

30 August 2024

Coroner Sarah Gebert
Coroners Court of Victoria
65 Kavanagh Street
SOUTHBANK VIC 3006

By email: cpuresponses@coronerscourt.vic.gov.au

Dear Coroner Gerbert

Investigation into the death of Nihal Singh Hundal

I refer to the *Finding into Death without Inquest* (relating to the death of Nihal Singh Hundal, a 3-year-old who died in a neighbour's septic tank) made by you on 29 May 2024.

Pursuant to section 72(3) of the *Coroners Act 2008* (Vic) this is the response of the Victorian Building Authority (the Authority) to your recommendation at para 67 page 11 of your Finding that ***the Victorian Building Authority investigate how they might introduce a Certificate of Compliance system for all septic tanks in the state. As part of this investigation, I further recommend that the Victorian Building Authority consider mandating the installation of child resistant screen devices on all septic tanks in Victoria.***

On behalf of the Authority, I take this opportunity to pass on our sincere condolences to Nihal's family for their loss.

Before turning to the substance of the response, the Authority considers it prudent to place its response into a broader regulatory context. I do this because ultimately it may be the Environment Protection Authority (EPA), rather than the Authority that is the best placed regulatory agency to achieve the intent of your recommendations.

It is important to understand that ongoing compliance with standards for new and existing septic tanks from installation to maintenance primarily falls under the jurisdiction of local councils. Councils administer permits for Onsite Wastewater Management Systems (OWMS) with a capacity of less than 5000 litres per day, and the EPA is responsible for systems exceeding this capacity. Ongoing maintenance of existing tanks generally falls upon the property owner and within the jurisdiction of local councils, primarily in complaint scenarios. According to EPA guidelines, councils are also responsible for the approval, regulation, and enforcement of OWMS. Councils can issue improvement or prohibition notices if the General Environmental Duty (GED) is breached.

It is of course entirely a matter for you as Coroner, but in these circumstances you may wish to engage with the EPA and the Municipal Association of Victoria (MAV) about your recommendations. By all means, provide a copy of this letter to the EPA. It would be useful if you copied the State Building Surveyor, Steven Baxas, into any such correspondence.

In the context of those preliminary comments, I turn to the substance of the Authority's response.

There are two parts to the recommendation calling for investigation.

- a) First, how to introduce a Certificate of Compliance system for all septic tanks in the state.
- b) Secondly, considering mandating the installation of child resistant screen devices on all septic tanks in Victoria.

The Authority without hesitation agrees to investigate both aspects of the recommendation, and as such the recommendation will be implemented.

Your noting of the parallels with pool safety barriers is understood. In that regard, the ability of the Authority to enforce compliance with pool barrier requirements was a direct result of legislative reform and, without such reforms, the Authority would have remained powerless to do anything meaningful to require compliance of pool barriers. Both a Certificate of Compliance system and mandating the installation of child resistant screen devices are changes which will require legislative reform.

An important matter learned through the pool safety barrier experience is that legislative change alone may not be enough to achieve the desired ultimate goals in relation to septic tanks. A key factor in the compliance monitoring of pool safety barriers was the involvement of councils and each owner's engagement with their council. In the case of pool safety barriers, this required registration of the pool with council, inspection by a registered inspector and the provision of a certificate of compliance to the council.

It is the Authority's view that the mandating of the installation of child resistant screen devices on all septic tanks in Victoria would require changes to the Building Code of Australia. Further, given that such a child resistant screen does not currently seem to be either manufactured or imported into Australia (see discussion at paras 55-59 of your Finding), there may be the need for other legislative changes relating to, for example, Standards which are outside the control of the Authority.

To facilitate the implementation of your recommendations, the Authority will raise the required legislative reforms with the relevant parts of the Victorian Government. In addition, we will consult with the relevant department about placing this important issue on the agenda for the Australian Building Code Board's consideration and discussion.

Please contact the State Building Surveyor on Email [REDACTED] if you have any further queries or require an update on progress with the implementation of your recommendations.

Yours sincerely



Anna Cronin
Commissioner and Chief Executive Officer
Victorian Building Authority