



14 April 2005

Mr Robert Wray
DLI Safety Services Pty Ltd
14 Ryan Avenue
ATHELSTONE SA 5076

Dear Mr Wray

National Gallery of Australia Investigation

I am writing in response to your letter of 22 March 2005 in which you sought advice as to why certain documents relating to employee sickness records and information were not provided to you at the time you requested them. Tony Rhynehart, our Head Human Resource Management has prepared a detailed response which is attached.

The National Gallery at all times sought to co-operate fully with your investigation and provided information in response to all your requests. It would appear that you misunderstood the status of a report on sick leave which you claim you were "given to understand was the whole of the records held by the NGA for the period nominated". The Gallery maintains sick leave records for staff and monitors sick leave on an ongoing basis.

Information related to the cluster of cancer related illness among Security staff was not provided to you as it was assessed separately by an occupational medical expert, as suggested by Comcare and was considered to be a separate matter to your follow up investigation. The advice of the independent medical expert engaged was that there was no casual link between the cancer cases and the occupational environment. This advice was received shortly after the matter was first raised in February 2002.

I look forward to receiving your draft report for comment.

Yours sincerely

A handwritten signature in black ink, appearing to read 'A. Froud'.

Alan Froud
Acting Director

ATTACHMENT E

Statement in Response to Mr Wray's Request of 22 March 2005

This statement has been prepared to respond to the question posed by Mr Wray in his letter of 22 March 2005, in which he sought to be advised of why certain documents had not been brought to his attention at the time he conducted his investigation, which covers the period from January 2002 until May 2003.

The information was not provided to Mr Wray as he did not request it. The terms of reference of his review, and his stated methodology, contained no indication whatsoever that the Gallery was expected to provide to him sick leave records or analyses or incidence reports, that might arise during the course of his extended investigation.

As evidence of this I offer the following.

~~Specifically in relation to sick leave, the terms of reference of the investigation required Mr Wray to ascertain:~~

~~"...whether actions taken in response to recommendations made following the above investigations are appropriate and complete, whether any actions remain outstanding and the timeframes within which those actions will be completed"~~

The recommendation in relation to sick leave records, contained in Investigation 1913 is:

"conduct a review of all sick leave, including those where no reason is given, to confirm there are no 'clusters' within working groups that may be attributable to the working environment."

The Gallery's expectations, based on a number of communications from Mr Wray, was that for him to discharge his obligations under his terms of reference, he would be required to satisfy himself as to whether the Gallery was monitoring and reviewing sick leave. In Mr Wray's letter of 18 January 2002 he provided a comprehensive list of documents that he required, **none** of which referred to sick leave records, analyses, or incident reports. In that same letter Mr Wray advised his intended plan of action. The only reference to non-building-works issues in his summary was:

- "meet with NGA employee groups representing business units to see what changes have occurred in relation to OHS issues; and
- meet representatives of the OHS Committee and HS Representatives to discuss the functioning of these groups."

In the elaboration of his Proposed Action Plan, the only reference to non-building-works issues was:

ATTACHMENT E

"Make appointments and arrange interviews aiming for a start of 4 February 2002:

- meet with all HSRs as a group to discuss their views on the progress towards improved consultation / resolution of issues;
- H&S Committee members as above;
- Selected supervisors to determine what OHS instruction / training has been initiated."

The Gallery's belief that Mr Wray's role was one of "progress-assessment" was re-inforced in his email of 22 January 2002 where he stated:

"In this instant (sic) the word 'investigation' is a bit unfortunate as my role is mainly a follow-up to determine what progress has been made".

Clearly there was **no** expectation that Mr Wray would be focussing on sick leave records to the extent that he has in his report.

The first mention of sick leave and health monitoring does not occur until Mr Wray provided his meeting schedule for 7 and 8 February 2002. In this he advised of a meeting of HRM staff (Tony Rhynehart, Helen Gee and Melinda Carlisle) on 7 February 2002 to discuss "communications, complaint processes, sick leave and health monitoring & OHS Policies".

At that meeting, as recorded in Mr Wray's file note, the HRM staff confirmed that they had audited the Gallery's sick leave records. A discussion ensued, also recorded on Mr Wray's file note, during which the HRM staff advised that nothing in the audited sick leave records suggested the existence of a cluster of illnesses. The HRM staff also advised Mr Wray, and this is not included in his file note, that they routinely assessed each sick leave form on receipt to determine whether there was a trend, pattern, or cluster emerging, or whether a stated cause of illness (eg stress / anxiety) required some immediate intervention. At the conclusion of the meeting, the HRM staff were of the view that they had satisfied Mr Wray's inquiry into whether they were monitoring sick leave. They are unanimous and unequivocal in their assertion that Mr Wray did not request to be provided with ongoing reports or analyses of sick leave.

It is critical to note that at no time did the HRM staff suggest that the only records of employee sickness for the period nominated was that provided to Mr Maguire, as Mr Wray contends in his letter of 22 March 2005. This is not the case. The Gallery does hold the sick leave applications and associated medical certificates for all staff, for at least 7 years, as required by the archives disposal schedule. An attempt to clarify this point was made by the Gallery in my email to Mr Wray of 1 April 2005 in which he was invited to clarify exactly what he had sought, for what period, with what result. Mr Wray's email in reply, 4 April 2005, does not address the issue of what period he nominated, and re-affirms his belief that the records provided to Mr Maguire were represented to him as the only ones available. That is clearly not the case, as all records are archived appropriately. In relation to the period nominated by

ATTACHMENT E

Mr Wray, the HRM staffs' recollection is that it was for the period after Investigation 1913 up until the start of his investigation.

In Mr Wray's letter of 22 March 2005 he states that "At or around the same time I asked if there was any evidence of disease cluster affecting employees of the NGA and was told there was not". It should be noted that this question was put to the HRM staff on **one** occasion only, being at the meeting of 7 February 2002. Their response has been mentioned above.

As stated, in the absence of any request from Mr Wray for any further, emerging information, the HRM staff were not of the view that he wanted to be continuously apprised of matters related to staff health. Had this been the case, it only required Mr Wray to make the request, and the Gallery would have provided whatever information he sought.

Turning now to the specific documents / issues that Mr Wray claims should have been brought to his attention.

1. Personal leave usage 1 July 2001 to 30 December 2001 with a reference 0083 in the top right hand corner of the page.

The origin of this document is not clear. There is no doubt that it was prepared by the Gallery from staffs' sick leave records. It appears to be part of a longer report, none of which is locatable. As it purports to be for the 6 months ending December 2001, it would have been prepared in January 2002 at the earliest. It appears to be based on a dump of employee information from the AURION Human Resource Information System dated 21 January 2002. However its purpose is not known, and it would be only speculation to state that it was available at the time that Mr Wray met with HRM staff in February 2002. Certainly it would have been available during the later course of his investigation, but as Mr Wray had not requested the provision of such information at any stage during or after his 7 February meeting with HRM staff, the consideration of providing it to him never arose.

2. Security cancer cluster.

This issue is referenced by 3 documents, viz a letter from Health Services Australia to Melinda Carlisle dated 8 March 2002; a memorandum from Melinda Carlisle to the Head of Human Resource Management dated 16 March 2002; and a paper titled "Investigating Disease Clusters".

The HRM department detected the incidence of cancer as part of its routine evaluation of sick leave absences, and acted appropriately by seeking advice from Comcare, and then engaging the professional services of Health Services Australia.

As Mr Wray had not requested to be kept informed of any clusters of illnesses, the consideration of whether to inform him of this issue never

ATTACHMENT E

arose. As far as the Gallery was concerned, Mr Wray had satisfied himself as to the Gallery's compliance or non-compliance with the relevant recommendation of Investigation 1913. In any event, the professional advice was that there was no work related cluster, so there was in reality nothing to report to Mr Wray.

The matter was discussed quite openly amongst staff and the OH&S Committee, with no attempt whatsoever to cover it up.

3. Security Staff symptoms – Exhibition Gallery pre 11 January / post 11 January.

This report relates to complaints received from Security staff in December 2002 about symptoms being experienced by some of them when stationed in the temporary exhibition gallery. The Gallery consulted widely with Security staff and undertook comprehensive environmental testing to attempt to identify the cause.

By now it was January 2003, Mr Wray's investigations had progressed to whatever stage they were at that time, he had expanded his inquiries on 3 occasions to concentrate on specific issues that had emerged, and he had not requested, after the initial request, any further information on sickness issues. The question of advising Mr Wray of this incident, which was appropriately reported by staff, and thoroughly examined by the Gallery, never arose.

4. Reported Staff Illnesses – 24 March to 2 April 2003

This report resulted from HRM receiving advice from a number of staff that there seemed to be a lot of staff "off ill". Rather than wait until leave forms were submitted to analyse the absences (this would require a wait of at least a month), HRM sought immediate reports from all managers as to absences within their work units. The resulting information was compiled into the report, and indicated that the rate of absences, and types of illnesses, did not suggest a work-related cause.

Mr Wray was not informed of this report as it was now April 2003, and in the absence of any request from him, and on the understanding that his report was almost finalised, the consideration of doing so never arose.

5. Copy of Control Room email (John) to Melinda Carlisle dated 22 April 2002.

The Gallery sought professional expertise to investigate this complaint. The results of the tests were shared with Control Room staff.

The incidence was not reported to Mr Wray as there was no indication that he sought this sort of information. It was by then over 2 months since his meeting with HRM staff.

ATTACHMENT E

All the foregoing has been on the basis that the purpose of Mr Wray's investigation in relation to sick leave records was to assess the Gallery's progress in implementing the relevant recommendation of Investigation 1913, ie that it conduct a review of sick leave.

Clearly, the overall terms of reference empowered Mr Wray to investigate any matter related to OHS. The Gallery's preparedness to cooperate with Mr Wray and assist in whatever way possible is on record with him. Taking the broader view that Mr Wray's investigation should focus on the actual incidence of sick leave rather than just the Gallery's capabilities to analyse and act on the trends, (ie reviewing sick leave as required by Investigation 1913), it would have been reasonable for him to expect to be advised of all sick leave occurrences for whatever period he required, historical and / or prospective for the duration of his investigation. Had he so requested, we would have complied. Again, however, I must point out that it was the Gallery's clear understanding, on the basis of Mr Wray's initial and repeated advice, that his task was not an investigation, rather an exercise to assess compliance with the earlier investigations.

Sick building syndrome

Mr Wray's draft report introduced the issue of sick building syndrome (SBS), which had not been raised with the Gallery during his investigation.

There are two comments on this.

First, we were not aware that Mr Wray was focussing on SBS until receipt of his first draft report in June 2002, by which time two of our investigations had been completed (cancer amongst security staff, and analysis of air quality in the security control room). Neither of these investigations identified any concerns, so apart from the fact that this was before Mr Wray's claims of sick building had emerged, there was no further action deemed necessary on either investigation.

Second, had Mr Wray wanted evidence from our sick leave records to support his claims of SBS, had he requested we would have provided access to ALL leave and attendance records.

This is particularly relevant given the Gallery's strong rebuttal of Mr Wray's unsubstantiated claims of SBS in response to his final draft report of March 2003.

Had we known that SBS was going to be an issue – and this was NOT evident from either the terms of reference or Mr Wray's stated intention of his work being "... mainly a follow-up to determine what progress had been made" - we would gladly have provided information so that his opinion on the Gallery environment could have been informed by a more balanced input.

Hence the issue of whether to provide the results of these further investigations / analyses to Mr Wray never arose. No-one took a decision not to provide him

ATTACHMENT E

with the results of the investigations / analyses, as it was never a consideration.

Mr Wray's views of Gallery management

Disturbingly, Mr Wray's file note on his meeting with HRM staff contains an allegation that the HRM department attempted to deceive him. He states: "*I was presented with a policy document for 2000 / 2001 that was dated 7.2.02. I have a suspicion that it had been recently put together, probably as a result of them being notified of the current investigation (Attachment NGA1).*"

In fact the document provided to Mr Wray was a genuine document, prepared some years before. The date of 7 February 2002 on the document represented the date it was printed – ie the day of our meeting with Mr Wray. It is extremely worrying that Mr Wray would form an opinion that we had put together a document to deceive him, and not have questioned us on it. What is particularly disappointing is that what can only be described as a biased assessment of HRM staff is now a matter that is on the public record, and will serve both to detract from our individual reputations, as well as fuel opinion that "Gallery management cannot be trusted".

It is also my opinion that Mr Wray's mistaken belief that we attempted to deceive him may have coloured his views of Gallery management, making him more disposed to accept at face value unsubstantiated claims made by some staff, particularly where those claims were critical of the Gallery.

Alleged cover-up

Given that the Gallery has been completely open with its staff, unions, the OH&S Committee and its Consultative Committee on all the above cases that Mr Wray has cited, and freely provided the information in response to an FOI request, how could anyone seriously consider that we were trying to hide it? That is illogical in the extreme, and it is absolutely ludicrous to believe that the Gallery has acted in any way to cover up, conceal, or hide any sick leave records from Mr Wray.



Tony Rhynehart
Head Human Resource Management
National Gallery of Australia
15 April 2005