

**FORM 2**

Rule 24

**DETERMINATION BY CORONER THAT REPORTED DEATH IS NOT A  
REPORTABLE DEATH**

*Section 16 of the Coroners Act 2008*

**Court Reference:** 5334 / 09

In the Coroners Court of Victoria at Melbourne

I, Judge Jennifer Coate, State Coroner having investigated the death of:

**Details of deceased:**

Surname: Human remains of unknown identity  
First name:  
Date of birth:  
Gender:  
Date of death/Suspected  
death:  
Place of death/Suspected  
death: Old Melbourne Gaol

reported by—

**Details of reporting person:**

Title (Mr, Mrs, Ms, Dr,  
etc): Mr  
Surname: BAXTER  
First name: Tom  
Organisation/Position held:  
Contact address: Address provided to the Court  
Contact number(s):

determine the death is not a reportable death pursuant to the *Coroners Act 2008* because:

**Reason(s) for decision:**

1. On 11 November, 2009, a skull believed to belong to Edward “Ned” Kelly was handed to the Victorian Institute of Forensic Medicine. The death was subsequently reported to the coroner on the basis that the identity of the skull was unknown.
2. The person who had possession of the skull, Thomas Baxter, made a statutory declaration on November 11, 2009 wherein he stated that he had come into possession of the skull in 1978 and he believed the skull had previously gone missing from the Old Melbourne Gaol. He believed the skull had gone missing from the Old Melbourne Gaol the week before it came into his possession. He also believed that the skull belonged to Ned Kelly and wished to deliver it back “to the Government” to be reunited with the other remains of Ned Kelly “that they may be given a proper burial.”<sup>1</sup>
3. A considerable amount of work has been done by a number of agencies on tracing the provenance of this skull in an endeavour to establish its historic context. Included in the material provided to me is a letter from the National Trust<sup>2</sup> advising that the National Trust had four skulls donated to it in 1972. It was claimed that these four skulls belonged to judicially executed prisoners and that one of these skulls was believed to be the skull of Ned Kelly. These four skulls were subsequently exhibited at the Old Melbourne Gaol. In 1978, the skull being exhibited as that of Ned Kelly was stolen from the exhibition at the Old Melbourne Gaol.
4. A significant amount of work has also been done by the Victorian Institute of Forensic Medicine on the scientific identification of the skull. I have been provided with a compilation report prepared by the Victorian Institute of Forensic Medicine dated 20 September 2010. This report includes (i) a summary of historical information to establish the provenance of this skull, (ii) a forensic odontology report and (iii) a forensic anthropology report. I have also been provided with further written material from the Victorian Institute of Forensic Medicine dated June 6, 2011 and July 20, 2011.

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<sup>1</sup> Statutory Declaration of Thomas Baxter , November 11 2009

<sup>2</sup> December 7, 2009

5. A report was provided with the September 2010 material by Dr Richard Bassed, Forensic Odontologist, who performed a photographic superimposition analysis of the skull with both photographs of Ned Kelly in life and with the plaster bust of his head (death mask) prepared straight after his execution. Dr Bassed explained his methodology in detail in the report which included making comparisons with as many male individuals<sup>3</sup> as possible known to be buried at the Old Melbourne Gaol, for whom photographs or death masks exist. Dr Bassed concluded that he was able to exclude 12 of the 14 males he was able to compare and that this left two possibilities in that group, one was Ned Kelly and one was another executed prisoner named Deeming.
6. By report dated June 6, 2011 Associate Professor David Ranson of the Victorian Institute of Forensic Medicine provided the results of scientific DNA testing and analysis that has been undertaken in collaboration with a laboratory in Argentina (which is highly skilled in analysing DNA from aged bones) and the Australian Centre for Ancient DNA. In that report, based on the results of that testing, Associate Professor Ranson provided his opinion that DNA extracted from the skull matched that from remains that were extracted from the area referred to as "Pit C" at Pentridge Prison, being the remains known as case 3086/10. These remains have been the subject of a previous determination of September 2, 2010 which resulted in the mandatory discontinuation of the investigation as the remains were found to be more than 100 years old.<sup>4</sup>
7. By further letter dated July 20, 2011 Professor Stephen Cordner, the Director of the Victorian Institute of Forensic Medicine provided an additional molecular biology report. Professor Cordner advised that full mitochondrial DNA profiles have now been obtained "which further supports the conclusion that the skull most probably belongs to skeletal remains exhumed from Pit C, namely case 3086/10".
8. The significance of this evidence for the coroner is that an investigating coroner must discontinue any investigation into a death that was reported to the coroner, if the coroner determines that the death probably occurred more than 100 years before it was reported to the coroner.<sup>5</sup>

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<sup>3</sup> Forensic anthropologist Dr Soren Blau provided a report 10.12.2009 concluding that the skull belonged to an adult who was probably male and of Caucasoid ancestry.

<sup>4</sup> This determination can be found in the "Rulings" section of the Court website reported as *Pentridge Remains: Not reportable death over 100 years* : September 2, 2010. These human remains formed part of a much larger group of human remains being relocated during the redevelopment of the former site of Pentridge Prison.

<sup>5</sup> See Section 16(5) Coroners Act 2008

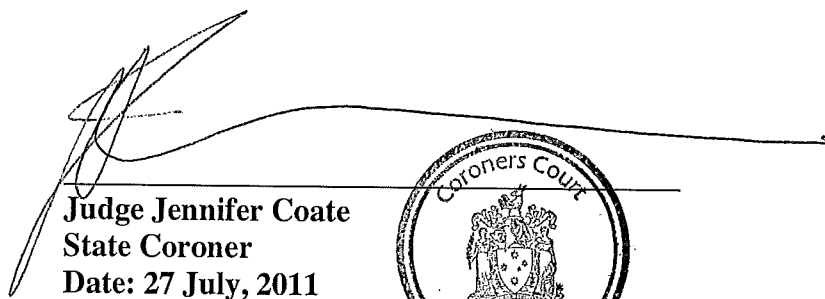
9. Having previously found by determination of September 2, 2010 that the human remains contained in Pit C exhumed from Pentridge Prison as part of the redevelopment of the prison site were more than 100 years old, and being satisfied on the scientific evidence now provided that this skull on balance belongs to the remains in case 3086/10 taken from Pit C, by operation of Section 16(5) of the Coroners Act 2008 I discontinue this investigation.

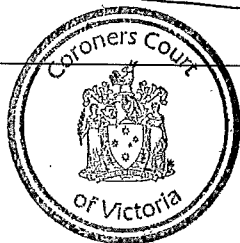
Accordingly—

I make the following orders:

Pursuant to section 16(5) of the Coroners Act 2008, I discontinue the investigation into the death as the death probably occurred more than 100 years before it was reported.

Signature:

  
**Judge Jennifer Coate**  
**State Coroner**  
**Date: 27 July, 2011**



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*NOTE: Notice of this determination must be provided to the person who reported the death.*

*An appeal can be made to the Supreme Court of Victoria within 3 months after the day on which the Determination/Order has been made.*

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