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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

25 October 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 on or about the 17 October, 2020 of the Victorian Government Department of Health and Human Services (DHHS) and its officers (as defined by the Occupational Health and Safety Act 2004 (Vic)) involved in the East Preston Islamic College (the College) COVID-19 cluster contract tracing program constitute indictable criminal offences against the Occupational Health and Safety Act 2004 (Vic).

I therefore request that the Authority (WorkSafe) prosecute the DHHS under section 23 for failing to ensure that persons other than its employees were not exposed to risks to their health and the relevant DHHS officers under section 144 for failing to take reasonable care that the DHHS did not contravene section 23 of the Occupational Health and Safety Act 2004 (Vic).

The East Preston Islamic College COVID-19 cluster was caused by the following management failures, at least, by DHHS:

1. Providing the mother of the family group at the centre of the cluster, with an official DHHS clearance letter for her children. The mother of the children then took the DHHS letter to the College who, on the basis of the DHHS letter, allowed the children to return to classes.
2. Not providing the mother of the children or the College with clear advice and instructions as to what they could do or not do in relation to the children returning to school. .
3. Appointing a case manager for each individual family member and not providing systematic coordination between the individual case managers. DHHS have admitted publicly that they did not coordinate across the several case managers to provide the mother adequate advice and instructions.

As a result of these contraventions, at least 400 people have been forced to isolate. I have no way of knowing precisely how many people were infected and or hospitalised with COVID-19 as a result of the contraventions, however, media reports have put the number of infections to date at 16.

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.

It is understood that in relation to these offences the 6-month period from the time the offences were committed, during which the Authority has not brought a prosecution has not 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 Occupational Health and Safety Act 2004 (Vic), prosecute accordingly.

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(2A) 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-