

*Submission by Dr Rudkin & Mr Dunkley
Qld Legal Constitutional and Administrative Review March 2006*

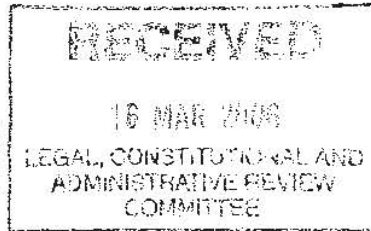
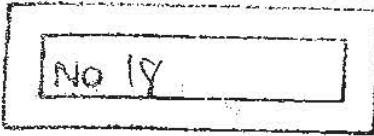
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13 March 2006



The Research Director
Legal, Constitutional and Administrative Review Committee
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Dear Sir or Madam

We make the following preliminary submission to the Legal, Constitutional and Administrative Committee concerning the Accessibility of Administrative Justice Discussion Paper, December 2005.

Our submission concerns:

1. the failure of the Environmental Protection Agency (EPA) to enforce environmental standards and license conditions on the abattoir Australia Meat Holdings at Dinmore according to law; and
2. the failure of the Queensland Ombudsman to appropriately investigate our complaint of maladministration by a Government body - the EPA.

Originally, our complaints to the EPA involved environmental nuisance caused by pollution of the Bremer River, excessive lighting, inadequate treatment and inappropriate dispersal of polluted water, odours, and excessive noise. This problem has directly impacted on the quality of life of nearby residents, and has involved us in a great deal of effort and expense to try to rectify the problem. Odours have severely impacted on the quality of life in the area, pollution has made the river unusable by residents along the river, excessive lighting at night has caused disturbed sleep, and noise keeps residents awake at night. These problems severely impact on the well-being of residents, including psychological and physical health.

In this submission, we will confine ourselves with the EPA's and the Ombudsman's response to our problems with noise because this can be accurately measured and reported, and there are detailed documents laying out the correct procedures for carrying out measurements and reporting results. We are able to show that the Environmental Protection Agency did not follow the required guidelines in

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monitoring AMH for noise, and the Ombudsman did not appropriately investigate our complaints about the EPA.

Briefly, the history of the problem is as follows:

- In June 1997, Residents at Karalee and Barellan Point unsuccessfully disputed the application for a license by AMH to the Ipswich City Council to upgrade an existing small abattoir to the largest abattoir in the Southern Hemisphere. Noise, odour, and excessive lighting subsequently became a problem and residents unsuccessfully negotiated with AMH to resolve the issues.
- In 1999, the residents formed an incorporated group to tackle the problem and in July 1999 we reported our concerns to the EPA. After many phone calls, letters, and meetings with representatives of the EPA, the EPA negotiated with AMH;
- In July 2001 EPA approved a new license that made the conditions more lenient; and a voluntary Environmental Management Plan (EMP), which aimed to bring AMH's operations into compliance with the new license. Representatives of the EPA assured residents that if the EMPs were unsuccessful in bringing AMH's operations into compliance, new EMPs would be negotiated. However, the EMP contained a clause that once operations were in compliance with the license, the rest of the EMPs need not be carried out.

Complaints to the EPA and Government bodies were dismissed and our concerns were not addressed.

As an example of the way our concerns have not been addressed, we repeatedly asked the direct question: now that the EPA has found AMH to be in apparent compliance, will they be required to carry out the rest of the EMPs? We have asked the EPA a number of times, and Rod Welford, the then minister for the environment, at a face to face meeting, and by letter. At the meeting he said that they would be required to comply to their legally binding commitments. We pointed out that this basically meant 'no'. In a letter he later sent, he repeated his answer to our question: 'Will AMH be required to carry out the rest of its EMPs not so far carried out' by writing:

'Yes. AMH will be required to complete the legally binding commitments under the EMP such that it delivers compliance with the conditions of its environmental authority (licence).'

Since we had provided evidence that the EPA was manipulating evidence to make it appear AMH was in compliance, and had explained that the commitments under the EMP allowed AMH not to continue with rest of the measures, this answer was clearly evasive.

So on 30 November 2001 Ian Dunkley registered a complaint with the State Ombudsman.

Subsequently, further problems arose with the EPA, which we informed the Ombudsman as they arose. In particular, in July 2002, when most of the EMPs were said to have been carried out, the EPA produced a report of a noise monitoring operation which purported to show that AMH was now operating within its license conditions. Since noise levels measured by residents, particularly by one of us, Ian

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Dunkley, and by Ian and Silvia Page (both residences are almost directly across the river from AMH) were well above those reported by the EPA, we investigated the report to see how they reached these conclusions.

We found that the methods and the reporting did not comply with regulations as set out in the Licence, the Environmental Protection Act, and associated documents (listed in Attachment 1). All these documents are essentially legal in nature and only require a rudimentary knowledge of noise measurement. They are easily understood by the intelligent layperson and do not require detailed technical knowledge. We found that the processes followed were not in accord with the regulations, and the net effect was to seriously underestimate the amount of noise emanating from AMH. (Enclosed are Attachments 2 and 3 which each summarise the flaws in the noise report by EPA in 2002.)

Because we received little feedback from the ombudsman's office, we communicated with them regularly. During this time, we communicated with Ombudsmen Max Wise, Ray Hassall and Craig Allan. On 29 September 2003, approximately two years after the first registration of our complaint (31 November 2001), Deputy Ombudsman, Rodney Metcalfe finally responded. In essence, he declined to further investigate our complaint. In particular, our complaint that the noise measurements did not follow legal processes was not investigated on the grounds that it was 'too technical'. We were told that they would have to engage an expert for advice, which they decided not to do (Attachment 4).

Some extracts from this letter:

'... have elected not to engage a consultant...'

'... I do not believe it is necessary to engage an independent consultant at this Office's expense to resolve these matters...'

'As should be apparent from the above, I have not identified any evidence at this time of maladministration on the part of the EPA or any of its officers. Accordingly, I have concluded our investigation of this complaint pursuant to s.23(1)(f) of the Ombudsman Act 2001 (enclosed as Appendix 2).' This act is titled '23. Refusal to investigate complaint'.

The letter ends:

'I trust you understand the basis upon which we have concluded investigation of your complaint, and I thank you for raising this matter with me.'

Yet the evidence we had supplied was overwhelming, was fully documented with legal documents supplied, relevant extracts put into our submissions, and required no special expertise to understand. The documents are legal in nature, not technical. We had made it clear that the EPA had failed to follow the correct procedures as laid out in these legal documents, with the net effect of seriously underestimating the noise to which the local residents are subjected on an almost nightly basis (see Attachments 2 and 3).

We wrote back asking him to reconsider this decision on 13 November 2003 (Attachment 5). After receiving no reply, we considered that we had exhausted all avenues open to us. We did not continue to court proceedings as legal and court costs were prohibitive.

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Remarkably, we recently received a letter from Queensland Ombudsman, David Bevan, dated 23 February 2006, which is a reply to our letter of 13 November 2003 – 27 months later (Attachment 6). This letter has again failed to deal appropriately with our submissions.

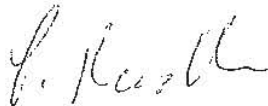
This letter again shows that the investigations the office carried out were primarily to consult with the EPA – the subject of our complaint. Although the letter notes that our complaint was that the EMPs were ineffective in bringing AMH into compliance, it goes on to say that all the EMPs were carried out. This is clearly beside the point. It is still necessary for AMH to comply with its license conditions. (It is still not clear whether AMH carried out all the EMPs or they carried out all the EMPs up to when they were said to be ‘in compliance’.)

The office again declined to consult an expert to see if our so-called ‘technical’ complaints were valid. It gives a lot of detail about the negotiations between EPA and AMH which resulted in the new license and the EMP, yet this was not the substance of our complaint. It quotes from an EPA noise report dated 18 March 2005, which was carried out 17 months after we asked the ombudsman to reconsider the decision. It illustrated yet again the inadequacy of EPA reporting. It fails to provide a map of the site of the measurement, which is supposed to show exactly where the measurements were taken, and what objects may be between the site of measurement and the noise source. Yet this is required by the regulations. It fails to report the operating conditions at the plant. Yet this is required by the regulations. For all we know, the measurements might have been taken with a large shed between the site of measurement and the source of the noise; and the management of AMH might have decided not to do a kill that night, and instead to have an ‘education’ night for their employees. (This means that the machinery that emits the most severe noise might not have been in operation.) As it stands, this report is meaningless.


Understandably, we have voluminous documentation to support our claims and we have provided only a small selection of what we have available.

All our dealings with the EPA and the Ombudsman’s Office have cost us a good deal of time, money, and effort. The EPA failed to enforce environmental regulations on AMH, and when we took this to the Ombudsman’s office, they failed to investigate our complaint appropriately. After this, we did not consider that there was any other avenue open to us. The whole process has involved many delays. It has taken from July 1999 when we first took our complaint to the EPA to February 2006 when we received our most recent letter from the Ombudsman’s office. We believe that our rights and interests in our dealings with government agencies have not been safeguarded.

Yours truly,



Clare Rudkin



Ian Dunkley

LIST OF ATTACHMENTS

1. List of legal documents consulted to assess the EPA noise report of 2002.
2. Summary from our submissions to Ombudsman's office detailing the lack of process followed in preparation of the EPA's Noise Report, 2002, attached to our letter of 13 Nov 2003 asking for a reconsideration of the decision.
3. Summary of the flaws in the noise assessment report supplied on request to the Ombudsman's office at an earlier date than above.
4. Assistant Ombudsman's letter of decision regarding our submissions, 29 September 2003. HARD COPY ONLY
5. Our letter requesting a reconsideration of decision, 13 November 2003.
6. Queensland Ombudsman, David Bevan's, letter dated 23 February 2006 in reply to our letter of 13 November 2003. HARD COPY ONLY