

To: Mr Aaron Hughes, acting CEO, Comcare  
The Hon Mark Dreyfus QC MP, Attorney-General  
The Hon Tony Burke MP, Minister for Employment and Workplace Relations  
The Hon Clare O'Neil MP, Minister for Home Affairs  
The Hon Andrew Giles MP, Minister for Immigration, Citizenship and  
Multicultural Affairs

From: Refugee Action Collective (Victoria) – RAC (Vic)  
Refugee Action Coalition – RAC (Sydney)

Date: 12 July 2022

Re: Unprevented health risks, esp. COVID, in immigration detention facilities

First, an explanatory table for Ministers. This letter is addressed to you because your portfolio responsibilities, as per the Administrative Arrangements Order of 23 June 2022, include some matter/s and Commonwealth laws that relate to the content of this letter. Please advise ASAP which of you will be responding to our concerns.

Minister	Portfolio matter	Legislation
Dreyfus	Law enforcement policy and operations Administration of criminal justice, including - Criminal law policy and principles of criminal responsibility Matters relating to prosecution Sentencing and management of federal offenders	<i>Law Enforcement Integrity Commissioner Act 2006</i>
Burke	Work health and safety	<i>Work Health and Safety Act 2011</i>
O'Neil	Immigration ... including entry, stay and departure arrangements for non-citizens	<i>Australian Border Force Act 2015</i> <i>Citizenship Act 2007</i> <i>Migration Act 1958</i>
Giles	Immigration (Scope of matters? The Order does not specify.)	

Dear Acting CEO and Ministers

In response to both past and present exposures of immigration detainees to COVID-19 risks, we write to call on Comcare, regulator of the *Work Health and Safety Act 2011* (WHS Act), to perform its section 152 function – “to monitor and enforce compliance with this Act” – in relation to immigration detention facilities (IDFs).

We also call on relevant Ministers to jointly remind Comcare’s CEO that people held in IDFs are highly COVID-vulnerable – so that non-compliance with a WHS Act “health and safety duty” relating to “other persons” (detainees) could involve a risk of death.

IDFs include immigration detention centres (IDCs), immigration transit accommodation facilities (ITAs), and alternative places of detention (APODs), such as hotels. They are all Commonwealth workplaces and therefore subject to the Act.

Accordingly, Comcare must ensure that the Department of Home Affairs, in particular its Australian Border Force (ABF) unit – whose website says “we are responsible for the ...



management of ... [IDFs], including the health and welfare of detainees" – complies with its health and safety duties under the Act.

Such duties require Home Affairs/ABF to pro-actively prevent risks to health and safety, including COVID risks. Failure to do so is a breach of a WHS duty – a criminal offence.

Multiple alleged failures to prevent COVID risks have led to the recent prosecution – by Comcare's Victorian counterpart, WorkSafe – of an aged care home, under the State's very similar OHS Act. As Erin Pearson reported in *The Age* (4/7/22):

St Basil's Homes for the Aged has been charged by WorkSafe with failing to provide a safe working environment for its staff and others during the COVID-19 pandemic.

Forty-five residents ... died from the coronavirus in 2020 ... [after 94] residents and 94 staff tested positive for COVID-19 ...

... WorkSafe ... charged the ... home with nine breaches of the Occupational Health and Safety Act following its investigation ....

WorkSafe alleges that in July 2020, after a worker notified the home they'd tested positive for COVID-19, St Basil's failed to ensure workers wore personal protective equipment or train them in how to safely use PPE, verify staff could competently use the equipment, advise staff when it must be used, or supervise its use.

St Basil's has been charged with nine breaches including failing to provide or maintain a safe working environment; ... two counts of failing to allow workers to perform duties without a risk to their health; ... three counts of failing to ensure those other than staff were not exposed to health and safety risks, and three counts of failing to ensure the workplace was safe for those entering and leaving the premises.

Each breach carries a maximum fine of \$1.49 million, meaning that, if convicted, St Basil's could face a penalty of up to \$13.41 million.

However, such non-preventions (but no deaths) at Melbourne's Park Hotel APOD – a Commonwealth workplace – have so far seen no Comcare prosecution. Why not?

#### The Park Hotel situation

In late 2021, two RAC (Vic) members, one being Margaret Sinclair (Dip WHS), wrote to Comcare, advising of unprevented COVID risks to the APOD's 45 detainees, e.g., they were permanently deprived of fresh air (windows being kept shut), and were not offered a first jab until August, four months after vaccines had become available.

By September, 21 detainees had contracted COVID.

On 14 November, Sinclair wrote again providing more details of unaddressed risks and requesting six forms of enforcement action. Comcare's 23 November reply said there was "an ongoing inspection and investigation" but gave no details. Comcare is yet to advise what (if any) further actions it took or what (if any) compliance resulted.

#### Current or recent cases of apparently unprevented COVID risks at IDFs

RAC (Sydney) spokesperson Ian Rintoul says, "There are or have recently been COVID outbreaks in Sydney's Villawood IDC (one compound being locked down), and several cases in WA's Yongah Hill IDC".

RAC (Vic) spokesperson David Glanz says that, although all previously long-held detainees have been released from the Park Hotel APOD, "it is now being used to hold detainees transitioning from hospital to an IDF. Also, when two compounds at



Melbourne's ITA facility (MITA) were recently in COVID lockdown, some infected detainees were transferred to the Park Hotel to be quarantined."

We therefore call on any relevant Minister/s to promptly ask:

- Home Affairs/ABF: (a) Has comprehensively effective COVID prevention action been undertaken at all IDFs? (b) If not, why not?
- Comcare: (a) Have your inspectors pro-actively monitored such action, including by (if apt) issuing to Home Affairs/ABF "improvement notices" (that compel duty compliance by a set date) to nip risks in the bud; or, if serious non-compliance persists, by compiling a prosecution 'brief of evidence'? (b) If not, why not?

But our concerns about Comcare's WHS Act regulator role go well beyond COVID.

Comcare's near total non-enforcement of the WHS Act in relation to IDF detainees

Comcare has rarely fulfilled its section 152 compliance function in relation to IDF detainees, despite being frequently apprised of alleged detainee-related breaches. Since 2015, Sinclair has written to Comcare more than 70 times, providing detailed evidence thereof: ex-WorkSafe prosecutor and RAC (Vic) member Max Costello has done so six times. Comcare's only response? 'We found no evidence of any breach'.

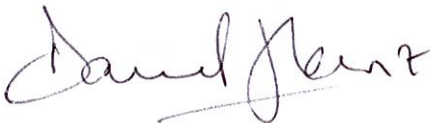
Costello adds, "Annual Reports show that, since the Act's inception in 2012, Comcare has issued just six detainee-related improvement notices, and founded one prosecution (re an unprevented Villawood suicide): the charges, laid in March 2021, are listed for further mention in Sydney's Downing Centre local court later this year.

Re the above, the *Law Enforcement Integrity Commissioner Act 2006* is 'toothless'

Costello explains: "The Commissioner only has power over bodies named as 'a law enforcement agency' by the Act or its regulations. Yet several light touch enforcers (notably Comcare) are not named: they must be ASAP. But even after such naming, the Commissioner could only deal with an *individual* agency staff member who 'engages in corrupt conduct', not blatant failure *by an agency* to enforce the law."

We ask Attorney-General Mark Dreyfus QC to ensure that the LEIC Act is amended accordingly, then effectively utilised.

Yours sincerely



David Glanz

For RAC (Vic) and RAC (Sydney)

For comment, please contact:

RAC (Vic): Max Costello 0425 701 690 or David Glanz 0438 547 723

RAC (Sydney): Ian Rintoul 0417 275 713

