

IN THE CORONERS COURT  
OF VICTORIA  
AT MELBOURNE

Court Reference: 2009 1497

## **FINDING INTO FIRE WITHOUT INQUEST**

*Form 40 Rule 61(2)*

*Section 68 of the Coroners Act 2008*

I, JUDGE IAN GRAY, State Coroner having investigated the fire at MAIDEN GULLY/BENDIGO

without holding an inquest find that the fire occurred on 7 February 2009

and find the cause and origin of the fire was:

IGNITION BY PERSON(S) UNKNOWN, AT THE REAR OF 54 BRACEWELL STREET,  
MAIDEN GULLY, VICTORIA

**in the following circumstances:**

### **Background**

1. The fire began at around 4.20pm on 7 February 2009 in a dry creek bed on the southern side of Bracewell Street, Maiden Gully, between Golf Links Road and Upper California Gully Road, approximately 6 kms from Bendigo. The fire started at the rear of a property belonging to Mr and Mrs Boyer of 54 Bracewell Street.
2. Ms Kirsty Tinker-Casson, resident at 24 Bracewell Street, approximately 50m from the point of origin of the fire, was the first witness to report the fire at 4.25pm. This report was quickly followed by other calls to '000'.
3. The fire spread along a creek line in the southeast, increasing in intensity and rate of spread. Homes were evacuated from approximately 5.05pm onwards.
4. The fire burned for six hours in the late afternoon and evening, running for about 5.5 kms to the south east before the wind changed at about 6.45pm, pushing the flames north east into

suburban Bendigo. The fire was declared under control at approximately 9.52pm, and declared safe at 7am on 9 February 2009.<sup>1</sup>

5. Tragically, one person died in the fire. A separate coronial investigation has been held into the death of Mr Kevin Michael Kane and findings have been completed (COR 2009 0731).
6. In addition to the death of Mr Kane, 41 casualties were recorded, 61 houses were destroyed by the fire, and approximately 125 sheds and outbuildings were damaged or destroyed. The fire burnt 179 hectares of Crown land, and approximately 175 hectares of private land. The total value of damage caused by the fire has been estimated in excess of \$23.5 million.<sup>2</sup>

### **Investigations**

7. On 11 February 2009 and 24 March 2009, an electrical inspector from Energy Safe Victoria attended the scene of the fire. The inspector examined all hardware, conductors and power poles marked nine, ten, and eleven along the southern side of Bracewell Street. The inspector did not find any evidence indicating that the cause of the fire was of an electrical nature.
8. On 11 June 2009, police investigators and members of the arson and explosives squad re-attended the scene to conduct a further search, which located nothing of evidentiary value.
9. As a result of these investigations, the police concluded that the probable cause of the fire was deliberate ignition. Further investigations were then undertaken by Victoria Police Phoenix Taskforce members and investigators from the Bendigo Criminal Investigation Unit, codenamed 'Operation Elects'.

### **Criminal proceedings**

10. As a result of the investigation, two youths were arrested on 2 February 2010, and subsequently charged with numerous offences including arson causing death.
11. On 7 November 2011, the criminal proceedings against the two youths were formally discontinued by the Director of Public Prosecutions (DPP).

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<sup>1</sup> 2009 Victorian Bushfires Royal Commission Final Report, Volume 1, pp197-199.

<sup>2</sup> 2009 Victorian Bushfires Royal Commission Final Report, Volume 1, p196.

## Coronial investigation

12. As the police investigation had determined the cause of the fire to be suspicious, limited evidence was presented to the 2009 Victorian Bushfires Royal Commission (the VBRC) into the cause of the Bendigo Black Saturday fire. The VBRC did, however, make findings and recommendations regarding other aspects of the Bendigo fire in its Final Report (which was delivered in July 2010), and I have had regard to that material in preparing this Finding.
13. I have also had regard to an extensive electronic inquest brief compiled by Victoria Police, which was provided to the court in August 2011. The Inquest Brief contains statements from eye witnesses, experts, witnesses from events prior to and during the fire, police investigators, a forensic pathologist, Disaster Victim Identification (DVI) investigators, photographs and images, an interactive re-enactment of the events and a range of documents including maps, meteorology, DVI and police comparison reports.

## Cause of fire

14. Following consideration of the forensic evidence in the inquest brief as to the cause of the fire, I sought and obtained a further statement from Ms Rachel Noble, Forensic Officer. I note the following with respect to the identification of possible sources of ignition as outlined in her statement dated 16 May 2013:

*Lighting – there was no reported lightning activity at the time of the fire.*

*Vehicular activity – there was no evidence of vehicular activity in the area of fire origin prior to the fire. There were no gates/access into the paddock/parkland. There were no tracks from earth moving equipment beside the fence, however, these were clearly made after the fire, probably by the fire service during fire suppression.*

*Electric fence/energiser – there was no electric fence or any electric fence components present at the time of the fire.*

*Camp fire – there was no evidence of a fire used for cooking or warmth in the area of fire origin, and given the weather conditions at the time of the fire, this seems highly unlikely.*

*Work in progress – there was no evidence of any work in progress, such as building or construction work, at the time of the fire.*

*Power lines – ...This was referred to the informant for further investigation.*

*Cigarette butts – ignition by a carelessly discarded cigarette could not be excluded, however, given the distance from the edge of the road to the area of the fire origin, it is highly unlikely that a cigarette butt thrown from a moving vehicle would travel approximately 4-5 metres (measured at a 90° angle to the road). There were no footpaths along the side of the road,*

*which reduces the likelihood of a pedestrian walking alongside the path and throwing a cigarette butt into the parkland, again approximately 4-5 metres..'*

*There was no physical evidence located in the area of fire origin with respect to the possible ignition by a carelessly discarded cigarette, and given the amount of vegetation and debris still remaining in the area of origin, it would be expected a cigarette butt would survive the fire.*

*Incendiary devices – there were no incendiary device located in the area of fire.*

*Deliberate ignition – all of the accidental sources of ignition that were identified were either excluded or deemed unlikely. This being the case, the probability that fire was lit by deliberate ignition is increased significantly. In addition to this, the location of the area of origin, in an area readily accessible by foot, and where there were relatively few houses, and there was a reasonable fuel load, provided appropriate conditions for direct ignition.*

15. With respect to the source of ignition being power lines, a separate investigation was conducted by an Electrical Inspector and that as a result no evidence was found indicating the cause of the fire was electrical in nature.

## **Conclusion**

16. In light of the VBRC's consideration of issues relating to the fire, the extensive Victoria Police investigation which resulted in charges being laid against two individuals for lighting the fire, the further statement of Ms Noble dated 16 May 2013, and having regard to section 7 of the *Coroners Act 2008* (Vic),<sup>3</sup> the court does not propose to conduct any further investigation into the Maiden Gully/Bendigo fire.
17. I find that the Maiden Gully/Bendigo fire was lit by an unknown person or persons, and the point of origin of the fire was a creek bed at the rear of premises located at 54 Bracewell Street, Maiden Gully.

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

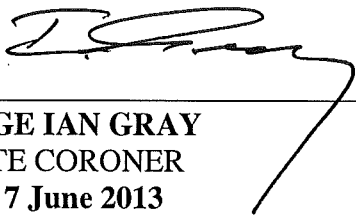
Mrs Carolyn Kane, Senior Next of Kin of Mr Kevin Kane

Detective Senior Sergeant Andrew Kerr, Phoenix Taskforce, Victoria Police

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<sup>3</sup> Section 7 of the *Coroners Act 2008* (Vic) records Parliament's intention that a coroner should liaise with other investigative authorities to avoid unnecessary duplication of inquiries and investigations.

Signature:

A handwritten signature in black ink, appearing to read 'I. Gray', written over a horizontal line.

**JUDGE IAN GRAY**  
**STATE CORONER**  
**Date: 7 June 2013**

