



**STATE CORONER'S COURT
OF NEW SOUTH WALES**

Inquest: Inquest into the death of Miata Jibba

Hearing dates: 9-10 April 2018, 27 April 2018, 6 July 2018

Date of findings: 6 July 2018

Place of findings: NSW State Coroner's Court, Glebe

Findings of: Magistrate Harriet Grahame, Deputy State Coroner

Catchwords: CORONIAL LAW – death by fire, smoke alarms,

File numbers: 2016/275649

Representation: Mr S Kelly (Sergeant) advocate assisting
Ms L Chan of counsel, instructed by Mills Oakley for Mr Eddy Tan

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Introduction

1. Miata was nine years of age at the time of her tragic death. Her parents Justin Kollie and Saybah (Mary) Kpaba had five children, Miata was the second eldest. She was greatly loved and her death as a result of injuries sustained in a house fire has caused heartbreaking pain for her family and community.
2. Since 2006, it has been mandatory in NSW to install smoke alarms in all buildings where people sleep, even if at the time the building was constructed a smoke alarm was not required. Tragically the inquest heard that when NSW Fire & Rescue (NSWFR) attends house fires a large number of dwellings are still non-compliant.¹ In NSW from 2010-2015 there were 23,766 accidental fires, out of which 115 fatalities occurred.² It appears likely that a significant proportion of injuries and fatalities occur in homes without properly functioning smoke alarms.³
3. The fire which caused Miata's death occurred in a rental property that did not have a functioning smoke alarm. By the time her parents became aware of the smoke, the fire was well established. Despite the heroic efforts of her parents to get her out of the house, Miata suffered extremely severe burns. She died as a result of these injuries almost six weeks after the fire.
4. Miata's death has caused enormous anguish to her family. Adjusting to life after the fire has been extremely difficult. The children have experienced an ongoing fear of fire and Miata's parents have struggled on a daily basis.

The role of the coroner

5. The role of the coroner is to make findings as to the identity of a nominated person and in relation to the place and date of death. The coroner is also to address issues concerning the manner and cause of the person's death.⁴
6. A coroner may also make recommendations in relation to matters that have the capacity to improve public health and safety in the future.⁵ In this case, it was necessary to carefully review the current law and community practise in relation to smoke alarms in an effort to understand whether there are opportunities for improvements that could save lives in the future.

The evidence

7. The court heard oral evidence over three days and received extensive documentary material in three volumes. The material included witness statements, medical reports, expert reports, photographs and policy documents. At the conclusion of the evidence submissions were prepared by the parties and various involved agencies made comments on proposed recommendations that were circulated.

¹ Michael Forbes Transcript 9/4/18, page 24, line 20 onwards, Kingsland Transcript 9/4/18, page 30, line 9 onwards. See also statistics at Exhibit 1, Volume 2, Tab 7F

² Senate Committee Report page 14. Exhibit 1, Volume 2, Tab 8

³ See evidence of Michael Forbes in this regard, Transcript 9/4/18, page 30, line 10 onwards

⁴ Section 81 *Coroners Act* 2009 (NSW)

⁵ Section 82 *Coroners Act* 2009 (NSW)

8. A draft list of issues was circulated to the parties prior to the inquest commencing. This contained the following issues,
- What action, if any, was taken by Century 21 Real Estate Agency prior to 6 August 2016 in relation to the non-functional smoke alarm at 169 Hill End Road, Doonside?
 - Should smoke alarms be hardwired and interconnected in residential properties?
 - Should battery-operated smoke alarms be powered by lithium batteries in all residential or rental properties?
 - Should property managers who accept responsibility for ensuring smoke alarms are maintained in rental properties conduct a physical inspection and test of all smoke alarms at every inspection?
 - Is the training provided to real estate agents surrounding smoke alarm legislative obligations adequate?
 - Should Local Councils be more proactive in ensuring compliance of smoke alarm legislative requirements in residential/rental properties?
 - Does the Department of Fair Trading provide sufficient information to tenants/landlords regarding their obligations to maintain smoke alarms in rental properties?
 - Should there be a legislative requirement on real estate agents to inform Local Councils when advised or aware of suspected breaches relating to smoke alarm legislative requirements?
9. To assist in answering these complex questions, a number of Government and Non-Government agencies provided their expertise to the court. All were committed to improving fire safety strategies and I thank them for their participation in these proceedings.

Background

10. Justin and Mary arrived in Australia as refugees from Liberia in 2015. They had five children, Mollay, Miata, Korpo, Wemor and Kpana. Justin worked to support the family and Mary stayed at home to care for the children. Over the years the family had lived in a number of rental properties in the western suburbs of Sydney.
11. The family's second born, Miata was diagnosed with autism at around four or five years of age. Her parents explained that she had been largely non-verbal as a small child. However in recent times she had made enormous progress attending the Ponds School. I had the opportunity to view a presentation compiled by that school, and it was clear to me how much Miata enjoyed her experiences there. She was a creative and fun loving child who loved drawing, playing on the ipad, cooking and dancing. She had a huge smile and brought great joy to those around her.
12. Her parents explained that Miata did not always recognise danger and sometimes walked onto the road without any fear of traffic.

13. Miata was described as an active child. She was known to wake early and go to the living room to watch television before the rest of the family woke⁶.
14. The family spoke highly of Miata's school and the support that it had offered them. They were also assisted by a number of church groups and members of religious orders.
15. At the time of the fire, the family were living at 169 Hill End Road, Doonside. It was a four bedroom brick house in poor repair⁷. The family were renting the house through Century 21, Blacktown, having commenced their tenancy on 9 July 2015.⁸
16. The day before the fire, the family had a cake for Korpo's sixth birthday before school⁹. Candles were lit and Miata had apparently so enjoyed the process of blowing the candles out that she wanted to do it a number of times. After the cake, Mary states that the candles and matches were placed back in the kitchen cupboard. That cupboard had a "portable lock."¹⁰ When Justin went into the kitchen late that evening, the kitchen benches were clear and there were no matches or candles in sight.

The fire on 6 August 2016

17. Justin was the last to go to bed on the night before the fire. He had come in from work just after 11pm.¹¹ He checked on all the family and went to the living room to watch TV and play on his phone to wind down. Later he switched off the lights and played on another phone. At about 2.30am he fell asleep.
18. At about 6.30 am on 6 August 2016, Miata's parents were asleep in their bedroom when Mary woke to the smell of smoke inside their house. It seemed to be coming from the lounge room area. Mary woke her husband who went to locate the two eldest children, while Mary evacuated the three youngest through her bedroom window. Mary managed to call out to her eldest child, Mollay and get her to climb out a bedroom window. Justin saw that fire was already engulfing the lounge room and kitchen. Visibility was greatly compromised by the density of the smoke.
19. Justin heard Miata moaning in pain and somehow located her on the ground between the kitchen and the lounge room. He tried to drag her from the house, but was confused about exactly where he was in the house. He was overcome by smoke. He described it as the thickest and blackest smoke he had ever seen.¹² Justin made it out the window but was unable to bring Miata with him. Justin was coughing and almost unable to breathe. The heat was by then extreme and the intensity of the growing fire would have been terrifying.
20. Mary sought assistance from one of the neighbours who had gathered outside. He helped her back through the window into the burning house. Somehow, Mary was able to retrieve Miata and drag her back to the window. She passed Miata to others outside, before escaping herself. Once outside Mary commenced trying to clear Miata's airways, while others assisted

⁶ See the ERISP of Mary Kpaba, Volume 1, Tab 10, Q569-570

⁷ A plan of the house is available at Exhibit 7. For a description of the house see Statement of Justin Kollie, Exhibit 1, Tab 9 [7] onwards and photographs at Exhibit 1, Volume 3.

⁸ Statement of Eddy Tan, dated 8 February, Annexure E

⁹ ERISP of Mary Kpaba, Volume 1, Tab 10, Q485 onwards

¹⁰ Mary Kpaba, Transcript 9/4/18 page 46, line 35

¹¹ Statement of Justin Kollie, Exhibit 1, Tab 7, [19]

¹² Statement of Justin Kollie, Exhibit 1, Tab 7, [20]

in trying to hose her terrible burns. It was immediately clear that Miata was very badly injured.

21. NSWFR arrived on the scene at 6.40am.¹³ They could see smoke and flames coming from the roof of the house. The front door was locked and officers could see the family on the front lawn, treating a child who had severe burns. They did not hear a smoke alarm. Officers set about extinguishing the blaze using two 38 mm hoses.

Miata's medical treatment and death

22. Miata was taken to the Children's Hospital at Westmead with extremely severe burns to 85% of her body. She was later transferred to the Paediatric Intensive Care Unit (PICU) where she remained intubated and ventilated.
23. Miata's treatment was complicated by the severity of her burns. She confronted multiple issues including fluid loss, difficulties with ventilation, difficulties with nutrition, blood loss, renal impairment and infection. Despite numerous medical interventions and surgeries her condition remained critical. She developed sepsis and succumbed to her injuries on 13 September 2016.
24. A limited autopsy was conducted on 15 September 2016 by Dr Jessica Reagh at the Department of Forensic Medicine, Glebe. A full summary of her hospital care is included in the autopsy report¹⁴. The cause of her death is recorded as "complications of thermal injury".
25. Miata's injury and death involved enormous pain and suffering. I express my sincere and heartfelt condolences to her family.

The fire investigation

26. On 6 August 2016 NSW Fire Investigator Michael Forbes attended the house and conducted an investigation into the circumstances surrounding the fire.¹⁵ In his view it is likely that a fire in the living room caused a flashover and then full room involvement. Once this occurred the fire is likely to have spread quickly through the roof space and dropped down into the adjoining dining room and kitchen.
27. A full inspection took place. Some of the rooms were destroyed by the fire. Each of the four bedrooms had sustained soot damage. The bathroom and toilet at the eastern end of the hallway had sustained even more significant damage.
28. The dining room had some roof collapse but did not appear to be the origin of the fire.
29. Significantly an inspection of the kitchen revealed that on the kitchen bench top, next to the stove, was a box of matches and a packet of candles. The candle packet was open with two candles sticking out. One of the candles appeared to have been burnt. The box of matches

¹³ Statement of Michael Forbes, Exhibit 1, Tab ?, [7]

¹⁴ Limited Autopsy report, Exhibit 1, Tab 1

¹⁵ See his report Fire Investigation report IN138/16, Exhibit 1, Tab 6

was open and contained unburnt matches. There were a number of burnt matches on the floor. A cupboard above and to the right of the stove had a cable lock on it. When it was opened, there were more matches inside. Even though it was cable-tied, it was possible to open the cupboard a small way by pulling on it. It may be that a child's hand could have slipped inside.

30. A number of devices were located and examined throughout the house. There were two devices in the hallway. One was a stand-alone smoke alarm device located in the hallway near the entrance to Bedroom One¹⁶. It would not have been operational as it did not have a battery. It appears that its cover had been removed prior to the fire.
31. The other device in the hallway was connected to a back to base security system¹⁷. Also connected to that system was a hardwired heat detector found in the kitchen. Later investigation confirmed the suspicion that this system had not been operational at the time of the fire. The security company that had installed the unit informed investigators that it had been monitored from 9 March 2005 until 9 March 2012, when the contract had not been renewed. In other words, although there were units visible in the house at the time of the fire, there was no working smoke alarm. Given its proximity to the hardwired unit, it appears likely that the stand-alone unit was installed at some after the contract expired, to give residents some protection. However, it had not been maintained.
32. Outside the house, there was a doll which had been burnt on its head and to its hair.

The initial police investigation

33. Police commenced an immediate investigation, taking statements from family members and other witnesses. It confirmed from witnesses at the scene that no smoke alarm had activated, despite the intensity of the blaze. On 9 August 2016 Detective Cox attended Century 21 Real Estate Office at Blacktown and spoke to the director Eddy Tan. At that time he provided police with a copy of the last periodical inspection form, dated 3 June 2016. That form indicated that the smoke alarm was working at the time of the inspection. However, further investigations revealed that this was not correct.

What was known about the state of the smoke alarms prior to the fire?

34. I accept that the owner of the property, Mr Su was unaware about the state of the smoke alarms at the time of the fire. Mr Su stated that he did not test the smoke alarms or pay for any fire alarm services.¹⁸ He stated that if the agent had informed him about an issue he would have done something. If it was a matter of changing batteries he would either have authorised the agent to do it or done it himself, and if it were a more significant problem Mr Su would have attended to it personally or arranged for the appropriate person to do so.
35. On the other hand, it is clear that the real estate agency had some knowledge, at least following the periodic inspection in June 2016, if not before, that there was an issue with the smoke alarms at the property. To determine the exact state of that knowledge it is necessary to examine the various accounts given.

¹⁶ This device was described as a 9 volt battery powered Brooks ionisation smoke alarm model EIB. It should have had a 9 volt battery, but did not.

¹⁷ This system was a Paradox Canada –DSC 5020/POW 864 -8 zone with battery back-up.

¹⁸ Statement of Mr Qiguang Su, Exhibit 1 [4]

The evidence of Century 21 staff

36. Linda Danakis was the property manager at Century 21 Real Estate, Blacktown at the time of the fire. She was new to the job when she commenced the periodic inspection of all rental properties on the agency's books in May and June 2016.¹⁹ Linda stated that she was new to the job but had developed a system where she would visit a property and make contemporaneous notations on the inspection form. At the same time she would take photographs in relation to any relevant issues identified or brought to her attention along the way. On her return to the office she would complete her reports and send them to the Office Manager, Christina Challita (Tina), who assisted with filing and downloading the associated photographs.
37. Linda remembered visiting 169 Hill End Road, Doonside on 3 June 2016. It was the first time she had been to the property and she immediately noticed the house and garden were rundown.²⁰ She remembered becoming aware of a number of issues including holes in the wall and the door in the kitchen. Linda stated that soon after her arrival she noticed that there was a smoke alarm in the hallway, which did not have a battery. She identified that there was another smoke alarm, also in the hallway. She found it odd that they were so close to each other.²¹
38. In her initial police statement, Linda stated that she noticed there was no flashing light on the smoke detector and she raised the battery issue with the tenant, Mary. However, she said that Mary "just didn't seem to care about the smoke detectors."²² Linda said that Mary insisted that "she had changed the battery". Linda took photographs of the alarm and claimed that she asked Mary to check the smoke alarm a number of times. It was her evidence that Mary was more interested in other problems, such as the front door and the flyscreen. Linda did not feel that she had a problem communicating with Mary and was satisfied that Mary could understand what she was saying.
39. In her oral evidence Linda reiterated that she did not believe the smoke alarms were working. It was her gut feeling. She told the court that she asked Mary to check again and stated "if it wasn't working it might need to be replaced". Linda said that "she would go back to the office and speak to my...director and we'll speak to the owner and go from there."²³
40. When questioned in this court about the certainty of her knowledge that the smoke alarm was not working she said,
- "I don't know, I just knew it wasn't working, it just looked, I have smoke alarms in my homes, I'm guessing, I don't know...the vibe I got from her was that it had never been touched, she'd never been up there she'd never looked at it, she didn't appear to maybe have even known they have to change a battery...I just knew within me they probably weren't told, she probably didn't know she had to change it, I just- I didn't get a vibe they were working"²⁴

¹⁹ Statement of Linda Danakis, Exhibit 1, Tab 11, [6]

²⁰ Statement of Linda Danakis, Exhibit 1, Tab 11, [10]

²¹ Statement of Linda Danakis, Exhibit 1, Tab 11, [17 -18]

²² Statement of Linda Danakis, Exhibit 1, Tab 11, [19]

²³ Linda Danakis, Transcript 9/4/18, page 55, line 23

²⁴ Linda Danakis, Transcript 9/4/18, page 60, line 5 onwards

41. Linda claims that once back at the office she told Tina about her concerns. Tina advised her to speak with Eddy Tan, as the owners of the property did not speak English. The following day Linda spoke to Eddy. She told him there were two smoke detectors in the house and they were not working. She says she told Eddy she did not believe Mary when she said that she had changed the battery and one of the unit's was operational.²⁵ Linda states that she left the relevant section of the form blank.
42. Linda stated that Eddy Tan said that he would speak to the owner.²⁶ Linda recalled that about a week later she became irritated that nothing seemed to have been done. She said,
- “I just wanted to get it filled, it had been a week and I needed to get it filled and out to the owner, so I just forced the situation and put pen to paper, and I said to him, “I’m going to put no it isn’t working”, because she said it’s – then I said to him, “I’m going to put no because I don’t believe it’s working”, and he said “look if a tenant said yes, it’s a yes”, then I thought okay if I put yes because it did make sense, if the tenant said yes, I’m going to put yes...”²⁷
43. It was at this stage, according to Linda, that she marked a “Y” on the inspection form, indicating that there was a functional smoke alarm. It appears that in her heart she still believed this to be untrue. There is no evidence that the owner was ever informed.
44. Later when the police came to request the file material, Linda was involved in collecting all the paperwork relating to the property. She told the court that Eddy removed some of the important paperwork and photographs. She said that she told Tina “we are going to get into shit for this. I had other stuff in there he took out.”²⁸
45. The office manager Christina Challita (Tina) had some memory of the tenants and the property at 169 Hill End Road, Doonside NSW. She recalled that Linda had done the inspection of the property around June and she was aware that there were some issues that needed to be addressed. However, she did not remember Linda mentioning anything to do with smoke alarms.²⁹
46. Tina stated that it was not until after the fire that she remembers Linda speaking to her about a conversation that allegedly occurred before the fire. She had no recollection in line with the evidence which had been given by Linda Danakis that she was present in the office when Eddy and Linda discussed the lack of a functioning smoke alarm at the house. She did however remember Linda and Eddy having a heated conversation at some time, where Eddy said something to the effect of “our job is only to collect rent”, but she could not recall when this occurred.
47. Eddy Tan also gave evidence, He said that at the time of the fire, his agency did not routinely use an independent smoke alarm or fire inspection company. He would inform landlords of

²⁵ Linda Danakis, Transcript 9/4/18, page 57, line 5 onwards

²⁶ Linda Danakis, Transcript 9/4/18, page 57, line 38

²⁷ Linda Danakis, Transcript 9/4/18, page 59, line 20 onwards

²⁸ Statement of Linda Danakis, Exhibit Tab 11 [49]

²⁹ Christina Challita, Transcript 27/4/18, page 11, line 21

the need to have a working smoke alarm and he would accept the word of a tenant if they said the alarm was working.³⁰ There was no automatic testing of batteries.

48. He did not recall ever having had a conversation with Linda where she indicated that it was her belief that the smoke alarm was not working at 169 Hill End Road Doonside.³¹ However, while his evidence was somewhat unclear, he did seem to have some recollection of saying words to the effect of “whatever the tenant have told you if it is working, then you should trust that it’s working then you should put “yes”.³² He could not remember if this occurred before or after the fire. In fact he was unable to say if the answer to the smoke alarm question on the periodical inspection form was completed before or after the fire.³³
49. Eddy Tan claimed little knowledge in relation to the paperwork or computer storage of documents in his office and had no real explanation of the way only some of his documents were initially produced to investigating officers and the court.

The evidence of Miata’s parents

50. Justin Kollie and Mary Kpaba also gave evidence before me. Their evidence was straightforward and plausible. They appeared to be attempting to remember these traumatic events to the best of their ability. It should be remembered that they came to Australia in 2005 as refugees. Their knowledge of the legislative requirements in place in relation to smoke alarms was unsurprisingly limited. They had a history of living in rental properties which were in various ways substandard and had from time to time experienced a poor response from rental agents in relation to the report of difficulties they identified.
51. Mary explained that there were a number of faults with the house at 169 Hill End Road, Doonside. She had tried to get the assistance of the real estate agents at Century 21 on various occasions. Sometimes she would visit the office in person. There were problems with the door, the power points, the windows, the oven, the leaking sink, among a variety of other issues.
52. Mary recalled the inspection carried out by Linda in June 2016. Mary was caring for a baby at the time, but nevertheless she accompanied Linda around the property to point out a number of faults. She recalled Linda’s attendance quite clearly and the fact that she took photographs and recorded information in writing. However, Mary emphatically denied that any discussion of smoke alarms or batteries took place in the hall. She stated that Linda Danakis did not alert her to a smoke alarm in the hallway and specifically denied that there was any mention of a battery being missing.³⁴ She certainly denied telling Linda that the alarm was working. It was Mary’s evidence that “there was not much talking between us.”³⁵
53. Mary remembered that prior to Linda’s inspection, not long after they had moved in an Indian man had come to fix something that may have been a smoke alarm. She said that he could

³⁰ Eddy Tan Transcript 9/4/18, page 73, line 15 onwards

³¹ Eddy Tan Transcript 9/4/18, page 75, line 10 onwards and elsewhere

³² Eddy Tan Transcript 9/4/18, page 77, line 2 onwards

³³ Eddy Tan Transcript 9/4/18, page 77, line 2 onwards

³³ Eddy Tan Transcript 9/4/18, page 78, line 14 onwards

³⁴ Mary Kpaba, Transcript 9/4/18, Page 39. Line 20 onwards

³⁵ Mary Kpaba, Statement 3/5/17 Exhibit 1, Vol 1, Tab 10 [17]

not complete the job because he didn't have a ladder and that he never came back.³⁶ She thought this had occurred in or near the dining room.

54. Justin told the court that on moving into the house he had initially believed that there were working smoke alarms in the house, because he saw two units³⁷. He saw one in the kitchen and later one in the hallway. However, in the past, at other rental properties, he had only seen alarms that had a green light to indicate that they were working. The units in this house had no light.³⁸ He stated that he raised the issue with the real estate agency soon after the initial condition report was undertaken. According to Justin, they sent an Indian man, who did not have a ladder. As it was too dangerous to stand on a chair, the man left. He told the family that he would come back, but he was never seen again. The alarm the Indian man had been looking at was in the hallway. Justin had been at work when Linda came for the later inspection.

Making sense of the conflicting accounts

55. I have considered all of the conflicting evidence very carefully. I have no doubt that Linda knew that there was no working smoke alarm when she left the property after the inspection. That is why she left the relevant part of the form blank. I have great doubts that she raised the issue in the manner she describes with Mary. If she raised the issue at all, I am of the view that it was lost among the many other issues which called for attention.
56. It makes little sense that Mary would have assured Linda on a number of occasions that the battery had been replaced or checked. Neither Justin or Mary had ever replaced the battery, even Linda expressed the view that that this was most unlikely. In the circumstances of Mary's other complaints it is extremely implausible that she would have disregarded clear advice about a significant safety issue if it had been raised in the manner Linda suggests. I do not accept that this happened. It appears clear that Mary was keen to get various improvements to the property. While I accept that the smoke alarm may not have been at the forefront of her concerns that day, I do not believe she told Linda that it was working. It is completely implausible. In Mary's account she was concerned that the device in the kitchen, did not work, but she appeared to have little or no knowledge about the devices in the hallway.
57. I think it is very likely that Linda raised the issue with both Tina and Eddy Tan after the inspection. When, after a week, Eddy had not contacted the owner about the fault, Linda took his advice to mark the form with a "Y", against her own better judgement. However, in my view, she is likely to have always been somewhat uncomfortable with this action and later when she heard about the fire, I have no doubt she felt guilty and upset. I had the opportunity to observe Linda give her evidence. I accept that she was genuinely sorry about what had occurred, but there were times when her demeanour showed troubling confusion and stress. There were aspects of her account which appeared internally contradictory and inherently implausible.

³⁶ Mary Kpaba, Transcript 9/4/18, Page 41. Line 29 onwards

³⁷ Justin Kollie, Transcript 10/4/18, Page 53, line 15 onwards

³⁸ Justin Kollie, Transcript 10/4/18, Page 53, line 25 onwards

58. I found the evidence of Eddy Tan and Tina Challita unimpressive. Both had limited memories of the events in question. While Eddy remembered a conversation where he advised Linda to accept the tenant's report, he could not recall if this had occurred before or after the fire. In my view both Eddy and Tina tried to minimise their involvement and I found it difficult to rely on their accounts.
59. While the Century 21 records do not record a visit by a tradesperson soon after the tenancy began, I nevertheless accept that an Indian person visited and looked at the smoke alarm. It may be that this person was contacted directly by Mr Su in response to the initial condition report.
60. At the conclusion of the evidence I am satisfied that the agency had actual knowledge of the fact that there was no operating smoke alarm at the time of the periodic inspection. The owner was not informed and nothing was done to replace the battery or ensure that a working alarm was installed. Tragically this failure was to have tragic consequences.

The cause of the fire

61. While the fire was recorded officially as "undetermined"³⁹ by FRNSW, the investigator noted that there is strong physical evidence that a child was playing with matches some time shortly before the blaze. There were also combustible materials in the living room, including a synthetic blanket the child was known to carry. In my view, on balance, it is likely that the fire started accidentally when Miata got access to the matches by pulling on the cupboard.
62. The ferocity of the blaze developed prior to any adult waking. Miata appears to have been the only person awake when the fire commenced.
63. In these circumstances, the fact that no smoke alarm sounded is critical to the way the fire developed and to the extent of the damage it caused.

The current law in relation to smoke alarms

64. In Australia the law in relation to the use and installation of smoke alarms is complex and diverges from state to state. It is governed by the National Construction Code (NCC), the use of Australian Standards and by various pieces of state and territory legislation and corresponding subordinate legislation. The relevant smoke alarm regulation will vary depending on when the property was constructed, in which state or territory it is located and how the building is classified under the NCC. A full discussion of these issues is well beyond the scope of the findings.⁴⁰
65. In May 2006 changes to the *Environmental Planning and Assessment Act* and regulations came into effect in NSW. These changes required that all new class 1a (single dwelling) and class 2 buildings (buildings containing two or more sole occupancy units) have functional

³⁹ Statement of Michael Forbes, Exhibit 1, Tab 5 [17]

⁴⁰ For an overview of each State and Territory's requirements see Senate Committee Report, "Use of Smoke Alarms to prevent smoke and fire related deaths- April 2016, Exhibit 1, Volume 2, Tab 8

smoke alarms in compliance with Australian Standard 3786 (AS 3786) and that existing buildings be retrofitted with AS 3786.⁴¹ This was a really significant change to existing policy and came into effect with a major education strategy to promote consumer awareness of the issue.

66. The minimum requirement for placement and installation of these alarms in NSW was set out in the *Environmental Planning and Assessment Regulation 2000*. In short it required that any new buildings, in specified building classes, be fitted with smoke alarms in any storey of a building that contained a bedroom, fitted in every hallway associated with a bedroom, or the section of the building containing the bedroom and the remainder of the building/dwelling if no hallway existed. It also specified that in any storey that does not contain a bedroom, a smoke alarm must be fitted on the travel path of egress.⁴²
67. Over the years various jurisdictions in Australia have introduced more stringent requirements to new and existing buildings, including in certain circumstances the type of alarm (photoelectric or ionisation), the interconnection of alarms in certain buildings, the type of power source (hard wired or ten year non-removable battery), the mandatory positioning of alarms at certain locations, among others.
68. Various jurisdictions have also examined the way the responsibility for installing and maintaining alarms is managed in rental properties and amended legislation accordingly.

How does this law relate to rental properties in NSW?

69. In NSW Regulation 186A of the *Environmental Planning Assessment Regulations 2000*, made pursuant to s 146A of the *Environmental Planning and Assessment Act 1979* (NSW) provides that owners of existing buildings and dwellings must ensure that smoke alarms are installed.
70. The *Residential Tenancies Act 2010* (NSW) provides that the regulations may prescribe a Standard Form Residential Tenancies Agreement (The standard form agreement). The standard form agreement sets out the responsibilities of the parties. Clause 38 provides that the landlord agrees to ensure that smoke alarms are installed and maintained in the residential premises in accordance with the relevant Act. Clause 39 states that both landlord and tenant agree not to remove or interfere with the operation of the alarm, “unless they have a reasonable excuse to do so”. Further, the condition report has a section where landlord and tenant can record whether a smoke alarm has been installed and is in working order.
71. Once installed and working, it appears that the responsibility shifts to the tenant. Clause 16.4 of the agreement provides that it is the tenant’s responsibility to replace light globes and batteries for smoke detectors in residential premises.

⁴¹ There was a caveat that any existing non-compliant smoke alarms could be updated to comply with the standard when they ceased to function or were removed.

⁴² Smoke Alarms in Homes- FRNSW Report, Exhibit 1, Volume 2 Tab 7 C

72. There is currently no specific requirement that a landlord use a professional to check the alarm or carry out testing in homes such as Miata's. It would appear that a visual inspection would suffice. Equally there is no requirement to check the life of the battery at the commencement of the tenancy, although the Department of Fair Trading "recommends" that a new battery is placed in a smoke alarm at the commencement of the agreement.

Was the house non-complaint at the time of the fire?

73. It is clear that there was a requirement that the house had a functioning smoke alarm at the commencement of the tenancy. Given the evidence of Justin and Mary in relation to the attendance of the Indian tradesman very soon after they signed the agreement, it appears most likely that there was never a functioning alarm.
74. Certainly after 3 June 2016, when Linda Danakis visited, she believed there was no functioning alarm and yet there was no attempt to remedy that and nobody contacted the owner of the house. There is no evidence that the relevant device would have been operational even with a new battery because it appears that it was never tested. There was not even an attempt to go back to the house and speak with the tenants about the possible danger, or to write to them or contact them by telephone. In my view, given what was known, the agency showed considerable and reprehensible disregard for the family living in those premises. It was perfectly clear to Linda Danakis and others in the office that Mary's first language was not English, that she was living in a dwelling with a number of maintenance issues and that she had the care of small children. For Linda to suggest that she tried to interest Mary in the issue, but was rebuffed is in my view a very poor excuse. That she marked the paperwork to say that the alarm was working when she personally believed it was not, is a decision I am sure she still regrets.
75. There is an urgent need to make real estate agents come to terms with the relevant safety issues and to prioritise their legislative requirements in this regard. Eddy Tan is reported to have said "our job is just to collect the rent". This is a mentality which must change.
76. Timothy McKibbon, Chief Executive Officer of the New South Wales of the New South Wales Real Estate Institute gave evidence at the inquest. His organisation is the largest professional association of real estate agents and other property professionals in NSW, comprising about 2000 agencies.⁴³
77. Mr McKibbon was scornful of the ease with which people can currently become real estate agents and also the ease with which they can subsequently complete their CPD training.⁴⁴ He eloquently described the need to make it compulsory for real estate agents to grapple with these important safety issues. Without compulsory training units, it was his experience that very few people took up the opportunity to study topics such as "safety requirements". Courses on issues such as marketing strategy may attract some interest, however he explained "there is, I guess, no commercial outcome for somebody to be an expert in smoke alarms."⁴⁵ Overall Mr McKibbon's evidence was extremely concerning, and his honesty about the skill level currently required of real estate agents was alarming.

⁴³ Timothy McKibbon, Transcript 10/4/18, page 3 line 7 onwards

⁴⁴ Timothy McKibbon, Transcript 10/4/18, page 5 line 20 onwards

⁴⁵ Timothy McKibbon, Transcript 10/4/18, page 14, line 49 onwards

78. It became clear that although smoke alarms are compulsory, neither agents, nor perhaps owners are ever likely to be prosecuted for non-compliance. The house at 169 Hill End Road, Doonside fell within the Blacktown City Council area. The court was assisted by Michael Zelasko from that council. He told the court that while Blacktown City Council would act on a complaint, the number of private homes (1a single dwellings) that were ever investigated was likely to be very minimal. He explained that while there was a fine of up to \$550, he had never issued one personally.⁴⁶ To the best of his knowledge Blacktown City Council had never issued a penalty notice for the breach of a fire safety offence in a single dwelling house.⁴⁷ He explained that most of the complaints and investigations he was aware of dealt with commercial or industrial issues and the Council does not really have the capacity to deal with residential compliance. I have no doubt that other Councils would respond similarly, if questioned. I note that the Office of Local Government suggests that priority should remain on community education and safety awareness rather than on infringement and prosecution⁴⁸. I agree that this is likely to be the best approach.
79. It may follow that if penalties for non-compliance routinely operate in this way, it is even more important that resources are put into positive education programs.

Could a smoke alarm have saved Miata?

80. Had the house been fitted with a single basic working smoke alarm in the hallway, it is possible that Miata's parents or siblings would have heard it and that the entire family, including Miata would have had time to evacuate from the house safely. It would certainly have greatly improved Miata's chances of survival.
81. It is a massive tragedy that a few dollars spent on batteries could have saved Miata's life. Even a new unit, if necessary, could have been purchased at minimal expense. The smoke alarm requirements currently in place in NSW are not onerous, however it seems many people still fail to understand how important these devices are.
82. During the inquest, the court received expert research which indicates that NSW could take a number of further steps to improve fire safety in relation to existing residential properties. I do not intend to recount in detail all the expert research material made available to the court by FRNSW and in other documents such, as the Senate Committee Report⁴⁹. A full analysis of that material is well beyond the scope of these brief findings. However, it is clear that research and development in this field has progressed greatly since household smoke alarms were made mandatory in NSW back in 2006. The evidence before me indicates that other improvements, if introduced would have further ensured Miata's safety in the circumstances of this fire. It was clear that there is significant knowledge within FRNSW and elsewhere which should be harnessed to help steer further legislative reform in this area.
83. There is sound research to support the view that increasing the number of smoke alarms in a residential property will increase the likelihood that someone will be able to hear and respond to danger at an early stage. We now also have an increased capacity to interconnect fire alarms, either by hardwire or by wireless technology. While a single operating alarm would

⁴⁶ For discussion of this issue see Michael Zelasko, Transcript 27/4/18, page29, line 5 onwards

⁴⁷ Statement of Michael Zelasko, Exhibit 14 [10]

⁴⁸ Correspondence from the Office of Local Government, Exhibit 1, Vol 2, Tab 2a

⁴⁹ See research material in Exhibit 1, Volume 2

have been a good start, it is clear that if an alarm had activated simultaneously in the hall and in Miata's parents' bedroom, the chances of early detection would have been substantially increased. In my view it is time for NSW Government to heed the research and look at options for strengthening existing legislative requirements in this regard.

84. The compulsory use of hard wiring or at least long term (usually 10 year lithium) non-removable batteries may also have solved the issue of battery change in this rundown rental property. Had professional checking of the unit taken place and been certified the family would have had further protection.

The need for recommendations

85. Section 82 of the *Coroners Act* 2009 confers on a coroner the power to make recommendations that he or she may consider necessary or desirable in relation to any matter connected with the death with which the inquest is concerned. It is essential that a coroner keep in mind the limited nature of the evidence that is presented and concentrates on the specific lessons that may be learnt from the particular death.
86. The evidence arising from this inquest draws into focus the need for further education in the community about the life saving benefits of well-placed and functioning smoke alarms. It is now many years since the introduction of "universal smoke alarm" provisions in NSW and while a number of agencies have continued with ongoing educational campaigns⁵⁰, it is clear that there is still significant non-compliance in the community. It may be time for another major public campaign.⁵¹The evidence presented at this inquest shows the expertise and goodwill of the stakeholders involved is available to drive and manage such an initiative.
87. The facts of this case demonstrate that there is also room for strengthening current legislation to incorporate mandating the placement of more smoke alarms, interconnection of devices and the compulsory use of hard wiring or long term batteries.
88. The particular issues raised by the lack of training in real estate agents also calls for review and improvement.
89. It is in these areas that I intend to make recommendations and to encourage further cross-agency co-operation.

Findings

90. The findings I make under section 81(1) of the Act are:

⁵⁰ I note that there is considerable information available in a variety of forms. See for example The Department of Fair Trading and FRNSW provide information about Smoke Alarms online, Exhibit 1, Vol 2, and elsewhere

⁵¹ See discussion of this issue by Michael Forbes, Transcript 9/4/18, page 24, line 25

Identity

The person who died was Miata Jibba.

Date of death

She died on 13 September 2016

Place of death

She died at Westmead Children's Hospital, Westmead, NSW.

Cause of death

She died as a result of complications of thermal injury.

Manner of death

Miata died as a result of an accidental fire in her home. It is likely that if there were adequate smoke alarms fitted in the property, Miata's death could have been prevented.

Recommendations

91. The recommendations I make under section 82 of the Act are:

Minister of Innovation and Better Regulation

1. That consideration is given to an amendment to schedule 1 of the *Residential Tenancy Regulations* in relation to the Standard Form Agreement to include a provision requiring landlords to replace batteries in smoke alarms at either the commencement of each new lease (or at a minimum annually) if the respective smoke alarm does not have a non-removable battery attached to it.
2. That consideration is given to introducing a system where a Certificate of Compliance is included as part of the residential tenancy agreement for all residential dwellings certifying that the rental property has a valid smoke alarm(s) which comply with the current regulatory requirements. The Certificate of Compliance is to be certified by an appropriately qualified person in fire protection services and such certificate should certify the smoke alarm,
 - has been properly installed in the correct location
 - has been tested and cleaned in accordance with the manufacturer's instructions
 - is working effectively
 - contains an attachment with a diagram of the location of each smoke alarm inside the rental property.
3. That consideration is given to introducing an amendment to the definition of "urgent repairs" in s62 of the *Residential Tenancy Act* to specifically include a 'smoke alarm that is not working'.

4. That consideration is given to developing a Fire Fact Sheet for tenants and landlords which specifically and clearly outlines the responsibilities of both parties in relation to the maintenance of any smoke alarm. Without limiting such information, it is recommended that the fact sheet include relevant information on the following areas,

- Explanations regarding how and when to test, clean and change batteries
- Information containing photographs of different smoke alarm models and the different type of smoke alarm technologies which are currently on the market
- Who a tenant should contact in the event a smoke alarm is suspected or found not to be working
- What to do in the event a smoke alarm is activated, including what procedures might be adopted in the event of a fire
- Who is responsible for fixing or replacing a smoke alarm
- The time frame and powers of entry for which a landlord should correct or rectify any fault
- Who to contact in the event of a fire or in the event a landlord has not rectified a fault within a reasonable time frame

5. That urgent consideration is given to finding strategies to improve the education of real estate agents in relation to fire safety. Consideration should be given to the introduction of a mandatory CPD training obligation requiring all real estate agents and property managers to cover the topic of *'risk management'* which would incorporate relevant information on the importance of smoke alarms and the current legislative requirements. The training should include case examples. I further recommend that the facts of this coronial investigation be included in the content of any material on this topic area.

6. That consideration is given, in consultation with the relevant stakeholders, to making an amendment to the *Property, Stock and Business Agents (Qualifications) Order 2009* to introduce a competency of *"risk management"* for persons seeking a career or qualification in property services or property management within NSW.

Real Estate Institute

7. That the Institute immediately contact all members and disseminate information regarding the findings of this inquest for purpose of advising and educating members in relation to the importance of smoke alarms being thoroughly checked during periodical inspections.

Ministers for Innovation and Better Regulation, Planning and Environment, Local Government & Emergency Services (responsible for FRNSW)

8. That consideration is given to establishing and auspicng an inter-governmental committee or working party with representatives from all relevant departments or organisations with the objective of developing a co-ordinated approach to increasing public awareness of and compliance with fire prevention strategies in NSW.

9. That the committee develop a document/ brochure similar to that proposed in recommendation 5 which can be utilised by Local Councils and disseminated when required throughout their municipalities.

10. That the committee conduct an analysis and review of factors relevant to non-compliance in the community with a view to developing strategies which could be jointly or independently

implemented to improve awareness and compliance with the legislation governing smoke alarms in all residential dwellings.

Minister for Police & Emergency Services

11. That the Minister give consideration for an award to be provided to Mrs Mary Kpaba for her enormous bravery and selflessness in returning inside her home, prior to the arrival of FRNSW and successfully retrieving her daughter Miata Jibba from a significant fire at 169 Hill End Road Doonside on 6 August 2016.

Minister for Planning

12. That consideration is given to amending the *Environmental Planning and Assessment Regulation 2000* to commence the staged introduction of changes to the current law in relation to all existing “residential buildings”. The new requirements should provide that smoke alarms are installed:

- a) In every bedroom and where bedrooms are served by a hallway, in that hallway, and all living or entertaining rooms
- b) In the case where there is more than one alarm required that they shall be interconnected by hard wiring or wireless signal.
- c) That all battery operated smoke alarms in existing dwellings be powered by a 10 year non removable battery or similar technology which does not require ongoing regular replacement.

Australian Building Codes Board (ACBC)

13. That the ABCB support and introduce amendments to the National Construction Code and Building Code of Australia in relation to new buildings in line with the recommendation set out at recommendation 12 a).

Conclusion

92. Finally, I once again offer Miata’s family my heartfelt condolences. I thank them for their attendance and participation at this inquest. Their generosity in sharing their story has already provided increased public awareness about this important issue and I have no doubt that many people reading of this tragedy have already made changes in their own homes as a result. I hope further legislative improvement will follow the recommendations I have made today and that some small future good comes from this most terrible tragedy. Miata’s family have been committed to bringing this issue into the public arena and for that I thank them.

93. I thank all those who have participated in this inquest, especially the Officers from FRNSW who remain so very committed to this important issue. I also thank Sergeant Kelly and the Officer in Charge, Detective Senior Constable Timothy Cox for their determination in bringing these issues to light.
94. I close this inquest.

Magistrate Harriet Grahame
Deputy State Coroner
6 July 2018
NSW State Coroner's Court, Glebe