



## OFFICE OF THE OMBUDSMAN

3RD FLOOR 580 GEORGE STREET, SYDNEY 2000  
TELEPHONE: 286 1000

Our reference: C250

Your reference:

David Watson  
286 1000

05 JUL 1993

30 JUN 1993

Mr John Corkill  
North East Forest Alliance  
NSW Environment Centre  
39 George St  
The Rocks Sydney NSW 2000

Dear Mr Corkill

**Re: Your Freedom of Information complaint about the Department of Conservation and Land Management**

I refer to the above complaint. I have recently been informed by Mr Ian McDonald, Acting FOI Coordinator for the Department, that Mr Mike Ockwell, Acting Director-General, has decided to release to you document 26, the document the subject of your complaint.

I have formed the view there is no utility in further pursuing your complaint because its basis, namely the withholding of the document, no longer exists. I have consequently decided to take no further action on the matter.

If you do not receive the document you should of course contact me as soon as possible and I will reassess my decision.

Yours sincerely

David Watson  
Investigation Officer  
for the Ombudsman



## OFFICE OF THE OMBUDSMAN

3RD FLOOR 580 GEORGE STREET, SYDNEY 2000  
TELEPHONE: 286 1000

Our reference: C250

Enq: David Watson  
286 1000

Your reference:

24 JUN 1993

Mr John Corkill  
North East Forest Alliance  
NSW Environment Centre  
39 George St  
The Rocks Sydney NSW 2000

Dear Mr Corkill

**Re: Your Freedom of Information (FOI) complaint about the Department of  
Conservation and Land Management**

I refer to the above complaint.

I have recently written to the Department of Conservation and Land Management,  
making preliminary inquiries about your complaint.

Please find enclosed a copy of my letter to Mr Michael Ockwell.

I will contact you again when a response is received.

Yours sincerely

David Watson  
Investigation Officer  
for the Ombudsman

Encl.



## OFFICE OF THE OMBUDSMAN

3RD FLOOR 580 GEORGE STREET, SYDNEY 2000  
TELEPHONE: 286 1000

Our reference: C250

Your reference:

Enq: Mr D Watson  
286 1000

24 JUN 1993

Mr Michael Ockwell  
Acting Director General  
Department of Conservation and Land Management  
GPO Box 39  
SYDNEY NSW 2001

Dear Mr Ockwell

Re: FOI Complaint by Mr John Corkill

The Ombudsman has received a complaint from the abovenamed (copy enclosed) in relation to a determination made by the Department of Conservation and Land Management under the Freedom of Information Act 1989 (FOI Act). Mr Corkill has requested that the Ombudsman conduct an external review of the Department's determinations.

Under section 52 of the FOI Act, the Ombudsman may investigate, under the Ombudsman Act 1974, the conduct of any person or body in relation to a determination made by an agency under the Act. Under the Ombudsman Act the Ombudsman has the discretion to investigate these complaints where it appears to him that any conduct of the authority may be conduct specified in section 26 of the Ombudsman Act 1974. In the past investigations of FOI determinations have found, for example, that: (a) the FOI Act has been misinterpreted eg by the inappropriate application of the exemption clauses to the documents subject of the application. Recommendations that the documents should be released would then generally result; (b) there has been maladministration in the processing of the applications; (c) the decision by the agency to exempt documents was correct.

At present I am making preliminary inquiries in order to determine whether or not an investigation of this matter should occur.

In making this decision I will need to have reference to the following documents.

- (1) All original documents covered by Mr Corkill's FOI application.
- (2) Good quality copies of all documents generated by the application, including but

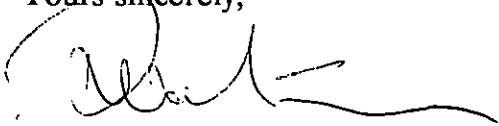
not limited to: the FOI file; any file notes; any memoranda; and any advice including legal advice received by the Department in relation to Mr Corkill's application.

- (3) Any advice, including legal advice, written by and/or received by the Department at any time about the exemption clause 9 of the Freedom of Information Act.

It would be most helpful if the above documents could be sent to this Office as soon as possible, and in any case within 14 days of the date of this letter.

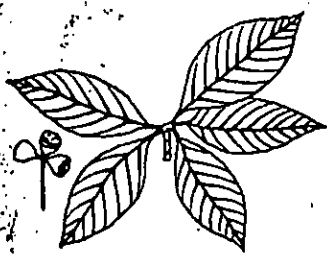
Please do not hesitate to ring me if you have any questions about the procedures involved in an external review by this Office.

Yours-sincerely,

A handwritten signature in black ink, appearing to read 'David Watson', with a long horizontal flourish extending to the right.

David Watson  
Investigation Officer  
for the Ombudsman

Encl.



BRUSH BOX  
*Lophostemon confertus*

# NEFA

## NORTH EAST FOREST ALLIANCE

C/- 'The Big Scrub' Environment Centre Inc.  
149 Keen Street, Lismore. 2480.  
Phone 066 213 278 Fax 066 222 676

### HIGH PRIORITY

**MEMO:** To All NEFA Co-ordinators, &/or Forest Action Groups; *especially:*  
Aidan Ricketts, Andrew Steed, Megan Edwards, Karen Rooke, Trevor Pike, Cath Eaglesham, Lyn Orrego, Patrick McEntee, Chris Sheed, Barrie Griffiths, Marg McLean, Anthony Too.

**RE:** Dissatisfaction with Freedom of Information (FOI) access to State Forests (Forestry Commission);

**FROM:** (Corkill, J. for) Professor Dailan Pugh; **DATE:** 19 August 1994.

#### Introduction

Dailan has been pursuing with the Office of the Ombudsman, his concerns with SF's (FCNSW's) answers to FOI applications, and has sought the OO's intervention and ruling on a number of ongoing issues.

The Office of the Ombudsman has proposed a 'dispute mediation process' to resolve these issues and is seeking a special meeting in Sydney which would be professionally facilitated. See attached letter.

This memo seeks

- 1) your expression of interest in being involved in such a meeting;
- 2) possible dates when you might be available;
- 3) your contribution to a statement of issues of concern;

#### Schedule of possible dates needed

The OO suggests that up to two days will be needed for the meeting in Sydney, now proposed for late Sept or mid October. Please advise me ~~of~~ <sup>of your</sup> preferences, if any, if you would be prepared to attend.

Week 1: Monday 5th	Friday 9th	new proposals.	Thurs. + Fri	
Week 2: " 12	" 16		29 + 30	Sept
Week 3: " 19	" 23		6 + 7	Oct
Week 4: " 26	" 30		20 + 21	Oct

#### Compilation of an Issues Statement

Aidan Ricketts (better known as Ned) has agreed to compile a list of issues of concern for providing to the OO for the focus of the mediation. A **draft** of the list of issues follows. Please add additional items by writing them down and faxing to The Big Scrub Environment Centre Inc. 066 222 676.

**Authorisation required**

The aim of the mediation process is to develop an Agreement for information provision which will be binding on all parties. Presumably SF's (FC) will have an Issues Statement of their own which they will be seeking agreement on also. The Office of the Ombudsman requests that each of the people, who attend to participate in the dispute mediation process, have their groups' full authorisation to negotiate and agree to proposals to resolve issues in dispute.

It is recommended that each person obtain a copy of the minutes from their organisation, or a letter on letterhead, empowering them to participate in the mediation process, negotiate and agree to proposals to resolve issues in dispute on behalf of their organisation. People who agree to participate will need to sign an 'agreement to mediate' as per the sample attached.

PLEASE ATTEND TO THESE REQUESTS AS A HIGH PRIORITY. THANKS!

Yours sincerely,

A handwritten signature in cursive script, reading "J.R. Corkill".

JR Corkill

\*\*\*\*\*  
draft 1 as @ 9 August 1994

## ISSUES STATEMENT

### Information provision from State Forests to environment groups

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CONFUSION AS TO WHAT DOCUMENTS DO NOT REQUIRE F.O.I. APPLICATION

DELAYS IN PROCESSING F.O.I. APPLICATIONS

REPETITIOUS REQUESTS FOR DETAILS OF GROUPS AIMS etc. WHERE GROUPS  
PREVIOUSLY RECOGNISED AS WARRANTING A 50% REDUCTION IN FEES

'DETERMINATIONS' DO NOT MEET REQUIREMENTS OF THE ACT

DISCRETION EXERCISED BY LOCAL 'ACCESS' STAFF TO LIMIT ACCESS AFTER  
'DETERMINATION HAS BEEN MADE GRANTING ACCESS

DELAYS IN PROCESSING APPLICATIONS FOR INTERNAL REVIEWS

CONFUSION WHETHER 50% REDUCTION APPLIES FOR FEES FOR INTERNAL REVIEW

DOCUMENTS CLAIMED TO BE EXEMPT WITHOUT FOUNDATION

DOCUMENTS REFERRED TO IN E.I.S.'s NOT AVAILABLE WITH/WITHOUT F.O.I.

OVERCHARGING FOR SEARCH TIME

OVERCHARGING FOR DOCUMENT INSPECTION SUPERVISION

OVERCHARGING FOR DOCUMENT COPYING

DELAYS IN EXTERNAL REVIEW DETERMINING ACCESS TO DOCUMENTS GENUINELY  
IN DISPUTE AS 'EXEMPT' DOCUMENT

***Leighton Contractors Pty Ltd***

The evidence is in Exhibit HR57. That company did not produce detailed records showing hourly rates but it is plain from an examination of the records and the Schedule prepared therefrom (see tab 2) that the actual or projected annual earnings for crane drivers and dogmen employed by that company were at rates substantially over the award. This can be verified by a comparison of such earnings with those shown by the records of other companies. Examples taken from the Schedule speak for themselves. For the year ended 30 June 1989, a tower crane driver's actual gross annual income including allowances was approximately \$120 000.00; for the year ended 30 June 1990, was approximately \$147 000.00; and for the period 1 July to 3 December 1990 was approximately \$100 000.00, which is a projected annual earning rate of \$240 000.00. Three dogmen each earned for the year ended 30 June 1989 an actual gross income of between \$101 250.00 and \$103 255.00.

***Triden Contractors Pty Ltd, Ritz Carlton project at Double Bay***

The crane was erected on this site in April 1990 (Exhibit HR35, para 5) and the evidence as to rates paid is in Exhibit HR36 at barcode 436449. From that document it appears that from 22 May 1990, the crane driver was paid \$20.25 per hour when the award rate was \$13.50 or \$13.57 if in charge of plant. Dogmen were paid at \$17.05 per hour when the award rate was \$11.60.

***John Holland Constructions Pty Ltd***

The evidence was given by Graham Edgar Stanley, State manager, building (t/s H4241) who said that as at the time of his giving evidence (30 July 1991) the hourly rate for tower crane drivers was about \$19.00 (when the award rate was \$13.50 or \$13.57 if in charge of plant) and for dogmen it was \$14.77 (when the award rate was \$11.60).

***Multiplex Constructions (NSW) Pty Ltd***

The evidence was given by Gary James McGilvery, the company's construction director. The evidence in this case provided one of a number of examples where award rates are used but an over-award payment is achieved by an artificial inflation of hours worked bearing no relationship to the hours of work required to be done. The purpose is to achieve a level of remuneration which would match current market rates being paid to crane drivers and dogmen. According to Mr McGilvery (t/s H4354-4356), each week the company and crane crew decide and agree to a spread of actual working hours that enables the crane to be used to its maximum per day. The crane crews commit themselves to work for that span of hours each week and for those hours they are paid at award rates. However, an additional payment is made for 'climbing time', calculated on the basis of 4½ hours at ordinary time for dogmen and 5 hours ordinary time for crane drivers. The crane crews were not required to do any work to earn this additional payment. Any actual climbing of the cranes took place during the weekly agreed spread of hours. As to the expression 'climbing time' used to describe this additional payment, Mr McGilvery gave the following evidence:

- Q. It was just a meaningless name given to an over-award payment; isn't that right? When I say meaningless, it had no real significance as far as the work to be done is concerned?
- A. That's correct. We called it climbing time or maintenance time. Other companies call it good boy money time. You are correct. It is not for any hours that are worked. (t/s H4356/5)

***Girvan (NSW) Pty Ltd/Metroplaza Constructions Pty Ltd***

It appears that over-award payments of crane crews were achieved by these two companies in the employment of crane crews on the Metroplaza site at North Sydney by methods similar to those adopted by Multiplex Constructions (NSW) Pty Ltd (see above). Evidence was given by Albert John Andrews, crane allocator, employed by both of those companies on the Metroplaza site since the project was initially commenced by Girvan (NSW) Pty Ltd. In his statement (Exhibit HR30) and oral evidence (t/s H4131), Mr Andrews explained the system of hours according to which the payment of crane crews was calculated as follows: the stipulated hours for work were from 6.00 am until 4.30 pm, making a total of 10½ hours less ½ hour for the lunch-break. For purposes of payment, the breakdown was: 6.00 am until 7.00 am, one hour at time and a half the hourly rate; 7.00 am until 3.30 pm (minus 30 minutes for lunch), eight hours at the ordinary hourly rate; then 3.30 pm until 4.30 pm, one hour at time and a half.



# NSW OMBUDSMAN

## ❖ AGREEMENT TO MEDIATE ❖

Ombudsman's file no:

Date:

### The Parties

agree:

To co-operate and work with the Mediators

NATASHA SERVENTY

and

GREG ANDREWS

in good faith and to try and reach an

agreement on all issues in dispute between us.

#### 1. Voluntary process

The parties may withdraw from Mediation at any time; the Mediators may also terminate the Mediation at any time.

#### 2. Respect for all participants

All participants have the right to speak for themselves and to be treated with respect during the mediation sessions.

#### 3. Mediators' neutrality

The parties will make their own decisions in the course of the Mediation.

The Mediators are impartial and will not support the interests of one party over the other.

The Mediators shall assist the parties to explore options and, if possible, achieve the expeditious resolution of the dispute by agreement between them.

The Mediators shall not impose a solution on the parties, nor offer legal or other advice.

#### 4. Full disclosure

The parties agree to fully disclose all information and papers relevant to the dispute.

#### 5. Authority to settle

Each party shall either attend in person or be represented at the mediation conference by someone with full authority to make agreements binding on that party.

#### 6. Representation and participation of others

Subject to the agreement of all parties:

a) each party may appoint other persons including legally qualified persons to assist and advise in the mediation

b) other persons having a direct interest in the outcome of the mediation may participate in mediation sessions.

#### 7. Confidentiality

Mediation is a confidential process. The parties and the Mediators agree that anything discussed in the mediation session or any confidential information which is disclosed will not be repeated and will remain confidential, except:

(a) where a participant has a reporting duty to the group or organisation represented;

(b) where the Ombudsman's Office deems it is in the public interest to report brief details of the features of the dispute and the outcome of the mediation.

(c) where the Ombudsman is obliged to report matter under S.11 of the Independent Commission Against Corruption Act.

(d) where a situation of serious or systemic maladministration is revealed which shall be reported to the Ombudsman for his consideration.

The Mediators will not be required to give evidence or produce documents in any subsequent proceedings.

❖ AGREEMENT TO MEDIATE ❖

**8. Communication between mediators and parties**

During the mediation conference the Mediators will meet with the parties in joint session and may meet with each party separately in a private session. Information, whether oral or written, given to the Mediators in the private session shall not be disclosed by the Mediators to the other party without permission.

**9. Settlement terms**

If settlement is reached at the mediation conference, the terms of the settlement shall be written down and signed by both parties or their representatives, and the Mediators. If desired the agreement shall be binding.

**10. Exclusion of liability and indemnity**

The Mediators shall not be liable to a party except in the case of bad faith by the Mediators for any act or omission by them in the performance of their obligations under this agreement.

Signed by \_\_\_\_\_

\_\_\_\_\_  
(Please print name)

\_\_\_\_\_  
(Please print title)

Signed by \_\_\_\_\_

\_\_\_\_\_  
(Please print name)

\_\_\_\_\_  
(Please print title)

Signed by \_\_\_\_\_

\_\_\_\_\_  
(Please print name)

\_\_\_\_\_  
(Please print title)

Signed by \_\_\_\_\_

\_\_\_\_\_  
(Please print name)

\_\_\_\_\_  
(Please print title)

Signed by \_\_\_\_\_

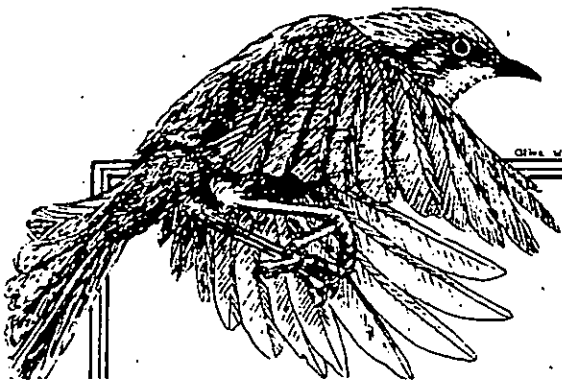
\_\_\_\_\_  
(Please print name)

\_\_\_\_\_  
(Please print title)

Signed by \_\_\_\_\_

\_\_\_\_\_  
(Please print name)

\_\_\_\_\_  
(Please print title)



Oliver Whistler

# THE BIG SCRUB ENVIRONMENT CENTRE

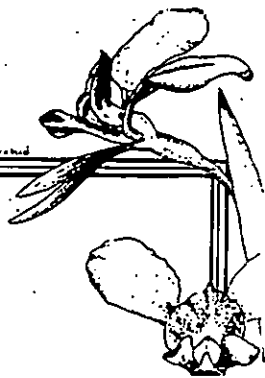
INC.

149 Keen Street, Lismore 2480.

Phone (066) 21 3278

Fax (066) 22 2676

Shirley Orford



## FAX COVER SHEET:

ATTENTION: FOI Complainants DATE: 10/8/94

FROM: Corkill J.

NO OF PAGES: 6 follos = 2 pp letter ⊕ 1 p. list ⊕ 2pp Agent ⊕ 1 p letter

MESSAGE: Please copy this + hand to addressees asap.

All input on Issues Statement re complaints  
welcome (IN WRITING!) Please no details → issues.

Cheers JF