

IN THE CORONERS COURT  
OF VICTORIA  
AT MELBOURNE

Court Reference: COR 2008 / 0043

## FINDING INTO DEATH WITHOUT INQUEST

*Form 38 Rule 60(2)*

*Section 67 of the Coroners Act 2008*

I, PETER WHITE, Coroner having investigated the death of DEEPAK KUMAR PRAJAPATI,

without holding an inquest:

find that the identity of the deceased was DEEPAK KUMAR PRAJAPATI,

born on 14 November 1975

and the death occurred on 3 January 2008.

at 216 Ballarat Road, Footscray 3011

**from:**

1(a) SMOKE INHALATION

Pursuant to section 67(2) of the Coroners Act 2008, I make findings with respect to the following circumstances:

1. On 3 January 2008 Sunil Ramanlal Patel (**Mr Patel**), Jignesh Kumar Ghanshyamdas Sadhu (**Mr Sadhu**), Deepak Kumar Prajapati (**Mr Prajapati**), all Indian nationals studying in Australia, died in a house fire at 216 Ballarat Road, Footscray (**the Dwelling**).

### PURPOSE OF A CORONIAL INVESTIGATION

2. The purpose of a coronial investigation into a reportable death<sup>1</sup> is to ascertain, if possible, the identity of the deceased person, the cause of death and the circumstances in which death occurred.<sup>2</sup> In the context of a coronial investigation, it is the medical cause of death which is important (including where possible the mode or mechanism of death) and the context or background and surrounding circumstances of the death sufficiently proximate

<sup>1</sup> The Coroners Act 2008 requires certain deaths to be reported to the coroner for investigation. Apart from a jurisdictional nexus with the State of Victoria, a 'reportable death' is defined in section 4 of the Act.

<sup>2</sup> Section 67(1) of the Coroners Act 2008. All references which follow are to the provisions of this Act, unless otherwise stipulated.

and causally relevant to the death, and not merely all circumstances which might form part of a narrative culminating in death.<sup>3</sup>

3. Coroners also have the power to investigate the cause and circumstances of a fire.<sup>4</sup>
4. The broader purpose of a coronial investigation is to contribute to the reduction of the number of preventable deaths through the findings of the investigation and the making of recommendations by coroners, generally referred to as the *prevention* role.<sup>5</sup> Coroners are also empowered to report to the Attorney-General on a death; to comment on any matter connected with the death they have investigated, including matters of public health or safety and the administration of justice; and to make recommendations to any Minister or public statutory authority on any matter connected with the death, including public health or safety or the administration of justice.<sup>6</sup> These are effectively the vehicles by which the prevention role may be advanced.<sup>7</sup>
5. It is not the Coroner's role to determine criminal or civil liability arising from the death under investigation.
6. Detective Senior Constable Kevin Murdoch was the coroner's investigator who prepared the coronial brief and assisted me with my investigation.

#### **WHETHER AN INQUEST IS REQUIRED**

7. In discharging my statutory functions under the Coroners Act 2008 (**the Act**), in particular sections 67 and 68, the coronial brief contains sufficient evidence to allow me to find Mr Prajapati's identity (section 67 (1)(a)); his cause of death (section 67 (1)(b)) and the circumstances within which he died (section 67 (1)(c)), the cause and origin of the fire (section 68 (a)) and the circumstances in which the fire occurred (section 68 (b)) without conducting an inquest.<sup>8</sup>
8. I have the same powers to comment or make recommendations for legal and policy changes, which may avert future deaths, regardless of whether an inquest is held.

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<sup>3</sup> This is the effect of the authorities- see for example *Harmsworth v The State Coroner* [1989] VR 989; *Clancy v West* (Unreported 17/08/1994, Supreme Court of Victoria, Harper J.)

<sup>4</sup> Section 68 of the *Coroners Act 2008*

<sup>5</sup> The "prevention" role is now explicitly articulated in the Preamble and purposes of the Act of the Coroners Act 1985 where this role was generally accepted as "implicit".

<sup>6</sup> See sections 72(1), 67(3) and 72(2) of the Act regarding reports, comments and recommendations respectively.

<sup>7</sup> See also sections 73(1) and 72(5) of the Act which requires publication of coronial findings, comments and recommendations and responses respectively; section 72(3) and (4) which oblige the recipient of a coronial recommendation to respond within three months, specifying a statement of action which has or will be taken in relation to the recommendation.

<sup>8</sup> Section 3 of the Coroners Act 2008 defines inquest to be "a public inquiry that is held by the Coroners Court in respect of a death"

9. All interested parties conceded by way of written submission<sup>9</sup> that this matter could be finalised without the need for an inquest.
10. The Tenants Union of Victoria Ltd (TUV) and Public Interest Law Clearing House Homeless Persons' Legal Clinic (HPLC) in their joint submission dated 24 December 2012 stated:

*"We submit, however, that there is little to be gained in examining and cross-examining witnesses. In our view, the facts are relatively clear and uncontentious... While there are important legal and policy changes required in light of the deaths, TUV and HPLC submit that the Coroner could effectively and efficiently make findings, comments and recommendations in chambers based on the Inquest Brief and written submissions from relevant organisations."*

#### **IDENTITY**

11. On 11 January 2008, Deepak Kumar Prajapati was formally identified by the Disaster Victim Identification Reconciliation Board. I find that Deepak's identity is Deepak Kumar Prajapati born on 14 November 1975.

#### **THE MEDICAL CAUSE OF DEATH**

12. On 8 January 2008 Dr Sarah Parsons, of the Victorian Institute of Forensic Medicine, conducted an external examination of Mr Prajapati's body and concluded the cause of death was 1(a) smoke inhalation.
13. Toxicology analysis of Deepak Kumar Prajapati's blood revealed ~13% saturation of Carboxyhaemoglobin and ~1.6 mg/L of Hydrogen Cyanide.
14. I find that Dr Parson's conclusion as to the cause of death is appropriate.

#### **THE CIRCUMSTANCES IN WHICH THE DEATH AND FIRE OCCURRED**

##### *The occupation of the Dwelling*

15. Whilst the focus of my investigation and findings must be confined to the circumstances of Mr Prajapati's death and the fire at the Dwelling, it is important to understand the

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<sup>9</sup> At a directions hearing on 26 November 2012 I invited submissions from all interested parties in relation to whether there should be an inquest and what were appropriate comments and recommendations'

surrounding circumstances of the fire and the deaths, and in particular, how the deceased came to occupy the dwelling.

16. On 5 July 2005, Phong Tan Nguyen, his sister, Hue Thi Nguyen and girlfriend, Nhi Thuy Pham (**The landlords**) bought the Dwelling jointly as an investment property for \$240,000 through Ray White Real Estate (**Ray White**).
17. The Dwelling was a three-bedroom timber weatherboard house with a living room, kitchen, bathroom and, at the rear, a garage, toilet, sunroom and backyard.
18. On 8 September 2005, the landlords engaged Ray White to lease and manage the Dwelling. The landlords say (and I accept for present purposes) that as part of the engagement there was an oral agreement with Ray White that it would undertake 6 monthly periodic inspections on the Dwelling.
19. On 22 October 2005, Mr Bhavin Zinzuwadia (**Mr Zinzuwadia**) signed a tenancy application form, which declared that 3 residents would live at the house.
20. The Tenancy Agreement, dated 31 October 2005, did not state how many people would reside at the Dwelling. However, Clause 7(a) of the Tenancy Agreement provided that the tenant must not assign or sub-let the whole or any part of the Dwelling without the consent of the landlords.
21. On 31 October 2005, Mr Zinzuwadia signed a 12-month tenancy agreement, which provided that the rent payable was \$230 per week / \$997 per calendar month.
22. From 31 October 2005 to the date of the fire on 3 January 2008, Mr Zinzuwadia lived at the Dwelling with his wife Kinjal, together with the following additional persons:
  - Mr Zinzuwadia's brother-in-law, Ashish Patodia, together with his wife, Grishma Patodia from March 2006 to June 2007;
  - Darshan Mandaliya (**Mr Mandaliya**) from March 2006 to 3 January 2008;
  - Mr Sadhu from October or November 2006 to 3 January 2008;
  - Mr Prajapati from October or November 2006 to 3 January 2008;
  - Mr Zinzuwadia's five-year-old daughter, Diya, who moved from India to Australia and lived in the house from November 2006 to 3 January 2008;
  - Sabhar Thakar from October or November 2006 but who had gone back to India for a holiday in December 2007;

- Mr Patel from March 2007 to 3 January 2008; and
  - Jagdeesh Chethan signed on 22 October 2005, another from Mr Zinzuwadia signed on an unknown date and one tenancy agreement signed by Mr Zinzuwadia on 31 October 2005.
23. On 3 March 2006, Bells Real Estate (**Bells**) took over the management of all of the rental properties on Ray White's "rent roll" which included the Dwelling. As this was less than 6 months from the date of the Tenancy Agreement, no one at Ray White had undertaken an inspection at the Dwelling prior to the takeover.
24. Bells was not aware of any oral agreement to undertake periodic inspections but did believe it had an obligation to carry out at least one general inspection after it had taken over management of the Dwelling. Despite this, between 3 March 2006 and the date of the fire, Bells did not undertake any inspections of the Dwelling.
25. The Tenancy Agreement was renewed numerous times, the last renewal being on 1 December 2007, which included a rental increase to take effect from 31 December 2007.
26. Neither the real estate agents nor owners of the property were aware of any additional residents in the house. Mr Nguyen said that he was of the belief that only a 'couple with a kid' were renting the house. Ms Pham's said that had she been aware of the additional tenants, she would have only consented to one or two additional tenants on the condition that additional rent would be paid to cover any additional wear and tear on the house.
27. As at 3 January 2008:
- Mr Zinzuwadia, his wife and his daughter all occupied the bedroom in the middle of the western side of the house;
  - Mr Zinzuwadia's brother-in-law and wife lived in the south west corner of the house but on the night of the fire, the room was unoccupied;
  - Mr Patel, Mr Sadhu, Mr Prajapati and Mr Mandaliya lived in a single room on the south east corner of the house (**the students bedroom**). The evidence is that sometimes, some of them slept in the front left room but they had not done so on the night of the fire.
28. On the material and evidence available to me I find that living arrangements at the Dwelling were that of a share house-type accommodation where each of the occupants

contributed to the rent and to other services and they collectively shared the household expenses.

29. Mr and Mrs Zinzuwadia described the students as “friends of friends”. Mr Zinzuwadia said that he did not really know any of them before they lived in the house but that he had invited them to live at the house because it was hard for overseas students to find a place to stay in Melbourne. Mr Zinzuwadia also said that there was no restriction on the students to only stay in their room or only use parts of the house; they lived together “as a family”.
30. Mr Mandaliya said that they all got along together in the house and that he did not have any problem living together with the other students in the same room.
31. I find that this case can be distinguished on its facts from my findings in the matters of Christopher Alan GIORGI (COR 2006 3728) and Leigh Sarah SINCLAIR (COR 2006 3727). In that case the accommodation was provided by a third party whose business involved the procuring of rental properties for the purpose of renting individual rooms at a profit over and above the rental payable to the landlord under the lease. In the Giorgi/Sinclair matter each “subtenant” paid rent to the tenant to secure occupation of a single room in the building. The occupation of all other rooms was determined by the head lessee organising the accommodation such that it was frequently the case that there was no familial or friendship connection between the occupants of different rooms. Indeed, each room was locked and a key provided only to the occupant of the room. These features created a systemic risk in the event of a fire in the building as the circumstances in that case so tragically revealed. Here, the apparent co-operation in the arrangement and functioning of the dwelling is of an entirely different and completely innocent character. Indeed, it is a type of accommodation which is (and has been for many years) common among students and young people from all walks of life and from all kinds of backgrounds. I find in this case that the nature of the accommodation in and of itself did not contribute to the fire or to the deaths.
32. It is not within the scope of my investigation or findings to determine whether Mr Zinzuwadia was in breach of his lease by subletting the property without obtaining the consent of the landlord under the terms of the lease. Nevertheless, I note Judge Saccardo's decision in the case of *Pham & Ors v Parissis Pty Ltd (t/as Bells Real Estate)* [2012] VCC 895 (see below) that the living arrangements were innocent. Judge Saccardo heard

evidence from Mr Zinzuwadia and concluded that if he had been asked to reduce the number of occupants he would have happily done so.

*The state of the Dwelling*

33. The landlord's did not have the electrical wiring or electrical fittings in the house checked after purchasing the Dwelling and were not aware if there were electrical protection devices or circuit breakers installed in the house.
34. In March 2007, Bells issued a maintenance order in relation to electrical work that needed to be done on the Dwelling. An electrician attended the Dwelling, and with the landlord's consent, replaced two power outlets and burnt wires.
35. All that said, there is no evidence that the electrical wiring in the dwelling in any way contributed to or caused the fire, and I so find accordingly.

*The students bedroom*

36. The students bedroom contained the following items:
  - A double bed and three mattresses on the floor which covered most of the eastern half of the room. Two of the mattresses appeared to have remnants of electric blankets;
  - Clothing for four people and some items of luggage;
  - A number of electrical devices which were connected to a six-point power board (including two microwave ovens, a pedestal fan, one desktop computer monitor, one processor and one television signal booster). The six-point power board was connected to an original single power point in the southern wall; and
  - An original double power point was located on the northern wall of the bedroom with a double adapter connected to each power point. While not entirely clear what was connected to the double adapters, it appears that it could have included a laptop battery charger and/or mobile phone charger, a fan heater and two electric blankets.

*The night of the fire: 2 and 3 January 2008*

37. On 2 January 2008 Mr Mandaliya left to go to work at approximately 10:15pm and was not at the Dwelling at the time of the fire. Mr Prajapati, Mr Sadhu and Mr Patel were last seen

alive in their room watching a DVD on the desk top computer and old style monitor inside the bedroom by Mr Zinzuwadia at between 11:50 to 11:55 pm.

38. On 2 January 2008 Mr Zinzuwadia, his wife and daughter all went to sleep a short time after midnight. Both Mr and Mrs Zinzuwadia woke up sometime later at around the same time, sensing that something was wrong and realised that there was a fire in the house. Mr Zinzuwadia smashed their bedroom window, climbed through and then helped his wife and daughter to a safe place. They did not recall hearing the sound of smoke alarms.
39. Wayne Gooch, a neighbour, noticed the fire at the Dwelling and called the fire brigade. The MFB has records to show that they received a call at approximately 12:44 am.
40. Wayne Gooch then woke up his brother, Ian Gooch, who tried to kick open the locked front door. Ian Gooch smashed the front left side window and called for people to get out. While he was at the front window, the Zinzuwadia family came running out of the house.
41. Mr Zinzuwadia then kicked down the front door, however the intensity of the flames prohibited safe entry. A short time later, Mr Zinzuwadia saw one of the students, later identified to be Mr Prajapati, come out of the front right bedroom engulfed in flames screaming and then fell over in the hallway.
42. The MFB arrived at approximately 12:49am and the fire was controlled at approximately 1:08am.
43. The body of Mr Prajapati was found lying face up approximately 5 metres from the front door. Two other bodies identified as Mr Patel and Mr Sadhu were later found lying face down in the northern half of the bedroom.

## **THE CAUSE AND ORIGIN OF THE FIRE**

### *MFB investigation*

44. The Fire Investigation Report prepared by the MFB (**MFB report**) concluded the cause of fire was as a result of an unspecified short circuit to the computer monitor in front south eastern bedroom.
45. Mr Zinzuwadia's evidence is that the computer monitor was purchased 4 to 5 months before the fire by two of the students at a swap meet market. It was an older style monitor and looked like a television. The MFB Report noted that the computer monitor was regularly used to watch DVDs and when the students finished watching, the computer



would be shut-down without turning off the terminal, which meant that the terminal was still active.

*Pham & Ors v Parissis Pty Ltd (T/As Bells Real Estate) [2012] VCC 895*

46. In July 2012 County Court Judge Saccardo handed down his decision in the matter of *Pham & Ors v Parissis Pty Ltd (trading as Bells Real Estate) [2012] VCC 895 (Judge Saccardo decision)* which dealt with the same factual circumstances relevant to my coronial investigations into the deaths of Mr Patel, Mr Prajapati and Mr Sadhu.
47. The plaintiffs (the landlords) sought damages against the defendant (Bells) in respect of the loss suffered by them as a result of the damage from the fire. The plaintiffs' case was that if inspections had been carried out, the number of people occupying the property would have been discovered, and the landlord would likely have insisted upon a reduction in the number of occupants.
48. It was relevant in the proceedings before Judge Saccardo to make findings as to the cause of the fire. Judge Saccardo heard evidence on the subject. Mr Roderick East, a fire investigator employed by the MFB gave evidence before Judge Saccardo, that the inadequate electrical circuitry within the Dwelling, together with the connection of a number of appliances to the six-outlet power board would have caused its overheating, which in turn, would have contributed to the outbreak of the fire. Judge Saccardo found that the cause of the fire was electrical, most likely due to overheating and possible short circuit of the computer monitor. Judge Saccardo also found that the outbreak of the fire was probably contributed to by the fact that the computer monitor was powered through its connection to a six-outlet power board. The connection of the monitor, together with a number of other appliances to the power board, would have contributed to the monitor overheating given the inadequate electrical circuitry within the Dwelling.
49. As to the physical cause of the fire in this case, none of the material before me would lead me to conclude that the fire was caused in a way other than that described by Mr East. I therefore adopt those findings as my own.
50. In the civil proceedings, the central issues for Judge Saccardo was whether the defendant:
  - owed a duty of care to the plaintiffs to conduct regular inspections at the property for the purpose of ascertaining activity which may result in damage to the property;
  - if a duty was owed, whether it was breached; and

- by its breach caused the loss suffered.

51. Judge Saccardo found that:

- there was an express term in the management agreement between Ray White, and then Bells, and the owners for them to conduct periodic inspections;
- that Bells breached its duty of care and the express term in the contract as it had not conducted an inspection on the property since it took over the management of the property from Ray White on 3 March 2006;
- it was foreseeable to Bells that a breach of its duty to inspect the property may expose the owners to the risk that the property may be damaged by reason of such an occurrence;
- the property should have been inspected in May 2006 and May 2007;
- at least at the latter inspection, it is likely on the balance of probabilities that Bells would have discovered the additional residents and would have had a conversation with the owner which would have resulted in the number of people occupying the bedroom to be reduced to two;
- on the balance of probabilities, periodic inspections would not have led to the detection of either the six-point power board or high-wattage appliances; and
- on the balance of probabilities, occupation of the front right bedroom by only two residents instead of four would not have necessarily prevented the overloading of the power board or the electrical fault with the computer monitor.

52. In the result, Judge Saccardo held that the defendant owed the duty alleged by the plaintiff and that it had breached the duty, but the plaintiffs were unsuccessful because they failed to establish that the breach of duty caused the loss. In substance Judge Saccardo declined to accept that the number of occupants was the cause of the fire or the plaintiffs' loss.

53. Judge Saccardo stated "*Given the state of the evidence, it is, in my opinion, a matter of speculation as to whether the occupation of the bedroom by only two occupants would have resulted in a relevant alteration in the activity that was responsible for the fire*".<sup>10</sup>

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<sup>10</sup> Pham & Ors v Parissis Pty Ltd (t/as Bells Real Estate, paragraph 121.

54. In reaching this conclusion, Judge Saccardo found that the tenant, Mr Zinzuwadia, was a witness of credit who intended no wrong doing. I adopt that finding, there being no basis in the material before me to suggest otherwise.
55. Though the nature of the civil proceedings differs from the task which I must perform, I am left to conclude that based upon the material before me I could not reach a different conclusion from that reached by Judge Saccardo. To my way of thinking the fire was caused by the malfunctioning of electrical appliances and devices connected to the power supply. This could have been the case whether the room was occupied by one, two or four people.

#### **PREVENTION ISSUES – SMOKE ALARMS**

56. The case before Judge Saccardo was concerned with whether the owners could establish factual causation under Section 51(1)(a) of the *Wrongs Act 1958* (Vic) and common law causation for the purposes of their the contract claim - Did the failure of the agents to conduct regular inspections cause the fire and therefore the economic loss to the plaintiffs? The questions for me are broader. I am concerned with the cause of the deaths. In this case it is clear that the mere number of people living in the dwelling did not cause or contribute either to the fire or the deaths. During the course of my inquiry a number of issues have emerged which require further consideration.
57. One such issue was whether or not the house was fitted with smoke alarms, and if so, whether or not they were adequately maintained.
58. No evidence of a smoke detector was found at the scene after the fire. That said, I cannot exclude the possibility that there was one present in the dwelling as the house was subject to extensive damage.
59. Nor am I able to conclude that the smoke detector was not operative at the time. The evidence is that the fire was very loud and I am unable to exclude the possibility that a smoke alarm was present and activated.
60. From the material before me it is not possible to conclude that the presence of a properly functioning smoke detector would have prevented the deaths in this case. Indeed, if there was a properly functioning smoke detector present in the house it clearly failed to alert the victims. Perhaps this is unsurprising given that the fire in this case started in the bedroom

occupied by the deceased and in all likelihood spread quickly and became intense and loud before the alarm, if any, might have been triggered.

61. All of that said, the evidence before me does raise concerns about the presence of smoke detector in rental properties and the state of knowledge as to the responsibility for the maintenance and testing which I feel bound to comment upon.
62. In this case Ms Pham (one of the landlords) believed that there was at least one smoke alarm in the Dwelling prior to renting it out because she recalled making a comment to one of the other landlords that the battery should be checked, but she did not check it herself. Whilst Ms Pham could not recall in which room the smoke alarm was, Mr Nguyen thought it was in the kitchen. Ms Nguyen did not know if there were any smoke alarms as she had never visited the Dwelling. I make no specific adverse finding against the landlords in this case, but I must say that I am surprised by the lack of precise knowledge of the landlords as to the state of repair of a device so fundamental to the future safety of their tenants as a smoke detector. Among other things, this raises in my mind a concern as to whether landlords in general appreciate the importance of smoke detectors.
63. Ms Pham did not visit the Dwelling after engaging Ray White to manage the property and left all inspections and maintenance up to Ray White (and later Bells). Ray White had authority to spend up to \$1,000 on any repairs that might have been done at the property. Ms Kovacic of Ray White said that when she attended the property on 27 October 2005 to complete a condition report, she could recall seeing a smoke alarm in the hallway in front of the lounge room on the roof area. The condition report prepared by her, has three ticks next to the item 'smoke alarms' to indicate that they were clean, undamaged and working. Ms Kovacic said that she gave the condition report to the tenant to comment on it within 3 days if there were any problems. Mr Zinzuwadia received a copy of the condition report but said that he could not recall signing it and played no part in filling out the form or checking anything in the house. I have no reason to doubt the statements of either Ms Kovacic or Mr Zinzuwadia.
64. All of the surviving occupants of the house, when asked about smoke alarms after the fire, all stated that they did not know what one looked like and were not aware if there were any installed in the Dwelling or working. Mr Zinzuwadia's evidence is "*I was not 100% sure of what a smoke alarm looked like until the police showed me pictures of them on the Google search facility. I can say that I do not recall seeing anything similar to these*

*plastic round alarms on the roof anywhere inside the house. I do not recall a smoke alarm being set off at any time inside the house. I do not recall replacing any batteries in a smoke alarm inside the house unless someone was aware of a smoke alarm inside the house that I am not aware of. Also on the night of the fire I do not recall hearing any screeching siren like sounds in the house”.*

65. Mr Mandaliya’s evidence is *“Firstly, in relation to smoke alarms I can say that in India where I came from they are not normally used in any of the houses or buildings that I am aware of so I was not familiar with smoke alarms before I came to Australia. I was not aware of what they looked like prior to the fire. I was not aware that they would normally be fitted inside a house.*
66. These startling observations are a cause for concern when one examines the complex legal framework which establishes the obligation to install and maintain smoke detectors.

*Legal requirements to install a smoke alarms as at 3 January 2008*

67. In my assessment the current regulatory framework for the installation and maintenance of smoke alarms is not sufficiently clear or effective in protecting all segments of the renting public.
68. The first observation which can be made is that the links between obligation and practical implementation seem not to be particularly effective.
69. As at 3 January 2008 regulation 707 of the Building Regulation 2006<sup>11</sup> provided:
- (1) Subject to subregulation (6), this regulation applies to any Class 1, 2 or 3 building or Class 4 part of a building constructed or for which a building approval or building permit was granted prior to 1 August 1997.*
  - (2) A self contained smoke alarm complying with AS3786—1993 Smoke alarms, published 13 April 1993, as published from time to time must be installed in each dwelling or sole-occupancy unit (which is or forms part of a building to which this regulation applies) in appropriate locations on or near the ceiling of every storey of the dwelling or sole-occupancy unit.*
  - (3) The appropriate locations referred to in subregulation (2) must be as determined in accordance with Practice Note 2006-27 issued by the Building Commission in May 2006.*

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<sup>11</sup> Building Regulations 2006 were not operative at time the house was rented to Bhavin Zinzivadia.

- (4) *This regulation must be complied with by the owner of the dwelling or sole-occupancy unit.*
- (5) *A person who fails to comply with this regulation is guilty of an offence and liable to a penalty not exceeding 5 penalty units.*
- (6) *This regulation does not apply to a Class 1b or 3 building—*
  - (a) *if the building complies with regulation 709; or*
  - (b) *on or after the earliest date on which the owner of the building is required to comply with regulation 709 in relation to the building—*  
*whichever first occurs.*

70. Therefore, in all new residential buildings, constructed on or after 1 August 1997, smoke alarms must be connected directly to the consumer power mains as well as having a battery back-up. Residential buildings constructed before 1 August 1997, are to be fitted with a self-contained battery-powered Australian Standard AS 3786 – 1993 (**the Standard**) compliant smoke alarm, in appropriate locations on or near the ceiling of the property. The Standard contains a ‘Test Schedule for Smoke Alarms’ and also specifies in situ performance criteria.
71. If smoke alarms have not been installed in rented residential premises, it is the responsibility of the owner to install them. Any owner who fails to install a smoke alarm may incur a fine.
72. It is clear that a smoke detector must be installed, but it is also clear that for those detectors that are not connected directly to the power main they must be regularly checked or tested. Who is to undertake that test? Should it be the landlord, the tenant or the agent?

#### *Maintenance of smoke alarms*

73. There is no specific section or regulation that specifies who is responsible for the maintenance and testing of smoke detector in a rented residence. The answer lies in the convoluted interrelationship between statute, common law and contractual principles.
74. It appears that in summary, the landlord is obliged to maintain the smoke detector, but only if the landlord is given notice of a defect. This was in substance the submission of the REIV, who stated that the Residential Tenancies Act 1997 (**RTA**) applies and the landlord is responsible, by virtue of Section 68(1), because they have a duty to ensure the rented premises are in good repair.<sup>12</sup> Section 86(1) of the RTA provides landlords with a right of

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<sup>12</sup> REIV submissions dated 12 February 2013.

entry to enable them to comply with Section 68(1). The case of *Morgan v Liverpool Corporation* [1927] 2 KB 131, 149-150 (**Morgan case**) stands for the proposition that the obligation of the landlord to do repairs does not come into existence until the landlord has notice of the defect which the contract to repairs requires them to make good. Of course, the tenant enjoys exclusive possession and the right to quiet enjoyment. The reason for this is because the landlord has given the tenant exclusive occupation of the premises. The landlord is not in a position to know whether the residence is in good repair or not. How does the landlord ever find out that there is a problem with the smoke alarm?

75. In this case it appears that the answer lies in contract law. Clause 35 of the Tenancy Agreement, signed by Mr Zinzuwadia, provided that it was the responsibility of the tenant to 'check' the smoke alarm weekly to confirm that it was kept fully operational. Mr Zinzuwadia's contractual obligation to check the smoke alarm, and subsequently notify the landlord it was not in 'good repair' would, on the REIV submissions, create an obligation to have the landlord repair it.
76. This is neat legal solution, but what does this mean in practice? In rented properties constructed before 1 August 1997, is the landlord obliged to enter to change a battery? Is the tenant obliged to notify the landlord that the battery needs to be changed, or is it the tenant's legal obligation to do so? Is the tenant permitted to change the battery themselves, and if so, is the tenant required to give notice to the landlord of having done so, in order that the landlord can remain informed as to the state of repair of the demised premises?
77. At the time a tenancy arrangement commences, the landlord is obliged to provide the CAV publication titled 'Renting a home – A guide for tenants and landlords' which is an information booklet to tenants about their rights and obligations. At the relevant time the relevant red book was the 2008 edition (**2008 red book**). The 2008 red book was silent on the rights and responsibilities relating to smoke alarms in rented premises. The 2008 red book was updated in May 2012 (**2012 red book**) and now contains a note stating, "*The landlord is responsible for fitting smoke alarms.*"<sup>13</sup> However, it is silent as to who is responsible for maintaining the smoke alarm. The 2012 red book also contains a note for reporting safety issues, advising "*You should inform your landlord of any defects that pose a threat to safety so these can be fixed by an expert. If you report a safety risk and it is not*

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<sup>13</sup> 2012 rental guide, page 13.

*fixed, you can take further action.*<sup>14</sup> However, the 2012 red book does not say who is obliged to check or maintain such alarms, nor does it contain information about why they are important for safety, nor does it include any photographs of what a smoke alarm might look like. I note that the current version of the red book is dated 2013 and does not address any of these matters.

78. On reviewing the situation it has become clear to me that there is a hiatus between the legal rights and responsibilities borne by each party and what in practice is likely to occur. I have also come to the conclusion that the manner in which the legal rights and obligations are explained to ordinary members of the public is not sufficiently clear. I also consider that tenants who are from cultures where safety measures such as smoke alarms are not commonplace may be at a particular disadvantage. These conclusions are reinforced by the circumstances surrounding the deaths and fire that is the subject of this inquest, and the statements made by the surviving residents concerning their knowledge of smoke detectors at the time of entering into the lease.

#### **SUBMISSIONS OF INTERESTED PARTIES**

79. At the directions hearing on 26 November 2012 I invited submissions from interested parties as to whether there should be an inquest and to make submissions on possible recommendations.
80. As discussed above, all interested parties submitted that an inquest was not required in this matter. Therefore, I now address each interested party's submissions in relation to possible recommendations below.

#### **Tenants Union of Victoria and HPLC**

81. The TUV and HPLC provided joint submissions dated 24 December 2012 that covered a range of issues including that the Dwelling was overcrowded; the power boards were overloaded; there was inadequate electrical circuitry; no electrical safety checks conducted; may not have had any electrical circuit breakers; safety switches; any working smoke alarms and no inspection conducted for over two years. The TUV and HPLC also submitted that all occupants of the Dwelling were recent arrivals to Australia, financially disadvantaged and had little to no knowledge about their rights and responsibilities or about basic fire safety.

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<sup>14</sup> 2012 rental guide, page 12.



82. The TUV and HPLC requested I acknowledge broader social trends and policy issues that this matter raises as well as the legislative gaps that exist in relation to fire safety and make recommendations that may prevent future tragedies from occurring in similar circumstances.
83. I acknowledge the very important roles the TUV and HPLC have, in particular with respect to providing advice to residential tenants, rooming house and caravan park residents in Victoria. However, I have been invited by the TUV and HPLC to make a number of findings that I consider are beyond my statutory authority.

*Was the Dwelling a 'rooming house'?*

84. TUV and HPLC submitted that the Dwelling was a rooming house by virtue of the RTA definition of a rooming house and the fact that it was not a commercial operation does not prevent it from being a rooming house. I acknowledge that when a property does meet the legal definition of a rooming house it has to be registered with council and the council has an obligation to conduct inspections and to confirm that the property does comply with those requirements.
85. I have already found that the number of people in the Dwelling did not contribute to the fire. Whether the dwelling was operating as a "rooming house" as defined or not is beyond the scope of this inquest. Nothing about the physical cause of the fire suggests that the nature of the occupation of the dwelling contributed to either the fire or the deaths. I decline to make a finding as to whether or not the dwelling was occupied as a "rooming house". In my view, it would be inappropriate to address the TUV and HPLC's submissions on the rooming house question.
86. Similarly, there is no evidence upon which I could make a finding that either Mr Patel, Mr Sadhu and/or Mr Prajapati were homeless.
87. However, I agree with the TUV and HPLC submissions that the current framework establishing the responsibility for installing and in particular the maintenance of smoke detectors is not particularly clear. To that end, neither is the informational/educational material which is provided to tenants which seeks to explain that framework of those rights. The direct and incontrovertible evidence in this case leads me to the conclusion that in all likelihood there are many tenants who come from different parts of the world who don't even know what a smoke detector is, let alone that they have a role to play in the maintenance of them. Vulnerable people, including international students, need support to

locate, access and sustain safe rental tenancies as well as access to better education about their rights and responsibilities and basic fire safety.

88. The real issue of concern to me is that it is apparent that the occupants of the Dwelling were unaware of their rights and obligations with respect to fire safety.

*Legislative gap in relation to smoke alarms*

89. I agree with the TUV and HPLC submissions that there are no clear obligations under the RTA on landlords to regularly check and maintain smoke alarms during their periodic inspections or otherwise.
90. Section 68 of the RTA requires a landlord to maintain a dwelling “in good repair”, although it is unclear whether this would encompass an obligation to replace a smoke alarm that was in a dwelling and working when the occupant took possession.
91. The REIV, as the peak body for the Victorian real estate profession interprets section 68 of the RTA to cover smoke alarms. Even so, I find that the complex arrangement of shared responsibility for smoke alarms for houses not covered by Regulation 707 and let as rental properties needs to be improved. At the very least, clearer information needs to be given to tenants which:
- Does not assume that tenants necessarily know what a smoke detector is (perhaps photographs could be included in the material provided to tenants); and
  - as to the rights and responsibilities in relation to the maintenance and testing smoke detectors in rented premises.

*TUV and HPLC's proposed recommendations*

92. The TUV and HPLC's proposed 7 recommendations. For the reasons given above, I have not considered those which relate to rooming houses.

*TUV and HPLC Recommendation 1*

93. I do not propose to recommend an amendment to the RTA to include the word ‘safe’ in section 65(1) on the basis that I have found that it cannot be ruled out that smoke alarms were installed and operating at the time of the fire. The real issue in this case is to ensure clarity around who is responsible for the installation and maintenance of smoke alarms.

*TUV and HPLC Recommendation 2*

94. I agree with the TUV and HPLC that clarity as to who is responsible for the installation and maintenance of smoke alarms is needed. Regulation 707 of the Building Code is clear about who is responsible for installing smoke alarms in residential premises. However, clarification as to who bears responsibility for checking, maintaining and replacing alarms in residential tenancy arrangements.

*TUV and HPLC Recommendation 4*

95. I agree with the TUV and HPLC's submission that an important issue arising from the circumstances in this case is the tenants lack knowledge about fire and safety issues – even if that lack of knowledge may not have directly resulted in or contributed to the fire or the deaths). I agree that amendments to the Red Book is one a way of addressing this issue and should be considered.

*TUV and HPLC Recommendation 5*

96. I agree with the TUV and HPLC that there is a significant risk that many potential tenants either do not receive the guides, or cannot read and understand it and that there should be an education campaign conducted that effectively communicates information about fire, health and safety and housing rights and obligations to international students and recent arrivals.

*TUV and HPLC Recommendation 7*

97. I agree with the TUV and HPLC that the REIV and the Registered Accommodation Association of Victoria can play a significant role in educating real estate agents and landlords about their obligations under the RTA as well as producing best practice guidelines.

**Metropolitan Fire and Emergency Services Board (MFB)**

98. The MFB submitted that the deaths demonstrate the consequences of what can occur when there is no early warning of a fire in a residential context. I commend the MFB for developing a range of initiatives to specifically address the risks to international students

and that of other tertiary students by producing information and forming partnerships to increase awareness about fire safety including but not limited to the following:

- Development of fire safety information specifically addressing the fire safety needs of tertiary students, with particular emphasis on those students from overseas;
- Distribution of fire safety information for students via a brochure entitled 'Fire Safety Tips for Students' and fridge magnet detailing a Fire Safety Checklist in partnership with tertiary institutions and key stakeholders such as Austrade (who manage Study Australia), student accommodation providers and student support and services agencies through electronic newsletters, relevant websites, a fire safety promotional clip, and pre-departure in country briefings; and
- Participation in Orientation Week activities at various tertiary institutions promoting fire safety and distributing fire safety information.

99. The MFB advised that while these activities contribute to an improved safety outcome, they are resource intensive due to the number of private and government funded tertiary institutions in the Metropolitan District. However, due to the competing demands of a new country, study and part time work it is also unlikely that these methods engage all international students and measuring effectiveness is difficult. More importantly, these initiatives do not promote or advance the broader fire safety issue of consistent and safe practice in the private rental market in relation to smoke alarms.
100. The MFB's proposed 4 recommendations. All of which I have accepted, either in whole or in part.

#### **The Real Estate Institute of Victoria (REIV)**

101. The REIV submitted that the RTA could be made more explicit so that it's meaning is plain to lay readers, including landlords, tenants and in particular estate agents who have the obligation to maintain rented premises and to check smoke alarms.
102. The REIV submitted that a note might usefully be included to section 68 of the RTA making it plain who is responsible for smoke alarm maintenance and servicing. The note must taking into account responsibilities which exist under the Building Regulations 2006 and the Building Code of Australia to avoid confusion between legislative requirements and obligations. In other words, an owner's obligations under the Building legislation

- should not be altered by amendment of the RTA. The REIV also submitted that the red book should also detail the same information.
103. The REIV made a number of submissions in relation to the recommendations proposed by the TUV and HPLC. In particular, I note the REIV's support for the TUV and HPLC's recommendation 7 and that it would be only too willing to conduct education campaigns for its members. The REIV advised that it had already been pro- active in this regard and in December 2012 conducted a seminar in relation to a property manager's responsibilities and smoke alarm management which was primarily designed to acquaint property managers with the Judge Saccardo decision.
  104. The REIV also supported a recommendation that at the commencement of residential tenancy a landlord should annex a diagram of the residence to the condition report indicating the location of smoke alarms together with advice about when the alarms were last inspected and when the next inspection is due. In addition, the condition report should advise that if the tenant becomes aware a smoke alarm is not functioning properly, it should be immediately be reported to the landlord or the landlord's managing agent, contact details being provided.
  105. REIV also state that estate agents management authorities for residential properties should specify whether the agent is to conduct inspections of the property. If the agent is to do so, the intervals for the inspection(s) should be specified, with a notation to the effect that if interval(s) are not specified, there will be an annual inspection and/or on each occasion a new rental agreement is entered into.
  106. The REIV also recommended the RTA be amended to bring smoke alarms within the definition of 'urgent repairs' in section 3.
  107. The REIV is of the view estate agents should not have statutory responsibility in relation to the installation, maintenance or replacement of smoke alarms as these are owner responsibilities under the Building Regulations 2006 and should remain as such.
  108. I note that on 11 February 2013 the REIV Board agreed to adopt a policy to the effect that hard-wired smoke alarms be mandatory in all rental properties and that they be retro-fitted in all existing rental properties. I consider such a change to be highly desirable.

### **Consumer Affairs Victoria**

109. The Director of Consumer Affairs Victoria (CAV) administers the RTA and associated Regulations, and is responsible for the publication of a number of guides which must be given to a tenant on or before they commences occupation of the premises.
110. The RTA requires landlords to provide a written statement, in a form approved by the Director of CAV, setting out in summary form the rights and duties of a landlord and tenant under a tenancy agreement.<sup>15</sup> This document is produced and published by Consumer Affairs Victoria and is commonly known as the red book.
111. CAV proposed 3 recommendations. All of which I have accepted, either in whole or in part.

### **Parissis Pty Ltd T/As Bells Real Estate**

112. Bells provided written submissions as to whether or not there ought to be an obligation placed upon real estate agents either at the time of a lease renewal or at a periodic inspection, to:
- inspect smoke alarms and ensure they are in working order; and
  - any difficulty that may be imposed on a real estate agent in carrying out that obligation.
113. Bells stated that it had implemented procedural changes in relation to the installation, operation and maintenance of smoke alarms at all properties under its management as follows:
- (a) Educating its landlords in relation to their legal obligation to ensure that smoke alarms(s) are installed and tested annually.
  - (b) Engaging the services of a suitably qualified electrical contractor at set rates to install hard wired and battery operated smoke alarms, test and replace faulty smoke alarms and replace batteries on an annual basis.
  - (c) Refuse to lease a property that does not have smoke alarm(s) installed.
114. Bells stated that more than 35% of its landlords had voluntarily accepted these changes as a minimum standard in relation to the management of their property:

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<sup>15</sup> Section 66 of the Residential Tenancies Act 1997.

115. Bells submitted in relation to placing an obligation on real estate agents to inspect smoke alarms at rental properties and ensure they are in working order created the following difficulties, making it an unreasonable burden to impose on a real estate agent:
- Real estate agents do not generally hold the necessary expertise or qualifications to ensure that the installation and operation of smoke alarms complies with the relevant Australian Standard and or building code.
  - Smoke alarms are predominately located on ceilings (usually a height of 2.4m - 3.6m from ground level). Requiring real estate agents to inspect the smoke alarms would raise substantial occupational health and safety issues, as it would require real estate agents to carry and climb ladders.
  - If there is no smoke alarm in the property or it is not in working order, the real estate agent is not in a position to compel the registered proprietor to install a smoke alarm or repair it so that it is in working order.
  - If there is no smoke alarm in the property, a secondary obligation may be created whereby a real estate agent is required to install a smoke alarm(s) to a property of which it is not the registered proprietor.
  - If there is a smoke alarm in the property, but on inspection it is found to not be in working order, a secondary obligation may be created whereby a real estate agent is required to take steps to have a smoke alarm repaired or replaced in a property of which it is not the registered proprietor.
  - The responsibility for inspecting and maintaining smoke alarms would be transferred from the owner of a property to a real estate agent.
  - It negates the current requirement for the registered proprietor of the property to install smoke alarm(s).
  - It negates the contractual requirement of a tenant to inspect smoke alarms and confirm they remain in operational condition.
116. Bells submitted to place an obligation on real estate agents in relation to the installation of smoke alarms to be too onerous.
117. However, Bells did agree with the TUV and PILCH recommendation to amend the red book to include diagrams, pictures and information about smoke alarms and to provide warnings or advice in relation to the proper use of power boards.

## COMMENTS

118. I thank the interested parties in this matter for their valuable contribution and submissions. Whilst I have not addressed matters related to rooming houses, the relevant authorities should use this finding as a timely opportunity to review all obligations in relation to fire safety for such accommodation.

## RECOMMENDATIONS

119. Recommendation 1: That the RTA be amended to ensure all properties regardless of whether they are new residential buildings, constructed on or after 1 August 1997, subject to a Residential Tenancy Agreement be fitted with a hard-wired smoke alarm with ten year long-life tamper proof battery chamber back-up, on every floor level of every residence.
120. Recommendation 2: That the RTA be amended to clarify who bears responsibility for the testing and maintenance of smoke detectors. This could be done by ensuring the RTA detail that:
- at the beginning of a tenancy agreement and every year thereafter, a landlord or agent must certify that each and every smoke alarm at the rented premises:
    - i. has been properly installed in the correct location (as required by the Building Code of Australia or Building Regulations 2006 (Vic));
    - ii. has been tested and cleaned in accordance with the manufacturer's instructions; and
    - iii. is working effectively.
  - During a tenancy, a landlord or agent must replace any smoke alarm before the end of its service life, or if it reaches the end of its service life, replace it immediately.
  - A tenant must advise the landlord or agent if the tenant becomes aware that the smoke alarm is not working.
  - Amend s 86 of the RTA, which provides grounds for entry by the landlord of rented premises, to include that for the purposes of an inspection under subsection 86(1)(f), the landlord or estate agent must check that the smoke alarms are working.
  - Amend the definition of urgent repairs in 3(1) of the RTA to include a "smoke alarm that is not working".



121. Recommendation 3: That CAV review and update the information on fire safety and smoke alarms in its guides and online content, including the red book, to include following information about smoke alarms and fire response such as:
- the rights and obligations of landlords or agents and tenants in relation to the installation, maintenance, repair and replacement of smoke alarms;
  - a diagram of a smoke alarm (see **Attachment A**) and easy to understand instructions about where they should be located in the premises
  - how to test (see **Attachment B**) and clean smoke detectors (see **Attachment C**) and how to change the batteries (see **Attachment D**), and in particular, inform a tenant that the tenant must:
    - i. to gently dust around the outside cover annually;
    - ii. test the smoke alarm every month to make sure it is working;
    - iii. contact the agent/landlord if the smoke alarm is not working;
    - iv. contact the agent/landlord if the smoke alarm emits an occasional chirping noise as the battery or smoke alarm is faulty.
  - What to do in the event that the smoke alarm goes off, including what procedures might be adopted in the event of a fire such as to:
    - i. get down low and stay out of the smoke;
    - ii. alert others on your way out if it's safe to do so;
    - iii. get out and call triple zero and ask for FIRE and be ready to give the address.
  - the fire and safety risk of having multiple appliances connected to individual power points on multi outlet power boards without any safety switches;
  - basic fire and safety information if a fire occurs at the premises; and
  - It is also crucial that the guidebooks are translated into as many different languages as possible, including the first language of the residents at the premises.
122. Recommendation 4 – That CAV promote fire safety messages as part of its ongoing education activities, including but not limited to utilizing the International Education Unit within the Department of Business and Innovation to provide information about smoke alarms on their Study Melbourne website, Facebook and Twitter channels to promote education of smoke alarms and link back to the safety information on our website.

123. Recommendation 5 – That CAV produce additional information for property managers and continue to provide education on fire safety by working with the REIV and other key industry groups about ways of alerting agents that offer property management services of the importance of the fire safety message being reinforced when letting a property. This must include adding information on fire safety to the "Landlord's Kit".
124. Recommendation 6: That the REIV and Registered Accommodation Association of Victoria develop best practice guidelines and provide education to real estate agents and landlords about their obligations under the RTA which includes:
- i. an education campaign (including training sessions) for real estate agents/landlords about their obligations in relation to fire safety;
  - ii. identify ways that their membership can better communicate to people at the beginning of their tenancy or residency;
  - iii. what a smoke alarm is (see **Attachment A**), how to clean (see **Attachment C**), test (see **Attachment B**) that it is working and replace batteries (see **Attachment D**);
  - iv. who is responsible for installing, maintaining and repairing smoke alarms;
  - v. the fire risk of overloading power boards;
  - vi. their basic rights and obligations; and
  - vii. the tenancy agreement.
125. Recommendation 7 – That the REIV to ensure every landlord provides a copy of the following information, in addition to the red book, is placed inside every residence subject to a residential tenancy agreement:
- i. annex a diagram of the residence to the condition report indicating the location of smoke alarms together with advice about when the alarms were last inspected and when the next inspection is due.
  - ii. a picture of at least 3 different smoke alarm models (see **Annexure A**).
  - iii. a smoke alarm will alert you to smoke or fire and provide time for you to get out and get help. If the smoke alarm goes "beep beep beep":- get down low and stay out of the smoke; alert others on your way out if its safe to do so; get

out and stay out; call Triple 000 and ask for FIRE and be ready to give the address.

- iv. a tenant needs to test their smoke alarm monthly (picture of broom handle test (see Annexure B)) and change the battery if required (Annexure D);
- v. gently dust around the outside cover annually (picture of dusting (see Annexure C)).
- vi. a tenant must contact your agent or landlord if smoke alarm test makes no sound or the smoke alarm makes an occasional chirping noise like a bird as the battery or smoke alarm is faulty.
- vii. a tenant must not remove the battery from the smoke alarm or remove the unit from the ceiling and if they believe the unit to be faulty or not working please contact your agent.

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

- The family of Deepak Kumar Prajapati
- The Minister for Consumer Affairs
- Metropolitan Fire and Emergency Services Board
- Consumer Affairs Victoria
- Tenants Union of Victoria Ltd
- Public Interest Law Clearing House Homeless Persons' Legal Clinic
- Real Estate Institute of Victoria
- Registered Accommodation Association of Victoria
- Parissis Pty Ltd trading as Bells Real Estate
- Detective Senior Constable Kevin Murdoch, Coroners Investigator.

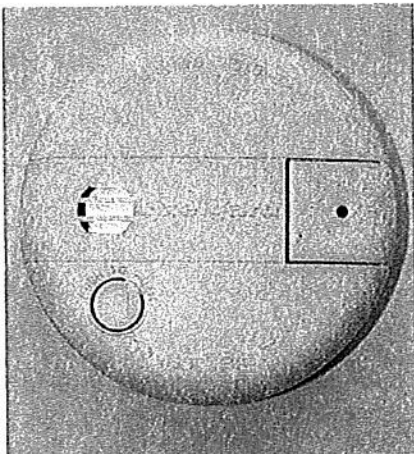
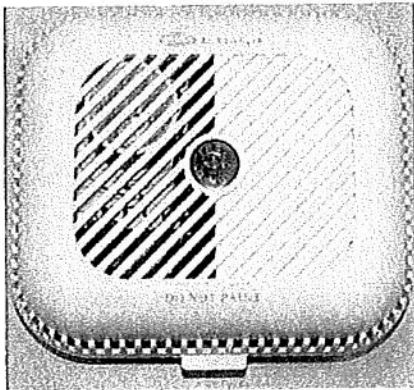
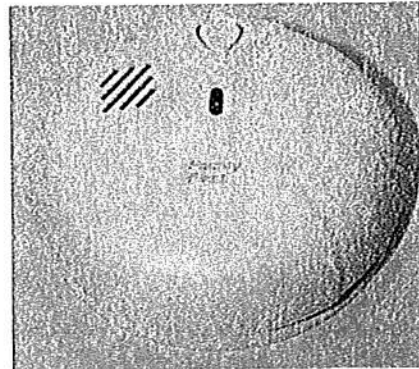
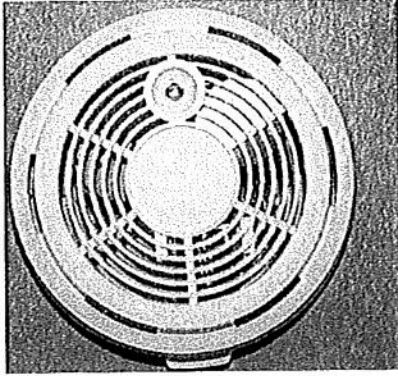
Signature:

PETER WHITE  
CORONER  
Date: 29 August 2014



**Attachment A**

**Pictures of different smoke alarm models**



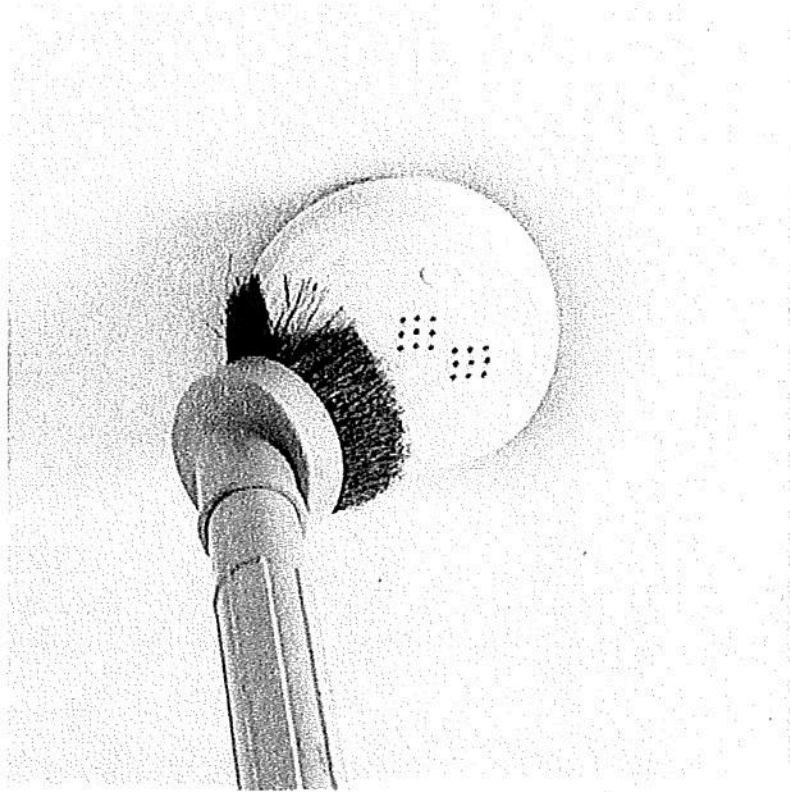
**Attachment B**

**A tenant needs to test their smoke alarm monthly (picture of broom handle test)**



**Attachment C**

**Gently dust around the outside cover annually (picture of dusting)**



**Annexure D**

**Change the battery if required (picture of changing battery)**

