The registered business name of
Independent Contractors Australia
Incorporated Victoria No A0050004U
ABN: 54 403 453 626
www.selfemployedaustralia.com.au
PO Box 13103 Law Courts 8010 Vic

THE CASE FOR THE PROSECUTION

Victorian Quarantine Hotel Work Safety Breaches
The evidence requiring prosecution of the Victorian Government

The Victorian Hotel Quarantine Program

was a

" catastrophe waiting to happen"

a

" disaster that tragically came to be"

caused by

"lack of proper leadership and oversight."

(From Report of the Coate Inquiry)

[Note: All quotations marked as "…" are directly taken from the Coate Report
Health refers to Department of Health and Human Services (DHSS)
Jobs refers to Department of Jobs, Precincts and Regions (DJPR)]

The initial 2020 Hotel Quarantine Program in Victoria led to 801 deaths as a consequence of the Covid-19 virus escaping quarantine.

The Coate Report into the disaster clearly identifies that it was management failures, starting at the highest levels of government in Victoria, that caused the outbreaks. Those failures amount to breaches of the Victorian work safety laws and require prosecution of the government.

THE CASE FOR THE PROSECUTION

This paper

- Explains and summarises the government's management failures as detailed in the Coate Report.
- Identifies the specific breaches of the work safety laws that occurred as a result of the government's management failures.

WorkSafe Victoria is the responsible prosecuting authority. It's seventeen months after the first breaches occurred. It's eight months after the Coate Report provided stark evidence of the breaches. WorkSafe has failed to act.

On 29 September 2020, Self-Employed Australia wrote to WorkSafe triggering provisions under the laws that require WorkSafe to investigate with a view to prosecution. We allege breaches of the laws were made by the Victorian Premier, senior Ministers, department heads and departments, amongst others. This paper puts evidentiary 'meat on the bones' of our allegations.

Contents

A. Summary

The evidence from the Coate Report is stark.

From the very start of the Victorian Hotel Quarantine Program the management of the program was dysfunctional at its core. The dysfunction had two primary features.

***First**: No 'control' over infection control implementation in the hotels.*

At the most senior levels of the two departments operating the Program (*Health* and *Jobs*) there was fundamental disagreement over who generally controlled the Program.

- Even though *Health* was the designated 'control agency', *Health* said that 'control' did not mean that it 'controlled' the hotels. *Health* refused to have anything to do with ensuring correct implementation of infection control measures in the hotels. However, the evidence is clear that *Health* had 'control'.

- *Jobs* was the department holding the contracts of employment with the hotels, security firms, cleaners and suppliers. *Jobs* said it had no knowledge of, or expertise in, infection control. It relied on direction and implementation in the hotels from *Health*. This never occurred.

This bureaucratic dysfunction at the very top of the Victorian government had an inevitable outcome 'on the ground'. The management of infection control in the hotels themselves was chaotic.

In the hotels

- No-one knew who was in 'control'.
- But clearly it was *Health* and senior *Health* bureaucrats who were in control.
- Confusion and chaos over infection control procedures were rife.
- 'Rules' over infection control changed constantly and varied between hotels.

***Second:** The Program had a dual purpose resulting in the wrong focus.*

The Premier considered that the Program had two purposes. That is, to detain travellers and to provide employment support for the tourism and accommodation industries. This dual purpose was built into the design and structure of the Program.

Coate said that this dual purpose deflected attention away from the essential task of the Program—namely, to ensure that the virus did not spread from hotels to the community. The dual purpose heavily contributed to the management dysfunction of the Program from the top of the bureaucracy down to hotel operations.

This is why Coate described the Program as a "*catastrophe waiting to happen"* and a "*disaster that tragically came to be*." That is, the Program's design, combined with its dysfunctional management, was the cause of the Covid-19 virus escaping the hotels.

1. Who was/is responsible?

Under the Victorian work safety laws, employers and those who 'control' worksites are held liable and responsible both for what they do and fail to do.

Coate blames *"lack of proper leadership and oversight*" for the infection outbreaks. That leadership must start with the Victorian Premier and work its way through Ministers, top bureaucrats and government departments. The evidence in the Coate Report of the lack of appropriate leadership when measured against Victoria's work safety laws requires prosecution.

To start with the Premier, for example:

- On his own evidence he accepts that he was responsible for the Program.
- But he then seeks to walk away from responsibility for the Program's dysfunctionality, saying that 'operational' matters were not his concern.
- However the Premier was clearly in control of the Program.
- During the Program he had *Health* report directly to him.
- *Health* says it provided the Premier with regular reports.
- But the Premier remains silent as to whether he knew about the dysfunctionality or not.

We allege that, under work safety laws, any suggestion that the Premier did not know and didn't have control is not a defence. A failure to recognise the risk to safety of a dysfunctional Program and to fail to do something about it constitute a breach of the work safety laws.

B. Responsibilities under the Victorian Occupational Health and Safety (OHS) Act

The Victorian OHS Act (work safety law) requires that employers and persons who control worksites must operate the worksites so as to not pose a risk to the health and safety of others. This includes the public.

The Act applies to the Victorian government. The government devised, organised, operated, managed and controlled the Hotel Quarantine Program. The hotels were/are worksites. As such, the Victorian government has obligations under the OHS Act in relation to the Quarantine Program.

Under the Act responsible parties are accountable both for what they do and fail to do.

2. Overview of the breaches

Based on the evidence detailed in the Coate Report, the people of Victoria were exposed to serious risks to their health and safety as a result of the failure of the Victorian government, government departments and the persons who ran those departments to devise, organise, operate, manage and control the hotel quarantine facilities safely.

The private security guards, health workers, cleaners, police and hotel staff who worked in the Hotel Quarantine Program hotels were badly equipped, trained, instructed and supervised to undertake the task of detaining and generally caring for people in hotel quarantine facilities who had entered Victoria from overseas and who were potentially infected with COVID-19.

As a result, those workers and the people of Victoria were exposed to risks to their health and safety.

3. The specific offences

The OHS Act 2004 (Vic) places duties on many persons including employers, employees and persons other than employers who have control and management of workplaces. The purpose of the OHS Act and these duties is stated by WorkSafe Victoria on their website:

> *The OHS Act seeks to protect the health, safety and welfare of employees and other people at work. It also aims to ensure that the health and safety of the public is not put at risk by work activities.*

The duties under the OHS Act are enforceable by WorkSafe and WorkSafe Inspectors. Contraventions of the principal duties in the OHS Act are indictable criminal offences and carry serious penalties some including lengthy terms of imprisonment. The Victorian government, and Victorian government departments and senior bureaucrats involved in the Hotel Quarantine Program failed to provide systems of work that were safe and without risks to the health of their employees and to the health of the Victorian public.

The Coate Inquiry into the 2020 Hotel Quarantine Program uncovered clear evidence that the people of Victoria and large numbers of employees involved in the Program were exposed to serious risks to their health and safety as a result of the failure of the Victorian government, several Victorian government departments and senior bureaucrats to plan, devise, organize, operate, manage and control safe hotel quarantine facilities.

The Victorian government, and Victorian government departments and senior bureaucrats involved in the Hotel Quarantine Program failed to provide systems of work that were safe and without risks to the health of their employees and to the health and safety of the Victorian public.

Private security guards, cleaners, health workers, police and hotel staff who worked in the Hotel Quarantine Program hotels were fundamentally ill-equipped, trained and instructed to undertake the tasks involved in detaining and generally caring for the people detained in the hotel quarantine facilities for entering Victoria from overseas potentially infected with COVID-19.

As a direct result of the gross mismanagement by the Victorian government, Victorian government departments and senior bureaucrats, employees and the people of Victoria were all exposed to risks to their health and safety.

Therefore, WorkSafe Victoria must prosecute the Victorian government, the Premier, Ministers, the responsible government departments and the senior bureaucrats.

The following explains the offences under the Act. Relevant extracts from the Act are located in the Addendum.

Employer Offences:

s.21(1)
The Victorian Government and the several Victorian Government authorities, agencies and organisations, as employers, failed to provide and maintain safe working environments for the security guards, cleaners, health workers, police and hotel staff employees.

These entities failed to provide and maintain safe working environments by their failure to do the following:

> s.21(2)(a)
> The failure by these entities to provide safe systems of work to the security guards, cleaners, health workers, police and hotel staff to undertake the work for which they were contracted, that is, guarding and generally caring for the people detained as being potentially infected with COVID-19, for example, they were not provided with any or any adequate PPE.
>
> s.21(2)(c)
> The failure of these entities to maintain the hotels used in the Hotel Quarantine Program (workplaces) in a condition that was safe and without risks to the health of the detainees, security guards, cleaners, health workers, police and hotel staff.

s.21(2)(d)
The failure by these entities to provide adequate facilities for the welfare of the security guards, cleaners, health workers, police and hotel staff at the hotels at which they were assigned to guard and generally care for the people detained as being potentially infected with COVID-19.

s.21(2)(e)
The failure by these entities to provide information, instructions, training and supervision to the security guards, cleaners, health workers, police and hotel staff so that they were able to perform the work for which they were contracted and employed, that is, to safely guard and generally care for the people detained as being potentially infected with COVID-19.

s.23(1)
The failure by these entities to ensure that all persons, other than employees—that is, the people of Victoria—were not exposed to risks to their health and safety as a result of the conduct of the undertaking of the Victorian Government and Victorian Government authorities, agencies and organisations in their planning, management and operation of the Hotel Quarantine Program.

Employee Offences:

s.25(1)
A failure of the government employees, in particular the senior bureaucrats of the government departments involved in the Hotel Quarantine Program, to take reasonable care for the health and safety of others affected by their acts or omissions in relation to the Hotel Quarantine Program.

Offences committed by persons:

s.26(1)
The failure by the persons (the Premier, Ministers, government departments and individuals) in control and management (to any extent) of the various workplaces involved in the Hotel Quarantine Program to ensure that the hotels used as quarantine facilities (workplaces) in the Hotel Quarantine Program and the means of entering and leaving those workplaces was safe and without risk to the health of all persons, including, but not limited to, the security guards, health workers and hotel staff contracted to guard and generally care for the detained persons potentially infected with COVID-19.

s.32
The failure by senior Victorian bureaucrats (persons) to ensure that safe systems of work were in place in relation to the Hotel Quarantine Program after the years of planning for a predicted and imminent global pandemic including conducting several pandemic preparedness exercises undertaken from 2008 through to 2019, was reckless conduct that exposed the people of Victoria to serious injury. The section carries a maximum penalty of 5 years' imprisonment for individuals.

S144
If a body corporate commits an offence against the Act then an officer of the body corporate is also guilty of that offence if the offence was attributable to the officer's failure to take reasonable care.

Summary of sections from the Victorian Occupational Health and Safety Act 2002

s.21(1),	s.21(2)(a),	s21.(2)(c),	s.21(2)(d),	s21(2)(e),
s25(1)	s26(1)	s.32	s,144	

4. The Coate Inquiry overview

The Coate Inquiry was conducted between July and November 2020, reporting in December 2020. Its task was to investigate how the management of the quarantine program resulted in the virus escaping. The Inquiry was charged with investigating the facts. The Inquiry had no power to do anything with its findings. That is, it could not prosecute or require anything to be done.

This paper draws from the Coate findings of fact and assesses those against the Victorian government's obligations under the OHS Act. This paper identifies the specific alleged breaches of the OHS Act by the government, government departments and individuals responsible for the quarantine program.

Included in this paper is a close focus on Chapters 3 to 8 of the Coate Report as these are the chapters that are most precise in detailing the behaviours of the government. Attached to this paper (in the Addendum) is a 'grid' for each chapter that presents relevant quotations from the Coate Report which identify the relevant management issues, the government parties responsible and the provision under the OHS Act that can be said to have been breached.

The Chapters from the Coate Report are:

3	Planning for a pandemic
4	The decision to set up quarantine
5	Setting up the quarantine program
6	Using private security
7	Hotels and cleaning
8	Department of Health (DHHS) as control agency
9.4	Conclusions – Infection control
9.5	Causation at law

The following analysis considers the evidence from each chapter. We summarise and comment on how the evidence demonstrates that prosecutions under the OHS Act must occur. The breaches of the Act are to do with management failures. It is 'management' that is the issue. The responsible and indictable parties are those who were responsible for the management failures.

Note: We do not offer a view on whether prosecution would result in a guilty finding or otherwise. That is for the courts to decide. Our assessment is whether the evidence warrants prosecution.

C. The Chapters

5. Planning for a pandemic (Coate Chapter 3)

Chapter 3 explores the build-up to Covid-19. Was it unprecedented or predictable and foreseeable?

The Coate Report comments:

> "Although the use of hotels as a setting for mass quarantine may have been unprecedented, factors that played a part in the outbreaks from Rydges and the Stamford *should have been foreseen* had there been an appropriate level of health focus in the Program." (Page 28)

Evidence from the Coate Report
Chapter 3 makes it clear that the Victorian government was well aware that a flu pandemic of some nature was due to occur at some time. The specific nature of the pandemic could not be known but there were clear historical and recent precedents. Victoria had a flu pandemic plan. But, critically, Victoria did not have a plan for hotel quarantining or any form of required quarantining.

In this link is a description of the warnings, preparations and plans for a flu pandemic leading up the start of the hotel quarantine program on 27 March 2020. This includes

2005 : The WHO Issued a checklist for influenza pandemic preparation.
2006 : Victoria participated in Exercise Cumpston testing Australian health systems pandemic preparations.
2009 : National pandemic preparation plan : reviewed by the Auditor General
2014: The Victorian government released its pandemic plan stating "…we must be prepared…"
2019: August – Pandemic national plan updated and issued.
2019: Aug/Sept – Victorian undertakes two pandemic preparation exercises.
2020: 30 January – WHO declares Covid-19 pandemic.
2020: 11 February – WHO states obligations re quarantining.
2020: 18 February – National Covid-19 plan released.
2020: 10 March – Victorian government release its Covid-19 pandemic plan.

Contrary to the Victorian government's claim, contemplation of quarantining was flagged years in advance of Covid-19.

Following the 2009 Review a recommendation was made in 2011 to clarify "…the management of people both at home and *in other accommodation* during a pandemic…" But Victoria's Chief Health Officer (Brett Sutton) "gave evidence that no work had been done … to implement this recommendation…" He further stated that if planning had been done, this would have been "useful." In addition, two pandemic preparation exercises were conducted as late as August and September 2019 (named Alchemy and Teapot). But Chapter 3 states that "…the lessons ….were not applied when they should have been."

Comment and assessment by SEA
The lack of planning and bad organisation, operation, management and control of hotel quarantining is a breach of OHS laws.

While Covid19 is unprecedented the fact of a global pandemic was entirely foreseeable and had been predicted for some 20 years. The fact is that pandemics are expected and are events that should be a standard part of the Victorian government's health scenario preparation. Quarantining of persons who have contracted highly infectious diseases is 'normal'. A significant number of diseases are subject to the Australian quarantine laws, for example cholera and smallpox. The management practices required for quarantining infectious persons are no mystery.

The Victorian government was involved in pandemic preparation and had documented plans in place years before Covid-19. These plans were updated once Covid-19 was known. The update occurred more than two weeks before it was decided to establish a quarantine program. But on its own admission the government did no planning for a quarantine program.

This set the scene for that which Coate found to be a dysfunctional program.

- On the evidence, a flu pandemic was expected, predicted and hence was *not* unprecedented and was foreseeable.
- The Victorian government had conducted pandemic preparedness exercises, with 2019 being the most recent.
- The government knew for two months (before hotel quarantine was announced) that Covid-19 had been declared a pandemic.
- The government had prepared a Covid-19 specific plan two weeks before the hotel quarantine program was announced but omitted a quarantining plan.
- It was perfectly reasonable and practicable to prepare a plan for compulsory quarantining. In fact Victoria had WHO legal obligations to plan for quarantining. This was made clear by the WHO on 11 February 2020.
- There was plenty of documentation regarding control of infection in hotels to assist planning. Just one source was the Hong Kong Department of Health (2007 and beyond) who drew on lessons from SARs, H1N1 and Ebola.

Specific OHS breaches
On the evidence, the government breached the sections of the OHS Act as follows:
s.21(1), s.21(2)(a), s21.(2)(c), s.21(2)(d), s21(2)(e),
s25(1) s26(1) s.32 s,144

6. The decision to set up Hotel Quarantine (Coate Chapter 4)

Chapter 4 explores the build-up to the decision to establish the quarantine program.

Evidence from the Coate Report
The Victorian Premier stated that

- as of 20 March 2020 he was "aware" that $80 million was allocated (by the Victorian Expenditure Review Committee of Cabinet) to procuring hotel rooms for an emergency accommodation program. Further, he agreed that this influenced his view that a quarantine program was feasible.

- A week later, on 27 March 2020, he made the decision for Victoria to undertake a hotel quarantine program.

Comment and assessment by SEA
On the Premier's own evidence, the Premier and other Cabinet Ministers had direct knowledge that a hotel quarantine program would occur.

That the setting up of the Hotel Quarantine Program was a 'scramble' is evidenced in Chapter 5 of the Coate Report.

7. Setting up the quarantine program (Coate Chapter 5)

The title to Chapter 5 in the Coate Report is actually "The Day was measured in minutes".

Chapter 5 gives a blow-by-blow, minute-by-minute analysis of the chaos and dysfunction that accurately describes the setting up of the hotel quarantine program. We say 'minute-by-minute' because the program had to be established within 36 hours, 'from scratch'.

Evidence from the Coate Report
The facts as described in Chapter 5 are as follows:

- There was clear evidence that returned travellers posed a serious risk of carrying the virus.
    - The Department of Jobs (DJPR) set up the operational side of the program—that is, organising hotels, staffing and so on. *Health* 'advised' on infection control procedures.
- From the very inception of the program there was conflict between the Department of Health and the Department of Jobs.
    - *Jobs* and *Health* both asserted that they were not responsible for ensuring that infection control procedures were implemented.

  This conflict affected every aspect of the quarantine program, making it dysfunctional and the cause of the infection outbreaks from the hotels.

The Premier gave evidence that:

- He did not consider who was going to monitor compliance with quarantine directions. This was not something to which he would "ordinarily turn his mind".
- The government was responsible for the proper functioning of the program and managing the risk.
- He considered risk management to be an operational matter that he left to others.
- He made the decision to order the hotel quarantine program without considering the risk.
- He considered the logistical undertaking 'unprecedented'.
- The program had a dual purpose of 'not just' protecting public health but also supporting jobs in the tourism and accommodation sectors.

The Secretary of the Department of Jobs stated that:

- He regarded the program as primarily a health operation.
- His department was in charge of the program 'from end-to-end'.

Further evidence is that:

- Covid-19 was a 'health emergency' under the legislated Victorian emergency management framework.
- At some point in the first 36 hours of setting up the program *Health* was declared the 'control' agency. After that, *Jobs* saw its role as support.

However

- Division between *Health* and *Jobs* remained. This caused "gaps, fault lines and problems".

Sourcing private security: key points of fact—

- No-one in the government, from the Premier down, admitted to making or knowing who made the decision to use private security to staff the hotels.
- Coate refers to this as "…a failure in the very first stages of the governance model".
- The Premier admitted that this "… does not remove accountability…"
- The management of quarantine was crucial to the risk of infection. The Premier and Ministers walked away from any oversight of that.

Private security role changed:

- Initially, private security's role was to conduct "static guarding". This changed to active (first tier) engagement with hotel guests without any consideration of the infection control risk.
- The problem was compounded because of the *Health*/*Jobs* dispute over who had 'control'.
- This did not change until late June (three months after the start of the Program) and only after two major infection outbreaks from the Program.

Coate refers to the situation as

- "failure of governance" but with "no person or department claiming responsibility".

Comment and assessment by SEA

The dual purpose of the program—both jobs and detention—confused the operation of the program, adding to the dysfunction (at every level) of the program in relation to infection control.

Specific OHS breaches
On the evidence, the government breached the OHS Act as follows:

s.21(1), s.21(2)(a), s21.(2)(c), s.21(2)(d), s21(2)(e),
s21(1) s25(1) s26(1) s.32

8. Private Security (Coate Chapter 6)

This chapter of the Coate Report looks at the detail of how private security operated 'on the ground'.

Evidence from the Coate Report
The sourcing of private security

- Was delegated to a *Jobs* executive who had no background in, or knowledge of, the security industry.
- Occurred without reference to the State's contract procurement requirements or the existing database of pre-approved security providers.
- The allocation of one contract was to a company (Unified) not pre-approved and in fact previously rejected for approval.
- The unapproved company (Unified) was allocated a majority of contracts.

Roles and training of security guards

- No clear instructions were given to the security companies or their staff by the government as to their roles, responsibilities or duties.
- The role of security guards was expanded beyond static guarding to active (first tier) engagement with hotel guests without any consideration of the infection control risk.
- This inevitably led to the high probability of security staff being infected.
- The confusion in the use of security guards was reflected in the contracts between the government and the companies. There were multiple contract anomalies.
- There was substantial use of subcontractor security companies by the three head contractors further watering down the control and adding to role confusion.
- The government contracts sought to shift responsibility for program management from the government to the security firms. This included training, OHS and so on.
- *Jobs* believed that *Health* was to provide written instructions to the security firms. The evidence is that this did not occur.
- The infection control training was not fit for purpose according to infectious disease experts.
- Training by *Jobs* of security staff did not occur until some five weeks after the Program started.
- Contradictory information was given to security guards as to the wearing of PPE.

Infection risk

Coate says that:

- the risk of infection was compounded because of the dispute between *Health* and *Jobs* as to who was in control.
- Further, because *Jobs* did not see itself as 'owning' the decision to use private security, it felt no responsibility for monitoring.
- The failure of the contracts to make security services subject to the direction of *Health* was a "deficiency".
- The attempts to shift responsibility to the security firms was "inappropriate and ought not have occurred".
- *Health* said that the infection risk was created by the virus and not the Program. Coate rejected this.

- The Quarantine Program was more than just a workplace, it was "…a measure to protect the public from a significant public health threat".
- *Jobs* failed to properly manage the contracts.
- But as *Health* was the 'control' agency it should have been responsible for managing the Program.
- "The problems I have identified in this chapter are systemic government failings."

Comment and assessment by SEA

The failures to

- have clear lines of control and responsibility;
- accept and undertake oversight and control of security personnel by the government;
- ensure engagement of suitable security guards;
- provide clear and consistent instructions to security guards;
- ensure proper training of security personnel in infection control procedures; and
- monitor and ensure infection control procedures were followed by security personnel

constitute breaches of the OHS Act.

Specific OHS breaches
On the evidence, the government breached the OHS Act as follows:

s.21(1), s.21(2)(a), s21.(2)(c), s.21(2)(d), s21(2)(e),
s21(1) s25(1) s26(1) s.32

9. Use of hotels and cleaning (Coate Chapter 7)

This chapter identifies the same management problems that were identified in chapter 6 with the use of private security, that is dysfunctionality and little, if any, coordination.

Evidence from the Coate Report
"Self-evidently, the risk of infectious outbreaks as between those in quarantine, and those working in the quarantine hotels was ever present on-site."

Coate said

"This impasse [*Health* v *Jobs*] …became a Gordian knot…"

- "… this created vulnerabilities within the program".
- Quarantine environments are "self-evidently dangerous spaces".
- "… the administration of those contracts (were) unwieldy and unnecessarily complicated and not a safe system of IPC". (Infection Prevention Control)
- "… it did not absolve the Government of its duty to ensure that appropriate safeguards were in place".
- "shifting a burden (of infection control) … to the contractors … ought not to have occurred".
  "The impact of fragmenting responsibilities in this way … added to or increased the vulnerabilities inherent with the Hotel Quarantine Program""

- "… consequences … included delays in providing proper cleaning advice and services, hampering the ability of those within hotels to deal quickly with issues…"

Health said

- Even though it was the designated control agency for the Program, it was not responsible for the overall Program.
- It was required to provide guidance and advice on infection control, but it was not responsible for implementation.
- The risks were not created by its actions (or inactions) but by the virus and travellers.

Jobs said

- It held the hotel contracts but said it had no expertise in infection control.
- It was responsible for contracting specialised cleaning providers.
- *Health* did not provide specific requirements for suitable cleaning contractors.
- *Health* failed to respond to *Jobs'* constant queries about required cleaning contractor standards.

Hotel Assessment and monitoring

- There is no evidence that *Health* did any assessment of any of the hotels from an infection control point of view.
- Hotels were assessed from the perspective of expediency and not risk minimisation.
- There was no evidence that proper auditing checks were conducted (by the government).

The Premier

- saw the use of hotels also as a jobs support mechanism.
- Agreed when asked if "…issues of infection control were too important to be left entirely to private contractors" said "given what's at stake, given the seriousness and the infectivity of this virus … I think that is a fair statement".
- …the evidence of the Premier that it would "absolutely" be a concern if the relevant departments "didn't take an active role in ensuring that there was proper infection control and prevention measure in place…"

Training of staff

- Was conducted by hotel management and not by people with infection control expertise.
- No evidence that *Health* played a role in training hotel staff.
- Cleaning was done by sub-contracted hotel cleaners. There is no evidence that they were trained in specific infection control.
- Rigorous training and monitoring was not occurring with the hotels.
- On 17 June, *Health* finally provided *Jobs* with detailed cleaning advice. It is 'unclear' whether the advice was provided to hotel cleaners. And *Health* said the 17 June advice was the same as that provided in March.
- Only after the infection outbreaks in late June did *Health* take control of the contracts and issued a new cleaning protocol.

Infection expertise

- *Health's* only infection control consultant said she had no formal role in the Quarantine Program.
- This expanded to three consultants (one full-time, two part-time) but did not specifically focus on the Program.
- There were no infection control supervisors stationed in the hotels to guide or supervise.
- The hotels and contracted cleaners were left to themselves to identify infection control cleaning standards without guidance from *Health* or *Jobs*. They did not have the expertise.

Comment and assessment by SEA

The failures to:
- assess hotels from an infection control perspective;
- source and make available to the hotels persons with infection control knowledge and expertise;
- properly train cleaning staff in infection control procedures; and
- monitor and ensure that cleaning infection control procedures were being followed

constitute breaches of the OHS Act.

Specific OHS breaches
On the evidence, the government breached the OHS Act as follows:

s.21(1), s.21(2)(a), s21.(2)(c), s.21(2)(d), s21(2)(e),
s21(1) s25(1) s26(1) s.32

10. *Health* as control agency (Coate Chapter 8)

This chapter focuses on the performance of the Department of Health and Human Services (*Health*)

Evidence from the Coate Report
- *Health* was the designated 'control' agency for 'human disease emergencies'.
- Purpose of the program should have been
  - Primary: Stop the spread of Covid-19 from travellers
  - Secondary: Care for persons in quarantine
- Core to the work of *Health* includes preventing the spread of communicable diseases.
- But, "…the Program was characterised as a compliance and logistics exercise rather than public health program".

Not our responsibility
Health said
- that implementation of infection control procedures in the hotels was not the responsibility of *Health* but of *Jobs* and the hotels.
- *Health* hotel on-site Team Leaders were not in charge but "our representatives" who coordinated but did not have control.

- Its position as 'control agency' did not mean it 'controlled' infection control implementation or the quarantine program.

Management (control) structure created for Covid-19 management was

- 'Maze-like'.
- Not well understood.
- Had parallel structures adding to complexity.
- Fractured and confused roles, responsibilities, lines of reporting and accountability. (eg) The Commander Covid-19 Enforcement & Compliance had no role over hotel staff or enforcement of infection control implementation.
- Confused by "…the emergency management framework and the statutory role and powers of the Chief Health Officer".
- Under emergency management rather than public health governance.
- Beset by confused leadership.
- Led to senior executives warning that the structure poses "…a risk to the health and safety of detainees".

Premier

- On 3 April, the head of *Health* (Ms Peake) was made directly accountable to the Premier.
- The Premier considered *Health* as accountable for the Program and from 8 April onwards the Premier "regarded (the Health Minister) as accountable …"
- Says he was aware of the control agency arrangements early in the Program but could not "point to" any documents or briefings.
- But *Health* says there were regular briefings, including to the Premier.

Chief Health Officer

- Said he was "…not in day-to-day decision making roles and … somewhat disenfranchised in the running of the Program".
- But "it was made clear that regardless … (he)… would retain control over and ultimate responsibility for the public health response".
- Agreed that there was no clear reporting line.

On-site at the hotels

- Priority should have been given to oversight by clinically trained personnel.
- There was no overall risk register.
- Infection control policies and procedures were "… ad hoc, fragmented and reactive".
- There was no-one with expertise on-site to undertake supervision and oversight. This meant that Public Health Command was not aware of infection issues until after the outbreaks.
- No evidence of an overarching plan, oversight or accountability.

Coate says:

(a) "It (*Health*) appears to have been the only agency confused or unclear about its role."
(b) *Health's* denial of its responsibility was the cause "… of many problems that eventuated in the Hotel Quarantine Program".

(c) "For such a high-risk program to be left in this situation was a catastrophe waiting to happen."
(d) There was "….serious danger inherent in the Program".

The Program was
(e) Fractured in lines of accountability and governance from the very beginning.
(f) Without overarching leadership and control.
(g) Confused by complicated governance structures, reporting lines and accountabilities.
(h) Labelled a "logistics and compliance exercise" shifting the focus away from infection prevention.
(i) Overall, "This left brewing the disaster that tragically came to be".
(j) "The complex and high-risk environment was left without on-site supervision and management …"
(k) That this "… was not apparent as a danger until after the two outbreaks was the ultimate evidence of the perils of the lack of proper leadership and oversight".

Comment and assessment by SEA

The failures to
- organise a Program with the required clear focus on infection control and the prevention of infection spread;
- have a properly coordinated Program;
- prevent disputes and dysfunction between the responsible departments, namely *Health* and *Jobs*;
- ensure clear lines of accountability and responsibility over infection control procedures and enforcement by *Health*;
- ensure consistent and clear instructions on infection control were delivered to the front line workers in hotels; and
- have infection risk control strategies in the hotel with an overall risk register providing risk information up and down the management chain

constitute breaches of the OHS Act.

Specific OHS breaches
On the evidence, the government breached the OHS Act as follows:

s.21(1), s.21(2)(a), s21.(2)(c), s.21(2)(d), s21(2)(e),
s21(1) s25(1) s26(1) s.32

11. Conclusions – Inadequate Infection Prevention and Control (Coate Chapter 9.4)

Section 9.4 of Chapter 9 is short, but importantly summarises the evidence from Chapters 3 to 8.

The Coate Report finds and concludes that

1) The shortcomings (failings) of the Program "…created the conditions for the outbreaks that eventuated".

2) The logistical and compliance focus of the Program overrode the "…primary objective as a public health program: to prevent the further spread of COVID-19". This resulted in
   - "inadequate cleaning practices,
   - unsafe PPE (Personal Protective Equipment) practices,
   - risks of cross-contamination between different 'zones' and
   - insufficient training in infection prevention and control, especially for those who were most at risk of exposure".

3) "…there was insufficient public health, specifically IPC, expertise embedded in the Program and in the personnel with the day-to-day implementation of the Program at hotel sites".

4) In summary "Infection prevention and control was inadequate across the Hotel Quarantine Program" even though "At all material times… there was scientific guidance as to COVID-19 modes of transmission…"

5) There was a "…. proliferation of policies, without operational line of sight into the implementation of those policies…" In plain language, the Program was chaotic.

6) Factors that led to the (realized) risk of infection outbreak include that
   - IPC (Infection Prevention and Control) experts were not at the hotels.
   - The nature of the frontline workforce engaged, most specifically security guards, had little if any expertise in, knowledge of or training in infection control.

That is, the Coate Report makes it plain and clear that the Covid-19 outbreaks from the quarantine hotels were a direct consequence of the gross culpability of the Victorian Government in the devising, setting up and even basic management, organisation, operation and control of the Program. Further, the Covid-19 outbreaks were predictable, foreseeable, inevitable and readily preventable.

12. Causation at law (Coate Chapter 9.5)

Coate states clearly that the community infection catastrophe happened as a result of the Quarantine Program.

> "… what I can, and do, find is that the 'second wave' of COVID-19 that so catastrophically affected Victoria was linked to transmission events out of both Rydges and Stamford via returned travellers to personnel on-site, who then transmitted COVID-19 into the community. I do so having accepted the uncontroverted genomic and epidemiological evidence…"

The Coate Inquiry Report dedicates an entire section to the issue of legal "causation". No offence under the OHS Act (except Industrial Manslaughter) requires the actual cause of an injury or death to be proven. For the criminal offences under the OHS Act to be proven it is sufficient for the prosecution to prove that an employee or other person (for example, a member of the public) was exposed to a risk to their health or safety.

ADDENDUM

THE CASE FOR THE PROSECUTION

Victorian Quarantine Hotel Work Safety Breaches
The evidence requiring prosecution of the Victorian Government

August 2021

Contents

Explanation: The 'grids' of chapters 3-8 extract directly from the Coate Report the content assessed as most relevant to an OHS consideration. Paragraphs within each chapter are included to enable reference.

Grids

Links (SEA marked up copies)

Coate Report Final Vol 1
Coate Report Final Vol 2

Chap 3 - Coate Grid - Pages 85 to 100

The state of pandemic planning in Australia and Victoria and the envisaged use of quarantining

Issue	Sub issue	Coate Quote	Party	Para
Planning	Most recent Comm plan	The most recent version of the Commonwealth Pandemic Plan was updated on 21 August 2019.		28
Planning	No plan for mandatory quarantine either Fed or any state	The Commonwealth Pandemic Plan does not provide specific guidance for a program of mandatory detention or quarantine for returned travellers. It does not refer to a mass program of mandatory quarantine to the scale of the Hotel Quarantine Program.		14
Planning	No updates implemented to 2011 plan	Professor Brett Sutton, Victoria's Chief Health Officer, gave evidence that no work had been done, nationally or in any jurisdiction of Australia, to implement this recommendation since it was made in 2011		34
Planning	Vic	Health Management Plan for Pandemic Influenza (the Victorian Pandemic Plan) is the local reflection, and replicates much, of the Commonwealth Pandemic Plan.		35
Planning	Vic Mandatory detention	Victorian Pandemic Plan does not provide specific guidance for a program of mandatory detention or quarantine for returned travelers, nor does it refer to a mass program of mandatory quarantine to the scale of the Hotel Quarantine Program. The COVID-19 Pandemic Plan for the Victorian Health Sector also does not envisage the involuntary, large scale detention of people arriving from interstate or overseas.		43 46
Hotels	Problematic	The Commonwealth Pandemic Plan identifies that the use of hotels to quarantine returned travellers is **problematic**		19
Application	Planning recommendations not done	Prof. Sutton gave evidence to the Inquiry that this work had not been undertaken….If this work been undertaken, it would have been very useful for establishing the Hotel Quarantine Program in a pandemic situation Prof. Sutton stated that, in his view (with the benefit of hindsight), it was an issue that the pandemic plans prior to the COVID-19 pandemic gave insufficient consideration.	Sutton	49 55
Responsible?	Considered Quarantine not state but Comm But states operational responsible	Ms Peake stated that, in her view, the Commonwealth Constitution envisages that quarantine will primarily sit as a responsibility of the Commonwealth Government … March 2020, it was not 'on the radar' for DHHS in Victoria that there would be a mass quarantine program required at a state level It is the responsibility of the states and territories for the majority of the operational detail to be in their plans.	Peake	52 70
No plan	Vic Quarantine	…Victoria, this left the State with no pre-planned structure or arrangements for mass quarantining of international arrivals.		57
Exercises	Teapot Sept2019 Alchemy Aug2019	In the context of the Hotel Quarantine Program, given the time constraints and lack of an overarching plan for mass, mandatory quarantine, the lessons from Exercise Alchemy were not applied when they should have been.		64
Blame ?		it would be unfair to judge Victoria's lack of planning for a mandatory quarantining program given the Commonwealth, itself, had neither recommended nor developed such a plan.	Conclude	82
Create Program	36 hrs to set up	The lack of a plan for mandatory mass quarantining meant that the Hotel Quarantine Program was conceived and implemented 'from scratch' to be operational within 36 hours from concept to operation… This was a most unsatisfactory situation from which to develop such a complex and high-risk program.		87

Chap 4 - Coate Grid – Pages 101 to 111
Understanding Victoria's decision to set up a Hotel Quarantine Program

Issue	Sub issue	Coate Quote	Party	Para
Decision	National 27 March 2020	…the result of travellers returning from overseas who then pass it onto their close contacts. To ensure this no longer happens, National Cabinet has agreed that all states and territories will put in place enforced quarantine measures. …the AHPPC had not endorsed a hotel quarantine program for all returned travellers either prior to, or in the wake of, the Prime Minister's announcement on 27 March 2020		20 23
Decision	Vic	Thirdly, the Premier was aware of a decision of the Expenditure Review Committee (ERC) on 20 March 2020 to allocate $80 million dollars for procuring hotel rooms….The Premier agreed, in evidence, that his knowledge of this work was key to his view that it would be feasible for Victoria to implement a mandatory quarantine program (Ref attached 4a: Premiers Witness statement par4) both the National Cabinet and the Victorian Premier took the decision to direct the mandatory detention of all international arrivals.	Premier	33 64

Chap 5- Coate Grid – Pages 112-158
The day was measured in minutes

Issue	Sub issue	Coate Quote	Party	Para
Set Up Quarantine	36 Hrs	implement the program in Victoria had to do so without warning and without any available blueprint for what was required… just 36 hours later, at 11.59pm on 28 March 2020.		1
Set up	States with Comm support	…made clear that the arrangements were to be implemented by the state and territory governments, with the cost to be borne by them. It was announced that there would be support from the Australian Border Force (ABF) and the Australian Defence Force (ADF),		2
Set up	Vic commit	…Premier of Victoria, the Hon. Daniel Andrews MP, was a party to the decision and committed Victoria to its implementation	Premier	5
Set up	risk	There was clear evidence that returned travellers posed a serious risk of carrying the virus into this State.		8
Compliance	Not Andrews job	…the Premier said in his evidence that he made an assumption at that time that the powers to be used were those in the *Public Health and Wellbeing Act 2008* (Vic) (PHW Act), which were already being used to issue directions to returned travellers to isolate at home. He did not consider who was going to monitor compliance with the directions. It was his evidence that this was not a matter to which he would ordinarily turn his mind.	Premier	9
Compliance	Govt responsible	… However, by directing the mandatory detention of returning travelers into the Hotel Quarantine Program, the government became responsible for the proper functioning of the Program. …, the government took on the management of the risk inherent in doing so. The Premier agreed in evidence that the government was responsible for such risk. The effect of his evidence was that he would have left the risk mitigations to those at an operational level.	Premier	12 14
Risk	Govt responsible	The decision to embark on the Hotel Quarantine Program in Victoria was made by the Premier without any detailed consideration of the risks that such a program would entail. No consideration was given to the risks that such a program would, itself, create. The evidence was that those risks were considerable.	Premier	15
Unprecedented		Premier agreed, in evidence, that it was a very substantial logistical undertaking.. He rightly described it as 'an unprecedented	Premier	16
Unprecedented	Purpose Protect community	This unprecedented and complex logistical operation was being designed to serve a primary purpose — preventing the further spread of a deadly virus into the Victorian community. It was, therefore, an operation designed to protect public health.		19
Unprecedented	Part explanation	Ultimately, it can be observed that the extraordinary pressure placed on individuals and the unprecedented nature of what they were trying to achieve explains some, but not all, of what occurred.		21
Dual purpose	Health & Jobs	the Premier during his press conference when he stated that it was 'not just about an appropriate health response. It's also … about working for Victoria and re-purposing people who have perhaps had their hours cut …The dual purpose was again reiterated by the Premier being the protection of public health and the need to support the viability of the tourism and accommodation industry … Victorian Government had been intending to support the accommodation industry even before 27 March 2020, through the $80 million allocation to the Department of Jobs, Precincts and Regions (DJPR) for use in securing hotel rooms.	Premier	25 26 28

		Mr Phemister said that he knew that DHHS would be relied upon across all phases of the operation for advice, if not direct control, because he regarded the quarantine operation as primarily a health operation.	Phemister	57
Who's in charge? 27 March	Dept Jobs - DJPR, DHHS ??	Mr Eccles stepped out to make a telephone call to Simon Phemister, the Secretary of DJPR …Mr Phemister understood that he and his Department were in charge of the Program 'from end-to-end', meaning DJPR, he was aware that, in many respects, his Department did not have the requisite expertise to plan and implement the Hotel Quarantine Program beyond some necessary logistical capability. there is no evidence that Ms Peake raised any concern or view that her own department, DHHS, ought to be in charge DHHS still played no role in the logistical planning and contracting efforts being undertaken by DJPR at that point.. The COVID-19 pandemic was a 'health emergency' and therefore a Class 2 emergency under the legislated Victorian emergency management framework. Under that same framework, DHHS was the control agency for the health emergency. However, it does not seem that anyone at the VSB meeting thought that DHHS should be running the Program as part of its responsibility as the control agency for the COVID-19 health emergency. There was no suggestion that anyone challenged Mr Phemister's understanding or that Ms Peake or anyone else suggested that DHHS should take the lead under the emergency management framework or otherwise According to Commissioner Crisp, the Hotel Quarantine Program was conducted within the emergency management framework, partly for role clarity: At that stage, Mr Helps believed that the coordination of the Program would fall under the purview of the DHHS State Controller — Health in accordance with the State emergency management arrangements. It was still unclear to Commissioner Crisp whether the operation would be run under the emergency management framework. Mr Phemister received a telephone call from Mr Eccles informing him that Commissioner Crisp had responsibility for coordinating the Program and that DHHS was the control agency. From that point, Mr Phemister regarded his Department's new role as that of a support agency… Commissioner Crisp had a telephone meeting with the secretaries of DHHS, DJPR, DPC and DJCS, at which Commissioner Crisp repeated his view that the Program should sit within the State emergency management arrangements with DHHS as the control agency. Commissioner Crisp understood the secretaries present agreed with that view. 29 March 2020, Mr Helps telephoned Ms Febey emphasising that DHHS was the control agency and needed to be in charge as it was accountable for the Program.	Eccles & Phemister Peake Crisp Helps Crisp Phemister Eccles Crisp Helps Febey	29 35 36 59 60 66 68 69 75 79 81 82 83 85

		What did change, and where dispute remains, was the division of responsibility for the operation and oversight of the entire Program…. From this early point, that lack of role clarity became symptomatic of some aspects of the Hotel Quarantine Program and caused some of the gaps, fault lines and problems that emerged.		92
Hotel suitability?	Not assessed or reviewed re infection	formed part of the previous planning by DJPR. In fact, other than the bare sourcing of numbers of available hotel stock, DJPR had done little preparation that was of relevance to an enforced quarantine program….capability and capacity of the hotels, in terms of the provision of security, cleaning and catering, had not been a factor at that time, nor had the capacity of the hotels to accommodate large numbers of people in a manner that would prevent transmission of COVID-19 to the community. there was no indication in the evidence that the decision to use hotels as designated facilities was subsequently revisited by anyone during the initial planning stages or that any assessment was made to determine if the purpose of the Program could actually be met using a hotel setting, and on such a large scale.		42 43
Private security	manager	sourcing private security firms was tasked to Alex Kamenev, Deputy Secretary, DJPR, who delegated it to Mr Menon and other DJPR executives, who then further delegated the task to Katrina Currie, Executive Director, Employment Outcomes, DJPR.	Currie	49
Private Security	Decision maker? No accountability	But no one was able to say who it was who committed Victoria to the enforcement model that placed such heavy reliance on private security. Shared accountability in this context has amounted to no accountability in that no person has accepted they were involved in the decision making and this represents a failure in the very first stages of the governance model I have concluded that - the decision was not one made by an 'individual' but, rather, there were those with influence who contributed to an understanding being reached that private security would be used and this understanding then became the decision that was adopted and acted upon at the SCC meeting chaired by the Emergency Management Commissioner Victoria Police submitted that this evidence supported a finding that a decision was made to engage private security in the Hotel Quarantine Program before the SCC meeting commenced at 4.30pm or that there was a settled consensus in favour of private security (unaided by Victoria Police's view) prior to that meeting. I do not accept this submission for the following reasons.. The Premier said he did not know who made the decision to use private security as the first tier of enforcement.. was not able to say when he became aware that private security would be used as frontline security, and did not remember having a specific view on the appropriateness of the decision to use private security at the time. As I have noted, no one who gave evidence to the Inquiry thought they were the person who decided to engage private security in the Program or knew, with precision, who the 'decision- maker' was or even the point at which the decision was made. I do not accept that he (Police Commissioner Ashton) was not 'consulted' or made no comment during the multiple discussions	 VicPol Premier Ashton	107 109 133 139 140 188 209 224

		to which he was party, including with Minister Neville and at the VSB meeting. Enforcement of quarantine was a crucial element of the Program that the Premier had committed Victoria to adopting, but neither he nor his Ministers had any active role in, or oversight of, the decision about how that enforcement would be achieved.	Premier Cabinet	291
Private security	Accountability	my understanding of collective decision-making does not remove accountability, it does not remove … for instance, as the Chair of the Cabinet, the Cabinet makes a collective decision, but I have made that decision because I am the Chair of that Cabinet Q: Given that would be your hope, it's alarming here, isn't it, that, to the extent it was a collective decision, no one seems to have understood that they were part of it? Premier: Yes, it is very disappointing. Former Minister for Health, the Hon. Jenny Mikakos MP, stated that she did not know who made the decision to engage private security and that, to the best of her recollection, she only became aware of private security being used after the Rydges Hotel (Rydges) outbreak:	Premier Mikakos	110 215
Private security	Not trained for role – role expanded	At the time of his evidence, Mr Ashton's view had not changed in relation to the use of private security, provided they were well-trained.172 He had since learned that security was being used to escort travelers, which was not what he envisaged when the plan was first put forward. That is, the role of private security expanded beyond the pure static guarding role that may have been anticipated on 27 March 2020 when it was expected guests would not leave their hotel rooms. Security guards taking guests for smoking and fresh air breaks, and transporting luggage to guests' rooms, meant that they moved through potentially contaminated areas or had the potential to interact with COVID-positive guests. These issues arose and evolved without any proper revisiting of whether the private security workforce remained the appropriate cohort for the first-tier security role. This was compounded by the lack of clarity over who was 'in control' or 'in charge' or had 'oversight' of the detention program as a whole.	Ashton	118 126 129 130
Failures from start	No Risk assessment	…the ongoing dispute as between DHHS and DJPR as to who was in charge of the overall operation of the Program there was no detailed consideration of the risks that would be involved in such a program. This was a failure in the establishment of the Program. It is beyond doubt that many people worked incredibly hard, in extraordinary timeframes, to deal with an unprecedented set of circumstances. But that is not a total justification for the deficiencies in some of the actions taken and decisions made in that first 36 hours, and it does not excuse the deficiencies I have found in the Program. …the fact remains that not one document was produced to the Inquiry that demonstrated a contemporaneous rationale for the decision to use private security as the first tier of enforcement, or an approval of that rationale in the upper levels of government		275 276 279 289
Governance Failure		…whether an alternative enforcement model should have been adopted, until late June 2020 following two significant outbreaks of infections among security guards.		293 294

		This itself bespeaks of a failure of governance. This decision was a substantial part of an important public health initiative and it cost the Victorian community many millions of dollars. But it remained, as multiple submissions to the Inquiry noted, an orphan, with no person or department claiming responsibility. The decision was made without proper analysis or even a clear articulation that it was being made at all. No one involved took issue with the use of private security at the time the arrangements were being made. This was despite an ongoing government-commissioned review that raised serious issues about the reliability and professionalism of some sectors of that industry.		295 296

Chap 6 - Coate Grid – Pages 166 to 206
Private Security

Issue	Sub issue	Coate Quote	Party	Para
The decision		That 'decision' (to use private security) had profound impacts on the efficacy and operation of the Hotel Quarantine Program. How that 'decision' was implemented, from the identification of potential security firms to how they worked 'on the ground', is the subject to which I now turn.		2
The decision maker	No security experience	Late on Friday 27 March 2020, Katrina Currie, Executive Director, Employment Delivery, Working for Victoria at DJPR, was nominated as the person responsible for identifying private security firms for the purposes Ms Currie had experience in the broader employment sector, but no particular experience with the security industry	Currie	4 6
No clarity		It does not appear that any clarity was received, although the 'ideal' operating model for the Hotel Quarantine Program was suggested by Cameron Nolan…		6
Breaching state contract requirements	Reinventing wheel No oversight	it does not appear that those involved in the group chat knew that there was a *State Purchase Contract Agreement for the Provision of Security Services*… that there were publicly available details, including email and mobile numbers, on a website. Ms Currie gave evidence that she did not know about the State Purchase Contract. Ms Currie and her team were working towards midnight looking for the names and contact details of potential firms, effectively reinventing the wheel when, all the time, the information they needed was readily available to them on a (government) website. remained unclear and liable to variation without any centralised oversight or consideration of whether those variations were appropriate.		9 10 11
Contractual Process breached	Unified not on contract panel But Unified preferred Infection risk outcome	it so happened that MSS and Wilson were members of the panel of firms subject to the State Purchase Contract. Unified was not. Ms Currie did not know this. Unified had, in fact, applied to join the State Purchase Contract but had been unsuccessful Unified appears to have won over those DJPR officers working on the frontline in hotels, and to have established itself as the preferred provider on the back of anecdotal reports about how well it was performing. take a snapshot of what this meant, in mid-May, Wilson was providing security at one hotel, MSS at four and Unified at eight or nine. Yet, it was Unified that was not on the State Purchase Contract, I am satisfied that the allocation of hotels to security companies was not based on any proper assessment of the respective companies' capacity and suitability to undertake the work. Had there been consideration of such matters as training, infection control and direct supervision of subcontractors, Unified ought to have been compared less favourably with the other subcontractors, who had taken on responsibility for devising their own training and, in the case of Wilson, taking their own expert advice on infection prevention measures.		15 25 30 38 40 41

		That risk was heightened because the role of subcontractors was not sufficient visible to DJPR and, so, was not monitored.		47
No role clarity		were no clear instructions regarding the nature of the work security guards would be required to undertake. there was no more detailed discussion bout what 'first line' or 'first tier' meant or what the actual duties of security would be.		48 49
	No guidance	…Unified, between 28 March and 2 April 2020, his company received very little information and/or guidance from Victorian Government representatives in relation to the duties and responsibilities of its security guards		52
	No effective police presence	Wilson Security had an initial understanding that Victoria Police would have a permanent presence at each hotel site, however, it later became clear this would not be the case		56
Role expanded - risk		They had a role to 'observe and report'. By early April 2020, the services that the Government had requested changed to include bag searches, food and care package deliveries and the facilitation of exercise breaks		57
	Health & safety & infection concerns	Wilson raised concerns about the expanded roles guards were expected to play in relation to infection risks for its workers, legal powers of guards and their health and safety.		59
	New risk – fresh air breaks	The most significant expansion of the role of private security guards came with the introduction of fresh air breaks. When initially contacted, all security companies were told that guests would not be leaving their hotel rooms It does appear that the initial conception of those establishing the Program was that guests would enter their rooms and not leave them until 14 days later.		63
		…two implications for security guards: A. it increased the potential for direct contact between security guards and quarantined guests, some of whom were, or could be, infectious B. it meant that guests were not remaining in their rooms and were moving through common areas also used by security and hotel staff, increasing the risk of infection..		65
	Failure to assess risk	…introduction of those breaks ought to have occurred in the context of a proper re-evaluation of the infection control measures in place in hotels and an assessment of the increased risks posed to security staff.		67
Govt to blame	Accountability failure	My view is that at least one reason this re-evaluation and risk assessment did not occur was because no person or agency regarded themselves as responsible for the initial decision to engage private security and no one had articulated the assumptions that underpinned this decision.		70
	DJOR v DHHS	This was further compounded by the positions taken by DJPR and DHHS about who was accountable for these contracted workers in circumstances where no one agency considered itself 'in charge of the operation on-site.		71
	Responsibility avoidance	Because DJPR did not see itself as 'owning' the decision to engage private security, it appears not to have seen itself as responsible for monitoring the appropriateness of that decision.		75
Written Contracts		The three contracts contained the same or substantially similar terms.		80
	Confused accountability	Each of the Wilson, MSS and Unified contracts required those providers to follow the direction of DJPR. In practice, on the changing roles of security guards, DJPR acted at the direction of		85

		DHHS such that DJPR essentially passed on welfare-related directions		
	Confused standards	if the drafters of the contracts did not know what those standards were, then it was unreasonable to expect that private security providers would know and almost impossible for DJPR to monitor and potentially enforce compliance …		128
	Subcontractors	head contractors were dependent on subcontractors to fulfil a substantial portion of the number of security positions.		89
		…Unified was not required to inform the subcontractor of the head contractor's obligations under the contract with DJPR and provide an acknowledgment that Unified's subcontractors would comply with the same obligations as imposed		93
		The contracts explicitly recognised the risk of transmission of COVID-19 to security guards and the harm that it may cause. The contracts sought to transfer liability for that harm to the security companies		96
		The arrangements for subcontracting, however, posed their own significant challenges for the Hotel Quarantine Program.		166
	Infection liability transfer	The contract ready "The Service Provider releases and indemnifies…[the Department] against any loss, damages, cost or expense…incurred by the Department arising out of, or in any way connected with… personal injury, including sickness and death (including but not limited to in relation to exposure to or infection from COVID-19)		96
	Training liability transfer	Wilson, MSS and Unified were each responsible for ensuring (staff)…'received adequate training in security, workplace health and safety …relevant safety induction…undertaken the Australian Government Department of Health COVID-19 infection control training module		99
	Not subject to DHHS	There was no requirement in the contracts that security services personnel be subject to the direction of DHHS. It was a deficiency that these contracts did not explicitly subject security service providers to the direction of DHHS…		101
Failure to issue directions	DHHS	DJPR understood that DHHS was to provide written material to security contractors so they could properly understand their role in enforcing those directions. It suggested to DHHS that DHHS update the draft document and formally provide it to security managers at each site. There was no suggestion from DJPR witnesses, Ms Febey or Mr Phemister, that this was actually done. The fact that DHHS submitted that Authorised Officers were not responsible for, or unable to direct, security guards, leads me to infer that DHHS did not circulate that document to each of the contracted security services providers. This demonstrated a lack of agreement between DHHS and DJPR as to the role of security guards		103
Govt should have remained responsible		It was not appropriate that the contracts allocated the risk of COVID-19 transmission on to security service providers in the manner it did.		105
		The contracts with security services providers effectively sought to impose the primary responsibilities relating to infection prevention and control on those private providers.		106
		… These were significant responsibilities to outsource, especially in the context of a government-led quarantine program, the primary aim of which was to contain the spread of a highly infectious disease.		107

		Shifting a burden to those contractors who were not specialised in the areas of infection prevention and control was inappropriate and ought not have occurred.		
DHHS excuse		DHHS submitted that the risks were not created or carried by the Hotel Quarantine Program but,rather, risks arose from COVID-19 itself and the entry into Victoria of travellers potentially infected with COVID-19.139		109
	DHHS wrong	The DHHS submission did not recognise that if the State mandates potentially infected people into the quarantine facility that it had created to avoid community transmission, it had then accepted the responsibility to take all necessary actions to keep the people in quarantine safe and minimise the risk of cross infection or community transmission from that quarantine facility…		110
	OHS obligations	DJPR submitted that its contracts did not purport to transfer to contractors or diminish the State's infection prevention and control responsibilities, nor did the State seek to contract out of its obligations under the Occupational Health and Safety Act 2004.146		115
Risk responsibility	Wrong to transfer risk	Suffice to say… it was not appropriate for the State to seek to impose the risk of transmission of COVID-19 onto the security service providers in the way in which these contracts purported to do.		116
	Obligation to public	The Hotel Quarantine Program was not just a workplace or a private arrangement between employer and employee, or contractor and principal. …. It was, fundamentally, a measure to protect the public from a significant public health threat.		117
	State responsible	… simply too much at stake for the State to have conferred such responsibilities on private security service providers whose ordinary roles were so far removed from infection prevention and control measures.		118
	Public safety	For DJPR to determine that security service providers could or should have been making assessments about 'risk management' and what was 'adequate training' and 'relevant public health standards' for COVID-19 was inappropriate as a matter of public safety.		120
Inappropriate training		Professor Lindsay Grayson, Director of the Infectious Disease Department at Austin Health, …stated that this training module was not fit for purpose for those working in an environment where they were likely to be in contact with a potentially infectious patient.		124
	No/late training	Like MSS, Unified had an expectation that DHHS would offer training on-site, but its experience was that no guidance was received until late April or early May.		137
		This had consequences for the risk of transmission within hotels. Unified and its subcontractors were more reliant on DHHS training and guidance to reduce the risk of transmission and, so, were vulnerable if that training or guidance was not delivered (or not delivered in a timely way).		138
	No information	There was no handbook or information distributed to the security guards.		141
	Infection cause	However, I am satisfied that, particularly at the Rydges and the Stamford Plaza hotels where outbreaks ultimately occurred, the practices of security guards fell short of necessary standards of infection prevention.		142

DHHS responsible		It does not necessarily follow that, if DJPR entered into the head contracts, it should also manage those contracts, including by way of giving directions to the security service providers DHHS was better placed than DJPR to manage the head contracts. Fragmenting responsibilities between procurement and management of the security services providers led to deficiencies in the Hotel Quarantine Program. A stark example of the confusion caused was the contradictory information given to security guards as to when PPE should have been worn. As control agency of the services provided pursuant to the head contracts, DHHS should have been responsible for the management of the delivery of those services. To promote consistency and enable clear lines of accountability, responsibility and supervision of security service providers, DHHS and DJPR should have arranged, at the outset, for the transfer of responsibility for the administration of contracts to DHHS.		148 154 155 156 157
DJPR responsible		This was a failure of proper contract management on the part of DJPR.		189
Premier aware of risk		The Premier gave evidence that he was aware of concerns in sections of the community and the private security industry about how the industry operates. The Premier was taken to a document, Victoria's Private Security Industry — Issues Paper for Consultation (Issues Paper),	Premier	201
Known security guard risk		On the basis of Dr Looker's and Prof. Sutton's evidence, the issues raised in the Issues Paper and the evidence that emerged more generally during the Inquiry, I conclude that there were aspects of the private security industry as referred to here that made this cohort vulnerable to the risks that eventuated. Security guards are not an appropriate cohort to be on the frontline in compliance and enforcement at quarantine hotels	Sutton	225 232
Police Use		The evidence of Chief Commissioner of Police, Shane Patton, was that Victoria Police had not received an official request to maintain a constant presence at each hotel. I note here that Victoria Police had powers to manage cordons, and could have done so, had a request been made It was likely that a constant police presence would have ensured an increased focus on health and safety on-site.		236 238 240
Systemic failures V Individuals		The problems I have identified in this chapter are systemic governmental failings. They are not criticisms of individuals and should not be taken as such. .. contracts of this size and significance did not appear to have had the direct oversight of the Minister. It ought to have had direct input and oversight from Mr Phemister and Minister Pakula. Outsourcing such a critical function warranted closer scrutiny from senior public servants and the Minister. The Minister should have been informed of security arrangements I do find that there were failures of proper procurement practice on the part of DJPR	Phemister Pakula	247 248 251 252 255

		first such failure was not using the State Purchase Contract		256
		The second failure was in contracting longer term with Unified despite advice		260
		…it was a failure of government decision-making to contract for what became very significant sums of money with a firm that had previously been refused admission to the State Purchase Contract panel and, then, to allocate so much work to that company.		263
		neither agency considered itself 'in charge' of the Program on-site		268
		not appropriate that the contracts placed responsibility for training and supervision in relation to PPE and infection prevention and control on the contractors in the manner they did. That should have been a responsibility that remained with the Victorian Government, as architect of the Hotel Quarantine Program		272
		Security guards were not the appropriate cohort to provide security services in the Hotel Quarantine Program without close monitoring and extensive and continued training by those with the requisite expertise. That level of monitoring and training did not occur.		278
		…flow on impacts in terms of the spread of the virus.		279
		…vulnerabilities had previously been identified by the Government; with that knowledge, they should not have been selected to provide the services they did without having addressed those vulnerabilities.		281

Chap 7 - Coate Grid – Pages 211-239
Use of hotels and cleaning

Issue	Sub issue	Coate Quote	Party	Para
Agencies responsible	Selecting hotels	It does not appear on the evidence that DHHS was specifically engaged in hotel selection at that stage (27 March).		18
	Coordinating agency	28 March 2020, Mr Eccles informed Mr Phemister that Emergency Management Commissioner Andrew Crisp would have the responsibility for coordinating the Hotel Quarantine Program and that DHHS would be the control agency in respect of the program.It was agreed that DJPR should transition various roles and functions over to DHHS.	Ecceles Phemister Crisp	19
	DHHS denies responsible	DHHS maintained that it was not in charge of the overall Program and had responsibility only for those parts of the Program that related to the health and wellbeing of those in detention.		20
	DHHS not assess hotels	Mr Menon also gave evidence that he was not aware of any specific documentation from DHHS concerning assessment of prospective hotels from an infection control point of view prior to giving approval to engage them.		26
Several objectives	Jobs boost	The use of hotels was also seen by the Premier as providing a significant financial and employment boost to the State's pandemic-affected economy; specifically, a direct injection of work into the hotel and tourism sectors.	Premier	30
	Infection control not primary	It appeared that the suitability of hotels as quarantine facilities was considered mainly from a point of view of expediency, rather than their capability to minimise against the risk of infection transmission.		31
	Contracts problematic	Aspects of the contractual responsibilities of hotels were problematic and became the subject of some attention during the Inquiry.		40
Training	Trainers no infection expertise	the application of the training was supervised by hotel management and not by people who had expertise in infection prevention and control.		53
	Infection consequences	Given the consequences of any failure to discharge these obligations, it was an entirely different matter as to whether it was prudent for the Government to allocate this obligation to hoteliers in the first place.		54
Infection prevention		Self-evidently, the risk of infectious outbreaks as between those in quarantine, and to those working in the quarantine hotels, was an ever-present one on-site. Consequently, infection prevention and control (IPC) for those in quarantine and those working on the sites was an essential component of what the Hotel Quarantine Program was required to deliver.		55
DHHS v DJPR	DHHS responsible?	DHHS accepted that it was its responsibility to provide guidance and advice on IPC issues, and asserted that it did do so.		58
	DHHS guidance only	DHHS took the position that it did not hold or manage the contracts with hotels and did not see it as its role to implement that advice and guidance and ensure it was done to the requisite standard.		59
	Impasse Gordian knot	DJPR's position was that although it held the contracts with the hotels, DJPR looked to DHHS for the necessary expertise and guidance in this area. This impasse made its contribution to what		60

		became a Gordian knot that developed in the early days of the Hotel Quarantine Program		
Infection expertise	1 person	DHHS had one infection and prevention control consultant (IPC Consultant) at its disposal for the State of Victoria. That IPC Consultant stated that she had no formal role in the Hotel Quarantine Program.		61
	Expanded	early April 2020, the IPC Cell commenced with the IPC Consultant, two additional part-time consultants and an administrative assistant. By mid-April 2020, the team had expanded to include an IPC Cell Strategy, Policy & Planning Lead and two more part-time IPC practitioners.		62
	Not hotel focused	the evidence was that this very small team was handling general COVID-19 enquiries from across the State, rather than specifically focusing on the Hotel Quarantine Program.		63
	DHHS did not training	no evidence before the Inquiry to suggest DHHS played a role in training hotel staff in infection prevention and control in any uniform, systematic or coordinated way.		67
Cleaning	When consider transmission	it was only when considering the Rydges outbreak, in late May 2020, that Dr Crouch first considered fomite transmission as a likely source of transmission.		72
		DHHS's publication Coronavirus disease 2019 (COVID-19), Case and contact management guidelines for health services and general practitioners. The version of this document that was available on 1 May 2020		76
	Contracts Hotels responsible	This responsibility was borne out in the contractual arrangements. Under the contracts entered into between the State (through DJPR) and hotels, primary responsibility for cleaning rooms fell to hotels participating in the program.		80
	Except for positive patients	that general requirement was subject to an exception in respect of rooms that had been used to accommodate a person in quarantine who was known to have tested positive for COVID-		81
	Cleaners not trained	There was no evidence that these sub-contracted hotel cleaners were trained in any specific infection control procedures.		86
Outsourced cleaners	DJPR sourced cleaners	DJPR was responsible for procuring and contracting the specialised commercial cleaning providers		87
	DHHS no standards	evidence that she understood that DHHS did not have specific requirements about which cleaning contractor(s) were to be engaged.		90
	DHHS not respond	DJPR submitted that it had difficulties in getting DHHS to provide cleaning protocols tailored to the Hotel Quarantine Program environment and to respond to multiple and repeated escalations seeking tailored information and responses to specific questions about cleaning		106
	First standards 17 June	The June Cleaning Advice was the first comprehensive, situation-specific cleaning advice tailored to the Hotel Quarantine Program environment. It was provided to DJPR on 17 June 2020 and DJPR directed it be provided to the cleaning contractors. It is unclear whether the June Cleaning Advice was also provided to the hotel cleaners.		104
	Same as march	DHHS submitted that the June Cleaning Advice, provided to DJPR in mid-June, was essentially and substantially the same as that contained in the March Cleaning Advice.		107
Infection outbreaks	DHHS takes control June	On 28 June 2020, after the outbreaks at Rydges and the Stamford, DHHS reissued this second cleaning protocol,		109

		responding to comments and feedback from the hotels and others.161 Two days later, DHHS assumed control of all service contracts under the Program At the time of the outbreak at the Rydges Hotel in Carlton, there was no cleaning protocol specific for the Hotel Quarantine Program.		110
DHHS V DJPR	Disputes	The evidence demonstrates that DJPR was frustrated that DHHS did not provide tailored cleaning advice and protocols for the Hotel Quarantine Program in the initial phase of the operation. In contrast, DHHS submitted that the March Cleaning Advice was applicable to the hotel environment and was sufficient and appropriate for the purposes of the program		111 111
	DHHS says not responsible	DHHS's evidence was that it was not responsible for supervising cleaning as part of IPC measures. Kym Peake, the then Secretary to DHHS, gave evidence.. although her team had responsibility for the availability of IPC advice and guidance in hotels, it was not accountable for determining whether it was appropriately implemented.	Peake	118 118
	Created vulnerabilities	Given the centrality of appropriate cleaning to any effective system of infection control, this created vulnerabilities within the program.		119
Dangerous places		it was uncontroversial that IPC, including cleaning services, was a crucial aspect of a successful quarantine program. described quarantine environments as 'self-evidently dangerous spaces'		121 122
	No Monitoring or training	The evidence demonstrated that this type of rigorous monitoring and training was not occurring within the hotels. This approach demonstrates that IPC measures were not sufficiently monitored within the hotels.		123 125
	No on sight guidance	There were no IPC stationed at the hotel sites to give guidance, oversight or supervision on the range of risks to which hotel staff would be exposed and what they needed to do to mitigate those risks. That was a deficiency in the model.		126
	Cleaning critical	and that the cleaning (whether it was undertaken by hotels or commercial cleaners) was a clear component of any proper system of infection control.		129
DHHS no guidance	No support Hotels/cleaners	The onus was clearly on the hotels to identify those standards, for themselves, without guidance from DJPR or DHHS….first and foremost, it was the responsibility of the supplier to actually avail themselves of that relevant information'. in respect of staff training, PPE supply and the cleaning of non-COVID guest rooms, hotel providers were largely left to determine these issues without guidance. these providers simply did not have the expertise to adequately fulfil these obligations.		131 133 135
	Not safe	that made the administration of those contracts unwieldy and unnecessarily complicated, and not a safe system of IPC.		136
Transfer of responsibility wrong	Premier agrees	When it was put by Counsel Assisting, Ms Ellyard, that 'issues of infection control were too important to be left entirely to private contractors' the Premier answered: '… given	Premier	139

		what's at stake, given the seriousness and the infectivity of this virus … I think that is a fair statement'		
	Ought not occurred	shifting of a burden created, in part, by the Government to the contractors was inappropriate and ought not have occurred.		140
DHHS excuse		DHHS submitted that the risks were not created or carried by the Hotel Quarantine Program but, rather, risks arose from COVID-19 itself and the entry into Victoria of travellers		141
	Govt fault	Whatever the reason for those contractual provisions, it did not absolve the Government of its duty to ensure that appropriate safeguards were in place.		144
Conclusion	Complicated process	This resulted in a situation where those responsible for ensuring compliance with the contracts (DJPR) were not the ones with sufficient expertise to understand whether the contracts were being performed as they should. This was an unnecessarily complicated and unwieldy situation and not a safe system of infection prevention and control.		150
	Contract framework wrong	. Additionally, this contractual framework complicated and obscured what was the necessary and appropriate, albeit apparently lacking, 'ongoing supervision and oversight' by DHHS of the operational aspects of the Hotel Quarantine Program.		152
	Created vulnerability	The impact of fragmenting responsibilities in this way as between DJPR, DHHS and the private contractors added to or increased the vulnerabilities inherent within the Hotel Quarantine Program.		155
	No on sight support	There were no IPC experts stationed at the hotel sites to give guidance, oversight or supervision on the range of risks to which hotel staff would be exposed and what they needed to do to mitigate those risks.		160
	PPE	stated, it made it even more unsatisfactory that hoteliers were contracted to provide their own PPE, training and infection prevention and control. It was a wholly inadequate situation.		162
	No monitoring	it was imperative that proper auditing checks were conducted with due care, particularly given the known risk of environmental transmission. There is no evidence this was done.		166
	Hampering	consequences of the 'split' DHHS and DJPR arrangement included delays in providing proper cleaning advice and services, hampering the ability of those within hotels to deal quickly with issues as they arose.		169
	Same problems as security	it was not appropriate for the Government to place contractual responsibility for IPC on security services providers. I come to the same conclusion with respect to contracts with hotels and commercial cleaners, and I repeat those reasons here with respect to hotel and cleaning contracts.		174
	Hi Risk	There was simply too much at stake for the Government to have conferred such responsibilities on private service providers, whose ordinary roles were so far removed from IPC measures.		179
	Govt responsible	it was the evidence of the Premier that it would 'absolutely' be a concern if the relevant departments 'didn't take an active role in ensuring that there was proper infection control and prevention measures in place', in particular where the Government had assumed such risk by bringing members of the public into the hotels	Premier	184

Chap 8 - Coate Grid – Pages 244 -311
DHHS as control agency

Issue	Sub issue	Coate Quote	Party	Para
DHHS responsible		Not surprisingly, given public health is squarely the responsibility of DHHS (particularly preventing the spread of communicable diseases) DHHS is designated as the control agency for human disease emergencies		25
		the SHERP provides for the Secretary to DHHS to appoint the State Controller (who, in the Hotel Quarantine Program, was referred to as the State Controller — Health		37
	DHHS took other view	pandemic was a Class 2 health emergency or that this Class 2 health emergency meant that DHHS was the 'control' agency. How DHHS interpreted that role and its functions and responsibilities in the context of the Hotel Quarantine Program was, however, the subject of considerable dispute.		44
Core purpose		The paramount purpose of the Hotel Quarantine Program, and the very reason for its existence, was to prevent the further spread of COVID-19 from returning overseas travellers into the Victorian community, thus protecting the health of all Victorians. The secondary objective of the Program was to meet the health and other needs of those detained in quarantine.		47
		Infection control, outbreak management, healthcare, welfare and human services are core to the work of DHHS…Key responsibilities of the Department relate to public health and include preventing the spread of communicable diseases.		48
Changing structures	Crisis council	3 April 2020, DPC announced a new government and public service structure to respond to the COVID-19 pandemic emergency. This included the establishment of the Crisis Council of Cabinet (CCC)		75
	Mission	Ms Peake was accountable directly to the Premier for delivery of that Mission	Premier Peake	78
		Ms Peake confirmed that the Mission Implementation Plan that was created following the Premier's request included a governance structure that was in place for some time prior to June 2020		85
	Maze like	Given the maze-like presentation of this document, when asked if people in charge understood the intersection of the CCC and MCC structures with the State Operational Arrangements,		88
	Fractured, confused structure	suggests the separation of decision-making from operations, a bifurcation that Ms Peake described as appropriate, was not well understood and, at times, served to fracture and confuse roles and responsibilities and lines of reporting and accountability as designated under the SHERP.		91
		It is apparent that the DHHS leadership made a decision early in the COVID-19 pandemic emergency response … to separate the Department's public health structures from the operational aspects of Operation Soteria and the wider COVID-19 pandemic emergency response.		97
		This had ramifications for the operation of the Hotel Quarantine Program through Operation Soteria.		98
	Complex environment	Ms Spiteri was at pains to emphasise that, while she and Mr Helps		108

	disjunct	were in 'direct control' of ensuring that public health resources and advice, including PPE and relevant instructions, physical distancing guidance and behavioural expectations were provided to those working in the Program, it was a complex environment with many players: Mr Eagle's evidence demonstrated a disjunct between his title and the apparent intention of the role and any apparent role in the chain of command relating to a 'health' input beyond being a conduit for information to the State Controller — Health		112
No responsibility	Repeated theme	Ms Williams was asked, in the context of cleaning policies for the hotels, whether it was the responsibility of DHHS to bring those specific policies to the attention of the hotels. Ms Williams ultimately asserted that it was not DHHS's responsibility but, rather, the responsibility of DJPR or the hotel contractors themselves. This lack of clarity and consistency as to the nature of the roles, reflected both in the documentation guiding Operation Soteria and in the subjective understanding of those involved as to the limits of their accountability in the Hotel Quarantine Program, unfortunately, was a repeated theme,		121 123
Sutton contradiction?		However, it was Prof. Sutton's evidence, emphasised particularly in two affidavits produced following the close of the evidentiary hearings, that, despite those accountabilities, he and Public Health Command 'were not in day-to-day decision-making roles and, as such, were somewhat disenfranchised in the running of the Program. 'it was made clear that [the CHO], regardless of whether he was the State Controller, would retain control over and ultimate responsibility for the public health response' Dr van Diemen's usual role was DCHO – Communicable Diseases. This role sits in the Health Protection Branch of DHHS. In the context of the COVID-19 pandemic emergency, she was also the Public Health Commander (as described above). In each role, she was required to report to Prof. Sutton as CHO Prof. Sutton agreed in his evidence that there was no clear or direct reporting line from Public Health Command into Operation Soteria.	Sutton	125 128 133 138
On Site confusion	DHHS team leaders Coordination? In charge?	characterise theTeam Leaders as being 'in charge' on-site, to which she responded that the term was 'somewhat loaded' in the context of the Inquiry. She described the Team Leaders as being 'our representatives on-site'. DHHS team leaders had a coordination function and performed that well but they did not have operational control over authorised officers'. Despite this, the perception of some other witnesses, who were on the ground in hotels and who were not DHHS employees, was that DHHS Team Leaders were in charge of the Program at the hotel sites.		162 164 167
Enforcement	But?	Mr Smith stated that, in his role as Commander, COVID-19 Enforcement and Compliance, he was responsible for the entire enforcement and compliance command structure. This included supervision of all Authorised Officers, Authorised Officer Team Leaders and Senior Authorised Office Mr Smith reported to the State Controller — Health throughout his involvement in the Hotel Quarantine Program Mr Smith gave evidence that his role was limited to exercising powers under s. 200(1) of the PHW Act, including serving	Smith	181 182

		detention notices on returning travellers, ensuring compliance with those notices, managing permissions and exemptions and, ultimately, approving people's release at the end of their detention….. Smith said that Authorised Officers had no role in supervising any other staff at the hotel, including security staff or in overseeing IPC or the use of PPE at the hotels.		
Conclusions DHHS		there were significant systemic flaws and shortcomings within the DHHS response that affected the Program's capacity to achieve its objectives. It was DHHS as the agency responsible for public health in this State… Where the controversy lay was in the interpretation of what it meant to be the 'control agency'. However, the precise functions and responsibilities of DHHS as control agency in the context of the Hotel Quarantine Program were matters of deep disagreement before the Inquiry.		187 189 190
	DHHS - 'Control' does not mean 'control'	A theme from DHHS witnesses was that their Department was not 'in charge' or 'in control' of the Hotel Quarantine Program overall, as their interpretation of being a 'control agency' should be seen through the lens of the Hotel Quarantine Program being a 'complex' emergency within the meaning of the emergency management framework. The problem with this position is that the two concepts are not mutually exclusive. That agencies such as DJPR engaged in responding to the emergency are properly accountable for their actions is not in question. But that concept of accountability does not obviate the need for the control agency to be more than a mere coordinator. Indeed, the language DHHS seeks to rely upon seems plain enough: 'There is a need for a single agency to be responsible for the collaborative response of all agencies'. submission was not consistent with the evidence of the Emergency Management Commissioner or, indeed, any other witness who gave evidence on this issue who was not an employee of DHHS. That is, DHHS was alone in holding this view. It appears to have been the only agency confused or unclear about its role The Premier, when asked for his view as to who he thought had responsibility for the Hotel Quarantine Program, gave evidence that DHHS 'as the designated control agency, was primarily responsible for the Program and that, from 8 April 2020, he 'regarded Minister Mikakos as accountable for the Program'. The fact that it (DHHS) did not see itself as having this responsibility and did not accept this responsibility, either during its involvement in the Program or throughout this Inquiry, can be understood as being a progenitor of many problems that eventuated in the Hotel Quarantine Program , I do not accept the DHHS submission that it 'delivered on the appropriate role of the control agency in a complex emergency'. That such a misinterpretation or mischaracterisation of the role and function of this central aspect of the response to a public health emergency could become so embedded in the minds of thesenior management of DHHS — all the way through to the Minister	Premier	191 210 211 216 222 240 243
	Reporting lines	The split that emerged was as between the emergency management personnel within DHHS and the public health		307

		witnesses. There was conflicting evidence about reporting lines and chains of command as between these two groups.		
Lack of infectious expertise		The limited number of employees with public health and infection control expertise posed practical difficulties to the Program meeting its objectives.		251
	Outside help	Dr Julian Rait, the President of the Australian Medical Association (AMA), gave evidence that there was insufficient engagement with stakeholders and experts outside DHHS in the establishment of the Program:		252
More complexity		Adding to the apparent complexity of the governance of the Hotel Quarantine Program was another layer of either intersecting pathways or parallel lines, depending on the way it was viewed, created by the emergency management framework and the statutory role and powers of the CHO. It was said to emerge in this way.		280
	Parallel structures	This diagram demonstrates the size and complexity of the Public Health Incident Management Team. Although the incident management team sat within the State Governance Structure (see above), in practice, because the incident encompassed the entire State, it was running parallel, rather than under, the emergency management leadership.		283
	Added complexity	This parallel structure added to the complexity of the COVID-19 pandemic emergency response and hence the Hotel Quarantine Program.		284
The Hotel Program	Central risk ignored	The weight of the evidence was that the Program was characterised as a compliance and logistics exercise rather than a public health program. The conceptualisation of the Program in this way created tension within DHHS, and also meant that the necessary attention was not paid to the central risk of the Program and, ultimately, to the whole State, being the risk of outbreaks inside the hotels or into the community at large.		295
		it was also being brought under emergency management, rather than public health governance.		296
	Bad concept bad leadership	However, the starting point for a Program to minimise the risk of transmission events is one that sees itself as a public health program, not a logistics program, and therefore places those with the right expertise into lead positions.		298
	Who is in command?	stating: 'I did not consider myself to be and was not the overall head of a chain of command in relation to Operation Soteria generally' He stated that he was so divorced from the command arrangements that he was not even aware of the detail of the governance arrangements:		310
	Risk to heatlh and safety	(email) In it, he stated, in emphatic terms, that: '[t]here arenow a considerable complexity and considerable risk that unless governance and plans issues are addressed there will be a risk to the health and safety of detainees'		315
Internal division		What was being raised at a senior level inside DHHS was a serious internal division of views about where the internal lines of command and responsibility lay, and the risks associated with the situation if left unaddressed.		321
	Waiting catastrophe	This level of confusion and disagreement inside the DHHS chain of command invariably contributed to the ultimate position that no division inside DHHS saw itself as having the power or authority or ability to be responsible for the operation of the Hotel Quarantine Program. For such a high-risk program to be left in this situation was a catastrophe waiting to happen.		329
Who was in charge in Hotels?		Given all of the above, it comes as no surprise that there was confusion and misunderstanding on the ground as to who had what role and who was 'in charge' of the operation.		348

	OHS responsibility	Ms Spiteri saw DHHS's responsibility as providing information about PPE and behaviour such as social distancing, with responsibility from an occupational health and safety perspective lying with every person and their organisations.		351
	No one in charge	Park Royal Hotel: '… things were siloed — there was a sense that everything was nobody's job. The [DHHS] staff were in charge, but nobody really reported to anyone'		355
	No training	25 May 2020, when Mr Ashford started his first shift, he still did not have any formal idea of what he would be required to do in his role as an Authorised Officer. Mr Ashford's evidence was that he received no specialist training in respect of performing Authorised Officer duties for DHHS. His training related to the use of the COVID-19 app and equality and diversity training. He had no training on infection control.		357
		Similarly, Mr Cleaves stated he did not recall personally giving direct instructions to security guards regarding operational matters such as cleaning or the appropriate use of PPE, except when carrying out a specific Authorised Officer function. He was clear that security did not report to Authorised Officers, nor did Authorised Officers supervise security or their teams.		361
		Evidence from security guards and security companies was that they saw Authorised Officers as 'in charge' at hotels.		362
Clinical guidance to Hotels	What should occur	the supply and use of PPE, cleaning procedures and IPC procedures are areas of expertise that cannot be left to chance, or, merely, to posters put up on-site or one-off pieces of training from time-to-time. Nothing short of constant on-site vigilance from those with the right expertise is what is required.		370
	Trained personnel?	conceded that priority should have been given to ensuring there was oversight from clinically-trained personnel		371
	Risk register?	was the evidence of Mr Helps that there was no overall risk register created across the Program		372
	Fragmented policies	A number of of witnesses from DHHS gave evidence about the various policies and procedures relating to infection control and welfare that were drafted and disseminated. But the process was ad hoc, fragmented and reactive.		376
	Problems identified after outbreaks	Dr van Diemen also said that her team's lack of operational oversight meant that the Public Health Command was not aware of significant IPC issues plaguing the Program until after the outbreaks….That meant that there was no one on-site with the expertise to maintain the necessary vigilance and supervision required. That this gap in the Program existed was a serious danger inherent in the Program.		379
	Inherent danger			
	No plan	There was no evidence presented of any overarching plan, oversight or accountability within the Program for IPC on-site.		381
	Risk creation	It is now clear that the expert guidance that was provided, by way of advice and policies, did not extend to the level of operational oversight that was essential to the minimising of risk to the operation of the Hotel Quarantine Program.		382
Ministerial responsibility	Evidence of Mikakos, Premier, DHHS at odds	Ms Peake acknowledged that, as Secretary to DHHS, she was accountable to her Ministers, including the Health Minister. She was also accountable to the Premier in her role as Mission Lead	Premier	384
		While the Premier became aware of the control agency arrangements early on in the Hotel Quarantine Program, he could not point to a specific document or briefing as to precisely when		390

		he became so aware…While the Premier became aware of the control agency arrangements early on in the Hotel Quarantine Program, he could not point to a specific document or briefing as to precisely when he became so aware		
		DHHS submitted that 'there was very regular and appropriate briefing of Ministers, their office the Premier, his office and the Crisis Council of Cabinet on ... the operation of the hotel quarantine program'. This submission is at odds with aspects of the evidence of both the Premier and former Minister Mikakos		391
		Minister Pakula was unable to recall how he became aware that his department had entered into contracts with private security companies for the provision of services at quarantine hotels.	Pakula	394
		Ensuring that Ministers are thoroughly and properly briefed is part of our system of responsible government, in place to create checks and balances on bureaucratic decision- making.		395
		However, the evidence on this issue that emerged in the Inquiry dictates that an appropriate agency or entity should undertake an examination of what has occurred to assess what action may be necessary …		396
Summary Conclusions	Failure at start	During that March weekend, the commencement of the Hotel Quarantine Program in DJPR created the first fracture in lines of accountability and governance from which aspects of the operation did not recover.		400
	DHHS control agency	While there was no controversy about the appointment of DHHS as the control agency for this Class 2 emergency, there was considerable controversy that persevered throughout the Inquiry as to what it meant to be the control agency.		405
	Dispute as to what 'control' means.	The meaning of the term 'control agency' is defined in the emergency management framework as the agency with the primary responsibility for responding to a specific form of emergency. The control agency's responsibilities are set out in the EMMV and include the appointment of 'controllers' for the specific form of emergency.		406
	Control central to emergency m'ment	The importance of having a control agency in emergency management is to ensure clear lines of command and control, as this is critically important to lead and manage the emergency, coordinate the response and ensure there is no ambiguity about who is accountable for the management of the emergency.		407
	Hotel Program leaderless	This left the Hotel Quarantine Program without a government agency taking leadership and control and the overarching responsibility necessary to run such a complex and high-risk program.		409
	DHHS internal confusion	inexplicable internal governance structures that served to complicate and obfuscate reporting lines and accountabilities rather than create clarity of role definition and lines of command.		410
		Further, there was considerable disquiet expressed from the senior members of the Public Health Team inside DHHS that there was a lack of clarity about the command structures inside DHHS.		414
	Lost focus on infection control.	The mischaracterisation of the Hotel Quarantine Program as a 'logistics' and 'compliance' exercise meant that focus did not fall on the need for expert infection and prevention oversight to be embedded into the Program.		416

	Brewing disaster	Just as DHHS did not see itself as the control agency responsible for the Program, it did not see itself as 'in charge' on-site. This left brewing the disaster that tragically came to be. This complex and high-risk environment was left without on-site supervision and management, which should have been seen as essential to an inherently dangerous environment. That such a situation developed and was not apparent as a danger until after the two outbreaks was the ultimate evidence of the perils of the lack of proper leadership and oversight.		421 421

Full Extracts from Chapter 9 of the Coate Report

(Highlights inserted by SEA)

9.4 Conclusions as to the impact of inadequate infection prevention and control measures on the outbreak

1. The specific factors that led to the transmission of COVID-19 from people in quarantine to workers in the Program, and beyond, to other members of the community, mirror some of the inherent problems with the Program as identified and explored in detail in this Report. Without repeating the detail of each of those systemic factors, it is important to focus attention on the ways in which those shortcomings created the conditions for the outbreaks that eventuated.
2. As has been noted, the Hotel Quarantine Program was predominately approached as a logistical or compliance exercise, rather than a health program.303 Although the Program had important logistical and compliance aspects, those were to be called in aid of, and were necessarily ancillary to, its primary objective as a public health program: to prevent the further spread of COVID-19.
3. It appears that one of the consequences of the failure to conceive of the Program as, first and foremost, a health response was that inadequate attention was given to the primacy of IPC measures on the ground at quarantine hotels. This resulted in inadequate cleaning practices, unsafe PPE practices, risks of cross-contamination between different 'zones' and insufficient training in infection prevention and control, especially for those who were most at risk of exposure.304
4. Related to this, and as discussed in Chapter 8, there was insufficient public health, specifically IPC, expertise embedded in the Program. It was absent in the high-level management of the Program and in the personnel with the day-to-day implementation of the Program at hotel sites.
5. Infection prevention and control was inadequate across the Hotel Quarantine Program, and was particularly inadequate at Rydges following its designation as a hot hotel. The outbreaks that occurred, and the findings that emerged from their OMT investigation, are demonstrative of those inadequacies.
6. Those inadequacies, specifically as they materialised at Rydges, increased or, at least, substantially failed to mitigate the known risks presented at the hot hotel.
7. At all material times in the Hotel Quarantine Program, while scientific knowledge has continued to grow and develop throughout 2020, there was scientific guidance as to COVID-19 modes of transmission, including the possibility of environmental transmission.305 Had public health experts in infection prevention and control played a greater role in the design and operation of the program, it is likely that IPC practices would have been more rigorous and more effective.
8. The proliferation of policies, without operational line of sight into the implementation of those policies, was insufficient to guard against what was known to be a pernicious virus.
9. The presence of a full-time designated IPC monitor at each quarantine hotel would have undoubtedly improved compliance with necessary practices and procedures.
10. The deficiencies in practices and procedures were plainly evident to the Outbreak Squads when they investigated the outbreaks at Rydges and Stamford.306 Had IPC experts been present at each hotel throughout the program, those deficiencies would likely have been observed and addressed, and the risk of outbreaks reduced.307
11. I conclude that many of the deficiencies identified in IPC practices, which increased the risk of outbreaks, would have been detected and remedied, perhaps preventing the consequences that have flowed, had this relatively modest, but critically important, resource been appreciated.
12. A further systemic issue that emerged from the evidence concerned the nature of the workforce called upon to staff the Hotel Quarantine Program. Some of the characteristics of this workforce308 exacerbated the risk created by the deficiencies in the IPC practices I have referred to in Chapter 6 and further interacted, in turn, to increase the risk that infected workers would transmit the virus into the community.
13. At the frontlines of the Program, agency nursing staff and private security contractors were used. It has been recognised that the private security workforce that was engaged, through a web of subcontracting arrangements, represented an inherently vulnerable cohort. Their vulnerabilities certainly bear emphasis in terms of their impact on the outbreak:

    A. Dr Crouch observed that, with hindsight, as a cohort, security guards, (through no fault of the individual workers) did not have an adequate understanding of necessary precautions, had poor health

literacy, and were more likely to work multiple jobs or to have personal and employment circumstances that limited their ability to take leave when sick309

B. there was also evidence before the Inquiry of 'potential cultural and language issues with respect to understanding the policies and procedures of physical distancing and the broader infection prevention and control measures that were in place'.310

14. These factors all drove difficulties with contact tracing, with personnel working across multiple sites within the Program and presenting a higher risk of further spread of the virus into the broader community.
15. The role of these systemic factors in the outbreaks is evident in the high proportion of transmission to private security guards (as opposed to other frontline workers)311 and in the Outbreak Squad's concerns about security guards' misuse of PPE and non-compliance with IPC practices.312 The use of the 'wrong cohort', including the highly casualised nature of much of the private security workforce,313 exposed those people and, in turn, the broader Victorian community to a significant and increased risk. (See Chapter 6 for a more detailed discussion on the use of private security guards.)

9.5 Causation at law

The outbreaks at Rydges and Stamford — and their causal connection to the ensuing devastation on the Victorian community — was the subject of some controversy.

Counsel Assisting the Inquiry invited me to find that the failure by the Hotel Quarantine Program to contain the COVID-19 virus was responsible for the deaths of 786 people and the infection of some 18,418 others.314 Counsel Assisting submitted such a finding was open to be made 'in light of the epidemiological, genomic sequencing, positive case data and mortality rates'315 before the Inquiry.

DHHS, however, submitted that such a finding was not open on the evidence.316

It submitted that the Inquiry had only limited evidence before it and so there was no basis on which to make any reliable finding as to the mechanism of transmission from hotel guests at Rydges and Stamford to staff, nor as to what occurred after there was transmission and the chain of events that led to the spread in the community.317

DHHS contended that the evidence before the Inquiry did not include categories of evidence that would be relevant to the question of causation:

A. whether the transmission event came about from environmental contamination or from the family to case 1, an intermediary person or to one or any of cases 2–5

B. the consequences of deciding, on 30 May 2020, to cohort staff that had worked at Rydges, as opposed to making that decision earlier

C. whether the eight hotel workers, and the other staff members that were so asked to isolate did, or did not, and whether they thus caused onward transmission

D. how COVID-19 spread from the eight personnel that worked at Rydges and tested positive to the wider Victorian community, including to their household contacts

E. the consequences of the delay in cleaning the hotel, from the evening of 26 May to the evening of 28 May

F. the consequences of the timing of the outbreak and the general easing of restrictions in the Victorian community at that time

G. whether the index family quarantined appropriately on release or caused onward transmission in the community.318

DHHS also noted difficulties faced by its OMT, such as with respect to contact tracing for some of the security guards and some continuing to work while symptomatic.

It would be unsafe, so submitted DHHS, to make a finding that 'the movement of the virus through the barriers of quarantining is responsible for some 99 per cent of the recent COVID-19 infections in Victoria', nor indeed any reliable finding as to the relationship of the events examined in the Program and the ultimate consequences in the community.319 DHHS submitted that there were various matters that contributed to the community spread, and cautioned against making a finding as to why these transmission events spread in the way that they did.320

No doubt DHHS had in mind such factors, among others, as the high percentage of loss of life in the second wave being related to aged care facilities and, therefore, what other factors in that environment contributed to that loss and should be considered as part of the 'chain of causation'.

As to who, or what, was responsible for the Rydges outbreak and its impact on the community, Rydges submitted that the Inquiry did not explore many other points in time that the family of four (to whom the Rydges outbreak was traced) may have passed on the genomic strain to others.321 It submitted that there was no way of determining whether one of the security guards, the hotel employee or the nurse first contracted COVID-19 from the family of returned travellers or passed COVID-19 on to any other person in the broader community.322 Rydges, further, submitted that there were many points at which the family of four would have come into contact with others, both before and after their time at Rydges.323

Unified contended that there was no causal link between the conduct of any security worker engaged by Unified and the outbreak.324 In particular, it submitted there was no causal link between Unified's reliance on subcontractors or not having received prior approval to use those subcontractors, or its training and supervision measures and the virus outbreak.325

Rather, it submitted that the 'second wave' of COVID-19 in Victoria was caused by systemic failures at the highest levels of government, in particular the failure of DHHS to adequately consider and assess the risks involved in the Program and the need to take responsibility for the Program as the agency in charge.326 Unified stated another contributing factor was that Rydges was a hot hotel without necessary infection controls.327

Unified invited me to make a positive finding that Unified did not cause the outbreak at Rydges.328

MSS, on the other hand, submitted that, in considering the circumstances of the outbreak, the evidence did not afford a positive finding from a scientific perspective as to the cause of the outbreak.329 MSS submitted that there was 'no direct evidence which conclusively illustrates the precise circumstances in which COVID-19 made its way from infected travellers to private security staff and beyond'.330

At their foundation, these submissions invited me to make findings as to what were the precise events in a chain of causation that led to the second wave of COVID-19 in Victoria.

The question of causation, in the way in which the law grapples with this issue, is a legally and factually complex one as all who have ventured into it will agree. The question of causation as a matter of law is one, if it is to be pursued, that must be properly pleaded before a court, seized of the jurisdiction, where the rules of evidence and procedure apply and arguments and submissions on the law can be made and ruled upon.

But what I can, and do, find is that the 'second wave' of COVID-19 that so catastrophically affected Victoria was linked to transmission events out of both Rydges and Stamford via returned travellers to personnel on-site, who then transmitted COVID-19 into the community. I do so having accepted the uncontroverted genomic and epidemiological evidence of Dr Howden and Dr Alpren and their conclusions from that evidence.

In terms of factors which contributed to those transmission events and the proliferation into the community, I rely on all of the contributing factors I have identified both in this Chapter, and throughout this Report.

Relevant sections from the Victorian Occupational Health and Safety Act 2004

Division 2—Main duties of employers

21 Duties of employers to employees

(1) An employer must, so far as is reasonably practicable, provide and maintain for employees of the employer a working environment that is safe and without risks to health.

Penalty: 1800 penalty units for a natural person;
9000 penalty units for a body corporate.

(2) Without limiting subsection (1), an employer contravenes that subsection if the employer fails to do any of the following—

(a) provide or maintain plant or systems of work that are, so far as is reasonably practicable, safe and without risks to health;

(b) make arrangements for ensuring, so far as is reasonably practicable, safety and the absence of risks to health in connection with the use, handling, storage or transport of plant or substances;

(c) maintain, so far as is reasonably practicable, each workplace under the employer's management and control in a condition that is safe and without risks to health;

(d) provide, so far as is reasonably practicable, adequate facilities for the welfare of employees at any workplace under the management and control of the employer;

(e) provide such information, instruction, training or supervision to employees of the employer as is necessary to enable those persons to perform their work in a way that is safe and without risks to health.

(3) For the purposes of subsections (1) and (2)—

(a) a reference to an employee includes a reference to an independent contractor engaged by an employer and any employees of the independent contractor; and

(b) the duties of an employer under those subsections extend to an independent contractor engaged by the employer, and any employees of the independent contractor, in relation to matters over which the employer has control or would have control if not for any agreement purporting to limit or remove that control.

(4) An offence against subsection (1) is an indictable offence.

Division 4—Duties of employees

25 Duties of employees

(1) While at work, an employee must—

(a) take reasonable care for his or her own health and safety; and

(b) take reasonable care for the health and safety of persons who may be affected by the employee's acts or omissions at a workplace; and

(c) co-operate with his or her employer with respect to any action taken by the employer to comply with a requirement imposed by or under this Act or the regulations.

Division 5—Duties of other persons

26 Duties of persons who manage or control workplaces

(1) A person who (whether as an owner or otherwise) has, to any extent, the management or control of a workplace must ensure so far as is reasonably practicable that the workplace and the means of entering and leaving it are safe and without risks to health.

32 Duty not to recklessly endanger persons at workplaces

A person who, without lawful excuse, recklessly engages in conduct that places or may place another person who is at a workplace in danger of serious injury is guilty of an indictable offence and liable to—

(a) in the case of a natural person, a term of imprisonment not exceeding 5 years, or a fine not exceeding 1800 penalty units, or both; and

(b) in the case of a body corporate, a fine not exceeding 20 000 penalty units.

144 Liability of officers of bodies corporate

(1) If a body corporate (including a body corporate representing the Crown) contravenes a provision of this Act or the regulations and the contravention is attributable to an officer of the body corporate failing to take reasonable care, the officer is guilty of an offence and liable to—

(a) if the provision contravened was section 39G(1), a fine not exceeding 10 000 penalty units; or

(b) otherwise, a fine not exceeding the maximum fine for an offence constituted by a contravention by a natural person of the provision contravened by the body corporate.

(2) An offence against subsection (1) is summary or indictable in nature according to whether the offence constituted by the contravention by the body corporate is summary or indictable.

(3) In determining whether an officer of a body corporate is guilty of an offence, regard must be had to—

(a) what the officer knew about the matter concerned; and

(b) the extent of the officer's ability to make, or participate in the making of, decisions that affect the body corporate in relation to the matter concerned; and

(c) whether the contravention by the body corporate is also attributable to an act or omission of any other person; and

(d) any other relevant matter.

(4) An officer of a body corporate may be convicted or found guilty of an offence in accordance with subsection (1) whether or not the body corporate has been convicted or found guilty of the offence committed by it.

(5) An officer of a body corporate (including a body corporate representing the Crown) who is a volunteer is not liable to be prosecuted under this section for anything done or not done by him or her as a volunteer.