14 June 2012

Mr Peter Gesling
General Manager
Port Stephens Shire Council

Dear Peter

Saying the same thing over and over doesn't make it true

I am responding to your letter of 14 June to the Secretary-General of the LGSA headed "HUNTER COUNCILS (sic) - DRUG AND ALCOHOL TRIAL". You correctly understand the information we have sought and you have listed in your six dotpoints but there are a number of other things in this letter that are not correct. I have heard them said before by your Ms Gulliver-Smith, so I should correct them now.

1. The Hunter Councils Drug and Alcohol Trial was actually the Industry Trial of the Alcohol and Other Drugs Guidelines.

2. "The LGSA and Unions" did not "form" or "establish" any Working Party as part of this Trial. You assert both these things in your letter and this is untrue. After the Industry Guidelines were agreed between the LGSA and the three unions, some sort of local Working Party was established by agreement between the Hunter councils involved in the trial and the USU. It is not clear to the other two unions how this happened.

3. There was never a decision by "the unions" to establish any working party or anything else below the process agreed by the peak bodies - the LGSA, the USU, the LGEA and depa.

4. It was agreed by the parties to IRC133 and 155 of 2011 to trial Industry Guidelines agreed between them and during those proceedings the Commission recommended the involvement in the industry trial of the enthusiastic Hunter Councils.

5. Not only was there no decision by the peak bodies to establish or legitimise any Committee at a lower or operational level, there were no formal notices of meetings sent to "the unions", no agendas of any meetings sent to "the unions" and no minutes of any meetings sent to "the unions".

6. My understanding was that this group was looking at operational issues that may arise during the Trial and nothing more. That this group had an agenda of ramming random drug testing into the industry, whether there was evidence of a need or not, whether this appropriately managed occupational health and safety risk or not , whether this involved turning their backs on individual responsibility under the WHS Act or not was never disclosed.

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7. The LGSA and the unions agreed as part of the trial that there would be a survey at the conclusion to allow them to review the results of the trial and responses of those participating to allow them to make decisions about whether the Industry Guidelines needed to be amended.

8. There was no agreement before the trial of "what information should be provided as part of a report on the trial" because that would defeat the purpose of a trial where those of us responsible for the trial proceeding were sufficiently open-minded about what would be revealed, that any change was possible.

9. The data provided in the Working Party Report of an increase in sick leave (conglomerated but not specifically identified on a Council-by-Council basis to allow proper analysis) is not evidence that this relates to the trial. That's why the additional information from preceding years is essential if amendments to the Industry Guidelines are to be based on evidence.

10. No useful additional information has been provided in response to our requests. The information we are seeking would have allowed us all to make judgements about whether a spike at the end of 2011 is meaningful, what normally happens each year or inconsistent with the past and potentially related to the trial.

11. You can't assert that the information we are seeking "is not necessarily going to add any useful information of the outcomes of the trial" if the outcomes of the trial require examination of evidence that would support assertion is being made arising from the trial.

12. Your assertion about its usefulness may mean you know you have no evidence of a deterrent effect and that you are happy to rely on gossip, verballing and innuendo.

13. The more you refuse to provide things that ought be reasonably available in an open and transparent process encourages scepticism that you are repressing information contrary to your apparently unshakeable commitment to random testing.

14. I reject your view that there would be a considerable amount of time and resources involved in supplying information we have sought. The information from the first three dot points would be readily available and capable of analysis now, and the remaining three dot points could be estimates for the purposes of these proceedings.

15. Unless otherwise decided by the community or the DLG, whether or not a drug trial is a "worthwhile use of funds" is not being argued here. The information about the cost of the exercise is important for councils contemplating which, if any, of the three testing options they may apply in the future. Why withhold this information from them?

16. This information is more than likely available anyway through GIPA - this would only serve to delay agreement on amendments to the current Industry Guidelines.

17. And while the WHS Act allows you to make a judgement of "what is reasonably practicable to eliminate or minimise risks in the workplace", having some evidence about the effectiveness of this program should be critical to these judgements. Upon what else do you base your judgement?

18. Your assertion that the costs into the future would be less than the cost incurred acknowledges that the information is readily available now and, for the purposes of full disclosure, should be disclosed to the industrial organisations to determine the future of the Industry Guidelines.

19. Debate between the industrial organisations about managing alcohol and other drugs in the industry started in 2005 and was the subject of industrial disputes filed by us with Hornsby, Sutherland and Wollongong, as long ago as 2007 – your impatience with this exercise over what you claim to be two years only reflects your late involvement.

20. If "the trial Councils are in no doubt that this program has made a difference to safety etc", then they either have evidence which they should allow to be examined or they are happy to rely upon gossip. If it's the latter, at least admit it.

21. Your collective refusal on behalf of the Hunter Councils will, particularly, discomfort Newcastle where delegates have been advised that it was recommended that the GM supply the information sought and where the GM in a letter to us said "I will offer any assistance Justice Haylen deemed necessary to assist in resolving this matter."

Your motivations have always been suspect. Your Memorandum to staff of 6 April 2011 focused solely on random testing as if that was all you cared about and the amendment by your Ms Gulliver-Smith of the Working Party documents to incorporate random testing even before the survey of participants in the trial went out, makes it clear that there was never an open mind at Port Stephens. It's a bit hard to dress up "evidence" from the survey results, when you lot already incorporated random testing without the evidence.

It is disappointing that the General Managers in the Hunter are not prepared to develop this policy based on evidence. It would be so much easier for you to acknowledge that you want random testing

- regardless of the cost,
- regardless of the effectiveness and
- regardless of post-incident and reasonable suspicion testing being a more reliable discharging of your obligations under the WHS Act and with a more accurate targeting of risk.

We will be asking the IRC next week for their assistance in obtaining this information. All of the defences you have raised in your letter were put to Haylen J on the last occasion and yet Haylen J still believed it was reasonable for the parties to the Industry Guidelines to have this information available for their consideration.

Your bloody mindedness is antagonistic to the development of sound public policy.

Yours etc

Ian Robertson
Secretary