Ms Sue Weston PSM Ref No: RAR19-055

CEO of Comcare 26 May 2019

GPO Box 9905 [for soft copy contact: cecilymason007@gmail.com]

Canberra ACT 2601

Dear Ms Weston

**Re: Comcare Regulator responsible for WHS Act compliance**

Recent Royal Commissions, eg Banking[[1]](#footnote-1), demonstrate conclusively that when Regulators fail to enforce laws, even the most trusted Institutions will continue to breach these laws when it suits them[[2]](#footnote-2).

Comcare as the Regulator of the *Work Health and Safety Act 2011* (Cth) (WHS Act) is responsible for enforcing compliance with the WHS Act in all Commonwealth Government workplaces. This includes all ‘detention facilities’ operated by the Department of Home Affairs – formerly the Department of Immigration and Border Protection (DIBP).

The WHS Act imposes on all workplace operators a ‘primary duty of care’ to ensure that the health (including psychological health) and safety of everyone at a workplace – workers and ‘other persons’ – is not put at risk. At detention facilities ‘other persons’ includes detainees. To meet this duty of care, workplace operators must conduct comprehensive risk assessments to identify significant risks and then eliminate or mitigate them as far as is practicable.

In September 2014, a 24-year-old asylum seeker, Hamid Khazaei, was declared brain dead at a Brisbane hospital after a leg infection contracted at the Manus Island Regional Processing Centre became full-blown sepsis. A Queensland Coroner’s Inquest found that “Mr Khazaei’s death was preventable. His death was the result of the compounding effects of multiple errors rather than any single action or inaction”[[3]](#footnote-3). The Coroner then listed multiple errors occurring during Hamid’s clinical treatment and ineffective transfer processes to Australia that led to his death.

The Coroner stated that the Australian Government is responsible for the care of persons relocated to offshore processing countries. DIBP and International Health and Medical Services (IHMS) accepted the Coroner’s findings and associated recommendations: this strongly suggests a proper risk assessment and appropriate health and safety measures were not in place prior to Hamid’s death.

It is essential to public trust that any government department, however powerful, is held to account for breaches of obligations under the WHS Act. It is imperative that any investigations are completed so that any subsequent prosecutions are commenced by the Commonwealth Director of Public Prosecutions (DPP) before the Statutory deadline of 29 July 2019 (one year from publication of the Coroner’s Report 30 July 2018). A detailed legal argument covering this matter was submitted to you by qualified advocates in WHS Law in February this year[[4]](#footnote-4).

Asylum seekers held on Manus Island for six long years are now in a grave situation. Current inadequate health services in PNG are rapidly deteriorating. This places a special obligation on Home Affairs to put in place the Coroner’s recommendations relating to provision and maintenance of appropriate clinical service and an efficient patient transfer process to Australia where necessary. Comcare will play a vital role in ensuring this occurs by conducting proper investigations and prosecutions of breaches of the WHS Act where they occur.

Accordingly, I urge you to work closely with the DPP to ensure that Khazaei-related charges can be laid by 29 July 2019.

Yours sincerely

Name:

Address:

1. 2019 Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry – financialservices.royalcommission.gov.au/ [↑](#footnote-ref-1)
2. 2017 Royal Commission into Institutional Responses to Child Sexual Abuse – https://www.childabuseroyalcommission.gov.au/final-report [↑](#footnote-ref-2)
3. 2018 Coroners Court of Queensland Findings of Inquest Citation: Inquest into the death of Hamid Khazaei –
 https://www.courts.qld.gov.au/\_\_data/assets/pdf\_file/0005/577607/cif-khazaei-h-20180730.pdf [↑](#footnote-ref-3)
4. M. Costello & M. Sinclair, Letter to CEO of Comcare February 2019 [↑](#footnote-ref-4)