the position approved on 2nd May, 1978—as per the plan forwarded by council to the Land Board Office with its letter of 30th June, 1978, and later approved by that office;

(2) the position as altered by the Municipal Engineer, because of the converging stormwater lines and at the request of the Sydney Flying Squadron—*t*In this regard the engineer agreed that he had marked the ramp behind the existing wooden ramp and wrote a note on the plan indicating such as the "proposed new ramp");

(3) the position further north where the work actually commenced on 1st August 1978. These three positions were clearly shown on the locality plan forwarded to me by council on 12th September, 1978.

In my letter to council I stated that it appeared to me that it would have been preferable for the ramp to have been constructed in the position approved by council on 2nd May, 1978, which, being located close to the southern end of the Park and adjacent to the club, would have been less intrusive of the area.

I was also concerned that no detailed estimate or consideration was given for the replacement of the existing ramp with a new timber ramp in or about the same position. If that had been a feasible proposition it would have provided no more intrusion into the park then previously existed.

Whilst there was no legal requirement upon council so to do, I believed that it would have been preferable to advertise the proposal since a public recreation area on the harbour foreshore was involved.

Also, the question of the basis of cost sharing of the development between the Squadron and the council at that stage had still not been completely clarified.

I further pointed out that having carefully considered all of the evidence available to me at that stage, I suggested to the council that it reconsider the position of the boat ramp in Milson Park.

Council replied on 6th November, 1978, advising that my suggestion regarding the repositioning of the ramp, following considerable debate, had been agreed to, subject to the Sydney Flying Squadron agreeing to contribute towards the cost of the ramp and the annual maintenance of the park.

I informed the complainants of council's decision and advised it that I found the complaint against the council sustained.

The ramp was constructed in the new position slightly south of the old wooden ramp and away from the centre of the park.

PORT STEPHENS SHIRE COUNCIL

Unfair Offer for Land

I received a complaint from a resident of Raymond Terrace, that the Port Stephens Shire Council had offered him inadequate compensation for part of his property.

Initial investigation of the complaint disclosed that the council had adopted a scheme to develop an area of unimproved land within the centre of a large block of the commercial part of Raymond Terrace. Part of the complainant's block was included in this scheme, along with other portions of land, some of which had already been acquired by the council. The complaint felt that the potential value of his property should be taken into account by the council, but council was prepared to offer only a sum based on the unimproved value of the property, and this, as determined by the Valuer-General in 1977 was $5,000.

It appeared that the council had hitherto adopted a practice in regard to the acquisition of private property, namely, that of negotiating for the properties at, or marginally above, the value determined by the Valuer-General; of itself, such a policy, if applied consistently, appeared to me to be quite reasonable. However, in the course of my enquiries, it emerged that in 1976 council had paid double the Valuer-General's figure of $5,000 for the purchase of a piece of land which was in the same block as the complainant's property and of almost identical size. It is significant to note here that both pieces of land were valued at $5,000 by the Valuer-General. The price of $10,000 had been authorized for offer to the other owner after a lengthy council debate and resolution of 9th March, 1976, and followed protracted and difficult negotiations and threatened litigation between the owner's solicitors and council. Subsequently council developed this piece of property by providing sealed access and services to it, and negotiated its resale for a proposed squash centre development for $10,000. However, it was clear from the cost breakdown provided to me by council, that the price council was to receive fell short of the sum already expended on the property.

I then queried council's apparent major departure from its established practice of negotiating for acquisition of properties at or about the Valuer-General's estimate, by offering $10,000 for property valued at $5,000. In reply the Shire President advised me that "in the particular circumstances..... council chose, *for reasons best known to itself*, to deviate from that policy" (emphasis is mine). I was not satisfied with this explanation and I pressed council to furnish me with the reasons for their deviation in policy. I also advised them that, on the information I had thus far received, it appeared to me that council's actions in offering one landowner only half of the sum paid to another for an identically valued piece of property, could be improperly discriminatory, in terms of the Ombudsman Act, section 5 (2) (b), and, therefore, could constitute "wrong" conduct, as defined in that Act.

In response to my letter, the Shire President informed me that the following had been resolved by council:

> "That council advise the Ombudsman that council made an *error of judgment* in the price paid for the acquisition of the land, believing it was offering a correct valuation; accepts full responsibility for its action and intends to pursue the acquisition of other lands under the Valuer-General's valuation or at whatever figure the Land and Valuation Court decides." (Again my emphasis added).

Accepting for the moment that an error in judgment had been made by council on the 1976 offer, I was still of the opinion that council's conduct, in regard to its offer to my complainant, could be seen as improperly discriminatory and, therefore, "wrong" conduct. Of course it could be argued that the offer of $10,000 to the other owner was *not* an "error of judgment" since council had, at the time, the benefit of legal advice, as well as that of its own officers, and deliberated at some length on its decision. It could, therefore, be seen as *a deliberately considered decision.*

Some two months after this decision in March, 1976, the Shire Clerk, recognizing that a decision had been made which could prove economically unattractive to council, in that the remaining owners might seek a higher price, suggested to a council meeting that it withdraw from the development scheme, including the negotiations already in progress. However, subsequent legal opinion, together with the threat of legal action from the affected owner, resulted in council proceeding with the transaction as previously resolved and the owner received the sum of $10,000 as compensation for acquisition.

Having carefully considered the material put before me by council, I wrote to council suggesting that it rectify its wrong conduct, by making an offer of $10,000 to my complainant. Council, however, advised me that it had "resolved to re-affirm its decision to negotiate for purchases of properties on the basis of the Valuer-General's valuation and if this is not satisfactory to the vendor then the matter be settled by an independent body, the Land and Valuation Court."

It is clear, of course, that council's conduct in relation to the acquisition of the complainant's property is only "wrong" conduct in comparison with its earlier offer to the other property owner. It is equally clear that if the earlier acquisition had been the *only* one in that particular parcel of land, cause for complaint to my office would not have arisen, and it could have been argued, I believe, that the offer of $10,000 was not unreasonably high. It must be mentioned also, in relation to the $10,000 offer, that this occurred in March, 1976, and it was not until 1st December, 1976, that I was given the jurisdiction under the Ombudsman Act, to investigate the conduct of local government authorities. Council, however, clearly admitted this conduct to be wrong, but was quite rightly concerned that having erred once, it did not wish to repeat its initial error (if indeed it had made a mistake).

Nevertheless, the fact remained that council had failed to deal equally with two citizens in almost identical situations, and to me this is obviously improper discrimination between the two parties, as provided for in the definition of "wrong" conduct, section 5 (2) of the Ombudsman Act. It could equally be seen as unreasonable or unjust conduct in respect of the complainant.

However, whilst I considered that council's conduct was wrong within the terms of the Ombudsman Act, I decided not to make any recommendation to rectify that conduct in light of the availability of an avenue of final resolution of the dispute through the Land and Valuation Court, following resumption. I, therefore, made no recommendation. I was also mindful of the practical difficulties which might arise if council, in taking steps to rectify this complaint, created a further departure from its established practice and thus found it difficult to administer a consistent and objective attitude towards other land acquisition.

I did however proceed to publish a report, pursuant to section 26 of the Ombudsman Act, and copies of the report were provided to the council, the Minister of Local Government, and the complainant.

In that report I found the conduct of the council to have been wrong within the terms of the Ombudsman Act as unreasonable, unjust or improperly discriminatory in offering the complainant $5,000 compensation for his land when it had earlier offered and paid another property owner $10,000 for an almost identical portion of land. I made no recommendation.

An interesting postscript to the complaint occurred when the complainant's land was revalued at $7,000 in late 1978 by the Valuer-General, and subsequently he was offered this increased sum by the council.

RANDWICK MUNICIPAL COUNCIL

Unreasonable Request to Pay for Restoration of Footpath

My complainant informed me that following heavy rains, a retaining wall at the rear of his property collapsed. He obtained approval from council for a plan to rebuild the wall. He was required to lodge a $200 bond against damage being caused to the footpath.

Before starting building work on the wall my complainant wrote to the council and requested it to inspect the footpath as it was already in very poor condition because of the heavy growth of weed along the length of his property and across to the gutter. Over the past 20 years he has continually complained to council about the general condition of the footpath and the fact that the weeds were allowed to grow so thick that other people were throwing rubbish in there. In clearing the weed shovels and mattocks had to be used and so on each occasion that the weeds were cleared the asphalt surface incurred further damage. As well installation of a new telegraph pole and repairs to a water pipe in past years had caused damage to the surface of the footpath.

When my complainant's building work was completed he notified council and in due time his bond was returned to him.

Almost six months later council wrote to him and informed him that—

> "An inspection of the footway at this location has been made and it is advised that it will be necessary for the following repairs to be carried out by council:
>
> Asphalt footpath restoration. The cost of this work is $480.00.
>
> Please forward your remittance for the cost of this work."

An inspection of the area revealed that the footpath was indeed in very bad condition and required restoration but, my complainant's building work had in no way contributed to this condition.

Council then informed my complainant that following a further inspection of the footpath "no further action is required".

I sought clarification from council as to whether this statement meant that my complainant was no longer required to pay the cost of the reconstruction of the footpath and, if so, why the original request was made to him.

Council replied that it considered the statement to be "quite clear and self-explanatory—that is, no further action is required". Council did not inform me as to why the notice to pay was issued to my complainant.

Whilst I considered this complaint to be sustained, as my complainant was satisfied with the council's actions I decided to take no further action.

Demolition of Historic Home—Failure to Notify Interested Parties of Change in Plans

A descendant of a family which had had a close affiliation with an historic building in the municipality complained to me that, although council had promised that the building would be retained as a public library after purchase, the building was demolished.

I was told that after the occupier had died council, which had purchased the property, allowed it to fall into disrepair and even though promises had been made to the occupier, a descendant of the original family, that the building would not be taken down, and to my complainant, a member of the local historical society, as well as the National Trust of Australia in writing that the building would be retained, these promises were broken. The building was said to have been demolished within five days of a council decision being reached on the matter.

The council at the time of my inquiries was in the hands of an administrator appointed by the Minister for Local Government and, in answer to my invitation to comment on the points made in the complaint to me, the administrator admitted that in 1976 he had informed the National Trust of Australia by letter that "the council intends to preserve the building and use it for public purposes". It was stated that at the time it was intended to use the building for a branch library and as a storage of historical items as well as to use part of the unbuilt-on land for public parking. The administrator added that when council subsequently obtained vacant possession of the building and made an inspection, it was found that the cost of necessary repairs to make it suitable for the intended purposes could not be justified in view of the limited historical significance of the building. The decision was then reached to demolish the building and to construct a carpark.

Since the administrator's reply to me, a new council had been elected and so I took up with the mayor a number of items including the reasons why my complainant was not informed of developments at the time and the reasons for the demolition being implemented so quickly after the administrator reached the decision to demolish the building. At the same time I requested that council make its file available to me for my perusal.

Council duly replied at some length and explained, *inter alia*, that contact was not made with my complainant because she was hardly known to council and was not a party to the council's arrangements and that, at the time, its internal arrangements were such that, under an administrator, most decisions were communicated the same day; that in this case the council had already received quotations for the work; and that the contractor was available to commence work immediately. On the other hand my complainant had informed me that she was frequently at the council chambers and was well known to council staff from whom she had borrowed the keys to the premises at different times.

In the light of this apparent difference I repeated my request for council's papers on the matter. At the same time, I wrote to my complainant informing her of the explanation furnished by council including its view that to renovate the building after vacation with consequent maintenance would have resulted in an initial expenditure of nearly $28,000 with a continuing high annual maintenance charge, plus the construction of a carpark on the vacant land at about $15,300—a total of at least $43,000 while, on the other hand, the construction of a carpark (with landscaping and the provision of seats) over the whole area involving demolition of the building, was estimated to be $25,000.

I then received a note from the mayor stating that he was prepared to make council's files available at the council chambers at a convenient time. Because I had had correspondence with the Secretary of the Local Government Association in respect of a legal point raised about my entitlement under the Ombudsman Act to be provided with council's files only at council chambers, I replied to the mayor forwarding a copy of a letter I had written to the secretary of the association pointing out that the relevant portion of the section of the Act upon which I particularly rely is that which requires a public authority to produce to me any document or other thing. I supported my contention by referring to section 20 of the Act which gives to me an additional power for me to enter the premises of a public authority at any time and inspect any document or thing in or on the premises.

As the file was not forthcoming from council despite this approach, I then, in accordance with section 18 of the Ombudsman Act, asked that council produce its file about the demolition, as previously requested, at my office by a set date.

Council's response was to state that, as a result of advice from its solicitor, it regretted that while council was anxious to assist me in the execution of my duties in any proper way, it was not prepared to forward its files to me for examination, However, council said the files would be made available to me at council's offices at a mutually convenient time.

In reply, it was pointed out to council that council's offer to assist me could not be reconciled with its refusal of a reasonable (and lawful) request that it make available the relevant files for perusal. Although it could be understood that it may sometimes be inconvenient for council files to leave its office, efforts were always made to return them promptly, and council had been told that it would be acceptable on occasions to inspect files at council's offices or for photocopies to be an alternative where suitable.

Nevertheless, council was reminded of the terms of section 18 of the Act which are quite explicit and require a public authority to produce to me any document or other thing required by the Ombudsman.

At the same time attention was drawn to the terms of section 37 of the Ombudsman Act in that, if the Ombudsman's jurisdiction was wilfully or intentionally hindered, the implications would have to be seriously considered and action taken.

Because council was still inclined to question the legality of providing the actual file, I suggested a compromise and requested a copy of the council's complete file on the subject. Council accepted this proposition and, rather than simply making the file available, it preferred to provide a rather bulky photocopy of its documents.

My inquiries were then able to proceed and, after perusal of the papers, I formed the opinion that—

(1) While council originally proposed to resume the property for parking, it later altered its mind and advised that it was proposed to use it for the purpose of a branch library and for parking.

(2) Council led the National Trust of Australia (New South Wales) and the Randwick Historical Society to believe that it was consistent in this attitude and then, after the property was purchased and vacant possession obtained, it left it empty for a lengthy period.

(3) A report by council's Senior Health Inspector as to the condition of the premises was not considered by council until seven months later, after which the National Trust and the Randwick Historical Society were then told that council was considering all aspects of the matter. But no indication was given at the time that demolition of the building was being contemplated.

(4) In spite of this council officers then made a hasty decision and recommendation to the administrator and this was repeated in the report of the administrator to a council meeting on a Friday three weeks later at which the recommendation that the building be demolished was formally adopted. The demolition was effected three days later.

(5) No advice was given either to the trust or to the historical society prior to this occurring so that the building was effectively demolished before either of these bodies was aware of the changed position.

I was, therefore, faced with the situation that the administrator who had made the decision and had it executed was no longer in office and the premises were no longer in existence following what might have been a correct decision in the light of the reports submitted.

There was no action open which would bring about a restoration of the building so that my complainant could have been satisfied.

Accordingly, I found the complaint to have been sustained insofar as the council was wrong in taking action to demolish the building without notifying the National Trust and the Randwick Historical Society in view of the correspondence which had taken place and the assurances previously given.

I concluded my inquiries by writing to council and my complainant informing them of my findings in the matter and indicating that I did not intend to make a recommendation in this respect as it appeared that no good purpose would be served. I took the opportunity to express to my complainant my understanding of her feelings in the circumstances.

RYDE MUNICIPAL COUNCIL

Damage to Sewer Pipes by Camphor Laurel Tree

The facts in this matter appeared to be as follows:

A camphor laurel tree was situated on the footpath in front of the complainant's property.

The tree was there prior to the complainant building on his property.

The sewer line leading to the complainant's property was blocked by the roots of the camphor laurel tree.

This was confirmed following inspection by the council's Parks and Garden Inspector.

Repairs were carried out at a cost of $361.

The complainant claimed this amount from the council. The council referred this to its chartered loss assessors who, some five months later, informed the complainant in a "without prejudice" letter that—

"After closely considering the information obtained we are of the opinion no liability rests with council in this instance and in the circumstances we can be of no further assistance."

It was apparently not referred back to the council at this stage.

I took the matter up with the council and shortly after was advised that the council's insurers had delivered a cheque for the amount claimed to the complainant.

Whilst I then discontinued my investigation, this case highlighted the problems arising (as set out by me in the body of this report) from the failure of the council initially to deal itself with the claim and leaving it to its loss assessors.

COUNCIL OF THE CITY OF SYDNEY

Failure to take action in respect of noise nuisance and unauthorized use of premises

In March, 1978, I received a complaint from an aged resident of the inner-city area concerning the operations of a courier service in premises next-door to his home. He alleged that excessive noise was being caused by vehicles loading and unloading at all hours and he provided me with details of the efforts he had made, over a period of almost two years, to have something done about the matter, without result.

My preliminary enquiries with council officers indicated that despite a recommendation that legal action be taken against the company, following an inspection of the premises in August, 1977, the company conducting the courier service had been invited to lodge a development application. That application, in February, 1978, had been refused by council on the basis that the use of the premises was contrary to the provisions of the relevant Interim Development Order and, in fact, council had no legal power to grant consent. The company had been served with notice to cease the unauthorized use of the premises within 14 days or face prosecution. However, my enquiries indicated that no legal action had, in fact, been taken by council and that, allegedly, all the relevant papers "could not be located".

The senior officer of council with whom my preliminary enquiries were conducted told me that he was again recommending that legal action be taken and that an injunction be sought against the company. In mid-April, however, I learned that council's Works Committee had refused to consider the matter at its April meeting and would not meet again until 1st May.

On 18th April, therefore, I wrote to the Lord Mayor seeking his comments about council's failure to pursue legal action in respect of the continued unauthorized use and I asked that all relevant papers be made available for my perusal.

Early in May, the Town Clerk informed me that, as the company had asked council to reconsider its decision to refuse the development application, the Works Committee had considered the matter and had decided to defer further action to enable committee members to carry out an inspection and prepare a report. The Town Clerk said in his letter—

"Council's officers were about to take the necessary steps to issue legal proceedings when the company requested that council's decision be reconsidered. Accordingly no legal action will be taken until the council reconsiders the matter."

The Town Clerk enclosed with his letter a file, which he described as "council's official file".

Perusal of that file made it clear that other papers existed and, on 9th May, I wrote again requiring the Town Clerk to provide to me all relevant files. On 17th May, the Town Clerk sent me two additional files and, in his covering letter, said—

"These—papers were not forwarded to you with (the) official file—as they are used for intra-departmental purposes and are not considered to form part of the official records of the council.

The matter was considered at the Works Committee meeting on the 15th May, 1978, and was deferred for a report by the City Planner as to council's legal powers. It is anticipated that the matter will be considered again at the next meeting of the Works Committee in early June, 1978, and I will keep you informed of progress."

My investigation showed that, in 1973, council had approved development application submitted by the company for consent to use the premises as an "office and showroom for a stationery business". Council limited its approval to a period of 7 years because it did not wish to give unrestricted use for the stated purpose for all time. It was quite clear that council had failed to enforce the provisions of the Local Government Act and after complaints were received in 1977.

Accordingly, on 14th June, I wrote to the Town Clerk in the following terms:

"I consider at this stage that there are two grounds for adverse comment in respect to council's actions in this matter which include the following aspects:

(1) Failure to take appropriate legal proceedings to enforce the provisions of the Local Government Act and Ordinances in respect to the unauthorized use as a courier service of the subject premises. In this regard the following matters are considered relevant:

The original complaint was received by council on 10th February, 1977, and despite repeated and further complaints, a recommendation was not made until 17th August, 1977, that legal proceedings be instituted. However, no follow-up action occurred to implement this recommendation until the 21st March, 1978, when a recommendation for injunction proceedings was made, that only following the intervention of my office.

Council apparently had authority to approve the courier service as "commercial premises" under the provisions of the City of Sydney Planning Scheme Ordinance for the Light Industrial 4 (b) zone, but an office/showroom only was approved.

Approval of the use of the premises "as offices and showroom for a stationery business" was granted although council had prior knowledge of the proposed use as a "courier service".

In a letter dated 28th June, 1977, from the company to council, the manager of the company stated in respect to the above consent that "the application was completed and lodged in this manner under the direction of an officer of the council. Prior to lodging the application the officer was fully informed as to our intended activity and this activity has not changed".

However, I note that the consent imposed a condition in respect to hours of operation and, was a restricted one; that an unrestricted approval for the "office and showroom" was not favoured owing to likely injury to the amenity of the neighbourhood; creation of a traffic hazard and traffic congestion; and also the likely prejudice to any future action with regard to the improvement of the means of egress of the premises. The approval was given by council following the concurrence of the State Planning Authority for the proposal, but the "courier service" was not considered by either council or the State Planning Authority and additional amenity and traffic aspects would have been involved in this increased use.

Council on the 17th May, 1978, indicated that it was reconsidering the company's development application, but council's records of 13th February, 1978, reveal that the use as a courier service does not now comply with Interim Development Order No. 21 and that council has no power to grant a development consent.

(2) Failure to produce to me on or before the 16th May, 1978, all the files and papers relevant to the current complaint as requested by me in my letter of 18th April, 1978, in accordance with section 18 of the Ombudsman Act. (I am disturbed that council considered that these most relevant and appropriate files being City Planning Department File and City Health Department File were not part of the official records of the council as this is obviously incorrect.)

Before I consider whether I should take further action in this matter under section 26 of the Ombudsman Act, an opportunity is provided by section 24 of the Act, for council to make a submission in respect of the above adverse comments."

The Town Clerk replied on 13th July setting out a history of council's actions in the matter from February, 1977, when council issued a notice to the company requiring the submission of a development application or, alternatively, cessation of use of the premises. That history made it clear that no positive steps were taken by council in the matter and, finally, in August, 1977, the company submitted the required application.

The Town Clerk reiterated the terms of council's decision taken in February, 1978, and went on to say—

"(The company) by letter dated the 3rd March, 1978, requested council to reconsider its decision of the 13th February, 1978. The Town Clerk by letter dated 30th March, 1978, advised the company in the following terms:

"The matters you raise have been given careful consideration but are not such as would alter the previous recommendation made to the council by the staff.

It is not proposed to resubmit the proposal to council unless you specifically request that this be done knowing that the same recommendation will be made as previously."

(The company), by letter dated the 13th April, 1978, requested that its letter of the 3rd March, 1978, be placed before council for reconsideration. The council finally determined the request at its meeting held on 26th June, 1978, when it was resolved—

(a) that arising from consideration of a letter dated 13th April, 1978, from the Manager, Numail Services Pty Ltd, the terms of resolution of council of 13th February, 1978—whereby it was decided that the council as the responsible authority refuse its consent to the application submitted by the company, with the authority of Miss S. Hilder, for permission to use the abovementioned premises as offices for a courier service and associated storage and parcel sorting purposes—reaffirmed;

(b) that council's officers take action immediately for the cessation of the unauthorized use referred to in the foregoing clause (a).

It is regretted that all of the council's files were not forwarded to you with council's letter of the 2nd May, 1978. In any future cases you will be furnished with all relevant files, reports, etc."

I considered that the Town Clerk's reply did not attempt to give reasons for council's actions in the matter and I, therefore, asked that this be done. Subsequently, the Town Clerk provided me with a comprehensive report which, whilst not entirely satisfactory, convinced me that I should not pursue the matter of making a formal finding of wrong conduct. In the meantime, council had finally initiated legal action against the company but these proceedings were adjourned at least twice before the matter was set down for hearing in November, 1978.

Just prior to the hearing, the Town Clerk informed me that the company, in fact, had vacated the premises and council proposed to offer no evidence when the matter came on for hearing, provided costs of court were paid.

As the company had vacated the premises, I regarded the complaint made to me, whilst justified, to have been rectified and I took no further action.

SYDNEY COUNTY COUNCIL

Dangerous condition of electrical connection

I received a complaint in February, 1979, that council had allowed the electricity connection to the complainant's new premises remain in a dangerous condition.

When he approached me about the matter my complainant gave me the following information:

(1) He had taken up the lease on his new premises in December, 1978, and did not notice anything extraordinary until February, 1979, except that at times the power fluctuated.

(2) On 7th February, 1979, he received a bad electric shock from the garden tap and one from the laundry tap. At that time plumbers were renewing the water pipes of the adjoining property.

(3) He spoke to the plumbers about the shock from the pipes and they advised him that because the water was on a joint supply to the main for the two properties and that for proper earthing there should be at least thirty feet of covered pipe (the complainants' pipe was mostly above ground level) his power was probably earthing on the pipes at the adjoining property. The plumbers assured him that when the new pipes were in and buried the problem would cease. While the found this explanation a little strange he went along with it. On completion of the plumbing job the power had returned to "normal" (but was fluctuating more than it had before) and all the taps could now be touched.

(4) Subsequently he noticed slightly erratic behaviour in some electrical appliances. On 11th February, his washing machine malfunctioned and he received a shock from the tap connected to it when the turned the water and the power off.

(5) He rang the Sydney County Council and a serviceman arrived shortly afterwards. When the serviceman went out to check his fuse box he noticed that the main council fuse box had a red seal. He said that the red seals were used when council cuts off supply for non-payment of account and that this supply was cut off in February, 1977 (long before the complainant moved in), and that only one fuse was removed instead of two so that the supply had been left in a dangerous condition.

(6) The serviceman then returned the power to normal and advised him that while a re-connection fee of ten dollars was normally required in such cases the complainant should not pay the fee but go to council and complain about the state of the electricity supply.

Despite numerous personal visits to council he was unable to resolve the matter. Subsequently he went to the Chamber Magistrate who referred him to me.

When I approached council I was informed that they were considering three aspects of the complaint, they had requested a full report from the serviceman, a report from the plumbers and the complainant's claim for compensation which may involve comment from council's solicitor.

The General Manager of Sydney County Council consequently wrote to me in the following terms:

(a) The main neutral conductor at the premises had been open circuited because of an incorrect procedure carried out by a council officer when disconnecting supply to the previous tenant. The open circuit did not prevent the use of light and power at the premises. This situation remained when the complainant took up occupancy.

(b) It would, however, not have given rise to a hazardous condition had the resistance of the customer's earthing system been satisfactory. Unfortunately, plumbing repairs to a metallic water pipe forming part of the earthing system at the premises, had rendered it unsuitable for earthing purposes. The neutral connection has since been restored to normal and the council's part of the installation modernized to ensure that incorrect isolation cannot result from the same cause.

(c) It will also be necessary for the complainant to arrange for an electrical contractor to bring his earthing system up to a satisfactory standard in accordance with Standards Association of Australia Wiring Rules.

(d) The complainant was interviewed at his home by council's officers on 30th March, 1979, and had accepted their explanation of the circumstances involved which led to him receiving electric shocks on 11th February, 1979. He was also made aware of the requirements necessary to bring his earthing system up to a satisfactory standard.

(e) The action of a council officer in contributing to the electric shocks was deeply regretted. Council places great importance on electrical safety and incidents of this nature are extremely rare.

I advised the general manager and my complainant that the complaint could be considered to be justified in terms of the Ombudsman Act, but as it had now been rectified I did not propose to take it any further.

The Size of Security Deposits

The system of requiring security deposits for connection of services such as electricity is no doubt in part designed to eliminate bad debts and thereby cheapen the cost of the particular service.

In this matter, the complainant wrote to tell me about his dealings to obtain the electricity supply when he had recently purchased new premises for his smash and mechanical repair business. Having been in that line of business for some 25 years, and having on record at the county council all his previous quarterly accounts which never exceeded $67, my complainant felt that his previous security deposit of $50 should not be increased to much more (if at all) than $100 when he wished the supply transferred to the new building.

These hopes proved illusory, for far from suggesting the original $50 security deposit would "do", the county council told the complainant that he was "required to lodge the sum of $500 . . . and it should be noted *that supply may be dissconnected without further notice if the deposit is not paid within the specified time.*"

While it was true that the $500 would earn interest at the rate payable from time to time by the savings banks on ordinary deposits, and would be refunded together with interest when the electricity supply was terminated, the complainant naturally claimed the new deposit represented an anticipated electricity usage beyond the foreseeable requirements of his business and would diminish his working capital.

The complainant took the matter up with staff of the county council who apparently told him that their method of assessing deposits for commercial premises was based on the average quarterly consumption of the previous owner. Unfortunately, the previous owner; a printing firm, had averaged $350 per quarter. Another factor taken into account was the potential usage of the building and in this regard my complainant pointed out that he again could not seem to win, for although the building comprised four floors, the top floor could not be used by council regulations. In fact, the complainant would, he claimed, only be using the ground floor while the other two would be rented for storage only—for daytime use, rendering the electricity consumption of those two floors negligible.

Being unable to see justification for the assumption that accounts for $350–$500 for electricity used per quarter would suddenly be accumulated by his business, which he alleged was vastly different in its pattern of usage from that of the previous owners', the complainant sought my assistance in having some account taken of his actual consumption, albeit necessarily measured over a very short period. However, the complainant stated he was prepared to increase the deposit if this did not prove a reliable guide to electricity consumption over succeeding quarters.

After my approach to the general manager, the complainant's meter was read on a number of occasions to check daily consumption. On the basis of these readings, the complainant and the county council reached agreement on the reduction of the security deposit by one-half, of which the original $50 had already been paid at an earlier point of time, so only another $200 was required. Although I concluded my enquiry on the basis of this agreement, being unable to hazard the potential electricity usage for the building on the information then available, the complainant subsequently advised me he still felt his meter was reading excessively.

As the complainant's previous security deposit for his electricity supply was $50, it seemed to me that his complaint as regards a demand for $500 was sustained in that it was apparently assessed without regard to two relevant considerations in the complainant's case, namely his actual consumption as recorded over a long period, and his previous dealings with the county council over that period.

SUTHERLAND SHIRE COUNCIL

Failure to alleviate drainage problem

I received a complaint from a resident in the Sutherland Shire that the council, after being responsible for a drainage problem caused to her property, refused to take action to remove it.

My enquiries, including an on-site inspection by one of my officers, revealed that the drainage problems experienced by my complainant were entirely due to work carried out on the property at the rear of her home, when the owner raised the level of his land by filling. The owner raised the level of his land in compliance with a condition imposed by council on his building approval, as the land was prone to flooding.

My complainant's property shaped steeply towards the rear. Surface water run off over her land, as a result of the filling of the land at the rear, was confronted by a wall of dirt almost 1 metre high; the result was to create a dam on my complainant's property.

During my investigation and, I suspect, as a result of suggestions made by council, the company which was engaged in the construction of a home on the property concerned installed a sullage pit and drainage pipes to remove the excess water "trapped" by the filling. All costs were met by the company subject to my complainant maintaining and keeping clean the pit and being responsible for any future repairs which might be needed. Thus, her immediate problem was resolved.

The question I pursued was whether a council, in imposing conditions on a building approval, should have regard to problems that fulfilment of such conditions might cause an adjoining landowner. I was firmly of the view that a council should take such matters into account and, if necessary, impose additional conditions to require the person seeking approval to take whatever action might be needed to remove or alleviate the problems that might be caused to his neighbour.

However, as a result of lengthy discussions I had with the Shire Clerk, and after closely examining the Local Government Act, I was forced to agree with the Shire Clerk's view that council lacked the power to impose such necessary, additional conditions.

I, therefore, took up the matter with the Department of Local Government, both by letter and in personal discussion, to see if the Act should be amended. The Department, unfortunately, did not agree with my views in the matter.

As a result, on 1st February, 1979, I wrote to the Minister for Local Government about the matter and I was pleased to receive a reply from the Minister in the following terms:

> "Thank you for your letter . . . concerning a complaint made to you by a resident of Sutherland Shire respecting a drainage problem on her property caused by development of an adjoining allotment.
>
> I have perused the copies of correspondence which you have forwarded and observed that there is a difference of opinion between yourself and my Department as to the relevant provisions of the law on this subject and whether an amendment of the Local Government Act is the appropriate course to take.
>
> To avoid further protracted correspondence and to resolve the matter I am prepared to recommend to Cabinet an amendment of the Act to specifically empower councils when considering building applications to take into consideration measures to prevent development adversely affecting the drainage of adjoining property.
>
> This amendment will be included in a suitable general amending Bill as soon as practicable."

In summary, I took the view that, whilst the problem my complainant experienced was of some magnitude and certainly warranted her complaining to me, I could not find that Sutherland Shire Council acted wrongly in the matter. Nevertheless, I must emphasize that council, and particularly the Shire Clerk, fully recognized that a problem existed and co-operated fully with me to try to find a solution.

In writing to the complainant, I expressed the hope that, when the Local Government Act was amended, councils would be able to act to prevent and correct problems of the nature that she had experienced.

I was subsequently advised that Cabinet had approved of the proposed amendment.

WARRINGAH SHIRE COUNCIL

Sand Removal Activities On and Through a Public Reserve

Two complainants approached me concerning the actions of Warringah Shire Council in transporting sand stockpiled on a reclaimed area through an adjacent public reserve. My complainants claimed that—

for some years the council had dredged sand from a lagoon and had stockpiled it on a reclaimed area which was adjacent to a reserve for public recreation and the promotion of the study and preservation of flora and fauna;

the council operated bulldozers and heavy trucks to transport the stockpiled sand along a narrow dirt road through the reserve;

this action had resulted in destruction of native flora and fauna in the reserve;

nothing in Part XIII of the Local Government Act authorized council's sand removal activities which therefore were illegal.

Following a site inspection, discussions held with senior officers of the council indicated that since 1964 the council had been engaged in dredging operations for the purpose of improving the lagoon for boating and other legitimate recreation purposes. Dredged material was used to reclaim part of the foreshore and the balance over and above that requirement was stockpiled as a temporary expedient for use towards the improvement and embellishment of other council owned or controlled reserves as well as in connection with roadworks and the like.

At the meeting with council officers the engineer was unable to be precise as to when the sand removal operations would be completed but estimated that some 2 to 3 thousand cubic metres of sand would have to be removed which would take approximately four to five months. The engineer also advised that council would have to purchase filling if the stockpiled material was not utilized. As removal of the stockpiled material was part and parcel of the dredging operation which brought the stockpile into existence, use of the material for other council works was considered to be fully justified.

Subsequently I wrote to inform the council that I had received a letter from the State Pollution Control Commission in which the view was expressed that the present condition of the reclaimed area was unsatisfactory and that the council should remove its immediate needs as quickly as possible and then cease operations. The commission also suggested that the residual area should be levelled and the area given appropriate landscaping.

In regard to the legality of the council's actions in transporting the dredged sand from the reclaimed area through the reserve, the council contended that the activity of dredging the lagoon to improve it for boating and other recreational activities was a legitimate function of the council within the provisions of Part XIII of the Local Government Act. The current operation of removing the stockpiled material was said to be an integral part of that dredging operation and was being done with the concurrence of the Lands Department and in terms of the permissive occupancy granted for this purpose.

The council also claimed that section 349 of the Local Government Act empowered it to improve and embellish public reserves and that it was acting under this section and within the terms of its trusteeship in removing the surplus dredged sand to enable development of the reclaimed area for passive recreation.

The question of the council's legal position regarding access through the reserve to its permissive occupancy subsequently was referred by the Department of Lands to the Crown Solicitor for his opinion.

While the Crown Solicitor was unable to come to a firm conclusion it appeared from what he said that the council could be acting within its powers. On the one hand the Crown Solicitor had been unable to find any clear express statutory power which, in his view, would enable the council to use the park for access to the reclamation area. On the other hand, the Crown Solicitor inclined to the view that the council probably had an implied power to make limited use of limited areas of the parks under its care, control and management to gain access to the reclamation area and he regarded the existing access as involving only a very limited area of the reserve.

It appeared to me that the question of legality of access through the reserve was a difficult matter to decide with any certainty and that only the court could provide a definitive conclusion on this question.

Following the issue of an environmental report by the State Pollution Control Commission I approached the council about certain aspects of the report which appeared to support my complainant's contentions. In reply I was informed that the council was preparing a landscape and development plan of the lagoon and adjoining reserves. This plan, together with the State Pollution Control Commission's report, would be considered by an advisory committee which comprised representatives of the council and local residents delegated to make recommendations to council on the future strategy for the development of the lagoon system. The council advised that comment on aspects of the report would, therefore be deferred until council had had an opportunity to consider and discuss its contents.

Concerning the likely duration of the council's sand removal operations. I was informed that a recent survey had disclosed that there was still 19 000 cubic metres of stockpiled sand which was to be removed before the foreshore reclamation could be developed. The council indicated that on completion of the sand removal operation the reclamation area would be beautified and developed for passive recreation.

The council stated that it was removing the sand as quickly as possible commensurate with its ability to use the material effectively on its reserves and roadworks and at the same time save its ratepayers the cost of buying in sand fill from elsewhere at a minimum cost of $4.00 per cubic metre. At the present rate of usage there was still *four* years supply but the council was looking at ways of accelerating the operation by using it to fill and develop additional playing fields and to blend with loam to make it suitable for topdressing turfed areas.

I subsequently expressed my concern to council at the estimate of four years for council to remove the sand particularly in view of the earlier advice given in discussions with my officers that the stockpile was estimated at two to three thousand cubic metres and could be removed in a period of four to five months. At the same time I was able to inform the council that following an inspection by the Metropolitan District Surveyor of the Department of Lands of the reclamation and sand removal operations the department had decided that council's sand removal must cease by 31st March, 1979, and that the remaining sand should be then used in mounding and landscaping the reclaimed area.

In this regard I also advised the council that I considered the Department of Lands' stand was correct and that all removal of sand should cease by 31st March, 1979. I also referred to the earlier advice obtained from the State Pollution Control Commission that council should remove its immediate needs as quickly as possible and then cease operations.

Following advice from my complainants that the council had widened the access track through the reserve to the stockpiled sand a site inspection was made and the council was approached for further information in regard to the widening of the access track. At the same time I pointed out that continuation of the removal of sand through the reserve would only aggravate the situation particularly the detrimental effect on the reserve and asked that all sand removal should cease pending completion of my investigation.

The council in reply indicated that agreement had been reached with the Lands Department in regard to the sand removal under its permissive occupancy that—

council would remove sand excess to the long-term development needs of the reserve prior to 24th December, 1978;

council would carry out restoration work including tree planting and the contouring of the sand stockpile to produce an appropriate area designed for passive recreation;

that on completion of the above work not later than 1st March, 1979, the road fronting the residences adjacent to the reserve would be repaired;

the access road through the reserve had been closed and restoration work in hand would be completed before Christmas, 1978. Tree planting and other remedial work on the access track would be undertaken and trees planted at appropriate times.

In this case I found that the complaint was justified. However, as the matter had been rectified to the satisfaction of my complainants I discontinued my investigation.

My principal complainant was somewhat pleased with the result and reported to me in the following terms:

"The removal of sand from the Jamieson Park area has ceased and the area has been restored ready for planting. The vandalized laneway has similarly been restored. Some work has already been done to remove abandoned vehicles and other rubbish from the park, and footpaths have been restored. The council has voted $30,000 for continuous restoration of the area during the current year. The roadway to the park has been renewed. The area is already being used much more widely for swimming and walking. Hopefully the wild life will return.

In my view this has been a magnificent victory achieved by your office both in protecting the environment and in asserting the public interest."

WYONG SHIRE COUNCIL

When is a development approval also a building approval?

One complaint dealt in some detail with the problem as to when a development approval is also a building approval.

In May, 1978, I received a complaint from a development company which had late in 1974 lodged a development application to erect a hotel/motel within the Wyong Shire. The council approved this application on 17th February, 1975, with conditions. This was permissible in this non-urban 1 (a) zone with council consent under the Wyong Planning Scheme Ordinance of 3rd May, 1968.

One of the conditions of the consent was the construction and drainage of a new road to council's satisfaction to serve the interior residential area. This was agreed to despite the fact that the hotel/motel site had existing access.

This new road was completed in December, 1976, and after acceptance dedicated to the council in February, 1977.

The Varying Planning Scheme (Amendment No. 2) to Wyong's Planning Scheme was prescribed on the 17th September, 1976. Clause 4 (a) stated that the carrying out of any work granted under the Wyong Planning Scheme was valid if it was commenced but not completed before the 17th September, 1976, or was substantially commenced within 12 months after that date. The road was completed by 17th February, 1977, and so was within that period.

After receipt of the development approval the following work was carried out:

The road was surveyed and constructed.

Drainage and diversion of stormwater from the main road was carried out on the site at the company's expense.

Amended plans were prepared.

A liquor license was applied for and obtained from the Licensing Court for the hotel/motel.

It was claimed that all this action was taken as a result of the council's approval of the development application. Apart from the price of the land, the company had expended about $70,000 on the project.

On 10th August, 1976, the company submitted an amended site plan to move the hotel building site further away from the adjacent residential zone. The council on 26th November, 1976, advised that the application had been approved, with no additional conditions. This date of approval was after the varying scheme had been prescribed, and whilst the road was under construction. The council had no complaint or objection to the project at that time.

On the 18th February, 1977, Interim Development Order No. 58, Shire of Wyong, was gazetted, and the site was zoned part rural 1 (c), and a hotel/motel was prohibited. However, clause 54 of the I.D.C. stated that a consent granted under a planning scheme which was in force at the appointed day was valid if the development had been commenced within a period of 12 months from that date.

The company wished to submit a building application but was advised by the council that the council could not approve a building application for the hotel/motel.

Following receipt of the complaint rather copious correspondence took place over a period of several months between my office and the council and the council's solicitors accompanied by perusal of voluminous files relating to this matter from its inception. Following a rather intensive investigation of the matter it appeared to me that, *inter alia*, the council's conduct may have been wrong in the following respects:

its refusal to allow the building proposal to proceed;

its contention that no development approval had been given in respect to a particular hotel/motel building;

its view that a building application could not now be approved by council;

discrimination against the complainant in comparison with its treatment of other developers in the area.

Following the submission of these matters to the council, the council agreed to apply to the Planning and Environment Commission for a variation to the Interim Development Order to allow the development to proceed.

The P.E.C. was fully acquainted with all the details of the matter by both the council and my office and expressed the view "that there is no impediment by way of town planning requirements to the council determining any relevant building application".

Following receipt of this opinion, council at its meeting of 11th April, 1979, resolved that in the light of legal advice "Council is now prepared to grant approval to an acceptable building application for the construction of a hotel/motel on this site, in accordance with the development consent previously issued."

As this appeared to rectify the matter, I resolved not to take the issue any further and concluded a long and rather complex investigation.

STATISTICAL SUMMARY OF COMPLAINTS

FOR THE PERIOD ENDING 30TH JUNE, 1979

Explanatory Notes to Statistics

No Jurisdiction—

Not Public Authority under the Ombudsman Act.

Conduct of class described in Schedule to Ombudsman Act—i.e., excluded by Schedule, e.g., courts, employer/employee, Parole Board, etc.

Conduct or complaint out of time—i.e., in respect of public authorities other than local government authorities the conduct took place before 18th October, 1974; and in respect of local government authorities—took place before 1st December, 1976.

Declined—

General discretion, e.g., complaint premature or concurrent representations made to the public authority.

Insufficient interest, trading or commercial function, alternate and satisfactory means of redress, complaint trivial, frivolous, vexatious or not in good faith.

Local Government Authority—right of appeal or review and no special circumstances.

Withdrawn—

Complaint withdrawn by complainant either prior to or during investigation.

Not Sustained—

Complaint found not to be sustained, either after preliminary enquiries or following investigation.

Sustained—

Enquiries discounted after full or partial rectification.

Sustained as result of investigation.

Complaint sufficiently rectified but no recommendation made.

Discontinued by Ombudsman—

These often involve those in a grey area where the investigation of the complaint is discontinued following some action by the authority although it is not clear whether or not there has been any wrong conduct by the public authority.

Public Authority	No Jurisdiction			Declined			Withdr wn	Not Sustained	Sustained			Discontinued	Under Investigation as at 30th June, 1979	Total
	Sec. 12	Sec. 12 1 (a)	Sec. 12 1 (b) (c) (d)	Sec. 13 (4) (a)	Sec. 13 (4) (b)	Sec. 13 (5)			1	2	3			
	Not Public Authority	Conduct is of a class described in Schedule	Conduct or complaint out of time	General Discretion	Insufficient interest, trading commercial function, alternate means of redress, etc.	Local Government Authority where right of appeal or review			Discontinued after full or partial rectification	Complaint Sustained	Sufficiently rectified—No recommendation made			
	1	2	3	4	5	6	7	8	9	10	11	12	13	14
Agriculture Department	..	..	..	1	..	..	1	1	..	..	..	..	3	6
Albury-Wodonga Development Corporation	..	..	..	..	..	..	..	..	..	..	..	..	2	2
Architects—New South Wales Board of	..	..	..	..	..	..	..	1	..	..	..	..	1	2
Attorney General and Justice—Department of	..	6	..	4	..	..	1	11	..	..	..	2	3	27
Australian Gas Light Company	..	..	..	1	..	..	..	5	1	..	..	1	2	10
Australian Music Examination Board	..	..	..	1	..	..	..	..	..	..	..	1	5	7
Banana Marketing Control Committee	..	..	..	..	..	..	..	..	..	..	1	..	..	1
Bankstown District Hospital	..	..	..	..	..	..	..	1	..	..	..	..	..	1
Bathurst/Orange Development Corporation	..	..	..	..	..	..	..	1	..	..	..	..	..	1
Blacktown Technical College	..	..	..	..	..	..	..	..	..	..	..	..	2	2
Bloomfield Hospital	..	..	1	..	..	..	..	..	..	..	..	..	..	1
Builders' Licensing Board	..	1	..	2	1	..	..	22	5	..	2	3	12	48
Bungunyah Irrigation Trust	..	..	..	..	..	..	..	..	..	..	..	..	1	1
Business Franchise Licences Branch (Petroleum)	..	..	..	..	..	..	..	1	..	..	..	..	1	2
Cessnock Technical College	..	..	..	..	..	..	..	1	..	..	..	..	..	1
Clerk of the Peace	..	..	..	..	..	..	..	..	..	..	..	1	..	1
Conservatorium of Music	..	..	..	..	..	..	..	..	1	..	..	..	..	1
Consumer Affairs Department	..	..	..	..	..	..	1	7	3	..	..	..	5	16
Consumer Claims Tribunal	..	..	..	7	..	..	4	9	2	..	..	15	4	41
Corporate Affairs Commission	..	..	..	..	..	..	1	9	4	1	..	4	5	24
Corrective Services—Minister for	..	1	..	..	..	..	..	..	..	..	..	..	..	1
Corrective Services	..	5	..	98	11	..	27	221	31	7	5	30	158	593
Counsellor for Equal Opportunity	..	..	..	..	..	..	..	2	..	..	..	..	1	3
Courts	..	32	..	..	..	..	..	..	..	..	..	..	..	32
Crown Solicitor	..	..	..	..	..	..	1	..	..	..	..	..	..	1
Cumberland College of Health Studies	..	..	..	..	..	..	..	1	..	..	..	..	..	1

Public Authority	No Jurisdiction			Declined			Withdrawn	Not Sustained	Sustained			Discontinued	Under Investigation as at 30th June, 1979	Total
	Sec. 12	Sec. 12 1 (a)	Sec. 12 1 (b) (c) (d)	Sec. 13 (4) (a)	Sec. 13 (4) (b)	Sec. 13 (5)			1	2	3			
	Not Public Authority	Conduct is of a class described in Schedule	Conduct or complaint out of time	General Discretion	Insufficient interest, trading commercial function, alternate means of redress, etc.	Local Government Authority where right of appeal or review			Discontinued after full or partial rectification	Complaint Sustained	Sufficiently rectified —No recommendation made			
	1	2	3	4	5	6	7	8	9	10	11	12	13	14
Dairy Industry Authority	..	..	..	..	..	..	..	..	..	..	..	1	..	1
Dental Board of New South Wales	..	..	..	1	..	..	..	..	1	..	..	..	..	2
Dubbo Base Hospital	..	..	..	..	..	..	..	..	..	..	..	..	1	1
Education Department	..	9	1	7	..	..	2	30	8	..	..	3	20	80
Egg Marketing Board	..	..	..	..	..	..	..	1	..	..	..	..	..	1
Electricity Commission	..	2	..	2	..	..	..	6	2	1	..	3	1	17
Fire Commissioners—Board of	..	..	..	..	..	..	..	2	..	..	..	..	1	3
Fisheries—Department of	..	..	1	1	..	..	..	6	1	..	..	..	2	11
Forestry Commission of New South Wales	..	..	..	1	..	..	..	3	1	..	..	..	2	7
Geographical Names Board	..	..	..	..	..	..	..	..	..	..	..	..	1	1
Goulburn Base Hospital	..	..	..	..	..	..	..	..	..	..	..	..	1	1
Government Insurance Office	..	..	1	3	11	..	1	37	6	..	..	5	10	74
Government Printing Office	..	..	..	..	..	..	..	1	..	..	..	..	1	2
Government Stores Department	..	1	..	..	..	..	..	1	..	..	..	1	..	3
Grain Elevators Board	..	..	..	..	..	..	..	1	1	..	..	..	..	2
Grain Sorghum Marketing Board of N.S.W.	..	..	..	..	..	..	..	..	..	..	..	1	..	1
Greyhound Racing Control Board	..	..	..	..	..	..	..	1	..	..	..	..	3	4
Health Commission	..	..	..	..	..	..	1	22	3	..	..	4	21	51
Housing Commission	..	..	..	7	1	..	1	51	1	1	..	..	9	71
Hunter District Water Board	..	..	..	1	..	..	..	6	1	..	..	4	6	18
Industrial Relations and Technology—Department of	..	1	..	3	..	..	..	16	2	..	..	..	4	26
Joint Examinations Board	..	1	..	..	..	..	..	..	..	..	..	..	..	1

P 74031—7

Public Authority	No Jurisdiction			Declined			Withdrawn	Not Sustained	Sustained			Discontinued	Under Investigation as at 30th June, 1979	Total
	Sec. 12	Sec. 12 1 (a)	Sec. 12 1 (b) (c) (d)	Sec. 13 (4) (a)	Sec. 13 (4) (b)	Sec. 13 (5)			1	2	3			
	Not Public Authority	Conduct is of a class described in Schedule	Conduct or complaint out of time	General Discretion	Insufficient interest, trading commercial function, alternate means of redress, etc.	Local Government Authority where right of appeal or review			Discontinued after full or partial rectification	Complaint Sustained	Sufficiently rectified—No recommendation made			
	1	2	3	4	5	6	7	8	9	10	11	12	13	14
Kempsey District Hospital	..	..	..	1	..	..	..	..	1	..	..	..	..	2
Land Commission	..	..	..	..	..	..	..	1	..	..	..	..	..	1
Land Board—Coleambally	..	1	..	..	..	..	..	..	..	..	..	..	..	1
Land Tax Office	..	..	..	..	..	..	..	7	1	..	..	3	1	12
Lands—Department of	..	2	1	2	..	..	..	20	..	..	..	4	10	39
Legal Aid Commissioner	..	..	..	..	..	..	..	1	..	..	..	1	..	2
Lidcombe Hospital	..	..	..	..	..	..	..	1	..	..	..	..	..	1
Liverpool District Hospital	..	..	..	..	..	..	..	..	1	..	..	..	..	1
Local Government Appeals Tribunal	..	1	..	..	..	..	..	..	..	..	..	..	..	1
Local Government Authorities	..	4	9	85	6	17	28	591	53	7	7	102	329	1 238
Local Government Boundaries Commission	..	..	..	1	..	..	..	..	..	..	..	..	9	10
Local Government—Department of	..	..	..	..	..	..	..	1	..	..	..	..	1	2
Local Government—Minister for	..	1	..	..	..	..	..	..	..	..	..	..	..	1
Local Government Superannuation Board	..	..	..	..	..	..	3	7	1	..	..	1	1	13
Local Land Board (Metropolitan)	..	..	..	..	..	..	..	..	..	..	..	1	..	1
Main Roads—Department of	..	1	..	3	..	..	2	20	9	..	..	9	7	51
Maritime Services Board	..	..	..	4	..	..	..	11	2	..	..	3	4	24
Mater Hospital	..	..	..	1	..	..	..	..	..	..	..	..	..	1
Medical Board	..	..	..	..	..	..	..	..	1	..	..	..	..	1
Metropolitan Waste Disposal Authority	..	1	..	..	..	..	..	..	..	..	..	1	..	2
Metropolitan Water Sewerage and Drainage Board	..	..	1	16	..	..	5	85	44	3	5	14	62	235
Mines Subsidence Board	..	..	..	..	..	..	..	2	..	..	..	..	..	2
Mineral Resources and Development—Department of	..	1	1	..	..	..	..	2	..	1	1	..	3	9
Motor Transport—Department of	..	..	1	3	3	..	3	32	6	..	..	6	8	62
Music Examinations Advisory Board	..	..	..	..	..	..	..	..	..	..	..	..	1	1

Public Authority	No Jurisdiction			Declined			Withdrawn	Not Sustained	Sustained			Discontinued	Under Investigation as at 30th June, 1979	Total
	Sec. 12	Sec. 12 1 (a)	Sec. 12 1 (b) (c) (d)	Sec. 13 (4) (a)	Sec. 13 (4) (b)	Sec. 13 (5)			1	2	3			
	Not Public Authority	Conduct is of a class described in Schedule	Conduct or complaint out of time	General Discretion	Insufficient interest, trading commercial function, alternate means of redress, etc.	Local Government Authority where right of appeal or review			Discontinued after full or partial rectification	Complaint Sustained	Sufficiently rectified —No recommendation made			
	1	2	3	4	5	6	7	8	9	10	11	12	13	14
National Park Trust—Warrumbungle	..	..	..	..	..	..	..	1	..	..	..	..	..	1
National Parks and Wildlife Service	..	..	..	..	1	..	..	13	5	..	..	2	17	38
Newcastle College of Advanced Education	..	..	..	..	..	..	..	1	..	..	..	..	..	1
Newrybar Drainage Union	..	..	..	..	..	..	..	1	..	..	..	..	..	1
New South Wales Government Travel Centre	..	..	..	..	..	..	..	..	..	..	..	..	1	1
New South Wales Higher Education Board	..	..	..	2	..	..	..	..	..	..	..	..	..	2
New South Wales Nurses Registration Board	..	..	..	..	..	..	..	2	..	..	..	..	2	4
New South Wales Retirement Board	..	..	..	..	..	..	..	8	..	..	..	..	1	9
North Oxley Island Drainage Board	..	..	..	..	..	..	..	..	..	..	..	1	..	1
North Ryde Psychiatric Hospital	..	..	..	..	..	..	..	..	..	..	..	..	1	1
North Shore Gas Company Ltd.	..	..	..	..	..	..	..	5	1	..	..	..	..	6
Northern Suburbs General Cemetery	..	..	..	..	..	..	..	1	..	..	..	..	..	1
Parole Board	..	21	..	..	..	..	..	..	..	..	..	..	..	21
Parramatta District Hospital	..	..	..	1	..	..	..	..	..	..	..	..	..	1
Pastures Protection Board—Carcoar	..	..	..	..	..	..	..	1	..	..	..	..	..	1
Pastures Protection Board—Casino	..	..	..	..	..	..	..	..	..	..	..	..	1	1
Pastures Protection Board—Grafton	..	..	..	..	..	..	..	2	..	..	..	..	..	2
Pastures Protection Board—Moss Vale	..	..	..	..	..	..	..	1	..	..	..	..	..	1
Pastures Protection Board—Narrabri	..	..	..	..	..	..	..	1	..	..	..	..	..	1
Pastures Protection Board—Tamworth	..	..	..	..	..	..	..	1	..	..	..	..	..	1
Planning and Environment Commission	..	1	..	2	..	..	4	20	3	2	1	2	16	51
Plumbers, Gasfitters and Drainers Examining Board	..	..	..	..	..	..	..	..	..	..	..	..	1	1
Police Department	..	58	1	9	1	..	5	30	6	..	3	5	25	143
Premier of New South Wales	..	1	..	..	..	..	..	..	..	..	..	..	..	1
Premier's Department	..	1	..	1	..	..	..	1	..	..	..	2	..	5
Prince Henry Hospital	..	..	..	..	..	..	..	1	..	..	..	..	1	2
Prince of Wales Hospital—Randwick	..	..	..	1	..	..	..	2	..	..	..	..	..	3

Public Authority	No Jurisdiction			Declined			Withdrawn	Not Sustained	Sustained			Discontinued	Under Investigation as at 30th June, 1979	Total
	Sec. 12	Sec. 12 1 (a)	Sec. 12 1 (b) (c) (d)	Sec. 13 (4) (a)	Sec. 13 (4) (b)	Sec. 13 (5)			1	2	3			
	Not Public Authority	Conduct is of a class described in Schedule	Conduct or complaint out of time	General Discretion	Insufficient interest, trading commercial function, alternate means of redress, etc.	Local Government Authority where right of appeal or review			Discontinued after full or partial rectification	Complaint Sustained	Sufficiently rectified —No recommendation made			
	1	2	3	4	5	6	7	8	9	10	11	12	13	14
Prison Medical Service	..	..	..	1	..	..	2	20	3	..	..	1	9	36
Protective Commissioner	..	..	..	1	..	..	1	8	1	..	..	..	3	14
Public Service Board	..	3	..	..	..	..	..	3	1	..	..	..	..	7
Public Solicitor	..	..	..	2	..	..	..	4	..	..	..	2	2	10
Public Transport Commission	..	1	..	6	..	..	1	31	11	..	..	6	22	78
Public Trustee	..	1	..	3	1	..	1	24	1	1	..	1	3	36
Public Works—Department of	..	2	..	1	..	..	1	6	3	..	..	2	4	19
Randwick Chest Hospital	..	1	..	..	..	..	..	1	..	..	..	..	..	2
Real Estate Valuers' Registration Board	..	..	..	..	1	..	1	..	..	..	..	..	..	2
Registrar General's Department	..	..	..	1	..	..	2	9	1	..	..	..	1	14
Registry of Births, Deaths and Marriages	..	..	..	1	..	..	..	5	..	..	..	3	..	9
Registry of Co-operative Societies	..	..	..	1	..	..	..	1	..	..	..	1	..	3
Rental Bond Board	..	..	..	..	..	..	1	3	1	..	..	1	1	7
Riverina College of Advanced Education	..	1	..	..	..	..	..	..	..	..	..	..	..	1
River Murray Commission	..	..	..	..	..	..	..	..	..	..	..	1	..	1
Royal Alexandra Hospital for Children	..	1	..	..	..	..	..	..	..	..	..	..	..	1
Royal North Shore Hospital	..	..	..	1	..	..	..	..	..	..	..	..	1	2
Royal Prince Alfred Hospital	..	..	..	..	..	..	1	..	..	..	..	..	1	2
Rozelle Hospital	..	..	..	..	..	..	..	..	..	..	..	1	..	1
Rural Assistance Board	..	..	..	..	..	..	..	4	..	..	..	..	1	5
Rural Bank	..	..	1	..	..	..	..	..	1	..	..	..	..	2
Secondary Studies—Board of	..	..	..	..	..	..	..	1	..	..	..	..	..	1
Senior School Studies—Board of	..	..	..	1	..	..	..	..	1	..	..	3	2	7
Services—Department of	..	..	..	..	..	..	..	2	..	..	..	1	1	4
Services—Minister for	..	1	..	..	..	..	..	..	..	..	..	..	..	1

Public Authority	No Jurisdiction			Declined			Withdrawn	Not Sustained	Sustained			Discontinued	Under Investigation as at 30th June, 1979	Total
	Sec. 12	Sec. 12 1 (a)	Sec. 12 1 (b) (c) (d)	Sec. 13 (4) (a)	Sec. 13 (4) (b)	Sec. 13 (5)			1	2	3			
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	1	2	3	4	5	6	7	8	9	10	11	12	13	14
Seven Oaks Drainage Union	..	..	..	..	..	..	..	..	..	..	..	..	2	2
Sheriff's Office	..	2	..	..	..	..	..	..	..	..	..	..	..	2
Soil Conservation Service	..	..	..	..	..	..	..	2	..	..	..	1	..	3
Solicitors' Admission Board	..	1	..	..	..	..	..	..	..	..	..	..	..	1
Sport and Recreation	..	..	..	1	..	..	..	..	3	..	..	..	1	5
Stamp Duties Office	..	..	..	3	..	..	6	13	1	..	..	..	4	27
State Electoral Office	..	..	..	1	..	..	..	1	..	..	1	..	..	3
State Library	..	..	..	..	..	..	..	1	..	..	..	..	..	1
State Lotteries Office	..	..	..	..	..	..	..	2	..	..	..	..	..	2
State Pollution Control Commission	..	..	..	1	..	..	..	7	3	..	1	1	11	24
State Superannuation Board	..	..	..	1	1	..	1	9	2	..	..	3	10	27
Strata Titles Board	..	1	..	2	..	..	..	4	3	..	..	4	1	15
Sydney Cricket and Sports Ground Trust	..	..	..	..	..	..	..	..	..	..	..	..	1	1
Sydney Hospital	..	..	..	..	..	..	..	4	..	..	..	..	..	4
Sydney Opera House	..	..	..	..	..	..	..	..	..	..	..	1	..	1
Taronga Park Zoological Trust	..	1	..	..	..	..	..	..	..	..	..	..	..	1
Technical and Further Education	..	3	..	..	..	..	..	3	..	..	..	1	2	9
Totalizator Agency Board	..	..	..	1	..	..	..	2	..	..	..	3	1	7
Traffic Authority of New South Wales	..	..	..	..	..	..	..	1	..	..	..	..	..	1
Treasury	..	..	..	..	..	..	..	1	1	..	..	..	..	2
Travel Agents' Registration Board	..	..	..	..	..	..	..	1	1	..	..	..	..	2
United Dental Hospital	..	..	..	..	..	..	..	4	..	..	..	..	..	4
University of New South Wales	..	..	..	..	..	..	..	1	..	..	..	..	2	3
University of Sydney	..	..	..	..	..	..	..	..	..	..	..	1	5	6

Public Authority	No Jurisdiction			Declined			Withdrawn	Not Sustained	Sustained			Discontinued	Under Investigation as at 30th June, 1979	Total
	Sec. 12	Sec. 12 1 (a)	Sec. 12 1 (b) (c) (d)	Sec. 13 (4) (a)	Sec. 13 (4) (b)	Sec. 13 (5)			1	2	3			
	Not Public Authority	Conduct is of a class described in Schedule	Conduct or complaint out of time	General Discretion	Insufficient interest, trading commercial function, alternate means of redress, etc.	Local Government Authority where right of appeal or review			Discontinued after full or partial rectification	Complaint Sustained	Sufficiently rectified—No recommendation made			
	1	2	3	4	5	6	7	8	9	10	11	12	13	14
Valuation Board of Review	..	..	..	..	..	..	..	1	..	..	..	..	..	1
Valuer General	..	..	..	2	5	..	..	6	..	..	..	2	3	18
Veterinary Surgeons' Board	..	..	..	..	..	..	..	1	..	..	..	..	..	1
Wallsend District Hospital	..	..	..	1	..	..	..	..	..	..	..	..	..	1
Water Resources Commission	..	..	..	3	..	..	..	9	..	..	..	1	1	14
Westmead Hospital	..	..	..	..	..	..	..	..	..	..	..	..	1	1
Workers' Compensation Commission	..	2	..	..	..	..	..	1	..	..	..	..	..	3
Youth and Community Services—Department of	..	3	..	1	2	..	..	25	2	..	..	1	5	39
Youth and Community Services—Minister for	..	1	..	..	..	..	..	..	..	..	..	..	..	1
Total	..	178	19	308	45	17	109	1 571	248	24	27	278	891	3 715
Unscheduled Bodies (Outside jurisdiction)—														
Australian Government Departments	90	..	..	..	..	..	..	..	..	..	..	..	..	90
Private Organizations and Individuals	136	..	..	..	..	..	..	..	..	..	..	..	..	136
Others	13	..	..	..	..	..	..	..	..	..	..	..	..	13
Total from all sources	239	178	19	308	45	17	109	1 571	248	24	27	278	891	3 954

Public Authority (Councils)	No Jurisdiction			Declined			Withdrawn	Not Sustained	Sustained			Discontinued	Under Investigation as at 30th June, 1979	Total
	Sec. 12	Sec. 12 1 (a)	Sec. 12 1 (b) (c) (d)	Sec. 13 (4) (a)	Sec. 13 (4) (b)	Sec. 13 (5)			1	2	3			
	Not Public Authority	Conduct is of a class described in Schedule	Conduct or complaint out of time	General Discretion	Insufficient interest, trading commercial function, alternate means of redress, etc.	Local Government Authority where right of appeal or review			Discontinued after full or partial rectification	Complaint Sustained	Sufficiently rectified —No recommendation made			
	1	2	3	4	5	6	7	8	9	10	11	12	13	14
Albury City	..	..	..	1	..	..	..	2	..	..	..	..	1	4
Armidale City	..	..	..	..	..	..	..	1	..	..	..	3	1	5
Ashfield Municipal	..	..	..	..	..	..	..	7	..	..	..	..	1	8
Ashford Shire	..	..	..	..	..	..	..	1	..	..	..	1	..	2
Auburn Municipal	..	..	..	1	..	..	..	3	..	..	..	..	2	6
Ballina Shire	..	..	..	..	..	..	..	2	..	..	..	..	2	4
Bankstown Municipal	..	..	..	1	..	..	1	10	1	..	..	3	12	28
Barraba Shire	..	..	..	1	..	..	..	..	..	..	..	..	1	2
Bathurst City	..	..	..	1	1	..	..	..	..	..	..	..	3	5
Baulkham Hills Shire	..	..	..	4	..	1	..	2	1	..	..	1	2	11
Bega Municipal	..	..	..	..	..	..	..	1	..	..	..	..	..	1
Bega Valley County	..	1	..	..	..	..	..	..	..	..	..	..	..	1
Bellingen Shire	..	..	..	2	..	..	..	2	1	..	..	..	3	8
Berrima County	..	..	..	..	..	..	..	1	..	..	..	..	..	1
Blacktown City	..	..	..	4	1	..	..	10	1	..	..	5	2	23
Bland Shire	..	..	..	..	..	..	..	..	..	..	..	1	..	1
Blayney Shire	..	..	..	..	..	..	..	7	..	..	..	..	..	7
Blue Mountains City	..	1	1	3	..	..	4	30	2	..	..	7	11	59
Bogan Shire	..	..	..	..	..	..	..	..	..	..	..	..	2	2
Botany Municipal	..	..	..	2	..	..	..	4	1	..	..	..	1	8
Bowral Municipal	..	..	..	..	..	..	..	2	..	..	..	..	1	3
Brisbane Water County	..	..	..	..	..	..	..	2	..	..	..	..	..	2
Burwood Municipal	..	..	..	..	..	..	..	1	..	..	..	..	1	2
Byron Shire	..	..	..	2	..	..	..	2	1	..	..	..	4	9
Camden Municipal	..	..	..	..	..	..	..	4	..	..	..	..	..	4
Campbelltown City	..	..	..	..	..	..	..	3	..	..	..	1	..	4

Public Authority (Councils)	No Jurisdiction			Declined			Withdrawn	Not Sustained	Sustained			Discontinued	Under Investigation as at 30th June, 1979	Total
	Sec. 12	Sec. 12 1 (a)	Sec. 12 1 (b) (c) (d)	Sec. 13 (4) (a)	Sec. 13 (4) (b)	Sec. 13 (5)			1	2	3			
	Not Public Authority	Conduct is of a class described in Schedule	Conduct or complaint out of time	General Discretion	Insufficient interest, trading commercial function, alternate means of redress, etc.	Local Government Authority where right of appeal or review			Discontinued after full or partial rectification	Complaint Sustained	Sufficiently rectified—No recommendation made			
	1	2	3	4	5	6	7	8	9	10	11	12	13	14
Canterbury Municipal				1				7	1			1	1	11
Carrathool Shire								1					1	2
Casino Municipal								6				1	1	8
Central Tablelands County								1						1
Central West County								2						2
Coffs Harbour Shire								5				1	2	8
Colo Shire								6				1	2	9
Concord Municipal								2				1	1	4
Coonabarabran Shire													1	1
Coonamble Shire			1											1
Cootamundra Shire			1											1
Corowa Shire													1	1
Cowra Municipal								1					2	3
Crookwell Shire								2						2
Deniliquin Municipal									1					1
Drummoyne Municipal								1				1	1	3
Dubbo City								1						1
Eurobodalla Shire								1				1	4	6
Evans Shire								1						1
Fairfield Municipal				1				8	1			2	1	13
Forbes Municipal									1					1
Glen Innes Municipal								1					2	3
Gloucester Shire													1	1

Public Authority (Councils)	No Jurisdiction			Declined			Withdrawn	Not Sustained	Sustained			Discontinued	Under Investigation as at 30th June, 1979	Total
	Sec. 12	Sec. 12 1 (a)	Sec. 12 1 (b) (c) (d)	Sec. 13 (4) (a)	Sec. 13 (4) (b)	Sec. 13 (5)			1	2	3			
	Not Public Authority	Conduct is of a class described in Schedule	Conduct or complaint *out of time*	General Discretion	Insufficient interest, trading commercial function, alternate means of redress, *etc.*	Local Government Authority where right of appeal or *review*			Discontinued after full or partial rectification	Complaint Sustained	Sufficiently rectified —No recommendation made			
	1	2	3	4	5	6	7	8	9	10	11	12	13	14
Goobang Shire	..	..	..	1	..	..	..	1	..	..	..	..	..	2
Gosford Shire	..	..	..	..	1	1	..	20	1	..	..	5	14	42
Goulburn City	..	..	..	..	..	..	..	3	..	..	..	..	..	3
Grafton City	..	..	..	..	..	..	..	..	..	..	..	..	1	1
Great Lakes Shire	..	..	..	..	..	1	..	4	1	..	..	..	..	6
Greater Cessnock City	..	..	..	..	..	1	..	4	..	..	..	..	4	9
Gundagai Shire	..	..	..	..	..	..	..	1	..	..	..	..	..	1
Gunnedah Municipal	..	..	..	..	..	..	..	..	..	..	..	..	1	1
Harden Shire	..	..	..	..	..	..	..	1	..	..	..	..	..	1
Hastings Shire	..	..	..	..	..	..	..	2	..	..	..	..	1	3
Holroyd Municipal	..	..	..	..	..	..	..	5	1	..	..	..	1	7
Hornsby Shire	..	..	..	1	..	..	1	5	3	..	..	4	3	17
Hume Shire	..	..	..	..	..	..	..	..	..	..	..	..	1	1
Hunters Hill Municipal	..	..	..	..	..	..	..	4	..	..	..	..	2	6
Hunter Valley County	..	..	..	..	..	..	..	..	..	..	..	..	1	1
Hurstville Municipal	..	..	..	..	..	..	..	5	..	..	..	3	4	12
Illawarra County	..	..	..	..	..	..	..	..	..	..	..	..	1	1
Imlay Shire	..	..	..	..	1	..	..	4	..	..	..	..	3	8
Inverell Municipal	..	..	..	..	..	..	..	2	..	..	..	..	1	3
Junee Municipal	..	..	..	..	..	..	..	2	..	..	..	..	..	2
Kempsey Shire	..	..	..	4	..	..	..	7	..	..	..	..	4	15
Kiama Municipal	..	..	..	..	..	..	..	6	..	..	..	..	2	8
Kogarah Municipal	..	..	..	..	..	1	..	2	..	..	..	1	6	10
Ku-ring-gai Municipal	..	..	..	1	..	..	..	14	1	..	..	2	8	26

Public Authority (Councils)	No Jurisdiction			Declined			Withdrawn	Not Sustained	Sustained			Discontinued	Under Investigation as at 30th June, 1979	Total
	Sec. 12	Sec. 12 1 (a)	Sec. 12 1 (b) (c) (d)	Sec. 13 (4) (a)	Sec. 13 (4) (b)	Sec. 13 (5)			1	2	3			
	Not Public Authority	Conduct is of a class described in Schedule	Conduct or complaint out of time	General Discretion	Insufficient interest, trading commercial function, alternate means of redress, etc.	Local Government Authority where right of appeal or review			Discontinued after full or partial rectification	Complaint Sustained	Sufficiently rectified—No recommendation made			
	1	2	3	4	5	6	7	8	9	10	11	12	13	14
Kyeamba Shire	..	..	..	..	..	..	..	1	..	..	..	..	..	1
Kyogle Shire	..	..	..	..	..	..	..	1	..	..	..	..	2	3
Lachlan Shire	..	..	..	..	..	..	..	1	..	..	..	..	..	1
Lake Macquarie Municipal	..	..	1	1	..	1	..	7	2	1	..	1	10	24
Lane Cove Municipal	..	..	..	..	..	..	1	7	..	..	..	2	..	10
Leichhardt Municipal	..	..	..	..	..	1	..	9	5	..	..	4	5	24
Lismore City	..	..	..	1	..	..	2	1	..	..	..	..	2	6
Lithgow City	..	..	..	..	..	..	..	1	1	..	..	..	1	3
Liverpool City	..	..	..	1	..	..	..	5	1	..	..	..	7	14
Liverpool Plains Shire	..	..	..	..	..	..	..	1	..	..	..	..	1	2
Lockhart Shire	..	..	..	..	..	..	..	1	..	..	..	..	..	1
Macintyre Shire	..	..	..	..	..	..	..	1	..	..	..	..	..	1
Mackellar County	..	1	..	1	..	..	..	6	1	..	1	..	..	10
Maclean Shire	..	..	..	..	..	..	..	..	..	..	..	..	2	2
Manly Municipal	..	..	..	1	..	1	..	6	..	..	..	..	3	11
Manning River County	..	..	..	..	..	..	..	1	..	..	..	..	..	1
Manning Shire	..	..	..	1	..	..	..	1	..	..	..	..	1	3
Marrickville Municipal	..	..	..	1	..	..	1	7	..	..	1	2	6	18
Merriwa Shire	..	..	..	..	..	..	..	1	..	..	..	2	1	4
Mittagong Shire	..	..	..	..	..	..	..	3	..	..	1	3	1	8
Monaro County	..	..	..	..	..	..	..	1	..	..	..	..	..	1
Mosman Municipal	..	..	..	3	..	..	1	7	..	..	..	2	5	18
Mudgee Shire	..	..	..	1	..	..	..	4	..	..	..	..	4	9
Mullumbimby Municipal	..	..	..	1	..	..	..	1	..	..	..	..	..	2
Mulwaree Shire	..	..	..	..	..	..	..	..	..	..	..	..	1	1
Mumbulla Shire	..	..	..	..	..	..	..	..	..	..	..	1	2	3

Public Authority (Councils)	No Jurisdiction			Declined			Withdrawn	Not Sustained	Sustained			Discontinued	Under Investigation as at 30th June, 1979	Total
	Sec. 12	Sec. 12 1 (a)	Sec. 12 1 (b) (c) (d)	Sec. 13 (4) (a)	Sec. 13 (4) (b)	Sec. 13 (5)			1	2	3			
	Not Public Authority	Conduct is of a class described in Schedule	Conduct or complaint out of time	General Discretion	Insufficient interest, trading commercial function, alternate means of redress, etc.	Local Government Authority where right of appeal or review			Discontinued after full or partial rectification	Complaint Sustained	Sufficiently rectified —No recommendation made			
	1	2	3	4	5	6	7	8	9	10	11	12	13	14
Murray River County	..	..	..	..	..	..	..	1	..	..	..	..	..	1
Murrumbidgee Shire	..	..	..	1	..	..	..	1	..	..	..	..	2	4
Muswellbrook Municipal	..	..	..	..	..	..	..	1	..	..	..	..	..	1
Nambucca Shire	..	..	..	1	..	..	..	2	1	..	..	..	2	6
Namoi Valley County	..	..	..	..	..	..	..	..	..	..	..	..	1	1
Narrabri Municipal	..	..	..	..	..	1	..	2	..	..	..	..	2	5
Narromine Municipal	..	..	..	..	..	..	..	..	..	..	..	..	1	1
Nepean River County	..	..	..	..	..	..	..	2	1	..	..	..	..	3
Newcastle City	..	..	..	..	..	..	..	2	..	..	..	2	2	6
Northern Riverina County	..	..	..	..	..	..	..	1	..	..	..	..	..	1
North Sydney Municipal	..	..	..	..	..	..	..	8	5	1	..	..	10	24
North West County	..	..	..	..	..	..	..	..	..	..	..	..	1	1
Parkes Municipal	..	..	..	..	..	..	..	1	..	..	..	..	2	3
Parramatta City	..	..	..	3	..	..	..	13	2	..	..	..	3	21
Parry Shire	..	..	..	1	..	..	..	1	..	..	..	..	1	3
Peel-Cunningham County	..	..	..	1	..	..	..	1	..	..	..	..	..	2
Penrith City Council	..	..	..	2	..	..	1	9	1	..	..	..	5	18
Port Macquarie Municipal	..	..	..	1	..	2	..	7	..	..	..	2	1	13
Port Stephens Shire	..	..	..	1	..	..	..	4	..	1	..	..	..	6
Prospect County	..	..	..	..	..	..	2	8	1	..	..	..	1	12
Queanbeyan City	..	..	..	..	..	..	..	2	..	..	..	..	..	2
Randwick Municipal	..	..	..	1	..	..	2	12	1	..	1	4	4	25
Richmond River Shire	..	..	..	1	..	..	..	4	..	..	..	..	..	5
Rockdale Municipal	..	..	..	1	..	..	..	8	..	..	..	3	2	14

Public Authority (Councils)	No Jurisdiction			Declined			Withdrawn	Not Sustained	Sustained			Discontinued	Under Investigation as at 30th June, 1979	Total
	Sec. 12	Sec. 12 1 (a)	Sec. 12 1 (b) (c) (d)	Sec. 13 (4) (a)	Sec. 13 (4) (b)	Sec. 13 (5)			1	2	3			
	Not Public Authority	Conduct is of a class described in Schedule	Conduct or complaint out of time	General Discretion	Insufficient interest, trading commercial function, alternate means of redress, etc.	Local Government Authority where right of appeal or review			Discontinued after full or partial rectification	Complaint Sustained	Sufficiently rectified—No recommendation made			
	1	2	3	4	5	6	7	8	9	10	11	12	13	14
Ryde Municipal	..	..	..	2	..	1	2	16	..	..	1	5	..	27
Rylstone Shire	..	..	..	..	..	..	..	..	..	..	..	..	1	1
Scone Shire	..	..	..	..	..	..	..	..	1	..	..	..	..	1
Shellharbour Municipal	..	..	..	..	..	..	..	2	..	..	..	..	3	5
Shoalhaven City	..	..	..	5	1	..	..	11	..	..	..	..	1	18
Southern Mitchell County	..	..	..	..	..	..	..	..	..	..	..	..	1	1
Southern Riverina County	..	..	1	..	..	..	..	..	..	..	..	..	..	1
South Sydney Municipal	..	..	..	..	..	1	1	2	..	..	..	1	4	9
South West Slopes County	..	..	..	..	..	..	..	..	..	..	..	..	1	1
St George County	..	..	..	1	..	..	..	..	..	..	..	..	..	1
Strathfield Municipal	..	..	..	1	..	1	..	1	..	..	..	..	1	4
Sutherland Shire	..	..	1	1	..	..	1	25	1	1	..	4	16	50
Sydney City	..	..	..	2	..	..	..	6	1	..	..	..	6	15
Sydney County	..	..	..	2	..	..	3	27	3	..	1	1	2	39
Tallaganda Shire	..	..	..	..	..	..	..	..	1	..	..	..	..	1
Tamworth City	..	1	..	2	..	..	..	..	..	..	..	..	3	6
Taree Municipal	..	..	..	..	..	..	..	2	..	..	..	..	..	2
Tenterfield Shire	..	..	..	..	..	..	..	6	..	..	..	..	..	6
Tumbarumba Shire	..	..	..	..	..	..	..	..	..	..	..	..	2	2
Tumut River County	..	..	..	..	..	..	..	1	..	..	..	..	1	2
Tumut Shire	..	..	..	..	..	1	1	2	..	..	..	1	..	5
Tweed Shire	..	..	..	1	..	..	..	7	..	..	..	..	..	8
Ulmarra Shire	..	..	..	..	..	..	..	3	..	..	..	..	1	4
Uralla Shire	..	..	..	..	..	..	..	1	..	..	..	..	..	1

Public Authority (Councils)	No Jurisdiction			Declined			Withdrawn	Not Sustained	Sustained			Discontinued	Under Investigation as at 30th June, 1979	Total
	Sec. 12	Sec. 12 1 (a)	Sec. 12 1 (b) (c) (d)	Sec. 13 (4) (a)	Sec. 13 (4) (b)	Sec. 13 (5)			1	2	3			
	Not Public Authority	Conduct is of a class described in Schedule	Conduct or complaint out of time	General Discretion	Insufficient interest, trading commercial function, alternate means of redress, etc.	Local Government Authority where right of appeal or review			Discontinued after full or partial rectification	Complaint Sustained	Sufficiently rectified —No recommendation made			
	1	2	3	4	5	6	7	8	9	10	11	12	13	14
Wagga Wagga City	..	..	..	..	..	..	..	..	..	..	..	..	1	1
Wakool Shire	..	..	..	..	..	..	..	..	..	..	..	..	1	1
Walcha Shire	..	..	..	..	..	..	..	1	..	..	..	..	..	1
Warringah Shire	..	..	2	6	1	1	..	28	3	2	..	4	26	73
Waverley Municipal	..	..	..	..	..	..	..	15	1	..	..	2	3	21
Wellington Shire	..	..	..	..	..	..	..	2	..	..	..	..	1	3
Willoughby Municipal	..	..	1	..	..	..	3	9	1	..	..	2	10	26
Windsor Municipal	..	..	..	..	..	..	..	1	..	..	..	2	..	3
Wingecarribee Shire	..	..	..	..	..	..	1	..	..	..	..	..	3	4
Wollondilly Shire	..	..	..	..	..	..	..	2	..	..	..	3	3	8
Wollongong City	..	..	..	..	..	..	..	4	..	..	..	..	3	7
Woollahra Municipal	..	..	..	3	..	1	..	6	..	..	..	1	8	19
Wyong Shire	..	..	..	1	..	..	..	12	..	1	1	2	4	21
Yass Municipal	..	..	..	1	..	..	..	..	..	..	..	..	..	1
	..	4	9	85	6	17	28	591	53	7	7	102	329	1 238