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13 September 2021

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On 17 August 2021, Comcare received your request for the assistance of a Comcare Inspector in resolving an issue regarding management and control of COVID-19 at a Fedex Australia (Fedex) workplace at 2 Military Road Matraville NSW (the workplace). An Inspection relating to this request commenced on 17 August 2021. You stated your request was being made in accordance with Section 141, WHS Act.

I note that Section 141, WHS act relates to an application for assistance of an Inspector in resolving a dispute about the exercise, or purported exercise, by a WHS entry permit holder of a right of entry. I have been informed that there was no attempt to enter the workplace by a WHS entry permit holder on 16 August 2021. However, I also note that your request for Inspector assistance relates to how Fedex responded to a worker being diagnosed with COVID-19, and an Inspection was undertaken to review this aspect of Fedex's safety management systems.

Based upon the review of the information made available in the conduct of this Inspection, I formed a reasonable belief that Fedex Australia, as the Persons Conducting Business or Undertaking (PCBU), did not comply with their duties under the WHS Act with respect to the scope of this Inspection, specifically management and control of COVID-19 hazards and risks in the workplace in response to a worker testing positive for COVID-19.

At the time of the incident, I believe that the PCBU contravened the following sections of WHS Act:

- a. Section 19(1)(a) A PCBU must ensure, so far as reasonably practicable, the health and safety of workers engaged or caused to be engaged by the person: There were workers classified as 'casual' contacts of the worker with COVID-19 at the workplace, during afternoon shift on 16 August 2021.
- b. Section 47 The PCBU must, so far as reasonably practicable, consult with workers who carry out work for the PCBU: Prior to commencing the afternoon shift on 16 August 2021, afternoon shift workers were not consulted with regarding hazards, risks and controls relating to a worker who contracted COVID-19.

- c. Section 49 Consultation is required in relation to the following health and safety matters: When identifying hazards and assessing risks to health and safety arising from work being carried out, specifically Hazards, risks and controls relating to a worker at the workplace who tested positive to COVID-19.

Whilst I reasonably believe at time of this incident the PCBU had contravened the WHS Act, I also reasonably believe that the PCBU has systems in place to ensure workers are communicated and consulted with about positive COVID cases at the workplace, and close and casual contacts are identified. In this instance, these systems were not fully implemented so far as reasonably practicable.

Regards,



[Redacted]

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