



IN THE CORONERS COURT  
OF VICTORIA  
AT MELBOURNE

Court Reference: COR 2007 1374

**FINDING INTO DEATH WITH INQUEST**

*Form 37 Rule 60(1)*

*Section 67 of the Coroners Act 2008*

Deceased:	<b>CHARBEL ATALLAH</b>
Findings of:	<b>JUDGE SARA HINCHEY, STATE CORONER</b>
Hearing date:	8 December 2016
Delivered on:	8 December 2016
Delivered at:	Coroners Court of Victoria, 65 Kavanagh Street, Southbank
Counsel assisting the Coroner:	Ms Jodie Burns, Senior Legal Counsel
Representation	Nil
Catchwords	Homicide, no person charged with indictable offence in respect of a reportable death, mandatory inquest

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## **HER HONOUR:**

### **BACKGROUND**

1. Charbel Atallah (**Mr Atallah**) was born in Lebanon on 17 April 1951. In the late 1960s, Mr Atallah married Adele in Lebanon and, in 1969, they had a daughter, Mirella.
2. In 1974, Mr Atallah, Adele and Mirella immigrated to Australia. Upon settling in Australia, Mr Atallah and Adele had three more children, George (in 1974), Rita (in 1979) and Jackie (in 1984). Mr Atallah and his family initially lived in Coburg before moving to a property in Fawkner in 2004. However, at the time of his death, Mr Atallah had not been living at the family home for a couple of years; although he remained married to Adele and would '*come and go*' from that home.
3. On 22 February 2006, Mr Atallah moved to 66 Heyington Avenue, Thomastown, a single storey, two-bedroom weatherboard house situated on the north side of the road. The property's driveway runs along the western boundary. The front entrance to the house is on the southern wall, towards the western end of the landing. Also on the southern wall, approximately 0.8 metres to the east of the front entrance, was a large, horizontally-oriented, rectangular window. This was the window for the master bedroom and consisted of a sliding pane of glass at each end and a large solid pane of glass in the centre.
4. Mr Atallah ran a number of restaurants and nightclubs, including Leos Spaghetti Bar in Swanston Street, Melbourne. In the mid-1980s, Mr Atallah sustained a back injury which resulted in him not being able to work, for which he received government benefits.
5. Mr Atallah's prior criminal history included a conviction for 'possession of a drug of dependence' in 1994 and convictions for drug trafficking in 2002, for which he was sentenced to a term of imprisonment.
6. On Friday 13 October 2006, Mr Atallah was charged and bailed in respect of 'conspiring to traffic' and 'trafficking a drug of dependence'. At the time of his death, he was on bail awaiting committal proceedings for these charges.
7. Mr Atallah had non-exclusive relationships with numerous women, including Ms Elzbieta Hodgins (**Ms Hodgins**). Ms Hodgins reports that Mr Atallah's other relationships caused friction for them and that her relationship with Mr Atallah was one of '*love-hate*'. On one occasion, upon finding another woman at Mr Atallah's home, Ms Hodgins slashed furniture

with a kitchen knife and threatened the woman with the same knife. The woman had to hide to avoid being stabbed. Mr Atallah and Ms Hodgins had been estranged in the period of time prior to Mr Atallah's death.

## THE PURPOSE OF A CORONIAL INVESTIGATION

8. At the time of Mr Atallah's death, the *Coroners Act 1985* (Vic) applied. From 1 November 2009, the *Coroners Act 2008* (**the Act**) has applied to the finalisation of investigations into deaths that occurred prior to the commencement of the Act.<sup>1</sup> Mr Atallah's death constituted a 'reportable death' under the *Coroners Act 1985* (Vic), as his death occurred in Victoria, and was both unnatural and violent.<sup>2</sup>
9. The jurisdiction of the Coroners Court of Victoria is inquisitorial.<sup>3</sup> The purpose of a coronial investigation is independently to investigate a reportable death to ascertain, if possible, the identity of the deceased person, the cause of death and the circumstances in which death occurred.
10. It is not the role of the coroner to lay or apportion blame, but to establish the facts.<sup>4</sup> It is not a coroner's role to determine criminal or civil liability arising from the death under investigation, or to determine disciplinary matters.
11. The term "cause of death" refers to the medical cause of death, incorporating where possible, the mode or mechanism of death.
12. For coronial purposes, the circumstances in which death occurred refers to the context or background and surrounding circumstances of the death. Rather than being a consideration of all of the circumstances which might form part of a narrative culminating in the death, it is confined to those circumstances which are sufficiently proximate and causally relevant to the death.
13. The broader purpose of coronial investigations is to contribute to a reduction in the number of preventable deaths, both through the observations made in the investigation findings and by the making of recommendations by coroners. This is generally referred to as the 'prevention' role.

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<sup>1</sup> Coroners Act 2008, section 119 and Schedule 1. All references which follow are to the provisions of this Act, unless otherwise stipulated.

<sup>2</sup> Section 3, definition of 'Reportable death', *Coroners Act 1985*.

<sup>3</sup> Section 89(4) *Coroners Act 2008*.

<sup>4</sup> *Keown v Khan* (1999) 1 VR 69.

14. Coroners are also empowered:
  - (a) to report to the Attorney-General on a death;
  - (b) 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
  - (c) 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. These powers are the vehicles by which the prevention role may be advanced.
15. All coronial findings must be made based on proof of relevant facts on the balance of probabilities. In determining these matters, I am guided by the principles enunciated in *Briginshaw v Briginshaw*.<sup>5</sup> 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 that they caused or contributed to the death.
16. Section 52(2) of the Act provides that it is mandatory for a coroner to hold an inquest into a death if the death or cause of death occurred in Victoria and a coroner suspects the death was as a result of homicide (and no person or persons have been charged with an indictable offence in respect of the death), or the deceased was immediately before death, a person placed in custody or care, or the identity of the deceased is unknown.
17. While Mr Atallah's identity was not in dispute and he was not a person placed in "*custody or care*" as defined by section 3 of the Act, his death is considered to be a homicide. Therefore, it is mandatory to conduct an inquest into the circumstances of his death because no person or persons have been charged with an indictable offence in respect of the death.

## **VICTORIA POLICE HOMICIDE INVESTIGATION**

18. Immediately after Mr Atallah's death, Victoria Police commenced a criminal investigation because the death was considered to be a homicide.
19. Mr Attallah's death was investigated by members of the Homicide Squad. Despite this investigation, no person or persons have been charged with indictable offences in connection with Mr Attallah's death.

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<sup>5</sup> (1938) 60 CLR 336.

20. I note the observations of the Victorian Court of Appeal in *Priest v West*,<sup>6</sup> where it was stated:

*“If, in the course of the investigation of a death it appears that a person may have caused the death, then the Coroner must undertake such investigations as may lead to the identification of that person. Otherwise the required investigation into the cause of the death and the circumstances in which it occurred will be incomplete; and the obligation to find, if possible, that cause and those circumstances will not have been discharged.”*

21. Consistent with this judgment, and mindful that the Act mandates that I must conduct an inquest, one of the purposes of the inquest is to investigate any evidence that may lead to the identification of the person (or persons) who may have caused the death, bearing in mind that I am required to make findings of fact and not express any judgment or evaluation of the legal effect of those findings.<sup>7</sup>

22. Section 7 of the Act specifically states that a coroner should avoid unnecessary duplication of inquiries and investigations, by liaising with other investigative authorities, official bodies or statutory officers. The rationale behind this provision is to allow for consideration of public interest principles that weigh against the potential benefits of any further investigation, such as further cost to the community. It also acknowledges that although a number of authorities or organisations may have the mandate to investigate, some are more appropriately placed than others to do so in any given circumstance.

23. In this case, I acknowledge that the Victoria Police through the Homicide Squad, has conducted an extremely thorough investigation in this matter.

24. In making this Finding, I have been careful not to compromise any potential criminal prosecution in the course of my investigation, mindful that Mr Attallah’s death is an unsolved homicide case which Victoria Police continues to investigate.

25. The Coroner’s Investigator, Detective Sergeant Paul Rowe, has provided to the Court a statement in relation to this matter.

26. The confidential nature of the Victoria Police’s ongoing investigation prevents me from reciting each and every matter which has been established by the Homicide Squad. However, Detective Sergeant Paul Rowe’s statement indicates that the following important matters have been established and are able to be disclosed:

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<sup>6</sup> (2012) VSCA 327.

<sup>7</sup> *Perre v Chivell* (2000) 77 SASR 282.

- (a) exhibits seized by Victoria Police tested for the presence of DNA has not identified any potential suspect for Mr Atallah's death;
- (b) forensic examination of the bullets determined them to be .45 calibre Winchester silvertip hollow points, which are approximately 230 grain;
- (c) the locations of the fired cartridge cases at the scene, the bullet damage inside the bedroom, the position of Mr Atallah and his wounds are all consistent with the shooter being positioned outside the house, close to the window on the landing, and firing into the bedroom through the open window;
- (d) latent fingerprints developed on the outside front sliding main window of Mr Atallah's bedroom were not matched with any fingerprints on the national database;
- (e) Victoria Police identified the '*Suitman*' as being Milad Noel Alaoui, born 1 January 1959;
- (f) Victoria Police intelligence is that Mr Atallah was involved in the drug trafficking and manufacturing trade and that he was often indebted to suppliers;
- (g) Mr Atallah's house was well known in the area as a '*drug hang-out*';
- (h) Tan An Nguyen (**Mr Nguyen**) had been arrested and charged in June 2006 for the same offences Mr Atallah was on bail for;
- (i) Mr Nguyen attended at Mr Atallah's home on the night of his death to discuss those charges and the pending court proceedings; and
- (j) the homicide investigation into Mr Atallah's death is ongoing and the Homicide Squad file remains open.

#### **MATTERS IN RELATION TO WHICH A FINDING MUST, IF POSSIBLE, BE MADE**

##### **Identity of the Deceased pursuant to section 67(1)(a) of the *Coroners Act 2008***

- 27. The deceased was visually identified by his father, George Atallah, on 14 April 2007 to be Charbel Atallah, born 17 April 1951.
- 28. Identity was not disputed and therefore required no investigation.

### **Medical cause of death pursuant to section 67(1)(b) of the Coroners Act 2008**

29. On 14 April 2007, Dr Malcolm Dodd (**Dr Dodd**), Senior Forensic Pathologist with the Victorian Institute of Forensic Medicine, conducted an autopsy upon Mr Atallah's body and subsequently provided a written report which concluded that a reasonable cause of death was "*Multiple gunshot injury to the chest.*"
30. Dr Dodd commented that the immediate cause of death was acute blood loss and internal organ trauma secondary to multiple gunshot injury to the chest. Dr Dodd also commented that all shots fired were of pathologically designated '*distant range*'.

### **Circumstances in which the death occurred pursuant to section 67(1)(c) of the Coroners Act 2008**

31. On the morning of 12 April 2007, Mr Atallah telephoned Ms Hodgins and offered to go to her house and mow her lawns. Ms Hodgins accepted Mr Atallah's offer. Mr Atallah also asked Ms Hodgins if she would stay at his home that evening. On Ms Hodgins' account, she had not stayed the night with Mr Atallah in the previous six months as she did not like his lifestyle.
32. At approximately midday, Ms Hodgins went Mr Atallah's home and then drove him to her address and he mowed her lawns. Later, Ms Hodgins and Mr Atallah drove back to his address in Thomastown.
33. Ms Hodgins told police officers that sometime during that day Mr Atallah referred to a person as the '*Suitman*'. The '*Suitman*' reportedly told Mr Atallah that a blue station-wagon had been driving up and down the street past his house.
34. The same day, Mr Atallah and Ms Hodgins walked up Heyington Street, in the direction of the railway station. Mr Atallah pointed out a blue Holden Commodore station-wagon to Ms Hodgins and told her that he believed it was a police vehicle. There was one male in the car.
35. According to Ms Hodgins, sometime after dark she drove Mr Atallah to a chemist in Mill Park so he could obtain medication for his diabetes. They then returned to Mr Atallah's home.
36. At approximately 7.30 – 8.00 pm, Mr Nguyen and another man, Andrew Smith (**Mr Smith**), attended at Mr Atallah's home. Soon after their arrival, Ms Hodgins left the house.



37. At 10:01 pm, Ms Hodgins telephoned Mr Atallah and he asked her to return to his home. She drove back to Mr Atallah's home to find Mr Nguyen and Mr Smith still present, but they left shortly thereafter.
38. Both Mr Atallah and Ms Hodgins then went to bed in the main bedroom, which is located at the front of the house. Ms Hodgins told police officers that:
- (a) at approximately 4.00am on Thursday, 13 April 2007, she was awoken by a noise and thought that somebody was knocking on the front door;
  - (b) she alerted Mr Atallah to what she had heard, then got out of bed and looked through the curtains but could not see anyone;
  - (c) Mr Atallah then got out of bed and also looked through the curtains and said "*Who's there?*"
  - (d) she heard a male voice, with no accent, state "*it's me, man*";
  - (e) she only heard the one voice from outside;
  - (f) Mr Atallah then opened the sliding bedroom window and said "*I'm here*";
  - (g) a number of shots were then fired and Mr Atallah fell to the floor;
  - (h) she called 000 at 4.07am and police officers attended.
39. Police officers found Mr Atallah lying on his back on the floor of the master bedroom, between the bed and the southern wall. Mr Atallah was wearing a partly cut off T-shirt and no other clothing. There were three visible wounds to the upper right section of his torso.
40. Police officers searched the property and located a cigarette butt on the nature strip in front of the property, to the east side of the driveway. The cigarette butt was burnt down to the filter, which had a gold-coloured band visible.

## **FINDINGS AND CONCLUSION**

41. Having investigated the death of Charbel Atallah and having held an Inquest in relation to his death on 8 December 2016, at Melbourne, I make the following findings, pursuant to section 67(1) of the Act:
- (a) that the identity of the deceased was Charbel Atallah, born 17 April 1951;

- (b) that Charbel Atallah died on 13 April 2007, at 66 Heyington Avenue, Thomastown from “*multiple gunshot injury to the chest*”;
  - (c) that Charbel Attallah died in the circumstances set out above; and
  - (d) that despite an extensive criminal investigation conducted by Victoria Police, no person or persons have been identified, to date, as being responsible for causing Charbel Atallah’s death. On that basis, I am satisfied that no investigation which I am empowered to undertake, would be likely to result in the identification of the person or persons who caused Mr Atallah’s death.
42. I note that if new facts and circumstances become available in the future, section 77 of the Act allows any person to apply to the Court for an order that some or all of these findings be set aside. Any such application would be assessed on its merits at that time.
43. I convey my sincerest sympathy to Mr Atallah’s family and friends.
44. Pursuant to section 73(1) of the Act, I order that this Finding be published on the internet.
45. I direct that a copy of this finding be provided to the following:
- (a) The Atallah family.
  - (b) Detective Sergeant Paul Rowe, Coroner’s Investigator.
  - (c) Detective Inspector Michael Hughes, Homicide Squad, Victoria Police.

Signature:



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**JUDGE SARA HINCHEY**  
**STATE CORONER**  
Date: 8 December 2016