

ATTACHMENT G

Investigation # 2732

**NGA draft report comments
with investigator's notes added
(in bold italics)**

OVERVIEW

For the detailed reasons set out below, the Gallery considers that the draft report is inadequate and deficient in the following respects:

- it contains subjective and speculative comment for which no objective or factual reasoning is offered;
- it contains factual errors;
- it does not make reference to all relevant facts;
- it offers comment that the Investigator is not qualified to make;
- it fails to acknowledge the inadequacies of the Investigator's own investigation; and
- it gives rise to a reasonable apprehension of bias against the Gallery on the part of the Investigator.

INTRODUCTION

Five conclusions set out in paragraphs 10 to 13 of the draft report require specific comment. These conclusions and those comments are set out immediately below. Comments on the recommendations made in the draft and on other specific aspects of the draft then follow.

A. COMMENTS ON CONCLUSIONS

Conclusion 1

The draft seeks to conclude that awareness of the additional information now under consideration would have led the Investigator to make further investigations at the time, but asserts that this would have been difficult because of employees' concerns that they would have been disadvantaged if seen to cooperate with the Investigator.

Comment

The draft states that in the early stages of the initial investigation the Investigator considered the information in Investigations 1913 and 1997, in relation to issues of alleged upper respiratory illness and the possible link to the air-conditioning system, to be deficient. The draft then states that, consequently, the initial investigation sought to collect additional information to determine if there was any link.

However, what is not stated and should be acknowledged is that it is evident that the Investigator's attempts to seek additional information were inadequate. This is because the Gallery was not made aware of what it is

now said was sought (or, worse, expected) by the Investigator. To compound this matter, the Investigator's attempts to elicit further information seem to have been very selective, as they reflect the information provided to the Investigator by a very small number of either former or current staff, most of whom had their own reasons to be critical of the Gallery.

The Investigator's apparent beliefs that the illnesses reported by those persons were attributable to the building, and that staff were afraid to report illnesses, are not supported by evidence. The cases quoted in the initial report prompted the Gallery, in commenting on the draft, to ask many questions of the Investigator. These remain still unanswered.

The information provided by the alleged small group of employees was of such consistency that I had no problems coming to the opinion that had employees been prepared to make an official statement there would have been conclusive evidence to support my opinions.

Conclusion 2

The draft asserts that the additional information is sufficient to convince the Investigator that the Gallery would have been classified as a sick building in the mid-1990s.

Comment

There is no evidence to support such a conclusion. The draft states that Dr Dingle, on the basis of the limited sickness statistics provided in 2002, commented that in his opinion there was a suspicion of sick building syndrome. The Investigator then states that, on the basis of his now enhanced personal knowledge of sick building syndrome, the additional information is sufficient to convince the Investigator that the building would have been declared a sick building in the mid 1990s.

No scientific basis for this assertion is stated in the draft, and for this reason the conclusion seems, at best, spurious. Obvious questions that would have to be addressed if this assertion were to be contained in the final report include:

- what is the relevance to the state of the building in the mid 1990s of reported staff illnesses in March and April 2003 (that is around 8 years after the mid 90s);
- similarly, what is the relevance of one-off instances of URI in the Control Room in April 2002 (7 years after the mid 90s);
- what is the relevance of one-off instances of discomfort of Security staff in the temporary exhibition galleries in December 2002 and January 2003 (some 7 years after the mid 90s);
- what is the relevance of sick leave statistics in the last 6 months of 2001 to the state of the Gallery 5 years earlier;
- what is the relevance of the cancer incidence, which has been professionally assessed as not work related.

The Investigator states in the draft that one of the basic elements of an investigation is to not reject any information until it can be eliminated by reasonable argument. The converse must also apply - not to accept any information until it can be validated by thorough investigation and evidence. It is clear that this conclusion has not been subjected to this rigour.

Dr Dingle's statement of a suspicion, on limited and incomplete information, is not sufficient to justify the conclusion now sought to be drawn in the draft and the draft contains no other scientific or factual justification for it. As the draft acknowledges that it is not now possible to confirm Dr Dingle's suspicion, it should equally fail to speculate in this regard without a clear and provable scientific and factual basis.

The consistent evidence provided by employees off the record mirrored the conditions identified in research and real cases of sick building syndrome in the USA and Europe. I stand by my opinion.

As to the relevance of the additional information (that was alleged to have been kept from me) I did not state that it would be relevant. I do not know if it would have been relevant because I was not given the opportunity to investigate it.

Conclusion 3

The draft states that the Investigator has "not been unable to uncover any evidence to support this" [that the Gallery deliberately withheld information from the Investigator].

Comment

Presumably the double-negative is a grammatical/typographical error, and the Investigator is actually seeking to state that he has not found any evidence that the Gallery did attempt to conceal the information.

While the Investigator may not be prepared to go further and positively assert that the Gallery did not attempt to conceal information from him, he should at least acknowledge that the available evidence is consistent with such a conclusion. That evidence includes the following:

- the Gallery fully complied with every specific request made by the Investigator for information provided to him;
- the Investigator did not specifically ask at the time for the information that has now been provided and, if it was material, he should have done so;
- the Investigator's own description of his assigned task, as described in his e-mail to the Gallery of 24 January 2002, was not such as to have induced any reasonable person to volunteer information of the nature now under consideration; and,
- far from hiding information of this nature, the Gallery openly disclosed it to

relevant parties in a manner completely inconsistent with a desire to conceal - for example, the material in relation to cases of cancer was promptly disclosed to staff, staff associations, the Gallery's OH&S Committee and to Comcare.

As this is a key aspect of the investigation, rather than being presented in such a negative manner, the draft should refer to the various forums and persons with whom the Gallery shared the information, with the Investigator then acknowledging that such openness was inconsistent with an attempted cover-up. To state that no evidence with which to damn the Gallery could be uncovered suggests that the Investigator believed the allegations in the first place, and gives rise to an apprehension that the investigation has not been conducted impartially.

The NGA must have an early copy of the draft as I cannot find this error in my copy.

As to the balance of the comments I find it difficult to see how the wording can lead to the assumptions canvassed – it is a statement of fact. Also see comments below.

Conclusion 4

The draft asserts that, if the Gallery were a prudent employer, it would have discussed with the Investigator, throughout the investigation, any information that came to hand in relation to employee sickness.

Comment

This is an unwarranted and unjustified criticism of the Gallery based on unsubstantiated opinion and presumption, and should have no place in a supposedly objective and hopefully conclusive report. It presumes that the Gallery had knowledge of the Investigator's line of enquiries, but this was not the case. It fails to take account of either the fact that the Investigator did not specifically ask for the information he now says was relevant and his own description of the limited purpose of his investigation.

In reality, this statement amounts to nothing more than an adverse reflection on the Investigator's own performance, and is open to be viewed as simply an attempt to deflect criticism away from the Investigator for not having been clear in what information was sought or expected to be provided.

This was based on practical experience with other government agencies and private sector employers. Examples are:

- *a Centrelink investigation where management contacted me regularly to enquire if information that had come to hand was relevant to the investigation.*
- *Numerous incidents where Holden Ltd (under SA State OHS legislation) would check with both myself as the local Dept of Labour manager and the inspector investigating incidents to see if issues and documents would be of help in the investigation.*

Conclusion 5

The draft concedes that no specific instructions were issued that the Gallery should provide emerging information, which "apparently" led management to decide that it had no requirement or responsibility to provide this information to the Investigator.

Comment

This concession should not be prefaced by the dismissive and pejorative term "apparently", as it reflects the true facts of this whole matter. The unwarranted qualification to the concession again can be seen as serving to deflect criticism from the Investigator for failing to seek information relevant to his investigation and giving rise to an apprehension of bias, and should be deleted.

The fact that the NGA says that their decision was based on the lack of formal request is not sufficient to persuade me to change the wording.

B. COMMENTS ON RECOMMENDATIONS

(i) The draft recommends that Comcare should conduct a review to assess if the recommendations made in investigation #2372 have been fully implemented.

Comment

This review commenced in August 2003 with the establishment of the Wray Steering committee to oversee implementation of the Wray Report recommendations. Had the Investigator made proper inquiry in the course of this investigation, he would have readily been satisfied that this recommendation was unnecessary.

(ii) The draft further recommends that another expert opinion be sought on the possible association of security staff cancer illnesses with the NGA environment.

Comment

The Investigator presents no reasoned basis to assert that the expert whose opinion was sought by the Gallery, consistent with the advice of Comcare and on the nomination of the Commonwealth's expert body, was not appropriately qualified to express that opinion. Further it would appear that, by the Investigator's own admission, he is *not* himself qualified to reach such a conclusion. Accordingly, this recommendation is not justified by the draft and should, in the Gallery's view, be deleted.

The Gallery is satisfied with the expert advice received from Health Services Australia and, in addition, is gathering information and seeking professional advice on a range of health related issues that have been raised by staff. The Gallery would not propose to seek another expert opinion in response to this recommendation if it remains in the final report.

The recommendations are for the 'Wray Committee' to decide if action is required.

C. COMMENTS ON SPECIFIC ASPECTS OF THE DRAFT

1. Part 8.1 Personal leave usage

The draft states that *These details on leave usage are more in keeping with what I would have expected to receive in response to a request for details of sick leave rather than the limited list I was given at the time.*

This allegation goes to the very nub of whether the Gallery's HRM staff complied with the Investigator's requests or whether they acted in concert to thwart the investigation.

The HRM staff have been consistent in maintaining that the Investigator never sought details of sick leave from them. Therefore when the Investigator wrote in a letter of 22 March 2005 to the Deputy Director:

During the investigation I required the NGA to provide me with details of employee sickness in accordance with the powers granted to me in Section 43 of the Act. I received what I was given to believe was the whole of the records held by the NGA for the period I nominated

they immediately sought the Investigator's clarification as to what had actually been sought, and what had been provided as a result of that request. The Investigator responded on 4 April 2005 as follows:

There was no written request for information on sick leave records. The subject was discussed at a meeting of HR personnel on Thursday 7 February 2002 when I was informed that the sick leave records provided to Mr Maguire were the only ones available (see File Note 8 item 2 of Attachments to my report). This prompted me to bring to the group's attention the requirements of the Approved Code of Practice for Workplace Injury and Disease Recording and the reference to Australian Standard 1885. 1. The only document that was provided to me was that which had been acquired by Mr Maguire headed 'sick leave for the period 1 January 1998 to 29 February 2000'.

The facts are that:

- The Investigator made neither a written nor an oral request for sick leave records.
- The Investigator clearly failed to conduct his investigation in a proper manner by entertaining expectations without conveying them to the Gallery.
- It is nonsensical and wrong for the draft to state that the HRM staff claimed that the sick leave records provided to Mr Maguire were the only ones available. The Gallery maintains both hard copy and electronic records of sick leave. The hard copy versions are maintained for at least the period required by the archives general disposal schedule, while the electronic versions have been stored in the AURION HRMIS for the past 5 years, and the PERSPECT HRMIS for the several years prior to that. Knowing this, the HRM staff clearly would not have advised the Investigator that the brief details in the Investigator's possession were all that were available.

- As further evidence that the Investigator was not unaware of the availability of sick leave statistics, the file note of the record of conversation with the HRM staff includes the comment that the Gallery was liaising "with the organisation that handled the wages to include in their software programme a facility to repeat [sic] sick leave statistics". The HRM staffs' recollections of the conversation are that the Investigator was informed of this in order to show that the Gallery was looking to develop an enhanced, automated reporting system. They further re-call that this information elicited no particular comment from the Investigator.
- The same file note correctly states that the HRM staff admitted to being unaware that the requirement to maintain sick leave records was actually included in a Code of Practice. What is excluded from this statement is that, while unaware of the Code of Practice, the HRM staff were actually complying with its requirements to collect, analyse and maintain sick leave records.

In order for the draft to be factually correct it clearly should state:

- precisely what was in fact requested in the way of sick leave records;
- when and to whom that request was made; and
- the outcome of the request.

It is the Gallery's belief that factual detail and analysis of this nature will clearly show that no adverse comment is warranted or sustainable in relation to the Gallery.

It is my opinion based on information gathered. Nothing has been presented to convince me to change that opinion.

2. Part 8.2 Possible cancer cluster

Paragraph 2 of this section states that the Investigator had specifically asked HRM if there had been any health related clusters and was advised there had not. The inference contained in the next sentence is that, in giving a negative reply, HRM was withholding knowledge of the cancer illnesses. That is impossible as the meeting with the Investigator took place on 7 February (the date has been omitted from the draft), whereas the cancer illnesses were drawn to attention on 21 February, some 2 weeks later.

It is essential that the final report clarify that the meeting with HRM took place before the cancer incidences came to light, and further that the Investigator did not ask to be informed of emerging sick leave or sickness details.

The cluster had already occurred at the time of my asking the question, it was just that the persons being asked the question on 7 February 2002 were not aware of it. I am prepared to concede that at the time I asked for details of cluster illnesses the person giving the negative reply was not aware of the incident. However when two weeks later it was found that the answer was incorrect it should have been realized that I had been misled and should have prompted a correction. Ministers have been removed from office for similar incidents in the House!

3. Dr Lark

As the Investigator admits to having no medical qualifications, it is highly inappropriate for the Investigator to comment on the professionalism of Dr Lark.

It is clear from the draft that the Investigator does not have a proper understanding of the Model for Investigating Disease Clusters, as otherwise the draft would not state that Dr Lark's approach deviated from the Model. While the Model is simply that, a model, and not a prescriptive instruction or code that must be followed, an examination of Dr Lark's methodology shows that in fact he did follow the Model. This is clearly demonstrated by the following:

General aspects of the model

1. Be receptive to the existence of a cluster

The Gallery was very receptive to the possibility of a cluster, evidenced by the fact that it acted swiftly once a cluster was suspected.

Therefore step 1 of the model was followed.

2. Be open and involve interested parties in the workplace

The Gallery was completely open with security staff, the OH&S Committee and the union from the beginning, seeking information from staff, and providing information back to staff.

Therefore step 2 of the model was followed.

3. Communication of the results

The Gallery communicated the results initially to security staff, and later to all staff.

Therefore step 3 of the model was followed.

Specific investigation

Stage 1 First response

The first response was made in an open and responsive manner, and a decision was made to seek expert advice.

Therefore stage 1 of the model followed.

Stage 2 Screening investigation

This stage requires the determination of whether there really is a cluster by:

- (a) assessing initial cases

The model states "If all the cases have the same diagnosis we can easily proceed to the next step. If there are many different diagnoses perhaps one should consider whether there really is a cluster. A collection of quite disparate diagnoses tends to argue against a single cause, but this is not necessarily the case".

As the initial cases had disparate diagnoses, the model suggests it is possible to terminate the process at this stage.

However rather than be presumptive about there not being a cluster, further assessment was undertaken.

- (b) seek new cases

The Gallery provided Dr Lark with information about possible further cases which, in his view, confirmed his initial assessment of no work-related cluster.

- (c) compare observed cases numbers with those expected to confirm an excess

Dr Lark's report addresses this issue.

Therefore this stage of the model was followed.

Stage 3 Obvious exposure control

Dr Lark addressed this in an addendum to his report.

Therefore this stage of the model was followed.

Stage 4 More formal investigation using epidemiological techniques

Dr Lark's report does not indicate whether, or to what extent, a formal epidemiological study of the type suggested by the model was undertaken. In any event that is irrelevant, as Dr Lark's assessment up to this stage did not suggest that there was any work-related cause, and clearly, under the model, the assessment could have ceased at stage 2(a) above when the diagnoses indicated that the cancers were different and diverse in their aetiology.

If the Investigator is to include any comment on the validity of Dr Lark's assessment in the final report, it would be appropriate to do so only after the Investigator had sought

comment from Dr Lark. Failure to do so would be but another example of incorporation of unsubstantiated opinion, as well as being a denial of natural justice to Dr Lark as a result of his having been criticised without having had the opportunity to rebut the Investigator's uninformed opinion.

There is nothing in the report to implicate NGA management in this criticism so it is surprising to see the effort and time to comment.

It is rather presumptuous of the NGA to speak on behalf of Dr Lark and claim that he has been denied natural justice. Dr Lark was provided with a copy of the report and his employer HSA has provided an appropriate comment.

4. Exposure of Security staff to hazardous Conservation chemicals

The draft asserts that Dr Lark's statement that *there are no occupational cancer-causing agents associated with security work as such* suggests Dr Lark was unaware of the possible exposure of Security staff to hazardous conditions resulting from the chemicals used in the conservation area.

This presumes an awareness of Dr Lark's knowledge, and any basis for this assumption should be explained.

It is also essential that, if such comment is to remain, the draft should identify the hazardous conditions that existed in the conservation area, and why Security staff would be particularly prone to being affected by these conditions to the apparent exclusion of other staff who, by virtue of their duties, may be equally or more exposed.

My report as far as I understand it was to comment on the allegations of Mess Ford and Cropp not to re-investigate the NGA. In any case I would think that Dr Lark and his organization are capable of addressing the comments themselves so why has the NGA entered into the discussion.

5. Part 8.3 Surveys of Security staff symptoms 11 January 2003, and Reported Staff Illness 24 March 2003

The draft makes the subjective assessment that these surveys were probably carried out in the knowledge that the initial report "would be requiring such actions". That is pure conjecture at its best, assumes irresponsible, negligent and reactive management on the part of the Gallery, and has no part in an objective analysis and report.

The facts are that the Gallery had been for a long time encouraging staff to report any and all health and safety related concerns. Consequently, the investigation into the Security staff complaints was the result of staff formally notifying their concerns to management. The other analysis of absences was initiated after anecdotal reporting of apparently larger than usual occurrences of absences, and the HRM staff informed the Investigator of this practice in the meeting of 7 February 2002. That is, they advised the Investigator that they routinely assessed each sick leave form on receipt in HRM in order

to ascertain whether there was an emerging cluster or increased frequency of absence, in addition to maintaining an awareness of general attendance or absence fluctuations - in a small organisation the size of the Gallery, any significant variation in daily staff attendances is readily noticed.

These analyses were clearly not prepared as the result of an expectation that the initial report would require such action and this subjective assessment must be removed from the draft as it cannot be substantiated.

In the third paragraph of this part the draft asserts that the absences reported for the period 24 March to 2 April 2003 indicate that illnesses due to respiratory and gastric conditions were becoming prevalent. That may be the Investigator's assessment, but the Gallery's view is that there was no prevalence of respiratory and gastric illness at a level that should have suggested further investigation was warranted.

~~If this statement is to be included in the final report then the Investigator should include also the Scientific and factual basis for asserting that the illnesses were becoming prevalent.~~

In this same paragraph the Investigator states that *The Murdoch University report recommended that ongoing monitoring of staff illness and increased testing for environmental contaminants if there was any indication of respiratory and gastric illness becoming prevalent.* A reading of the Murdoch University report (Attachment 28 to the initial report) has, however, failed to locate this recommendation.

Accordingly, if this statement is to be included in the final report then the report should specifically state where that recommendation is included in the Murdoch University report.

My informal interviews with current and ex employees did not support this claim. The NGA may have been trying to establish a good reporting system but it was clear from my discussions with staff that there was a reluctance to report incidents.

In relation to the Murdoch recommendation I concede the point. The draft recommendations were worded for additional testing to take place if there was a significant reporting of upper respiratory / gastric illness. I discussed this with the assessors after which they decided to suggest annual air monitoring be carried out. My report is amended to reflect this.

6. Part 8.4 Security Control Room URI

The draft states that the Investigator conducted follow up interviews with management and staff later in 2002 where this matter could have been brought to attention.

Nowhere, after the February meeting with HRM staff, is there reference to meetings with "management and staff" in the *Timeline for NGA Investigation to determine compliance with the recommendations from Investigations 1913 & 1997* (Attachment 29 to the initial report).

To clarify this, the final report should explain when and with whom these follow up interviews were held and, more particularly, why the Investigator believes that management or staff should have been expected to raise this matter in those interviews particularly as the Investigator had, so far as the Gallery is aware, made no request for such information.

Included in this section is the statement that both the Investigator and the Murdoch University research team were particularly interested in identifying URI statistics as part of their "pre-testing staff assessment".

If this is the case, the final report should include clarification as to why neither the Investigator nor the research team sought these statistics from the Gallery, notwithstanding the Investigator's mistaken assumption that the Gallery did not maintain sick leave records.

During the visit in March 2002 I had informal meetings with Mess Froud, Rynehardt and Ms Carlisle where the objectives were discussed. I acknowledge that these do not appear in the Timeline. At this stage of the investigation I cannot see any value in their being introduced into a report.

In regard to asking for more employee illness records; I had been given to understand that the ones I had were the only ones available so there was no reason to expect anything else being available. Surely if the system had been upgraded the NGA management would have been only too pleased to have informed me of the progress that had been made, especially when I gave a lecture on the need to comply with the Code.

7. Part 9.1 NGA Response

The assessment in the draft of the Gallery's response appears to be an attempt to shift to the Gallery blame for not informing the Investigator of emerging sickness details, when in fact it was the Investigator who failed to seek those records either at the commencement of the investigation or in the ensuing months.

Not only did the Investigator not seek this information, the Investigator clearly stated in an advice to the Gallery in an email of 24 January 2002 that *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.*

If there was any "presumption", as the draft states, about there being no expectation for further information, then it should be made clear that this was a presumption on the part of the Investigator, with no inference that it was the Gallery who presumed they knew what the Investigator did or did not want.

Paragraph 2 of this section contains a concession that, at the start of the investigation, the Investigator tended to focus on a review of action taken to comply with the recommendations of the previous investigations, but notes that the terms of reference of

the investigation enabled the Investigator to pursue a wider scope should the Investigator consider that necessary. The Gallery was fully aware of that, and always indicated its willingness and intention to cooperate fully during the investigation / follow-up.

On three occasions either the Investigator or Comcare informed the Gallery in writing that the scope of the investigation had been expanded in order to investigate issues brought to light by informants. These occasions were:

- 14 March 2002 to examine allegations into the unsafe use and handling of hazardous substances;
- 26 July 2002 to allow additional work to be undertaken in relation to allegations concerning mould and bacteria; and
- 24 January 2003 to examine a reported allegation of improper handling of hydrogen peroxide.

Given these conscious decisions to expand the scope of the investigation, it should have been incumbent on the Investigator to advise the Gallery of any new or additional information that he required in order to complete his expanded task and particularly of his interest in sick leave, especially as it was apparently assuming such great importance in the Investigator's mind and becoming an integral part of the investigation. The fact that the Investigator did not inform the Gallery of this cannot legitimately be used as a basis for criticising the Gallery.

The third paragraph of this section goes to the nub of the allegation of withholding information. The HRM staff have clear recollections of the discussion relating to sickness records and, as advised in the Gallery's letter to the Investigator of 14 April 2005, at no stage did they suggest to the Investigator that the extent of the Gallery's sick leave records was the onepage list provided to Mr Maguire some years earlier. The very idea is preposterous.

The fifth paragraph states that, because the Investigator had once asked about clusters, the Investigator assumed that the Gallery would have automatically informed the Investigator of the cancer incidences of which it later became aware, if for no other reason than to rebut any criticism the Investigator may have inferred for the HR staff not being aware of the Code of Practice relating to sick leave records. This assumption on the part of the Investigator was unwarranted for two reasons.

First, the HRM staff did not recognise any criticism of them in the Investigator's comment about the Code of Practice, rather accepting it as merely informative. This was particularly so as they were in fact complying with the requirements of the Code. Consequently there was no reason why they should have been assumed by the Investigator to be sensitive to any need to expiate themselves for any presumed wrongdoing.

Secondly, and more importantly, the Terms of Reference required the Investigator to look into "any other health and safety matter concerning the air-conditioning system...". Given that professional medical advice had indicated that there was no work-related connection with the cancer cases, there is no reasonable basis on which the Investigator should

conclude that these cases were in any way relevant to an investigation of the air-conditioning system (or, indeed, any other aspect of the workplace).

The next paragraph suggests that the Security staff symptoms of December 2002 and January 2003 should have been referred to the Wray Steering Committee. That is not the function of the Steering Committee, and in any event would have been inappropriate as the Wray Steering Committee did not convene until August 2003.

The next paragraph, dealing with the URI symptoms in the Control Room, states that the Investigator had discussed what the Investigator considered to be inadequate records for employee sickness. There is no disagreement that this was discussed - however a one-off discussion of this nature was not, and should not have been assumed by the Investigator to amount to, a request for provision of emerging information. Also, the draft refers to *meetings*, plural, in February 2002. As we are aware of only one meeting, on 7 February 2002, and no others are referenced in the *Timeline*, the final report should include the dates of, and attendees at, any such other meetings.

In the same paragraph the draft states that the Investigator made further inquiries relating to the effects of chemicals and upper respiratory illness in March 2002. Details of any such inquiries should also be included in the final report as the Gallery is not aware of them.

Based on my experience with other employers I DID expect the NGA to be more forthcoming without my having to resort to official requests. (see above)

I find it difficult to understand why it is only now that the comments on my claims of inadequate records have been raised. Throughout and after the investigation, the NGA has readily presented detailed criticism of any allegations made against that they considered to be unreasonable so why has it taken so long to defend comments made in February 2002.

A review of clauses 45 to 77 in the final report should assist NGA management to identify my inquiries into chemicals and the association with upper respiratory illness.

There are no clauses C8 and C9 in the NGA assessment document however the page numbers are continuous so I presume this is a formatting error.

10. Part 9.2 Comcare response

The draft states that the Gallery had identified the possible cluster as a result of complying with a recommendation of Investigation #1913. The draft then asserts that the Gallery should have notified the Investigator of any activity relating to its compliance with Investigation #1913. As stated above, the cancer incidences were identified after HRM's meeting with the Investigator, and there had been no request, actual or implied, from the Investigator that the Investigator should be kept informed of emerging illness details.

It is also clear either that Comcare's understanding is not complete, or that the draft misrepresents their understanding. Certainly the Gallery's identification of the cancer

incidences did demonstrate that we were complying with the requirements of Investigation #1913, a fact of which the HRM staff informed the Investigator in the meeting of 7 February 2002. It is completely inappropriate to maintain - in the absence of a request from the Investigator that the Gallery should have continuously informed the Investigator of any ongoing analyses of suspected illness clusters.

Again this contrary to my experience with other employers (see above)

R W Wray

Comcare Investigator



Jan 8. 2005