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

And by email: enforcement_group_admin@worksafe.vic.gov.au

18 August 2020

Request for the Authority to investigate and prosecute pursuant to s.131 Occupational Health & Safety Act 2004 (Vic) (the OHS Act).

I consider that the development, planning, management and implementation of the Victorian Government COVID-19 Hotel Quarantine Containment Program, the planning phase of which commenced in late January or early February, 2020 (such time only specifically ascertainable by investigation) instigated, managed or controlled by the Victorian Government, various Victorian Government organisations and agencies including their contractors and staff, constitutes several offences contrary to the OHS Act in that the health, safety and welfare of employees and others persons was put at risk contrary to, but not limited to, sections 21, 23, 26, and 32 of the OHS Act.

I understand that no prosecution has been brought in respect of such offences, however, I have no way of knowing if WorkSafe has commenced an investigation into these incidents.

It is understood that in relation to a number of offences the 6-month period during which the Authority has not brought a prosecution may not have expired, however, it would be a derogation of the Authority's statutory responsibilities for it to not commence a thorough and comprehensive investigation immediately.

To secure the health and safety of workers and all members of the public and to avoid the potential loss or destruction of evidence, I request that the Authority commence an investigation immediately and, pursuant to s.131 of the OHS Act, prosecute accordingly.

Confirmation of receipt of this email and letter is requested.

Yours sincerely

Ken Phillips
Executive Director
Self Employed Australia

Section 131 of the OHS Act 2004 (Vic).

131. 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; 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) 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.

(3) If the Authority advises the person that a prosecution will not be brought, 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.

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Victorian Legislation and Parliamentary Documents

Occupational Health and Safety Act 2004 Act No. 107/2004

Part 11—Legal Proceedings

(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 sub-section (1); and
- (b) the number of cases in which the Authority has advised under sub-section (2)(b) that a prosecution has been or will be brought, or will not be brought; and
- (c) the number of cases in which the Director of Public Prosecutions has advised under sub-section (4) that a prosecution should be brought or should not be brought.