

IN THE CORONERS COURT  
OF VICTORIA  
AT WANGARATTA

Court Reference: COR 2009 000015

**FINDING INTO DEATH WITH INQUEST**

*Form 37 Rule 60(1)*

*Section 67 of the Coroners Act 2008*

**Inquest into the Death of GARY JAMES COOK**

Delivered On:	11 October 2012
Delivered At:	Wangaratta Coroners Court
Hearing Dates:	31 May, 1, 2, 3 June 2010 and 24 November 2011
Findings of:	Gerard Robert Bryant, Coroner
Representation:	Counsel for the Family – Mr Hanos Counsel for Thales Australia – Mr Taylor Counsel for Mr Mulquinney – Mr Hanneberry Counsel for Mr Kreeck – Mr Stafford
Counsel Assisting the Coroner	Sgt McCormack

I, Gerard Robert Bryant, Coroner, having investigated the death of GARY JAMES COOK  
AND having held an inquest in relation to this death on 31 May, 1, 2, 3 June 2010 and 24 November  
2011

at Wangaratta Coroners Court

find that the identity of the deceased was GARY JAMES COOK

born on 25 September 1955

and the death occurred On 2 January 2009

at Wangaratta Hospital, Green Street, Wangaratta Victoria 3677

**from:**

1a ELECTROCUTION

**in the following circumstances:**

### **INTRODUCTION**

The deceased man Mr Gary Cook ("Mr Cook") was employed by Thales Australia ("Thales"), at their Mulwala facility in New South Wales. He had been employed with the Department of Defence ADI and Thales since 24 January 1972. He was 53 years of age.

Mr Cook was a qualified "A" class electrician with extensive qualifications and experience. He qualified as a certified electrical mechanic on 23 January 1976, and completed a number of certificates and upgrading of his skills in regard to high voltage work including the authority to receive Electrical Access Permits (EAP). The list of his qualifications and experience is detailed in the Inquest brief.

Mr Cook was conducting high voltage electrical maintenance work on 30 December 2008 at around 2.10 pm. Two of his work mates, Mr Mark Mulquinney ("Mr Mulquinney") and Mr Brandon Kreeck ("Mr Kreeck"), were observing his work. Mr Cook was working in an elevated work platform ("EWP") or cherry picker. He was in the process of removing three earthing sticks from three (22,000-volt) cables. These cables were not live and had been isolated for the repair work to be undertaken. Directly below these high voltage cables were low (415 volt) cables that were live. Mr Cook had removed two of the earthing sticks, and was in the process of removing the third earthing

stick, when he was observed to collapse in the bucket of the EWP. He was administered first aid and conveyed to the Wangaratta Hospital. He passed away at 3.30 pm on 2 January 2009.

A subsequent post mortem was unable to ascertain the cause of death. The pathologist noted in her comments that,

*"There is no definitive evidence from the scene investigation that the deceased was electrocuted". Comment was also made that, "It is possible that the deceased has had a cardiac arrhythmia which has led to his collapse. The cause of which has not been determined following an autopsy and ancillary tests".*

As the death occurred at a "workplace"<sup>1</sup> it was investigated by Comcare to determine whether there had been compliance with the Occupational Health and Safety Act 1991 ("The OHS Act") and its associated regulations and codes of practice. The Coroner is indebted to the investigating officers for their investigation and preparation of the inquest brief.

The incident leading to the death of Mr Cook occurred in NSW, and he passed away in Victoria. The Coroners Act 2008, ("The Act") provides jurisdiction to investigate the matter if the death is a "reportable death".<sup>2</sup> and where inter alia, the death occurred in Victoria. A reportable death is a death that appears to have been; *unexpected, unnatural or violent or to have resulted, directly or indirectly, from an accident or injury;*

The Victorian Coroners Court has jurisdiction to hear this matter as the death occurred in Victoria, and the death was unexpected and arose from an accident.

### **CIRCUMSTANCES SURROUNDING THE DEATH**

The circumstances surrounding the death of Mr Cook have been the subject of a prior ruling by the Coroner on 3 June 2010, and confirmed by the Supreme Court in a subsequent appeal brought by the employer Thales.

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<sup>1</sup> Section 5 of the Occupational Health and Safety Act 1991

<sup>2</sup> Section 4 of the Coroners Act 2008

I do not propose to add anything further to those findings, but rather repeat them here for the sake of completeness;<sup>3</sup>

*Thales, has advanced a number of reasons why in this inquest I could not be satisfied on the balance of probabilities that Mr Cook was electrocuted and I think it is important to summarise and briefly repeat them as part of the ruling that I make today. It is submitted that there is no direct evidence, no eyewitness evidence, of Mr Cook coming into physical contact with the power lines that he was working on. There is no direct evidence from any of the witnesses that Mr Cook came into contact with two power lines which I think is accepted is necessary for him to be at risk of electrocution, that is an entry and an exit point.*

*It is also submitted that whilst witnesses observed Mr Cook lowering earth sticks into the bucket from the high voltage wires that none of the witnesses, and some of them were quite close to Mr Cook, noticed any of those earth sticks physically coming into contact with the wires. It is also noted that those earth sticks were subsequently investigated and checked and none of them were found to be faulty so that even if that part of the earth stick had come into contact with the wires it wouldn't have acted as a conductor.*

*There is no evidence that Mr Cook was holding the clamp section of the earth sticks and it would be necessary if the earth sticks were subsequently assessed as being in working order for him to have had hold of a section of the earth sticks which was not insulated in order for that to act as a conductor. There is no evidence that the low voltage lines moved and there is no evidence that wind or any other atmospheric conditions played a part in Mr Cook accidentally coming into contact with the low voltage lines.*

*The employer, Thales, made submissions that both Mr Kreeck and Mr Walker identified Mr Cook as holding the earth sticks in both hands as he was lowering them from the high voltage wire and not the clamps. Mr Kreeck's observations were that at the time that these earth stick were being lowered that Mr Cook was 400 to 600 millimetres below the low voltage wires.*

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<sup>3</sup> T336- 344

*Of course it is put and I accept that what Mr Cook was doing was in accordance with the code of practise and in accordance with the safety assessment that he had carried out in accordance with the electricity access permit that he had signed off on. It was conduct which was entirely consistent with the then necessary standards of work on high voltage wires.*

*Of course the EWP or the cherry picker in layman's terms was also analysed and it was found to be in working order such that it is argued that the court could not conclude that the bucket if it had come into contact with the wires could have acted as a conductor. It is also noted by Mr Taylor that there was no evidence of damage or burns on the equipment and none of the witnesses present identified any arcing or flashing and noise and smell which you would ordinarily associate with someone who had come into contact with low voltage wires.*

*Both of the pathologists, Dr Parsons and Dr Collins, noted that there were no entry or exit points. There was no definitive evidence of electrocution. There was no singed hairs, no markings and the markings that I think originally were considered to be consistent with electrocution were explained as being previous injuries and in one case a birthmark.*

*Doctor Collins was of the view that given the pathology and the mildly enlarged and the evidence of ischemic heart disease that Mr Cook's death was more consistent with cardiac arrhythmia and that his collapse was sudden and due to asymptomatic or silent heart disease. Of course those factors would be present if someone was to suddenly and unexpectedly suffer a cardiac arrhythmia.*

*The entire submission by the employer of course is to a large extent based on an assertion that the sudden and unexpected collapse of Mr Cook was coincident with the work that he was undergoing in the immediate vicinity of low voltage power lines.*

*Counsel for the family accept that there were no definitive features following the post-mortem that would point unequivocally to electrocution but it is also pointed out and I accept that there is no medical history of heart disease. The general practitioner's notes have been tendered, hospital notes have been tendered and there was nothing that Mr Cook had complained of prior to his collapse on this particular day which would indicate any*

*impending heart attack and nothing in his history that would suggest that he suffered from any of the precursors to a heart attack.*

*The evidence of Mr Kreeck and Mr Mulquiney and to a lesser extent Mr Walker it is argued provide a basis upon which this court could conclude that the collapse of Mr Cook was something more than a coincidence. I think it is important to repeat some of the observations of both Mr Mulquiney and Mr Kreeck in terms of their observations of Mr Cook on that day.*

*Mr Mulquiney said on p.11 of the interview that he conducted with Mr Stevens, I am reading from the top of the page, "Brandon was the post observer and he was doing the observations. I was also present and observing him actually as he pulled the last one down. I didn't – my view was obstructed and I didn't actually see him pull that one completely down." Question, "Ok, what happened then?" Answer: "Gary, he let out a – it sounded like he said, 'Shit' but I don't know what he actually – what happened, the noise was what I initially looked to see where it was and he just crumpled into the bucket."*

*He is asked the question, "When you say bucket he was working on a EWP?" "He was in there doing – at the back of the cherry picker." "And that was in the elevated position?" "It was in an elevated position." "Ok, where approximation to sort with the cables if you like was that the situation?" "It was below the low voltage wires which ran underneath." "Ok, so directly below, not to the side?" "No, directly below, directly below." "And how far below would you estimate?" "It's hard to tell from the ground because your view is obscured but I would say 200 or 300 metres, I don't want to speculate."*

*He then goes on to say, "That's ok and how far from where you were actually standing in relation to the EWP?" "A clear view to Gary." "And how far would you have been?" "Probably five no it probably would be ten metres from basically the base of the pole." He then goes on to say, "All right, so you're sort of – I appreciate you're not the observer but you've been observing. You were partly obscured." "I was present." "You heard Gary say something?" "An utterance." "And then you've looked up?" "Immediately looked up and he's dropped into the bucket."*

*"And what did you see? Did he – what was the equipment where was that at that point?" and he goes on to describe that he says, "I think he had the two poles in the bucket with him so he had – he had the poles removed and he had them – I can't recall actually – he started to move them – we started to move into the resuscitation phase then." What Mr Mulquiney is describing of course in my view an action which probably in the course of the work that he was undergoing that day put him at most risk of electrocution.*

*Mr Kreeck also detailed in his record of interview at p.12 his observations of that critical time and he says as follows, "I was standing there with Mark and I said something to Mark, I can't remember what I said to him and then I was looking up at the bucket and Gary had the two sticks off – two sticks taken off the south to the south one and the middle one. He's taken them off and he just unscrewed the north line and he's brining it down and what I see was it was like – it was like slipped like slipped in his hand and that sort of, you know, like he went to catch it and then he sort of slid down into the bucket and I said to Mark at that stage I said, 'I think he might've knocked himself out with the stick.'"*

*That in my view suggests that Mr Cook in the process of removing the final earth stick from the high voltage wire had lost some control of the earth stick and a loss of control of the earth stick in such close proximity to the low voltage power lines in my view raises the very real likelihood of electrocution through the loss of control of that earth stick to Mr Cook.*

*Of course the family concede that there is no direct evidence of electrocution and that the locking of the jaw observed by Mr Mulquiney and Mr Kreeck is equivocal because it is equally consistent with cardiac arrhythmia. In my view the locking of the jaw supports the argument that during that critical phase of lowering the third earth stick that Mr Cook in all likelihood had allowed himself to come into contact with the low voltage wires and has suffered an electric shock as a result of losing control of the earth stick in that process.*

*I think the evidence from the pathologists doesn't assist me in reaching a conclusion one way or the other as to the existence of electrocution. The evidence is equivocal and whilst I have the utmost respect for Dr Collins and Dr Parsons in my view whilst Dr Collins was of the view that if he was faced with a choice between cardiac arrhythmia and natural*

*causes and electrocution he would prefer cardiac arrhythmia, that is not really the test that is applied here. The test is the balance of probabilities and in my view the balance of probabilities in this particular case lead me to the view that on balance it is more likely than not that Mr Cook was electrocuted as a result of lowering that third earth stick in close proximity to the low voltage lines.*

*I do reach that conclusion on the following basis. One, there was no significant indication of prior heart disease. That he was not engaged in any particularly strenuous activity which would act as a catalyst to a cardiac arrhythmia. There was no suggestion that he was suffering to any of the symptoms prior to his arrest although I accept what Dr Collins says that people can have all of the precursors to a heart attack and not know of them.*

*The observations of the witness have Mr Cook collapsing in the bucket and I accept Mr Mulquiney's evidence that there were some exclamation, it may not have been of the expletive initially described but it is an exclamation in my view entirely consistent with a recognition by Mr Cook that something had happened which had put him in danger of electrocution. In my view it is unlikely if someone has suffered a spontaneous cardiac arrhythmia that an exclamation of that type in this very narrow window of time, at this particular point in time, is likely.*

*I don't consider that the absence of any of the signs ordinarily associated with electrocution necessarily would lead me to a definitive conclusion that Mr Cook had not suffered an electrocution. This is not a situation where Mr Cook for example had been walking down the street or had been in bed and had suffered a heart attack. He was working in a high risk situation, in close proximity to low voltage wires and he had in his possession the potential for electrocution in the guise of the earthing stick and/or consistent with what Mr Walker had observed the potential to be resting against one of the wires by moving to the corner of the bucket.*

*Although one must be careful in placing any significant weight on the observations of Mr Walker given that he only made a statement in May of this year and there is no way of testing whether or not the statement that he gave to the inquest or gave to his solicitors and*



*in turn given to the inquest is consistent with what he told investigators previously. However I am satisfied on the evidence as I have found that on the balance of probabilities that commonsense dictates that Mr Cook in all likelihood and on balance given the circumstances as I have found that he died as a result of coming into contact with live wires, that is, that he was electrocuted.*

#### **ISSUES ARISING FROM THE DEATH**

8. In my earlier ruling it was found that ;

*“ Mr Cook had been responsible for carrying out a safety assessment of the risks involved in the subject work, and had compiled the necessary access permits to undertake the works. I found that this work was consistent with Industry codes of practice and in accordance with the relevant industry standards”.*

9. Such a finding however, does not preclude this Inquest inquiring into the circumstances of his death, the work practices at Thales and adequacy of State and National guidelines, protocols and standards. Such inquiry being undertaken with a view to identifying any areas that may require change or remedial review in order to prevent similar deaths from occurring again in the future.

#### **MATTERS RAISED BY MRS COOK**

10. The widow of Mr Cook, although legally represented at the hearing, submitted a number of her own letters to the inquest, raising concerns she had about the death of her husband. This correspondence was disseminated to the parties and they were each given an opportunity to respond to the matters she raised.

11. The matters raised by Mrs Cook can be briefly summarised as follows;

a) That there was evidence to suggest that the power was switched back on unbeknown to Mr Cook whilst he was in the EWP.

b) That given Mr Cook's extensive experience and qualifications, that he would not have allowed himself to be working so close to live power lines. His dress and the jewellery he was wearing suggest he had understood the lines were de-energised.

c) The failure to produce and/or the non existence of switching instructions is a matter of concern. These instructions would have been capable of informing the inquest of when the power was turned on/off, by whom and in what direction power was switched on.

d) That Mr Bill Young an employee of Thales should have been called in regard to his knowledge of switching paperwork.

e) That Mr Mulquinney had told Mrs Cook at the Wangaratta Hospital that the power had been turned on. Further, that he was not properly trained or qualified to do his allocated tasks.

f) The incident should have been investigated by NSW Workcover authority.

g) That Thales code of practice concerning electrical work was based on a Victorian manual when the work was undertaken in NSW and should have been done under NSW codes of practice.

12. In considering the numerous matters raised by the widow of Mr Cook, it must be borne in mind that it is not the purpose of a coronial inquest to establish blame, liability or guilt arising from the acts or omissions of any one individual or entity.<sup>4</sup>

13. In many instances, there is insufficient evidence upon which answers to all the matters raised by Mrs Cook can be given. It is not sufficient to speculate, or draw inferences, which are not supported by the actual evidence at the inquest. Some of the matters raised by Mrs Cook in her submissions were not raised at all during the Inquest, or were not pursued during cross-examination in any depth.

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<sup>4</sup> See s69 of the Act

14. As a widow who has lost her partner in such tragic circumstances, it is entirely understandable, that she and her family would want answers to many of the questions that the circumstances of Mr Cook's death raise.

**Was the power switched back on whilst Mr Cook was in the EWP?**

15. The principal basis upon which this assertion rests is the evidence of Mr John Walker an employee of Thales. Mr Walker had been working as a production employee and gave evidence that he was waiting for the power to come back on to complete his tasks. He said:

*" I was anxious for the power to come back on so I could do my tasks at work...I only wanted power onto the building where I was ..I needed to stir tubs and that... also I couldn't even make a cup of tea so I couldn't even boil the jug"<sup>5</sup>*

In his statement tendered to the inquest he said ;<sup>6</sup>

*"Power was off to the section I was working in and I heard on the radio in the control room the words," we are coming back on line". I assumed they meant the power and I recognised the voice to be Mark Mulquaney's. ....I was inside the control room of building 112 at the time, so I went outside as I was interested to see what the electricians were doing and know how long it would be until power was restored. I was standing in the middle of the double doors of building 112, about 70 metres away from the cherry picker."*

In his evidence to the inquest he was then asked about his observations of Mr Cook and the proximity of the power lines and he said;

*Q so did you see how close the power lines that were around his waist, waist- height---yes that was a bit hard to tell but they would have been around here somewhere...THE CORONER...For the purpose of the transcript the witness is indicating that the power lines were under his armpits, yes...So I would have thought about three or four inches under the*

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<sup>5</sup> T 230pp22-29

<sup>6</sup> Exhibit C8

armpits.<sup>7</sup>...

He was then asked about the sequence of events and gave the following evidence;

*You actually saw the last stick go into the cherry picker?..yes..and he was still standing upright after that happened?..yes....Q How long would he have been standing up with next ( indistinct) place?—The time is hard but I – it could have been a minute or so, you know, he just seemed to do nothing before he sort of- then he just sort of ducked down which I thought he was just ducking down under wires, he never got up”.*

16. Mr Walker’s evidence is in contrast to the evidence of Mr Mulquinney who maintained that Mr Cook collapsed as he was removing the last remaining earth stick.<sup>8</sup>

17. Mr Mulquinney gave evidence, which can be usefully summarised as follows:

- 1) That he was the acting team leader of a group of electricians performing maintenance work over the Christmas period.<sup>9</sup>
- 2) That there was no discussion with Mr Cook about whether the low voltage lines were energised or not ;<sup>10</sup>
- 3) All electricity was disconnected from the factory;<sup>11</sup>
- 4) He did not recall a conversation with Mrs Cook about whether the low voltage lines were supposed to be on or off.<sup>12</sup>
- 5) That when he was heard by Mr Walker to say..”*we are coming back on line*”..this was a pre emptive call to a Mr Vin Slattery and that Mr Cook was the only one that could have switched the power back on.<sup>13</sup>

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<sup>7</sup> T 232 pp9

<sup>8</sup> T T94 pp13

<sup>9</sup> T 81

<sup>10</sup> T86pp24

<sup>11</sup> T83

<sup>12</sup> T 98pp6-8

<sup>13</sup> T 112-113 at pp1-13