*NB: this letter is effectively an ultra-précis of the 7-page, very legalistic 2018 original. It was endorsed by Gillian Triggs, Julian Burnside QC and 40+ other ‘legals’ or advocates.*

To the CEO of Comcare,

Ms Jennifer Taylor

GPO Box 9905, Canberra ACT 2601

Email: general.enquiries@comcare.gov.au

 February 2019

Dear Ms Taylor,

*Work Health and Safety Act 2011* (Cth) prosecution following Coroner’s Khazaei Report?

On the 30th of July 2018, the Queensland State Coroner handed down his report of the inquest into the death of Mr Hamid Khazaei (**the Report**), who had been detained at the regional processing centre (**RPC**) on Papua New Guinea’s Manus Island. The Report recounts that, after a 1-day delay involving at least four levels of the Department of Immigration and Border Protection (**DIBP**), the critically ill Mr Khazaei was flown to Australia in late August 2014, arriving brain dead at Brisbane’s Mater hospital. He died on the 5th of September after life support was turned off. Here is a link to the Report.

<https://www.courts.qld.gov.au/__data/assets/pdf_file/0005/577607/cif-khazaei-h-20180730.pdf>

As you know, a workplace law, the *Work Health and Safety Act 2011* (Cth) (**the Act**):

* has “extended geographical jurisdiction” at Commonwealth workplaces in countries like PNG that lack an equivalent law, and thus applied at the Manus RPC;
* requires DIBP to *pro-actively* “ensure … the health and safety of workers; [and] that the health and safety of other persons [detainees] is not put at risk …”;
* has a standard 2-year limit on the laying of charges, but gives Comcare a further 1 year if Act offences are apparent in the report or proceedings of a coroner’s inquest.

Possible offences against the Act are apparent in the Report. For example, it said (at p 3) that Mr Khazaei’s death was “preventable”, and criticised the slow, unwritten, unclear airlift approval process. It also found (at p 78) that an antibiotic (Meropenem) that would “safely and effectively treat” most common tropical infections, “including Mr Khazaei’s”, was not stocked at the Manus clinic. We therefore request that Comcare move from conducting “inquiries” (as advised by your Anthony Blucher in his e-mail to us on 17/12/2018) to conducting a thorough re-investigation – aimed at compiling a full ‘brief of evidence’ in time to enable Comcare or the Commonwealth Director of Public Prosecutions (**CDPP**) to lay any charge(s) before the 29th July 2019 deadline.

Such a re-investigation is required because Comcare in 2014 conducted a mere ‘desktop exercise’: Comcare’s “Inspector Report” just asserted (relying solely on DIBP-supplied documents – no mention of any witness statement) that the delay was not “a contributing factor” to Mr Khazaei’s sepsis-related death, and that there was no breach of the Act.

Because that ‘investigation’ was so inadequate, we have copied this letter to the CDPP, Ms Sarah McNaughton SC, asking that her lawyers give Comcare “pre-brief advice” – which, as the CDPP website says, aims to “assist investigators to focus their efforts and most efficiently gather admissible evidence [that can] … prove [any alleged] offence …”.

Yours sincerely,

Max Costello LLM Margaret Sinclair

former WorkSafe Victoria prosecuting solicitor       Diploma of Work Health and Safety

refugee advocate

Gillian Triggs <gilliand.triggs@gmail.com>

Tue 11/12/2018, 4:26 PM

Dear Max.

I support your letters and have followed this work health and safety initiative for some time.

... Would you please add my names support for the letters.

Best wishes,

Gillian Triggs

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**From:** Robert Richter <richter@vicbar.com.au>
**Sent:** Wednesday, 12 December 2018 4:32 PM

Dear Max,

May I say that I entirely agree with your views and would be prepared to sign such a letter with one observation – which is why I am circulating this to all the recipients – I don’t believe that individually signed letters have any impact and would urge you to consider a letter with a large number of signatories.  That of course depends on who amongst the addressees is also prepared to sign.

Let me know what responses there are and we may then have letters with multiple signatories.

Cheers

Robert Richter QC

Crockett Chambers
Level 7, 530 Lonsdale St
Melbourne VIC 3000

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Julian Burnside <burnside@vicbar.com.au>

Fri 14/12/2018 1:05 PM

Dear Max

Feel free to add my name

Very best wishes for Christmas and the New Year

Julian

Julian Burnside AO, QC

Level 30, 200 Queen St Melbourne

[www.julianburnside.com.au](http://www.julianburnside.com.au/%22%20%5Ct%20%22_blank)

@JulianBurnside

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_