

IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court Reference: COR 2014 1256.

DETERMINATION FOLLOWING A REQUEST TO INVESTIGATE A FIRE

Form 17 Rule 39(2)

Sections 31 of the Coroners Act 2008

I, Jacqui Hawkins, Coroner having received a request to investigate the following fire:

Details of fire:	Hazelwood Coal Mine Fire
Location of fire:	Latrobe Valley
Fire occurred on or about:	9 February 2014 for 45 days

from the following requestors:

Surname:	Marshall
Given name:	Peter
Organisation:	United Firefighters Union of Australia
Address:	410 Brunswick Street, Fitzroy, Victoria 3065

Surname:	Hollis
Given name:	David
Organisation:	Occupy Latrobe Valley
Address:	██

Surname:	Farmer
Given name:	Wendy
Organisation:	Voices of the Valley
Address:	██

Determine that the fire will not be investigated pursuant to section 31(2) of the **Coroners Act 2008**, for the following reasons:

BACKGROUND

1. The Hazelwood Coal Mine Fire (Hazelwood Fire) began on 9 February 2014. The fire was caused by embers spotting into the Hazelwood Coal Mine from bushfires burning in close proximity to the mine. The fire burned in and around the Hazelwood Coal Mine for 45 days.

REQUEST TO INVESTIGATE THE FIRE

2. The Coroners Court of Victoria received three separate requests to investigate the Hazelwood Fire pursuant to section 31(1) of the Coroners Act 2008 (Vic) (Coroners Act) from:
 - a. Peter Marshall on behalf the United Firefighters Union of Australia (UFUA);
 - b. David Hollis on behalf of Occupy Latrobe Valley (OLV); and
 - c. Wendy Farmer on behalf of Voices of the Valley (VOTV).

Application of United Firefighters Union of Australia

3. On 4 March 2014, the UFUA made an application for the Coroner to investigate the Hazelwood Fire. The request provided an outline of some of the circumstances surrounding the fire and expressed concern about the potential for adverse health outcomes for the firefighters and the community as a result of the fire.
4. On 11 March 2014, the UFUA were advised that the Coroner would await the outcome of the State Government's Commission of Inquiry before determining whether to investigate.

Application of Occupy Latrobe Valley

5. On 20 July 2014, OLV made an application for the Coroner to investigate the Hazelwood Fire, stating that:

since the mine fire there appears to be deaths occurring – most notably in the elderly population – at greater than normal numbers and [he] had grave concerns that the excessive air pollution caused by the event [had] contributed to these deaths.

Application of Voices of the Valley

6. On 11 September 2014, Wendy Farmer on behalf of VOTV¹ made an application to investigate the Hazelwood Fire stating:
- Our community group has analysed death notices in the local press: the Latrobe Valley Express, over six half-year periods January 2009 to June 2014, and discovered an anomaly in the numbers during Feb-March 2009 and Feb-March 2014.
 - We sent our data to the Hazelwood Mine Fire Inquiry (HMFI) secretariat on about 15th August, well after the closing date for formal evidence to be submitted. We had communication from the secretariat that the Board members had all been informed of our findings; that they would note in their official report that they had received no evidence about deaths within the required time limits: and that they would therefore refer the matter to your office and to the Victorian Health Department.
 - Next we obtained official data from the Victorian Births, Deaths and Marriages Registry for four key postcodes and have obtained expert epidemiological opinion on that data, confirming our observation of excess deaths coinciding with the smoke exposure of the population, to a high degree of certainty.
 - As of today we are unaware of any approach to any of us by the Coroners' Court or the Health Department, what they intend to do with our evidence of excess deaths coinciding with the exposure of a whole population to toxic smoke.
 - THEREFORE, pursuant to section 31(1) of the Coroners Act 2008 we submit this Form 16 formally requesting that you promptly set up an investigation of the fire, which we suggest will quickly validate our findings, and perhaps then best be dealt with by making the process transparent and public i.e. upgrading it to a **public coronial inquest**.
 - **We believe that people should come before profits**, and that if people were made ill and even killed by a preventable industrial accident, then the guilty should not escape without sanction. We find little by way of commensurate sanction for the harms caused to the Latrobe Valley community in the Hazelwood Mine Fire Inquiry report or recommendations, while recognising that our information came too late for the HMFI to take it into account.
 - We will make all relevant information in our possession available to you upon request, particularly a report on how the newspaper data was compiled, and how the expert epidemiologist arrived at his conclusions from his analysis of the Births Deaths and Marriages official death statistics.
7. On 16 October 2014, Environmental Justice Australia, legal representatives for VOTV, requested that I withhold a determination of their application until they were in a position to provide further information in support thereof. I approved this request and on 29 October 2014 the Court received further material from VOTV supporting their application.

¹ Form 16 - Application for a Request to Investigate a Fire

8. This material included:
- a. An 11 page letter with a request to investigate the fire;
 - b. An email from the Hazelwood Inquiry advising that the Board was not able to use the data;
 - c. A "Hazelwood Coalmine Fire Health Effects Report" written by Professor Don Campbell, Monash University;
 - d. "Review of Birth Deaths & Marriages Victoria (BDMV) mortality data for the Latrobe Valley and the time of the Hazelwood coal mine fire in Morwell" written by Louisa Flander and Professor Dallas English, University of Melbourne;
 - e. "Reports of deaths in the Latrobe Valley claimed to be related to the Hazelwood Coal Mine Fire" written by the Department of Health dated September 2014;
 - f. "Analysis of death data during the Morwell mine fire" written by Adrian Barnett;
 - g. "Reports of deaths in the Latrobe Valley related to the Hazelwood coal mine fire", by the Department of Health dated 17 September 2014; and
 - h. Letter to the Coroners Court from VOTV titled "Supporting evidence in the Request to Investigate a fire – Application Submitted by Voices of the Valley Inc 17 September 2014" with additional information.
9. This application stated that it is warranted and necessary in the public interest for the following reasons:
- a. There is evidence that pollution from the mine fire caused an increase in deaths in the Latrobe Valley during and in the months after the fire;
 - b. Studies show that short term exposure to pollution such as that released in the mine fire can result in deaths at the time of the pollution event and in the days following;
 - c. This issue did not form part of the Hazelwood Mine Fire Inquiry and has been inadequately dealt with by the Department of Health and therefore remains unresolved.
 - d. The inconsistency in analysis of whether the mine fire is causative of an increase in deaths has resulted in confusion and additional distress for community members that needs to be resolved. Community members are very concerned that deaths may be continuing to occur as a result of the mine fire. The nominal attention given to the issue by the Government and Department of Health is not commensurate with the seriousness of the issue, the level of ongoing distress it is causing the Latrobe Valley community, and the ongoing threat relating to public health that exists while the issue remains unresolved.
10. Further, the application requested the following issues be considered as part of the scope of the investigation:
- a. Whether the pollution from the mine fire caused or contributed to the deaths of some residents;
 - b. Whether pollution from the mine fire poses the risk of causing or contributing to further deaths in the short term;
 - c. Whether any measures might be taken to prevent any such deaths; and
 - d. Whether any deaths could be prevented if similar circumstances occurred in the future.

THE LEGAL FRAMEWORK

11. A person may request a coroner to investigate a fire.² If a Coroner does investigate a fire, a coroner must make a finding pursuant to section 68 of the Coroners Act and find, if possible:
 - a) the cause and origin of the fire; and
 - b) the circumstances in which the fire occurred.
12. The Coroners Act does not proscribe any statutory criteria to be considered when determining whether to investigate a fire however, guidance can be gained from its structure. In particular, the preamble and purpose of the Coroners Act assist in interpreting the intention of Parliament for the coronial jurisdiction.
13. The preamble of the Act provides for the independent investigations of fires for the purpose of finding the cause of the fire and to contribute to a reduction in the number of preventable fires. I also note the articulated desirability of promoting public health and safety and the administration of justice³ and the overarching principle that the coronial system should operate in a fair and efficient manner.⁴

Application of the legal framework

The distinction between the coroner's role as a death investigator and as a fire investigator

14. As a coroner I wear two investigatory hats; the first relates to the investigation of deaths and the second the investigation of fires. Although there can be overlap between these roles, they are governed by separate and distinct powers.
15. It has been held that: “[t]he coroner’s source of power of investigation arises from the particular death or fire. A coroner does not have general powers of enquiry or detection [...]”.⁵ That the applications request me to investigate a fire pursuant to section 31(1) of the Coroners Act, rather than any one or more nominated individual’s death/s, is therefore of significance.

² Section 31(1) Coroners Act
³ Section 8(f) Coroners Act
⁴ Section 9 Coroners Act
⁵ *Harmsworth v The State Coroner* [1989] VR 989

16. A coronial enquiry must also be directed to specific ends;⁶ namely the making of the findings required under the Coroners Act. To this end, I consider that the scope of the term ‘circumstances in which the fire occurred’ does not permit consideration of the fatal outcomes contemplated within the applications at hand, as an issue in isolation.
17. Consideration of the cause or contribution of the fire to a death must necessarily form the scope of an investigation into a reportable death, as defined in section 4 the Coroners Act, and would require me to exercise my powers as a *death* investigator. Therefore, I consider the information relating to the alleged increase in deaths as only peripheral to this determination.⁷

Avoiding duplication

18. Section 7 of the Coroners Act specifically states that a coroner should avoid unnecessary duplication of inquiries and investigations, by liaising with other investigative authorities, official bodies or statutory officers. The rationale behind this provision is to allow for consideration of public interest principles that weigh against the potential benefits of any further investigation, such as further cost to the community. It also acknowledges that although a number of authorities or organisations may have the mandate to investigate, some are more appropriately placed than others to do so in any given circumstance.
19. To this end, the following are worthy of consideration:
 - a. The Hazelwood Mine Fire Inquiry commissioned by the Victorian Government (the Inquiry);
 - b. The statistical analyses undertaken by the Department of Health; and
 - c. The recently announced long-term study into the health impacts of the Hazelwood Coal Mine Fire led by Monash University.⁸

Hazelwood Mine Fire Inquiry

20. On 11 March 2014, Premier Denis Napthine MP, announced an independent inquiry into the Hazelwood Coal Mine Fire. The Board of Inquiry was officially established on 21 March 2014, with the Governor in Council appointing the Honourable Bernard Teague AO, Professor Emeritus John Catford and Ms Sonia Petering.

⁶ *Harmsworth v The State Coroner* [1989] VR 989

⁷ Incidentally, to my knowledge, no death allegedly resulting directly or indirectly from the Hazelwood Coal Mine Fire which has been reported to the Coroners Court has been determined reportable.

⁸ <http://www.health.vic.gov.au/hazelwood/health-study.htm> accessed 10 November 2014.

21. The Inquiry's Terms of Reference required the Board to inquire into and report on a range of issues including the origins of the fire, the firefighting response, fire prevention and preparedness measures taken by the owner, operator and licence holder of the Hazelwood mine and all of its related entities.
22. The Inquiry conducted a comprehensive investigation into the origin, circumstances and other issues associated with the fire. Extensive community consultation was undertaken (10 sessions) and the Inquiry received many hundreds of public submissions and obtained independent expert reports. Sixteen days of public hearings occurred, with 100 exhibits being tendered over the course of that time.⁹
23. The Hazelwood Mine Fire Inquiry released its report on 29 August 2014 (Final Report). The origin and circumstances of the fire were considered at Part Two of the Final Report and the Final Report provided a detailed analysis of their findings.
24. The Inquiry also looked into issues of health and wellbeing and this is discussed at Part Four of the Final Report. The Final Report made 18 Recommendations which I understand are currently under consideration by the relevant bodies. The Final Report also made a number of Affirmations where the State of Victoria and GDF Suez (the mine operator) has already taken action or have announced a commitment to undertake action in response to the fire.
25. I consider it important to note that the deficiency identified by VOTV in relation to the Inquiry, namely that their information about the cause or contribution to deaths was not considered as part of the Inquiry, was a deficiency of their own making. The failure to provide relevant information to the Inquiry prior to the deadline is not a sufficient reason for a duplicitous expenditure of resources.
26. I consider that the matters raised in the applications, and in particular the application on behalf of the VOTV, have already been the subject of an extensive and comprehensive investigation and will be the subject of ongoing examination.

⁹ I note that this material is all available through the Inquiry's website: <http://hazelwoodinquiry.vic.gov.au/> accessed 10 November 2014.

Statistical analyses undertaken by the Department of Health

27. On 17 September 2014, in response to concerns raised by the community and in the media, the Department of Health released a fact sheet containing statistical analyses of deaths occurring in four relevant postcodes which was undertaken by the University of Melbourne.¹⁰
28. I note that the applications identified a number of factors that they consider indicate the insufficiency of this study. However, the question I must ask, in determining whether there is a duplication of resources, is has a relevant and appropriate organisation considered the issues at hand.
29. I acknowledge that, as stated on their website:

The Department of Health has an important role in protecting the health of Victorians from the potential health effects of environmental hazards by raising awareness of environmental hazards in the community, providing technical guidance and advice and informing state and national policy.¹¹

30. Accordingly, the answer to the questions posed must be in the affirmative. To this end, I am unwilling and unable to neither consider allegations that the analyses were incorrect nor delve behind the methodology.
31. Moreover, there is currently another avenue for these criticisms to be aired and I am not minded to pre-emptively judge the efficacy of that inquiry mechanism (discussed at paragraph 34 below).

Long term study into the health impacts of the Hazelwood Coal Mine Fire

32. On 5 November 2014, in response to Recommendation 10 of the Inquiry's Final Report, the Victorian Government announced funding for a long-term potential health effects study on the impact of the Hazelwood Coal Mine Fire which will be led by Monash University.
33. The Department of Health website states:

The Victorian Government has appointed Monash University to conduct a long term health study into the potential health impacts of exposure to emissions from the Hazelwood open cut coal mine fire. The selection of the Monash-led team follows an open tender and extensive evaluation process.

¹⁰ Department of Health, 'The Reports of deaths in the Latrobe Valley claimed to be related to the Hazelwood Coal mine fire - Community fact sheet', <http://docs.health.vic.gov.au/docs/doc/Reports-of-deaths-in-the-Latrobe-Valley-claimed-to-be-related-to-the-Hazelwood-Coal-mine-fire--Community-fact-sheet>, accessed 10 November 2014.

¹¹ Department of Health, <http://health.vic.gov.au/environment/>, accessed 10 November 2014.

The government has accepted the recommendation of the Teague Board of Inquiry that the study be of at least 20 years duration.¹²

34. Similarly, the Monash University website contains the following information:

“The study will provide information on the potential health effects including respiratory and cardiovascular conditions, cancer, causes of death, child development and psychological outcomes as well as broader community health outcomes. It will also provide evidence on which to base health advice in future events” Professor Abramson said.

The study will bring together researchers from across Monash University, Federation University, the University of Tasmania, CSIRO and the University of Adelaide.¹³

35. In light of this, I reject the contention made in the applications that the Victorian Government, specifically the Department of Health, has not afforded the community concerns appropriate consideration.

36. In addition, given the high level of expertise engaged and the study’s ability to monitor and respond to any potential negative impacts on health over time, I am of the opinion it is the most appropriate mechanism for answering the questions asked of me in the applications.

Determination

37. I acknowledge that the concerns and issues outlined in the applications are serious and worthy of examination. I further acknowledge the significant distress the Hazelwood Fire has had on the applicants and their community.

38. At this juncture I wish to emphasise that it is not the role of a coroner to apportion blame or responsibility, or to assist an aggrieved party with any potential civil claim.

39. The applications request me to examine potential short and long-term health implications which I consider have already been dealt with by the Inquiry and will continue to be monitored and responded to as part of the ongoing study lead by Monash University.

40. This does not mean, however, that all the matters raised in the applications would necessarily be within the proper scope of a coronial investigation into a fire. My role is to determine whether it is necessary to conduct an investigation with a view to finding, pursuant to section 68 of the Coroners Act, the cause and origin of the fire, the circumstances in which the fire

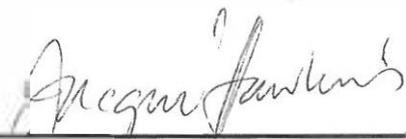
¹² Department of Health, <http://www.health.vic.gov.au/hazelwood/health-study.htm>, accessed 10 November 2014.

¹³ Monash University, <http://monash.edu/news/show/monash-to-conduct-long-term-study-of-the-health-of-morwell-residents>, accessed 10 November 2014.

occurred, and to assist with the reduction of preventable fires. I do not consider that the matters raised in the applications align with these responsibilities (and the limitations thereof).

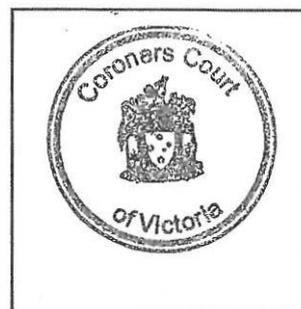
41. Having considered all of the material provided to me by the applicants and the comprehensive Hazelwood Mine Fire Inquiry Report 2014 in light of this role, I have determined not to investigate the Hazelwood fire pursuant to section 31(2) of the Coroners Act.
42. In making my determination, I have considered the preamble, purposes and objectives of the Coroners Act generally, as well as section 7, 8 and 9 of the Coroners Act. I have also had regard to the provisions relating to section 68 which set out what a coroner is required to find if a fire investigation were conducted. In doing this, I have not identified a legitimate coronial purpose that is likely to be served by investigating this fire.

Signature:



Coroner Jacqui Hawkins

Date: 11 November 2014



NOTE: Written notice of this decision must be provided to the person who made the request within 3 months of receiving the request.

An appeal can be made to the Supreme Court of Victoria within 3 months after the day on which this decision has been made.
