

**IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION
JUDICIAL REVIEW AND APPEALS LIST**

No.

B E T W E E N

Independent Contractors of Australia Inc trading as Self Employed Australia

Plaintiff

-and-

Victorian WorkCover Authority trading as WorkSafe Victoria

Defendant

AFFIDAVIT

Date of Document:	14 February 2022	Solicitors Code:	40373
Filed on behalf of:	Independent Contractors of Australia Inc (Plaintiff)	DX:	
Prepared by:	██████████	Telephone:	██████████
		Ref:	██████████
		Email:	████████████████████

I, *Kenneth Norman Phillips* of ██████████ Victoria, *Executive Director*, affirm:

1. I am the current Executive Director of Self Employed Australia (SEA), which is the registered trading name of Independent Contractors of Australia Inc. SEA is a not-for-profit association incorporated under the *Associations Incorporation Act 1981* (Vic). I was a co-founder of SEA and I have held the position of Executive Director for 23 years.
2. I am also an independent contractor operating my own business as a researcher, commentator, advocate and consultant on workplace management issues. I focus on public policy in workplace issues, including occupational health and safety issues.
3. I am authorised to make this affidavit on behalf of SEA. I make this affidavit from my own knowledge, except where I have stated otherwise. I make this affidavit in support of the application under Order 56 of the Supreme Court Rules filed herewith.
4. SEA is open for membership to people who are self-employed or interested in being self-employed and companies that engage people who are self-employed. It was formed to protect the rights of independent contractors and other self-employed individuals and ensure that they are treated fairly, justly and equitably, and that they are able to work fairly, justly and equitably in Australia, free from intimidation or harassment. SEA focuses on

public policy rather than consulting advice. Over the years, SEA has submitted a range of submissions to parliamentary inquiries and committees as part of our advocacy work.

5. Now produced and shown to me and marked 'KNP-1' is the bundle exhibit referred to in this affidavit. A reference to a page number in this affidavit is a reference to the relevant pages of KNP-1 unless otherwise stated.

Breaches of the OHS Act in the planning and operation of the Hotel Quarantine Program

6. SEA first took an interest in the Victorian Hotel Quarantine program (**Program**), which commenced in March 2020, as a result of coverage in the media at the time that the Program commenced. This initial coverage caused SEA concern that the management and handling of the Program by persons involved constituted contraventions of the OHS Act. This led to me closely following the ongoing media coverage.
7. On 2 July 2020, there was an Order in Council setting out the Terms of Reference for the COVID-19 Hotel Quarantine Program inquiry. On 20 July 2020, the Board of Inquiry, chaired by the Honourable Jennifer Coate AO, commenced the inquiry (**Coate Inquiry**). The inquiry examined a range of issues, including:
 - a. Decisions and actions of government agencies, hotel operators and private contractors;
 - b. Communications and contractual arrangements between these entities;
 - c. The information, guidance, training and equipment provided to staff in the hotels; and
 - d. Policies, protocols and procedures.
8. In my role as Executive Director of SEA I took a close interest in the Coate Inquiry. Our members are responsible for occupational health and safety issues within their own workplaces. Occupational health and safety laws in Australia place significant responsibility on self-employed individuals and employers. Our organisation has an interest in seeing that the government is held to at least the same standards in the workplaces that it manages.
9. Based on the media reporting and the evidence provided and obtained during the Coate Inquiry hearings, which I had been following, and which ran from 17 August 2020 until closing submissions on 28 September 2020, I considered that there had been a number of occurrences involving individuals and entities (twenty-seven in total) that may have constituted offences under the *Occupational Health & Safety Act 2004* (Vic) (**OHS Act**) in relation to the Program. The relevant individuals and entities included the Department of Health and Human Services; the Department of Jobs, Precincts and Regions; Emergency Management Victoria; Victoria Police; Victorian Trades Hall Council; the Premier of Victoria, Daniel Andrews; the former Minister for Health, Jenny Mikakos; the Minister for Police, Lisa Neville; the Minister for Jobs, Precincts and Regions, Martin Pakula; the Chief Health Officer, Brett Sutton; and the Deputy Chief Health Officer, Annaliese van Diemen.
10. Given the interest of SEA in ensuring that the government was held to account, I considered that it was important that WorkSafe prosecute the government departments and relevant individuals who appeared to have committed offences under the OHS Act.

29 September 2020 request for investigation and prosecution under s 131 – “First Request”

11. On 29 September 2020, I sent a section 131 OHS Act request to WorkSafe (**First Request**). A true copy of the covering email and letter sent to WorkSafe on 29 September 2020 is set out in pages 14 to 16 of the bundle exhibit. My letter stated that I considered that the “occurrences, acts and omissions of the employer entities, officers (as defined by the Occupational Health and Safety Act 2004 (Vic)), persons and employees” mentioned in the below list constituted indictable criminal offences under the OHS Act. The list referenced 27 individuals and entities that I considered engaged in conduct that constituted an offence under the OHS Act. I listed each of these individuals and entities alongside the sections of the OHS Act that I considered they had breached. I stated in the letter that prosecutions should be brought against these identified entities and individuals in relation to the occurrences, acts and omissions in relation to the planning, development, control, operation and management of the Program. I specified that these occurrences, acts and omissions included but were not limited to the decision to engage private security agencies to guard returned international travellers. Six months had passed from the time of these occurrences, and no prosecutions had yet been brought by WorkSafe. I also noted the extensive coercive investigatory powers held by WorkSafe which are powers which were not available to the board for the Coate Inquiry. I observed that the evidence provided by witnesses and documents produced in the Coate Inquiry established that the occurrences, acts and omissions referred to in my letter led to more than 17,800 people contracting COVID-19 and 765 people dying (as at the date of the letter). I further noted that my request complied with the WorkSafe information sheet on requests for prosecution dated December 2016. A true copy of the WorkSafe information sheet is set out in pages 17 to 18 of the bundle exhibit.
12. On 30 September 2020, I sent a further letter to Gordon Cooper (Director, Enforcement Group) at WorkSafe in which I noted that, in relation to Graham Ashton I had referred to section 39G of the OHS Act, but as he retired before that section came into force, I was withdrawing my request in relation to Mr Ashton for that offence. A true copy of the covering email and letter sent to WorkSafe on 30 September 2020 is set out in pages 19 to 20 of the bundle exhibit.
13. On 7 October 2020, I received a response from Mr Cooper to the First Request. The letter acknowledged that I had made a request for WorkSafe to bring prosecutions against “various individuals and entities involved with the Hotel Quarantine Program”. He notified me that WorkSafe was currently conducting an investigation into the Hotel Quarantine Program (the **Program**), but that it was taking some time for the investigation to be completed. He stated that in accordance with subsection 131(2A) of the OHS Act, WorkSafe would provide me with updates every three months as to the status of the investigation and decisions about whether prosecutions would be brought. A true copy of the covering email and letter sent by WorkSafe on 7 October 2020 is set out in pages 21 to 22 of the bundle exhibit.

First report in relation to First Request

14. On 17 December 2020, I received a further letter from Mr Cooper (dated 18 December 2020). This letter referred to my request “for WorkSafe Victoria to bring a prosecution against various individuals and entities involved with the Hotel Quarantine Program with respect to alleged indictable offences”. The letter advised me, under subsection 131(2A)(b) of the OHS Act, that WorkSafe’s investigation into these matters was still ongoing, and that

if the investigation was not completed within the following three months, a further “report” would be provided in three months’ time, and every subsequent three months, until the investigation was complete. The letter also noted that: “The matter is complex, involving multiple duty holders across multiple workplaces, including hotel operators, security companies and government entities involved in the program”. A true copy of the covering email and letter sent by WorkSafe on 17 December 2020 (although the letter is dated 18 December 2020) is set out in pages 23 to 25 of the bundle exhibit.

15. On 17 December 2020, I responded to Mr Cooper’s letter dated 18 December 2020 with my own letter dated 18 December 2020, enclosing with my letter information to assist the investigation, namely:
 - a. Guidelines on Infection Control & Prevention in Hotel Industry;
 - b. Health Advice for Hotel Industry on serving guests with history of travel to or resided in the Ebola Virus Disease (EVD) affected areas;
 - c. Preventing Severe Acute Respiratory Syndrome (SARS) Guidelines for Hotels;
 - d. The role of the hotel industry in the response to emerging pandemics: a case study of SARS in 2003 and H1N1 swine flu in 2009 in Hong Kong;
 - e. An addendum references relevant information from the Coate Inquiry.

A true copy of the covering email and letter sent to WorkSafe on 17 December 2020 is set out in pages 26 to 29 of the bundle exhibit.

16. On 4 January 2021, I wrote again to Mr Cooper, this time requesting further information in regards to his statutorily required report to me under subsection 131(2A)(b). I requested that he answer ten questions relating to the investigations which had been carried out so far, which I included in my letter. A true copy of the covering email and letter sent to WorkSafe on 4 January 2021 is set out in pages 30 to 33 of the bundle exhibit.
17. I did not receive any response to that letter.

Second report in relation to First Request

18. On 4 March 2021, I received a further letter from Mr Cooper referring to my “request for WorkSafe Victoria to bring prosecutions against various individuals and entities associated with the COVID-19 Hotel Quarantine Program”. This noted that WorkSafe’s investigation was still ongoing and that I would be advised of the outcome once the investigation was complete. A true copy of the covering email and letter sent by WorkSafe on 4 March 2021 is set out in pages 34 to 35 of the bundle exhibit.
19. On 10 March 2021, I responded to the 4 March 2021 letter, contesting the adequacy of Mr Cooper’s report to me on the progress of the investigations and noting that I had not received a response to the letter of 4 January 2021. I also referred to the obligation under section 131(3) of the OHS Act to refer the matters to the Director of Public Prosecutions (**DPP**) if no prosecution has been brought within 9 months of the First Request. A true copy of the covering email and letter sent to WorkSafe on 10 March 2021 is set out in pages 36 to 37 of the bundle exhibit.

20. On 31 March 2021, I received a response from Mr Cooper to my letter of 10 March 2021, stating that he was satisfied that WorkSafe was meeting its reporting obligations to me and referring me to s 131(2A)(b) of the OHS Act in that regard. A true copy of the covering email and letter sent by WorkSafe on 31 March 2021 is set out in pages 38 to 39 of the bundle exhibit.
21. On 16 May 2021, I wrote to Mr Cooper enclosing with my letter a summary report from December 2020 by Safer Care Victoria, which I explained in my letter contained further evidence of serious contraventions of the OHS Act. I also noted that on 29 June 2022, in the absence of prosecutions I expected WorkSafe to refer the matters detailed in the First Request to the DPP for her consideration and advice. A true copy of the covering email and letter sent to WorkSafe on 16 May 2021 is set out in pages 40 to 42 of the bundle exhibit.

Formal request for referral of matters in First Request to DPP

22. On 2 June 2021, I followed up the 16 May 2021 letter with a further letter noting that I was formally requesting the referral of the relevant matters to the DPP on 29 June 2021 in the absence of prosecutions. I also noted the relevant steps that must be followed under the OHS Act following this referral and that by 20 June 2021, WorkSafe would have had 15 months to investigate matters relating to the Hotel Quarantine Program. A true copy of the covering email and letter sent to WorkSafe on 2 June 2021 is set out in pages 43 to 44 of the bundle exhibit.
23. On 29 June 2021, I received a letter from Julie Nielsen (Executive Director, Health & Safety) of WorkSafe. Ms Nielsen noted that nine months had passed following the “acceptance of [my] request”, and that WorkSafe had not brought a prosecution. Ms Nielsen asked me to confirm in writing my wish for WorkSafe to refer the matter to the DPP and noted that if such a request was received WorkSafe would continue its investigation and provide further materials to the DPP upon request. Ms Nielsen informed me that WorkSafe would provide me with a copy of the DPP’s advice when received, and if it did not follow that advice, it would provide written reasons for the decision in accordance with s 131(5) of the OHS Act. Ms Nielsen also noted that the matter “is complex” and involved “multiple duty holders across multiple workplaces, including hotel operators, security companies and government entities involved in the Hotel Quarantine Program”. A true copy of the covering email and letter sent by WorkSafe on 29 June 2021 is set out in pages 45 to 47 of the bundle exhibit.
24. On the same day as receiving Ms Nielsen’s letter, on the nine-month anniversary of the date when I sent the First Request, I wrote to Ms Nielsen and again formally requested that “all the matters detailed in the [First Request] ... be referred immediately to the DPP for her consideration and advice” (**Formal Referral Request**). I noted that I did not consider the three-monthly email “reports” provided to me to be adequate to comply with WorkSafe’s statutory duties, and I repeated some of the questions set out in my 4 January 2021 letter. A true copy of the covering email and letter sent to WorkSafe on 29 June 2021 is set out in pages 48 to 53 of the bundle exhibit.
25. I received no reply or further correspondence from WorkSafe in July 2020.

DPP failure to provide advice

26. On 5 August 2021, I received a letter from Dmitry Rozkin (Director (Acting), Enforcement Legal) of WorkSafe responding to the First Request and Formal Referral Request correspondence. Mr Rozkin noted that the DPP had informed him that “she is unable to make a determination in this matter until she has reviewed the investigative materials”. He enclosed with his response a copy of a letter from the DPP dated 4 August 2021. He also noted that WorkSafe’s investigation was ongoing, and I would be advised of the outcome once it was completed. A true copy of the covering email and letter sent by Mr Rozkin on 5 August 2021 is set out in pages 54 to 55 of the bundle exhibit.
27. The letter from the DPP stated that the matter remained under investigation by WorkSafe, and that she could not make a determination “until I have viewed the investigative materials”. The DPP noted that she was satisfied that the investigation by WorkSafe “is progressing appropriately”. A true copy of the letter sent by the DPP to Mr Rozkin on 4 August 2021 is set out on page 56 of the bundle exhibit.
28. Due to my concern arising from this letter that WorkSafe had not provided all of the investigation materials to the DPP, I wrote to the DPP on 9 August 2021. I raised my deep concerns with the DPP that WorkSafe had not provided her with the investigative materials necessary for her to comply with her statutory duty under subsection 131(4) of the OHS Act. I also raised my concerns about the time taken to investigate given the two-year statutory limitation period for bringing prosecutions in relation to indictable offences, and my concern that my requests for certain information had all been ignored. I attached a summary of the Coate Inquiry findings that I had prepared, which I considered provided sufficient information for the DPP to find a prima facie case. A true copy of the covering email and letter sent to the DPP on 9 August 2021 is set out in pages 57 to 60 of the bundle exhibit.
29. I did not receive any response to that letter.
30. On 22 August 2021, I wrote to Mr Rozkin, responding to his 5 August 2021 letter. I raised my concerns that WorkSafe had not complied with its statutory duty under subsection 131(3) of the OHS Act to refer the matters in my First Request and Formal Referral Request to the DPP, as it had not provided her with its investigative material. I requested that he provide the investigative materials to the DPP, and noted that it made no difference to the duty under the OHS Act that WorkSafe was still investigating the matters. A true copy of the covering email and letter sent to Mr Rozkin on 22 August 2021 is set out in pages 61 to 64 of the bundle exhibit.
31. On 27 August 2021, Mr Rozkin wrote to me, stating that WorkSafe had complied with its obligations under section 131 of the OHS Act, and noting that the DPP had confirmed she was satisfied that WorkSafe’s investigations were progressing appropriately. A true copy of the letter sent by Mr Rozkin on 27 August 2021 is set out on page 65 of the bundle exhibit.
32. On 19 September 2021, I responded again to the 5 August 2021 letter, reiterating that WorkSafe had not complied with its statutory obligations and requesting that he advise when the investigations would be sufficiently complete for it to refer the matter to the DPP. I also repeated nine of the 10 questions from the 4 January 2021 letter. A true copy of the covering email and letter sent to Mr Rozkin on 19 September 2021 is set out in pages 66 to 67 of the bundle exhibit.

Correspondence with other bodies to request assistance

33. On 22 September 2021, I wrote to the Attorney-General for Victoria, Jaclyn Symes. outlining the history of the First Request, its acceptance by WorkSafe, the Program, the Coate Inquiry and the responses from WorkSafe to that point in time. I explained my view that WorkSafe had not complied with its statutory obligations under the OHS Act and had not provided its investigative materials to WorkSafe. I provided copies of relevant correspondence. I requested that the Attorney General enforce the law and direct WorkSafe to comply with its statutory obligations and provide the DPP with the investigative materials required for the DPP to comply with the its statutory obligations. A true copy of my letter to the Attorney-General dated 22 September 2021 is set out in pages 68 to 71 of the bundle exhibit.
34. I received no response from the Attorney-General other than an acknowledgement of receipt from her office.
35. On the same day, I wrote to the Shadow-Attorney-General, Tim Smith, the Minister for Workplace Safety, Ingrid Stitt and the Shadow Minister for Workplace Safety, Nick Wakeling. In each of these letters I requested the Minister or Shadow Minister to assist with requiring WorkSafe to comply with its statutory obligation under the OHS Act, and I attached the letter to the Attorney-General and other letters as relevant to the particular Minister or Shadow Minister. A true copy of my letter to the Shadow Attorney-General dated 22 September 2021 is set out on page 72 of the bundle exhibit. A true copy of my letter to the Minister for Workplace Safety dated 22 September 2021 is set out on page 73 of the bundle exhibit. A true copy of my letter to the Shadow Minister for Workplace Safety dated 22 September 2021 is set out on page 74 of the bundle exhibit.
36. I received no response from the Shadow Attorney-General or the Minister for Workplace Safety (other than an automated reply acknowledgement from the Minister). I received a short response from the office of the Shadow Minister for Workplace Safety. A true copy of the response from an adviser to the Shadow Minister for Workplace Safety dated 22 September 2021 is set out in pages 75 to 76 of the bundle exhibit.
37. On 29 September 2021, I wrote to the Victorian Ombudsman, Deborah Glass. The content of my letter largely replicated that of my letter to the Attorney General. I requested the Victorian Ombudman's assistance to ensure that WorkSafe complied with the law and provided the DPP with the investigative materials required for the DPP to comply with the DPP's statutory obligations. A true copy of my letter to the Victorian Ombudsman dated 29 September 2021 is set out in pages 77 to 79 of the bundle exhibit.
38. On 30 September 2021, I wrote to the Solicitor-General for Victoria. The content of that letter largely replicated the content of the letters to the Victorian Ombudsman and Attorney-General. I emphasised that I considered the rule of law was not being maintained by WorkSafe. I requested the Solicitor-General's assistance in holding WorkSafe to the rule of law and its statutory obligations, and requiring WorkSafe to provide its investigative materials to the DPP. A true copy of my letter to the Solicitor-General is dated 30 September 2021 is set out in pages 80 to 83 of the bundle exhibit.
39. I received no response from the Solicitor-General.

29 September 2021 – Prosecution of Department of Health and failure to deal with other occurrences

40. On 29 September 2021, I came across a WorkSafe media release which stated that WorkSafe was commencing prosecutions against the Department of Health and Human Services in relation to 58 indictable offences under the OHS Act. Now produced and shown to me and set out in pages 84 to 85 of this affidavit is a copy of the WorkSafe media release dated 29 September 2021. I inferred from this that WorkSafe was not intending to prosecute the other 26 individuals and entities identified in the First Request. I consequently wrote to Mr Rozkin noting the above, and formally requesting again that WorkSafe provide its investigative material to the DPP in relation to all of the matters. A true copy of the covering email and letter to Mr Rozkin dated 29 September 2021 is set out in pages 86 to 87 of the bundle exhibit.
41. Shortly afterwards on 29 September 2021, I received a letter from Mr Rozkin referring to the First Request of a year earlier and advising me that the investigation into the “matter” was completed and a prosecution had been brought against the Victorian Department of Health. He stated that WorkSafe had now brought a prosecution in respect of the occurrence of the act, matter or thing outlined in my request, and had therefore fulfilled its obligation to me under the OHS Act. A true copy of the covering email and letter from Mr Rozkin dated 29 September 2021 is set out in pages 88 to 92 of the bundle exhibit.
42. That same day I responded to Mr Rozkin’s letter of 29 September 2021, disputing his assertion that WorkSafe had fulfilled its obligations under section 131 of the OHS Act by bringing a prosecution against the Department of Health. The First Request referenced a large number of occurrences of acts, matters or things that did not involve the Department of Health. These were not covered by the prosecution against the Department of Health. A true copy of the covering email and letter to Mr Rozkin dated 29 September 2021 is set out in pages 93 to 95 of the bundle exhibit.
43. On 6 October 2021, I received a letter from Mr Rozkin attaching a letter from the DPP to Mr Rozkin dated 4 October 2021. A true copy of covering email and letter from Mr Rozkin dated 6 October 2021 is set out in pages 96 to 97 of this affidavit. The DPP’s letter claimed that because WorkSafe had brought a prosecution in relation to alleged failures occurring in respect of the Program against the Department of Health, there was no longer any requirement or power for the DPP to consider and advise on the matter pursuant to section 131(4) of the OHS Act. The letter from the DPP noted that Mr Rozkin had offered to provide the DPP with the full WorkSafe investigative brief, but stated that given the filing of charges in relation to the Program, there was no longer a requirement to provide this. A true copy of the letter from the DPP dated 4 October 2021 is set out on page 98 of the bundle exhibit.
44. On that same day I wrote back to Mr Rozkin, reiterating that bringing a prosecution against one of the 27 individuals and entities identified in the First Request did not absolve WorkSafe and the DPP of their statutory obligations in relation to the remaining 139 alleged offences and 26 individuals and entities. I highlighted that the DPP has no power under section 131 of the OHS Act to advise WorkSafe whether or not it should provide its investigative materials, or whether its investigation is progressing appropriately, but that the DPP is obliged to consider whether prosecutions should be brought based on the investigative materials. A true copy of the covering email and letter to Mr Rozkin dated 6 October 2021 is set out in pages 99 to 101 of the bundle exhibit.

Request for confirmation of investigation of all matters

45. I followed up my 6 October 2021 letter to Mr Rozkin up with a further letter to Mr Rozkin on 8 October 2021. This letter requested confirmation that WorkSafe did in fact comply with its statutory obligation under section 131(2A) of the OHS Act to conduct full, proper and comprehensive investigations into each and all of the individuals and entities identified in the Request Letter and each of the allegations of contraventions. A true copy of the covering email and letter to Mr Rozkin dated 8 October 2021 is set out in pages 102 to 104 of the bundle exhibit.
46. I received no response to that letter.

Follow up letter to the Victorian Ombudsman

47. On 6 October 2021, I followed up my 29 September 2021 letter with a further letter to Ms Glass explaining that WorkSafe had now announced it had charged the Victorian Health Department, and had subsequently written to me stating that it had brought a prosecution in respect of the occurrence of the act, matter or thing outlined in the First Request, and had fulfilled its obligations to me. I set out my view that this assertion was being used to justify its continuing failure to comply with its statutory obligations. I explained that the occurrence of the act, matter or thing outlined in my request was not the fact of the Program, but the failures in its planning, development, control, operation and management by the people and agencies involved. I reiterated that WorkSafe must now provide its investigative materials to the DPP in accordance with subsection 131(3) of the OHS Act. A true copy of the letter to Ms Glass dated 6 October 2021 is set out in pages 105 to 106 of the bundle exhibit.

Responses from the Victorian Ombudsman

48. On 7 October 2021, I received a response from Peta McManus (Manager, Statutory Functions) from the Victorian Ombudsman. In her response, Ms McManus stated that she could not assist with the matter as on her view WorkSafe had followed the correct procedures. She stated that section 131 of the OHS Act does not specify the substance of what needs to be included in the referral to the DPP, and therefore the referral that did occur appeared to be consistent with WorkSafe's responsibilities. She also referred to the fact that WorkSafe was prosecuting the Department of Health and had offered the DPP the brief of evidence. A true copy of the letter from Ms McManus dated 6 October 2021 is set out in pages 107 to 108 of the bundle exhibit.
49. On 8 October 2021, I responded to Ms McManus, respectfully requesting her to reconsider her analysis. I explained that I considered the relevant investigative material had to be provided under subsection 131(3) as otherwise this would mean the DPP could never comply with her obligations under s 131(4) of the Act. I explained my view that without this requirement to provide the investigative materials the statutory process would be completely meaningless. I added that the DPP had no power to refuse to accept a copy of the investigative materials, as the DPP is obligated to consider the evidence and provide her written advice to the WorkSafe. A true copy of the letter to Ms McManus dated 8 October 2021 is set out on page 109 of the bundle exhibit.
50. On 18 October 2021, Ms McManus responded to my 8 October 2021 letter. She stated that she remained of the view that the referral by WorkSafe to the DPP was a proper referral, and that because WorkSafe was prosecuting the Department of Health under the OHS Act

subsection 131(4) of the OHS Act no longer applied. She also stated that the Ombudsman could not direct or compel WorkSafe to charge individuals or agencies. A true copy of the letter from Ms McManus dated 18 October 2021 is set out in pages 110 to 111 of the bundle exhibit.

“Second Request” for prosecutions and further related correspondence

51. On 21 December 2021, I wrote again to Mr Rozkin (**Second Request**), reiterating that WorkSafe had not complied with its obligations and requesting that WorkSafe advise me not just that it had brought prosecutions against the Department of Health, but specifically whether prosecutions will be brought against the remaining individuals and entities, and/or provide written reasons for any decision not to prosecute particular individuals or entities in respect of any particular alleged offences identified in the First Request. A true copy of the covering email and letter to Mr Rozkin dated 21 December 2021 is set out in pages 112 to 116 of the bundle exhibit.

Confirmation of decision not to refer matters for prosecution or provide reasons for the non-prosecution of remaining individuals and entities

52. On 10 January 2022, I received a response from Mr Rozkin to the Second Request. Mr Rozkin’s letter confirmed that WorkSafe would not be taking any further actions in response to the First Request. It stated that it “has brought a prosecution ... and will not be taking any further action in response to your request”. A true copy of the covering email and letter from Mr Rozkin dated 10 January 2022 is set out in pages 117 to 119 of the bundle exhibit.
53. On 24 January 2022, I responded to Mr Rozkin’s 10 January 2022 letter stating that his response confirmed that WorkSafe will not prosecute the other 26 individuals and entities identified in the First Request and that it therefore had not complied with its obligations under s 131 of the OHS Act. I requested that Mr Rozkin refer the occurrences of the acts, matters or things detailed in the First Request to the DPP. A true copy of the covering email and letter to Mr Rozkin dated 24 January 2022 is set out in pages 120 to 122 of the bundle exhibit.
54. On 31 January 2022, I received a response from Mr Rozkin dated 31 January 2022 stating that WorkSafe’s position was unchanged from 10 January 2022. A true copy of the covering email and letter from Mr Rozkin dated 31 January 2022 is set out in pages 123 to 124 of the bundle exhibit.

Failure to investigate

55. On 2 February 2022, having not received any response to the 8 October 2021 letter requesting confirmation that WorkSafe had investigated all of the occurrences relating to all of the individuals and entities identified in the First Request, and having received confirmation that WorkSafe did not intend to prosecute or refer these matters to the DPP, I sent a further letter to Mr Rozkin, this time stating my understanding that WorkSafe must have not carried out investigations of the occurrences of these acts, matters or things. A true copy of the letter to Mr Rozkin dated 2 February 2022 is set out in pages 125 to 127 of the bundle exhibit. As at the date of affirming this affidavit, I have received no response to that letter.

Application

56. On the basis of the above events, I have now filed an originating motion in Form 5G seeking an order pursuant to order 56 of the Supreme Court Rules for orders in the nature of mandamus requiring WorkSafe to:
- a. Investigate the occurrences of the acts, matters or things referred to in the Second Request (by reference to the First Request), to the extent that these have not been investigated, in accordance with its statutory duty under subsections 131(2A) and 131(2C);
 - b. Give reasons in accordance with its statutory duty under subsection 131(2A)(a)(ii) why it is not prosecuting the remaining individuals and entities in relation to the occurrences of acts, matters or things that I referenced in the Second Request (by reference to the First Request); and
 - c. Refer the remaining matters to the DPP (including providing its investigative materials), in accordance with its statutory duty under subsection 131(3) and my request that it do so.
58. I respectfully seek the orders set out in that originating motion.

The contents of this affidavit are true and correct and I make it knowing that a person making a false affidavit may be prosecuted for the offences of perjury.

Affirmed at [REDACTED] Melbourne
in the State of Victoria on 14 February 2022

Before me,

on 14 February 2021

A person authorised under section 19(1) of the **Oaths and Affirmations Act 2018** to take an affidavit.

~~* In accordance with section 27(1A) of the Oaths and Affirmations Act 2018, this affidavit was signed and sworn or affirmed by the deponent by audio visual link and the authorised affidavit taker has used a scanned or electronic copy of the affidavit and not the original in completing the jurat requirements.~~

~~[*strike out this sentence if not applicable].~~

FORM 43A

Rule 43.06(3)

**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMON LAW DIVISION
JUDICIAL REVIEW AND APPEALS LIST****No.****B E T W E E N****Independent Contractors of Australia Inc trading as Self Employed Australia**

Plaintiff

-and-

Victorian WorkCover Authority trading as WorkSafe Victoria

Defendant

CERTIFICATE IDENTIFYING EXHIBIT OR EXHIBITS

Date of Document:	14 February 2022	Solicitors Code:	40373
Filed on behalf of:	Independent Contractors of Australia Inc	DX:	
Prepared by:	██████████	Telephone:	██████████
		Ref:	██████
		Email:	████████████████████

This is the exhibit marked "KNP1" now produced and shown to Ken Norman Phillips at the time of affirming the person's affidavit on 14 February 2022:

.....
[Signature of deponent]

.....
[Signature of person taking affidavit]

Exhibit "KNP-1"

*Correspondence and related documents in relation to
the s 131 OHS Act request for prosecution of
individuals and entities for occurrences associated
with the COVID-19 Hotel Quarantine Program*

From: "Michelle Repacholi (WorkSafe)" <michelle_repacholi@worksafe.vic.gov.au>
Subject: RE: for Mr Cooper from Ken Phillips
Date: September 29, 2020 at 10:51:31 AM GMT+10
To: Ken Phillips <kennethnormanphillips@gmail.com>

Good morning Ken

I acknowledge receipt of your letter and confirm it has been provided to Mr Cooper.

Michelle

Michelle Repacholi michelle_repacholi@worksafe.vic.gov.au
 Paralegal Tel/ 03 4243 7237
 Enforcement Group Fax/ 03 4243 9321
 - West

9 / 567 Collins Street
 Melbourne VIC 3000
www.worksafe.vic.gov.au

BE GREEN, READ FROM THE SCREEN

From: Ken Phillips <kennethnormanphillips@gmail.com>
 Subject: for Mr Cooper from Ken Phillips
 Date: September 29, 2020 at 12:16:13 AM GMT+10
 To: "Michelle Repacholi (WorkSafe)" <michelle_repacholi@worksafe.vic.gov.au>
 Cc: "Patrick D'Arcy (WorkSafe)" <patrick_darcy@worksafe.vic.gov.au>

Hello Michelle

Please find attached letter for Mr Cooper

Confirmation of receipt would be appreciated.

With thanks

Ken

Ken Phillips
 Executive Director
 +61- 0412 393 692
kennethnormanphillips@gmail.com
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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

Mr Gordon Cooper
 Director - Enforcement Group
 WorkSafe Victoria

By email only:

c/o Michelle Repacholi michelle_repacholi@worksafe.vic.gov.au

cc Patrick D'Arcy Patrick_darcy@worksafe.vic.gov.au

29 September 2020

Dear Mr Cooper,

Pursuant to section 131(1) of the Occupational Health and Safety Act 2004 (Vic), I consider that the occurrences, acts and omissions of the employer entities, officers (as defined by the Occupational Health and Safety Act 2004 (Vic)) persons and employees in the listing below, constitute indictable criminal offences against the Occupational Health and Safety Act 2004 (Vic) and therefore request that the Authority (WorkSafe) prosecute under the sections of the Occupational Health and Safety Act 2004 (Vic) as detailed in the listing below.

The prosecutions should be brought against the entities, officers, employees and persons identified in the listing below in relation to the occurrences, acts and omissions in relation to the planning, development, control, operation and management of the Victoria government Hotel Quarantine Containment Program, including but not limited to the decision to engage private security agencies to guard returned international travellers, which commenced operation on 27 March 2020.

This request is made in the knowledge that the Authority (WorkSafe) and its Inspectors have extensive coercive investigatory powers which were not made available to the Board of Inquiry Into the Hotel Quarantine Containment Program headed by Jennifer Coate.

On the basis of the sworn evidence provided by the witnesses to and the documents produced to the Victoria government Board of Inquiry into the Hotel Quarantine Containment Program (also known as the Inquiry into COVID-19 Quarantine Containment) headed by Jennifer Coate and also in public statements made by the Premier Daniel Andrews, the former Minister for Health, Jenny Mikakos, the Chief Health Officer Brett Sutton and the Deputy Chief Health Officer, Annaliese van Diemen, it is now clear that these occurrences, acts and omissions have to date resulted in more than 17,800 people contracting the COVID-19 virus, hundreds of people being admitted to hospital as inpatients and 765 people dying as a result of contracting the virus (as at 27 September 2020).

This request is made in compliance with section 131(1) of the Occupational Health and Safety Act 2004 (Vic) and in accordance with the WorkSafe published Information sheet entitled *Requests for prosecution under section 131 of the Occupational Health and Safety Act 2004 (Vic)*, dated December 2016.

I look forward to your advices after the investigations undertaken in relation to the Authority's (WorkSafe's) decisions to prosecute or to provide written reasons for why prosecutions will not be brought, in compliance with the Authority's (WorkSafe's) statutory obligations under section 131(2) of the Occupational Health and Safety Act 2004 (Vic).

I reserve the right to produce this letter to a court should it be necessary.

With thanks

Ken Phillips
 Executive Director
 Self Employed Australia-

List of entities, officers, persons and employees I request to be prosecuted, including the offences I consider to have been constituted by the occurrences, acts and omissions in relation to the Victoria government Hotel Quarantine Containment Program.

State of Victoria: Contravened Sections 21(1), 21(2)(a), 21(2)(b), 21(2)(c), 21(2)(d), 21(2)(e), 22(1)(a), 22(1)(b), 22(1)(c), 22(2)(a), 22(2)(b), 23, 26, 32, 38(5)

Department of Health and Human Services: Contravened Sections 21(1), 21(2)(a), 21(2)(b), 21(2)(c), 21(2)(d), 21(2)(e), 22(1)(a), 22(1)(b), 22(1)(c), 22(2)(a), 22(2)(b), 23, 26, 32, 38(5)

Department of Jobs, Precincts and Regions: Contravened Sections 21(1), 21(2)(a), 21(2)(b), 21(2)(c), 21(2)(d), 21(2)(e), 22(1)(a), 22(1)(b), 22(1)(c), 22(2)(a), 22(2)(b), 23, 26, 32, 38(5)

Emergency Management Victoria: Contravened Sections 21(1), 21(2)(a), 21(2)(b), 21(2)(c), 21(2)(d), 21(2)(e), 22(1)(a), 22(1)(b), 22(1)(c), 22(2)(a), 22(2)(b), 23, 26, 32, 38(5)

Victoria Police Force: Contravened Sections 21(1), 21(2)(a), 21(2)(b), 21(2)(c), 21(2)(d), 21(2)(e), 22(1)(a), 22(1)(b), 22(1)(c), 22(2)(a), 22(2)(b), 23, 26, 32

Victorian Trades Hall Council: Contravened Sections 21(1), 21(2)(a), 21(2)(b), 21(2)(c), 21(2)(d), 21(2)(e), 22(1)(a), 22(1)(b), 22(1)(c), 22(2)(a), 22(2)(b), 23, 26, 32

Premier of the State of Victoria, Daniel Andrews: Contravened Sections 26, 32, 39G, 144

The former Minister for Health, Jenny Mikakos: Contravened Sections 26, 32, 39G, 144

Minister for Police Emergency Services, Lisa Neville: Contravened Sections 26, 32, 39G, 144

Minister for Jobs, Precincts and Regions, Martin Pakula: Contravened Sections 26, 32, 39G, 144

Chris Eccles, Secretary, Department of Premier and Cabinet: Contravened Sections 25, 26, 39G, 144

Kym Peake, Secretary for Health and Human Services: Contravened Sections 25, 26, 39G, 144

Melissa Skilbeck, DHHS, Deputy Secretary, Regulation, Health Protection and Emergency Management: Contravened Sections 25, 26, 39G, 144

Andrea Spiteri, DHHS, Executive Director, Emergency Management: Contravened Sections 25, 26, 39G, 144

Jason Helps, DHHS, Deputy Director, Emergency Management: Contravened Sections 25, 26, 39G, 144

Simon Phemister, Secretary for Jobs, Precincts and Regions: Contravened Sections 25, 26, 39G, 144

Brett Sutton, Chief Health Officer: Contravened Sections 25, 26, 32, 39G, 144

Annaliese van Dieman, Deputy Chief Health Officer: Contravened Sections 25, 26, 32, 39G, 144

Michelle Giles, Deputy Public Health Commander: Contravened Sections 25, 26, 32, 39G, 144

Simon Crouch, DHHS, Senior Medical Adviser, Acting Deputy Chief Health Officer: Contravened Sections 25, 26, 39G, 144

Shane Patton, Chief Commissioner of Victoria Police: Contravened Sections 25, 26, 39G, 144

Graham Ashton, Former Chief Commissioner of Victoria Police: Contravened Sections 25, 26,

Timothy Tully, Victoria Police Commander, Officer In Charge Operation Soteria: Contravened Sections 25, 26, 39G, 144

Andrew Crisp, Emergency Management Commissioner: Contravened Sections 25, 26, 39G, 144

Noel Cleaves, DHHS, Manager Environmental Health, Regulation and Compliance: Contravened Sections 25, 26, 39G, 144

Rachaele May, DJPR Executive Director, Emergency Coordination; DJPR Agency Commander of Operation Soteria: Contravened Sections 25, 26, 39G, 144

All members of the management team known as the State Control Centre: Contravened Sections 25, 26, 39G, 144

Information about



Enforcement Group: Requests for prosecution under section 131 of the Occupational Health and Safety Act 2004 (Vic)

December 2016

Enforcement Group Section 131 Policy¹

You can request that WorkSafe Victoria (**WorkSafe**) commence a prosecution if you consider that the occurrence of an act, matter or thing (**occurrence**) constitutes an offence under the *Occupational Health & Safety Act 2004* (Vic) (**OHS Act**) and WorkSafe has not commenced a prosecution within six months of the alleged offence occurring.

Who can make a request?

Any person (including a body corporate, unincorporated body or association, or a partnership) can make a request under section 131 of the OHS Act.

Making a request for prosecution under the OHS Act

Your request for prosecution under section 131 of the OHS Act cannot be made until 6 months after the occurrence and must be made in writing.

WorkSafe has prepared the attached form to assist you with making your request. Please complete the attached application form, setting out the facts of the occurrence including:

- the date of the alleged offence(s);
- place where the alleged offence(s) occurred;
- name(s) of the people concerned;
- nature of the offence(s) you believe has occurred;
- identity of the person(s) you believe committed the offence; and
- your contact details (so that WorkSafe can contact you to obtain further information regarding your request).

If the person making the request is not an individual, but rather is a body corporate, unincorporated body or association or a partnership, an authorised contact person should be nominated on the application form.

Please send your completed application form to:

Investigations Team
Enforcement Group
Victorian WorkCover Authority
Level 22, 222 Exhibition Street
Melbourne VIC 3000

Next steps

Upon receiving an application form setting out the request under section 131 of the OHS Act, WorkSafe will assess the request to determine that it is valid and that conducting an investigation into the occurrence falls within WorkSafe's jurisdiction under the OHS Act.

WorkSafe will acknowledge receipt of your request in writing. If WorkSafe accepts your request as valid, an investigator will contact you to obtain further information about your request and may ask you to provide a signed statement regarding your request. If WorkSafe considers that your request is not valid², it will advise you in writing as to the reasons.

Within three months of receiving a valid request, WorkSafe will investigate the matter (if an investigation has not already been conducted, or is being conducted) and advise you in writing if a prosecution has been or will be brought, or provide reasons why a prosecution will not be brought. WorkSafe's General Prosecution Guidelines provide guidance about the prosecution of offences under Victoria's occupational health and safety and workers compensation laws and are available on the WorkSafe website at www.worksafe.vic.gov.au.

1. This policy also applies to requests made under section 40A of the *Dangerous Goods Act 1985* (DG Act) and sections 577 and 607 of the *Workplace Injury and Compensation Act 2013* (WIRC Act). These sections provide for a person to make a request for WorkSafe to commence a prosecution if a person considers that an offence has occurred under the DG Act, or specified sections of the WIRC Act, and no prosecution has commenced within six months of the occurrence. Please note the accompanying form applies to requests made under section 131 of the OHS Act. If you wish to make an application under the DG act or WIRC Act, please contact WorkSafe in writing.

2. For a request to be valid, it must be made in accordance with section 131 of the OHS Act.

Enforcement Group: Requests for prosecution

If WorkSafe decides that there is insufficient evidence to commence a prosecution and/or it is not in the public interest to do so, you may request in writing that this decision be referred to the Victorian Director of Public Prosecutions (DPP) for review. Following the DPP's review, WorkSafe will advise you in writing of the outcome.

This FAQ Sheet is intended for general use only and may not be applicable in every circumstance. You should always check the applicable legislation and make your own judgment about what action you may need to take to ensure you have complied with the law. Accordingly, WorkSafe cannot be held responsible and extends no warranties as to the suitability of the information for any particular purpose; or actions taken by third parties as a result of information contained in the FAQ Sheet.

From: Ken Phillips <kennethnormanphillips@gmail.com>
Subject: Letter to Mr Cooper from SEA
Date: September 30, 2020 at 9:36:01 AM GMT+10
To: "Michelle Repacholi (WorkSafe)" <michelle_repacholi@worksafe.vic.gov.au>
Cc: "Patrick D'Arcy (WorkSafe)" <patrick_darcy@worksafe.vic.gov.au>

Hello again Michelle

Please find attached follow up letter to yesterday's letter.
Again confirmation of receipt would be appreciated.

With thanks
Ken

Ken Phillips
Executive Director
+61- 0412 393 692
kennethnormanphillips@gmail.com
www.selfemployedaustralia.com.au



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PO Box 13103 Law Courts 8010 Vic

Mr Gordon Cooper
Director - Enforcement Group
WorkSafe Victoria

By email only:

c/o Michelle Repacholi michelle_repacholi@worksafe.vic.gov.au
cc Patrick D'Arcy Patrick_darcy@worksafe.vic.gov.au

30 September 2020

Dear Mr Cooper

I refer to my letter dated 29 September 2020. I note that it refers to section 39G in relation to Graham Ashton. As Mr Ashton had retired before that section came into force on 1 July 2020, I withdraw the request in relation to Mr Ashton and that offence.

With thanks

Ken Phillips
Executive Director
Self Employed Australia-

From: "Michelle Repacholi (WorkSafe)" <michelle_repacholi@worksafe.vic.gov.au>
 Subject: RE: Request for the Authority to investigate pursuant to s131 OHS Act
 Date: October 7, 2020 at 4:56:41 PM GMT+11
 To: Ken Phillips <kennethnormanphillips@gmail.com>
 Cc: "Patrick D'Arcy (WorkSafe)" <patrick_darcy@worksafe.vic.gov.au>

Good afternoon Mr Phillips

Please find **attached** our letter dated 7 October 2020.

Kind regards
 Michelle

Michelle Repacholi Paralegal Enforcement Group - West	michelle_repacholi@worksafe.vic.gov.au 4243 7237 Fax/ 03 4243 9321	Tel/ 03 9 / 567 Collins Street 3000 www.worksafe.vic.gov.au
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1 Malop Street Geelong VIC 3220
PO Box 279, Geelong 3220
Telephone 03 4243 7000
Fax 03 4243 9321
worksafe.vic.gov.au



Mr. Ken Phillips
Executive Director
Self Employed Australia
PO BOX 13103
LAW COURTS VIC 8010

7 October 2020

By email only: kennethnormanphillips@gmail.com

Dear Mr. Phillips,

RE: Request for the Authority to investigate and prosecute pursuant to s.131 Occupational Health and Safety Act 2004 (Act)

Thank you for your letter dated 29 September 2020.

You have made a request under s 131(1) of the Act for WorkSafe to bring prosecutions against various individuals and entities involved with the Hotel Quarantine Program (the Program). I understand the basis of your request to be that evidence from the COVID-19 Hotel Quarantine Inquiry indicates that COVID-19 was transmitted from returned travellers to persons working in the Program and then into the broader community.

As you have been made aware, WorkSafe is currently conducting an investigation into the Program. WorkSafe is committed to carrying out its investigation in an efficient and timely manner but as you will appreciate, it will take some time for the investigation to be completed and then for decisions to be made in respect of bringing prosecutions.

In accordance with s 131(2A) of the Act, we will provide you with updates every three months as to the status of the investigation and decisions made about whether any prosecutions will be brought.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Gordon Cooper", written over a horizontal line.

Gordon Cooper
Director
Enforcement Group

Begin forwarded message:

From: "Michelle Repacholi (WorkSafe)" <michelle_repacholi@worksafe.vic.gov.au>

Subject: RE: Request for the Authority to investigate pursuant to s131 OHS Act

Date: December 17, 2020 at 12:10:55 PM GMT+11

To: Ken Phillips <kennethnormanphillips@gmail.com>

Good afternoon Mr Phillips

Please find **attached** our letter dated 17 December 2020.

Kind regards

Michelle

Michelle Repacholi michelle_repacholi@worksafe.vic.gov.au
Paralegal Tel/ 03 4243 7237
Enforcement Group - Fax/ 03 4243 9321
West

9 / 567 Collins Street
Melbourne VIC 3000
www.worksafe.vic.gov.au

BE GREEN, READ FROM THE SCREEN

We work flexibly at WorkSafe. If you are receiving this e-mail before or after ordinary business hours, there is no expectation that you review or respond to this email until your working day commences

From: Michelle Repacholi (WorkSafe)

Sent: Wednesday, 7 October 2020 4:57 PM

To: Ken Phillips <kennethnormanphillips@gmail.com>

Cc: Patrick D'Arcy (WorkSafe) <patrick_darcy@worksafe.vic.gov.au>

Subject: RE: Request for the Authority to investigate pursuant to s131 OHS Act

Good afternoon Mr Phillips

Please find **attached** our letter dated 7 October 2020.

Kind regards

Michelle

Michelle Repacholi michelle_repacholi@worksafe.vic.gov.au
Paralegal Tel/ 03 4243 7237
Enforcement Group - Fax/ 03 4243 9321
West

9 / 567 Collins Street
Melbourne VIC 3000
www.worksafe.vic.gov.au

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- (5) Please consider the environment before printing.

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PO Box 279, Geelong 3220
Telephone 03 4243 7000
Fax 03 4243 9321
worksafe.vic.gov.au



Mr. Ken Phillips
Executive Director
Self Employed Australia
PO BOX 13103
LAW COURTS VIC 8010

18 December 2020

By email only: kennethnormanphillips@gmail.com

Dear Mr. Phillips

Request for the Authority to investigate and prosecute pursuant to s.131 of the *Occupational Health and Safety Act 2004* ('the Act')

I refer to your request dated 29 September 2020 for WorkSafe Victoria to bring a prosecution against various individuals and entities involved with the Hotel Quarantine Program with respect to alleged indictable offences against the Act.

Pursuant to section 131(2A)(b) of the Act, please be advised that:

- WorkSafe's investigation in relation to the matters outlined in your request is still ongoing; and
- unless our investigation is completed beforehand, a further report will be given to you within 3 months of the date of this letter, and after every subsequent three-month period until the investigation is complete.

Please note that the obligations imposed by the Act with respect to requests made under section 131 differ according to whether the offence(s) to which the request relates are summary offences or indictable offences. In particular, the requirement that investigations be completed within 3 months of the date of the request applies to summary offences only. I draw your attention to subsections 131(2) and 131(2A).

At this point, WorkSafe is not in a position to say whether or when prosecution action will be brought as a result of its investigation. The matter is complex, involving multiple duty holders across multiple workplaces, including hotel operators, security companies and government entities involved in the program. It bears noting that while there is a considerable body of information on the public record arising from the Coate Inquiry, information, documents and other material provided to a Board of Inquiry is not necessarily admissible in a criminal proceeding (see, for example, s.80 of the Inquiries Act 2014), and of course it is incumbent on WorkSafe to satisfy itself, in accordance with its *General Prosecution Guidelines*, that any prosecution is based on admissible evidence capable of discharging the criminal burden of proof. WorkSafe is nevertheless committed to completing its investigation in a timely a manner as is reasonably practicable.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Gordon Coopel", with a stylized flourish at the end.

Gordon Coopel
Director
Enforcement Group

From: "Michelle Repacholi (WorkSafe)" <michelle_repacholi@worksafe.vic.gov.au>
Subject: RE: Letter to WorkSafe - Mr Cooper
Date: December 18, 2020 at 12:33:25 PM GMT+11
To: Ken Phillips <kennethnormanphillips@gmail.com>

Hi Ken

I acknowledge receipt of your letter for Gordon Cooper.

Have a safe and Merry Christmas.

Michelle

Michelle Repacholi	michelle_repacholi@worksafe.vic.gov.au
Paralegal	Tel/ 03 4243 7237
Enforcement Group - West	Fax/ 03 4

From: Ken Phillips <kennethnormanphillips@gmail.com>
Subject: Letter to WorkSafe - Mr Cooper
Date: December 17, 2020 at 11:26:41 PM GMT+11
To: "Michelle Repacholi (WorkSafe)" <michelle_repacholi@worksafe.vic.gov.au>
Cc: "Patrick D'Arcy (WorkSafe)" <patrick_darcy@worksafe.vic.gov.au>

Hello Michelle

Please find attached letter to Mr Cooper plus supporting documents
Regards

Ken Phillips

Ken Phillips
Executive Director
+61- 0412 393 692
kennethnormanphillips@gmail.com
www.selfemployedaustralia.com.au



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

Mr Gordon Cooper
 Director - Enforcement Group
 WorkSafe Victoria

By email only:

c/o Michelle Repacholi michelle_repacholi@worksafe.vic.gov.au
 cc Patrick D'Arcy Patrick_darcy@worksafe.vic.gov.au

18 December 2020

Dear Mr Cooper,

I refer to my letter of 29 September 2020 requesting certain employers and individuals be prosecuted under the Occupational Health and Safety Act 2004 (Vic) (the Act) for their respective failures in relation to the Victoria Government Hotel Quarantine Program. I also refer to your letter received yesterday but dated today (18 December 2020) advising that you have not at this stage initiated any prosecution rather that you are continuing investigating into those matters. Further that you will provide an additional progress report within 3 months of 18 December 2020.

To continue my support for your investigation, I have attached several documents to this letter to assist your efforts to bring prosecutions against those who have contravened the Act.

First, it should be clearly understood that the use of hotels to quarantine people during a pandemic has been accepted practice internationally for many years. For example, The Hong Kong Department of Health, Centre for Health Protection has had Hotel Quarantine Guidelines and procedures since at least 2007 when it published revised [*Guidelines on Infection Control and Infection in Hotel Industry \(Revised\) November 2007*](#) (Attached relevant documents x four. See references below). It was therefore undoubtedly reasonably practicable for those involved in the planning, operation and monitoring of the Victoria Government Hotel Quarantine Program to have had safe systems of work ready and available.

The attached are several of many of the documents which clearly show that the relevant employers and persons contravened sections 21(1) and 23 respectively, in that they did not provide and maintain safe systems of work in relation to the Victoria Government Hotel Quarantine Program, which meant that they did not provide and maintain working environments for employees that were safe and without risks to health and that persons other than employees were not exposed to risks to their health or safety as a result of those failures.

For example, in his sworn evidence to the Coate Inquiry Luke Ashford (Authorised Officer) stated that the expected practice of OH&S alerts following incidents was not followed. He said,

“Following the Stamford Plaza outbreak, there was no alert, no new instructions or guidance and no lessons learned. Each outbreak was treated like a secret and nothing seemed to change in terms of the Program’s operation, practice and procedure.”

Dr Julian Rait in his sworn statement provided evidence of an email from Dr Nathan Pinski stating that Covid-19 test results were not being provided to doctors over the phone and that,

“This is complete contrast to normal clinical communications practices for both urgent and routine results.”

He warned

“This is placing individuals at risk”

I look forward to your next report now due on 18 March 2020 with your advice concerning the status of the WorkSafe investigation.

Yours sincerely

Ken Phillips
Executive Director
Self Employed Australia-

Attached

- *Guidelines on Infection Control & Prevention In Hotel Industry*
- *Health Advice for Hotel Industry on serving guests with history of travel to or resided in the Ebola Virus Disease (EVD) affected areas*
- *Preventing Severe Acute Respiratory Syndrome (SARS) Guidelines for Hotels*
- *The role of the hotel industry in the response to emerging epidemics: a case study of SARS in 2003 and H1N1 swine flu in 2009 in Hong Kong*

ADDENDUM

Coate Inquiry Exhibits

Email from Dr Nathan Pinskiier to Brett Sutton
13 April 2020 Exhibit 93 - Annexures to Witness Statement of Dr Julian Rait.

Some COVID-19 tests are being sent to VDRL and some to Melbourne Pathology. The VDRL results are taking up to 5 days to arrive and are communicated to the doctors only if they ring up VDRL and are then sent to the hotel by fax. VDRL has refused to provide the results to the doctors over the phone. This is complete contrast to normal clinical communications practices for both urgent and routine results. This is placing individuals at risk. Test results should be provided in a timely manner and preferably be sent by a seamless electronic solution not fax with a direct call to the doctors and nurses for all COVID-19 positive results...

To date doctors have been recording clinical notes on paper as too have the nurses.
 The quarantine protocols and 14 day rule needs clarification. The doctors have advised that persons are being sent home from quarantine after 14 days irrespective of their COVID-19 status.

Witness Statement – Luke Ashford
Ranger Team Leader – Parks Victoria
Deployed as Authorised Officer in Hotel Quarantine Program
Exhibit 23

Pn 11. On 25 May 2020, I had my first shift with the Program at the Pan Pacific Hotel. It was a Monday evening shift from 3pm to 11pm. I recall it was very busy with a large number of detained guests. At this time, I still did not know what my AO role would involve. I had no clue what I would be doing.

Pn 12. Notwithstanding that I had not been issued with my AO identification, and should not have been allowed into the hotel, I walked straight into the Pan Pacific hotel. No one stopped or challenged me. I wandered around for about 15 minutes. I did not know where I was supposed to be. There was no-one in an official capacity to instruct me on where to go or how the Program works.

Pn 13. I received a 10-minute shift 'hand over' from a female AO who was originally from New Zealand. I was provided with a Department AO quarantine procedure document that was a draft. This document had been printed and left at the AO desk. I still didn't know what I was meant to be doing.

Pn 26. When I asked the woman about the circumstances of the request, I believe she lied to me. I had doubts about her leave request, so I asked the Department AO Team Leader to ask Victoria Police to do a spot check to ensure she was at the designated location and was following the conditions of the Temporary Leave Permit. My concerns were just dismissed. I was told by the Department Team Leader that Victoria Police would not want to deal with it.

Pn.38. There was no formal procedure for complaints or issues to be raised

Pn 50. In the ordinary course, if a serious OH&S incident occurs within my usual work-place, there would be an alert put out straight away. This did not occur during the Program. Following the Stamford Plaza outbreak, there was no alert, no new instructions or guidance and no lessons learned. Each outbreak was treated like a secret and nothing seemed to change in terms of the Program's operation, practice and procedure. I only knew about the Stamford Plaza outbreak because of what occurred with my colleague. In my opinion, the risks were not taken seriously enough by those running the Program.

From: "Michelle Repacholi (WorkSafe)" <michelle_repacholi@worksafe.vic.gov.au>
Subject: RE: letter to Mr Cooper - Self Employed Australia
Date: January 12, 2021 at 4:24:19 PM GMT+11
To: Ken Phillips <kennethnormanphillips@gmail.com>

Hi Ken

I acknowledge receipt of your letter for Gordon Cooper.

Michelle

Michelle Repacholi
 Paralegal
 Enforcement Group -
 West

michelle_repacholi@worksafe.vic.gov.au
 Tel/ 03 4243 7237
 Fax/ 03 4243 9321

9 / 567 Collins Street
 Melbourne VIC 3000
www.worksafe.vic.gov.au

From: "Michelle Repacholi (WorkSafe)" <michelle_repacholi@worksafe.vic.gov.au>
Subject: Automatic reply: letter to Mr Cooper - Self Employed Australia
Date: January 4, 2021 at 4:37:09 PM GMT+11
To: Ken Phillips <kennethnormanphillips@gmail.com>

I am currently on leave returning Monday 11 January 2021. If your e-mail is urgent, please contact Adrian Trotman, Acting Lead Lawyer @ adrian_trotman@worksafe.vic.gov.au, otherwise I will respond to you upon my return. Have a safe and Merry Christmas.

From: Ken Phillips <kennethnormanphillips@gmail.com>
 Subject: letter to Mr Cooper - Self Employed Australia
 Date: January 4, 2021 at 4:34:05 PM GMT+11
 To: "Michelle Repacholi (WorkSafe)" <michelle_repacholi@worksafe.vic.gov.au>
 Cc: "Patrick D'Arcy (WorkSafe)" <patrick_darcy@worksafe.vic.gov.au>

Hello Michelle

Please find attached letter to Mr Cooper

Confirmation of receipt would be appreciated.

Rgds

Ken

Ken Phillips

Executive Director

+61- 0412 393 692

kennethnormanphillips@gmail.com

www.selfemployedaustralia.com.au



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Mr Gordon Cooper
 Director - Enforcement Group
 WorkSafe Victoria

By email only:

c/o Michelle Repacholi michelle_repacholi@worksafe.vic.gov.au
 cc Patrick D'Arcy Patrick_darcy@worksafe.vic.gov.au

4 January 2021

Dear Mr Cooper,

I refer to your letter of 17 December 2020 in which you did little more than advise that the WorkSafe investigations into indictable offences committed under the Occupational Health and Safety Act 2004 (Vic) in relation to the Victoria Government Hotel Quarantine Program, are continuing. It is obvious that your investigations are continuing, otherwise your letter would have advised of your decision.

Similarly, your comments in relation to the admissibility or otherwise of the evidence provided to the Coate Inquiry were puzzling. Surely you're not suggesting that those who breached the Occupational Health and Safety Act can somehow now hide behind the evidence given to the Coate Inquiry? WorkSafe and WorkSafe Inspectors have extremely wide powers of investigation which must be used if the WorkSafe investigation into the Victoria Government Hotel Quarantine Program is to be taken seriously. If nothing else, the Coate Inquiry has provided your investigation with many clear signposts.

Given that WorkSafe have now been aware of the circumstances surrounding the failures of the Hotel Quarantine Program for some nine months and that therefore your investigations should be very well advanced, I write requesting you provide further information to your brief letter of 17 December 2020.

I am not requesting information that could possibly prejudice future prosecutions brought by WorkSafe but, given the investigations must now be very well advanced and in the interests of WorkSafe maintaining transparency as to how it is meeting its statutory functions with regard to this critical investigation, I am merely requesting an update of the progress of your investigations as you are required to provide to the Minister. To this end, I have framed the following questions.

1. How many WorkSafe Inspectors and staff have been assigned to the Hotel Quarantine Program investigation team?
2. How many witnesses have been contacted?
3. How many witness statements have been taken?
4. How, many requests for formal records of interview have been made?

5. How many persons have been interviewed?
6. How many persons have refused to be interviewed?
7. How many persons have been requested to make a statement?
8. How many statements have been taken?
9. How many persons have refused to make a statement?
10. How many statutory directions requiring information and documents from entities and individuals have been made to date pursuant to ss.9 and/or 100 of the Occupational Health and Safety Act?

I look forward to your responses.

Yours sincerely

Ken Phillips
Executive Director

From: "Michelle Repacholi (WorkSafe)" <michelle_repacholi@worksafe.vic.gov.au>
 Subject: Request for the Authority to bring a prosecution
 Date: March 4, 2021 at 4:06:43 PM GMT+11
 To: Ken Phillips <kennethnormanphillips@gmail.com>

Good afternoon Mr Phillips

Please find **attached** our letter dated 4 March 2021.

Kind regards
 Michelle

Michelle Repacholi michelle_repacholi@worksafe.vic.gov.au Tel/ 03 9 / 567 Collins Street Melbourne VIC
 Paralegal 4243 7237 Fax/ 03 4243 9321 3000 www.worksafe.vic.gov.au
 Enforcement Group -
 West

BE GREEN, READ FROM THE SCREEN

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Telephone 03 4243 7000
Fax 03 4243 9321
worksafe.vic.gov.au



Mr Ken Phillips
Executive Director
Self Employed Australia

4 March 2021

By email only: kennethnormanphillips@gmail.com

Dear Mr Phillips,

Request for the Authority to bring a prosecution

I refer to your request for WorkSafe Victoria to bring prosecutions against various individuals and entities associated with the COVID-19 Hotel Quarantine Program.

Please be advised that WorkSafe's investigation is still ongoing and that you will be advised of the outcome once the investigation is complete.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Gordon Cooper", written over a horizontal line.

Gordon Cooper
Director
Enforcement Group

From: "Michelle Repacholi (WorkSafe)" <michelle_repacholi@worksafe.vic.gov.au>
Subject: RE: letter to Mr Gordon
Date: March 10, 2021 at 5:21:55 PM GMT+11
To: Ken Phillips <kennethnormanphillips@gmail.com>
Cc: "Patrick D'Arcy (WorkSafe)" <patrick_darcy@worksafe.vic.gov.au>

Good afternoon Ken

I acknowledge receipt of your letter for Gordon Cooper.

Michelle

From: Ken Phillips <kennethnormanphillips@gmail.com>
Subject: letter to Mr Gordon
Date: March 10, 2021 at 3:17:56 PM GMT+11
To: "Michelle Repacholi (WorkSafe)" <michelle_repacholi@worksafe.vic.gov.au>
Cc: "Patrick D'Arcy (WorkSafe)" <patrick_darcy@worksafe.vic.gov.au>

Hello Michelle

Please find attached letter to Mr Cooper.

Rgds

Ken

Ken Phillips
Executive Director
+61- 0412 393 692
kennethnormanphillips@gmail.com
www.selfemployedaustralia.com.au



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

Mr Gordon Cooper
Director - Enforcement Group
WorkSafe Victoria

By email only:

c/o Michelle Repacholi michelle_repacholi@worksafe.vic.gov.au
cc Patrick D'Arcy Patrick_darcy@worksafe.vic.gov.au

10 March 2021

Dear Mr Cooper

I refer to your letter of 4th March 2021.

As I have previously made clear, I do not accept that merely advising me that the WorkSafe investigations are still ongoing properly complies with the objects of WorkSafe's statutory obligations under sections 7 and 131 of the Occupational Health and Safety Act 2004 (Vic). I note that I have not received a response to my request to receive a proper report as to the status of your investigations.

I also draw your attention to the obligation at section 131(3) of the Occupational Health and Safety Act 2004 (Vic) for WorkSafe, on my request, to refer the matters to the Director of Public Prosecutions should prosecutions not be brought within 9 months after receiving my request for the several prosecutions to be brought.

I look forward to receiving a proper update report on your investigations including whether the matters have been referred to the Director of Public Prosecutions.

I look forward to your responses.

Kind regards

Ken Phillips
Executive Director

From: Enforcement Group Admin (WorkSafe)
<Enforcement_Group_Admin@worksafe.vic.gov.au>
Sent: Wednesday, 31 March 2021 5:02 PM
To: kennethnormanphillips@gmail.com
Subject: Re: Request for the Authority to bring a prosecution

Good afternoon Mr Phillips

Please find **attached** our letter dated 31 March 2021.

Kind regards

Enforcement Group
WorkSafe Victoria

enforcement_group_admin@worksafe.vic.gov.au

567 Collins Street
Melbourne VIC 3000
www.worksafe.vic.gov.au

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Mr Ken Phillips
Executive Director
Self Employed Australia

31 March 2021

By email only: kennethnormanphillips@gmail.com

Dear Mr Phillips,

Request for the Authority to bring a prosecution

Thank you for your letter dated 10 March 2021.

I am satisfied that WorkSafe is meeting its reporting obligations to you and refer you to section 131(2A)(b) of the *Occupational Health and Safety Act 2004* in that regard.

I will provide you with a further update as to the progress of the investigation in due course.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Gordon Cooper", with a stylized flourish at the end.

Gordon Cooper
Director
Enforcement Group

From: "Michelle Repacholi (WorkSafe)" <michelle_repacholi@worksafe.vic.gov.au>
Subject: RE: Letter for Mr Cooper from SEA
Date: May 17, 2021 at 2:27:15 PM GMT+10
To: Ken Phillips <kennethnormanphillips@gmail.com>
Cc: "Patrick D'Arcy (WorkSafe)" <patrick_darcy@worksafe.vic.gov.au>

Good afternoon Ken

I acknowledge receipt of your letter and accompanying document for Gordon Cooper.

Michelle

Michelle Repacholi	michelle_repacholi@worksafe.vic.gov.au	9 / 567 Collins Street
Paralegal	Tel/ 03 4243 7237	Melbourne VIC 3000
Process	Fax/ 03 4243 9321	www.worksafe.vic.gov.au
Review		
Project,		
Enforcement		
Group		

BE GREEN, READ FROM THE SCREEN

From: Ken Phillips <kennethnormanphillips@gmail.com>
 Subject: Letter for Mr Cooper from SEA
 Date: May 16, 2021 at 1:07:07 PM GMT+10
 To: "Michelle Repacholi (WorkSafe)" <michelle_repacholi@worksafe.vic.gov.au>
 Cc: "Patrick D'Arcy (WorkSafe)" <patrick_darcy@worksafe.vic.gov.au>

Hello Michelle

Please find attached letter for Mr Cooper and accompanying document.

Confirmation of receipt of this email would be appreciated.

Regards

Ken

Ken Phillips

Executive Director

+61- 0412 393 692

kennethnormanphillips@gmail.com

www.selfemployedaustralia.com.au



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

Mr Gordon Cooper
Director - Enforcement Group
WorkSafe Victoria

By email only:

c/o Michelle Repacholi michelle_repacholi@worksafe.vic.gov.au
cc Patrick D'Arcy Patrick_darcy@worksafe.vic.gov.au

16 May 2021

Dear Mr Cooper

Further to my letter dated 29 September 2020, pursuant to section 131 of the Occupational Health and Safety Act 2004 (Vic) (the Act) requesting WorkSafe to prosecute various individuals and agencies for indictable offences under the Act in relation to what can only be described as the entirely botched COVID-19 Hotel Quarantine Program, I have attached an important document for your information and consideration.

The Safer Care Victoria ***Review into blood glucose level monitoring equipment in the COVID-19 quarantine accommodation program Summary report, December is an important document*** in relation to the several investigations WorkSafe is now conducting into the culpable mis-management by the Government of Victoria, the DHHS and several others of COVID-19 generally and the hotel quarantine facilities in particular. I do not have a copy of the full Report to provide to you, however, WorkSafe's broad statutory powers will no doubt enable it to obtain it for consideration.

This damning Report provides further clear evidence of serious contraventions of the Occupational Health and Safety Act 2004 identifying numerous examples of non-existent or completely inadequate safe systems of work as required under the Act and grossly inadequate information, instruction, training and supervision provided to front line quarantine workers all of which exposed not only those workers but also the Victorian public to serious risks to their health and safety.

I look forward to your next 3 monthly update on the WorkSafe investigations due by 29 June 2021 at which time if WorkSafe has decided not to prosecute or has not brought prosecutions by that date against all or any of the entities and persons detailed in my letter of 29 September 2020, the matters, including your advice that prosecutions will not or have not been brought, are to be referred to the DPP for her consideration and written advice.

Kind regards

Ken Phillips
Executive Director

From: "Michelle Repacholi (WorkSafe)" <michelle_repacholi@worksafe.vic.gov.au>
Subject: RE: Letter to Mr Cooper - from Self Employed Australia
Date: June 2, 2021 at 12:39:49 PM GMT+10
To: Ken Phillips <kennethnormanphillips@gmail.com>

Good afternoon Ken

I acknowledge receipt of your letter for Gordon Cooper.

Michelle

Michelle Repacholi
Paralegal
Process Review
Project, Enforcement
Group

michelle_repacholi@worksafe.vic.gov.au
Tel/ 03 4243 7237
Fax/ 03 4243 9321

9 / 567 Collins Street
Melbourne VIC 3000
www.worksafe.vic.gov.au

From: Ken Phillips <kennethnormanphillips@gmail.com>
Subject: Letter to Mr Cooper - from Self Employed Australia
Date: June 2, 2021 at 12:12:28 PM GMT+10
To: "Michelle Repacholi (WorkSafe)" <michelle_repacholi@worksafe.vic.gov.au>
Cc: "Patrick D'Arcy (WorkSafe)" <patrick_darcy@worksafe.vic.gov.au>

Hello Michelle

Please find attached letter to Mr Cooper.
Kindly confirm receipt.

Regards

Ken

Ken Phillips
Executive Director
+61- 0412 393 692
kennethnormanphillips@gmail.com
www.selfemployedaustralia.com.au



The registered business name of
Independent Contractors Australia
 Incorporated Victoria No A0050004U
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 PO Box 13103 Law Courts 8010 Vic

Mr Gordon Cooper
 Director - Enforcement Group
 WorkSafe Victoria

By email only:

c/o Michelle Repacholi michelle_repacholi@worksafe.vic.gov.au
 cc Patrick D'Arcy Patrick_darcy@worksafe.vic.gov.au

2 June 2021

Dear Mr Cooper,

I refer to my letter of 29 September, 2020 pursuant to section 131 Occupational Health and Safety Act 2004 (Vic) (the Act) requesting WorkSafe to prosecute various individuals and agencies for indictable offences under the Act in relation to what can only be described as the entirely botched COVID-19 Hotel Quarantine Program and our subsequent correspondence.

Please note that if the Authority (WorkSafe) advises me that any or all of the prosecutions requested in my letter of 29 September, 2020 will not be brought, or that they have not brought any or all of the prosecutions requested by the 29 June 2021 (9 months after receiving my request on 29 September 2020), I hereby formally request the Authority to refer the relevant matters to the Director of Public Prosecutions to consider the matters and advise (in writing) the Authority whether or not the Director of Public Prosecutions considers that prosecutions should be brought pursuant to sections 131(3) and (4) of the Act.

Further, I note that pursuant to section 131(5) of the Act, the Authority must ensure a copy of the advice received from the Director of Public Prosecutions in relation to the relevant matters is sent to me as the person who made the request on 29 September 2020 and, if the Authority declines to follow advice from the Director of Public Prosecutions to bring proceedings, the Authority must give me written reasons for its decisions.

In addition, I note that as at the 29 June 2021, WorkSafe will have had 15 months to complete its investigations into the occurrences, acts and omissions in relation to the planning, development, control, operation of Victoria's Hotel Quarantine Program (which commenced on 26 March 2020) such a period of time being reasonably practicable for WorkSafe to have completed its investigations pursuant to section 131(2C) of the Act.

Regards

Ken Phillips
 Executive Director

From: "EDHS Office (WorkSafe)" <edhs_office@worksafe.vic.gov.au>
Subject: Correspondence from WorkSafe Victoria
Date: June 29, 2021 at 9:12:32 AM GMT+10
To: "kennethnormanphillips@gmail.com" <kennethnormanphillips@gmail.com>

Dear Mr Phillips

Please find attached a letter in relation to your request for the Victorian WorkCover Authority to bring a prosecution.

Kind regards

Laura

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Fax 03 4243 9321
worksafe.vic.gov.au



Mr Ken Phillips

29 June 2021

By email only: kennethnormanphillips@gmail.com

Dear Mr Phillips

Request for the Victorian WorkCover Authority to bring a prosecution

I refer to your request, received on 29 September 2020, for the Victorian WorkCover Authority (trading as WorkSafe Victoria) to bring prosecutions against various individuals and entities associated with the initial iteration of the Hotel Quarantine Program.

WorkSafe commenced its investigation into this matter in mid-2020, prior to your request, and WorkSafe has continued to provide you with progress reports on your request every three months in accordance with section 131(2A) of the *Occupational Health and Safety Act 2004* (the Act).

Please be advised that nine months following acceptance of your request, WorkSafe's investigation remains ongoing and at this time WorkSafe has not brought a prosecution.

Under section 131(3) of the Act, a person who requests that a prosecution be brought can also request for the matter to be referred to the Director of Public Prosecutions, if WorkSafe has not commenced proceedings within nine months.

Now that you have been formally advised that WorkSafe has not commenced proceedings within nine months, consistent with your preferences as outlined in your letter to Mr Gordon Cooper of 2 June 2021, we ask you to confirm in writing your wish for WorkSafe to refer the matter to the Director of Public Prosecutions.

Assuming a request to refer the matter to the Director of Public Prosecutions is forthcoming, WorkSafe will continue with its investigation into the initial iteration of the Hotel Quarantine Program while the Director considers the matter as it currently stands, and will make any additional material gathered available to the Director upon request.

In accordance with section 131(5) of the Act, WorkSafe will provide you with a copy of the Director of Public Prosecutions' advice when it is received. In the event WorkSafe declines to follow the Director's advice, we will also provide you with written reasons for this decision.

At this point, I would like to reassure you that our investigation is progressing in a timely and efficient manner, noting it is not unusual for complex investigations to take up to two years to complete. It is for this reason that indictable offences under the Act have a two-year limitation period. That is, criminal prosecutions for indictable matters must be commenced within two years of the alleged offence or offences first coming to the notice of WorkSafe.

It is a matter of public record that this matter is complex, involving multiple duty holders across multiple workplaces, including hotel operators, security companies and government entities involved in the Hotel Quarantine Program. Like most of WorkSafe's ongoing COVID-19-related investigations, this investigation has involved interviewing many witnesses and assessing thousands of pages of physical and electronic documents, including a consideration of the evidence presented to the COVID-19 Hotel Quarantine Inquiry, chaired by the Hon Jennifer Coate AO.

WorkSafe's COVID-19 related investigations are being overseen by an experienced and dedicated team of investigators. They will complete these investigations promptly, without compromising the necessary standards the community expects WorkSafe to uphold.

Any decision by WorkSafe to bring a prosecution will be made in accordance with WorkSafe's General Prosecution Guidelines, which includes consideration as to whether there is sufficient evidence to support the action and whether there is a reasonable prospect of conviction.

I thank you for your ongoing interest in this matter. You will continue to be updated as required under the Act.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Julie Nielsen', with a small dot at the end.

Julie Nielsen
Executive Director, Health & Safety

From: "EDHS Office (WorkSafe)" <edhs_office@worksafe.vic.gov.au>
Subject: RE: Correspondence from WorkSafe Victoria
Date: June 29, 2021 at 4:26:08 PM GMT+10
To: Ken Phillips <kennethnormanphillips@gmail.com>
Cc: "EDHS Office (WorkSafe)" <edhs_office@worksafe.vic.gov.au>

Hi Ken,

Many thanks for your response. Please accept this email as confirmation of its receipt.

Kind regards

Laura

From: Ken Phillips <kennethnormanphillips@gmail.com> [L] [SEP] **Sent:** Tuesday, 29 June 2021 1:00 PM [L] [SEP] **To:** EDHS Office (WorkSafe) <edhs_office@worksafe.vic.gov.au> [L] [SEP] **Subject:** Re: Correspondence from WorkSafe Victoria

Hello Laura

Please find attached letter in reply to Ms Nielsen.

Confirmation of your receipt of this would be appreciated.

Rgds

Ken

Ken Phillips
Executive Director

+61- 0412 393 692

kennethnormanphillips@gmail.com

[SEP]

www.selfemployedaustralia.com.au

[SEP]

[SEP]

On Jun 29, 2021, at 9:12 AM, EDHS Office (WorkSafe)

<edhs_office@worksafe.vic.gov.au> wrote:

Dear Mr Phillips

Please find attached a letter in relation to your request for the Victorian WorkCover Authority to bring a prosecution.

Kind regards

Laura

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From: "EDHS Office (WorkSafe)" <edhs_office@worksafe.vic.gov.au>
Subject: Correspondence from WorkSafe Victoria
Date: June 29, 2021 at 9:12:32 AM GMT+10
To: "kennethnormanphillips@gmail.com" <kennethnormanphillips@gmail.com>

Dear Mr Phillips

Please find attached a letter in relation to your request for the Victorian WorkCover Authority to bring a prosecution.

Kind regards

Laura

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PO Box 13103 Law Courts 8010 Vic

Ms Julie Nielsen
Executive Director, Health and Safety
WorkSafe Victoria
1 Malop Street Geelong 3220

By email only.

29 June 2021

Dear Ms Nielsen,

I refer to my letter of 29 September 2020 pursuant to s.131 of the Occupational Health and Safety Act 2004 (Vic) (the OH&S Act). I also refer to your letter of 29 June 2021 in which you state that WorkSafe's investigation, now some 12 months in duration, remains ongoing and at this time WorkSafe has not brought a prosecution.

Notwithstanding that at least 1 year and 3 months has now elapsed since the offences I listed were committed and that WorkSafe has been investigating the matters for a full year with a team of dedicated and experienced investigators, WorkSafe remains unable to make a decision as to whether to bring such prosecutions.

Therefore, pursuant to s.131(3) of the Act, I again formally request that all the matters detailed in the letter referred to above, be referred immediately to the DPP for her consideration and advice to WorkSafe, such advice setting out whether or not the DPP considers that prosecutions should be brought and which WorkSafe must subsequently consider to decide whether or not prosecutions will be brought (see ss.131(4) and (5)).

Once WorkSafe receives that advice from the DPP, it must be immediately provided to me (see s.131(5)).

I look forward to receiving that advice noting that the statutory limitation period for prosecutions for indictable offences to be brought by WorkSafe under the OHS Act will expire no later than mid 2022.

Further, I do not consider that WorkSafe's 3 monthly emails to me, which said nothing more than that its investigations were continuing, have been in compliance with its statutory duties. Nor do I believe that WorkSafe has complied with its obligations of transparency and consultation.

To that end, I once again request that you provide answers to my questions (listed below) in relation to the current status of the WorkSafe investigation. I trust that WorkSafe will not ignore my request as it has in the past.

As my previous request for a proper investigation status update noted, none of the answers to my questions could in any way prejudice the ongoing investigations but would clearly be in the spirit and compliance with WorkSafe's functions and purpose.

1. How many WorkSafe Inspectors and staff are assigned to the Hotel Quarantine Program investigation team
2. How, many requests for formal records of interview have been made to date?
3. How many persons have refused to attend a formal interview?
4. How many statements have been taken to date?
5. How many persons have refused to make a statement?
6. How many statutory directions requiring information and documents from entities and individuals have been made to date pursuant to ss.9 and/or 100 of the Occupational Health and Safety Act?

I look forward to receiving your investigation update.

Yours sincerely

Ken Phillips
Executive Director

From: "Enforcement Group Admin (WorkSafe)"
 <Enforcement_Group_Admin@worksafe.vic.gov.au>
 Subject: Request for the Authority to bring a prosecution
 Date: August 6, 2021 at 4:41:33 PM GMT+10
 To: "kennethnormanphillips@gmail.com" <kennethnormanphillips@gmail.com>

Good evening Mr Phillips

Please find **attached** our letter dated 5 August 2021.

Kind regards

Enforcement Group
 WorkSafe Victoria

enforcement_group_admin@worksafe.vic.gov.au

567 Collins
 Street Melbourne VIC
 3000 www.worksafe.vic.gov.au

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Fax 03 4243 9321
worksafe.vic.gov.au



Mr Ken Phillips
Executive Director
Self Employed Australia

5 August 2021

By email only: kennethnormanphillips@gmail.com

Dear Mr Phillips

Request for the Authority to bring a prosecution

I refer to your request for WorkSafe Victoria to bring prosecutions against various individuals and entities associated with the COVID-19 Hotel Quarantine Program and, in particular, your later request for WorkSafe Victoria to refer the matter to the Director of Public Prosecutions for her review.

By letter dated 4 August 2021, the Director has informed me that she is unable to make a determination in this matter until she has reviewed the investigative materials. Please find **attached** a copy of a letter from the Director of Public Prosecutions.

WorkSafe's investigation is still ongoing and you will be advised of the outcome once the investigation is complete.

Yours sincerely

A handwritten signature in black ink, appearing to read "Dmitry Rozkin", followed by a horizontal line.

Dmitry Rozkin
Director (Acting)
Enforcement Legal



KERRI JUDD QC
DIRECTOR of
PUBLIC PROSECUTIONS
VICTORIA

Director's Chambers
565 Lonsdale Street
Melbourne VIC 3000
DX 210290
T: 03 9603 7508
E: director@opp.vic.gov.au

4 August 2021

OPP Ref: 2103357

Dmitry Rozkin
Director Enforcement Group
WorkSafe Victoria
222 Exhibition Street
Melbourne VIC 3000

Dear Mr Rozkin

Referral pursuant to s. 131 of the Occupational Health and Safety Act 2004 by Mr Ken Phillips

This matter has been referred to me pursuant to *s. 131 of the Occupational Health and Safety Act 2004* following a request made by Mr Ken Phillips. I confirm receipt of this letter dated 29 June 2021.

The matter remains under investigation by WorkSafe Victoria. I cannot make a determination in this matter until I have viewed the investigative materials.

I have made enquiries as to the progress with WorkSafe Victoria. Based on these enquiries I am satisfied that the investigation is progressing appropriately.

Yours faithfully,

Kerri Judd QC
Director of Public Prosecutions



From: Director <director@opp.vic.gov.au>
 Subject: RE: letter for DPP concerning oHS prosecution - Ken Phillips
 Date: August 9, 2021 at 3:56:05 PM GMT+10
 To: Ken Phillips <kennethnormanphillips@gmail.com>

Dear Mr Phillips,

Thank you for your email.

We acknowledge receipt and will forward your email and attachments to the Director for consideration.

Kind regards,
 Associate to the DPP

From: Ken Phillips <kennethnormanphillips@gmail.com> [1] [1] [SEP] **Sent:** Monday, 9 August 2021 3:12 PM [1] [1] [SEP] **To:** Director <director@opp.vic.gov.au> [1] [1] [SEP] **Subject:** letter for DPP concerning oHS prosecution - Ken Phillips

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Please find attached letter to the DPP and accompanying document

Confirmation of receipt of this would be appreciated

With thanks

Ken Phillips
 Executive Director
 +61- 0412 393 692
kennethnormanphillips@gmail.com

[1] [1] [1] [1]
[SEP] [SEP]

[1] [1]
[SEP] www.selfemployedaustralia.com.au
[1] [1] [1] [1]
[SEP] [SEP]

From: Ken Phillips <kennethnormanphillips@gmail.com>
Subject: letter for DPP concerning oHS prosecution - Ken Phillips
Date: August 9, 2021 at 3:12:14 PM GMT+10
To: director@opp.vic.gov.au

Please find attached letter to the DPP and accompanying document

Confirmation of receipt of this would be appreciated

With thanks

Ken Phillips

Executive Director

+61- 0412 393 692

kennethnormanphillips@gmail.com

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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

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 it's 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

From: "Peter Collins (WorkSafe)" <peter_collins@worksafe.vic.gov.au>
Subject: RE: Letter to Mr Rozkin
Date: August 23, 2021 at 12:02:01 PM GMT+10
To: Ken Phillips <kennethnormanphillips@gmail.com>

Noted thanks

Peter Collins
 Acting Director
 Investigations

peter_collins@vwa.vic.gov.au
u
 Mob/ 0434 308 872

Head Office, 222 Exhibition Street
 Melbourne VIC 3000
www.worksafe.vic.gov.au

From: "Enforcement Group Admin (WorkSafe)"
 <Enforcement_Group_Admin@worksafe.vic.gov.au>
Subject: Re: Letter to Mr Rozkin
Date: August 23, 2021 at 11:20:15 AM GMT+10
To: Ken Phillips <kennethnormanphillips@gmail.com>

Good morning Ken

We acknowledge receipt of your letter for Dmitry Rozkin.

Kind regards

**Enforcement
 Group
 WorkSafe Victoria**

enforcement_group_admin@worksafe.vic.gov.au

**567 Collins Street
 Melbourne VIC 3000
www.worksafe.vic.gov.au
u**

From: Ken Phillips <kennethnormanphillips@gmail.com>
Subject: Letter to Mr Rozkin
Date: August 22, 2021 at 3:22:55 PM GMT+10
To: Enforcement_Group_Admin@worksafe.vic.gov.au

Please find attached letter to Mr Rozkin.
 Confirmation of receipt of this would be appreciated
 With thanks

Ken Phillips

Ken Phillips

Executive Director

+61- 0412 393 692

kennethnormanphillips@gmail.com

www.selfemployedaustralia.com.au



The registered business name of
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www.selfemployedaustralia.com.au
PO Box 13103 Law Courts 8010 Vic

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

22 August 2021

Dear Mr Rozkin,

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

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

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

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

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

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

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

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

I look forward to your urgent responses.

Yours faithfully

Ken Phillips
Executive Director.

1 Malop Street Geelong VIC 3220
PO Box 279, Geelong 3220
Telephone 03 4243 7000
Fax 03 4243 9321
worksafe.vic.gov.au



27 August 2021

Mr Ken Phillips

By email only: kennethnormanphillips@gmail.com

Dear Mr Phillips,

I refer to your letter dated 22 August 2021 in which you assert WorkSafe Victoria (WorkSafe) has failed in its obligations under section 131 of the *Occupational Health and Safety Act* (the Act).

In particular, I note your suggestion that failure to confirm WorkSafe has provided investigative materials to the DPP will be taken as a refusal to provide the investigative materials, and therefore be interpreted as a continuation of failure to comply with the Act.

I wish to reassure you that in relation to this matter, WorkSafe has complied with all obligations under section 131 of the Act. I further note that in her letter dated 4 August 2021, the DPP confirms she is satisfied that WorkSafe's investigation is progressing appropriately.

As you are aware, WorkSafe commenced a comprehensive investigation into the initial iteration of the Hotel Quarantine Program in mid-2020, prior to receiving any requests under section 131 of the Act to investigate.

WorkSafe's investigation is progressing in a timely and efficient manner. In line with our obligations under section 131 of the Act, WorkSafe will next update you on the progress of our investigation no later than 29 September.

Yours sincerely

A handwritten signature in black ink, appearing to read "Dmitry Rozkin", written over a horizontal line.

Dmitry Rozkin
Director (Acting)
Enforcement Legal

From: "Enforcement Group Admin (WorkSafe)"
 <Enforcement_Group_Admin@worksafe.vic.gov.au>
Subject: Re: Letter for Mr Rozkin
Date: September 20, 2021 at 1:46:50 PM GMT+10
To: Ken Phillips <kennethnormanphillips@gmail.com>

Good afternoon Ken

I acknowledge receipt of your letter for Dmitry Rozkin.

**Enforcement
Group
WorkSafe
Victoria** [enforcement_group_admin@worksafe.vic.gov.a
u](mailto:enforcement_group_admin@worksafe.vic.gov.au)

**567 Collins Street
Melbourne VIC 3000
[www.worksafe.vic.gov.a
u](http://www.worksafe.vic.gov.au)**

From: Ken Phillips <kennethnormanphillips@gmail.com>
 Subject: Letter for Mr Rozkin
 Date: September 19, 2021 at 5:33:27 PM GMT+10
 To: Enforcement_Group_Admin@worksafe.vic.gov.au

Please find attached letter for Mr Rozkin.
 Confirmation of receipt would be appreciated.

With thanks

Ken Phillips
 Executive Director
 +61- 0412 393 692
kennethnormanphillips@gmail.com
www.selfemployedaustralia.com.au



The registered business name of
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 PO Box 13103 Law Courts 8010 Vic

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

19 September 2021

Dear Mr Rozkin

I refer to your letter of 5 August 2021.

I do not believe that WorkSafe has complied with its statutory obligation under s.131(3) of the Occupational Health and Safety Act 2004 (Vic).

WorkSafe has not provided the DPP with the investigative material that she requires to comply with her statutory obligation under s.131(4) of the Occupational Health and Safety Act 2004 (Vic) as it was obliged to do on my request. That request has been made in writing on 2 separate occasions.

Please advise as a matter of urgency, when the WorkSafe investigations into the matters contained in my letter of 29 September, 2020 will be in WorkSafe's view, sufficiently complete for it to refer the material to the DPP.

In the meantime, I again ask that you provide me with a meaningful update as to the progress of the investigation including answers to the questions below:

- How many WorkSafe Inspectors and staff have been assigned to the Hotel Quarantine Program investigation team?
- How many witnesses have been contacted?
- How many requests for formal records of interview have been made?
- How many persons have been interviewed?
- How many persons have refused to attend a formal record of interview?
- How many persons have been requested to make a statement?
- How many statements have been taken?
- How many persons have refused to make a statement?
- How many statutory directions requiring information and documents from entities and individuals have been made to date pursuant to ss.9 and/or 100 of the Occupational Health and Safety Act?

I await your urgent response.

Yours sincerely
 Ken Phillips
 Executive Director



The registered business name of
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 PO Box 13103 Law Courts 8010 Vic

Ms Jaclyn Symes
 Attorney-General of Victoria
 Level 26, 121 Exhibition St
 Melbourne 3000
 By email: jaclyn.symes@parliament.vic.gov.au

22 September 2021

URGENT

Dear Ms Symes

I request your intervention to require WorkSafe Victoria to comply with its obligations under the Occupational Health and Safety Act 2004 (Vic), specifically to supply to the Director of Public Prosecutions its investigative material into the Victorian Government Hotel Quarantine Program as required under Section 131 of the Act.

Background

On the 29 September 2020, at least 6 months after the disastrous commencement of the Victorian Government Hotel Quarantine Program, I made a formal written request under s.131 of the Occupational Health and Safety Act 2004 (Vic) to WorkSafe Victoria for it to prosecute 27 of Victoria's senior Ministers and bureaucrats, including the Premier, for indictable offences under the Occupational Health and Safety Act 2004 (Vic), for their respective parts in the catastrophic Hotel Quarantine Program.

WorkSafe accepted my request and has been investigating the matters I raised since at least that time. WorkSafe has stated that it had commenced an investigation into the Hotel Quarantine Program at an undisclosed earlier date.

In the aftermath of that Hotel Quarantine Program, 801 people died in Victoria from COVID-19, thousands of people were infected and billions of dollars were consequently wasted in the subsequent attempts to rectify the mess.

The Coate Inquiry, established by the Victorian government to investigate the gross mismanagement of the Hotel Quarantine Program, stated that the Program was

a "catastrophe waiting to happen" *
 a "disaster that tragically came to be" **
 and was caused by "lack of proper leadership and oversight." **

(From the Coate Report, Chapter 8, *para 329, **para 421.)

Since 29 September 2020, WorkSafe has condescendingly advised me on several occasions that its investigations are still ongoing. WorkSafe has refused on several occasions to provide me with proper updates as to the status of its investigations despite some 28 instances of correspondence between WorkSafe and myself.

On the 29 June 2021, exactly 9 months (A) after my letter of 29 September 2020 was received, WorkSafe formally asked me whether I wished the investigation to be referred to the DPP—as the statutory procedure requires when WorkSafe has not made a decision whether or not to prosecute within 9 months. (s.131(3)) I advised WorkSafe immediately in writing on 29 June 2021 (B) that I did require the investigation to be referred to the DPP.

WorkSafe breaching its statutory obligations

On the 5 August 2021, I received a letter from WorkSafe (C) which included a letter from the DPP, dated 4 August 2021 and addressed to WorkSafe, in which the DPP stated:

“The matter remains under investigation by WorkSafe Victoria. I cannot make a determination in this matter until I have viewed the investigative materials.”

It was at that point that it became plainly obvious to me that in fact WorkSafe had not complied with its statutory obligation under the Occupational Health and Safety Act 2004 (Vic), an Act that it administers. Further, that it had not referred the relevant investigative materials to the DPP as she clearly states is necessary.

Importantly, WorkSafe itself in its letter of 29 June 2021 (A) clearly implies that it would provide the DPP with all the investigative materials including any additional material gathered as the investigation continued.

On 9 August 2021 (D) I consequently wrote to the DPP explaining that I believed WorkSafe’s failure to provide her with its investigative materials as required by the Occupational Health and Safety Act 2004 (Vic), meant that she could therefore not comply with her own statutory obligation under the Occupational Health and Safety Act 2004 (Vic) (s.131(4)) and that, in not doing so, WorkSafe was treating both her and the Victorian public with contempt.

To date, the DPP has not responded to my letter.

I further wrote to WorkSafe on 22 August 2021 (E) and have received no more in response than a denial that it has failed and refused to comply with its obligations under the Occupational Health and Safety Act 2004 (Vic) and yet further gratuitous statements that its investigations are still ongoing.

My request

I am now left with very few options to have WorkSafe comply with its statutory obligations and therefore turn to you to enforce the law of the State of Victoria and direct WorkSafe to comply with its statutory obligations and provide the DPP with the investigative materials she requires to enable her to comply with her own statutory obligation under the Occupational Health and Safety Act 2004 (Vic).

I have attached the correspondence referred to above for your consideration.

I have full trust that you will properly undertake your duty as the Attorney-General of the State of Victoria and will direct WorkSafe Victoria to comply with the law.

I await your urgent responses.

Yours sincerely

Ken Phillips
Executive Director

Attached letters

A – From WorkSafe, 29 June 2021

B – To WorkSafe, 29 June 2021

C – From WorkSafe, 5 August 2021

D – To Director of Public Prosecutions, 9 August 2021

E – To WorkSafe, 22 August 2021

OCCUPATIONAL HEALTH AND SAFETY ACT 2004 - SECT 131

http://www5.austlii.edu.au/au/legis/vic/consol_act/ohasa2004273/s131.html

Procedure if prosecution is not brought

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

the [person](#) may request in writing that the [Authority](#) bring a prosecution.
- (2) If the offence the subject of a request under subsection (1) is a summary offence, within 3 months after the [Authority](#) receives a request it must—
 - (a) investigate the matter; and
 - (b) following the investigation, advise (in writing) the [person](#) whether a prosecution has been or will be brought or give reasons why a prosecution will not be brought, unless the [Authority](#) considers that giving such advice or reasons will prejudice the current investigation of an indictable offence.
- (2A) If the offence the subject of a request under subsection (1) is an indictable offence, the [Authority](#) must, within 3 months after receiving the request, report in writing to the person who made the request, advising that—
 - (a) the [Authority's](#) investigation of the matter is complete, and—
 - (i) that a prosecution will be brought; or
 - (ii) give reasons why a prosecution will not be brought; or
 - (b) the [Authority's](#) investigation is still ongoing and that a further report will be given within 3 months after the date of the response, and after every subsequent 3-month period, until the investigation is completed.
- (2B) If subsection (2A)(b) applies, the [Authority](#) must, within each 3-month period, also report to the Minister as to the progress of the investigation.
- (2C) The [Authority](#) must commence and complete investigations under this section in as timely a manner as is reasonably practicable.
- (3) If the [Authority](#) advises the [person](#) that a prosecution will not be brought, or that it has not brought a prosecution within 9 months after receiving the request, the [Authority](#) must refer the matter to the Director of Public Prosecutions if the [person](#) requests (in writing) that the [Authority](#) do so.
- (4) The Director of Public Prosecutions must consider the matter and advise (in writing) the [Authority](#) whether or not the Director considers that a prosecution should be brought.
- (5) The [Authority](#) must ensure a copy of the advice is sent to the [person](#) who made the request and, if the [Authority](#) declines to follow advice from the Director of Public Prosecutions to bring proceedings, the [Authority](#) must give the [person](#) written reasons for its decision.
- (6) The [Authority](#) must include in its annual report, and publish on its website, a statement setting out—
 - (a) the number of requests received by the [Authority](#) under subsection (1); and
 - (b) the number of cases in which the [Authority](#) has advised under subsection (2)(b) or (2A)(a) that a prosecution has been or will be brought, or will not be brought; and
 - (ba) how long it took to commence and complete each investigation pursuant to a request under subsection (1); and
 - (bb) the number of times the [Authority](#) failed to report in accordance with subsection (2A) to a [person](#) making a request under subsection (1) and any reasons for such failure; and
 - (c) the number of cases in which the Director of Public Prosecutions has advised under subsection (4) that a prosecution should be brought or should not be brought.
- (7) The [Authority](#) must provide a copy of any statement containing the matters referred to in subsection (6)(bb) to the Minister.



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

Mr Tim Smith MP
Shadow Attorney-General
Suite 1, 400 High St
Kew Vic 3101
By email tim.smith@parliament.vic.gov.au

22 September 2021

URGENT

Dear Mr Smith,

I have today written to the Victorian Attorney-General and the Minister for Workplace Safety requesting that they require WorkSafe Victoria to comply with its statutory obligation under s.131(3) of the Occupational Health and Safety Act 2004 (Vic) to provide the DPP with its investigative materials concerning its investigations into Victoria's failed Hotel Quarantine Program. I have also written to your colleague, the Shadow Minister for Workplace Safety.

I have attached my letters to the Attorney-General and the Minister for Workplace Safety for your information and consideration.

After having investigated the Hotel Quarantine Program for over 14 months, WorkSafe Victoria has failed to provide the DPP with the investigative materials she requires to review the investigation as is her statutory obligation under the Occupational Health and Safety Act 2004 (Vic).

I trust that as Shadow Attorney-General you will consider my request and assist me in our efforts to require WorkSafe Victoria to comply with its statutory obligation under s.131(3) of the Occupational Health and Safety Act 2004 (Vic).

I look forward to your urgent reply.

Yours sincerely

Ken Phillips
Executive Director



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www.selfemployedaustralia.com.au
PO Box 13103 Law Courts 8010 Vic

Ms Ingrid Stitt
Minister for Workplace Safety
Level 22, 50 Lonsdale St
Melbourne, Vic 3000
By email: Ingrid.Stitt@parliament.vic.gov.au

22 September 2021

URGENT

Dear Ms Stitt,

I have today written to the Attorney-General, Ms. Jaclyn Symes, requesting her to require WorkSafe Victoria to comply with its statutory obligation under s.131(3) of the Occupational Health and Safety Act 2004 (Vic) to provide the DPP with its investigative materials concerning its investigations into Victoria's failed Hotel Quarantine Program.

I have attached my letter to the Attorney-General for your information and consideration.

After having investigated the Hotel Quarantine Program for over 14 months, WorkSafe Victoria has failed to provide the DPP with the investigative materials she requires to review the investigation as is her statutory obligation under the Occupational Health and Safety Act 2004 (Vic).

I trust that you will meet your duty as the Minister for Workplace Safety and require one of the government authorities for which you have responsibility, WorkSafe Victoria, to comply with its statutory obligation under s.131(3) of the Occupational Health and Safety Act 2004 (Vic).

I look forward to your urgent reply.

Your sincerely

Ken Phillips
Executive Director



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www.selfemployedaustralia.com.au
PO Box 13103 Law Courts 8010 Vic

Hon Nick Wakeling
Shadow Minister for Workplace Safety
Unit 4, 91 Dorset Rd
Ferntree Gully, Victoria 3156
By Email: nick.wakeling@parliament.vic.gov.au

22 September 2021

URGENT

Dear Mr Wakeling,

I have today written to the Victorian Attorney-General and the Minister for Workplace Safety requesting that they require WorkSafe Victoria to comply with its statutory obligation under s.131(3) of the Occupational Health and Safety Act 2004 (Vic) to provide the DPP with its investigative materials concerning its investigations into Victoria's failed Hotel Quarantine Program.

I have attached my letters to the Attorney-General and the Minister for Workplace Safety for your information and consideration. I have also written to your colleague, the Shadow Attorney-General.

After having investigated the Hotel Quarantine Program for over 14 months, WorkSafe Victoria has failed to provide the DPP with the investigative materials she requires to review the investigation as is her statutory obligation under the Occupational Health and Safety Act 2004 (Vic).

I trust that as Shadow Minister for Workplace Safety, you will consider my request and assist me in our efforts to require WorkSafe Victoria to comply with its statutory obligation under s.131(3) of the Occupational Health and Safety Act 2004 (Vic).

I look forward to your urgent reply.

Yours sincerely

Ken Phillips
Executive Director

From: "Brandon Walker" <brandon.walker@parliament.vic.gov.au>
Subject: RE: Letter to Shadow Work Safety Minister - URGENT
Date: September 22, 2021 at 1:08:15 PM GMT+10
To: Ken Phillips <kennethnormanphillips@gmail.com>
Cc: Nick Wakeling <Nick.Wakeling@parliament.vic.gov.au>

Hi Ken

I trust this email finds you well –

Just acknowledging receipt and that we're on to this issue. Thanks for sending through that material.

It is absurd for WorkSafe to state: -

*At this point, I would like to reassure you that our investigation is progressing in a timely and efficient manner, noting it is not unusual for complex investigations to take up to two years to complete. **It is for this reason that indictable offences under the Act have a two-year limitation period.***

I also note the DPP's advice that she "...cannot make a determination in this matter until I have viewed the investigative materials." There is no basis for WorkSafe to withhold these materials from the DPP. Any ongoing investigations can continue while the DPP reviews the materials as they stand.

We will continue to put pressure on the Minister who to date has refused to answer all questions in relation to WorkSafe's HQP investigations on the basis she cannot interfere with these investigations. The Act clearly gives her a right to be briefed and she has a responsibility as the relevant Minister to ensure WorkSafe is fulfilling its statutory duties.

I can assure you this remains a top priority for Nick as SM for Workplace Safety.

Kind regards,

Brandon Walker

Policy & Media Adviser
 NICK WAKELING MP
 State Member for Ferntree Gully
 Shadow Minister for Industrial Relations & Workplace Safety
 Shadow Minister for Trade
 (03) 9758 6011

[Website](#) | [Twitter](#) | [Facebook](#) | [Instagram](#)

For the most up to date information on COVID-19 please phone the dedicated hotline on: 1800 675 398

From: Ken Phillips <kennethnormanphillips@gmail.com> ^[L]_[SEP] **Sent:** Tuesday, 21 September 2021 10:20 PM ^[L]_[SEP] **To:** Nick Wakeling <Nick.Wakeling@parliament.vic.gov.au> ^[L]_[SEP] **Subject:** Letter to Shadow Work Safety Minister - URGENT

Please find attached urgent letter to the Shadow Minister along with copies of letters to AG and Workplace Safety Minister

Confirmation of receipt would be appreciated.

With thanks

Ken Phillips

Executive Director

+61- 0412 393 692

kennethnormanphillips@gmail.com

^[L]_[SEP] www.selfemployedaustralia.com.au



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

Ms Deborah Glass
 Victorian Ombudsman
 570 Bourke St
 Melbourne 3000
 By way of lodgement on Ombudsman website
<https://www.ombudsman.vic.gov.au/complaints/make-complaint/>

29 September 2021

URGENT

Dear Ms Glass

I wish to make an urgent formal complaint concerning WorkSafe Victoria and its continuing failure to comply with its statutory obligations under the Occupational Health and Safety Act 2004 (Vic), specifically to supply to the Director of Public Prosecutions its investigative material into the Victorian Government Hotel Quarantine Program as required under section 131(3) of the Occupational Health and Safety Act 2004 (Vic).

Background

On the 29 September 2020, at least 6 months after the disastrous commencement of the Victorian Government Hotel Quarantine Program, I made a formal written request under s.131 of the Occupational Health and Safety Act 2004 (Vic) (OHSA) to WorkSafe Victoria for it to prosecute 27 of Victoria's senior Ministers and bureaucrats, including the Premier, for indictable offences under the OHSA for their respective parts in the catastrophic Hotel Quarantine Program.

WorkSafe accepted my request and has been investigating the matters I raised since at least that time. WorkSafe has stated that it had commenced an investigation into the Hotel Quarantine Program at an undisclosed earlier date.

In the aftermath of that Hotel Quarantine Program, 801 people died in Victoria from COVID-19, thousands of people were infected and billions of dollars were consequently wasted in the subsequent attempts to rectify the mess.

The Coate Inquiry, established by the Victorian government to investigate the gross mismanagement of the Hotel Quarantine Program, stated that the Program was:

a “catastrophe waiting to happen” *
 a “disaster that tragically came to be” **
 and was caused by “lack of proper leadership and oversight.” **

(From the Coate Report, Chapter 8, *para 329, **para 421.)

Since 29 September 2020, WorkSafe has condescendingly advised me on several occasions that its investigations are still ongoing. WorkSafe has refused on several occasions to provide me with proper updates as to the status of its investigations despite some 29 instances of correspondence between WorkSafe and myself.

On the 29 June 2021, exactly 9 months (A) after my letter of 29 September 2020 was received, WorkSafe formally asked me whether I wished the investigation to be referred to the DPP—as the statutory procedure requires when WorkSafe has not made a decision whether or not to prosecute within 9 months. (s.131(3)) I advised WorkSafe immediately in writing on 29 June 2021 (B) that I did require the investigation to be referred to the DPP.

WorkSafe breaching its statutory obligations

On the 5 August 2021, I received a letter from WorkSafe (C) which included a letter from the DPP, dated 4 August 2021 and addressed to WorkSafe, in which the DPP stated:

“The matter remains under investigation by WorkSafe Victoria. I cannot make a determination in this matter until I have viewed the investigative materials.”

It was at that point that it became plainly obvious to me that in fact WorkSafe had not complied with its statutory obligation under the OHSA, an Act that it administers. Further, that it had not referred the relevant investigative materials to the DPP as she clearly states is necessary.

Importantly, WorkSafe itself in its letter of 29 June 2021 (A) clearly implies that it would provide the DPP with all the investigative materials including any additional material gathered as the investigation continued.

On 9 August 2021 (D) I consequently wrote to the DPP explaining that I believed WorkSafe’s failure to provide her with its investigative materials as required by the OHSA meant that she could therefore not comply with her own statutory obligation under the OHSA (s.131(4)) and that, in not doing so, WorkSafe was treating both her and the Victorian public with contempt.

To date, the DPP has not responded to my letter.

I further wrote to WorkSafe on 22 August 2021 (E) and have received no more in response than a denial that it has failed and refused to comply with its obligations under the OHSA and yet further gratuitous statements that its investigations are still ongoing.

I wrote to WorkSafe again on the 19 September 2021 (F). I am yet to receive an acknowledgement of receipt or a response.

My Complaint

I am now left with very few options to ensure that WorkSafe comply with its statutory obligations and to respect the rule of law. I therefore turn to you as the Victorian Ombudsman and request your assistance to ensure that WorkSafe Victoria complies with the law of the State of Victoria and provides the DPP with the investigative materials she requires to enable her to comply with her own statutory obligation under the OHSA.

I have attached the correspondence referred to above for your consideration.

I await your urgent responses.

Yours sincerely

Ken Phillips
Executive Director
0412 393 692

Attached letters

- A – From WorkSafe, 29 June 2021
- B – To WorkSafe, 29 June 2021
- C – From WorkSafe, 5 August 2021
- D – To Director of Public Prosecutions, 9 August 2021
- E – To WorkSafe, 22 August 2021
- F - To WorkSafe, 19 September 2021



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

Rowena Orr
Solicitor General Victoria
Level 22
Owen Dixon Chambers West
525 Lonsdale St
Melbourne 3000
By Email: rowena_orr@vicbar.com.au
Cc: sg.secretary@vicbar.com.au

30 September 2021

URGENT

Dear Ms Orr

I wish to bring to your attention as the highest independent non-politically aligned law officer in Victoria and the Government's most senior legal counsel, a very serious and worrying matter concerning WorkSafe Victoria's continuing failure to comply with its statutory obligations under the Occupational Health and Safety Act 2004 (Vic), specifically to supply to the Director of Public Prosecutions its investigative materials into the Victorian Government Hotel Quarantine Program as required under section 131(3) of the Occupational Health and Safety Act 2004 (Vic).

Background

On the 29 September 2020, at least 6 months after the disastrous commencement of the Victorian Government Hotel Quarantine Program, I made a formal written request under s.131 of the Occupational Health and Safety Act 2004 (Vic) (OHSA) to WorkSafe Victoria for it to prosecute 27 of Victoria's senior Ministers and bureaucrats, including the Premier, for indictable offences under the OHSA for their respective parts in the catastrophic Hotel Quarantine Program.

WorkSafe accepted my request and has been investigating the matters I raised since at least that time. WorkSafe has stated that it had commenced an investigation into the Hotel Quarantine Program at an undisclosed earlier date.

In the aftermath of that Hotel Quarantine Program, 801 people died in Victoria from COVID-19, thousands of people were infected, and billions of dollars were consequently wasted in the subsequent attempts to rectify the mess.

The Coate Inquiry, established by the Victorian government to investigate the gross mismanagement of the Hotel Quarantine Program, stated that the Program was:

a “catastrophe waiting to happen” *
 a “disaster that tragically came to be” **
 and was caused by “lack of proper leadership and oversight.” **

(From the Coate Report, Chapter 8, *para 329, **para 421.)

Since 29 September 2020, WorkSafe has condescendingly advised me on several occasions that its investigations are still ongoing. WorkSafe has refused on several occasions to provide me with proper updates as to the status of its investigations despite some 28 instances of correspondence between WorkSafe and myself.

On the 29 June 2021, exactly 9 months (A) after my letter of 29 September 2020 was received, WorkSafe formally asked me whether I wished the investigation to be referred to the DPP—as the statutory procedure requires when WorkSafe has not made a decision whether or not to prosecute within 9 months (s.131(3)). I advised WorkSafe immediately in writing on 29 June 2021 (B) that I did require the investigation to be referred to the DPP.

WorkSafe breaching its statutory obligations

On the 5 August 2021, I received a letter from WorkSafe (C) which included a letter from the DPP, dated 4 August 2021 and addressed to WorkSafe, in which the DPP stated:

“The matter remains under investigation by WorkSafe Victoria. I cannot make a determination in this matter until I have viewed the investigative materials.”

It was at that point that it became plainly obvious to me that in fact WorkSafe had not complied with its statutory obligation under the OHSA, an Act that it administers. Further, that it had not referred the relevant investigative materials to the DPP as she clearly states is necessary.

Importantly, WorkSafe itself in its letter of 29 June 2021 (A) clearly implies that it would provide the DPP with all the investigative materials, including any additional material gathered as the investigation continued.

On 9 August 2021 (D) I consequently wrote to the DPP explaining that I believed WorkSafe’s failure to provide her with its investigative materials as required by the OHSA meant that she

could therefore not comply with her own statutory obligation under the OHSA (s.131(4)) and that, in not doing so, WorkSafe was treating both her and the Victorian public with contempt.

To date, the DPP has not responded to my letter.

I further wrote to WorkSafe on 22 August 2021 (E) and have received no more in response than a denial that it has failed and refused to comply with its obligations under the OHSA and yet further gratuitous statements that its investigations are still ongoing.

I wrote to WorkSafe again on the 19 September 2021 (F).

On the morning of 29 September 2021, a full year since I sent my letter to WorkSafe Victoria requesting prosecution under s.131, I lodged a formal complaint in relation to the behaviour of WorkSafe Victoria with the Victorian Ombudsman.

In the early afternoon of 29 September 2021, WorkSafe Victoria announced that it had commenced prosecutions against the Department of Health—that is, only one of the 27 entities that I identified in my s.131 request of 29 September 2020. It also announced that its investigations into other individuals and entities had concluded.

In a letter (G) from WorkSafe also dated the 29 September 2021 and received late that afternoon, it asserts that as it has now brought a prosecution against just one of the entities listed in my letter of 29 September 2020, it has somehow complied with its statutory obligations under s.131(3) of the Occupational Health and Safety Act 2004 (Vic). In part the letter says,

*“WorkSafe has now brought a prosecution in respect of the **occurrence** of the act, matter or thing outlined in your request. Accordingly, WorkSafe has now fulfilled its obligations to you under Section 131 of the Act.”* [emphasis added]

This assertion is palpable nonsense and is clearly being used by WorkSafe in an attempt to justify its continuing failure to comply with its statutory obligations. The occurrence of the act, matter or thing outlined in my request of 29 September 2020, was not the fact of the Hotel Quarantine Program as WorkSafe now wants to suggest, but rather the failures in the Program’s planning, development, control, operation and management by the people and agencies involved.

WorkSafe has decided not to prosecute these people and agencies as I requested and therefore must immediately provide its investigative materials to the DPP in accordance with s.131(3) of the Occupational Health and Safety Act 2004 (Vic).

Is WorkSafe seriously suggesting that I should have made 27 separate requests, one for every individual and entity that I requested to be prosecuted, rather than the single letter I sent on 29 September 2020?

For WorkSafe to comply with s.131(3) of the Occupational Health and Safety Act 2004 (Vic), it must now provide the DPP with the investigative materials in relation to the 26 individuals and entities that it has decided not to charge, as it was legally obliged to do three months ago.

WorkSafe Victoria is treating our fundamental governing principle, the Rule of Law, the people of Victoria and the DPP with contempt by its continuing failure to comply with its statutory obligation under the Occupational Health and Safety Act 2004 (Vic).

I have recently written to the Attorney-General, the Minister for Workplace Safety, the Shadow Attorney-General and the Shadow Minister for Workplace Safety explaining WorkSafe Victoria's non-compliance with the very statute that it is supposed to be administering.

I am now left with very few options to ensure that WorkSafe complies with its statutory obligations and to respect the Rule of Law. I therefore turn to you and request your assistance to ensure that WorkSafe Victoria complies with the law of the State of Victoria and provides the DPP with the investigative materials she requires to enable her to comply with her own statutory obligation under the OHSA.

I have attached the correspondence referred to above for your consideration.

I await your urgent responses.

Yours sincerely

Ken Phillips
Executive Director
0412 393 692

Attached letters

- A – From WorkSafe, 29 June 2021
- B – To WorkSafe, 29 June 2021
- C – From WorkSafe, 5 August 2021
- D – To Director of Public Prosecutions, 9 August 2021
- E – To WorkSafe, 22 August 2021
- F – To WorkSafe, 19 September 2021
- G – From WorkSafe 29 September 2021

MEDIA RELEASE



29 September 2021

Charges laid over hotel quarantine

WorkSafe has charged the Victorian Department of Health with 58 breaches of the Occupational Health and Safety Act in relation to Victoria's initial hotel quarantine program.

The Department of Health, formerly the Department of Health and Human Services, has been charged with 17 breaches of Section 21(1) of the OHS Act, in that it failed to provide and maintain, as far as reasonably practicable, a working environment that was safe and without risks to health for its employees.

The department has been charged with a further 41 breaches of section 23 (1) of the OHS Act, in that it failed to ensure, so far as was reasonably practicable, that persons other than employees were not exposed to risks to their health and safety arising from conduct of its undertaking.

Between March and July 2020, the Department of Health was responsible for the oversight and co-ordination of Operation Soteria, Victoria's first hotel quarantine program.

WorkSafe alleges that the Department of Health breached OHS laws by failing to appoint people with infection prevention and control (IPC) expertise to be stationed at hotels it was utilising for the program.

It alleges the department failed to provide security guards with face-to-face infection prevention control training by a person with expertise in IPC prior to them commencing work, and either failed, or initially failed, to provide written instruction for the use of PPE.

WorkSafe further alleges the department failed to update written instructions relating to the wearing of masks at several of the hotels.

In all charges, WorkSafe alleges that Department of Health employees, Victorian Government Authorised Officers on secondment, or security guards were put at risk of serious illness or death through contracting COVID-19 from an infected returned traveller, another person working in the hotels or from a contaminated surface.

The maximum penalty for a body corporate for each of these charges is \$1.64 million (9000 penalty units).

This complex investigation took 15 months to complete and involved reviewing tens of thousands of documents and multiple witness interviews.

A review of the material from last year's COVID-19 Hotel Quarantine Inquiry provided relevant context and information that informed parts of the investigation.

MEDIA RELEASE



The decision to prosecute has been made in accordance with WorkSafe's General Prosecution Guidelines, which require WorkSafe to consider whether there is sufficient evidence to support a reasonable prospect of conviction and whether bringing a prosecution is in the public interest.

Inquiries into other entities associated with this investigation including hotels, security firms and other Government departments and agencies have concluded.

The matter is listed for a filing hearing at the Magistrates' Court on 22 October and WorkSafe will not be providing further comment, as the matter is now before the court.

A number of other investigations relating to the control of COVID-19 related risks in workplaces remain ongoing.

From: Ken Phillips <kennethnormanphillips@gmail.com>
Subject: For Mr Rozkin from Ken Phillips Self Employed Australia
Date: September 29, 2021 at 2:10:28 PM GMT+10
To: Enforcement_Group_Admin@worksafe.vic.gov.au

Please find attached letter for Mr Rozkin

Confirmation of receipt would be appreciated

With thanks

Ken

Ken Phillips

Executive Director

+61- 0412 393 692

kennethnormanphillips@gmail.com

www.selfemployedaustralia.com.au



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

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

29 September 2021

Dear Mr Rozkin

I have become aware through a WorkSafe media release earlier today that WorkSafe has decided to commence prosecutions against the Department of Health and Human Services in relation to 58 indictable offences under the Occupational Health and Safety Act 2004 (Vic).

I also note in the WorkSafe press release that WorkSafe has decided not to prosecute the 26 other individuals and entities detailed in my request to prosecute made on 29 September 2020 under s.131 of the Occupational Health and Safety Act 2004 (Vic).

I again formally request that WorkSafe's investigative material in relation to all matters be immediately provided to the DPP in compliance with WorkSafe's statutory obligation under s131(3) of the Occupational Health and Safety Act 2004 (Vic).

Yours sincerely

Ken Phillips
Executive Director

From: "Enforcement Group Admin (WorkSafe)"
 <Enforcement_Group_Admin@worksafe.vic.gov.au>
 Subject: RE: Request for the Victorian WorkCover Authority to bring a prosecution
 Date: September 29, 2021 at 2:40:45 PM GMT+10
 To: "kennethnormanphillips@gmail.com" <kennethnormanphillips@gmail.com>

Good afternoon Ken

Please find **attached** our letter dated 29 September 2021.

We also acknowledge receipt of your letter for Mr Rozkin received today.

Kind regards

Enforcement Group
 WorkSafe Victoria

enforcement_group_admin@worksafe.vic.gov.au

567 Collins
 Street ^{SEP} Melbourne VIC
 3000 ^{SEP} www.worksafe.vic.gov.au

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1 Malop Street Geelong VIC 3220
PO Box 279, Geelong 3220
Telephone 03 4243 7000
Fax 03 4243 9321
worksafe.vic.gov.au



Mr Ken Phillips

29 September 2021

via email only: kennethnormanphillips@gmail.com

Dear Mr Phillips,

Request for the Victorian WorkCover Authority to bring a prosecution

I refer to your request, received on 29 September 2020, for the Victorian WorkCover Authority (trading as WorkSafe Victoria) to bring prosecutions against various individuals and entities associated with the initial iteration of the Hotel Quarantine Program.

WorkSafe commenced its investigation into this matter in mid-2020, prior to your request, and has continued to provide you with progress reports every three months in accordance with section 131(2A) of the *Occupational Health and Safety Act 2004* (the Act).

Today I can advise you that WorkSafe's investigation into this matter is completed and a prosecution has been brought against the Victorian Department of Health, as the responsible agency of the Crown. WorkSafe has filed charges in relation to the following failures:

- *Seventeen (17) charges of failing, so far as was reasonably practicable, to provide and maintain for employees a working environment that was safe and without risks to health in breach of section 21(1) of the Act; and*
- *Forty-one (41) charges of failing to ensure, so far as was reasonably practicable, that persons other than its employees were not exposed to risks to their health and safety arising from the conduct of its undertaking in breach of section 23(1) of the Act.*

WorkSafe has now brought a prosecution in respect of the occurrence of the act, matter or thing outlined in your request. Accordingly, WorkSafe has now fulfilled its obligations to you under Section 131 of the Act.

A public statement outlining some details of this prosecution is appended below.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Dmitry Rozkin".

Dmitry Rozkin
Director (Acting)
Enforcement Legal

MEDIA RELEASE



29 September 2021

Charges laid over hotel quarantine

WorkSafe has charged the Victorian Department of Health with 58 breaches of the Occupational Health and Safety Act in relation to Victoria's initial hotel quarantine program.

The Department of Health, formerly the Department of Health and Human Services, has been charged with 17 breaches of Section 21(1) of the OHS Act, in that it failed to provide and maintain, as far as reasonably practicable, a working environment that was safe and without risks to health for its employees.

The department has been charged with a further 41 breaches of section 23 (1) of the OHS Act, in that it failed to ensure, so far as was reasonably practicable, that persons other than employees were not exposed to risks to their health and safety arising from conduct of its undertaking.

Between March and July 2020, the Department of Health was responsible for the oversight and co-ordination of Operation Soteria, Victoria's first hotel quarantine program.

WorkSafe alleges that the Department of Health breached OHS laws by failing to appoint people with infection prevention and control (IPC) expertise to be stationed at hotels it was utilising for the program.

It alleges the department failed to provide security guards with face-to-face infection prevention control training by a person with expertise in IPC prior to them commencing work, and either failed, or initially failed, to provide written instruction for the use of PPE.

WorkSafe further alleges the department failed to update written instructions relating to the wearing of masks at several of the hotels.

In all charges, WorkSafe alleges that Department of Health employees, Victorian Government Authorised Officers on secondment, or security guards were put at risk of serious illness or death through contracting COVID-19 from an infected returned traveller, another person working in the hotels or from a contaminated surface.

The maximum penalty for a body corporate for each of these charges is \$1.64 million (9000 penalty units).

This complex investigation took 15 months to complete and involved reviewing tens of thousands of documents and multiple witness interviews.

A review of the material from last year's COVID-19 Hotel Quarantine Inquiry provided relevant context and information that informed parts of the investigation.

MEDIA RELEASE



The decision to prosecute has been made in accordance with WorkSafe's General Prosecution Guidelines, which require WorkSafe to consider whether there is sufficient evidence to support a reasonable prospect of conviction and whether bringing a prosecution is in the public interest.

Inquiries into other entities associated with this investigation including hotels, security firms and other Government departments and agencies have concluded.

The matter is listed for a filing hearing at the Magistrates' Court on 22 October and WorkSafe will not be providing further comment, as the matter is now before the court.

A number of other investigations relating to the control of COVID-19 related risks in workplaces remain ongoing.

From: Ken Phillips <kennethnormanphillips@gmail.com>
Subject: Re: Request for the Victorian WorkCover Authority to bring a prosecution
Date: September 29, 2021 at 6:35:58 PM GMT+10
To: "Enforcement Group Admin (WorkSafe)"
<Enforcement_Group_Admin@worksafe.vic.gov.au>

Hello

Thank you for your confirmation below and the letter from Mr Rozkin

Please find a further letter in reply to Mr Rozkin.
Again your confirmation of receipt would be appreciated.

Rgds
Ken

Ken Phillips

Executive Director
+61- 0412 393 692
kennethnormanphillips@gmail.com
www.selfemployedaustralia.com.au

On Sep 29, 2021, at 2:40 PM, Enforcement Group Admin (WorkSafe)
<Enforcement_Group_Admin@worksafe.vic.gov.au> wrote:
Good afternoon Ken

Please find **attached** our letter dated 29 September 2021.

We also acknowledge receipt of your letter for Mr Rozkin received today.

Kind regards

Enforcement Group
WorkSafe Victoria

enforcement_group_admin@worksafe.vic.gov.au

567 Collins Street
Melbourne VIC 3000
www.worksafe.vic.gov.au

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- <Outcome letter to Ken Phillips - 29.09.2021.pdf>



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www.selfemployedaustralia.com.au
PO Box 13103 Law Courts 8010 Vic

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

29 September 2021

Dear Mr Rozkin

In response to your letter to me of 29 September 2021, I find your assertion that by bringing a prosecution against the Department of Health, WorkSafe have somehow complied with its statutory obligation under the Occupational Health and Safety Act 2004 (Vic) is at best disingenuous.

In your letter you state:

WorkSafe has now brought a prosecution in respect of the occurrence of the act, matter or thing outlined in your request. Accordingly, WorkSafe has now fulfilled its obligations to you under Section 131 of the Act.

For your assertion to be correct at law, I would have needed to make my requests to have the individuals and entities prosecuted, in 27 entire separate letters.

Such an assertion is palpable nonsense. The occurrence of the act, matter or thing to which you refer is clearly not just referable to just one of the entity's involved in the Hotel Quarantine Program. The occurrence of the act, matter or thing is clearly referring to the involvement of each of the individuals and entities involvement in the Hotel Quarantine Program.

I do not accept your assertion that the reason WorkSafe believes it has complied with its statutory obligations is that it has decided to prosecute one entity out of 27 individuals and entities.

Yours sincerely

Ken Phillips
Executive Director

From: "Enforcement Group Admin (WorkSafe)"
 <Enforcement_Group_Admin@worksafe.vic.gov.au>
 Subject: RE: Request for the Victorian WorkCover Authority to bring a prosecution
 Date: October 6, 2021 at 3:32:44 PM GMT+11
 To: "kennethnormanphillips@gmail.com" <kennethnormanphillips@gmail.com>

Good afternoon Ken

Please find **attached** our letter dated 6 October 2021.

Kind regards

Enforcement Group
 WorkSafe Victoria

enforcement_group_admin@worksafe.vic.gov.au

567 Collins
 Street Melbourne VIC
 3000 www.worksafe.vic.gov.au

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1 Malop Street Geelong VIC 3220
PO Box 279, Geelong 3220
Telephone 03 4243 7000
Fax 03 4243 9321
worksafe.vic.gov.au



Mr Ken Phillips
Executive Director
Self Employed Australia

6 October 2021

By email only: kennethnormanphillips@gmail.com

Dear Mr Phillips

Request for the Victorian WorkCover Authority to bring a prosecution

I refer to your previous correspondence.

Pursuant to section 131(5) of the OHS Act, please find **attached** a copy of a letter from the Director of Public Prosecutions dated 4 October 2021.

Yours sincerely

A handwritten signature in black ink, appearing to read "Dmitry Rozkin", followed by a horizontal line.

Dmitry Rozkin
Director (Acting)
Enforcement Legal



KERRI JUDD QC
DIRECTOR of
PUBLIC PROSECUTIONS
VICTORIA

Director's Chambers
565 Lonsdale Street
Melbourne VIC 3000
DX 210290
T: 03 9603 7508
E: director@opp.vic.gov.au

4 October 2021

Dmitry Rozkin
Director Enforcement Group
WorkSafe Victoria
222 Exhibition Street
MELBOURNE VIC 3000

Dear Mr Rozkin

Referral pursuant to s. 131 of the Occupational Health and Safety Act 2004 by Mr Ken Phillips

Thank you for your letter dated 29 September 2021.

I note that WorkSafe Victoria has brought a prosecution in relation to alleged failures occurring in respect of the Hotel Quarantine Program.

In such circumstances, there is no longer any requirement, or indeed power, for me to consider and advise pursuant to s.131(4) of the *Occupational Health and Safety Act*.

This matter was initially referred to me following a s.131 request from Mr Phillips. I indicated that I would not require a brief at that stage as I was satisfied that the investigation was progressing appropriately and I would prefer to receive the complete investigation brief, if required, in due course.

I note your offer to provide me with a full WorkSafe investigation brief, now that it is complete.

Given the filing of charges in the Hotel Quarantine Program matter and the scope of s.131(4), there is no longer a requirement for the investigation brief to be provided to me.

Pursuant to s.146 of the *Criminal Procedure Act*, if the Department of Health is committed for trial, I will receive the depositions at that stage.

Yours faithfully,

Kerri Judd QC
Director of Public Prosecutions

From: Ken Phillips <kennethnormanphillips@gmail.com>
Subject: Letter for Mr Rozkin
Date: October 6, 2021 at 7:20:57 PM GMT+11
To: Enforcement_Group_Admin@worksafe.vic.gov.au

Please find attached letter for Mr Rozkin.
Confirmation of receipt would be appreciated
Rgds
Ken

Ken Phillips

Executive Director

+61- 0412 393 692

kennethnormanphillips@gmail.com

www.selfemployedaustralia.com.au



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PO Box 13103 Law Courts 8010 Vic

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

6 October 2021

Dear Mr Rozkin

I refer to your letter of today, 6 October 2021 in which you refer to and attach a letter to you on behalf of WorkSafe Victoria, from the DPP dated 4 October 2021.

There remain 139 alleged offences and 26 individuals and entities specifically identified in my letter of 29 September 2020 requesting WorkSafe to prosecute.

Bringing a prosecution against one of the 27 individuals and entities identified in my letter does not absolve WorkSafe from its statutory obligation under s.131(3) of the Occupational Health and Safety Act 2004 (Vic) or for that matter, the DPP under s.131(4).

WorkSafe has a statutory obligation to refer the matters that it has decided not to prosecute to the DPP and, pursuant to s.131(4) of the Occupational Health and Safety Act 2004 (Vic), the DPP has a statutory obligation to advise WorkSafe as to whether she believes that prosecutions should be brought in relation to all matters listed in my letter of 29 September 2020.

The DPP has no power under s.131 of the Occupational Health and Safety Act 2004 (Vic) to advise WorkSafe whether it should or should not provide her with its investigative material, brief or investigative brief, as it has been variously referred to. Nor does the DPP have any role or power under s.131 to advise WorkSafe Victoria that it's investigation might or might not be progressing appropriately or otherwise.

The DPP must consider the matter, that is in this case, the investigative materials gathered by WorkSafe Victoria as a result of my letter of 29 September 2020, and advise WorkSafe in writing whether or not the DPP considers that a prosecution, in this case prosecutions, should be brought.

The same written advice provided by the DPP to WorkSafe Victoria must be then provided to me as the person who requested WorkSafe Victoria to prosecute more than 12 months ago.

The DPP's and WorkSafe Victoria's statutory obligations under s.131 are clearly stated and must be respectfully complied with as has been the case on no less than 43 occasions over the past 5 years.

Why is WorkSafe continuing to fail to provide its investigative materials into the Hotel Quarantine Program to the DPP? And why is the DPP writing to WorkSafe with advice outside its ambit under s.131 of the Occupational Health and Safety Act 2004 (Vic)?

WorkSafe Victoria's continuing obfuscation to provide the DPP with the investigative material collated during the conduct of its investigation into the Victorian Government Hotel Quarantine Program, an investigation that it has publicly stated it has indeed conducted and recently concluded, is of great concern to many.

Yours sincerely

Ken Phillips
Executive Director

From: "Enforcement Group Admin (WorkSafe)"
<Enforcement_Group_Admin@worksafe.vic.gov.au>
Subject: RE: Letter to Mr Rozkin - Date correction
Date: October 11, 2021 at 5:00:49 PM GMT+11
To: Ken Phillips <kennethnormanphillips@gmail.com>

Good afternoon Ken

I acknowledge receipt of your letter for Dmitry Rozkin.

Kind regards

**Enforcement
Group
WorkSafe Victoria**

enforcement_group_admin@worksafe.vic.gov.au

567 Collins Street
Melbourne VIC 3000
[www.worksafe.vic.gov.a](http://www.worksafe.vic.gov.au)
u

From: Ken Phillips <kennethnormanphillips@gmail.com>
Subject: Letter to Mr Rozkin - Date correction
Date: October 10, 2021 at 6:18:26 PM GMT+11
To: Enforcement_Group_Admin@worksafe.vic.gov.au

Please find attached letter to Mr Rozkin sent on 8 Oct 2021 in which the date on the letter was incorrect (8 Sept)
Attached is the same letter with the date corrected
Confirmation of receipt of this would be appreciated
With thanks
ken

From: Ken Phillips <kennethnormanphillips@gmail.com>
Subject: Letter for Mr Rozkin
Date: October 8, 2021 at 5:52:53 PM GMT+11
To: "Enforcement Group Admin (WorkSafe)"
<enforcement_group_admin@worksafe.vic.gov.au>

Please find attached letter for my Rozkin
Confirmation of receipt would be appreciated.
with thanks
Ken

Ken Phillips

Executive Director

+61- 0412 393 692

kennethnormanphillips@gmail.com

www.selfemployedaustralia.com.au



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

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

8 October 2021

Dear Mr Rozkin

I refer to previous correspondence between WorkSafe Victoria and myself.

In light of WorkSafe Victoria's constant prevarication and obfuscation in relation to its statutory obligation under s.131(3) of the Occupational Health and Safety Act 2004 (Vic) and the DPP's recent confirmation that she has not actually seen WorkSafe Victoria's investigative materials relevant to my letter to WorkSafe Victoria dated 29 September 2020, I now ask for written confirmation from you on behalf of WorkSafe Victoria, that WorkSafe Victoria did in fact comply with its statutory obligation under s.131(2A) of the Occupational Health and Safety Act 2004 (Vic) and conduct full, proper and comprehensive investigations into each and all of the individuals and entities identified in my letter of 29 September 2020 containing my detailed request for WorkSafe Victoria to prosecute those individuals and entities.

This is not a difficult question and should be able to be answered without delay. Did or did not WorkSafe Victoria conduct a full, proper and comprehensive investigation into each of the allegations of contraventions of the Occupational Health and Safety Act 2004 (Vic) identified and detailed in my letter of 29 September 2020 as accepted by WorkSafe Victoria as meeting the requirements of s.131 of the Occupational Health and Safety Act 2004 (Vic)?

I look forward to your urgent response.

Yours sincerely

Ken Phillips
Executive Director



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

Ms Deborah Glass
 Victorian Ombudsman
 570 Bourke St
 Melbourne 3000
 By way of lodgement on Ombudsman website
<https://www.ombudsman.vic.gov.au/complaints/make-complaint/>

6 October 2021

Dear Ms Glass

I refer to my urgent complaint forwarded to you 29 September 2021, concerning the failure of WorkSafe Victoria to comply with its obligations under s.131 of the Occupational Health and Safety Act 2004 (Vic) and wish to update you on recent developments.

Since forwarding you my complaint letter, WorkSafe has announced that it has charged the Victorian Health Department (one of the 27 individuals and entities identified in my letter to WorkSafe of 29 September 2020, requesting it to prosecute) with a total of 58 offences under the Occupational Health and Safety Act 2004 (Vic) for its role in the bungled Victorian Hotel Quarantine Program.

After making the announcement, WorkSafe forwarded me a letter advising me of the charges and also that its investigations had completed. The letter goes on to say that as a result it believes that it had complied with its obligations under s.131 of the Occupational Health and Safety Act 2004 (Vic). WorkSafe's letter to me states;

“WorkSafe has now brought a prosecution in respect of the occurrence of the act, matter or thing outlined in your request. Accordingly, WorkSafe has now fulfilled its obligations to you under Section 131 of the Act.”

This assertion is palpable nonsense and is clearly being used by WorkSafe in an attempt to justify its continuing failure to comply with its statutory obligations. The occurrence of the act, matter or thing outlined in my request of 29 September 2020 was not the fact of the Hotel Quarantine Program as WorkSafe now wants to suggest but rather the failures in its planning, development, control, operation and management by the people and agencies involved.

WorkSafe has decided not to prosecute these people and agencies as I requested and therefore must now provide its investigative material to the DPP in accordance with s.131(3) of the Occupational Health and Safety Act 2004 (Vic).

Is WorkSafe seriously suggesting that I should have made 27 separate requests, one for every individual and entity that I requested to be prosecuted, rather than the single letter I sent on 29 September 2020?

I trust this additional information will be useful to you when considering my complaint about WorkSafe's continuing failure to comply with its statutory obligations.

Yours sincerely

Ken Phillips
Executive Director
0412 393 692

7 October 2021

File No: C/21/20536

Document Ref: DOC/21/77278

By email to kennethnormanphillips@gmail.com

Dear Ken Phillips

Your complaint about Victorian WorkCover Authority (WorkSafe)

Thank you for your online complaint about WorkSafe's occupational health and safety investigation of Hotel Quarantine and for providing copies of your correspondence with WorkSafe about the matter. I have also received your letter of 6 October 2021. I understand you are concerned that WorkSafe did not follow section 131 of the *Occupational Health and Safety Act 2004* (Vic) ('the OHS Act') 'Procedure if prosecution is not brought'.

I am sorry I can't help you with this matter. Put simply, on the information available, it does not appear WorkSafe failed to follow the correct procedure.

I have provided some information about the Ombudsman's role and explained my assessment of your complaint in more detail below.

Role of the Ombudsman

The Ombudsman can consider complaints about WorkSafe under the *Ombudsman Act 1973* (Vic). The Ombudsman is independent and does not represent any of the parties involved. We also don't investigate every complaint we receive and have to carefully consider which matters we take on. We may decide not to deal with a complaint if it appears the organisation being complained about hasn't made a mistake or acted outside their authority.

Assessment

I have assessed your complaint and considered relevant information, including applicable laws, and the information you provided.

In your complaint you claim WorkSafe did not send its investigative materials to the Director of Public Prosecutions ('the DPP') and has therefore contravened Section 131(3) of the OHS Act.

Information provided to this office shows that WorkSafe referred the matter to the DPP (after a written request was made of it when no prosecution had been brought within 9 months). We understand the DPP acknowledged receipt of the

referral. Section 131 of the OHS Act does not specify the substance of what needs to be included in a referral to the DPP. Based on this, it is my view, WorkSafe's referral of the matter to the DPP appears consistent with its responsibilities under section 131 of the OHS Act.

As you are aware, on 29 September 2021 WorkSafe charged the Department of Health with 58 breaches under the OHS Act and the matter is now before the court. WorkSafe's statement can be found at [Charges laid over hotel quarantine - WorkSafe](#).

My enquiries with WorkSafe indicate that WorkSafe have offered the DPP a copy of the brief of evidence.

Given this, I will not be taking further action on your complaint at this time. I have provided a copy of this letter to WorkSafe.

Thank you for contacting us with your concerns.

Yours sincerely

Peta McManus
Manager, Statutory Functions



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

Peta McManus
Victorian Ombudsman
Level 2, 570 Bourke St
Melbourne 3000.
By email: peta.mcmanus@ombudsman.vic.gov.au

8 October 2021

Dear Ms McManus

Thank you for your letter of 7 October 2021, however, I respectfully request that you reconsider your assessment as your analysis is flawed.

First, for a proper referral to the DPP to be made under s.131(3) of the Occupational Health and Safety Act 2004 (Vic) (the Act) the relevant investigative material must be included. It is illogical to consider otherwise.

The DPP cannot comply with her obligations under s.131(4) of the Act unless she is provided with sufficient material on which to provide written advice to WorkSafe Victoria, as to whether or not she considers that prosecutions should be brought. The DPP's advice needs to be sufficiently detailed for WorkSafe Victoria to be able to decide whether or not to follow it. The obligations of the DPP cannot be fulfilled unless the investigative material is referred to her to review.

The legislative process contained in ss.131 (3), (4) and (5) of the Act would be rendered completely meaningless if, as you suggest, a proper referral might occur without the inclusion of the investigative materials.

Second, the DPP has no option to refuse to accept a copy of, as you describe it, "the brief of evidence". As stated above and pursuant to s.131(4) of the Act, the DPP has an obligation to review the investigative material or brief of evidence and provide WorkSafe Victoria with written advice. The DPP cannot do so unless she has the investigative materials on which to base her advice.

WorkSafe Victoria continues to fail to comply with its statutory obligation to provide the DPP with its investigative materials in relation to my request for WorkSafe Victoria to prosecute the individuals and entities identified in my letter of 29 September 2020.

Please reconsider your assessment immediately and I look forward to receiving your response.

Yours sincerely
Ken Phillips
Executive Director

18 October 2021

File No: C/21/20536

Document Ref: DOC/21/81712

Dear Ken Phillips

Your complaint about Victorian WorkCover Authority (WorkSafe)

Thank you for your letter of 8 October 2021.

I understand you are concerned that I did not properly consider your complaint about WorkSafe's application of section 131 of the *Occupational Health and Safety Act 2004* (Vic) ('the OHS Act'), titled 'Procedure if prosecution is not brought'.

I have again considered your argument that WorkSafe's referral to the Director of Public Prosecutions ('the DPP') was not a proper referral because it did not include WorkSafe's investigative materials. For the reasons I outlined in my previous letter, I remain of the view that WorkSafe's referral of the matter to the DPP appears consistent with its responsibilities. I am satisfied that continuing to deal with your complaint about this issue is therefore unnecessary or unjustifiable in the circumstances.

Under section 131(4) of the OHS Act, the DPP is requested to review the decisions of WorkSafe in cases where WorkSafe has made a final determination not to prosecute. Given that WorkSafe has decided to prosecute the Department of Health with OHS Act offences, as a result of its investigation of the Hotel Quarantine matter, it does not appear that s131(4) of the OHS Act continues to apply in this matter. I understand that the DPP has advised WorkSafe that it will receive the evidence should the matter proceed to trial.

I understand that your request to WorkSafe included individuals and agencies you believed should be charged with offences under the OHS Act. A request to investigate is made under s131(1) of the OHS Act in relation to the occurrence of an act, matter or thing. Ultimately, whoever is charged will be determined by supporting evidence obtained during investigation of the act, matter or thing.

Section 13AB of the *Ombudsman Act 1973* (Vic) prohibits the Ombudsman from performing functions or duties or exercising powers in a manner that would prejudice criminal proceedings or criminal investigations. The Ombudsman cannot direct or compel WorkSafe to charge individuals or agencies with offences under the OHS Act.

If you believe I have not followed the proper process or have made a mistake in my decision, you may request an internal review of your case. A request for internal review should be made within 60 days of the original decision (made on 7 October 2021) and include:

- an explanation of why you believe I made an error, and
- evidence in support of your belief.

Further information on the internal review process is at [Make a complaint about us | Victorian Ombudsman](#).

Yours sincerely

Peta McManus

Manager, Statutory Functions

From: "Enforcement Group Admin (WorkSafe)"
 <Enforcement_Group_Admin@worksafe.vic.gov.au>
 Subject: RE: letter for Mr Rozkin from Ken Phillips Self Employed Australia
 Date: December 22, 2021 at 9:18:02 AM GMT+11
 To: Ken Phillips <kennethnormanphillips@gmail.com>

Dear Mr Phillips

Thank you for your letter, I write to confirm receipt. WorkSafe will respond in due course, however please note that Dmitry Roskin is on leave until 10 January 2022.

Kind regards

Enforcement Group
 WorkSafe Victoria

enforcement_group_admin@worksafe.vic.gov.au

567 Collins
 Street, Melbourne VIC
 3000 www.worksafe.vic.gov.au

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From: Ken Phillips <kennethnormanphillips@gmail.com> **Sent:** Tuesday, 21 December 2021 2:02 PM **To:** Enforcement Group Admin (WorkSafe) <Enforcement_Group_Admin@worksafe.vic.gov.au> **Subject:** letter for Mr Rozkin from Ken Phillips Self Employed Australia

Please find attached letter for Mr Rozkin and accompanying attachment

Confirmation of receipt would be appreciated.

With thanks

Ken Phillips

Executive Director

+61- 0412 393 692

kennethnormanphillips@gmail.com[L T]
[SEP*SEP]www.selfemployedaustralia.com.au[L T]
[SEP*SEP*SEP][L T]
[SEP*SEP]**IMPORTANT -**

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From: "Enforcement Group Admin (WorkSafe)"

<Enforcement_Group_Admin@worksafe.vic.gov.au>

Subject: RE: letter for Mr Rozkin from Ken Phillips Self Employed Australia

Date: December 22, 2021 at 8:52:25 AM GMT+11

To: Ken Phillips <kennethnormanphillips@gmail.com>

Cc: "Enforcement Legal (WorkSafe)" <Enforcement_Legal@Worksafe.vic.gov.au>

Dear Mr Phillips

Thank you for your letter, I write to confirm receipt. WorkSafe will respond in due course, however please note that Dmitry Roskin is on leave until 10 January 2022.

Kind regards

Enforcement Group
WorkSafe Victoria

enforcement_group_admin@worksafe.vic.gov.au

567 Collins
Street, Melbourne VIC
3000 www.worksafe.vic.gov.au

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From: Ken Phillips <kennethnormanphillips@gmail.com> **Sent:** Tuesday, 21 December 2021 2:02 PM **To:** Enforcement Group Admin (WorkSafe) <Enforcement_Group_Admin@worksafe.vic.gov.au> **Subject:** letter for Mr Rozkin from Ken Phillips Self Employed Australia

Please find attached letter for Mr Rozkin and accompanying attachment

Confirmation of receipt would be appreciated.

With thanks

Ken Phillips

Executive Director

+61- 0412 393 692

kennethnormanphillips@gmail.com

SEP

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PO Box 13103 Law Courts 8010 Vic

21 December 2021

Dmitry Rozkin
Director (Acting)
Enforcement Legal
WorkSafe Victoria

By email only: Enforcement_Group_ enforcement_group_admin@worksafe.vic.gov.au

Dear Mr Rozkin

Request under s 131(1) for the Authority (WorkSafe) to bring prosecutions for offences under the *Occupational Health and Safety Act 2004* (Vic) (OHS Act) (Second Request)

I refer to your letter dated 29 September 2021 in response (**Response**) to my letter dated 29 September 2020 (**First Request**) (copy **attached** for ease of reference) requesting WorkSafe to bring prosecutions against some 27 individuals and entities in relation to occurrences, acts and omissions constituting 172 offences against the OHS Act, as referred to on page 2 of the First Request.

Your Response informed me that a prosecution has been brought against one of the entities mentioned in my First Request, namely the Department of Health, with 58 charges being filed.

However, contrary to what you assert in the penultimate paragraph of your Response, WorkSafe did not thereby “fulfil ... its obligations ... under Section 131 of the Act.” It did not prosecute the remaining 26 individuals and entities referred to in my First Request in relation to the offences there referred to.

I now request that, in accordance with s 131(3) of the OHS Act, WorkSafe advises me whether prosecutions will be brought against those remaining individuals and entities, and/or provides written reasons for any decision not to prosecute any particular individuals or entities in respect of any particular alleged offences as identified in my First Request.

I look forward to your prompt response.

Yours sincerely

Ken Phillips
Executive Director
Self Employed Australia

Begin forwarded message:

From: "Enforcement Group Admin (WorkSafe)"
 <Enforcement_Group_Admin@worksafe.vic.gov.au>
Subject: Reply re: Request under s 131(1) for the Authority (WorkSafe) to bring prosecutions for offences under the Occupational Health and Safety Act 2004 (Vic) (OHS Act) (Second Request)
Date: January 10, 2022 at 5:14:46 PM GMT+11
To: Ken Phillips <kennethnormanphillips@gmail.com>

Dear Mr Phillips

Please find **attached** our letter dated 10 January 2022.

Kind regards

Enforcement Group
 WorkSafe Victoria

enforcement_group_admin@worksafe.vic.gov.au

567 Collins Street
 Melbourne VIC 3000
www.worksafe.vic.gov.au

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Michelle Repacholi
 Paralegal
 Enforcement Legal
 division
 Legal &
 Governance

michelle_repacholi@worksafe.vic.gov.au
 Tel/ 03 4243 7237
 Fax/ 03 4243 9321

9 / 567 Collins Street
 Melbourne VIC 3000
www.worksafe.vic.gov.au

BE GREEN, READ FROM THE SCREEN

We work flexibly at WorkSafe. If you are receiving this e-mail before or after ordinary business hours, there is no expectation that you review or respond to this email until your working day commences

1 Malop Street Geelong VIC 3220
PO Box 279, Geelong 3220
Telephone 03 4243 7000
Fax 03 4243 9321
worksafe.vic.gov.au



Mr Ken Phillips

10 January 2022

By email only: kennethnormanphillips@gmail.com

Dear Mr Phillips,

I refer to your letter dated 21 December 2021.

The Victorian WorkCover Authority (trading as WorkSafe Victoria) has brought a prosecution in respect of the occurrence of the act, matter or thing outlined in your request dated 29 September 2020 and advised you of this outcome in a letter dated 29 September 2021.

Accordingly, WorkSafe has fulfilled its obligations to you under section 131 of the *Occupational Health and Safety Act 2004* and will not be taking any further action in response to your request.

You may wish to seek independent legal advice to address any further queries you may have in relation to your correspondence.

Yours faithfully,

A handwritten signature in black ink, appearing to read "Dmitry Rozkin", followed by a horizontal line.

Dmitry Rozkin,
Director, Enforcement Legal

Begin forwarded message:

From: Ken Phillips <kennethnormanphillips@gmail.com>
Subject: Fwd: letter for Mr Rozkin from Ken Phillips SEA
Date: January 25, 2022 at 1:32:00 PM GMT+11
To: adrian_trotman@worksafe.vic.gov.au

Please find attached letter to Mr Rozkin
 Confirmation of receipt would be appreciated

With thanks

Ken Phillips

Executive Director

+61- 0412 393 692

kennethnormanphillips@gmail.com

www.selfemployedaustralia.com.au

From: "Michelle Repacholi (WorkSafe)" <michelle_repacholi@worksafe.vic.gov.au>
Subject: Automatic reply: letter for Mr Rozkin from Ken Phillips SEA
Date: January 24, 2022 at 2:17:14 PM GMT+11
To: Ken Phillips <kennethnormanphillips@gmail.com>

I am on leave returning Monday 7 February 2022. I will respond to your message upon my return. If your message is urgent, please contact Adrian Trotman, Lead Lawyer on (03) 4243 7210 or adrian_trotman@worksafe.vic.gov.au

From: Ken Phillips <kennethnormanphillips@gmail.com>
 Subject: letter for Mr Rozkin from Ken Phillips SEA
 Date: January 24, 2022 at 2:13:12 PM GMT+11
 To: _Admin@worksafe.vic.gov.au
 Cc: michelle_repacholi@worksafe.vic.gov.au

Hello Michelle

Please find attached letter to Mr Rozkin

Confirmation of receipt of this would be appreciated.

Rgds

Ken Phillips

Executive Director

+61- 0412 393 692

kennethnormanphillips@gmail.com

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www.selfemployedaustralia.com.au
PO Box 13103 Law Courts 8010 Vic

24 January 2022

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

Dear Mr Rozkin

Request under s 131(3) of the *Occupational Health and Safety Act 2004* (Vic) (OHS Act) for the Authority (WorkSafe) to refer matters to the Director of Public Prosecutions

I refer to your letter dated 10 January 2022 in response (**Response**) to my letter dated 21 December 2020 requesting WorkSafe to advise whether prosecutions will be brought against some 27 individuals and entities in relation to occurrences, acts and omissions constituting 172 offences against the OHS Act as detailed in my letter dated 29 September 2020 (**First Request**).

Your Response informed me that a prosecution has been brought “in respect of the occurrence of the act, matter or thing outlined in” my First Request. However, that prosecution is against only one of the 27 individuals and entities mentioned in my First Request, namely the Department of Health, with 58 charges being filed. That prosecution is not in respect of the occurrences of the acts, matters or things outlined in my First Request relating to the other 26 individuals and entities there identified.

Your response confirms that WorkSafe will not prosecute those other 26 individuals and entities.

Thus, again, contrary to what you assert in the penultimate paragraph of your Response, WorkSafe has not “fulfilled its obligations ... under Section 131 of the [OHS Act].”

I now request that, in accordance with s 131(3) of the OHS Act, WorkSafe refers the occurrences of the acts, matters or things detailed in my First Request, relating to the other 26 individuals and entities as identified in my First Request, to the Director of Public Prosecutions.

I look forward to your prompt response.

Yours sincerely

Ken Phillips
Executive Director

From: "Enforcement Group Admin (WorkSafe)"
<Enforcement_Group_Admin@worksafe.vic.gov.au>
Subject: Reply re: Fwd: letter for Mr Rozkin from Ken Phillips SEA
Date: January 31, 2022 at 9:35:45 AM GMT+11
To: "kennethnormanphillips@gmail.com"
<kennethnormanphillips@gmail.com>

Dear Mr Phillips,

Please find attached our letter dated 31 January 2022.

Kind regards,

Enforcement Group WorkSafe Victoria	enforcement_group_admin@worksafe.vic.gov.au	567 Collins Street Melbourne VIC 3000 www.worksafe.vic.gov.au
--	--	--

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- (5) Please consider the environment before printing.



Mr Ken Phillips

31 January 2022

By email only: kennethnormanphillips@gmail.com

Dear Mr Phillips

I confirm receipt of your letter dated 24 January 2022.

The Victorian WorkCover Authority's position, as set out in its letter dated 10 January 2022, remains unchanged.

I reiterate that you may wish to seek independent legal advice to address any further queries you have in relation to this matter.

Yours sincerely

A handwritten signature in black ink, appearing to be "Dmitry Rozkin", followed by a horizontal line.

Dmitry Rozkin
Director
Enforcement Legal

www.selfemployedaustralia.com.au

Begin forwarded message:

From: Ken Phillips <kennethnormanphillips@gmail.com>
Subject: Letter to Mr Rozkin from K Phillips -Self Employed Australia
Date: February 2, 2022 at 5:06:33 PM GMT+11
To: "Enforcement Group Admin (WorkSafe)"
<enforcement_group_admin@worksafe.vic.gov.au>
Cc: adrian_trotman@worksafe.vic.gov.au, michelle_repacholi@worksafe.vic.gov.au

Please find attached letter to Mr Rozkin of todays date.
Confirmation of receipt would be appreciated
Rgds
Ken



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

2 February 2022

Dmitry Rozkin
Director
Enforcement Legal
WorkSafe Victoria
By email only: Enforcement Group Admin@worksafe.vic.gov.au

Dear Mr Rozkin

Request under s 131(3) of the *Occupational Health and Safety Act 2004* (Vic) (OHS Act) for the Authority (WorkSafe) to refer matters to the Director of Public Prosecutions

I refer to my letters of 29 September 2020 (**First Request**) and 8 October 2021 (**Investigation Query letter**) and your letters of 29 September 2021 (**Response to Request letter**), 10 January 2022 (**No prosecution confirmation letter**) and 31 January 2022 (**Non-referral confirmation letter**).

In the First Request, I identified 27 individuals and entities whom I considered may have engaged in conduct that constituted offences under the OHS Act in relation to the Hotel Quarantine Containment Program.

Sub-section 131(2A) of the OHS Act requires WorkSafe Victoria to report on its investigation into any indictable offences where a person requested that it bring a prosecution in relation to the occurrence of acts, matters or things under section 131 of the OHS Act. Sub-section 131(2C) states that WorkSafe must commence and complete investigations under this section in as timely a manner as is reasonably practicable.

Therefore, WorkSafe is obligated under section 131 to investigate the occurrences of acts, matters or things that I considered constituted offences in relation to all 27 individuals and entities identified in the First Request, and to do so in as timely a manner as is reasonably practicable.

In the Response to Request letter, WorkSafe advised me that it had completed its investigation into the matters identified in my First Request, and was bringing prosecution against the Victorian Department of Health. You have since indicated by the responses in the No prosecution confirmation letter and the Non-referral confirmation letter that you are not proposing to bring prosecutions against any of the other 26 individuals or entities identified in the First Request, and that you are not referring the occurrences of the acts, matters or things I raised concerning those other 26 individuals or entities to the Director of Public Prosecutions (**DPP**). This suggests that you have not completed an investigation into each of these 26 other individuals or entities, as otherwise the OHS Act would require you to either bring a prosecution or refer these matters to the DPP.

In the Investigation Query letter, I requested written confirmation from you that WorkSafe Victoria did in fact comply with its statutory obligation under s 131(2A) of the OHS Act by conducting a full, proper and comprehensive investigation into each and all of the 27 individuals and entities identified in the First Request. As noted in the Investigation Query Letter, WorkSafe accepted that the First Request met the requirements of section 131 of the OHS Act. It was therefore obligated under the OHS Act to investigate these matters. However, nearly four months have now passed and I have not received a response to that letter. Accordingly, I take it that WorkSafe has not in fact conducted investigations into the occurrences of the acts, matters or things I raised concerning the remaining 26 individuals and entities identified in the First Request.

Yours sincerely

Ken Phillips
Executive Director