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Kerri Judd QC
Director of
Public Prosecutions
Victoria

By email: director@opp.vic.gov.au

9 August 2021

Dear Ms Judd,

As you know, in September 2020 I made a request to WorkSafe Victoria pursuant to s.131(1) of the Occupational Health and Safety Act (2004) Vic (the OHS Act) in relation to events surrounding the failures of the Victorian Government Hotel Quarantine Program. That request was accepted.

Pursuant to s.131(3), WorkSafe advised me on 29 June 2021 that it had referred the matters, that is, their investigative materials, to you for consideration and your written advice as to whether you consider prosecutions should be brought. In compliance with s.131(5) of the OHS Act, your advice will be provided to me.

WorkSafe also advised me that its investigations into the Hotel Quarantine Program will continue and that it is willing to provide you with any assistance you may require.

On the 5 August 2021, some 6 weeks after WorkSafe had advised me that they had referred the matter to you in compliance with its statutory duty under s.131(3), I received a letter from the Acting Director of Enforcement Legal, Dmitry Rozkin, attached to which is a letter from you to Mr Rozkin, advising him that you cannot make a determination in this matter until you have viewed the investigative materials.

I am deeply concerned that WorkSafe Victoria has not provided you with the material you clearly must have at your disposal to enable you to comply with your statutory duty under s131(4) of the OHS Act.

It is utterly incomprehensible to think that WorkSafe has not provided you with the very material that you obviously and critically need in order to comply with your statutory duty to consider the matters raised in my s.131(1) request letter. One can only conclude that WorkSafe are treating you, the office of the DPP and the Victorian public with contempt.

I am further deeply concerned about the length of time the WorkSafe investigation into the Hotel Quarantine Program has taken so far.

It is now 17 months since the Hotel Quarantine Program commenced, 14 months since WorkSafe has stated it commenced an investigation into the Hotel Quarantine Program and some 10 months since my request was made in September 2020 under s.131 of the OHS Act and accepted by WorkSafe and yet the investigations continue to drag on and still no proceedings have been commenced.

This all continues to drag along while the offences being investigated by WorkSafe remain under your consideration, have a 2-year statutory limitation period which, at least on the basis of WorkSafe's own statements, must expire no later than June 2022.

Further, I have made several requests to WorkSafe for certain information about the status of its investigations, none of which could possibly prejudice any person or investigation, but all have been totally ignored.

The Coate Inquiry Report provides more than sufficient evidence to satisfy prima facie cases yet still no proceedings have been commenced.

In the absence of you being provided with the WorkSafe investigative material to date, material critical to you complying with your statutory duty, I have summarised the Coate Inquiry findings as they relate to the relevant offences under the OHS Act and I attach that summary for your assistance.

I look forward to your response.

Your sincerely

Ken Phillips
Executive Director