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6 January 2009

Mr Vince Puccio
PO Box 69
YARLOOP WA 6218

Dear Mr Puccio

Complaint about the Department of Environment and Conservation (the Department)

Thank you for your letter of 5 August and attachments which were received in this office on 11 August 2008. I am pleased to inform you that our investigation of this matter has now concluded and the final report is attached. I apologise for the delay it has taken to reach this stage, which was due to the complexity of this major investigation. Thank you for your patience and assistance throughout the course of the investigation.

My final view is based on the material available to me in the course of the investigation and taking into consideration the department's and your subsequent comments. I have noted your concerns and these are addressed.

The complaint

You lodged a complaint on behalf of CAPS about:

1. the manner in which the Department investigates and responds to complaints about Alcoa;
2. the cessation of Dr John Ottoway's involvement in the prosecution case against Alcoa;
3. licensing issues; and
4. the Wagerup Tripartite Group.

Ombudsman's inquiries

After considering information received from the Department on the above matters, Ms Moro advised you that, for the reasons set out in her letter of 24 June 2008, the Ombudsman would not investigate the following allegations.

2. ***The cessation of Dr John Ottoway's involvement in the prosecution case against Alcoa; and***
4. ***Concerns about the operation of the Wagerup Tripartite Group.***

However, Ms Moro undertook to make further enquiries in relation to allegations 1 and 3 above.

1. ***The manner in which the Department investigates and responds to complaints about Alcoa is inadequate***

You raised concerns about the adequacy of the Department's investigation of, and response to, complaints about Alcoa. In doing so you identified 15 complaints as examples to support your claim. The complaints dated from February 2004 to July 2005.

As part of the investigation a review was conducted of the Department's complaint files, which focussed on the complaints you identified. The review highlighted apparent inconsistencies with the way in which the complaints were handled. They are that:

- the Department did not receive responses to all the questions it directed to Alcoa. Moreover, there was nothing on the files to indicate that the Department had pursued this deficiency;
- the lack of informative responses from Alcoa and the Department's failure to seek from Alcoa the relevant detail affected its ability to provide quality information to complainants;
- there were significant delays in the handling of complaints about Alcoa in relation to notification to Alcoa of complaints received, monitoring receipt of responses from Alcoa and provision of responses to complainants; and
- there did not appear to be any written records of the Department's evaluation of the information provided by Alcoa in relation to complaints. Furthermore, there were no written records of any discussion held by departmental staff on any aspects of the information provided by Alcoa.

The Department has acknowledged that the way in which its predecessor responded to Alcoa complaints during the period 2003 to 2005 was inadequate and systems have already been put into place to address the issues raised.

The final view is that your complaint that the manner in which the Department's predecessor investigated and responded to complaints about Alcoa was inadequate is sustained.

3. Licensing issues

Your complaint about licensing issues raised concerns that:

- (i) the Department is allowing Alcoa to “self-monitor”;
- (ii) self-monitoring results in ineffective monitoring of the most significant sources of odours and VOC emissions;
- (iii) the Department failed to advertise the proposed 2005 licence renewal; and
- (iv) all stakeholders should be given the opportunity to comment on draft licences.

For the reasons set out in Ms Moro’s letter of 24 June, she advised you that the Ombudsman would not investigate 3(i) and 3(ii) above and that 3(iv) of your complaint was not sustained.

However, Ms Moro made enquiries in relation to your concern that the Department failed to advertise the proposed 2005 licence renewal as required by the *Environmental Protection Act 1986*.

The Department’s advice is that while it is not required by legislation to advertise its intention to amend a licence it does so in the public interest and in practice advertises both licence applications and proposed amendments to a licence.

Due to an administrative error, the 2005/2006 licence was not advertised in the following Monday’s paper. However, the Department took reasonable corrective actions when it became aware of the error by placing an additional advertisement in the Wednesday edition as well as the following Monday’s edition of the newspaper.

The final view is that your complaint that the Department failed to advertise the proposed 2005 licence renewal is partially sustained.

The Department’s licence reassessment process

Following an examination of the Department’s new format for the reassessment of a licence, Ms Moro suggested to the Department that it should undertake an analysis of complaints received to identify any emerging or ongoing problems that might need to be addressed through licence conditions.

The Department has accepted this suggestion and will include a separate section for the analysis of complaints in its future reports in the reassessment of licences.

Concerns raised in your letter of 5 August 2008

In your response you state that *"although the investigation has supported some of our concerns, we would like to stipulate a few areas where we feel more attention should be given"*.

As I understand it:

- a. complainants are still receiving 'standard' responses to their complaints from Alcoa via the Department and these responses are, even now, taking approximately six months.
- b. you remain dissatisfied with the responses provided by the Department in relation to air quality complaints.

You say that the *Preliminary LIDAR Report (the Report)* has highlighted meteorological anomalies in the Wagerup region which affects the air quality. However, in regard to air quality complaints, the Department does not question the data and the responses provided by Alcoa with the Report in mind. To support your claim you have provided us with a number of air quality complaint reports received by Ms Cam Auxer.

- c. You believe more attention should be given to the question of the licensing of the cooling towers and slurry tanks and that these should be monitored and licensed.

I have carefully considered your concerns and advise that:

- a. In regard to the "standard" responses and the length of time it takes the Department to respond, it is hoped that these issues will be addressed through the Ombudsman's recommendations.

The Ombudsman's office has in recent times undergone a major restructure. As part of that restructure a new team, Administrative Improvements (AI), has been created to focus on a critical area of our work. That is to improve the quality of public administration.

As part of its focus the AI is intending to look at complaint processes across a wide range of government agencies and the Department will be added to the list of agencies for consideration.

b. & c. The concerns you raise are not matters of administration. You are asking this office to make a decision on matters that require technical knowledge and professional expertise. As mentioned in Ms Moro's letter of 24 June, the Ombudsman would not normally become involved in complaints of this nature. I can only suggest that you raise these issues during the licence appeals process.

Summary

The final conclusion of the investigation follows.

1. Allegation 1 - ***the manner in which the department investigates and responds to complaints about Alcoa is inadequate*** - is sustained. The Ombudsman's recommendation is that:
 - the department give consideration to incorporating time frames for notifying Alcoa of a complaint, monitoring receipt of its response and providing responses to complainants, and report back to the Ombudsman in six months on the results of its consideration; and
 - the department adopt improved record keeping practices by ensuring that all reasons for decisions and notes of material discussions are recorded and placed on the database and/or the appropriate complaints file, and report back to the Ombudsman in six months on progress in implementing this recommendation .
2. Allegation 3 - ***licensing issues: the department failed to advertise the proposed 2005 licence renewal*** - is partially sustained with a suggestion by the Ombudsman that the department consider developing a process that incorporates an analysis of complaints received when reassessing licences.

The department has committed to include a section for the analysis of complaints in reassessment of licence reports.

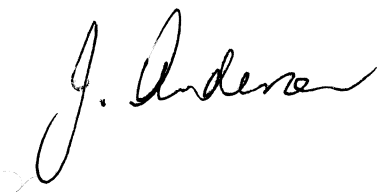
Pursuant to Section 25(3) of the *Parliamentary Commissioner Act 1971*, the Ombudsman has written to the Hon Donna Faragher, Minister for Environment to inform her about this matter.

Thank you for taking the time to raise your concerns, as your complaint highlighted shortcomings in the department's processes and was instrumental in bringing about changes. It is pleasing to note that during the course of this investigation the Department advised that it has improved, and will continue to improve, its administration of compliance monitoring, together with its record keeping and complaint management systems.

Your complaint has served a very useful purpose. Even if they cannot always be resolved to the satisfaction of all concerned, complaints are an important way in which an agency can be made aware of dissatisfaction of its actions and are an essential part of how the agency is held accountable for its decisions and actions. We will continue to monitor the implementation of the recommendations.

I wish you all the best for the future.

Yours sincerely

A handwritten signature in black ink, appearing to read "J. Anderson". The signature is written in a cursive style with a large, looped initial "J".

Judi Anderson
A/DIRECTOR
INVESTIGATIONS AND RESOLUTION