

## CORONERS REGULATIONS 1996

### Form 1

State Coroners Office  
57-83 Kavanagh Street  
Southbank 3006  
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(All Hours)  
Toll Free: 1300 309 519  
(Only Country Victoria)  
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Case No: 3727/06

### RECORD OF INVESTIGATION INTO DEATH

I, **PETER WHITE**, Coroner,

**having investigated** the death of **LEIGH SARAH SINCLAIR** with Inquest held at Coronial Services Centre, Southbank on the 20th October to 31st October, 2008, 18th February to 23rd February, 2009 and at Melbourne Magistrates' Court, Melbourne on the 23rd to 24th April, 2009

**find that** the identity of the deceased was **LEIGH SARAH SINCLAIR** and that death occurred on 1st October, 2006 at 211a Sydney Road, Brunswick, Victoria 3056 from

1(a). EFFECTS OF FIRE / INHALATION OF FIRE FUMES <sup>- 213 & )</sup> *pw*

in the following circumstances:

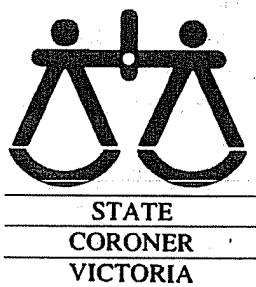
It is beyond doubt that Leigh Sarah Sinclair and Christopher Alan Giorgi died in a fire, which ignited late on the night of 30th September/1st October 2006, at 211-213 and 211-213A Sydney Road, Brunswick.

These two young lives were lost against a backdrop, which included a failure in the administration of applicable building code fire safety, planning and rooming house regulations and a failure to maintain both electrical wiring and electrical components. The circumstances in which these failures occurred are set out below.

#### A) Background:

Leigh Sinclair was a 25-year-old female born in Christchurch New Zealand on the 16th of August 1981. She was raised and educated in Christchurch by her parents, Peter and Judith Sinclair, where she worked as an apprentice hairdresser.

She travelled to Melbourne in 2002 where her brother, Scott, was living and stayed for approximately 6 months before travelling to Mildura to undertake seasonal work as a fruit picker.



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**Case No: 3728/06**

### RECORD OF INVESTIGATION INTO DEATH

I, **PETER WHITE**, Coroner,

**having investigated** the death of CHRISTOPHER ALAN GIORGI with Inquest held at Coronial Services Centre, Southbank on the 20th October to 31st October, 2008, and at Melbourne Magistrates' Court, Melbourne on the 19th February to 24th February, 2009 and 23rd to 24th April, 2009

**find that** the identity of the deceased was CHRISTOPHER ALAN GIORGI and that death occurred on 1st October, 2006 at 211 Sydney Road, Brunswick, Victoria 3056 from

82

1(a). EFFECTS OF FIRE / INHALATION OF FIRE FUMES

in the following circumstances:

It is beyond doubt that Leigh Sarah Sinclair and Christopher Alan Giorgi died in a fire, which ignited late on the night of 30th September/1st October 2006, at 211-213 and 211-213A Sydney Road, Brunswick.

These two young lives were lost against a backdrop, which included a failure in the administration of applicable building code fire safety, planning and rooming house regulations and a failure to maintain both electrical wiring and electrical components. The circumstances in which these failures occurred are set out below.

#### A) Background:

Leigh Sinclair was a 25-year-old female born in Christchurch New Zealand on the 16th of August 1981. She was raised and educated in Christchurch by her parents, Peter and Judith Sinclair, where she worked as an apprentice hairdresser.

She travelled to Melbourne in 2002 where her brother, Scott, was living and stayed for approximately 6 months before travelling to Mildura to undertake seasonal work as a fruit picker.

Ms Sinclair later returned to Melbourne where she met Christopher Giorgi. She continued her travels in Australia and returned to New Zealand, during which period she remained in contact with Christopher Giorgi.

Christopher Giorgi was a 24-year-old male, born in Melbourne on the 13th of January 1982 to parents Alfredo and Marilyn Giorgi. After getting through some health difficulties, he completed Year 11 at Essendon Secondary College, before entering the workforce.

Having met and maintained contact with Leigh Sinclair, he visited her in New Zealand following her departure from Australia. Thereafter, the couple travelled separately to Melbourne where they stayed initially with his family.

From August 2005, they rented a house in Brunswick. After the expiration of their 12-month lease, the property owner reclaimed possession and Christopher and Leigh were forced to seek an alternative. Christopher returned temporarily to his parent's home, while Leigh looked around for another, more permanent, option.

B) 211-213 and 211-213A Sydney Road, Brunswick

211-213/211-213A Sydney Road is a two story Victorian premises located on the western side of Sydney Road, between Michael Street and Dawson Street.

It is situated within a busy inner suburban area of Melbourne where there are a large number of retail outlets, supplying a variety of goods, together with restaurants, coffee houses, bars and financial institutions.

The ground floor, (211-213, Sydney Road), was a street level commercial property of some 270 sq metres which, at the relevant time, was leased under a commercial lease as a Pizza Hut restaurant by Restaurant Brands Australia Pty Ltd. The front section had a service area and counter, with the kitchen area at the rear containing a large pizza oven against the northern wall. The pizza oven was generally in an area beneath the first floor bedroom No 3.<sup>1</sup>

The first floor (211-213A) "premises", could be entered by a side entrance fronting on to Sydney Road that led to an internal timber stairway, which extended to the first floor apartment and beyond to a laundry on the roof. There was also an external steel stairway from the first floor, at the rear of bedroom 6, leading to a back yard, which area could be easily accessed via a garage door situated on the western boundary, which habitually was not secured.

Mr and Mrs Louis Danielle owned both floors from the 1st of September 1998.

C) The lease of 211-213A Sydney Road to George Maatouk:

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<sup>1</sup> - See Exhibit 13, at page 4.

On the 18th of May 2004, Mr George Maatouk wrote to Ms Lisa Bey, the Property Manager at Nelson Alexander Brunswick, applying to rent the premises. The letterhead suggested that the application was being made on behalf of

Northern Suburbs Accommodation Services  
4 Miller Street, Preston.  
ABN 59906128967  
94950288.<sup>2</sup>

The letter suggested however that the 'Company name' would be 'Northern Suburbs Accommodation Centre'

In evidence, Mr Maatouk said he did not know why he had made the change from "services" to "centre". He further stated that he did not know where the ABN came from and that it was an attempt to make the letter look more 'official.'

In fact, the ABN was the ABN for the Maatouk Family Trust.<sup>3</sup>

On the 18th of June 2004, Mr Maatouk also signed a Nelson Alexander application form, which stated that the number of occupants would be 5 adults and no children.

On the form, Mr Maatouk stated that his occupation was 'property manager'; that the name of his employer was 'The Northern Suburbs Accommodation Centre'; that his current income after tax was \$900 and that his employer was 'Arthur':

He testified that he wrote '3 years' down on the application because he thought it would look good and that his 'current income' was made up.

He further testified that he used Arthur (Oshan's) name because he worked at the same office and thought they were looking for a contact rather than his employer.<sup>4</sup>

Ms Lisa Bey of Nelson Alexander stated that she spoke with the property owner, Mr Daniele, who told her that he had met at the premises with Mr Maatouk. She understood from him that the front room was going to be partitioned, that Mr Maatouk was going to sub-lease the rooms and that he had approved this proposal.<sup>5</sup>

Mr Maatouk agreed that he had met with Mr Daniele at the premises and that the owner knew where the proposed partitions were to be located. The partitions were later installed at the direction of Mr Maatouk, who also placed locks on all of the doors apart from Room 6. He had discussed this matter with Mr Daniele who gave his approval.

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<sup>2</sup> See exhibit 1b. I further note that at transcript page 748 in answer to questions put by Senior Counsel for Mr and Mrs Daniele, Mr Maatouk was unable to state whether this was or was not his office telephone number.

<sup>3</sup> See transcript at apages 550-551 and 625.

<sup>4</sup> See exhibit 1b at folio 4 and transcript at page 674-675.

<sup>5</sup> See transcript at pages 26-33.

He did not discuss the installation of smoke alarms.<sup>6</sup>

On the 2nd of July 2004 the upstairs premises of which room 3 was a part,<sup>7</sup> was leased for a period of two years by Mr George Maatouk from the owners, Louis Daniele and his wife Gelsomina Daniele, through Nelson Alexander, Brunswick. Mr Maatouk signed the lease on behalf of Dignity Homes Pty Ltd,<sup>8</sup> (and not Northern Suburbs Accommodation "Services" or "Centre").<sup>9</sup>

Mr Anthony Gentile, the senior property manager at Nelson Alexander Brunswick testified that in his experience the leasing of an ordinary residential premises, for the purpose of sub-lease of the rooms within, was 'uncommon but not unheard of'.<sup>10</sup>

The lease was achieved under a residential tenancy agreement, which included the deletion of clause 7, allowing the premises to be sub-let.

Immediately following the signing of this lease, alterations were made to allow for the creation of six bedrooms.<sup>11</sup>

Having regard to all of the evidence and the inferences to be drawn therefrom, it is clear that this was the intention of both Mr Maatouk and Mr Daniele, from the outset. It is also clear that Mr Daniele was aware that the alterations he approved were intended to maximize the financial return to Mr Maatouk and his associates.<sup>12</sup>

#### D) The sublease of Bedroom 3 to Leigh Sinclair:

On the 23rd of August 2006, Leigh Sinclair signed an agreement document entitled Rooming House Application Agreement for room 3, 211A Sydney Road Brunswick.<sup>13</sup>

I note that the agreement document purports to be between Leigh Sinclair and an organization known as 'Edge Housing'.

The weekly room rental was set at \$140 with rent to be paid into a named Edge Housing Account with the Commonwealth Bank. (BSB 063234 Account 10424857).

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<sup>6</sup> See transcript page 678-679.

<sup>7</sup> See Exhibit 20 at page 6.

<sup>8</sup> See Exhibit 1(c)

<sup>9</sup> Ultimately, there was no evidence before me of this matter but I note Senior Counsel representing the Tenants Union of Victoria, the Council to Homeless Persons and the Pilch Homeless Persons Legal Clinic, alleged that 'Dignity Homes Pty Ltd' in fact did not exist while the entity, 'Dignity Homes' did.

<sup>10</sup> It is noteworthy that the 'for rent' columns of the daily internet and print media now advertise many such single room spaces in our inner suburbs, as available for short-term lease. It is also the case that such leases are routinely being offered at a price, which appears to exceed, by a significant degree, the cost of renting. While it is not known whether the large majority of such properties are themselves, the subject of leasing arrangements, anecdotal evidence strongly suggests that such is the case.

<sup>11</sup> See transcript at page 732-733.

<sup>12</sup> See Exhibit 27 and the evidence of Lisa Bey at transcript page 26-27 and 37 and the evidence of George Maatouk at transcript page 598-599 and 678.

<sup>13</sup> See part of Exhibit 17b.

E) The condition of the premises at the time of the fire, - electrical wiring, door locks, smoke detectors and fire safety generally:

Mr John Kelleher, a Victoria Police forensic scientist, examined the premises after the fire on Sunday the 1st of October with a view to determining its cause. His investigation was conducted together with Commander Ian Hunter of the MMFB Investigation and Analysis unit.

**Electrical Wiring**

Mr Kelleher testified that there were two different types of wiring above the pizza oven and in the space between the restaurant ceiling and the floor of the first floor apartment. These were a relatively recent household type 240-volt cable and metal conduit wiring, incorporating vulcanised India Rubber wiring, dating back to approximately 1930, possibly lighting wiring to the centre of the kitchen. There were four fluorescent lights, running east-west across the centre of the room which passed in front of the range hood above the pizza oven.<sup>14</sup>

**a) 211-213**

Mr Sam D'Amato was employed from July 2004, to undertake electrical maintenance at the ground floor Pizza Hut Restaurant. This arrangement continued until August 8th 2006, at which time his position was suspended.<sup>15</sup>

According to Mr D'Amato, his work during this period did not include a monitoring of the restaurant's fixed lighting system, unless the need arose because of a light failure. Mr D'Amato kept a log of his maintenance work, which was generally undertaken at six monthly intervals. His last visit before the fire occurred on the 8th of February 2006 and his further evidence was that his work did not include inspection of 'fixed wiring' or 'lighting.'

His further evidence was that he considered the maintenance to be appropriate and that you wouldn't,

*'go pull every light fitting apart to see what the wiring is like behind the covers'.<sup>16</sup>*

Mr Tom Theoharadis was at the time of the fire employed by the lessee of the ground floor premises, Restaurant Brands Australia Brands Pty Ltd. He confirmed the evidence given earlier by Mr D'Amato and further testified that the direction to cease the preventative maintenance programme was made by a Mr Jason Ball who was General Manager of the Australian subsidiary, at the relevant time.<sup>17</sup>

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<sup>14</sup> See Mr Kelleher's statement exhibit 13 at page 4. See also Andrew Farley at transcript page 248 where he speaks about a 'weird electrical' odour he experienced as he left via the front of the boarding house premise.

<sup>15</sup> See Exhibit 21a.

<sup>16</sup> See Exhibit 21, 21b and 21c, and transcript from page 962.

<sup>17</sup> See Tom Theoharadis from transcript page 1000.

**b) 211-213A**

Mr Nathan Rau testified that in his time as a resident in the apartment from December 2004, there had been a few power outs, which he believed occurred because it was an 'old' house. He further testified that the residents would often reset the fuses themselves, which he had done on three or four occasions. He also stated that a tradesman had come to reset it at least once or twice.<sup>18</sup>

Fellow tenant Mr Randy Anderson also testified about difficulties with the fuses which he had, on occasions, tried to fix.<sup>19</sup>

He further testified that the fuse box at the top of the stairs had "dodgy" wiring and that he had seen the fuses changed a few times with wire other than proper fuse wire. He said that the fuse box did not contain a circuit breaker and had two different types of fuses.<sup>20</sup> He recalled seeing Mr Daniele come to the building about three times to carry out maintenance, including work on the fuse box.<sup>21</sup>

It is further relevant that the evidence of Mr Leahy, a compliance officer with Energy Safe Victoria, included that Louis Daniele was and remains a licensed electrician and registered electrical contractor. Mr Leahy testified that as such Mr Daniele was entitled to carry out both electrical maintenance and installation and to run an electrical contracting business.<sup>22</sup>

**Door locks**

In regard to the door lock device in room 3, George Maatouk gave evidence that he discussed with Mr Daniele, the need for locks to be added to each of the bedroom doors and obtained approval to take such a course, before he arranged for the contractor to complete the room divisions and door lock installation.<sup>23</sup>

Mr Nathan Byfield, a friend of Leigh and Christopher and a visitor to the premises on the night of September 30th/October 1st, testified that the door of bedroom 3 needed a key to lock/unlock. Such a key could be used from either side of the door and that when the door was closed it was not possible to enter or exit without the use of such a key.<sup>24</sup> He had not noticed whether Leigh was in the habit of leaving the key in the lock when she was secure inside the room, but thought that when he had left Leigh and Chris in the early morning of October 1st, the keys had to be retrieved from the coffee table before he could depart.

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<sup>18</sup> See transcript at Page 151 and 153.

<sup>19</sup> See transcript at Pages 195-197 and 234.

<sup>20</sup> See transcript from 197.

<sup>21</sup> See transcript at page 196, 197-198 and 231-234.

<sup>22</sup> See transcript at page 1210-1211.

<sup>23</sup> See transcript at page 678-679.

<sup>24</sup> See transcript at page 94.

Mr Alfredo Giorgi testified that the door had a deadlock and separate door handle, which the deadlock needed to be unlocked and the (old) handle below had to be separately turned, before the door opened.<sup>25</sup>

It is self-evident that in an emergency, occupants of a rooming house should be able to get out of a sole occupancy unit with a minimum of difficulty. The locks introduced at the commencement of the residential lease fell short of that requirement.

### **Smoke Alarms**

A plan of the first floor of the premises is found at the M.F.B report exhibit 20 at page 6. It reveals that the three smoke alarms were located as follows.

- one alarm was fitted to the ceiling of the communal lounge room;
- one was fitted to the passageway outside bedroom 3, which had only one battery, and therefore did not work;<sup>26</sup> and
- one smoke alarm was attached to the ceiling of room 5 having been installed by the sub-tenant of room 5, Mr Randy Anderson.<sup>27</sup>

### **Fire Safety Generally**

Exhibit 20 sets out the general observations made following the M.F.B investigation. This investigation revealed significant multiple failures to satisfy reasonable fire safety standards. Areas of deficiency in compliance with safety standards found during the post fire investigation are set out from page 17-25, of Exhibit 20, the report into the fire prepared by the Fire Investigation Unit of the M.F.B.

These include deficiencies concerning smoke alarms, the construction of bedroom doors, fire separation between the boarding house and the restaurant and the manner in which separate rooms were secured. These observations 1-10, were not contested and (with the exception of the legal opinion found at page 17 and the reference to possible criminal offences) I adopt these observations.

#### **F) The use of the premises at the time of the fire:**

On the night of the fire, there were seven persons staying at the apartment. These were,

- a) Nathan Rau and his girlfriend, Fiona Ward, who were in room 6. Mr Rau had been living at the premises since December 2004.<sup>28</sup>
- b) Randy Anderson and his then 7-year-old son, RJ, in room 5. I note that RJ stayed with his father at the premises every second weekend and over one week in each school holiday;

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<sup>25</sup> See transcript at pages 63 and 64.

<sup>26</sup> See Exhibit 20 at page 8.

<sup>27</sup> See also Mr Maatouk on fire alarms generally at pages 678-679.

<sup>28</sup> See transcript page 511-512 and Exhibit 9c;

- c) Leigh and Chris in room 3; and
- d) Andrew Farley in room 1.

It is also relevant that Fiona Ward and Christopher Giorgi were regular overnight visitors at the apartment and that an eighth tenant, 'CJ', who normally occupied room 4, was away interstate on the night of the fire. I also note that room 2 had been let out to a sixth tenant, 'Ash', who although absent on the night of the 1st had previously occupied the remaining front bedroom, bedroom 2, and was in the process of moving in.

The evidence of several tenants gave further elaboration to the numbers of persons who were normally resident.

Nathan Rau was a permanent at the apartment from a point soon after his arrival in Australia on the 16th of December 2004, until the morning of the fire, October 1st 2006.<sup>29</sup> During this period, there was a changing group of tenants, which systematically exceeded five in number.

As far as he was aware as many persons could live there as were prepared to share the room rent and tolerate the conditions. His further evidence was that the greatest number he had lived with was nine persons including himself, as permanent and that such residents frequently had visitors who would stay overnight. His further testimony was that there was never any interference from those managing the business concerning this issue.<sup>30</sup>

Randy Anderson testified that when he moved into the apartment he shared a bedroom with Mr Rau and that there were seven people living in the house at that time.<sup>31</sup>

Mr Anderson's evidence generally corroborated that of Mr Rau and I accept both as reliable historians concerning this matter.

#### G) Classification of the building under the Building Code of Australia

Despite the use detailed above it is clear that at the time of the fire the first floor premises continued to be classified as a Class 4 dwelling at the rear and as a Class 5 office space, at the front.

The classification of floors determines the fire safety requirements throughout the building.

The Building Code of Australia requires buildings to be classified according to their use. Under the Building Code,

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<sup>29</sup> See transcript at page 511.

<sup>30</sup> See transcript at page 137.

<sup>31</sup> See transcript at page 209-210.

*"A residential building which is a common place of long term or transient living for a number of unrelated persons, including a boarding house, guest house, lodging house, or backpackers accommodation, a residential part of a hotel or mote",*

is designated as a class 3 building.

Allan Thredwall, the Moreland City Council Municipal Building Surveyor, set out in his written submission, details concerning the history of building use.<sup>32</sup> In October 1989, separate identities were created for the ground floor and first floor to allow the building to be rated as separate occupancies. From this time, the ground floor building became 211-213, while the first floor apartment, which was designated for use as a dwelling at the rear and offices at the front, became 211-213A, Sydney Road.

A history of the building and planning permits issued showed that no permits were applied for or issued, which may have established a lawful change of use for the first floor, from "dwelling" to "boarding house".

Instead, all applications received by the Moreland City Council suggested the first floor continued to be used as a single dwelling with offices at the front.<sup>33</sup> It is also relevant that there was no application or permit granted for the construction of two lightweight partition walls, which Mr Maatouk and his associates used to divide the lounge, fronting Sydney Road, into two additional rooms (Bedrooms 1 and 2). Similarly, there was no application or permit issued for the construction of a partition wall and door between the rear living area and kitchen which partition had been erected to create a 6th bedroom, at the rear of the property.<sup>34</sup>

It is clear then that the first floor premises was used as a class 3 boarding house as each resident had exclusive use of a bedroom and use of common shared areas (e.g. kitchen and bathroom). It is also the case that while both the owners and operators were aware of the use for which the apartment was leased, that neither informed the Moreland City Council of this changed use, despite being cautioned concerning their obligation to do so. See Moreland City Council letters and the responses to same.<sup>35</sup>

Had the owners or operators notified both the Building and Health Departments Council of the change of use they would have been required to satisfy both the fire safety requirements of the Building Code and the registration requirements of the Health Prescribed Accommodation Regulations 2001.

Under the Health Prescribed Accommodation Regulations, the number of persons who occupy a boarding house or apartment of this kind is intended to drive the statutory requirement that operators, register their boarding house business at the office of their local City Council.

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<sup>32</sup> See Exhibit 24.

<sup>33</sup> See Exhibit 24 at page 4.

<sup>34</sup> See Exhibit 24.

<sup>35</sup> See discussion at section J of this finding

These requirements are triggered when such establishments house more than five tenants at any one time.

The statutory framework under the Health Act Prescribed Accommodation Regulations, is set out in Exhibits 18 and 20.<sup>36</sup>

Having more than five tenants in a rooming house mandates an obligation to register the business with the appropriate Municipal Council and to conduct the business in accord with the regulations, though not at the present time, the Building Code fire safety provisions.<sup>37</sup>

In this case, I note that in regard to the Councils Planning Departments requirements, the age and location of the building was such that permission would not have been given by the Planning Department, to establish this premise as a boarding house.<sup>38</sup>

It is relevant that neither officers of the Health Department or Building Department of the Moreland City Council were aware of this (planning) issue, prior to the commencement of the investigation which followed this fire.

The Health Act Prescribed Accommodation Regulations also establishes a framework in which Council may ensure compliance with that legislation.

It may be seen then that such a framework is vertically, rather than horizontally, integrated and likely to be perceived as complex and to involve the operator in additional time and both direct and indirect expense, especially concerning any upgrading, which may be required in an older building.

A search of Council's records established that the boarding house was not registered in accordance with the Health Act Prescribed Accommodation Regulations.<sup>39</sup>

Generally, the evidence of tenants Nathan Rau and Randy Anderson, together with the evidence of sometime visitor Fiona Ward, sets out how the business was run from the perspective of residents at the premises.<sup>40</sup>

More specifically, the evidence of Adam Giles, which I deal with from Section L below, sets out how John Pisani, George Maatouk, Mark Vernuccio, and later Mark Fernandez and Alistair Akom, organized their business and in so doing, how they were able to avoid the intervention of a less than diligent Moreland City Council.<sup>41</sup>

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<sup>36</sup> See exhibit 18 at page 2 exhibit 20 at page 27.

<sup>37</sup> See exhibit 20 at page 26. Taking precautions to ensure safety from fire, is not currently a requirement under the Health Act, Prescribed Accommodation Regulations. See however Recommendation 7 below at page 32.

<sup>38</sup> See the evidence of Mr English and email from the Manager of Urban Planning at the Moreland City Council, at page 1 of Exhibit 18(c).

<sup>39</sup> See Exhibit 23.

<sup>40</sup> See Section I below.

<sup>41</sup> It is appropriate to note that during the course of the inquest both property owners, Louis and Gelsomina Daniele, successfully applied through Counsel, to be excused from testifying on the grounds of the privilege against self-incrimination. I further note that George Maatouk and persons whom I am ultimately satisfied

H) Adam Giles, George Maatouk, John Pisani, Mark Vernuccio, Dignity Homes Pty Ltd, and the rooming house business

Dignity Homes Pty Ltd was the name used by George Maatouk, when he took out a residential tenancy lease on the apartment from the Daniele's.<sup>42</sup>

Mr Maatouk's brother-in-law, Mr Mark Vernuccio, claimed in his statement that both he and Mr Maatouk were partners and ran the business with his share in the name of a company called Commercial Integrity Pty Ltd.<sup>43</sup>

Mr Akom contradicted this version in his statement,<sup>44</sup> in which he claimed that three persons, Mr Giles until August 2005, Mr Vernuccio and Mr Fernandez until January 2006, managed the business.

Mr Maatouk, (who apart from Adam Giles was the only person associated with the business to testify), stated that in June 2004 he and Mark Vernuccio established the business and that Mr Vernuccio was the one who set it up. He claimed that a month or two after he signed the lease for the premises on behalf of Dignity,<sup>45</sup> he had no further involvement. At this time, Mr Vernuccio brought Mr Giles and Warren Crowley into the business.<sup>46</sup>

George Maatouk further testified that his current position was Director of an organization called Northern Suburbs Accommodation Centre Pty Ltd.<sup>47</sup>

He said that Northern Suburbs Accommodation shared accommodation with Dignity Homes with he occupying one room and Dignity Homes staff, Mr Vernuccio, Mr Giles, Mr Akom and Mr Crawley, all in another room<sup>48</sup> with both organizations sharing a fax machine.

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were at relevant times his associates in the rooming house business, i.e. John Pisani, Mark Vernuccio, Dillon Fernandez, Alistair Akom, each also made applications through Counsel, to be excused from giving evidence on the grounds of privilege against self-incrimination. All such applications except that of George Maatouk, (transcript at 537), were granted.

<sup>42</sup> On the 5th day of hearing, Senior Counsel representing the Tenants Union of Victoria, Council to Homeless Persons and Pilch Homeless Persons Legal Clinic, made a statement from the Bar Table which suggested that her inquiries revealed that Dignity Homes Pty Ltd was registered as a business on the 9th of June 2004 and deregistered as a business on the 10th of June 2007. She further alleged, by reference to a document prepared by her junior, that Mr Maatouk was registered as a person carrying on the business from the 9th of June 2004 to the 24th of May 2005 and that Commercial Integrity Pty Ltd, a company of which Mr Vernuccio was Director and Secretary, was registered as a corporation carrying on the business from the 9th of June 2004 to the 10th of June 2007. I note here that this information was not produced in evidence and was not evidence, before the inquest. However, because of these allegations, and further evidence received during the inquest, I issued summonses for both banking and business documents in respect of the abovementioned and other entities. Ultimately, no information was established from this course of action.

<sup>43</sup> See Exhibit 33 at Brief page 299-301 and Transcript at page 1431.

<sup>44</sup> Exhibit 17.

<sup>45</sup> See exhibit 1C and exhibit 15 at page 5,

<sup>46</sup> See transcript page 544-545.

<sup>47</sup> See paragraph 1 at page 19 below.

<sup>48</sup> See transcript page 591-595.

He further testified that after he left Dignity Homes, he had no further involvement with the business or the Sydney Road premises, which was operated as part of Dignity Homes, and was then being run by Mark Vernuccio and Adam Giles.<sup>49</sup>

I note that, as referred to above, Mr Maatouk agreed that he had signed the lease for the Sydney Road property.<sup>50</sup> In further evidence, he agreed that in July of 2006, he had signed a tenancy option form to extend the lease.<sup>51</sup> He also agreed that he signed a document to recover the bond after the fire.<sup>52</sup>

I also note that he further testified about his dealings with correspondence received from Moreland City Council concerning the condition of the premises and the need to satisfy the various legislative requirements referred to above.<sup>53</sup> This matter is dealt with further in Section J below.

In regard to the business of Northern Suburbs Accommodation generally, Mr Maatouk also testified that his business leased some 60-70 homes over the last 5 years and accommodated 200-300 people.<sup>54</sup>

The company's income was around \$40,000 per week and that it was his practice to keep the number of tenants at five or less to avoid the need to register premises. At the time of the fire in October 2006, none of the properties he operated was registered. Although several Councils had now approached him about properties under his control, at the time of giving his evidence, none of those properties had been registered as a boarding house.<sup>55</sup>

It is also relevant that Mr Maatouk testified that at the time he was involved in running the premises, he was not aware of his statutory responsibilities under the Building Code, the Health Act Prescribed Accommodation Regulations or the Residential Tenancies Act. He specifically was not aware that under the Building Code a rooming house was a class 3 building for which hardwired smoke detectors had to be provided.

*"I assume that if I had to do any of that Council would have informed me".*

He also gave further evidence about his general state of awareness concerning the operation of the business, and his duties as an operator/director.<sup>56</sup>

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<sup>49</sup> See transcript at page 592.

<sup>50</sup> See Exhibit 1(c).

<sup>51</sup> See Exhibit 15(b).

<sup>52</sup> See Exhibit 15(a).

<sup>53</sup> See Exhibit 12(c).

<sup>54</sup> See Transcript page 596.

<sup>55</sup> See Transcript page 596-597.

<sup>56</sup> See Mr Maatouk's evidence at page 734. See also transcript of his evidence at pages 600, 630 and 631.

Adam Giles,<sup>57</sup> ultimately gave a substantially different version to that given by Mr Maatouk, about Dignity Homes Pty Ltd, and how and by whom it was run.

On the 19th of February, 2009 he was recalled to the witness box and testified that he had not been truthful in his earlier evidence as he had been, and felt, threatened by an approach made to him by George Maatouk in the foyer of the Court, prior to his giving evidence on October 20th, 2008. Mr Giles gave the following reasons for his change of evidence.<sup>58</sup>

According to Mr Giles, Mr Maatouk spoke to him in the court foyer on the morning of the 20th of October 2008. At this point, he had not seen Mr Maatouk for approximately 14 months. After general pleasantries were exchanged, Mr Giles testified that Mr Maatouk said the words,

*"just don't mention John,"*

which Mr Giles understood was a direction not to mention the name of a Mr John Pisani, whilst giving his evidence.

At the time, John Pisani was known to him as a person whom he believed to be the 'leader of' or 'owner or key man of' Northern Suburbs Accommodation.<sup>59</sup> Mr Giles further testified as to the effect these words had on him and on the manner in which he then testified.

Mr Giles further stated that he felt threatened because during the year he worked with Mr Pisani and Mr Maatouk and it was apparent to him that they, with associates Mr Joe D' Amato and Mr Arthur Oshan, ran an extensive boarding house business which included 211-213A Sydney Road, in a manner which was,

*"and under the radar according to their own terms".* <sup>60</sup>

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<sup>57</sup> Mr Giles informed me through Counsel Assisting that he was not seeking to be represented, when he first testified briefly on the 20th of October. He again testified on the 22nd-23rd of October. See transcript page 66-68 Day 1; 255-306 Day 3; 310-409 Day 4 and again briefly on Day 6, from page 649. At the conclusion of that evidence, I informed Mr Giles that I required him to appear before me at a date to be fixed, to make submissions as to whether his evidence should be referred to the Office of the DPP, so that consideration could be given to whether he should be charged with the offence of perjury. (See transcript at page 650). Later, Mr Giles wrote to me about his earlier evidence. See Exhibit 5B headed, 'Submissions for consideration'.

I then initiated arrangements for Mr Giles to obtain legal representation and to appear again on the 19th of February.

On resumption Mr Giles, through Mr Crisp of Counsel, informed me that he wished to testify to the matters set out in his letter and to related matters and that, he did not seek to be excused from giving further evidence. Copies of his letter were circulated to interested parties.

Mr Giles then testified and following cross-examination, he was excused from further attendance. (See transcript from 1224). The evidence then given by Mr Giles caused me to initiate further inquiries and to call at least two additional witnesses.

<sup>58</sup> The changed evidence referred to is set out in detail at transcript pages 1340-1352.

<sup>59</sup> "Northern Suburbs Accommodation", was a name that was variously mentioned over the course of the inquest. It is relevant that its owners and their associates were alleged to be closely connected to the management of Dignity Homes Pty Ltd, and later Edge Housing. See Section M below.

<sup>60</sup> See transcript at pages 1231-1239.

*could be wrong on structure. What I do know is that John was office based and George, Joe and Arthur spent time out of the office managing houses".*

Of this \$35,000 sum invested by Adam Giles, \$6,000 was income support for himself, \$25,000 was to purchase management rights over 5 of the total number of properties managed by Dignity Homes, not including the Sydney Road property, and \$4,000 went to John Pisani for his 'training and mentoring'.

*"In addition to the \$4,000 paid to John there was a 30% royalty on gross profit (Income - rent outgoings - bills x 30%), to Dignity Homes which I believe was split evenly between Mark and John".<sup>65</sup>*

Mr Giles testified that he commenced with Dignity Homes in August 2004 and that at this time they managed a total of 5 to 10 houses, but that this grew to around 30 houses by the time he left a year later, of which he managed 10 - which did not include the Sydney Road premises.

His belief was that he had bought a 'franchise' which allowed him a share of profits with a 30% royalty paid to the owners of Dignity, who were Mark and John.<sup>66</sup>

He further testified that it was John Pisani who had 'his finger on the pulse' in respect of the affairs of Dignity Homes. He further considered him the 'decision maker' and testified that he had created a system of spread sheets which recorded the occupancy, income and expenses of all of the properties, controlled by the group.<sup>67</sup>

He did not believe that Mr Maatouk received profit from Dignity Homes.<sup>68</sup>

Mr Giles further testified how he became involved in assisting Dignity's owners in respect of the Sydney Road property, which matter I deal with below.

### ***Edge Housing***

Documents subpoenaed from the Commonwealth Bank of Australia showed that the account referred to on both Leigh Sinclair's and Andrew Farley's rooming house applications, was in the name of Edge Housing.<sup>69</sup>

This account had been operated from the 12th of January 2006 and was still being operated, the signatories being Mr Fernandez and Mr Akom.<sup>70</sup>

In his untested statement to police, Mr Fernandez stated that he and a friend, Mr Akom, were looking for a commercial opportunity when they met Mark Vernuccio who was

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<sup>65</sup> See exhibit 5 (b) at pages 2 and 3.

<sup>66</sup> See transcript at page 1238, 1239, 1261 and 1302.

<sup>67</sup> See transcript at page 1265-73, 1303-04 and exhibit 17(b).

<sup>68</sup> See transcript at page 1243.

<sup>69</sup> See exhibit 17(a) at folio 2 and 3.

<sup>70</sup> See transcript at page 1097-98.

Those tactics included not putting their name to official documentation.

Mr Giles' further testimony concerning this matter was that he had never seen Mr Pisani put his name to anything.<sup>61</sup>

Other strategies alleged to be employed by Mr Pisani and his associates, involved using threatening and intimidating standover tactics towards 'problem' tenants, such as moving heavily built and seemingly aggressive persons into rooms they wished to see vacated, thereby achieving tenant removal without the involvement of VCAT.<sup>62</sup>

Mr Giles stated that he did not mention Mr Pisani, prior to his testimony in February 2009, because he was scared following Mr Maatouk's conversation with him outside the court. I note here that in fact Mr Pisani's name was not mentioned in that evidence, by Mr Giles<sup>63</sup> although it had been mentioned in his earlier statement to police, where 'Mr John Pozani, or similar,' is named by him, as the owner of Dignity Homes.

Mr Giles sets out further reasons for his failure to provide 'full disclosure' in his statement.<sup>64</sup>

Mr Giles further stated that he had been introduced to the rooming house business sometime in mid 2004 by his best friend of 22 years, Mark Vernuccio.

Mr Giles testified that it was apparent to him from an early stage that Dignity Homes was a business owned and operated by Mr Vernuccio in partnership with Mr Pissani.

He said that Mark (Vernuccio) was introduced to the business by George (Maatouk) who was then the boyfriend (now the husband), of Mark's sister. George was part of a larger group of operators which included John Pissani, Arthur Oshan and Joe D'Amato whom he knew as Northern Suburbs Accommodation.

He further testified that Dignity Homes started as a venture between Mark and John, with Mark tasked to bring in 3 people who would each contribute \$35,000. Dillon Fernandez was the first to invest and he was the second. Mark, John and George leased the houses under Dignity Homes or Northern Suburbs Accommodation.

Mr Giles further stated that he joined the business in August 2004, by paying the sum of \$35,000 and that John and Mark split the royalties on the properties he managed. He further stated that,

*"John appeared to have the same or a similar (but separate) arrangement with George, (Maatouk) Joe (D' Amato) and Arthur (Oshan), but I was not aware of the details, so I*

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<sup>61</sup> See transcript page 1289.

<sup>62</sup> See exhibit 5B and transcript pages 1231-1236 and 1318-1319.

<sup>63</sup> Mr Giles was questioned at transcript pages 258, 264 and 272 about a Mr Pozani and a Mr Hozani, and can be seen to have played down the level of involvement of this person.

<sup>64</sup> See exhibit 5 at page 1 and 5.

involved with Dignity Homes. Initially, Mr Akom worked within Dignity Homes and learnt about how the business was run and they then both started Edge Housing. As at the 17th of October, 2008 (when he made his statement), Edge Housing managed 4 properties which had been transferred to it from Dignity Homes. One of these had been the Sydney Road premises.<sup>71</sup>

In what was also an untested statement, Mr Akom said that he worked for Edge Housing, which was owned by Mr Fernandez. This issue apart, he corroborated the evidence of Mr Fernandez referred to above.

From the above evidence it appears that the Sydney Road premises was under the management of Edge Housing at the time of the fire, although there are no supporting contracts indicating an assignment of the business or any of the leases it owned, from Dignity Homes. For an assignment to be valid there must be a written consent from the properties owner.<sup>72</sup> There is no evidence to suggest that Mr and Mrs Daniele provided such consent,

D) Nathan Rau, Randy Anderson, Andrew Farley, Dignity Homes and Edge Housing.

As far as the residents were concerned, their knowledge of the identities of the business operation was extremely limited.

Nathan Rau testified that during 2006, he rented room 6 for \$150 per week and that he paid this amount of cash to "Alistair" and later to "Warren". Each week Alistair would collect the rent in person and issue a receipt, which did not disclose any information about the management of the business.<sup>73</sup>

Together with these receipts, Nathan Rau produced a business card for Dignity Homes in the name of "Warren Crowley". He was described as a business manager. Nathan Rau had heard of Edge Housing and believed that "Dignity" and "Edge" were interchangeable names.<sup>74</sup>

Randy Anderson testified he had been showed a room by "Alistair". He did not know who Alistair worked for. He entered into an agreement which commenced on the 21st of November 2005 and paid rent directly into an ANZ account (see below), and that he had been given a card with the Dignity Homes' name on it.

Andrew Farley was resident in room 1 situated at the front of the premises. He moved in in August 2006 and, at that time, dealt directly with Warren Crowley and did not sign any agreement. Thereafter, he paid cash to Alistair Akom or Warren Crowley. Like Mr Rau and Mr Anderson, he had not met George Maatouk, Mark Fernandez or Adam Giles.<sup>75</sup>

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<sup>71</sup> See Exhibit 16.

<sup>72</sup> See section 81 of the Residential Tenancies Act.

<sup>73</sup> See transcript 123-126.

<sup>74</sup> See transcript page 127 and 510 and Exhibit 9(b).

<sup>75</sup> See transcript at pages 206, 247-248.

Nathan Rau and Randy Anderson both further testified about a laminated poster at the premises near room 5 headed "House Rules".<sup>76</sup> This document listed "Warren", as Accommodation Manager and mentioned an ANZ Account number to which rent payments could be made.

Documents subsequently subpoenaed from the ANZ Bank showed that the account so mentioned was in the name of Dignity Homes and operated by George Maatouk and Mark Vernuccio as signatories. It was opened on June 17th, 2004 and operated until the 21st of November 2005.<sup>77</sup> This account was also referred to in the tenancy agreement signed by Randy Anderson, which commenced on the 3rd October 2005.

Having reviewed this uncontradicted evidence, I note that none of the tenants appear to have been aware of the identity of the owner(s) of Dignity Homes or Edge Housing. Further, the receipts and rooming house agreements did not provide details concerning the name or names of the proprietors of this organization and nor did they provide an address or telephone number other than the mobile number of sometime rent collector, Warren Crowley, whose connection to Dignity Homes was not stated. Nor did they provide an ABN or tax file number.

As indicated above, the agreement entered into by Leigh Sinclair in respect of room 3, was with Edge Housing.<sup>78</sup> It is relevant that this organization was also inconspicuous and that there is no evidence that the management of Dignity Homes was passed to Edge Housing or visa versa.

The tenants also had no knowledge about the identity of the building's owners or their agents.

#### J) Adam Giles and the Moreland City Council.

On the 1st of September 2004, a customer service officer at the Council received a telephone call from a resident of the premises, Mr Rob Leaman, in which he complained about health and fire related hazards. His fire safety concerns were summarised on the Council's Action Management System as follows:

*"Fire escape - part of hall has been turned into a room for 2 persons, the fire escape is at the rear of the room - no access for others. Bars on bedroom windows. Have to use key to leave building - unsafe if fire."*

As a result, on the 7th of September 2004, Ms Vanessa Crow, an Environmental Health Officer at Moreland City Council, inspected the property together with Mr Brian Bergin, a senior member of the Building Services Department. Mr Bergin was assigned to attend the inspection because of the allegations concerning a fire hazard, which allegations fell to be considered under the Building Act.

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<sup>76</sup> See Exhibit 9 (a).

<sup>77</sup> See transcript page 1098.

<sup>78</sup> See the contents of Exhibit 17 (b).

It is also the case that Ms Crow, whose powers to enter and inspect were wide ranging under the Health Act, was in a position to employ those powers to gain immediate entry while Mr Bergin would otherwise have been required to provide 48 hours advance written notice before he could have obtained entry, under the Building Act.<sup>79</sup>

Mr Bergin further stated that he focused on the 'blocking off' of the rear exit as this was the subject of the complaint and that whilst he noticed two battery smoke alarms, he did not fully turn his mind to the other fire safety requirements applicable to the premises.

Mr Bergin stated that he would normally have examined the fire safety requirements of the premises and taken follow up action. He said that this did not take place for a number of reasons, which included his ill health and the Building Departments workload.

Senior Counsel representing Moreland City Council correctly acknowledges that in the circumstances Mr Bergin should have done more.

After her inspection, Ms Crow testified that she followed up on Health Act issues and believed that Mr Bergin would do the same in relation to fire safety issues.<sup>80</sup>

Vanessa Crow made a file note of her inspection which included the words 'no fire fighting equipment' and what she was told by Mr Leaman, She did not count how many smoke detectors she saw and did not check if they were working.<sup>81</sup>

On the 26th of October 2004, Ms Crow wrote to Mr and Mrs Daniele advising them that the premises was required to registered with the Moreland City Council under the Health Act Prescribed Accommodation Regulations as there were 6 rooms available for rent. The letter further advised in a computer-generated paragraph, that the writer was concerned with Health Act compliance only and that they should contact the Planning and Building Services to ensure compliance with other applicable legislation.<sup>82</sup>

On the 29th of October Ms Crow spoke with Mrs Daniele who stated that she was unaware that the premises was being used as a rooming house and was unaware that partitions had been added. <sup>83</sup>

Mrs Daniele referred the Council's letter to Ms Bey at Nelson Alexander. Both Ms Crow and Ms Bey with Mr Anthony Stucco visited the premises on the 9th of November during which they discussed the blocked fire exit. Ms Bey passed on the Councils letter to 'Dignity Homes Pty Ltd' and neither she nor Nelson Alexander, then took any further part in seeking to ensure the owners compliance.<sup>84</sup>

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<sup>79</sup> See Statement of Ms Crow Exhibit 23, Statement of Brian Bergin Exhibit 19 and transcript from page 1015, together with the evidence of Mr Luke English, Moreland's Manager Civic Safety and Amenity, from transcript page 846.

<sup>80</sup> See transcript at page 1017.

<sup>81</sup> See transcript at page 1030.

<sup>82</sup> See exhibit 18a.

<sup>83</sup> See transcript at page 1027-28, which allegation is contradicted in her statement, see exhibit 27.

<sup>84</sup> See statement of Anthony Gentile at exhibit 14, at pages 4 and 5.

On the 26th of November, Ms Crow wrote to Mr Maatouk at the Miller Street office about the requirement that the premises be registered under the Prescribed Accommodation Regulations. In this letter she further wrote

*"It should also be noted that there is a potential fire hazard with this building where the rear lounge area has been converted into a bedroom and access to a rear stairway, which in the event of fire would act as a fire escape is impeded by this conversion. You are requested to make contact with Councils Building Services to ensure that adequate fire exits are provided."*

At the conclusion of the letter, a computer-generated paragraph further advised Mr Maatouk to contact 'Planning and Building Services' in regard to 'further Council Services'.<sup>85</sup>

On the 17th of February 2005 Ms Crow sent a further letter to Mr and Mrs Daniele advising that she had not received a response from the tenant and urged them to speak to their agents to ensure that the tenants comply with the Prescribed Accommodation regulations,

*"or alternatively the tenancy agreement be revoked".*

She further specifically mentioned that the last inspection had disclosed a fire hazard situation and alluded to the fact that non-compliance (with the Health Act), may have implications,

*'for yourself as owner of the building'.*<sup>86</sup>

In her statement, Mrs Daniele stated that on receipt of this letter she spoke on a number of occasions to Ms Bey who advised that she had tried unsuccessfully to contact the lessee. As a result, Mrs Daniele stated that she got a contact number for the lessee and spoke to a person who identified himself as the manager.

This person acknowledged that they had received 'two' notices from the Council and she told him that,

*"they had one week to either reduce the number of bedrooms in operation or register the accommodation as specified in the Councils notices".*

She further alleged that she threatened to take steps to evict them if her demands were not met.<sup>87</sup>

Mr Maatouk testified that when he received the first Council letter, dated 26th of November 2004 he passed it to Mr Giles.<sup>88</sup>

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<sup>85</sup> See exhibit 12c at page 3.

<sup>86</sup> See exhibit 18a.

<sup>87</sup> See exhibit 27 at page 3, (which statement was not the subject of evidence given in court).

<sup>88</sup> See transcript at page 603 and 653-654. I note here that Mr Maatouk appeared unable to identify the contents of particular letters handed to him during his testimony, and further his evidence as to his general level of literacy.

Mr Giles stated in his supplementary evidence that Mr Pisani gave him the letter and asked him to get the forms and fill them in to permit them to be able to comply with Councils demands.<sup>89</sup>

After reading the contents, he did some research on the Prescribed Accommodation Regulations and arranged to go and see the property, which he believed that he did soon after Mr Pisani gave him the letter, in January 2005.<sup>90</sup>

Following the visit (which he believed may have been undertaken with Mr Akom) and based on his rough notes, he endeavoured to draw up a site plan.<sup>91</sup>

Mr Giles further stated that he realized there were six rooms in use, which included room 6.

He further stated that he informed those back in the office that they would need some professional assistance to comply with the registration process.

Mr Giles also stated that upon his return he said to John (Pisani) and Mark (Vernuccio) or Alistair (Akom) 'or both' and 'giving them my impression of what I had just been through. At that point John just said well there needs to be five rooms, there needs to be five rooms'.

Mr Giles further stated that he was instructed to contact the Council. He said,

*"Just call the council, find out if its five rooms, what we need to do".*

I then followed up with Council, I spoke to Ms Crow at that point, its going to be used, or will be used - its only going to have 5 rooms, what does that mean, and I don't remember the exact nature of everything that was discussed, but the result of what I do remember was that she said,

*"Great, can you send that through in writing".*

Mr Giles then sent a fax to Ms Crow confirming this arrangement.<sup>92</sup>

Mr Giles further testified that he believed this was a genuine decision, by Mr Pisani, and that the premises would have only five bedrooms.<sup>93</sup>

He said that Mr Akom continued to manage the house and went there weekly to collect the rent.<sup>94</sup>

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<sup>89</sup> See exhibit 5b and transcript 1243.

<sup>90</sup> See transcript at page 1245.

<sup>91</sup> See exhibit 17b (1).

<sup>92</sup> See transcript at pages 1253 and 1298 and exhibit 12a.

<sup>93</sup> See transcript page 1254.

<sup>94</sup> See transcript page 1255.

He said that he made it clear to Mr Akom the importance of not maintaining bedroom 6 as a bedroom and that they all knew that if room 6 was maintained as a bedroom, the premises would have to be registered.<sup>95</sup>

Ms Crow accepted Mr Giles' undertaking that the premises only had five bedrooms and that the obstruction had been removed from the rear fire exit. Accordingly, she was of the view that the premises were now entitled to exemption from the Prescribed Accommodation Regulations. She testified that she felt Mr Giles was well versed in the regulations because he knew of the exemptions.<sup>96</sup>

Ms Crow did not return to the premises to check to see if Mr Giles' assertion was factual and, instead, on the 24th of February 2005, closed her file. She did not contact the Building Department about the fire hazard issues but stated that she was confident they would deal separately with those matters.

In hindsight, she conceded that the level of communication between the various departments of Council was less than satisfactory.<sup>97</sup>

K) Saturday the 30th of September 2006, and Sunday the 1st of October, 2006

Saturday the 30th of September 2006, was the day of the Australian Football League Grand Final and 'old friend,' Mr Nathan Byfield testified that he and Leigh Sinclair spent much of the afternoon together in Brunswick, in various local bars.

They were joined later in the evening by Christopher Giorgi and returned to Leigh Sinclair's room before midnight. Later, they purchased food from the Pizza Hut, which was consumed in room 3, following which Mr Byfield left at approximately 12.30 am. Mr Byfield testified that no drugs had been consumed in his presence and that they were all coherent when he left that night.<sup>98</sup>

On Saturday the 30th of September, the Pizza Hut restaurant operated as normal under the direction of its manager, Mr Alan Zhang. At about 12.45 am he locked up and left, having turned off all appliances. He did not notice anything unusual before he left.

Mr Abdul Fadil, the owner of a nearby restaurant gave evidence that he closed his restaurant at around 9.30 pm and went out. On returning to his home located above his restaurant at around 11 pm, he smelt smoke but was not aware of where it might have been coming from and went to bed.

Nathan Rau testified that he and Fiona Ward fell asleep in room 6 at around 1 am. Randy Anderson also stated that he and his son returned to room 5 at around 1 am and fell asleep approximately half an hour later, with the television on.<sup>99</sup>

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<sup>95</sup> See transcript at page 1298.

<sup>96</sup> See transcript 1034 -1035, 1053, 1066-69.

<sup>97</sup> See transcript at 1037-38.

<sup>98</sup> See transcript at page 113.

<sup>99</sup> See statement of Nathan Rau at Exhibit 9 and Randy Anderson's statement at Exhibit 11.

Randy Anderson further testified that at about 1.30 or 2.30 am he heard screams but did not pay attention because, earlier that evening, people had been yelling. The screaming was going back and forth and woke him from a restless sleep. There were two different screams which may have come from two different persons, which he thought may have been a domestic dispute. He further testified that he determined not to involve himself as he had his young son with him, and did not wish for his son to become involved. He further testified that at about 3am the power went off, turning off his electrical appliances. He thought it was another fuse and he went back to sleep. He said that, what felt like 20 minutes later but may have been longer, he heard Nathan Rau banging on his door.<sup>100</sup>

At around 2 am, Fiona Ward got up to let her dog out and whilst up noticed a smell of smoke. Nathan Rau later arose and lit a cigarette and Fiona Ward again believed she could smell smoke, "*giving off a plastic like smell*".<sup>101</sup>

At about 5.20 am, Nathan Rau and Fiona Ward were awoken by an alarm and flashing blue light, outside his room, (room 6), by the rear staircase. He said he noticed the light before he heard the alarm, which he thought was the Pizza House burglar alarm. He proceeded to wake up Fiona, Randy, RJ and Andrew Farley who was in room 1 at the front of the apartment.<sup>102</sup>

Nathan Rau further testified that there was a lot of smoke and that he had to get down on the floor and crawl along. He could see flames up through the roof and a glow under bedroom 3. He knocked on the door and tried the handle but it was hot. The door had a round handle and a deadlock, which he could not open. He said he could hear movement in the room, which, he believed, came from the flames. He could not hear talking or other noises coming from room 3.<sup>103</sup>

I note here as I did at inquest, that Mr Nathan Rau is to be commended on the great courage he displayed at this time.

Randy Anderson stated that it was as if the door to bedroom 3 was "breathing". He and his son exited through the rear stairs to the back garden, from where he could see flames coming from the roof above room 3 to a height of some 20 feet. Fiona and Nathan exited from the rear stairs also; this after Nathan had made sure that Andrew Farley in room 1 at the front of the apartment was awake and was leaving the building through the front exit.

Fiona further testified that as she left the premises she heard a smoke alarm, which she presumed, was the one in the kitchen.<sup>104</sup>

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<sup>100</sup> See transcript page 200.

<sup>101</sup> See statements of Rau and Ward, Exhibits 9 and 10.

<sup>102</sup> See transcript pages 129-130,151,163 and 243. It is not clear whether the alarm which woke Mr Rau came from within the premises kitchen or from an M.F.B vehicle, which had already arrived at the rear.

<sup>103</sup> See exhibit 9 and transcript at pages 131-132 and 160-162.

<sup>104</sup> See transcript page 175,178 and 186.

Andrew Farley testified that as he left via the front stairs he saw the smoke in the hallway, which, he described as having a 'funny electrical smell' to it.

#### L) The M.F.B Response

At 5.22am, M.F.B fire fighters responded to an alarm at RMIT, Dawson Street, Brunswick. While on route, they were waived down by an occupant from 211A Sydney Road. A decision was made to attend to this fire, where the threat of loss of life was immediate.

Fire fighters wearing respiratory protection entered the building via the front door and discovered a significant fire in bedroom 3. The fire was brought under control and soon after 6 am, the bodies of Leigh Sinclair and Christopher Georgi were found in room 3. The fire destroyed a large section of the ceiling/floor between the ground floor food preparation area and bedroom 3. The southern wall, which abutted the hallway outside room 3, was also severely damaged.

#### M) The M.F.B Investigation

An examination of the damage to the floor of room 3 suggested that the fire had travelled upwards from the ceiling space above the restaurant into the floor of bedroom 3.<sup>105</sup>

According to the M.F.B expert, the fire was an electrical fire, with the probable source of ignition being a faulty light fitting and associated electrical wiring fixed to the restaurant ceiling, below room 3.<sup>106</sup>

#### N) Finding

I accept the M.F.B opinion in regard to the origin of the fire and find that Leigh Sinclair and Christopher Giorgi died from injuries sustained when fire broke out either late in the evening of September 31st, or in the early hours of the 1st of October 2006, in the space between the ceiling of the Pizza Hut Restaurant and bedroom 3 of a Boarding House, situated at 211-213 Sydney Road Coburg. *Brunswick*

I further find that prior to the arrival of Mr Randy Anderson as a tenant the boarding house premises had only two smoke detectors, one of which was located outside bedroom 3, and was not maintained in working order.

I find that had correctly located and maintained smoke alarms been installed throughout the building, it is probable that all occupants would have been alerted to the danger before the fire had time to develop. Instead, the evidence establishes that Leigh Sinclair and Christopher Giorgi did not have the advantage of an early warning and were denied an opportunity to evacuate.

I note that both Leigh Sinclair and Christopher Giorgi had quantities of ethanol (alcohol), cannabis and methamphetamine in their blood.

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<sup>105</sup> See Exhibit 20.

<sup>106</sup> See Exhibit 20 at page 4.

I find that the position of their bodies and the fact that lethal carbon monoxide levels were found in their lungs, supports the contention that both attempted to get out of the room before being overcome. The evidence of Mr Jackson also supports this contention and establishes to my satisfaction that despite their level of inebriation, Leigh Sinclair and Christopher Giorgi were both conscious and were heard calling out in a period prior to their demise.

In the circumstances in which he found himself, Mr Jackson who heard the yelling, misunderstood what he was hearing and I am entirely sympathetic to him for the pain that he continues to live with.

In a building of this type and classification, fire separation is required to minimize the risk of fire spreading between different areas within the same building.<sup>107</sup>

One means of obviating the need for fire separation between the two floors may have been to install a sprinkler system. The failure of various interested parties to take appropriate action concerning fire safety meant that this possibility was never considered.<sup>108</sup>

Faced then with a terrifying and chaotic situation, probably in darkness and without an early warning system, an extinguisher or sprinkler system, and without fire separation protection from the fire below, Leigh and Christopher were unable to locate the door keys needed to open the door before they were both overcome by smoke.

I also find that Mr Adam Giles gave credible reasons for the changed evidence he gave from the 19th of February 2009. Having reviewed that evidence, and in the absence of evidence from John Pisani and Mark Vernuccio, among others, I accept his testimony and to the extent that it contradicts the evidence of Mr Maatouk, I find that I believe Mr Giles' evidence and disbelieve the evidence of Mr Maatouk.

It follows that I find, without regard to the impact on the residents, Mr John Pisani sort to avoid possible expense and inconvenience by instructing Mr Giles to advise the Moreland City Council that not more than five persons were residing at the premises, although he knew this to be untrue.<sup>109</sup>

Further, based on Mr Giles' evidence and on all of the evidence and the inferences which can be properly drawn from that evidence, I am satisfied that there was a wall of secrecy, which surrounded the management of the Sydney Road business specifically and more generally Northern Suburbs Accommodation and the related businesses referred to in this finding.

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<sup>107</sup> The inadequate fire separation between floors had been previously identified in 1990, by the M.F.B in a fire protection report. On that occasion, the M.F.B recommended that appropriate amendments be made, but it appears that these recommendations were never followed. See M.F.B submission at page 11.

<sup>108</sup> See exhibit 24 at page 8.

<sup>109</sup> See page 18-20 above, where exchanges of correspondence between Alistair Giles on behalf of Mr Pisani and Dignity Homes, Nelson Alexander, the Danielle's and Ms Crow of the Moreland City Council, is discussed.

I am further satisfied that this approach, although sometimes ineptly employed, was deliberately undertaken by the boarding house operators named, as part of a scheme which was intended to isolate senior management from their Northern Suburbs Accommodation tenants, as well as from those responsible authorities charged with the various legislative oversight duties, referred to above.

As a result, Sydney Road residents were denied contact with an Estate Agency whom they may have wished to contact concerning maintenance issues, and were provided with no clear target should it be felt that the need had arisen to report owner management breaches either to the Moreland Council or to Consumer Affairs Victoria. Further, I find that this lack of clarity almost certainly discouraged any individual attempt to address grievances, however reasonably held.

I further consider that this lack of clarity was unwittingly assisted by the fact that neither Nelson Alexander, Brunswick, nor the Moreland City Council, sought to authenticate the name Dignity Homes Pty Ltd, before accepting the various representations that were seemingly made on its behalf, following the Council inspection by Mr Burgin and Ms Crow on the 7th of September 2004.

O) Persons contributing to the fire under Section 36(1)(c)

*- Louis Daniele and Gelsie Daniele*

Mr and Mrs Daniele were the owners of both floors and both Mr Daniele and Mrs Daniele understood from the outset that the upstairs premises were to be used as a boarding house.<sup>110</sup>

This fact was further confirmed to Mr Daniele by his occasional visits to the 1st floor to undertake electrical maintenance. Those trips also informed him of the position concerning bedroom 6, in particular, and the rear fire escape. Both Mr and Mrs Daniele were further informed of this matter, by the Moreland City Council correspondence, in which they were advised that the premises was being operated as unregistered prescribed accommodation and were additionally informed that 'Planning and Building Services should be consulted for further Council requirements'.<sup>111</sup>

A subsequent warning letter was also sent to the Daniele's (dated 17th of February 2005)<sup>112</sup> and I find that both letters confirmed to Mr and Mrs Daniele and were understood by them, to encompass regulatory requirements concerning fire safety.

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<sup>110</sup> See exhibit 27 at page 2 and the evidence of Mr Maatouk.

<sup>111</sup> See letter dated 26th of October 2004, part of exhibit 18a. See also exhibit 27 where Mrs Daniele has noted on this correspondence words which tend to establish that at this time a Council employee discussed with her the need to install 'fire fighting equipment'.

<sup>112</sup> See exhibit 18a.

It is also the case that Mr Daniele's experience and training as an "A grade" electrician and contractor, should have informed him as to his fire safety duties as an owner under the Building Code.

I also find that his visits to undertake maintenance further informed him as to the unsatisfactory nature of the wiring and electrical components generally and the dangers inherent in that situation, as well as to the absence of a suitable system of providing early fire warning through a hard-wired or indeed any adequate system of smoke warning device or fire separation. In such circumstances, it should have been obvious to him that his intervention was required as a matter of urgency. As an owner, his omissions in particular, were of a continuing nature and I find that such omissions contributed to the catastrophe that occurred.

I further note that the need to comply with fire safety precautions under the Building Code was not the result of the threshold number of five residents being breached under the Prescribed Accommodation Regulations. Rather such need was brought about by the 'change of use' undertaken by the operator and condoned by the owners.

I further find that Mrs Daniele, as an owner of a premises part of which was used as a boarding house, should together with her husband have kept herself informed as to the responsibilities, which attached to her position. I find that she failed to comply with that obligation.

Mrs Daniele's final conversation with Ms Crow is alleged to have informed her that the Environmental Health Department at Moreland City Council would take no further action on the original complaint. I find that whatever the case maybe in regard to that conversation, nothing was said which should or might reasonably have caused either Mr or Mrs Daniele to believe that Council were waiving any responsibilities they as owners had in regard to fire safety.

- John Pisani

On the evidence of Adam Giles, John Pisani was the head of Northern Suburbs Accommodation. Northern Suburbs was (and on Mr Maatouks evidence remains) an umbrella organization under which a large number of homes in the northern suburbs of Melbourne were leased and then furnished in such a way as to facilitate the letting of individual rooms, to members of the public.

The homes were divided between various managers running different accommodation groups, which included names like "Dignity" and "Edge." The managers, Messers. D'Amato, Maatouk, O'Shan and Vernuccio, together with Mr Pisani, were isolated from the tenants by 'franchise' purchasers who included at different times Mr Giles and later Mr Akom and his associate Mr Fernandez. These persons also helped finance the business and were further used to assist in isolating the abovementioned managers from those entrusted with the legal responsibility to regulate their activities.

A complaint by then tenant Mr Rob Leaman caused an inspection of the premises by Mr Bergin and Ms Crow to take place in September 2004 and following a considerable delay by

Mr Pisani, ultimately led him to direct Mr Giles to at first prepare to seek to have the premises properly registered. <sup>113</sup>

Having reviewed all of the evidence and the inferences, which may be properly drawn therefore, I find that before he involved Mr Giles, he had read the Council correspondence and knew that part of Council's concern related to fire safety.

Mr Giles was later directed to give an undertaking to the Moreland City Council that not more than five persons would reside at the premises, which he did, resulting in an under resourced Ms Crow, prematurely closing her file.

Having given this undertaking, Mr Pisani, with the knowledge and acquiescence of then manager Mark Vernuccio and his associate and collector, Alistair Akom, continued to maintain the premises as a six-roomed boarding house, despite the advice previously received from Mr Giles that such conduct would put them in breach of Council regulations.

Although it was Mr Pisani who made the decision, I draw the inference that Mr Vernuccio, together with Mr Akom, must have been aware of the relevant correspondence. Further, I find that they both acquiesced in Mr Pisani's decision, whilst keeping the underlying plan to mislead Moreland Council and maintain the accommodation in its existing form, confidential to themselves.

Further, from Mr Giles, we know that Mr Pisani was a well-organized individual with a background in management. Instead of responding and seeking to inform himself as to what was required to provide a reasonable level of protection to his tenants, he first delayed any contact and then finally instructed Mr Giles to intervene in a manner which was primarily intended to mislead Council while isolating himself from their enquiry.

When later advised by Mr Giles of the complex nature of the matter and the implied likelihood of additional expense, Mr Pisani made a further decision to, in equal parts, both defy and deny Councils demands.

I find in so doing that his acts of omission were of a continuing nature, which acts seriously compromised the reasonable fire safety precautions that his tenants were entitled to expect.

- *George Maatouk*

George Maatouk was a manager within the group and had been responsible for negotiating the original lease and the signing of the lease renewal. He testified that shortly after signing the original lease, he passed over control of the property to his then girlfriend's brother, Mark Vernuccio, and that he exercised no further control over the premises. This evidence was supported generally by Mr Giles and, in the absence of evidence to the contrary, I accept this testimony. <sup>114</sup>

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<sup>113</sup> See Exhibit 18a Council letter to Mr Maatouk dated 26th of November 2004.

<sup>114</sup> At page 17 above, I note that Mr Maatouk remained a signatory on the Dignity Homes Bank account between the 17/6/2004 until the 21/11/2005. The significance of this fact as it relates to his control over the premises during this period remains an open question.

I also find, however, that Mr Maatouk took the lead in arranging the change of use to a class 3 building and that he failed to inform himself as to the legal obligations, which flowed from that conduct. For the avoidance of doubt, I find that his limited level of education is not a reasonable excuse for that omission.

I also observe that in my view the door lock(s) Mr Maatouk had arranged to install in room 3 (as well as other rooms in the premises) was of an unsatisfactory design which design was ultimately a factor in preventing escape. I note that the Building Code does not presently address the issue of lock design in regard to rooming houses and deal with this matter further below.

*- Mark Vernuccio*

On the available evidence, I find that Mr Vernuccio was the manager of the business "Dignity", which operated the premises as an unregistered boarding house at the time the decision, was made by Mr Pisani to mislead the Moreland City Council.

I find that Mr Vernuccio, as manager of the property, must have informed himself as to the nature of the Council's concerns and was therefore aware that these concerns embraced the issue of fire safety.

In addition, he acquiesced in Mr Pisani's decision and knowingly continued to run what was a class 3 premises, while ignoring the matter of suitable fire precaution. This situation appears to have continued at least until Mr Giles left the business.

*- Alistair Akom*

Alistair Akom assisted in the management of the premises at the time of the fire, under the auspices of Edge Housing.

He had been informed by Mr Giles of the need to keep the number of tenants at five or below or else he would be in breach of certain Council requirements.

His participation in the Pisani/Giles meeting is uncertain on the evidence of Mr Giles, but we know that he collected rent at the apartment on a regular basis, both before and after, and that he continued as a manager of the property of which his associate, Mr Fernandez, had become an 'absent franchisee'.

In these circumstances, I find myself satisfied that he too was familiar with the properties' immediate history and aware that Moreland Council had raised questions about fire safety. Notwithstanding that knowledge, he continued to ignore, among other issues, both the room 6 door obstruction and the inadequacy of the smoke detector system.

*- Dillon Fernandez*

On the available evidence, it appears that Dillon Fernandez came into the business after the 'change of use' and after the decision was taken by Mr Pisani to instruct Mr Giles in his

dealings with Moreland Council. There was no evidence called before this inquest, which established that Mr Fernandez was aware of this history.

However, as the co-operator/franchisee of the premises at the time of the fire I find that Mr Fernandez together with his associate, Mr Akom, ought to have kept themselves informed as to the nature and application of all relevant legislation.

I find that they both failed to comply with that obligation.

- *Adam Giles*

The evidence given by Adam Giles prior to his return to the witness box as detailed above differed to the evidence he gave before that time. The circumstances in which he gave the later evidence and the explanation he gave for his earlier conduct are not proper matters for me to comment on save that I accept the evidence given following his return.

In so finding, I note that the evidence given following his return was not contradicted in any material way.

It is also the case that his later evidence tended to establish certain matters, which were broadly corroborated by the rest of the evidence. This includes the following:

- 1) that, he was not involved in the business of the letting of Sydney Road or its ongoing management, as it was not one of his designated premises, but he was simply engaged to advise Mr Pisani and then used by him to communicate with Ms Crow;
- 2) that in addition to (other) premises he managed on his own behalf, that he was generally used to represent the larger organisation in its dealings with VCAT as well as other 'government' organizations, which employment I also note to be consistent with the confident and at times brazen manner in which he presented during his earlier testimony; and
- 3) that the operators of the larger business played a low-key role which deliberately involved using others to communicate with tenants and where necessary outside agencies.
- 4) that the operators ran a cash income business, with minimal or no record keeping.

I find that Adam Giles allowed himself to be used to represent John Pisani and his colleagues in dealings with Moreland City Council and exercised poor judgement concerning that matter.

- *Restaurant Brands Australia Ltd.*

Restaurant Brands Australia Pty Ltd, a subsidiary of Restaurant Brands New Zealand Pty Ltd, operated the Pizza Hut business situated at 211-213 Sydney Road and was responsible under a commercial lease to maintain that premises.<sup>115</sup>

Under the Building Code, this was a class 6 category building.

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<sup>115</sup> See Ex 27 the statement of joint owner Mrs Daniele, at page 1.

The lessee had evidently not undertaken any audit of the wiring and electrical components within the restaurant and from Mr D'Amato we know that by the time of the fire, it had withdrawn all maintenance.<sup>116</sup>

The evidence does not establish to my satisfaction whether a reasonable maintenance regime would have resulted in inspection and replacement of the faulty wiring and components situated above the kitchen ceiling and, accordingly, I make no finding concerning that matter.

I am however satisfied that the fire emanated from within the ceiling of the ground floor premises and that Restaurant Brands Australia Pty Ltd had a general duty to prevent the occurrence of same. I am also satisfied that the fire risk increased significantly having regard to the ongoing use made of the premises by the lessee and the location of a commercial sized pizza oven beneath what were faulty electrical fittings, which were themselves beneath a boarding house.

The evidence further establishes that the company failed to undertake an assessment of the potential risks involved in its decision to withdraw maintenance.

Given the age and the use of the premises, and the absence of an earlier audit, the failure to address the issue of risk analysis and community safety, was both unsatisfactory and not in the public interest.

*- Moreland City Council*

It is clear that Ms Crow attempted over a number of months to ensure compliance with the Prescribed Accommodation Regulations and gave other relevant advice. I also find that Ms Crow was not well supported by the systems put in place by her employer at that time. However, I consider that her failure to ensure inspection of the premises to confirm compliance, or to initiate an inquiry with the Building Department was sub optimal and I find that both she and Mr Bergin failed to carry out their responsibilities in an appropriate manner.

This was particularly so in the case of Mr Bergin, whose duties included inspection for fire safety compliance, and I further find that his explanation for either not properly executing or failing to delegate those duties is unsatisfactory.

It is appropriate to note here my view that the rules in place at the time of this fire, although not perfect, were sufficient to regulate the operators of this property and provide adequate protection to its inhabitants.

A systems failure coupled with failures in application by two Council employees resulted instead in certain named boarding house operators being allowed to continue to run their

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<sup>116</sup> It is not known whether Mr and Mrs Daniele were made aware of the decision to terminate electrical maintenance.

affairs with impunity and in the words of one of their number, run those affairs, 'under the radar'.

The failure of Moreland Council to successfully administer relevant and sometimes complex legislation and the danger which resulted from that failure coupled with the catastrophic events which subsequently occurred, have led me to conclude that significant change is now called for.

#### P) Recommendations

My recommendations are as follows: <sup>117</sup>

#### **Consumer Affairs Victoria to henceforward play a leading role in the administration of the Health Act Prescribed Accommodation Regulations, and related matters.**

1. That Consumer Affairs Victoria, embarks on a campaign to identify and ensure that rooming house operators and the owners of rooming house premises and their managing agents, are aware of their obligations and the health, safety and planning requirements in regard to rooming houses.

This campaign should give particular emphasis to the requirements of the Building Code of Australia as it applies to class 3 buildings. <sup>118</sup>

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<sup>117</sup> Written submissions and/or submissions in reply were received from  
Counsel Assisting the Coroner, Mr T. Burns  
Counsel for the Giorgi and Sinclair families  
Counsel for Adam Giles  
Counsel for the Tenants Union of Victoria, Council for Homeless Persons and others  
Counsel for Mr and Mrs Daniele  
Counsel for the Moreland City Council and its employees  
Counsel for the Hume City Council  
Counsel for Nelson Alexander  
Counsel for the M.F.B.

Written submissions accepted as part of the evidence were received from  
Mr Allan Threadwell, Municipal Building Surveyor, Moreland - see exhibit 30.  
The Real Estate Institute of Victoria - see exhibits 31 and 31a.  
Counsel for the Building Commission - see exhibit 32.  
The Department of Human Services (concerning the work of the Interdepartmental Committee on Rooming Houses and the issue of registration of rooming house operators) - see exhibit 34.  
The Inner Urban Rooming House Working Group (primarily concerning the registration of rooming house operators) - see exhibit 35.  
The Registered Accommodation Association Victoria - see exhibit 36a.  
The Director of Consumer Affairs, Victoria (primarily concerning the use of the Residential Tenancies Act and its applicability to rooming house management) - see exhibit 37.  
The Municipal Association of Victoria (primarily concerning a development approvals system as it applies to Victorian Municipal Councils) - see exhibit 38.

<sup>118</sup> The M.F.B Investigation has disclosed a significant number of alleged Building Code breaches, at the premises. These are set out in the Report into the fire exhibit 20, as well as the M.F.B Submission, dated 30th of June 2009. I note here that some of these alleged failings are not seen to have caused or contributed to the fire and having regard to issues of relevance and to sections 19 (3) and 36 (3) of the Coroners Act, I do not comment further upon them. These remain however extremely important matters which in my view ought to be a part of the education campaign referred to above.

To help inform this campaign I recommend that a consultative process be implemented to assist in the identification of the location of unregistered low cost boarding houses and address in particular the potential fire safety problems within. Properly interested persons who might join this process should include the Tenants Union of Victoria, the Council to Homeless Persons, relevant Municipal Council representatives, the Real Estate Institute of Victoria, the M.F.B and Consumer Affairs Victoria.

2. That Consumer Affairs personnel be given powers of search and entry and with the support of suitably experienced Municipal Council employees and M.F.B officers, take the lead in ensuring compliance with the Health Act Prescribed Accommodation Regulations, the Planning and Environment Act and the Building Code fire safety provisions, in regard to all class 3 boarding house premises.

This recommendation anticipates that having first identified unregistered premises, Consumer Affairs Victoria would then monitor the registration process and further advise Municipal Councils concerning possible closures and/or prosecutions, in appropriate cases.

Personnel who might be appointed to Consumer Affairs Victoria to assist, should include those with proven skills in the administration of the Building Code in particular, but might also include experienced real estate agents able to investigate and identify the existence of for profit businesses, providing class 3 accommodation.

3. That the Director, Consumer Affairs Victoria, implement a licensing system for all rooming house operators with each such business to be managed by a nominee who shall be the person in charge, with such persons to be fit and proper persons having regard to criteria to be established by the Director.
4. I further recommend that the Health Act Prescribed Accommodation Regulations be amended to require operators to prepare and publish an appropriate emergency management plan to comply with criteria to be established by the Director of Consumer Affairs Victoria, in consultation with the Chief Fire Officer of the M.F.B.<sup>119</sup>

**Amendments to the Prescribed Accommodation Regulations and the Building Regulations designed to facilitate improved oversight of the Boarding House Industry.**

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<sup>119</sup> Despite their desirability, it is not presently mandatory for operators of prescribed accommodation to prepare an emergency management plan. Emergency Management Plans assist in providing a safer environment in the event of fire or other emergency. In particular, documented fire orders and evacuation procedures that are properly communicated assist occupants and visitors to a building, to locate exits, to take appropriate action in case of a fire, to locate and operate installed fire fighting equipment and to evacuate safely to a designated assembly point.

5. That the Health Act Prescribed Accommodation Regulations be amended to require that the regulations apply to all residential premises, where more than one room within a residential building is to be offered for lease, or where more than two persons are normally resident in such a room.<sup>120</sup>
6. That the Health Act Prescribed Accommodation Regulations be amended to require a boarding house operator to provide and display a certificate issued by a building surveyor, which certifies that the property complies with the Building Code of Australia. Further, that such a certificate is to be issued as a condition precedent to the first use of premises or part of premises as a boarding house and be updated at least every three years thereafter.
7. That the Health Act Prescribed Accommodation Regulations be amended to adopt the Building Code Fire Safety provisions and to make those requirements applicable to all prescribed accommodation.
8. That the Government of Victoria amends the Health Act Prescribed Accommodation Regulations, with a view to allowing for the imposition of more substantial penalties for non-compliance.

That the Government of Victoria amends the Building Regulations 2006, Regulation 1011, which deals with change of use, to substantially increase the maximum penalty.

It is further recommended that Municipal Councils in consultation with Consumer Affairs Victoria, support the effectiveness of this legislation by ordering the closure of premises and/or the bringing of criminal prosecutions in appropriate cases.

**Tenancy Agreements for Building Owners, Rooming House Operators and Rooming House Tenants and the need to publicly identify where such arrangements exist.**

9. That the Government of Victoria introduce amendments to the Residential Tenancies Act 1997, which set out the obligations of rooming house owners and operators, under relevant Building, Health and Planning legislation.
10. That subject to recommendation 12 below, the Government of Victoria introduce amendments to the Residential Tenancies Act 1997, which mandate the use of a prescribed form of agreement for a lease intended for running a rooming house, said agreement to set out the rights and duties of owners and operators as suggested by recommendation 9 above.

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<sup>120</sup> I have considered recent changes recommended by the Interdepartmental Committee on Rooming Houses and the need to broadly apply safety regulations to the rooming house industry as advocated by Mr English, Manager Civic Safety and Amenity, Moreland City Council.

I see no public interest in limiting the application of laws relating to public safety in rooming houses.

11. That the Government of Victoria introduces amendments to the Residential Tenancies Act 1997, which mandate the use of a prescribed form of agreement for the sub-lease of all rooming house premises rooms to occupying tenants, said agreement to set out the rights and duties of operators and tenants as suggested by recommendation 9 above.
12. That the Real Estate Institute of Victoria recommend that its members employ a lease agreement as recommended in 10 above, in all leases of premises under their management intended for use, in whole or in part, as a boarding house.

Alternatively, that the Real Estate Institute of Victoria recommends that in complex cases where a pro forma tenancy agreement will not satisfy the needs of the parties, that a commercial tenancy agreement be employed while having regard to the need to define the duties of each party as set out in recommendation 9 above.

13. Institute members should be further required to notify Consumer Affairs Victoria, of all Recommendation 10 or 12 agreements above, within 7 days of the commencement of such an agreement.

Further that the Real Estate Institute of Victoria recommend that its members notify Consumer Affairs Victoria, in all cases where a presently existing pro forma Residential Tenancy Agreement is signed or has been signed in respect of properties under their management, where such an agreement purports to exclude the application of existing clause 7. Further, that such notification is to occur within 7 days of the commencement of such an agreement, or 14 days from the commencement of operation of any such policy directive.

It is further recommended that together with the abovementioned amendments, the Residential Tenancy Act includes requirements concerning notification, which are consistent with the above.

**Administrative and legislative changes designed to make the approvals system more user friendly.**

The evidence from Ms Crow, and the statement of Mr Bergin and indeed Ms Crow's correspondence referred to above, illustrate how compartmentalized the Environmental Health and Building Services Departments of Moreland City Council were at the time of Councils investigation and how this arrangement prejudiced Councils response to Mr Leaman's complaint. Clearly, after their inspection in September 2004, both Ms Crow and Mr Bergin acted quite independently concerning their 'portfolio' responsibilities. The result of that approach was that neither was aware of what the other had done or had not done and, further, that there was no contact between departments before Ms Crow determined to accept Mr Giles' undertaking and close her file, this in February 2004. *RW*

It is also the case that the Planning Department would not have approved the 'change of use' of the premises which occurred in this case and that neither the Environmental Health or Building Services informed the Planning department of the preliminary findings made by Mr Burgin and Ms Crow.

As explained in the evidence of Mr Luke English, a certain level of streamlining of administration has now been achieved at the Moreland City Council, under which one supervisor is now responsible for both fire safety and health issues. It is also relevant that the IT system has been upgraded to allow officers to access information relevant to any particular application.

The existing legislative framework, however, does not in my view sufficiently permit the type of horizontal integration, which is best suited to ensuring broad legislative compliance and to investigating and prosecuting closure of premises applications etc. in appropriate cases.

Further, its existing level of complexity is such that I believe that operators themselves may be generally discouraged by the level of 'red tape' that confronts them.

I have received helpful suggestions from witnesses and interested parties as to how Government might best address this issue, but in my opinion it is beyond the scope of this inquest to seek to determine how such a better level of integration in the approvals system may be best achieved.

14. In the circumstances, I recommend that the Government of Victoria, through the Minister for Local Government now seek longer-term arrangements that will best permit legislative compliance while securing a greater efficiency for all concerned.

I note that such an exercise is likely to be time consuming.

15. Having regard to the urgency of the need to ensure a safe environment for boarding house tenants, I recommend that Municipal Councils in consultation with Consumer Affairs Victoria move quickly to review their internal communication systems. The objective of such a review is to ensure that all relevant departments (Building, Health and Planning), both closely communicate with one another, and are readily able to access information relevant to a particular premises, regardless of which Council department obtained the information.

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16. I further recommend that relevant Council staff ~~is~~ given adequate direction and that under the auspices of the Director and the Interdepartmental Committee on Rooming Houses, that guidelines are used to inform staff as to how to proceed to ensure that cross discipline enquiries are dealt with having full regard to both existing legal requirements and efficient administration.

#### Bedroom/Unit Door Locks in Boarding Houses

The Building Code of Australia does not prohibit the use of deadlocks as the sole means of locking and unlocking bedroom doors in class 3 boarding houses. This is because the Code regulates the locking and opening mechanism, either on doors that are an exit or in the path of travel to an exit - excepting doors within a sole occupancy unit of a class 2, 3 or 4 building.

17. In the circumstances, I recommend that the Government of Victoria seek an amendment to Part D2 of the Building code, to exclude doors serving sole-occupancy or double occupancy rooms in class 3 boarding houses from the exemption.<sup>121</sup>

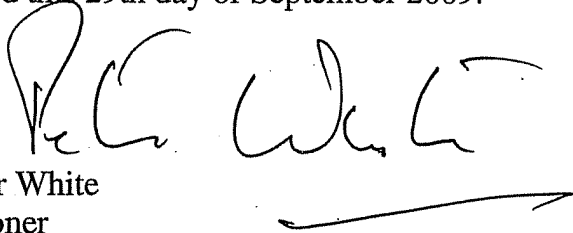
The Building Surveyor at the Moreland City Council, Mr Alan Threadwell, has researched the available locking devices and assessed their suitability for use in a class 3 Boarding House premises.

18. As a result and after a consideration of related submissions, I recommend that the Government of Victoria seek an amendment to the Building Code of Australia, to require all class 3 Boarding Houses to have a single locking device in respect of each boarding house unit, with each such device to be operated by a key from the outside and a lever that cannot be locked from the inside. I note that the Lockwood Commercial 529-929 Exterior Escape Set and the Lockwood 002 Single Cylinder Dead latch with lever handle, both comply with this recommendation.<sup>122</sup>

Finally may I thank Counsel and those instructing, together with those witnesses who appeared to testify, for their assistance in the conduct of this inquest.

I am particularly grateful to the families of Leigh Sinclair and Christopher Giorgi for participating in what for them can only have been a deeply painful exercise.

Dated this 29th day of September 2009.



Peter White  
Coroner

Counsel Assisting the Coroner, Mr T Burns of counsel, on the instructions of The Office of the Victorian Government Solicitor (Ms G McManus).

Counsel for the Tenants Union of Victoria and others. Ms J. Dixon SC with Ms S. Moore of Counsel.

Counsel for the Moreland City Council and its employees, Ms Crow and Mr Bergin, Mr D O'Callaghan SC.

Counsel for the Hume City Council, Mr B Stafford of Counsel.

Counsel for the M.F.B, Ms S Hinchey with Mr Pikusa of Counsel.

Counsel for the families of Leigh Sinclair and Christopher Giorgi, Mr A Finanzio with Ms N Collingwood of Counsel.

Counsel for Nelson Alexander Brunswick Mr P Priest QC with Mr P Rozen of counsel.

Counsel for George Maatouk, Mr A Halse of Counsel.

Counsel for John Pisani, Mr Dwyer, Solicitor.

<sup>121</sup> See exhibit 30, dated the 9th of February 2009. (I note that sole occupancy includes a bedroom in a boarding house occupied by one or more tenants).

<sup>122</sup> See Exhibit 30 at pages 5-6.

Counsel for Mr and Mrs Louis Daniele, Mr C Dane QC with Ms C. Anagnostou of Counsel.  
Counsel for Adam Akom, Mr Hallows, Solicitor.  
Counsel for Adam Giles, Mr I Crisp of Counsel (from the 19/2/2009).  
Counsel for Mark Vernuccio, Mr I Hill QC.  
Counsel for Dillon Fernandez, Mr Hallows, Solicitor.