

IN THE CORONERS COURT  
OF VICTORIA  
AT MELBOURNE

Court Reference: 2009 / 1496

## **FINDING INTO FIRE WITHOUT INQUEST**

*Form 40 Rule 61(2)*

*Section 68 of the Coroners Act 2008*

***The Finding into Fire Without Inquest dated 23 September 2015 is hereby AMENDED pursuant to section 77 of the Coroners Act 2008***

I, Judge Ian L. Gray, having investigated the fire at Kilmore East, Victoria

without holding an inquest find that:

the fire occurred: between 7 and 16 February 2009; and

the cause and origin of the fire was: a failed conductor between poles 38 and 39 on a section of power line near Saunders Road in Kilmore East, which caused arcing that ignited vegetation near the base of pole 38

**in the following circumstances:**

1. The Kilmore East fire of 7 February 2009 started at 11.45am on top of a rocky hill between two gullies near Saunders Road in Kilmore East ('the Kilmore East fire'). The Kilmore East fire started after the conductor between poles 38 and 39, on a section of power line spanning some 1,043 metres across the gullies, failed and the live conductor contacted with a cable stay that supported pole 38. This contact caused arcing that ignited vegetation near the base of pole 38.
2. At the time of ignition, weather conditions were extreme. The temperature was around 40°C, humidity was below 5 % and a north to north-west wind was gusting to around 80 kilometres per hour.
3. Initially spreading in a south-easterly direction, the fire crossed the Hume Highway and spread through Wandong toward Mt Disappointment. As the main fire front progressed across Mt Disappointment, spot fires were also reported at Wallaby Creek, Humevale,

Strathewen, St Andrews, Steels Creek, Dixons Creek and Yarra Glen, and in the Healesville area.

4. After the south-westerly wind change, which passed through the fire ground between 5.40pm and 7.00pm, the eastern flank of the fire became the front and the fire behaviour intensified. Almost immediately, the head of the fire impinged on Kinglake, Kinglake West, Clonbinane, Steels Creek, Chum Creek and Strathewen, then it progressed towards Flowerdale, Hazeldene, Castella and Glenburn.
5. The Kilmore East fire was finally contained on 16 February 2009.
6. In all, 119 people died in the Kilmore East fire. More than 1,000 people suffered serious injury and 1,772 homes were destroyed or damaged. The combined area burnt by the Murrindindi and Kilmore East fires, which later merged, was 168,542 hectares. The Kilmore East fire alone burnt 125,383 hectares.

### **Investigation into the Kilmore East fire**

#### *2009 Victorian Bushfires Royal Commission ("the VBRC")*

7. On 16 February 2009, then Governor of Victoria, Professor de Kretser issued letters patent setting out the terms of reference for a Royal Commission into the bushfires that raged through Victoria on 7 February 2009, on what came to be known as Black Saturday. The VBRC was given very broad terms of reference. The VBRC produced two interim reports and a four-volume Final Report containing 67 recommendations.
8. The VBRC was comprised of three members and was chaired by the Honourable Bernard Teague AO. The VBRC was supported by a considerable team of lawyers including Senior Counsel appointed to assist the VBRC.
9. The VBRC heard from 434 witnesses including 100 lay witnesses over 155 sitting days, accepted the tender of more than 1000 exhibits and produced 20,767 pages of transcript. The VBRC also received almost 1700 public submissions, together with its own internal research.<sup>1</sup> The VBRC convened and directed two expert panels.
10. The VBRC undertook an extensive investigation, which covered sequence of events, communications, warnings, roadblocks and fuel reduction in relation to the Kilmore East

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<sup>1</sup> Final Report of the VBRC, Volume 1: page xxvi.

fire, and delivered detailed findings, along with a large number and range of recommendations, in its Final Report dated July 2010.

11. In relation to point of origin and cause, the VBRC found that:

- a. the Kilmore East fire started at about 11:47am at the top of a rocky hill between two gullies near Saunders Road in Kilmore East;
- b. the Kilmore East fire started after the conductor between poles 38 and 39 failed and the live conductor came into contact with a cable stay supporting pole 38. This contact caused arcing that ignited vegetation near the base of pole 38;
- c. the conductor failed as a result of fatigue on the conductor strands very close to where a helical termination was fitted to the conductor at pole 39;<sup>2</sup>
- d. the fatigue of the conductor strands was partly caused by the helical termination being incorrectly seated in a thimble, so that it was jammed between the thimble and a clevis device at pole 39, causing stress to the conductor,<sup>3</sup> which was probably 43 years old; and
- e. a line inspection carried out in February 2008 had failed to identify the incorrectly seated helical fitting.

#### *Coronial investigation*

9. A brief of evidence in relation to the Kilmore East fire was delivered to the Coroners Court in September 2012. The Kilmore East fire coronial brief contained statements from eye witnesses, experts, witnesses from events prior to and during the fire, police investigators, forensic pathologists, Disaster Victim Identification (DVI) investigators, as well as photographs and images, an interactive re-enactment of the events and a range of documents including maps, meteorology, DVI and police comparison reports, reports and transcripts and statements provided to the VBRC. Much of the material in the Kilmore East fire coronial brief was made available to, and considered by, the VBRC.

10. I have had regard to the Kilmore East fire coronial brief and the material from the VBRC, particularly the findings and conclusions contained in chapter five of the VBRC Final

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<sup>2</sup> A helical termination is a device used in electricity distribution; it is wound helically around the conductor and grips it, keeping tension in the line and holding the line off the ground.

<sup>3</sup> The thimble and clevis attach the helical termination to the insulator, which in turn is attached to the pole. The thimble is horseshoe-shaped and pivots around a pin; it is held in place by the clevis.

Report. I accept the VBRC's conclusions regarding the origin and cause of, and of the response to, the Kilmore East fire, **save for the role of the misaligned helical termination and the failure to identify the misaligned helical termination during the February 2008 line inspection being causative.**

11. In October 2010, the Victorian Premier appointed Mr Neil Comrie AO APM, to monitor government agencies and departments as they implemented the VBRC's recommendations.<sup>4</sup> The role of the implementation monitor became known as the Bushfires Royal Commission Implementation Monitor (BRCIM) and was subsequently formalised through the *Bushfires Royal Commission Implementation Monitor Act 2011* (the BRCIM Act). The BRCIM's functions were to monitor, review and report on the progress of agencies in carrying out the government's response to the VBRC's Final Report recommendations. The BRCIM Act required the BRCIM to table in Parliament a Final Report by 31 July 2012.<sup>5</sup>

#### *Civil proceedings*

12. On 16 February 2009, civil proceedings were commenced in the Supreme Court of Victoria as an 'open' class group proceeding.<sup>6</sup> The plaintiff, Mrs Carol Matthews, brought the proceeding on her own behalf and on behalf of that class of people who were either injured or suffered the death of persons upon whom they were dependent, or suffered property damage or economic loss in consequence of the fire.
13. The claim was brought against the owner and operator of the power line (AusNet Electricity Services Pty Ltd – 'AusNet'), a power line maintenance and inspection contractor ('UAM') and various State entities.
14. The causes of the fire and questions of legal responsibility for the damage resulting from it were fiercely contested at the trial, which ran for 208 days over 16 months, before Justice Forrest, before settling. The scale of the proceeding was unprecedented in Victoria and the payout became the largest class action settlement in Australian history. There were 26 pre-trial directions hearings, 34 pre-trial applications, 60 major evidentiary and procedural rulings by the judge, 40 expert and 60 lay witnesses gave evidence, some 10,364 documents

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<sup>4</sup> This was consistent with recommendation 67 of the VBRC's Final Report.

<sup>5</sup> An amendment extended the operation of the BRCIM Act until 30 September 2014 and required the BRCIM to prepare two additional reports (Annual Reports) on the progress of any implementation action not completed at the date of the tabling of the BRCIM Final Report.

<sup>6</sup> *Matthews v AusNet Electricity Services Pty Ltd & Ors* [2014] VSC 663.

were tendered in evidence and in excess of 20,300 pages of transcript were generated in the course of the trial. The proceeding settled for just under \$500 million.

15. Having regard to section 7 of the *Coroners Act 2008* (Vic), this court determined to await the outcome of the civil proceedings before finalising the coronial investigation.
16. **I note that the VBRC’s findings regarding the misaligned helical termination and line inspection were the subject of contradictory evidence at trial, including expert evidence and field testing on the matter of the misaligned helical termination. Justice Osborn’s judgment stated that the misaligned helical termination was “ultimately agreed not to be a significant circumstance” in the cause of the fire.<sup>7</sup> The issue of whether line inspectors failed to identify the incorrectly seated helical fitting, specifically whether the line inspectors ought to have identified it, was not resolved or determined. I make no finding as to whether or not the line inspection ought to have identified the incorrectly seated/misaligned helical termination. However given that the misaligned helical termination was not causative it follows that the failure of line inspectors to identify it during the February 2008 line inspection is also not causative.**

*Application for inquest into the Kilmore East fire*

17. Mr Michael Gunter lodged five applications for inquest, dated 7 July 2011, in relation to the 7 February 2009 Murrindindi, Kilmore East, Weerite, Coleraine and Vectis fires.
18. I summarise Mr Gunter’s reasons for an application for inquest into the Kilmore East fire as follows:
  - a. a metallurgist report<sup>8</sup> that apparently revealed the power line was in an “*extremely unsafe condition*” for a period of time before the fire;
  - b. the failure of the electricity industry regulator to prosecute AusNet regarding the power line’s condition prior to the fire or to enforce safety standards;
  - c. suggestion that AusNet had ‘improperly removed evidence’ from the scene of the commencement of the fire, being a 2.78 metre length of wire allegedly removed and found in an AusNet storage depot;<sup>9</sup> and

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<sup>7</sup> *Matthews v AusNet Electricity Services Pty Ltd & Ors* [2014] VSC 663, at paragraph 103.

<sup>8</sup> VBRC Exhibit 525, Report by metallurgist Harry Better.

<sup>9</sup> Mr Gunter’s application references the VBRC transcript (day 082, lines 28-30 of page 11,298) and the VBRC document Exhibit VPO-001-039-0016 regarding these allegations.

d. whether these issues were common to other Black Saturday fires.

19. On 18 July 2011, then State Coroner, Judge Jennifer Coate determined not to make a decision as to whether or not an inquest should be held in relation to each of the fires.

20. Section 7 of the Coroners Act 2008 states that:

*It is the intention of Parliament that a coroner should liaise with other investigative authorities, official bodies or statutory officers—*

- (a) to avoid unnecessary duplication of inquiries and investigations; and*
- (b) to expedite the investigation of deaths and fires.*

21. Having considered Victoria Police and the VBRC's extensive investigations into the Kilmore East fire, the BRCIM's role in monitoring government agencies' and departments' implementation of the VBRC's recommendations and the civil proceedings, and having regard to section 7 of the *Coroners Act 2008*, I attach my Determination of 23 September 2015, not to hold an inquest into the Kilmore East fire.

### *Conclusion*

22. In light of:

- a. the VBRC's:
  - i. extensive investigation;
  - ii. detailed findings which considered the sequence of events and fire response and management; and
  - iii. number and range of recommendations, many of which go to issues of public health and safety; and
- b. the BRCIM's role in monitoring government agencies' and departments' implementation of the VBRC's recommendations; and
- c. the extensive civil proceedings relating to the 7 February 2009 Kilmore East fire;

and having regard to section 7 of the *Coroners Act 2008* (Vic), the court does not propose to conduct any further investigation into the Kilmore East fire.

### **Findings**

23. I accept and adopt the VBRC's findings in relation to the Kilmore East fire, **save for the role of the misaligned helical termination and the failure to identify the misaligned**

**helical termination during the February 2008 line inspection being causative, and I find that:**

- a. the Kilmore East fire occurred between 7 and 16 February 2009; and
- b. the origin and cause of the Kilmore East fire was a failed conductor between poles 38 and 39 on a section of power line near Saunders Road in Kilmore East, which caused arcing that ignited vegetation near the base of pole 38.

I convey my sincere condolences to the families of the 119 people who died in this fire.

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

Coroner's Investigator, Detective Inspector Andrew Kerr (formerly of the Phoenix Taskforce)

Michael Gunter

Norton Rose Australia

Maurice Blackburn lawyers

Herbert Smith Freehills

Holman Fenwick Willan

Signature:



**JUDGE IAN L. GRAY**

Date: 23/2/16

