



**Statement regarding prosecution of the Victorian government for breaches of work safety laws in relation to Covid19 transmission and deaths
29 September 2020**

Today, 29th September 2019, Self-Employed Australia has written to the Victorian WorkSafe Authority under provisions in the *Occupational Health and Safety Act 2004* seeking prosecution of the Victorian government for breaches of work safety laws.

[The letter to WorkSafe is here](#)

The breaches relate to the government's failures in relation to the hotel quarantine program that started on 27 March 2020. The failures resulted in the spread of Covid-19 through the community resulting in some **765 deaths** so far in Victoria. The breaches constitute criminal offences, including offences of industrial manslaughter.

The parties named include the Victorian Premier, Ministers, senior public servants and a number of government departments and the Victorian Trades Hall Council. Self-Employed Australia does not allege or suggest the guilt of any named party, but instead that the available evidence requires prosecution. The courts will decide whether anyone is guilty or not.

A summary of the cited offence Sections of the *Occupational Health and Safety Act 2004* (Vic) is as follows. These are [referenced in the formal letter to WorkSafe](#) as referenced above.

21 Duties of employers to employees -

- 21(1) Fail to provide and maintain a safe working environment
- 21(2)(a) Fail to provide and maintain safe systems of work
- 21(2)(b) Fail to ensure safe use and handling of substances
- 21(2)(c) Fail to provide a safe workplace
- 21(2)(d) Fail to adequate facilities for the safety of employees
- 21(2)(e) Fail to provide information, instruction, training and supervision for the safety of employees

22 Duties of employers to monitor health and conditions etc.

- 22(1)(a) Fail to monitor the health and safety of employees
- 22(1)(b) Fail to monitor the conditions of the workplace
- 22(1)(c) Fail to information you employees about the condition of the workplace
- 22(2)(a) Fail to keep information and records about the health and safety of employees
- 22(2)(b) Fail to have persons suitably qualified regarding OH&S to advise the employer

23 Duties of employers to other persons (the public)

25 Duties of employees

25(1) Fail to take reasonable care for your own safety
25(1) Fail to take reasonable care for the safety of other affected by your acts and omissions.

26 Duties of persons who manage or control workplaces

Fail to ensure the workplace was safe

32 Duty not to recklessly endanger persons at workplaces

38 Duty of employer with management and control of a workplace to notify Worksafe of an incident at that workplace

39G Workplace manslaughter

144 Liability of officers of bodies corporate which commit offences (If the body corporate commits an OH&S offence, any officer of the body corporate whose actions attributed to the contravention) is also guilty of an offence

Why this letter seeking prosecution

This Friday last, 25 September 2020, the [Coate Inquiry](#) into the Andrews' government's hotel quarantine debacle [interviewed the Premier of Victoria, Dan Andrews](#). This completed the major round of public interviews of all relevant parties, including heads of government departments, ministers and so on that started on 20th July 2020.

The public evidence given under oath to the Inquiry describes a work system of hotel quarantine that was chaotic, disorganised, uncoordinated, badly resourced and without control systems capable of achieving the primary objective—namely, to contain and stop the spread of Covid-19 by returning travellers.

Under OHS law, responsible parties are prosecuted both for what they do or fail to do. A high-order requirement of the OHS Act is that responsible parties must provide a safe system of work. Failure to do so requires prosecution. Prosecution under the Act is a criminal matter.

The evidence from the Coate Inquiry requires prosecution of the named persons and entities as detailed in our letter.

The work safe principle and practice at stake – A chaotic society if no prosecutions

In a society that operates under the rule of law, it is vital that the law applies to all persons regardless of their position in society. So, for example, if someone drives a vehicle when drunk, has a crash and someone dies, the drunk driver can be charged with manslaughter. It does not matter if that person is, for example, an unemployed person, the wealthiest person in the country or the most powerful politician. The law applies to everyone in the same way.

This is the case with work safety (Occupational Health and Safety) laws. Everyone in the workplace who has a measure of control is responsible for what they control, whether that person is a cleaner or the boss.

The Coate Inquiry has revealed that the highest public service officers and politicians in Victoria had and have a duty to have systems of control over the hotel quarantine. The system of work demonstrably failed in that duty, resulting in Covid-19 infecting the community resulting in deaths. If this occurred with a private firm, prosecution would be swift. If the responsible public servants and politicians are not prosecuted, the entire system of work safety laws in Victoria collapses.

Failure to prosecute would mean that every future incident of work safety breach in Victoria would become subject to claim by those responsible that they could not be held responsible based on precedent set in the failure to prosecute the government over the hotel quarantine mess.

For example: Every senior public servant, minister and the premier have stated before the Inquiry that they do not know how or who made the decision to use private security firms. This was critical to the failure of the work systems. If failure to prosecute is based on the excuse that 'I don't/didn't know', then that sets precedent for every person in the future who may be responsible for a workplace death to say 'I didn't know' and get off. Work safety would descend into farce, threatening the lives of countless people in Victoria.

Look at these work safety convictions of just the last two months. Under the excuse of 'I didn't know' (as used by the government before the Coate Inquiry) each of these convictions would likely have failed.

- [Yarra Valley Snack Foods Pty Ltd was sentenced](#) in the Ringwood Magistrates' Court on September 10 after pleading guilty to failing to provide or maintain safe systems of work. (17 Sept 2020)
- [SKM Services Pty Ltd was convicted and](#) fined in the Melbourne Magistrates' Court ... for two charges of failing to maintain a safe workplace (21 Aug 2020)
- [Austin Health pleaded guilty and was sentenced](#) in the Heidelberg Magistrates' Court last month for failing to provide or maintain a safe working environment. (19 August 2020)
- [Seascope Constructions Pty Ltd was sentenced](#) in the Melbourne County Court on Tuesday last week following the 2017 death of a carpenter at a two-storey house under construction in Kalkallo. ...The company pleaded guilty failing to prepare and conduct work in accordance with a safe work method statement. (4 Aug 2020)

To fail to prosecute the Victorian government is a recipe for the collapse of the rule of law. It is a recipe for a society that would descend into chaos. It is the wrecking of society.

The performance of the WorkSafe Authority in Victoria

WorkSafe Victoria is responsible for work safety prosecution.

On 18 August 2020 we [wrote to the WorkSafe Authority in Victoria](#) asking for the Authority to prosecute the Victorian government for breaches of the work safety laws as stated again today.

Since 18 August, WorkSafe has corresponded with us on some five occasions. In none of that correspondence does WorkSafe give any indication that it is prosecuting or intends to prosecute the Victorian government.

Essentially they have ignored our triggering of the provisions under the Act requiring them to prosecute. Primarily, WorkSafe have told us to go away. We will not.

Based on our experience so far we believe that WorkSafe may ignore our letter of today. If this occurs, WorkSafe would be open to a charge that it is acting to protect the government, public servants and the Labor Party in Victoria. It would add to a charge that Victoria has become a totalitarian state with WorkSafe being an institution of totalitarianism. These are the issues at stake.

Section 131 of the OHS Act 2004 (Vic).

This is the section of the Act under which we seek prosecution

131. Procedure if prosecution is not brought

(1) If—

- (a) a person considers that the occurrence of an act, matter or thing constitutes an offence against this Act; and
- (b) no prosecution has been brought in respect of the occurrence of the act, matter or thing within 6 months of that occurrence—

the person may request in writing that the Authority bring a prosecution.

2) Within 3 months after the Authority receives a request it must—

- (a) investigate the matter; and
- b) following the investigation, advise (in writing) the person whether a prosecution has been or will be brought or give reasons why a prosecution will not be brought.

(3) If the Authority advises the person that a prosecution will not be brought, the Authority must refer the matter to the Director of Public Prosecutions if the person requests (in writing) that the Authority do so.

(4) The Director of Public Prosecutions must consider the matter and advise (in writing) the Authority whether or not the Director considers that a prosecution should be brought.

(5) The Authority must ensure a copy of the advice is sent to the person who made the request and, if the Authority declines to follow advice from the Director of Public Prosecutions to bring proceedings, the Authority must give the person written reasons for its decision.