



IN THE CORONERS COURT  
OF VICTORIA  
AT MELBOURNE

Court Reference: COR 2019 0638

**FINDING INTO DEATH WITHOUT INQUEST**

*Form 38 Rule 60(2)*

*Section 67 of the Coroners Act 2008*

Findings of:	Simon McGregor, Coroner
Deceased:	<b>Richard Armstrong Lyon</b>
Date of birth:	5 March 1999
Date of death:	3 February 2019
Cause of death:	Drowning
Place of death:	Baxter Park Dam, Frankston South, Victoria 3199

## INTRODUCTION

1. Richard Armstrong Lyon was a 19-year-old man who lived with his girlfriend and her family in Frankston at the time of his death.
2. Mr Lyon drowned while swimming in a dam at Baxter Park in South Frankston on 3 February 2019.

## THE PURPOSE OF A CORONIAL INVESTIGATION

3. Mr Lyon's death was reported to the Coroner as it appeared unexpected, unnatural or to have resulted, directly or indirectly, from an accident and so fell within the definition of a reportable death in the *Coroners Act 2008*.
4. The role of a coroner is to independently investigate reportable deaths to establish, if possible, identity, medical cause of death and surrounding circumstances. Surrounding circumstances are limited to events which are sufficiently proximate and causally related to the death. The purpose of a coronial investigation is to establish the facts, not to cast blame or determine criminal or civil liability.
5. Under the Act, coroners also have the important functions of helping to prevent deaths and promoting public health and safety and the administration of justice through the making of comments or recommendations in appropriate cases about any matter connected to the death under investigation.
6. The Coroner's Investigator, Senior Constable Mark Aitken, prepared a coronial brief in this matter. The brief includes statements from witnesses, including family, friends, the forensic pathologist who examined Mr Lyon and investigating officers.
7. After considering all the material obtained during the coronial investigation, I determined that I had sufficient information to complete my task as coroner and that further investigation was not required. Whilst I have reviewed all the material, I will only refer to that which is directly relevant to my findings or necessary for narrative clarity.
8. I have based this finding on the evidence contained in the coronial brief. In the coronial jurisdiction facts must be established on the balance of probabilities.<sup>1</sup>

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<sup>1</sup> This is subject to the principles enunciated in *Briginshaw v Briginshaw* (1938) 60 CLR 336. The effect of this and similar authorities is that coroners should not make adverse findings against, or comments about, individuals unless

9. In considering the issues associated with this finding, I have been mindful of Mr Lyon's basic human rights to dignity and wellbeing, as espoused in the *Charter of Human Rights and Responsibilities Act 2006*, in particular sections 8, 9 and 10.

## **BACKGROUND**

10. Mr Lyon was one of four children to parents, Julie and Hugh Lyon. His father described his son as a caring person who would do what he could to help others.<sup>2</sup>
11. Mr Lyon completed school until year ten, and was unemployed at the time of his death.<sup>3</sup> He lived with his girlfriend of three years, Ms Brooke Fox, at her family home in Frankston. Previously, the couple lived with Mr Lyon's family.<sup>4</sup>
12. Hugh Lyon was a healthy young man in keeping with his age of 19 years. His medical history included a diagnosis of autism, childhood asthma and a hernia. He regularly smoked marijuana.<sup>5</sup>
13. He took swimming lessons as a child, however, his father did not consider him to be a strong swimmer.<sup>6</sup> Ms Fox also stated Mr Lyon mainly "doggy paddled" in the water.<sup>7</sup>

## **CIRCUMSTANCES IN WHICH THE DEATH OCCURRED**

14. On 3 February 2019, Mr Lyon, Ms Fox and their friend, James Nye, drove to Baxter Park in Frankston South. They ate lunch on the oval at the park and Mr Nye suggested they go for a swim in the dam.<sup>8</sup>
15. The dam at Baxter Park is surrounded by a cyclone wire fence. Attached to the fence are signs which read "ACCESS TO DAM PROHIBITED".<sup>9</sup> Mr Nye was familiar with the area and was aware of a hole in the fence which led to the dam.
16. The trio walked along a well-worn track to the dam where they swam for about an hour.<sup>10</sup> During this time, Mr Lyon "faked" drowning several times as a joke,<sup>11</sup> and the boys bragged

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the evidence provides a comfortable level of satisfaction as to those matters taking into account the consequences of such findings or comments.

<sup>2</sup> Statement of Hugh Lyon, 30 June 2019.

<sup>3</sup> Statement of Hugh Lyon, 30 June 2019.

<sup>4</sup> Statement of Hugh Lyon, 30 June 2019.

<sup>5</sup> Statement of Hugh Lyon, 30 June 2019.

<sup>6</sup> Statement of Hugh Lyon, 30 June 2019.

<sup>7</sup> Statement of Brooke Fox, 17 May 2019.

<sup>8</sup> Statement of Brooke Fox, 17 May 2019.

<sup>9</sup> Scene photographs.

<sup>10</sup> Statement of Brooke Fox, 17 May 2019.

about being able to swim across the dam.<sup>12</sup> Following this discussion, Mr Lyon proceeded to walk around to the far side of the dam and entered the water.<sup>13</sup>

17. Shortly after entering the water, Mr Lyon became distressed and called out to his friends for help.<sup>14</sup> They knew he was not joking this time.<sup>15</sup> Panicked and struggling, he called out for Mr Nye who swam over to render assistance.<sup>16</sup> When Mr Nye reached Mr Lyon, he tried to calm him, however, he continued to struggle with Mr Nye who was pushed under the water.<sup>17</sup> Mr Nye, who was exhausted, panicked and could not touch the ground, was forced to abandon the rescue attempt for fear of drowning himself.<sup>18</sup>
18. Ms Fox was distressed and yelled out for help. A passerby, Mr Kenneth Grundy, heard the cries and went to assist.<sup>19</sup> He found Ms Fox hysterically crying, asking him to help her boyfriend who was drowning.<sup>20</sup> Mr Grundy stated there were no signs of a person in or under the water by this time.<sup>21</sup>
19. Unable to get clear instructions from Ms Fox who was in shock, Mr Grundy jumped into the water. Mr Nye then appeared and informed Mr Grundy that the victim had entered on the other side of the dam.<sup>22</sup> Mr Grundy exited and re-entered the water where Mr Nye indicated.<sup>23</sup> Mr Grundy dove under the water multiple times, however, the water was murky, and he was unable to locate Mr Lyon.<sup>24</sup>
20. Meanwhile, emergency services had been contacted and Victoria Police arrived on the scene at approximately 3:30pm. Unsuccessful and physically exhausted, Mr Grundy exited the water. At approximately 4:00pm, a police helicopter carried out an extensive sweep of the dam but could not locate Mr Lyon.<sup>25</sup>

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<sup>11</sup> Statement of Brooke Fox, 17 May 2019.

<sup>12</sup> Statement of James Nye, 6 June 2019.

<sup>13</sup> Statement of Brooke Fox, 17 May 2019; Statement of James Nye, 6 June 2019.

<sup>14</sup> Statement of Brooke Fox, 17 May 2019; Statement of James Nye, 6 June 2019.

<sup>15</sup> Statement of Brooke Fox, 17 May 2019.

<sup>16</sup> Statement of James Nye, 6 June 2019.

<sup>17</sup> Statement of James Nye, 6 June 2019.

<sup>18</sup> Statement of James Nye, 6 June 2019.

<sup>19</sup> Statement of Kenneth Grundy, undated.

<sup>20</sup> Statement of Kenneth Grundy, undated.

<sup>21</sup> Statement of Kenneth Grundy, undated.

<sup>22</sup> Statement of Kenneth Grundy, undated.

<sup>23</sup> Statement of Kenneth Grundy, undated.

<sup>24</sup> Statement of Kenneth Grundy, undated.

<sup>25</sup> Statement of Senior Constable Mark Aitken, 1 July 2019.

21. At approximately 5:30pm an underwater search was commenced by Victoria Police Search and Rescue.<sup>26</sup> At approximately 6:00pm, Mr Lyon was discovered, unresponsive, 4.5 meters below the water's surface.<sup>27</sup> He was brought to shore and confirmed deceased by paramedics at the scene.<sup>28</sup>

## **IDENTITY AND CAUSE OF DEATH**

22. On 5 February 2019, Julie Lyon visually identified the body of her son, Richard Armstrong Lyon, born 5 March 1999. Identity is not in dispute and requires no further investigation.
23. On 7 February 2019, Dr Matthew Lynch, a Forensic Pathologist practising at the Victorian Institute of Forensic Medicine (VIFM), conducted an autopsy upon Mr Lyon's body and reviewed a post mortem computed tomography (CT) scan, the VIFM contact log and the Police Report of Death for the Coroner. Dr Lynch provided a written report, dated 8 March 2019, in which he formulated the cause of death as '*I(a) Drowning*'.
24. Toxicological analysis of post mortem samples taken from Mr Lyon identified the presence of delta-9-tetrahydrocannabinol.<sup>29</sup>
25. Dr Lynch commented there was no evidence of any natural disease or injury which might have contributed to Mr Lyon's death.
26. I accept Dr Lynch's opinion as to cause of death.

## **COMMENTS PURSUANT TO SECTION 67(3) OF THE ACT**

27. Photographs of the dam show multiple holes were present in the fence at the time of the incident, and well-worn tracks through the vegetation leading to the dam demonstrate the dam was regularly accessed and likely used for swimming. Frankston City Council were only able to provide minimal documentation relating to the maintenance and repair of the fence, however, an invoice dated 2015 detailed the repair of three holes in the fence. A 2017 report surveying the dam noted holes were present in the fence in April 2017.<sup>30</sup>

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<sup>26</sup> Statement of Leading Senior Constable Donald McConnell, 5 June 2019.

<sup>27</sup> Statement of Leading Senior Constable Donald McConnell, 5 June 2019.

<sup>28</sup> Statement of Senior Constable Mark Aitken, 1 July 2019.

<sup>29</sup> Delta-9-tetrahydrocannabinol (THC) is the active form of cannabis (Marijuana).

<sup>30</sup> Department of Environment, Land, Water & Planning report dated May 2017.

28. Although the dam was accessible, the trio knew they were not supposed to access the area but did so anyway.<sup>31</sup> I do not consider Frankston City Council's failure to maintain the fence directly contributed to Mr Lyon's death, however, I make the following recommendation below.

#### **RECOMMENDATIONS PUSUANT TO SECTION 72(2)**

29. Pursuant to section 72(2) of the *Coroners Act 2008*, I recommend Frankston City Council ensure there is a regular inspection and maintenance regime of the dam and its fencing, to improve public safety in the area and minimise the occurrence of similar events in future.

#### **FINDINGS AND CONCLUSION**

30. I express my sincere condolences to Mr Lyon's family and friends for their loss.

31. Having investigated the death, without holding an inquest, I make the following findings pursuant to section 67(1) of the *Coroners Act 2008*:

(a) The identity of the deceased was Richard Armstrong Lyon, born 5 March 1999;

(b) The death occurred on 3 February 2019 at Baxter Park, Frankston South, Victoria from drowning; and

(c) The death occurred in the circumstances described above.

32. I direct that a copy of this finding be published on the internet pursuant to section 73(1A) of the *Coroners Act 2008*.

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<sup>31</sup> Statement of Brooke Fox, 17 May 2019.

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

- (a) Mr Hugh and Mrs Julie Lyon, senior next of kin;
- (b) Senior Constable Mark Aitken, Coroner's Investigator;
- (c) Frankston City Council; and
- (d) Ms Olivia Warwick, Minter Ellison Lawyers, solicitors for Frankston City Council.

Signature:



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**SIMON McGREGOR**

**CORONER**

Date: 27 March 2020.

