



IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court Reference: COR 2018 1222

FINDING INTO DEATH WITHOUT INQUEST

Form 38 Rule 60(2)

Section 67 of the Coroners Act 2008

Findings of:	Caitlin English, Acting State Coroner
Deceased:	I.M.
Date of birth:	13 November 2008
Date of death:	15 March 2018
Cause of death:	I(a) Acute exacerbation of asthma on a background of anaphylaxis
Place of death:	[REDACTED]

This is a redacted version of the original finding handed down on 31 May 2019

INTRODUCTION

1. I.M. was the beloved daughter of Mrs M and Mr MV.
2. On the afternoon of 15 March 2018, I.M consumed a cookie containing egg and suffered an allergic reaction. Despite attempts to resuscitate I.M, she died at the scene.

THE PURPOSE OF A CORONIAL INVESTIGATION

3. I.M's death was reported to the Coroner as it was unexpected and so fell within the definition of a reportable death in the *Coroners Act 2008*.
4. The role of a coroner is to independently investigate reportable deaths to establish, if possible, identity, medical cause of death and surrounding circumstances. Surrounding circumstances are limited to events which are sufficiently proximate and causally related to the death. The purpose of a coronial investigation is to establish the facts, not to cast blame or determine criminal or civil liability.
5. The Coroner's Investigator prepared a coronial brief in this matter. The brief includes statements from witnesses, including family, the forensic pathologist, treating clinicians and investigating officers.
6. Mrs M, I.M's mother, raised a number of concerns throughout the investigation into I.M's death. In light of the circumstances of I.M's death and the concerns raised by Mrs M, I directed the Coroners Prevention Unit (CPU)¹ to review the laws regarding food packaging and labelling to advise consumers about allergens.
7. In addition to the CPU's review I sought information from Allergy and Anaphylaxis Australia (A&AA),² with specific reference to Mrs M's concerns, in addition to seeking a submission from Mondelez Australia Pty Ltd (Mondelez International), who make 'Cadbury Chocolate Chip Cookies', which I.M consumed.
8. I have based this finding on the evidence contained in the coronial brief, I.M's medical records, the review conducted by the CPU and information provided by A&AA and

¹ The Coroners Prevention Unit (CPU) was established in 2008 to strengthen the prevention role of the coroner. The unit assists the Coroner with research in matters related to public health and safety and in relation to the formulation of prevention recommendations. The CPU also reviews medical care and treatment in cases referred by the coroner. The CPU is comprised of health professionals with training in a range of areas including medicine, nursing, public health and mental health.

² An allergy support charity.

Mondelez International. In the coronial jurisdiction facts must be established on the balance of probabilities.³

IDENTITY

9. On 15 March 2018, Mr MV visually identified his daughter I.M, born 13 November 2008.
10. Identity is not in dispute and requires no further investigation.

BACKGROUND

11. I.M was a 9-year-old girl with previous diagnoses of an egg allergy, asthma⁴ and hay fever. From nine months of age she was managed by specialists at the Allergy and Immunology Clinic at the Royal Children's Hospital (RCH) in Melbourne.
12. On 13 February 2018, I.M and her mother presented to Dr Danielle Wurzel at the respiratory outpatient clinic at the RCH. Mrs M noted that I.M had symptoms of asthma on most days and had missed three to four weeks of school in the previous year. Viral infections and I.M's pet dogs were noted as triggers for I.M's asthma. Mrs M also expressed concerns that I.M's current medication, Seretide was not assisting, but noted that I.M sometimes missed doses.
13. Dr Wurzel recommended I.M trial Symbicort in place of Seretide and provided asthma education to I.M and her mother as per Dr Wurzel's standard practice. Dr Wurzel discussed the importance of taking the preventer regularly without missing doses and to take Ventolin every four hours. Dr Wurzel advised if I.M did not improve or her condition worsened she should start a five-day course of prednisolone. A nasal steroid spray was recommended for I.M's hay fever. Bloods were also taken to assess for triggers for I.M's asthma. Dr Wurzel provided a written and verbalised asthma action plan and made recommendations on spacer technique. She arranged to see I.M in two weeks' time and provided two sets of medication scripts for both of I.M's parents.
14. On 18 February 2018, Dr Wurzel contacted Mrs M, informing her that I.M's blood tests showed that I.M had antibodies to cat/dog, house dust mites and grasses. Dr Wenzel

³ This is subject to the principles enunciated in *Briginshaw v Briginshaw* (1938) 60 CLR 336. The effect of this and similar authorities is that coroners should not make adverse findings against, or comments about, individuals unless the evidence provides a comfortable level of satisfaction as to those matters taking into account the consequences of such findings or comments.

⁴ Asthma is a chronic disorder of the airways caused by immunological reactions to a variety of stimuli (i.e. pollen, infection, exercise or medication) causing constriction of the airways, inflammation and increased mucus secretion which leads to compromised breathing, poor oxygenation and eventual death. The risk factors for developing asthma are multifactorial and includes genetic environmental and host related.

suggested that I.M should avoid any contact with outdoor pets and discussed preliminary dust mite avoidance measures with Mrs M. Mrs M noted that I.M was much the same and that she was taking her preventer regularly and using Ventolin twice-daily. Dr Wurzel recommended commencing prednisolone for 3 to 5 days if I.M's condition did not improve and to see her general practitioner if they had concerns.

15. On 27 February 2018, I.M attended the respiratory outpatient clinic at the RCH with her mother, father and her mother's partner. She was again reviewed by Dr Wurzel. I.M's parents reported that I.M's asthma had worsened over the previous weekend and that she had commenced prednisolone three days prior. I.M was reported to have improved since starting on prednisolone.
16. I.M's parents noted that she was using her asthma preventer regularly and that she was also using her nasal spray.
17. On examination, I.M appeared well and did not show any signs of breathing difficulty. Her lung function test showed dramatic improvement and her results placed her in the normal range. A review of I.M at the clinic was arranged for six weeks' time.

CIRCUMSTANCES IN WHICH THE DEATH OCCURRED

18. On 15 March 2018 at approximately 4.45pm I.M arrived home after collecting some of her belongings from her father's house with her mother. Upon arriving home I.M took some Ventolin as her mother noted she had 'short breaths'. I.M noted to her mother that she had had a bad taste in her mouth since the morning. Mrs M thought her daughter may have been getting a cold so took her temperature, but it appeared fine.
19. Around 5.30pm I.M had dinner in the lounge room, which included 'Maggi' noodles, cooked chicken, a 'Magnum' ice-cream and some 'Cadbury Chocolate Chip Cookies'.
20. After eating, I.M began to feel unwell and began to experience difficulty breathing. Mrs M gave her daughter Ventolin; however, this did not appear to provide any relief. As I.M's condition worsened, her mother's partner, Mr S contacted emergency services. Whilst on the phone to the emergency services operator, Mr S checked the packaging of the 'Cadbury Chocolate Chip Cookies' and discovered that they contained egg as an ingredient. Mr S informed the operator and Mrs M got I.M's EpiPen (an adrenaline autoinjector). Mrs M attempted to administer the EpiPen before Ambulance Victoria paramedics arrived at the scene at 6.27pm.

21. Paramedics noted upon arrival that I.M was unresponsive with no effective respirations and that she appeared to have generalised cyanosis. Despite extensive treatment by paramedics, I.M was unable to be resuscitated and died at the scene.

CAUSE OF DEATH

22. On 19 March 2018, Dr Essa Saeedi, a Fellow Forensic Pathologist, practising under the supervision of Dr Joanna Glengarry at the Victorian Institute of Forensic Medicine, conducted an examination and provided a written report, dated 23 July 2018. In that report, Dr Saeedi concluded that a reasonable cause of death was '*I(a) Acute exacerbation of asthma on a background of anaphylaxis*'.⁵
23. In Dr Saeedi's opinion I.M's death was due to natural causes.
24. Dr Saeedi noted there are multiple substances that can cause an anaphylaxis reaction, most commonly food (like nuts and shell fish). In this case I.M was known to be allergic to eggs and her RAST test⁶ was strongly positive to egg white and moderately positive for mixed nuts.
25. Toxicological analysis did not identify the presence of common drugs or poisons.
26. I accept Dr Saeedi's opinion as to cause of death.

CORONIAL INVESTIGATION AND REVIEW OF CARE

Concerns raised by Mrs M

27. The Court received correspondence from Mrs M including email correspondence on 19 June 2018, 6 September 2018, 1 October 2018, 12 October 2018, 26 November 2018, 10 December 2018, 26 February 2019, 6 May 2019, 8 May 2019, 14 May 2019 and 21 May 2019, expressing several concerns in relation to I.M's death
28. Mrs M's concerns were carefully set out in detailed emails to the court dated 19 June 2018, 6 September 2018, 1 October 2018. Mrs M's primary concerns relating to I.M's death were that food packaging, specifically that the packaging of the Cadbury's Cookies range needed to be more distinct to prevent items containing allergens being inadvertently purchased and

⁵ Anaphylaxis is a systematic allergic reaction to a substance which the body gets exposed to. It causes microvascular damage leading to wide spread oedema (including the upper airways) which leads to severe difficulty in breathing and eventual death.

⁶ A radioallergosorbent test (RAST) is a blood test using radioimmunoassay test to detect specific IgE antibodies, to determine the substances a subject is allergic to.

provided to people with allergies. Mrs M further suggested that an allergen symbol should be introduced on the front of food packaging for items containing allergens as a warning to consumers and that companies should alter packaging when ingredients in products are changed. Finally, Mrs M expressed concerns regarding the *'time scale of allergen labelling and appropriate legislative amendments'*.⁷ The contents emails dated 12 October 2018, 26 November 2018, 10 December 2018, 26 February 2019, 6 May 2019, 8 May 2019, 14 May 2019 and 21 May 2019 from Mrs M have also been taken into account.

29. I requested that Sergeant Tracy Weir from the Police Coronial Support Unit obtain and provide colour photographs of the three packets of the Cadbury Cookies range which Mrs M described as having similar packaging. The three types of biscuits were Cadbury Cookies Choc Centre (which I.M had eaten previously without issue); 'Cadbury Cookies Chocolate Chip' (which I.M ate on 15 March 2018); and Cadbury Cookies Double Choc. Further examination of the packaging revealed that 'Cadbury Cookies Chocolate Chip' and 'Cadbury Cookies Double Choc' list egg as an ingredient. 'Cadbury Cookies Choc Centre' do not list egg as an ingredient on the packaging, however state the product 'may contain traces of egg'. In Mrs M's email correspondence to the Court dated 19 June 2018 she stated when referring to this particular Cadbury Cookies range *'if you put all three of them together you can distinguish the differences'*. However, she stated due to the similarity of the packaging she did not realise she had purchased the 'Cadbury Cookies Chocolate Chip' as opposed to the 'Cadbury Cookies Choc Centre'.

CPU Review

30. In light of the circumstances of I.M's death and Mrs M's concerns, I requested the CPU review the laws regarding food packaging and labelling to advise consumers about allergens.

Legality of packaging and labelling of the Cadbury Cookies range

31. Food safety in Australia is governed by the Australia New Zealand Food Standards Code (Food Standards Code). The Food Standards Code is comprised of a series of individual food standards, which are developed and administered by Food Standards Australia New Zealand (FSANZ). The Commonwealth and state governments jointly agree upon these national food standards. The standards are legislative instruments under the *Legislative Instruments Act 2003* (Cth). Enforcement of the Food Standards Code is the responsibility of state and territory departments and food agencies. In Victoria, the Department of Health has

⁷ Email from Mrs M to the Coroners Court of Victoria dated 1 October 2018.

general oversight of the administration of the *Food Act 1984 (Vic)*. Local councils and the Department of Health administer the *Food Act 1984 (Vic)*.

32. The Australian Food and Grocery Council (AFGC) is an industry association which represents Australian manufacturers and suppliers, produced the Food Industry Guide to Allergen Management and Labelling (the Guide). This is a guidance document provided to food industry members to assist them in managing allergens.
33. The Guide specifically provides advice on a recommended labelling format, stating that the recommended format consists of the following: an ingredient list declaring in bold allergenic substances and their derivatives; an allergen summary statement; and a precautionary allergen statement (PAL).⁸
34. The Food Standards Code requires that a food label include a mandatory declaration if it contains any one of ten food and substances that can cause allergic reactions, including egg (subject to certain exceptions).
35. The CPU advised that the labelling of the Cadbury Cookies range including the 'Cadbury Cookies Chocolate Chip' consumed by Is.M complied with all legal requirements under the Food Standards Code as well as the suggested recommendations in the Guide from the AFGC.
36. I accept CPU's advice that the labelling of the 'Cadbury Cookies Chocolate Chip' adhered to all legal and mandatory requirements for food labelling as well as the AFGC's suggested recommendations.

Introduction of an 'allergen symbol' on the front of food packaging

37. The CPU considered Mrs M's suggestion to introduce an 'allergen symbol' on the front of food packaging. The CPU noted that an 'allergen symbol' would ultimately duplicate the information already available on the back of packaging. Currently there are ten different mandatory foods and substances which must be declared on food packaging in Australia and New Zealand if they are present in food (subject to certain exceptions). As such, the CPU

⁸ Precautionary statements are not legally required by the Food Standards Code and can instead be added to food packaging on a voluntary basis by companies who wish to advise consumers of the possibility of cross contamination with allergens.

considered that a clear list of ingredients is less ambiguous than an allergen symbol and noted it may pose less of a risk to consumers as opposed to a symbol.

Amending packaging when ingredients change

38. The CPU considered Mrs M's concern that companies are not required under existing laws to amend their packaging when ingredients change in the product. Under the Food Standards Code, food that is required to bear a label must list a statement of ingredients (subject to certain exceptions).
39. The CPU noted the logistical problems that could arise if companies have to change their packaging each time an ingredient is changed. Moreover, there would remain the risk that consumers may not recognise new packaging as indicating that an allergen is now present as an ingredient.
40. I note that current laws, subject to certain exceptions, require all ingredients be listed in food for sale, particularly if any of the ingredients are allergens.

Mrs M's concern regarding the 'time scale of allergen labelling and appropriate legislative amendments'

41. I note Mrs M's concern regarding the '*time scale of allergen labelling and appropriate legislative amendments*'.⁹ Food Standards Australia and New Zealand regularly accept proposals and consider possible amendments to the Food Standards Code. The Work Plan for FSANZ, contains details of applications or proposals to change the Food Standards Code and is freely available from the FSANZ website – the latest version is 16 May 2019, and illustrates that FSANZ is working on issues including Plain English Allergen Labelling, a proposal "*to standardise the use of plain English terminology for allergen declarations on food labels*".¹⁰
42. The CPU noted that legislation governing food standards is complex, with potential state, national and international dimensions for both companies and consumers. In spite of these complexities, FSANZ has introduced five amendments to the Food Standards Code in 2018 as at October 2018 and introduced nine amendments to the Food Standards Code in 2017. The available evidence shows FSANZ to be consistently working on legislative amendments in a timely fashion.

⁹ Email from Mrs M to the Coroners Court of Victoria dated 1 October 2018.

¹⁰ Food Standards Australia and New Zealand, Food Standards Development Work Plan as at 16 May 2019.

Submission from A&AA dated 16 January 2019

43. On 27 November 2018, I sought a submission from A&AA in relation to Mrs M's concerns regarding the similarity of the biscuits' packaging and Mrs M's suggestion to introduce 'an allergen symbol' on the front of packaging as a warning to consumers.
44. Ms Maria Said, the Chief Executive Officer at A&AA provided a response on behalf of A&AA by way of letter dated 16 January 2019.
45. Whilst acknowledging the CPU's opinion regarding the compliance of the labelling Ms Said stated that
- 'It is concerning that the packaging of the three biscuit varieties is almost identical. Although we encourage parents to read the label of every product they purchase every time, this is a very time consuming, onerous task...'*¹¹
46. Ms Said stated that she was *'not persuaded that the use of an allergy symbol, even on the front of a food package, offers a practical solution'*.¹² She noted given there are ten major allergens prescribed under food labelling standards this would require the majority of processed packaged foods being required to include such a symbol in the label, thereby negating its efficiency.
47. Ms Said noted that Mondelez International's labelling on 'Cadbury Cookies Choc Centre', 'Cadbury Cookies Chocolate Chip', and 'Cadbury Cookies Double Choc' packaging lists the ingredients, in addition to an allergen summary and the PAL statements immediately after the ingredient list.

Submission from Mondelez International dated 10 April 2019

48. On 12 March 2019, I sought a response from Mondelez International regarding Mrs M's concerns and the submission by Maria Said on behalf of A&AA. Brendon Fong Senior Counsel at Mondelez International provided a response to the Court dated 10 April 2019. In Mr Fong's response he confirmed *'that the packaging of the 'Cadbury Cookies Choc Centre' product has always, since the product was first introduced in June 2017, stated "May contain traces of egg..."'*¹³ Mr Fong clarified that since the introduction of the Cadbury Cookies range in June 2017 there had been no change to the allergen ingredients

¹¹ Letter from Maria Said to the Coroners Court of Victoria dated 16 January 2019.

¹² Letter from Maria Said to the Coroners Court of Victoria dated 16 January 2019.

¹³ Letter from Brendon Fong to the Coroners Court of Victoria dated 10 April 2019.

presented in the 'Cadbury Cookies Chocolate Chip' variety or any other product in the range.

49. In relation to Mrs M's and A&AA's concerns regarding the similarities between the packaging of the different varieties in the Cadbury Cookies range, Mr Fong stated that

'Mondelez International continues to educate its employees to be aware of food allergen risks as they evolve, so that they take these into consideration when developing products.

As part of its ongoing product development and having regard to this incident including the advice of A&AA, Mondelez International is launching a product label refresh intending to call out even more prominently the fact that the varieties in the Cadbury Cookies range are different'.¹⁴

50. In its correspondence Mondelez International enclosed pictures of the proposed updated packaging of the Cadbury Cookies range. This showed a vivid change in the colour differentiation between the three packages.

Conclusion

51. I acknowledge and commend Mrs M's tireless advocacy to improve labelling standards for consumers in the context of the devastating loss of her daughter, I.M.

FINDINGS AND CONCLUSION

52. Having investigated the death, without holding an inquest, I find pursuant to section 67(1) of the *Coroners Act 2008* that I.M, born 13 November 2008, died on 15 March 2018 at Niddrie, Victoria, from acute exacerbation of asthma on a background of anaphylaxis in the circumstances described above.

53. I convey my sincere condolences to I.M's family.

54. I direct that a copy of this finding be provided to the following:

Ms M, senior next of kin.

Mr MV, senior next of kin.

The Hon Peter Khalil MP, Federal Member for Willis.

¹⁴ Letter from Brendon Fong to the Coroners Court of Victoria dated 10 April 2019.

Ms Maria Said, Allergy and Anaphylaxis Australia.

Mr Brendon Fong, Mondelez International.

Ms Emma Carnovale, the Royal Children's Hospital.

Senior Constable Christopher Maeland, Victoria Police, Coroner's Investigator.

Signature:



CAITLIN ENGLISH

ACTING STATE CORONER

Date: 29 July 2019

