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Dmitry Rozkin
Director (Acting)
Enforcement Legal
WorkSafe Victoria
By email: Enforcement_Group_Admin@worksafe.vic.gov.au

22 August 2021

Dear Mr Rozkin,

I refer to your letter dated 5 August, 2021 and the attached letter from the DPP addressed to you dated 4 August, 2021.

I am deeply concerned about the behaviour of WorkSafe Victoria in not providing the DPP with the investigative materials to enable her to review and advise WorkSafe in relation to my s.131(1) Occupational Health and Safety Act request for WorkSafe to prosecute, dated 29 September, 2020.

Notwithstanding that WorkSafe has a statutory obligation to refer the matters to the DPP to enable her to advise WorkSafe as to whether prosecutions should be brought, she states in her letter to you of 4 August, 2021, that WorkSafe has not provided her with its investigative material.

The DPP is therefore unable to comply with her statutory obligation to review the matters contained in my s.131(1) Occupational Health and Safety Act request for WorkSafe to prosecute dated 29 September, 2020, and to provide her written advice to WorkSafe as to whether prosecutions should be brought.

WorkSafe's failure to provide its investigative materials to the DPP for review is a clear failure of its obligation under s.131(3) of the OHSA. Further, WorkSafe's failure to provide the investigative materials makes it impossible for the DPP to comply with her statutory obligations under s.131(4) of the OHSA.

Please provide all relevant WorkSafe investigative materials to the DPP immediately and within 7 days from the date of this letter. Please confirm to me that WorkSafe has provided the investigative materials.

You note in your letter of 5 August, 2021 that the WorkSafe investigations are “still ongoing”. It makes no difference to the operation of ss.131(3), (4) and (5) whether the WorkSafe investigations are still ongoing. It is the clear obligation of WorkSafe to refer the matters to the DPP for her review and advice as to whether she considers prosecutions should be brought if WorkSafe has been unable to decide within 9 months of receiving my request for prosecutions to be brought. That 9-month period expired almost 2 months ago.

If WorkSafe does not provide the investigative materials to the DPP or fails to confirm that it has done so as requested, it will be taken as a refusal to provide the investigative materials and therefore a continuation of its failure by to comply with the OHSA.

I look forward to your urgent responses.

Yours faithfully

Ken Phillips
Executive Director.