



CRIMINAL JUSTICE
COMMISSION

**REPORT ON
AN INVESTIGATION CONDUCTED BY
THE HONOURABLE R H MATTHEWS QC
INTO THE IMPROPER DISPOSAL
OF LIQUID WASTE
IN SOUTH-EAST QUEENSLAND**

**VOLUME II
TRANSPORTATION AND DISPOSAL**

OCTOBER 1994

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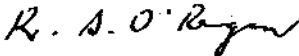
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Dear Sirs,

In accordance with Section 26 of the *Criminal Justice Act 1989*, the Commission hereby furnishes to each of you Volume II of its Report on an investigation conducted by the Honourable R H Matthews QC into allegations of improper disposal of liquid waste in South-East Queensland.

Yours faithfully


R S O'REGAN QC
Chairperson

7 October 1994

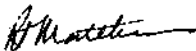
Mr P M Le Grand
Director
Official Misconduct Division
Criminal Justice Commission
557 Coronation Drive
TOOWONG QLD 4066

Dear Mr Le Grand

By resolution of 9 September 1993, I was engaged by the Commission to investigate the improper disposal of liquid waste in South-East Queensland. On 9 June 1994, I forwarded to you a report concerning the limited amount of evidence I received on the mining industry.

I now forward to you Volume 2 of my report of the investigation in order that, in the discharge of your responsibilities, you may report to the Chairman.

Yours sincerely



R H MATTHEWS QC

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CHAPTER 1 - INTRODUCTION

BACKGROUND

This report results from investigative hearings conducted by the Criminal Justice Commission in late 1993 and early 1994.

The investigation arose from allegations that liquid waste transport businesses were defrauding members of the public and Local Authorities of substantial sums of money by not disposing of liquid waste as required. The wastes were said to be harming the environment because of their own characteristics and the manner and volume of disposal. The complaint continued and indicated that such a situation could only exist with the corrupt assistance of public officers.

On 9 September 1993, the Commission resolved to conduct an extended investigation into this area, and for that purpose, resolved to appoint an independent qualified person to conduct the investigation. This resolution followed upon two directions of the Chairman of the Commission to the Director of the Official Misconduct Division to carry out an investigation into these allegations. The resolution of the Commission and the directions of the Chairman are contained in Appendix 1.

Having been appointed to conduct the Inquiry, it was thereupon decided by me, in consultation with Counsel assisting me, Mr C E K Hampson QC¹ and legal officers attached to the Commission, that the investigation should be held by way of a public hearing with evidence taken on oath. The provisions of the *Criminal Justice Act 1989* (the Act) impose prima facie an obligation upon the Commission to hold open hearings. Section 90² of the Act provides that hearings shall, as a general rule, be open to the public but if, having regard to the subject matter of the hearing, or the nature of the evidence expected to be given, the Commission considers it preferable, in the public interest, to conduct a closed hearing, it may do so. This provision recognises the many benefits of holding hearings in public.

The hearings were conducted wholly in public except for issues related to the suppression of names of persons who may have been adversely affected by allegations made against them before there was opportunity for them to give evidence and also the tender of a few confidential exhibits which contained matters

¹ In the interests of economy and consistency, surnames are used without the customary "Mr" or equivalent honorifics and titles will be used only once. No discourtesy is intended.

² The Act has been amended during the course of this investigation. Reference is to the section numbers now in use unless otherwise stated.

of commercial secrecy, personal issues or other sensitive information. These exhibits could only be examined with my consent.

Before the Hearings commenced, an advertisement was placed in *The Courier Mail* and *The Australian* newspapers to advise the public of the terms of the investigation and to request persons with relevant information to come forward. A copy of the advertisement is in Appendix 2.

The hearings commenced on 20 October 1993 with an opening of the issues to be addressed and reception of applications for leave to appear and other procedural matters. It then commenced to take evidence from witnesses from 6 November 1993. The hearing continued intermittently through to April 1994.

Additionally, information was gathered by Commission officers from Local Authorities, generators and transporters of liquid waste and various submissions or complaints were received from members of the public. The coercive powers of the Commission were used extensively. Local Authorities were asked to produce information for the investigation and complaints or submissions were received by the Commission from interested persons.

As the investigation evolved it expanded to take evidence in relation to matters beyond the initial complaint but still within the terms of the directions of the Chairman. This included evidence from medical waste disposal companies and the mining industry plus government departments and local authorities. I reported separately to the Commission on the investigation in relation to mining issues on 9 June 1994. That report was presented to Parliament on 5 August 1994.

The original complaint contained detailed information concerning Transpacific Industries Pty Ltd (Transpacific), which with its subsidiaries, carried on the largest liquid waste transport and disposal businesses operating in the Brisbane and Logan districts. Whilst it carried with it allegations of corrupt conduct by public officials, it did not identify any individual official. At first sight much of the complained of activity was not a matter for this Commission. Pollution control and the failure by business to adhere to correct practices are the responsibility of a multitude of regulatory bodies at all levels of government.

Nevertheless, because the informant had a background which apparently gave him access to the information supplied, the Commission made a preliminary assessment of his information. This included examining the relevant laws, seeking advice from persons with expertise in the area with regard to methods of gathering evidence and devising strategies for a feasible investigation.

During this phase of the investigation, staff of the Queensland Health Department (Health), Department of Environment & Heritage (DEH) and Brisbane City Council (BCC) were interviewed. It appeared that the control of the disposal of liquid waste was fragmented across a number of bodies and that few resources were available to overview the industry. Studies conducted in the previous decade had all reported that a sizeable amount of liquid waste was unaccounted for. The cost of legal disposal of some liquid waste was seen to be more than the maximum fine for improperly discharging it into the sewer. Because of the volume of material disposed of, the profits available to an unscrupulous business were enormous. When profits are available from illegal activity, the opportunity for corruption exists.

The Commission was concerned to keep the investigation manageable. As the informant had supplied information concerning the businesses operated under the umbrella of Transpacific, the Commission started the active phase of the investigation with that group but recognised that the investigation might well expand from there.

THE CHAIRMAN'S DIRECTION

On 9 March 1993, the Chairman issued a direction to the Official Misconduct Division to carry out an investigation into the persons and entities engaged in the disposal of liquid waste in the Brisbane and Logan areas.

An application under the Act was made to the Supreme Court. Mr Justice Moynihan authorised the issue of search warrants to obtain documents from Transpacific and its subsidiary entities and on 25 March 1993, the three search warrants authorised by the Supreme Court were executed at three premises of the group. A substantial quantity of documents was obtained.

Given the volume of these documents, a sample of three months was initially chosen to see if the original information could be verified and a computerised database was created to allow the reconciliation of information from a wide variety of documents obtained from the company and the BCC. To facilitate this, a request was made to Health and DEH for four data support staff. The former was unable to make staff available but DEH supplied one of its own officers and retained three temporary staff to assist. In the event, data for four months were used in the time allowed for this phase of the operation. In effect, this permitted the tracing of each load of waste from its point of collection to its point of disposal or to indicate that it was not recorded as being taken to any authorised disposal point.

The information gathered as a result of this analysis indicated substantial discrepancies between the amount of material recorded as collected and the amount advised to Local Authorities. As the business conducted transactions throughout other parts of South-East Queensland and allegations had come to the Commission concerning the industry as a whole, the investigation was expanded to address all of South-East Queensland rather than the limited area of Brisbane and Logan. A direction to the Director of the Official Misconduct Division was issued by the Chairman on 9 September 1993 to this effect.

The investigation chose the Local Authorities in the area extending from Goondiwindi to Miles and across to Miriamvale as encompassing South-East Queensland. (See Figure 1.)

STANDARD OF PROOF

The very nature of an investigation under the Act and especially the fact that the Commission is not bound by the rules of evidence applicable to proceedings in a court, raises the question as to the degree of satisfaction which should be attained before considering an adverse finding in respect of any person. The Act is silent on the standard of proof required; however, after consideration of the authorities, I considered that the appropriate standard of proof was a civil standard which varies according to the gravity of the finding to be made. This standard is often called the Briginshaw Principle or the Standard of 'Reasonable Satisfaction' and in applying it, I adopted a statement of Sir Owen Dixon in *Briginshaw v. Briginshaw* (1938) CLR336 at 361 - 362 where he stated:

"Reasonable satisfaction" is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences following from a particular finding, are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters "reasonable satisfaction" should not be produced by inexact proofs, indefinite testimony, or indirect references.

I am comforted in my view that the requisite standard is that of 'reasonable satisfaction' by the adoption of that standard in similar Inquiries such as the Parliamentary Judges Commission of Inquiry (1989), which examined the conduct and behaviour of the former Mr Justice Angelo Vasta. I note that the same standard was also adopted by the Honourable W J Carter QC in his report of August 1993 on his Inquiry into the selection of the jury for Johannes Bjelke-Petersen and I adopted the same standard in the investigation into allegations by Lorrelle Saunders.

FIGURE 1 - MAP OF SOUTH-EAST QUEENSLAND



PUBLIC HEARING DATES AND APPEARANCES

The public hearings commenced on 20 October 1993. The Commission sat for a total of 40 days spread over seven months terminating on 15 April 1994. Hampson was appointed Senior Counsel Assisting the Commission and Mr B Thomas was appointed as Junior Counsel Assisting. Mr I Callinan QC and Mr J Bell QC appeared for Transpacific and its subsidiaries and employees. On occasion, Mr G Vickery or another solicitor from the firm of Sly and Weigall Cannan & Peterson represented these persons. Other appearances in relation to individual persons or companies were Mr C Bagley for Hunter Brothers Qld Pty Ltd (Hunter Bros) and Ace Waste Pty Ltd (Ace) and Mr C Jones of McNamara and Smith appeared for Department of Minerals and Energy. Mr Drew Hutton, the Convenor of the Queensland Greens was also given leave to appear. Mr T Fisher of T Fisher & Co also appeared for Mr B Fox. Mr H Prokuda of Corrs Chambers Westgarth appeared for the Logan City Council and its officers.

LOGISTICS OF THE INVESTIGATION

In all 80 witnesses were called and gave evidence in public hearings. A further 19 statutory declarations were produced to the Commission. Those declarations were tendered in evidence with the consent of the legal representatives appearing before me. Without objection, a number of reports, maps and other documents were tendered in evidence before me.

Three Search Warrants authorised by the Supreme Court were issued. Fifty-nine Summonses, 246 Notices to Furnish Information, 12 Notices to Produce were issued. Information was voluntarily supplied by a further 182 councils, transporters and generators of waste.

In addition to Thomas' involvement, four Commission investigators, a financial analyst, a legal officer and a support officer were engaged for the majority of the investigation in conducting inquiries, interviewing witnesses and serving Summonses and Notices to Produce and preparing material for the hearing. Further investigative staff were used as required. Additionally, the expertise of officers from every Division of the Commission was called on to assist in various stages of the investigation. DEH provided four data input processors. Health provided the assistance of scientific advisers and the BCC provided assistance from Scientific Services Branch.

DIRECTIONS TO WITNESSES TO ANSWER QUESTIONS

The primary purpose of an investigation under the Act is to ascertain the truth. The rules governing an investigation under the Act, create an environment in which the truth is more likely to be told. In particular, there is the statutory negation of the right to remain silent on the basis of self-incrimination. Subject to matters of form, a person under the Act is not entitled to refuse to answer questions on the ground the answer might tend to incriminate. The trade off is that any answer given by that person cannot be used against him or her in any subsequent criminal, civil or disciplinary proceedings, save perjury arising out of the evidence given before the Commission and contempt of the Commission.

Accordingly, a person is less likely to conceal the truth where the person knows that any truthful answer given cannot be used against him or her in the future.

In this hearing, I directed a number of witnesses with connections to the waste disposal industry to answer questions which might have tended to incriminate them, after they objected to answering such questions. This was an exercise leading to useful and significant admissions relevant to an assessment of industry-wide practices.

THE REPORTING OF THE PUBLIC HEARINGS

Throughout the public hearings, my attention was drawn on some occasions to newspaper articles which were inaccurate, unjustifiably sensationalised and on occasions erroneous. I am aware that some of these articles caused unwarranted distress to persons or company officers in relation to matters attributed to them or their company. This is regretted.

I am not aware of how or why such errors and inaccuracies occurred and, as I observed in my report on the Saunders matter, it may well be that in future when an investigation of significant public importance and complexity is conducted, one senior reporter will be assigned by his or her employer to attend the hearing from beginning to end. This would no doubt go a long way to eliminating errors arising from the lack of familiarity with both the oral evidence previously given in the public hearings and the documentary material tendered.

On the other hand, I should observe that the suppression orders in relation to the names of witnesses and companies were never breached by members of the press and, in fact, in relation to this matter, they showed such circumspection as kept to a minimum identification of witnesses by name until the suppression order was removed by me.

SCOPE OF THIS REPORT

I should make it clear at the start that this report does not attempt to judge the relative merits of particular technologies for treatment of waste or indicate the appropriate standards of wastes to be discharged to the environment.

I possess no scientific expertise, but, having seen what occurred, I have made recommendations in areas which I believe may be of assistance to those who do possess expertise and authority in the area of waste management and environmental protection.

In reporting what happened, I have named individuals and companies in this report. It is unavoidable if the facts are to be told and understood. However, the mere fact of naming a person should not be taken to mean that adverse judgements have been made by me concerning that person. I regard it as undesirable to refer to the evidence of every witness or the contents of each exhibit. To do so would result in a loss of clarity. This report revolves on the central issues and the players in those events.

DEFINITION OF TERMS

As this report deals with the practices of an industry, it is necessary to refer to some terms which are not necessarily understood or used widely in the community. Therefore, I have set out some of the more commonly used terms to assist understanding of the report.

- 'Generator' is used to indicate a person who or business which creates liquid waste.
- 'Transporter' is used for the person who or business which collects the liquid waste from the generator to take it to a point of disposal or recycling.
- 'Grease trap' is used in relation to a tank or interceptor in the sewerage line which is designed in such a way as to allow liquid leaving a premise to stagnate for a while so that the oils and grease in the water have an opportunity to rise to the top. The piping into and out of the tank is arranged in such a way that this separated grease is trapped in the tank and the water continues into the sewerage system.
- 'Grease trap waste' refers to the material which is removed from these grease traps. It includes the grease at the top, the liquids in the trap, the substances which remain as sediments at the bottom of the trap and the

water which is sometimes sprayed into the trap to assist in cleaning down the sides of the trap when it is cleaned.

- 'Hazardous waste' is used to refer to chemically active materials, such as acids. These wastes can be readily neutralised or stabilised.
- 'Toxic waste' refers to material which, even in its diluted form, requires very special security treatment and disposal.
- BOD is an abbreviation of the term 'Biochemical Oxygen Demand' which is an established scientific standard used in the waste water management industry.
- 'NFR' indicates solids suspended in liquid and is also an established standard in the industry.

Grease trap waste is generated at major food preparation establishments such as canneries and meat processors and also at restaurants and take away food premises and such like.

Oily wastes are generated by small premises, such as garages and car washes.

It should also be made clear that the grease trap wastes go to the sewers and sewers lead to sewerage treatment works which treat the liquids they receive and ultimately discharge the treated liquids to the waterways or ocean. Sewers should be distinguished from rainwater drains, which receive rainwater and water flow off and lead directly to waterways.

Households connected to a sewerage system discharge their sewage to the sewerage system.

OTHER STUDIES ON LIQUID WASTE

Before the Commission decided to dedicate the substantial amount of resources it provided for this investigation, the assessment of the complaint included gathering information on previous studies touching on liquid waste disposal in the Brisbane or South-East Queensland area. These reports were tendered in the hearing.

In April 1978, Maunsell and Partners Pty Ltd reported to the Co-ordinator General's Department in a two volume report headed, *Report on Waste Disposal Study of Brisbane and near Brisbane area.*

That report included a statement as follows:

The survey was primarily aimed at ascertaining the quantities and types of wastes generated by industry in the region. By comparing these figures with data already available (up-dated at the time of the survey) on liquid wastes collected and dumped by contractors, it appears that 30% of the liquid waste produced goes to three existing liquid dumps. The remaining 70% must be disposed of on-site by industry or by other means. This is based on liquid wastes not including waste-water, which are assumed to discharge to drain or sewer. Likewise, 'oils' represent only those oily wastes which are dumped at present. There is an additional quantity, approximately 3000m³/year of oil which is returned to the refineries.

A report prepared by Sinclair Knight and Partners Pty Ltd for the Co-ordinator General's Department in August 1982 stated:

It is emphasised that not all tankered wastes need to be delivered to Willawong, as there are recycling operations and some waste exchanges operating within the Brisbane area. From the summary in Table 3, it is believed that the largest volume of unauthorised discharges are grease wastes and dilute oils. A high percentage of the alkalis and solvents may also be discharged without authorisation but the overall volumes are relatively low.

The sewerage system is believed to be the most common unauthorised discharge point for tankered industrial wastes which has been estimated to receive some 85 percent of these unauthorised discharges. Therefore, it is recommended that improved policing of tankered industrial waste water discharges to the sewerage system be conducted by introducing a transport docket system and by policing the destination of tankered liquid wastes.

Disposal to landfill and other land disposal appears to only constitute a relatively minor volume but such discharges could produce serious pollution problems. Accordingly it is recommended that the unauthorised dumping to landfill and surface land sites be located and the practices be stopped.

A study of Industrial Liquid Waste and Hazardous Toxic Waste in South-East Queensland by Crooks Michelle Peacock Stewart in April 1985 said:

A significant difference appears in the low volumes of glue and dye wastes found in the survey, compared with BCC records. The survey also found more acid/alkali/plating wastes claimed to be carried by transporters than BCC estimates indicate arrived at Willawong. This raised the possibility that the transporters, or at least the driver, either does not know what he is delivering; or is falsifying information for commercial confidentiality reasons; some transporters may be diverting wastes to other generators for reuse without the knowledge of the original generator; and other conclusions are possible. The aggregate quantity claimed to be sent off-site by generators compared to that actually disposed of at Willawong appears to differ largely in regard to the bio-degradable wastes, not in regard to the more 'difficult', sometimes hazardous wastes. The bio-degradables identified in the two questionnaire surveys total 20 500kL/y (categories 20 to 23),

whereas BCC estimates of deliveries to Willawong indicate that (prior to May 1983) only 5800kL/y arrived there.

Later it said:

Outside of Brisbane, in spite of the existence of a degree of concentration of waste-producing industries in several Local Authorities, there is no treatment or disposal facility for industrial liquid wastes and practically no capability to devise, supervise, or operate one. Local Authorities adjacent to Brisbane have been dependant on Brisbane's facilities; Local Authorities further away have done without.

Other reports were published during the investigations. In June 1993, the Department of Primary Industries issued a model Trade Waste Policy which stated in its preface:

Local Authorities have the power under the Standard Sewerage By-Laws of the Sewerage and Water Supply Act to control the discharge of trade waste to sewer. A Local Authority's policy on the discharge of trade waste to sewer is normally defined in a written Trade Waste Policy, which includes sewer admission limits, the method of charging and day to day requirements for administration. Currently 90% of Queensland Local Authorities do not have a well defined trade waste policy.

On 17 September 1993, the Industry Commission in its report, *Environmental Waste Management of Equipment, Systems and Services*, asked the question, 'How significant is the Environmental Waste Management Equipment, Systems and Services industry?', and said:

At the global level, it is a large industry. It is growing rapidly and strong growth in demand is anticipated for the remainder of the decade.

The practical ability to manage wastes comes, in part from the ability to generate a surplus from everyday economic activity. In other words, there is a very strong correlation between a country's level of income and its expenditure on waste management. This means that the rapidly developing countries - a number of which are close neighbours to Australia - must present opportunities for the Australian industry. In many of those countries, governments are only now starting to tackle the major environmental problems created by rapid population growth, industrialisation and urbanisation of recent years.

The world market is at least \$A280 billion per annum. Some assessments put it considerably higher. This implies that the international EWMESS industry is similar in size to the world plastics industry and the world aerospace industry, and approaching half that of the world chemicals industry.

At present the Australian market represents about 1 per cent of world demand, with the lowest estimate being about \$A2.8 billion per annum.

This report was devoted to Australian firms achieving success in the world market. However, it does reflect on the size of the industry within Australia.

It is clear that liquid waste transport and disposal is a sizeable industry. The discrepancies between the volumes generated and the volumes accounted for at disposal have been known to some for in excess of a decade as have been the potential problems which may flow from the improper disposal of the waste.

Apart from the draft Trade Waste Policy and the report of the Industry Commission, the previous reports were not made public.

TRANSPACIFIC INDUSTRIES PTY LTD

The evidence before me established that Mr T E Peabody (Peabody Sen) is a businessman with diverse interests who controlled a number of companies and businesses. Those which were related to this investigation were under the umbrella of Transpacific. The directors of that company being Peabody Sen, his son, T E Peabody Junior (Peabody Jun) and a Mr Smith of Canada. The company offices are in Toowong. In fact, Transpacific is owned by a Hong Kong registered company which has the same directors as Transpacific. Transpacific in turn, owns various business entities. Some appeared to be unregistered under the *Business Names Act*.

Australian Resource Recovery Pty Ltd (ARR) is a fully owned subsidiary of Transpacific. It receives and treats liquid waste and states it produced a useful by-product in the nature of stock feed or fertiliser and tallow. ARR operates from two plants, one situated at 10 Platinum Street, Marsden, (or Crestmead) and the other situated at 1004 Lytton Road, Murarrie. For the purposes of this report, the plants will be described as being situated at Marsden and Murarrie.

Zappaway Liquid Waste Removals is a registered business name owned by Transpacific and it operates from the ARR premises at Marsden. The name was on various of the trucks which operated from sites controlled by Transpacific. The Gold Coast arm of the business is conducted by separate subsidiaries called Zappaway Waste Removals (Gold Coast) and Gold Coast Liquid Waste Services and operates from premises at Coombabah.

Discount Grease Trap Pumping Services was another name which was used with some consistency and is a business owned by Transpacific. Other businesses were purchased by Transpacific and it was said that their names continued to be used for the purposes of customer good-will. Advertisements were continued in the Yellow

Pages under the variety of business names which had come under the Transpacific umbrella.

The company True Blue Oil Recycling Pty Ltd is a fully owned subsidiary. It receives and treats waste oil and sells the resulting product as a fuel. It operates from Narangba and maintains temporary waste oil storage tanks at ARR Marsden and Coombabah depot at the Gold Coast.

For ease of reference, the term Transpacific will be used throughout this report to cover the activities of any of its subsidiaries, unless there is a need to name the actual subsidiary.

TRANSPACIFIC EXECUTIVES

The evidence from witnesses called attention to the following executives of Transpacific.

I have already mentioned Peabody Sen, who spends a considerable time overseas each year. His son Peabody Jun was the Manager of the Waste Division of Transpacific. He was described by most witnesses as having a "hands-on" approach to that position. Mr B Higginson was the Plant Manager in charge of Marsden and then Murarrie when it was purchased. Mr G Sparks was the Technical Services Manager for Transpacific with a brief to look after environmental issues. Mr Ivan Brooker was the Transport Manager for Zappaway based at the Marsden Plant. Mr G Jones was the Manager of the Gold Coast companies.

MARSDEN PLANT LAYOUT

The Marsden plant is contained within a building. Liquid waste is received at loading bays which have two pits in the ground with grills over the top to remove larger items. Material is poured through the grills into the pits and then pumped to a machine which sifts out solid substances removing approximately at least two tonnes of material per day. The liquid is then pumped to the centre of the plant to a series of tanks. The liquid is then directed to particular tanks where it undergoes that particular process allocated to it and finally to a settling tank, before passing through a monitor tank and meter and into the sewerage system. At any particular time, a limited number of tanks may be used to process material and others are used for storage of grease or other material.

It was estimated that the total capacity of the plant's tanks was approximately 600,000 litres.

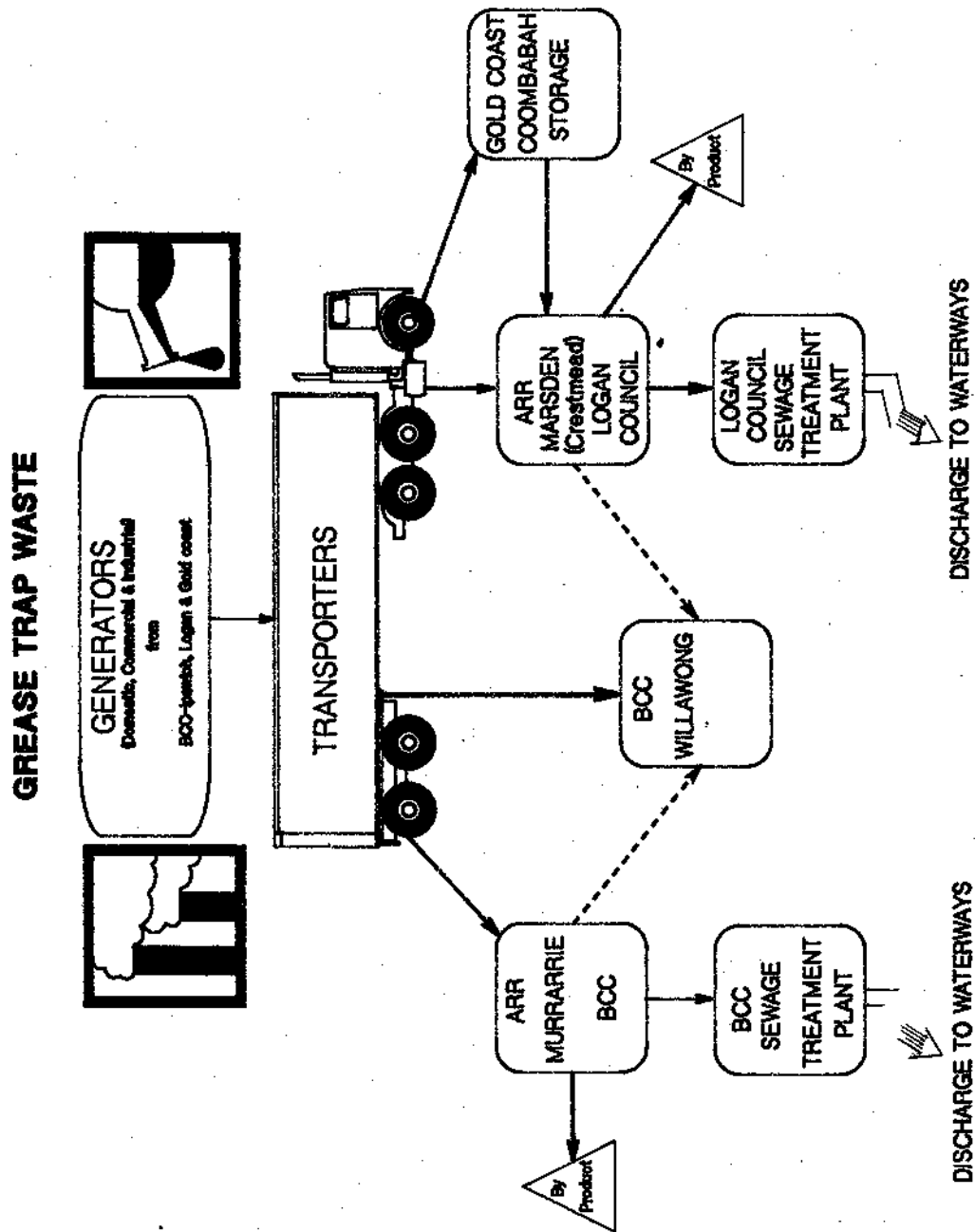
MURARRIE PLANT LAYOUT

This plant is set on the side of a hill and takes advantage of the hill by way of gravity feeding of tanks. Trucks arrive and are emptied by vacuum hose which takes the contents into a tank and the truck's tank is then hosed and resulting water is also taken by vacuum hose to the receiving tank. The material is then transferred through a revolving drum which removes the solids. It is transferred to a second tank and removed under vacuum to two cylindrical tanks used as cookers of about 10,000 to 15,000 litres capacity each.

The contents after being heated to about 90°C are left overnight. The raw tallow is removed from the cookers and transferred for storage and later heated and placed in 44 gallon drums. The water from the cookers flows to two large half-tanks at the lower level of the plant area. Each tank is about 400,000 litres capacity. The water settles in those tanks and is then transferred by pump to a tank of about 800,000 litres capacity where large volumes of air are pumped by compressor into the tank, for up to 10 days. The liquid is then tested and, on approval from the BCC, the contents of the tank are discharged to the sewerage system.

Figure 2 shows diagrammatically the paths that grease trap liquid takes from collection to final disposal.

FIGURE 2 - GREASE TRAP WASTE DISPOSAL PATHS





CHAPTER 2 - THE INVESTIGATION

THE COMPLAINT

There is a great deal of unpleasant and dangerous liquid waste produced by domestic and industrial premises which must be disposed of. In some cases, it is sent to the sewers and in other situations it is transported from the site of generation to a disposal site. It costs the community millions of dollars each year to do this and there is a number of businesses, both large and small engaged in such transport and disposal.

The largest of these businesses in the South-East Queensland area is Transpacific. This business has about three times the number of vehicles in use for liquid waste transport as its nearest competitor.

Transpacific received a good deal of attention throughout this investigation. This came about because Hutton brought to the Commission Mr Brian Fox, a former driver with Zappaway, one of Transpacific subsidiaries with allegations concerning his former employer. In his allegations which were in line with his testimony before me Fox said that the business collected a good deal of grease trap waste but disposed of it in a variety of ways which were not authorised. In particular, he said that drivers would dispose of grease trap waste on collection by removing it from a grease trap and flushing it straight into the sewers or, secondly, by taking it from one grease trap and disposing of it through another grease trap. He said that material returned to the treatment plants operated by Transpacific at Marsden and Murarrie was disposed of untreated to the sewer system or in an improperly treated state. This was disguised by a hidden pipe entering the sewerage system to bypass a meter in the Marsden depot and further, there was another meter along this hidden pipe so the company would know the true volumes which were said to be disposed of. Further, he said that other forms of waste, including hazardous waste, were disposed of in a variety of improper ways by the company and its drivers.

It was also said that the drivers had objected to this practice of dumping and a meeting was called which Peabody Jun told the drivers that if they did not continue the practice, they would have to find employment elsewhere.

He also said that these practices could only continue because of tip-offs provided by public officials of where inspections might be carried out on the sewers or where Transport Department officers would not weigh the trucks or inspect them for appropriate documentation. It was said that the practices of Transpacific were only reflections of industry-wide practices.

Individual amounts per litre charged for disposal of liquid waste were minuscule because of the huge volumes of liquid waste dealt with in this industry, but the potential profits by improper activity over time were in the order of millions of dollars.

ALLEGATIONS AGAINST TRANSPACIFIC

In combination with the complaint from Hutton, a variety of allegations against Transpacific and its staff emerged from the evidence I heard. Some allegations were inconsistent with others. The more notable allegations were:

- A number of persons were corrupted in government departments and Councils to provide information or protection from investigation for Transpacific.
- A sizeable quantity of grease trap waste was said to be illegally deposited to the sewerage system. It was said to be in the order of a million litres per month.
- Numerous sites about Brisbane were regularly used for illegal disposal of grease trap waste.
- Unauthorised disposal of various liquids occurred at Transpacific facilities.
- Various other methods were used by drivers to illegally dispose of liquid wastes.
- A hidden meter and a pipe existed at the Marsden plant to facilitate defrauding the Logan Council of appropriate fees. Further, the Marsden plant was said to have a defective meter to measure volumes discharged to sewer, as did the Murarrie plant.
- Dangerous liquids were carried by unlicensed drivers in trucks without proper signage and without appropriate documentation.
- There was a lack of basic workplace health and safety at Transpacific facilities.
- Samples supplied for analysis from the Marsden plant were said to be improperly diluted before testing.
- Overloaded trucks which attended at the BCC liquid waste plant at Willawong were allowed to pass without comment from officials.

- Hazardous waste was mixed with other liquid waste and then illegally discharged into sewerage lines.
- The plants were operated in such a way as to create a charade of efficiency when the plants were inspected by authorised visitors.
- A number of drivers approached management and protested about illegal dumping. During a meeting, the drivers were directed by Peabody (Jun) to continue to illegally dump or face dismissal.

THE JURISDICTION OF THE CRIMINAL JUSTICE COMMISSION

The Criminal Justice Act 1989 empowers the Commission to investigate allegations of corruption and official misconduct by public officials and others who could adversely affect the honest and impartial discharge of duties by public officials. It also includes the investigation of organised or major crime if that function cannot be effectively discharged by the Police Service or other agencies of the State.

The allegations as received by the Commission raised the possibility of organised or major criminal activity and a number of offences or disciplinary matters, including official misconduct:

1. A breach of section 427 of the *Criminal Code* – Obtaining money by a false pretence i.e. that liquid waste was to be disposed of in an authorised manner, the pretence being made to the generators or Councils who contracted the collection of liquid waste. [Maximum penalty five years imprisonment].
2. A breach of section 430 of the *Criminal Code* – Conspiracy to defraud the public, namely the generators or particular local authorities. [Maximum penalty seven years imprisonment].
3. A breach of section 87 of the *Criminal Code* – Corruption of public officials. [Maximum penalty seven years imprisonment and a fine].
4. A breach of section 359 of the *Criminal Code* – Threats – [Maximum penalty one year imprisonment and \$500.00 fine].
5. A breach of section 415 of the *Criminal Code* – Demanding the performance of services with threats – [Maximum penalty 14 years]. [If substantial economic loss was likely to be caused to a public authority, maximum life imprisonment].

6. A breach of section 230 of the *Criminal Code* 'Common Nuisance'. [Maximum penalty two years].
7.
 - Breaches of the *Refuse Management Regulations* - [Maximum penalty \$2,400]
 - Breaches of the *Standard Sewerage By-Laws* - [Maximum penalty \$2,400]
 - Breaches of the *Carriage of Dangerous Goods by Road Act* - [Maximum penalty \$10,000 for a person]
 - Breaches of the *Clean Waters Act* - [Maximum penalty \$10,000 for a first offence].
8. Official misconduct by public officials or other disciplinary offences.

EVIDENCE FROM DRIVERS

Evidence was received from fourteen current and former drivers of Transpacific Industries and a statement from one further driver was tendered. The length of employment in the industry for these drivers ranged between twenty years and two weeks. Each witness was examined in relation to work history, conditions, and knowledge of or involvement in illegal disposal of liquid waste. Additionally, former and current plant operators from the Marsden and Murarrie plants gave evidence.

It appears that the bulk of the liquid waste transported and disposed of by Transpacific was grease trap waste. Drivers indicated that their normal working day was between 4.45 a.m. and 2.00 p.m. The day started with the allocation of grease trap run sheets showing the clients to be serviced during that day. The drivers informed me that these runs were to be completed in the early morning to avoid clients and their customers being subjected to unpleasant odours associated with cleaning the grease traps.

The majority of drivers indicated that the Marsden plant received the bulk of this liquid waste. Some gave evidence that they had never delivered any waste to the plant at Murarrie.

The majority of drivers said that after the grease traps had been completed, they returned to the depot and, if required, performed industrial waste collection and transport or otherwise cleaned their vehicle or did tasks which might be allocated to them. The material collected by the drivers included industrial waste such as

acids and caustics, oil wastes, pesticides, chemicals, paints and dyes, bilge from ships and also septic waste from some businesses and private premises.

Rather than detail the evidence of each driver, I will set out the evidence of a few which represents the range of evidence I heard.

Mr R Beard gave evidence in this matter in November 1993 and he provided an insight into the industry as carried out on the Gold Coast. Beard said he started in the industry about four years previously. I directed him to answer incriminating questions as I did to most other drivers. He told me that he had been employed by a firm called Kennedy Walsh on the Gold Coast. He spoke of various methods of improper disposal of grease trap waste, including 'losing water', which involved returning water to the grease trap being cleaned or to the sewers, 'skimming', which involved removing only the fat at the top of the grease trap, and sometimes he had heard of transporters leaving a bill without actually cleaning the trap at all. On a number of occasions, he made efforts to avoid identifying persons he asserted had engaged in improper practices. I accepted Beard as a person attempting to tell the truth but who was nevertheless aware that his livelihood was in the industry about which he was giving evidence disclosing improper practices.

His account to me of his start in the industry echoed the accounts given by a number of other witnesses. The transcript reads:

How did you come to learn about the skimming of grease-traps?---I was shown how to do that the first day I started work.

By one of your fellow employees?---That's correct.

And did you do that yourself then, Mr Beard?---It was a company requirement, yes.

So you in fact fell into line and did it?---Well, that was how I was required to do it. If I didn't do it like that I wouldn't have had a job.

And the only purpose, as far as you know, for doing it, was to pay the Council less money for the waste that was being disposed of?---That's correct.

While at the same time getting the same reward from the generators of the waste, who were paying for it to be disposed of?---That's correct.

He told me that Transpacific purchased Kennedy Walsh about two years ago. Beard had commenced employment with Transpacific some five weeks before this take over. In that period, he had worked in Brisbane from the Marsden plant and underwent a more rigorous training program when he was instructed to follow appropriate cleaning and dumping procedures. This professed rectitude seemed to be at odds with the reality of his employment at the Gold Coast office of

Transpacific. Jones, the Transpacific Manager at the Gold Coast, instructed Beard to lose water on occasions. The drivers there became so concerned that they called a meeting with Jones. Beard gave the following account of it:

All right. Now, I mean this was at the drivers' initiative. You went along to see him, did you? You asked for an appointment to see him?---That's correct.

Because you were going to complain about the fact that you did not want to illegally dump waste any longer?---It wasn't a complaint. It was just a statement of fact.

Statement of fact?---We just got together and said we're not going to do it any more.

Okay. Now, the reason was, I take it, that you thought that he had some expectation that you would continue to do it and that is why you wanted to tell him you were not going to do it?---It was getting to be company policy and it got to the stage that we realised if anyone got caught the company would disown us and we would have to wear it by ourselves, and if that was the case we wouldn't do it.

This sensitivity to the risk of detection arose from the discovery by Council staff who happened to be downstream of one driver when he released a quantity of liquid in a sewer and an investigation followed. When asked about the chance of detection, Beard said:

It would not have crossed your mind that would even have happened?---No, well if you were caught running water back, all you had to do was reverse the valve and you were sucking water up and not putting it down. You think about these things, keep your eyes open - no.

When he gave evidence before me, Jones denied that such a meeting took place and in his tendered statement categorically denied that he ever instructed Beard to improperly dispose of material. However at one stage in evidence he said that it could have been said.

Beard said that his working days now started at 5.30 a.m. with the transporting of grease trap waste in his 15,000 litre truck. The truck had no gauges or dip-stick to measure its contents and he could only check the volume by a visual check or a rough tally from his collection and an estimation of added water from washing out the grease traps. However, he also received transfers of grease trap waste from smaller trucks in the area. No documents were kept for these transfers. In short, there was a very inexact method of totalling the contents of any particular truck at any particular time.

Beard indicated that access to commercial areas was prohibited after 8.30 a.m. Therefore, there was a limited time to do collections and further, because the Transpacific plant was located at Coombabah at the northern end of the Gold Coast, it sometimes happened where there was only one further grease trap to empty at the other end of the Gold Coast and no space in the truck. On occasions like that he would lose some water as he had been instructed to do by Jones to save a long return journey. The advantage to both the driver and the company was saving time. Jones at one point in his evidence, maintained that the issue of dumping was never addressed expressly one way or another either by direction to dump or not to dump.

Beard indicated that he was given a list which indicated grease traps to be cleaned and the list would usually contain more jobs than could be completed in one day. In such circumstances he would choose which jobs he could do and carry the remainder to the next day. He estimated that there were 2,500 to 3,000 customers of Zappaway on the Gold Coast and that the grease traps cleaned ranged in size from 180 to 3,000 litres.

Zappaway had a transfer station within the Gold Coast Council complex at Coombabah which was also largely a Council sewerage treatment plant. The Zappaway drivers delivered their grease trap waste into ponds and then it was pumped into tanks and finally tankers would arrive from Brisbane to take the liquid to the Brisbane plants. Beard had no understanding of what happened to the material at the Brisbane plant at Marsden. He said that on two to three occasions, the plants at Coombabah were full and drivers would wait until there was a transfer to Brisbane before collecting more grease trap waste. He estimated that there were between 200,000 to 250,000 litres of liquid transferred from Coombabah to Marsden each week. Jones estimated that 800,000 litres was transferred to Marsden each month.

Oil and Other Liquids

Beard said that originally oil and oily waters which were collected from places such as garages, car washes etc were taken to the Council area at Coombabah and spread on roads to settle dust. Because Willawong, the BCC liquid waste plant, was not available for disposal of Gold Coast liquids including oil and the more hazardous liquids, the practice was to mix other liquids in with the oily waters and spread the resulting cocktail on the roads in the Council compound. He said that materials mixed in would include acids, caustics, paint thinners, paint, dye. He said that this was the situation in the Kennedy Walsh days and 'there weren't any rules in those days'. He also indicated that sometimes these materials had been used to settle dust in quarries.

Further, he told me that whilst there were requirements for signing of trucks carrying dangerous goods, that Zappaway had no signs at the Gold Coast. He had spoken to Jones about obtaining signs and nothing had happened since that time, some six to nine months ago. Beard indicated that it was not often that materials of that nature had to be transported but it had been becoming more frequent in the recent past. He stated that he had never been checked by anybody on the road and he had never seen a Council inspector at any stage.

He believed there were at least four other significant liquid waste transporters on the coast and perhaps some smaller operators.

DRIVERS BASED AT MARSDEN OR MURARRIE

Fox had his introduction to the business of liquid waste disposal when he accepted employment with Zappaway in March 1990. During his first period of one or two weeks employment as a driver with that company, he received from a more senior driver, Julian Stapleton, instructions which embraced, apart from other matters more easily comprehended as part of the instruction process, the ways in which waste could be and was disposed of by the improper use of dumping into grease traps or sewer manholes.

Fox admitted that he himself had adopted the practice and had continued to do it until his employment terminated in September 1992. He asserted also that other drivers and plant operators employed by Transpacific subsidiaries had told him that the practice had continued up to the time he was giving evidence - November 1993. There is ample corroboration of what he says of his own involvement in improper dumping and of how he came to engage in it and I have no reservations about accepting what he says in that respect. Other evidence strongly suggests that once this investigation moved to the searching of Transpacific premises and seizure of documents the practice ceased almost entirely.

Fox also gave support to the notion that improper dumping was not only encouraged by the employer, but to a degree, insisted upon. He said that in the first part of 1990, and soon after he commenced employment with Zappaway, he attended a meeting which was held at the Marsden plant in the office of Peabody (Jun), a meeting which had been organised by a driver called Saunders on behalf of other drivers who were protesting against illegal dumping. He said that nine or ten drivers, apart from himself, had attended the meeting and that management had been represented by Peabody (Jun), Mr Ivan Brooker, the Transport Manager and perhaps one other person. He agreed with other evidence that Peabody (Jun) had at the meeting, in effect said that if a driver did not continue to illegally dump, his job would be safe only until he was able to find another. There was conflicting evidence as to what may have happened at such a meeting. Drivers differed as to

attendance and as to what was said at it. Peabody (Jun) and Brooker gave evidence that drivers were not only instructed not to dump, but that at some stage, a notice to that effect had been posted for the attention of drivers.

I have elsewhere discussed the relevant conflicts and denials which appear from the evidence, but it does seem that improper dumping at that time had become of such proportions as to cause drivers to be disturbed about it and the possibility of its continuance. At the time of that meeting, according to Fox's rough estimate, drivers employed by Zappaway during each working day were illegally dumping a total of 20,000 to 100,000 litres of waste. He was of the view, founded he said on conversations he had had with drivers employed by other companies engaged in waste disposal, that with one exception, drivers employed this means of lessening the loads which they were required to carry and that the practices adopted were similar to those which he and other Zappaway drivers used.

Waste disposal was obviously a competitive business and Cleanaway, the one exception in Fox's opinion, and his employer since June 1993, must have found it difficult to compete with other companies enjoying the benefits of improper dumping. There was other evidence which did not give Cleanaway such a clean bill of health as was claimed for it by Fox.

This witness also confirmed evidence of other drivers that the Zappaway tankers were used to transport septic waste and sewerage (documented as 'special') to the ARR plant at Marsden where it was dumped into the pits provided for the reception of grease trap waste. This was in breach of the permit which the company had from the Logan Council to conduct the plant, but Fox asserted that on occasions he disposed of his septic or sewerage waste in the same way as he dealt with grease trap waste which was regarded as in excess of the load to be taken in the tanker or requirement of the plant. His evidence in this particular respect was not supported by any other driver.

Apart from disposal of waste by improper dumping into grease traps or sewer manholes, Fox also gave evidence that at times when the plant was overloaded or broken down, incoming wastes, without treatment or without sufficient treatment, would be delivered to the sewer lines. There is a deal of evidence to support a conclusion that the Marsden plant would, at times, not be able to cope with the volume of waste entering it or the build up of grease within it, although Fox did say that after the Murarrie plant was acquired in 1992, lack of capacity became a less significant factor.

Fox's general allegations of dumping were, as I said, supported and corroborated by other witnesses, but there was a number of allegations of more isolated improper disposal made by Fox and in respect of which it is more difficult to make any positive findings. I will give some examples of such allegations:

- (a) A plant operator at Murarrie, named Keys was quoted by Fox as the source of some of the wrongdoing which he mentioned. He said that Keys had told him that another driver Pecic had washed out his truck which had been carrying acid waste in such a way as to cause the wash water merely to run into a drain. Keys, although saying that he had heard this story about Pecic and had had it mentioned to him by Fox, denied knowing anything about the incident. Pecic, who gave evidence at the investigation was not asked about it. Fox also said that Keys had told him that he had been instructed at Murarrie not to mow a particular area of ground which was used for concealing the dumping of waste; this evidence was also denied by Keys.
- (b) Fox alleged that he had been told by a plant operator at Marsden whom he called Bernie (obviously a reference to Mr B Bowerman) that at the plant, although a meter had been installed at the plant to measure the volume of treated waste before that waste entered the Logan Council sewerage system, that meter was inaccurate and, indeed, other evidence suggested that the particular meter was inaccurate. Fox said that he had also been told by Bowerman that ARR had installed another hidden meter which was available only for its own measuring purposes. He said that his hearsay evidence in this respect was substantiated by the fact that he had seen the hole where the second meter had been kept. Bowerman gave evidence at a time before Fox gave his evidence and although he mentioned a by-pass line through which he said waste was passed before entering the Council's sewerage system, he did not mention that there had been any second meter installed.
- (c) Fox particularly mentioned another driver, Stewart Horne who he said had been able to allow waste to pass through a valve which he had installed to his tanker and be deposited on the road as he moved along it. Fox said that Horne had done this three times that he, Fox, knew of; and that Brooker also knew of it because he, Horne and Brooker had discussed the particular means whereby Horne disposed of the waste. Fox said that Brooker had, after a time, told Horne to stop the practice. Both Brooker and Horne denied that deposits of waste had ever been made in this way.
- (d) Fox made an allegation about improper disposal of paint and silt from schools in the Gold Coast area. He, as I understood the allegations, suggested that volumes of paint and silt which were toxic were mixed with grease trap waste and taken to the ARR plant but should have been disposed of at Willawong. What quantity of paint and silt came from the grease trap at the relevant schools one could not say, but the quantity by comparison with the general grease trap waste would have been, I think, not consequential and certainly not able to be measured. Whether there was toxic waste could also be doubted.

More seriously, Fox suggested that corruption existed in the industry in various forms. He said that he had been told by Brooker that if he was carrying a load consisting of 'special' which should not have been in his tanker and he was questioned about it, there was an employee of Hunter Bros who would protect him because this employee would say on his behalf that Zappaway was merely carrying the load for Hunter Bros.

Again it was said by Fox that some sort of pay-off by Transpacific or its subsidiaries was made to employees of the Logan City Council and the Brisbane City Council and there was more than a hint of the making of deals with employees of the Shell company and Ampol. His evidence in these respects was denied, in part, but was overall quite unsubstantiated and dependent on vague hearsay. It fell far below what would be required to give one the necessary satisfaction to make a finding in accord with any of the allegations.

It will be seen from what I have said that there were aspects of Fox's evidence which I would not act upon or which indeed I would not accept and in one respect, I think he gave evidence which was not true and this was in relation to the circumstances of his dismissal. I say this because contrary to the way in which Fox described the proceedings which relevantly occurred, a witness, Fortescue, gave his own version and he, I thought, was a credible witness.

When Fox was called to give evidence, I was quite willing in his interests, as I thought, to protect his identity by forbidding publication of his name, but in answer to queries relative to this, he said that he did not want his name suppressed 'for safety reasons' and again because he was 'not afraid of anyone'. In the light of this, I was surprised when through the medium of an article in *The Sunday Mail* of 7 November 1993, he and his solicitor complained of the treatment he had received from the Criminal Justice Commission in respect of his vulnerability as a whistleblower. There must always be difficulties for an investigative body in its approach and its dealing with one who offers himself as an informant, but in the instant case, the subsequent affidavit of one of the Criminal Justice Commission investigators and the attachments to it which became exhibit 371 in the investigation explain in detail what relevantly occurred when the Criminal Justice Commission had dealings with Fox and what was said by Fox to officers of the Commission at the time. They go a long way towards disposing of the suggestion that Fox had been dealt with 'shabbily'. I do not propose to discuss the matter further because it seems to me that there are aspects of it which should remain confidential.

Despite my criticism of some of Fox's evidence and my unwillingness to act upon or accept all of his assertions, I think that the community is indebted to him because it was he who brought to the attention of the Commission and so of the public, the improper practices which had become rife in the liquid waste industry and which were the subject of the bulk of the evidence in the present investigation.

Fox said that four of the drivers employed by Zappaway were favoured by the company in return for carrying out much of the illegal dumping. This favouritism was carried through to the greater payments of overtime to four of this inner circle. He identified the four as Julian Stapleton, Stephen Horne, Peter Pecic and Garry Johnson.

All four were summonsed and gave evidence. They had extensive experience in the industry, having been involved in it for up to twenty years each. All of them had worked closely with Brooker, the Transport Manager of Zappaway, for many years. He had been their Foreman for a considerable period. Before that, Brooker had, in fact, trained Horne when he first joined the industry.

There was some variation in the accounts that they gave of the industry and practices of Zappaway. Initially, Johnson denied ever hearing of the practice of dumping under its various names, however, after some time he made the following concession:

Okay. That is what I am talking about. Now, that is not hearsay or rumours, because it is the man himself telling you that he has done it; do you follow what I mean?---Yes.

That is different from the man telling you that a man down the street had done it. That is what I am interested in. I am interested in the people who admitted to you that they had done it, you see. Would it be fair to say that every Zappaway driver at some stage or other, certainly in the first five or six years you were there, admitted that he did this regularly?---It's possible, yes.

That is true, is not it?---Yes.

It was a practice that was regularly followed by all the drivers at Zappaway insofar as they told you?---Yes.

I do not mean that you went out and kept an eye on them to see whether they were telling you the truth, but from what they told you, it was a practice that all the drivers at Zappaway regularly followed - certainly in the first five or six years that you were working for that company; is that right?---Yes.

Yes. Okay. Now, to be fair and frank, you followed the practice too, did not you?---To a degree, yes.

The three other drivers conceded that the practice of dumping existed throughout the industry and placed periods between two to four years prior to this hearing on its demise.

Horne, when confronted with the results of data analysis conducted by the Commission, acknowledged that he had mixed loads of other material with grease trap waste and emptied the material at Marsden in July, September and October 1992. (The period of analysis by the Commission.)

I was left with the impression that each of the four was firmly committed at least initially, to giving evidence which minimised both their part in improper practices in the past and also diminishing the responsibility and knowledge of senior officers of their employer as knowing participants in those practices. I believe they conceded as much as they had to. They were required to give evidence after many other employees had spoken of the practices and also knowing that the results of the Commission analysis of company documents had been tendered. They were not prepared to deny things of which the Commission already had evidence but on the other hand they were not prepared to concede anything that went further than this.

MEETING WITH THREATS TO EMPLOYMENT

Fox's account of the meeting at Marsden was echoed by the evidence of one other driver, Mr Sawyer. However, he placed it as occurring within six or twelve months of the Marsden plant starting, over a year before Fox's account had it occur.

Johnson provided a guarded confirmation of the event spoken of by Fox. The others in the inner circle either could not recall or specifically denied that such a meeting took place.

Johnson replied to the following questions by Counsel Assisting:

I was just wondering what caused the drivers to raise this at a meeting. Was there something that happened which put the wind up them a bit?---I don't know.

I - - -

You do not know?---Because I never used to go to the meetings much. No use me going there, I'd fall asleep every time.

All right. But, anyway, you remember a meeting?---I remember a meeting, yes.

Drivers being present, and this topic was raised?---Mm.

And the thrust of it was - what they were really saying, whoever raised it, was that they did not want to do it. The drivers did not want to do it?---Well, as far as what I heard, that's right.

Yes, but you were at the meeting?---Yes.

Well, before you went to sleep did you hear that, that they were saying in effect, 'We don't want to do this'?---They were talking about other stuff and everything, you know?

Yes. Was any of the management people at the meeting?---Oh, it was run by Mr Peabody.

Peabody Jun and Brooker specifically denied the threat was made. Peabody Jun's attention was drawn to his own briefing notes for a management meeting of 28 March 1992 which concluded with the statement:

If you can't work this system, leave.

It should be noted that this management meeting was not with the drivers.

In his statement he had addressed this comment and said:

This point was merely made by me in order to indicate that I was anxious for the new system to work and I wanted the total commitment of all the key participants. Apart from what was basically a tongue-in-cheek remark no-one was actually threatened with their job in order to ensure their attendance to participation in the process.

No other witness gave direct evidence of the threat although a number claimed defective memories in relation to this meeting.

CHAPTER 3 - EXAMINATION OF THE PLANTS' OPERATIONS

THE OPERATION OF THE MARSDEN PLANT

The Marsden plant is located in the Logan City Council area. It appeared that this plant was ARR's first venture into liquid waste disposal. ARR came into the business after the plant was planned and construction started, but before it was commissioned and commenced to receive liquid waste. The project appeared to be in concert with Genesearch Pty Ltd which was examining converting waste to high protein fertiliser or stock food through a micro biological process.

The two longer serving plant operators, Mr B Bowerman and Mr M O'Connor, started employment around the time the plant commenced. Bowerman in October 1988 and O'Connor in January 1989. Bowerman was qualified as a fitter and turner and a senior watch engineer in the Merchant Navy. He spoke precisely of matters within his knowledge. O'Connor had no formal qualifications, but had been a plant operator at another unrelated business. He appeared to be a plain speaking man. The other two plant operators called were Sean Russell and Anthony Hartley. I formed the view that the plant operators were credible witnesses. It may be said that all appeared to have an imperfect understanding of the processes used and the reasons for their tasks and duties which may reflect more upon the training they received than upon themselves.

Russell had been employed at the Marsden plant early in its operation, he thought from June 1988 until May 1989. Hartley was an employee of the former owner of the Murarrie plant and had remained employed at that site following the take over by ARR in April 1992. He had worked at Murarrie from October 1986 until injured in November 1992 and due to his delay in returning to work, the company was not able to hold his position for him. Hartley could not provide any information on the Marsden plant.

The plant operator at both plants entered in a diary or logbook the volumes of liquid received at the plants and commented on problems in the plant. These were tendered.

From the evidence of Bowerman and O'Connor, it appeared that the Marsden plant initially operated with two systems. One was the new technology which was under development by the consultants, Genesearch to recycle the grease trap waste to a by-product and the other was to deal with the bulk of the material being brought to the plant by the transporters. This bulk of material was treated by way of settling and aeration and sometimes chemicals were added to assist its clarification before release to the sewer.

The first system being used by Genesearch was subject to regular modification and was controlled by a consultant, Dr J Reichelt. The second system was apparently the result of Higginson's design and was subject to control by Higginson. Initially, the plant operated on a 24 hour basis, with plant operators working shifts. The loads of waste received at the plant were tested to ensure that nothing deleterious entered the process to upset the bacteria which were used in the first system. However, after the first year this testing was abandoned. Bowerman said he never saw signs within the piping of corrosion from hazardous substances when carrying out maintenance.

In about May 1990, Bowerman was instructed to effect repairs on the machinery within the plant. He removed all the pumps from their foundations and placed them on the concrete apron within the plant building, repaired, painted and then replaced them. This took him five to seven weeks. The other plant operators were put off by the company and were under the impression that the plant was closing down. They were re-engaged over time, but O'Connor was not re-employed for some eight or nine months.

At that time, the Murarrie plant was owned by a competitor and was not used by Transpacific to treat its waste. The staff at the plant were Bowerman, Higginson and another person, Gooch. Higginson and Gooch were not plant operators but it appeared they would carry out some plant operator tasks on occasions.

When Bowerman was asked about the operation of the plant during this period of maintenance, he said:

Because I had all the machinery in that area and working on it, the plant did not operate in the manner that it had operated before with the machinery. The machinery was needed to effect the processing of the grease trap waste liquid and so, to that extent, I had all the machinery away from its mountings, I'm working on it. The plant was not operating in its normal fashion with the assistance of these machines.

Evidence from the drivers who were employed by Transpacific at that stage, does not disclose that they were aware that the plant was closed down or that they varied from their usual procedures of returning with their collected liquids to the plant. The exceptions were those who spoke of the meeting and the threat to employment who implied the company's need to continue dumping arose from the plant's inability to cope with material received. Fox said this meeting occurred in early 1990. Bowerman was not aware of where the grease trap waste went at that stage and because the other plant operators were not employed, they were unable to provide the information. A desire to avoid paying Council dump fees would provide a motive to have drivers dump material rather than take it to Council plants while Marsden plant was inoperative.

The evidence did not make clear what happened during the period of the maintenance to the liquid waste which ordinarily would have been either delivered to the Marsden plant for processing or otherwise disposed of.

The machinery in place at the plant was not equipped with a mechanism to automatically prevent large concentrations of solids in suspension from being released to the sewer. The decision concerning the quality of the effluent discharged was for the plant operators alone. As has been said they were given no training or information of the appropriate licence conditions and standards for release to the sewer and had no previous experience in the field.

It seemed that over time, the area of the plant dedicated to the Genesearch system was decreased and the area used for reception and settling of grease trap waste, as supervised by the plant operators, increased steadily. Likewise, through the aggressive purchasing of other businesses, the total volume of the grease trap waste collected by Transpacific steadily increased.

The plant initially operated on a 24 hour basis, however, with the lack of success in the Genesearch process, it was reduced to one eight hour shift. O'Connor stated that, of that eight hour shift, he would spend two hours receiving loads of grease trap waste and effectively was left with six hours to process the material. The process used by O'Connor was designed by Higginson; it passed liquid through a series of tanks and finally through a monitor tank which was a small open tank in which the quality of the effluent could be viewed or monitored before being released to the sewer.

This process meant that there was a build up of grease and other materials in the tanks which decreased the volume available for receipt and treatment of incoming liquids.

In 1992, the efforts of Genesearch were abandoned completely and systems designed or modified by Higginson came into use. However, it appears that once again, two systems operated within the plant. One was the system designed by Higginson which apparently could not cope with the volume of incoming material and the other being the system of settling improvised by the plant operators. O'Connor described this.

How would you shortly describe the system used at the Marsden plant now?---
The system now is set up by Brian Higginson, and I believe it was built for 50,000 litres to go through in a day.

Yes?---But because of only one shift on this is not possible and then because I'm two hours out in the truck bay as well, it is not possible to handle that full amount so it is basically split in two at the moment and we run what we can through the

system in the time available and the rest is put into five tanks and settled for whatever time we can give it and then discharged into the sewerage drain.

Well, are you saying that only part of it is treated and the other part is not treated?---Basically.

So you are getting in, how much a day? 60,000, is it? 60,000 litres still?---We get in?

Yes?---No - - -

It was designed to take 50,000 litres a day?---Well, that is what I was told by Mr Higginson.

Right. It did take 60,000 in the Genesearch days because of the extra things they are doing?---That was an entirely different system. They involved all the tanks.

I see?---Since the Genesearch have left, this involves five major tanks which leaves me five major tanks to play with whatever excess comes in.

Well, now, what is the intake per day now, 50 or 60,000 litres, or what?---100,000.

100,000 litres comes in, into the 50,000 litre plant as you understand it and you are saying half of that gets treated in the appropriate way, the way that the - - - ?---Well, half of it can't be treated in the normal way because we are only one shift available.

Yes?---In that time I find that probably because of the two hours I do in the truck bay I can only process 20,000 through - 20 to 30,000 maximum through that system set out by Mr Higginson.

Right. So 20 to 30,000 litres per day is treated according to the method - - - ?
---That plan set out.

- - - the company advertises as its method of treatment. Would that be a fair way to put it?---Yes.

When I say it advertises it, I do not know whether it puts billboards out, but if I went to inspect it as a visitor or something like that, or as a customer, what I would be shown as the treatment is given only to 20 or 30,000 litres per day?---
At this stage.

At the present time, all right. And what happens to the rest?---We have these other tanks and we start from the back one and we fill that, then we start the next one and fill that, and start the next one and fill that, and then the next one then by the time we are ready to start the last one, we have to ditch the first one.

So what you have done, in effect, is you have stored in the storage tanks this liquid and I suppose that as it cools the fat goes to the top, sort of thing, does it?
---Yes.

And what you do then is you, in sequence, you just put them down the drain?---
That's correct.

What happens to the fat in them?---It stays in the tank.

So the water drains out the bottom of the tank and - - - ?---We visibly watch it, and as it turns we turn it off, so - - -

As it turns, as you are starting to get more fat, you turn the tank off?---Yes. It will just turn grey and then it will slowly turn darker and then it will slowly start picking up small amounts of grease and if you kept it going it would eventually pick up a thicker amount, but just through our experience there as it starts to turn, going from the clear to milky, is when we shut the valves off and we have to leave that tank then.

So you shut the valves, you will not let any more of that go down the sewer line?---No.

Why not?---Because I consider it unfit, so - - -

What, is it too thick you mean, or what?---Yes.

Yes, okay?---Yes, it starts to get what we accumulated in the tank.

Right. So you turn that one off and then you have got another tank so you can do the same with it?---Yes.

Later he was asked about the shortest time that liquid was released after reception and said:

Well, are there occasions for example when you can say that it has been released from a point in the system for arguments sake, where it has not gone through much of it at all, let us say you said one of the best pieces of machinery was the contra shear. Does it ever get released say, having only been treated by the contra shear?---Not exactly, not directly.

No?---There will be some settling. For instance, say if our tanks are getting to the stage where they may have 20,000 litres of solid grease in them, and you can't take them right to the top so you will overflow them, so that might cut your distance down again and suddenly your 200,000 litres has come down to 80 to 90,000 litres left and you get an exceptional day where maybe 80 or 90,000 came in within three hours well, your first tanks are going down the drain fairly quickly.

In an hour or less?—Probably, an hour would be about the minimum time some of them have had.

Well, that would suggest there was not much treatment at all?—I've got no alternative.

Yes. Well, I am not saying - no, I am only after the facts, I am not sort of apportioning blame or anything at the moment. But it would suggest that it was hardly treated at all in those circumstances?—It could look like that.

O'Connor also pointed out that the contents of the tanks would not settle until the tank had finished being filled because of the disturbance caused by the in-flowing liquid.

PLANT PRESENTATION

The evidence raised for consideration whether the Marsden plant's purpose, methods and effectiveness had not been falsely represented to the authorities, customers and others. In particular, attention was drawn to allegations of the cleaning of the monitor tank so it misrepresented the clarity of the material being discharged to sewer, the existence of a concealed pipe which by-passed the monitor tank and meter so that liquid waste of questionable content could be discharged to sewer in a concealed manner without registering on the meter and that the entire plant was sometimes presented to visitors in a way which was quite false. I must deal with these matters in some detail.

As previously indicated, whilst the liquid waste passes through a number of tanks, ultimately the design of the plant as specified by the Logan Council was that any liquid discharged to sewer should pass through a small monitor tank prior to discharge. This monitor tank was located near a transportable office and from this monitor tank, samples were taken to be sent for analysis at Symmonds and Bristow. On the basis of the analysis of those samples, information was given to the Logan City Council to calculate the fees due to it.

A number of witnesses were asked about this sampling. O'Connor's account was as follows.

Now, from your experience, are those samples genuine, the ones that are taken from the monitor tank?—Of recent, not 100 per cent.

Well why, What is done to - - -?—Well, the monitor - - -

- - - sort of titivate the results up a bit?—The monitor tank is the showpiece of a factory. It's a releasing point; and it has been the - the - can't think of the actual word - but it's been the accepted thing that that tank has to be kept 100 per

cent clean at all times and I'll come in in the morning and have a play around with it and Brian Higginson will come in and have a play around with it and sometimes my co-worker will have a - come in and have a play around with it by - well - and the manner of adding water so that that tank will always look like its 100 per cent clean.

This exchange occurred a short time later:

THE JUDGE: How do you add the water? As Mr Hampson described, or do you put a hose in it?---Just put a hose in, your Honour.

MR HAMPSON: All right. And have you had instructions to do that?---Yes.

From whom did you get instructions to do that?---Brian Higginson.

All right. And what about Mr Angell? Does he do that too?---Yes.

Probably a pretty good job is done, if all three of you do it one morning?---It could look that way.

Pardon?---It could look that way.

He then went on to say that there was no practice of only taking samples after the water was clarified in the tank, but it averaged at about half the samples being taken after this had occurred. It should be said that Higginson indicated that the regular cleaning of the tank was merely to ensure that the samples taken were a true reflection of the state of the liquid passing through the monitor tank rather than containing a build up of contaminants within the tank.

There was also evidence that a pipe had been added to the system at some point by Bowerman. It was a four inch diameter pipe which effectively passed under the demountable office and was out of sight and allowed liquid to be discharged directly to the sewer without passing through the monitor tank or the meter which recorded volumes for the purpose of fees due to the Council.

One question was whether the pipe had been deliberately concealed. Russell said it was concealed as a result of the demountable office being placed on top of it. However, when asked whether he had used that pipe, he was concerned enough to claim a privilege from answering on the grounds of self-incrimination and it was only after I directed him to answer such questions, that he indicated he had used it twice. O'Connor also appeared to regard the pipe as a concealed pipe and indicated that it was removed in July or August 1992 which was about the time that Genesearch completely finished their connection with the plant. Reichelt of Genesearch was asked of this pipe and had no knowledge of it.

Higginson acknowledged the existence of the pipe and ascribed to it a use for draining tanks with unacceptably discoloured liquid in them. It was introduced for cosmetic reasons. He said that there was no harm in by-passing the meter because the meter did not work and the figures supplied to the Council for their volumes, upon which fees were charged, were the result of manual addition of records kept by the company. This explanation ignores the fact that the fees to the Council also increased if the standards imposed for the quality of the discharge were exceeded.

O'Connor agreed that the meter had never worked, that he kept a running tally of receptions at the plant in the log book and it was from this tally that the figures ultimately were taken for the Council. He indicated that, on occasions, he or others would press the controls on the meter to advance it to correspond as best they could with the amounts they thought had been received in the factory.

O'Connor told me of the procedures followed for prospective customers and others who inspected the plant.

The plant was cleaned so it would present well, but a number of other devices were used to assist in generating a positive image of the plant to prospective customers including the Army and also some media. All these examples came from O'Connor only after he confirmed that he had been directed to answer questions and, therefore, such answers could not be used against him for the purposes of criminal prosecutions. Some of the examples detailed by O'Connor in evidence are:

Mr HAMPSON: Tell us some of the things that you have done, or you have seen other people do, to - - -?---There has been occasions, particularly when the Gold Coast newspaper came, that we had to recall some fertiliser from off somebody's - one of Genesearch's farms, so we had something to show them and I
- - -

Because they were being told that it was a by-product, a sort of a - - -?---Yes, and I had to spend about two hours picking all the gum leaves out of it because he unfortunately had it under a gum tree.

Yes?--And - - -

So when the people from the Gold Coast came, you were able to say, 'Well, look, there's our by-product', the fertiliser?---That's correct.

Yes, okay. And they were - you were there; they were given to understand that that was a viable by-product?---That's correct.

That what you mean?---That's correct.