

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

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.