



IN THE CORONERS COURT  
OF VICTORIA  
AT MELBOURNE

Court Reference: COR 2016 5403

**FINDING INTO DEATH WITHOUT INQUEST**

*Form 38 Rule 60(2)*

*Section 67 of the Coroners Act 2008*

Findings of:

**MICHELLE HODGSON, CORONER**

Deceased:

[REDACTED]

Date of birth:

[REDACTED]

Date of death:

14 November 2016

Cause of death:

1(a) ANAPHYLAXIS

Place of death:

Frankston Hospital, 2 Hastings Road, Frankston,  
Victoria

## **HER HONOUR:**

### **Background**

1. [REDACTED] was born on [REDACTED]. He was 37 years old when he died on 14 November 2016 from anaphylaxis.
2. [REDACTED] lived alone in Bonbeach. He is the father of [REDACTED].
3. He was described as a strong and fit man who was health conscious and had completed an iron man challenge two years prior to his death.

### **The coronial investigation**

4. [REDACTED] death was reported to the Coroner as it fell within the definition of a reportable death in the *Coroners Act 2008 (the Act)*. Reportable deaths include deaths that are unexpected, unnatural or violent or result from accident or injury.
5. Coroners independently investigate reportable deaths to find, if possible, identity, medical cause of death and with some exceptions, surrounding circumstances. Surrounding circumstances are limited to events which are sufficiently proximate and causally related to the death. Coroners make findings on the balance of probabilities, not proof beyond reasonable doubt.<sup>1</sup>
6. The law is clear that coroners establish facts; they do not cast blame or determine criminal or civil liability.
7. Under the Act, coroners also have the important functions of helping to prevent deaths and promoting public health and safety and the administration of justice through the making of comments or recommendations in appropriate cases about any matter connected to the death under investigation.
8. Victoria Police assigned an officer to be the Coroner's Investigator for the investigation into [REDACTED] death. The Coroner's Investigator investigated the matter on my behalf and submitted a coronial brief of evidence.

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<sup>1</sup> In the coronial jurisdiction facts must be established on the balance of probabilities 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.

9. I also referred the matter to the Coroners Prevention Unit<sup>2</sup> (CPU) and sought submissions from Allergy and Anaphylaxis Australia (AAA)<sup>3</sup> regarding [REDACTED] death with a view to determining what could be done to prevent further deaths arising from the inadvertent consumption of allergens through online ordering of food.
10. After considering all the material obtained during the coronial investigation, I determined that I had sufficient information to complete my task as coroner and that further investigation was not required.
11. Whilst I have reviewed all the material, I will only refer to that which is directly relevant to my findings or necessary for narrative clarity.

#### **Identity of the deceased**

12. [REDACTED] was visually identified by his brother, [REDACTED], on 14 November 2016. Identity was not in issue and required no further investigation.

#### **Medical cause of death**

13. On 17 November 2016, Dr Essa Saeedi, Forensic Pathology Trainee (supervised by Dr Michael Burke, Senior Pathologist) at the Victorian Institute of Forensic Medicine, conducted an autopsy upon the body of [REDACTED] and reviewed a post mortem computed tomography (CT) scan.
14. The autopsy revealed that the cause of death was anaphylaxis. Dr Saeedi explained anaphylaxis is a systemic allergic reaction to a substance to which the body is exposed. It causes microvascular damage leading to wide spread oedema (including the upper airways), which leads to severe difficulty in breathing and eventual death.
15. There are multiple substances that can cause an anaphylaxis reaction, most commonly food (like nuts and shellfish), drugs (some antibiotics or anaesthetics), or insect venom.

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<sup>2</sup> The role of the CPU is to assist coroners investigating deaths, particularly deaths that occur in a healthcare setting. It is staffed by healthcare professionals, including practising physicians and nurses, who are independent of the health professionals and institutions under consideration.

<sup>3</sup> Allergy and Anaphylaxis Australia describes itself as, "A not for profit organisation that provides information, training and emotional support about allergies with food alerts, labelling, support for parents and more."

16. [REDACTED] was known to be allergic to macadamia nuts. The RAST<sup>4</sup> test was moderately positive for macadamia nuts. These findings, in combination with the histological changes seen in his airways, were in keeping with anaphylaxis.
17. The Tryptase (29.5 ug/L) and Total IgE (4535 kU/L) levels were elevated. These results were also in keeping with an anaphylaxis reaction.
18. Toxicological analysis of post mortem specimens taken from [REDACTED] identified delta-tetrahydrocannabinol (THC) (9 ng/mL), which is a metabolite of cannabis. Concentrations of THC in ante-mortem blood of 5ng/L generally indicate use within a few hours, although there is considerable individual variability. Persons under the influence of cannabis will experience impaired cognition (reasoning and thought), poor vigilance, and impaired reaction time and coordination.
19. After reviewing toxicology results, Dr Saeedi completed a report, dated 10 March 2017, in which he formulated the cause of death as "*I(a) Anaphylaxis*". Dr Saeedi concluded that [REDACTED] death was due to natural causes. I accept Dr Saeedi's opinion as to the medical cause of death.

### **Circumstances in which the death occurred**

#### ***14 November 2016***

20. At approximately 8.00pm on 14 November 2016, [REDACTED] cousin and neighbour, [REDACTED], was at home when [REDACTED] knocked on his front door. [REDACTED] had a very swollen face, mouth, and neck. He was clearly in the throes of suffering an anaphylactic response to the macadamia nuts he had just consumed.
21. [REDACTED] was very agitated and stated that he could not find his EpiPen and requested that an ambulance be called.
22. [REDACTED] told [REDACTED] that he had eaten pizza. [REDACTED] had seen a pizza delivered sometime before 8.00pm.
23. [REDACTED] deteriorated quickly and became unconscious before the ambulance arrived.

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<sup>4</sup> RAST Tests (Cap Test) detected Macadamia 1.82kU/L.

24. Cardiopulmonary resuscitation was commenced, and [REDACTED] was transported to Frankston Hospital. He passed away at 9.40pm.

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**[REDACTED] history of allergies**

25. [REDACTED] family identified he was allergic to macadamia nuts when he was aged two years.
26. [REDACTED] was educated about his food allergy and his family diligently monitored his diet. He did not have another reaction until his 20s.
27. He had previously experienced instances where food that he had ordered had been contaminated by macadamia nuts during preparation (when ordinarily those items would not contain macadamia nuts).
28. [REDACTED] mother, [REDACTED], stated that her son was suspicious of any food that might contain nuts. However, he often purchased raw nuts that were easily identifiable.
29. [REDACTED] general practitioner, Dr Zev Barr, stated that [REDACTED] had an extremely severe sensitivity to a number of allergens, including macadamia nuts. He also had mild chronic asthma.

***The food ordered by [REDACTED]***

30. [REDACTED] had ordered food online from Cucina Dolce Pizzeria in Seaford that evening.
31. Fred Kerbage is the owner/operator of Cucina Dolce Pizzeria. He provided a copy of [REDACTED] electronic transaction. This disclosed that [REDACTED] had ordered, amongst other items, a Generation Y, which is a Nutella-based dessert. The food had been ordered through MyPreOrder (an online ordering service), which is accessed through Cucina Dolce's website. Mr Kerbage stated that the Generation Y dessert is a "*Nutellas [sic] and macadamia spread with marshmallows rolled in pastry*".
32. Victoria Police members located the uneaten remains of this dessert at [REDACTED] house alongside the pizza he had ordered that evening. They also found a pot of herbal tea and an open packet of cashews.



*Whether the macadamia nuts were disclosed as an ingredient*

33. [REDACTED] family were adamant that had [REDACTED] been aware the dessert contained macadamia nuts as an ingredient, he would not have ordered it.
34. [REDACTED], [REDACTED] uncle, stated that in August 2017, he conducted online searches of various online ordering services that were linked to Cucina Dolce. He noted that all, except for MyPreOrder, made no mention of macadamia nuts being an ingredient in the Generation Y dessert. [REDACTED] confirmed that when he viewed the MyPreOrder menu, macadamia nuts were listed as an ingredient.
35. Senior Constable Paul Follet, Coroner's Investigator, noted that when he viewed the Cucina Dolce website (sometime between 1 December 2016 and 21 April 2017), it listed macadamia nuts as an ingredient in the Generation Y dessert.
36. Mr Kerbage stated that he was informed by Senior Constable Follett that the Cucina Dolce website had the Generation Y listed with macadamia nuts as an ingredient but other websites, which also facilitated online ordering, did not. He stated he was not aware of this and was in the process of rectifying the other websites and printing new menus to ensure they specified the correct ingredients.
37. As part of my investigation, I requested Senior Constable Follett obtain information as to the ingredients listed on MyPreOrder on the day of [REDACTED] death. He contacted the web development company that manages the MyPreOrder online ordering service. They advised that the earliest backup of data they could find was 10 December 2016. They extracted a snapshot of text on the website at that date, which listed Nutella macadamia spread and marshmallows as ingredients in the Generation Y dessert.

*The EpiPen*

38. Police members found [REDACTED] EpiPen in his bedside drawer buried beneath random objects.
39. [REDACTED] had appropriately been prescribed an EpiPen but was unable to find it when he had acute anaphylaxis. However, given the severity of [REDACTED] reaction, it cannot be said with certainty that administration of the EpiPen would have changed the final outcome.

## Findings

Pursuant to section 67(1) of the *Coroners Act 2008* I find as follows:

- (a) the identity of the deceased was [REDACTED], born [REDACTED];
- (b) [REDACTED] died on 14 November 2016 at Frankston Hospital, 2 Hastings Road, Frankston, Victoria, from anaphylaxis;
- (c) his death was due to natural causes; and
- (d) the death occurred in the circumstances described above.

## Comments

Pursuant to section 67(3) of the *Coroners Act 2008*, I make the following comments connected with the death:

- 1. [REDACTED] knew he had a potentially fatal allergy to macadamia nuts. The clear inference is that he was not aware that the dessert he ordered contained macadamia nuts. It can be assumed that this was either because the website did not contain details of the ingredient or [REDACTED] failed to notice macadamia nuts was an ingredient in the dessert.
- 2. There is no evidence before me that suggested [REDACTED] disclosed he had allergies when placing his order online or requested further details as to the ingredients.
- 3. I am unable to be satisfied as to whether the MyPreOrder website contained a reference to macadamia nuts or whether [REDACTED] failed to notice it. It is highly unlikely that he deliberately ate macadamias knowing of his severe allergy.

## *Food safety requirements in Australia*

- 4. As part of my investigation, I obtained advice from the Coroners Prevention Unit regarding the requirements of restaurants to disclose allergens in freshly prepared food.
- 5. Food safety in Australia is governed by the Australia New Zealand Food Standards Code (**the Code**). Enforcement of the Code is the responsibility of state and territory departments and food agencies. In Victoria, the Department of Health has general oversight of the

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

6. In general terms, food sold by restaurants and takeaway shops in Victoria does not have to bear a label.
7. The current requirements for restaurants and takeaway shops, such as Cucina Dolce, are for them to display details of allergens,<sup>5</sup> or otherwise provide details of them to purchasers upon request.<sup>6</sup>
8. It is unclear whether allergen information was available or provided to [REDACTED] upon request at the time he made his order.

### *Allergy and Anaphylaxis Australia*

9. As part of my investigation, I also invited AAA to prepare a written submission for the Court.
10. Maria Said, CEO, identified that a person's successful management of their allergy depends on their understanding, knowledge, information, guidance, and family support.
11. Ms Said referred to the Code and said that many people in the community do not understand that menus do not have to list allergens, or ingredients generally.
12. She noted that online orders for people with food allergies can be problematic for both the food service and the consumer with food allergy. Only the educated consumer with food allergy, who has some understanding of food labelling requirements, would understand that food ingredients do not have to be listed on a website when ordering food online. If some ingredients are listed on the website, many people may erroneously believe that all ingredients are listed. If the ingredient to which the customer is allergic is not listed, a presumption could easily be made that the food is free from that allergen.<sup>7</sup>

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<sup>5</sup> Of which tree nuts are identified as an allergen.

<sup>6</sup> Food Standards Australia New Zealand, "Allergen Labelling", <<http://www.foodstandards.gov.au/consumer/foodallergies/Pages/Allergen-labelling.aspx>>, accessed 14 September 2018.

<sup>7</sup> One issue raised by AAA is whether the 'Nutella' advertised as an ingredient in the Generation Y dessert is the Ferrero registered product, which is well known to contain hazelnuts, or an in-house made version containing macadamias. If the latter, it was acknowledged that its identification as 'Nutella' may be misleading to consumers.



13. Ms Said suggested that if a website clearly invited the consumer to disclose information on their food allergy before finalising an order, safety for both the customer and the food service provider would be increased. I accept this submission.

### ***Conclusion***

14. [REDACTED] death was preventable. He had a known allergy to macadamia nuts but was apparently unaware that the dessert he ordered and consumed contained them. Whether this was due to [REDACTED] failing to notice that the dessert contained that ingredient or because it was not listed on the website at the time he ordered cannot be ascertained.
15. The prevention of anaphylaxis relies on the caution of the person with allergies as well as on food retailers. Best practice requires that persons with food allergies declare this information to food retailers when purchasing food to confirm the food that they are consuming is safe.
16. Given that there are already clear legal guidelines as to when restaurants should provide information regarding allergens to their customers, I do not see a need to make recommendations connected with [REDACTED] death. If these guidelines are not followed by a restaurant or takeaway shop, it is a matter principally for local councils to investigate and take enforcement action as appropriate under the *Food Act 1984*.
17. However, I emphasise the importance of restaurant and takeaway shop owners to provide allergen-related information to customers and for those with food allergies to take reasonable steps to exercise caution when buying or ordering food from such establishments.
18. I therefore encourage Mr Kerbage, as well as other restaurant and takeaway shop owners, to ensure their menus and all online menus consistently and accurately reflect allergen ingredients.
19. I also take this opportunity to remind persons with food allergies to ensure they have rapid access to an EpiPen at all times.
20. Given this finding raises important issues that relate to public health and safety, I direct that a redacted version of this finding be published.

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However, considering the circumstances of [REDACTED] death, it is unclear whether the MyPreOrder site contained the word 'macadamia' at the time of the order and/or whether [REDACTED] failed to notice it.

## Publication

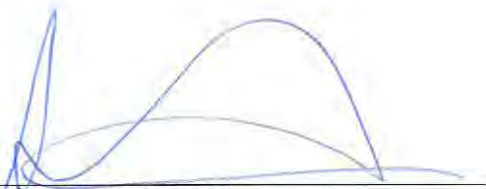
I direct that this finding be published on the internet pursuant to section 73(1A) of the *Coroners Act 2008*. I direct that the published finding be redacted so as to remove any identifying information of the deceased and his family.

I convey my sincere condolences to [REDACTED] family.

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

- [REDACTED], Senior Next of Kin;
- Mr Fred Kerbage, owner of Cucina Dolce Pizzeria;
- Ms Maria Said, Allergy and Anaphylaxis Australia;
- City of Kingston;
- Regulation and Incident Management, Food Safety Unit, Department of Health and Human Services;
- Australian Society of Clinical Immunology and Allergy; and
- Senior Constable Paul Follett, Coroner's Investigator, Victoria Police

Signature:



MICHELLE HODGSON

Coroner

Date:

3.12.2019

