

IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court Reference: COR 2010 1291

FINDING INTO DEATH WITHOUT INQUEST

Form 38 Rule 60(2)

Section 67 of the Coroners Act 2008

I, AUDREY JAMIESON, Coroner having investigated the death of CHANEL PECKHAM

without holding an inquest:

find that the identity of the deceased was CHANEL PECKHAM

born 30 June 2008 and the death occurred on 6 April 2010

at Dandenong Hospital, David Street, Dandenong, Victoria 3175

from:

1 (a) CONSISTENT WITH DROWNING

Pursuant to section 67(2) of the **Coroners Act 2008**, I make findings with respect to **the following circumstances:**

1. Chanel Peckham was born on 30 June 2008 to parents Julianne Robinson and Ben Peckham. The couple later separated in September 2008. Chanel lived with her mother and 5 year old sister, Skye Peckham and brother Ashley Dicken aged 8 years at 18 Golden Grove Drive Drive, Narre Warren South. In November 2008, Ms Robinson's current partner, Rick Slama moved into the Golden Grove Drive home.
2. On 6 April 2010 at approximately 12.00pm, Chanel and Skye were playing around their Golden Grove Drive home. Their mother answered the door to her friend Ms Justine Henry and shortly thereafter went to the kitchen to make a cup of tea. Ms Henry had spoken to Skye but had not sighted Chanel. When she enquired of her whereabouts, Ms Robinson realised that she did not know where Chanel was so they commenced a search of the house and yard. A short time later, Ms Robinson located Chanel in the outdoor spa floating face down.

3. Ms Robinson removed Chanel from the spa and immediately commenced cardio-pulmonary resuscitation (CPR). Ms Henry contacted Emergency Services ('000') on a neighbour's telephone and kept a lookout for the ambulance while Ms Robinson continued with CPR.
4. Ambulance Paramedics arrived at the Golden Grove Drive Drive home a short time later. They continued with CPR and transported Chanel to Dandenong Hospital Emergency Department. At 2.01pm, Chanel was declared deceased.

Investigation

Medical investigation

5. Dr Sarah Parsons, Forensic Pathologist at the Victorian Institute of Forensic Medicine, performed an external examination on the body of Chanel Peckham. A skeletal survey reported at the Royal Children's Hospital showed 'No unexplained skeletal trauma'. Dr Parsons recommended that a full post mortem examination be performed but as she was aware that Chanel's family had expressed their objection to a full post mortem, Dr Parsons reported that a reasonable cause of death in the circumstances could be attributed to being consistent with drowning.
6. Toxicological analysis was negative for ethanol, common drugs or poisons.

Police Investigation

7. The Police investigation identified that the Golden Grove Drive home was a rental property. The Peckham family had signed a lease of the property on 21 April 2008, for one year through Century 21 Estate Agents. In November 2008, Raine and Horne Estate Agents took over the rental agency and signed a new lease with the Peckhams for six months on 24 November 2008 and thereafter a lease was signed every six months with the last being on 24 October 2009. There is no evidence that inspections of the property were undertaken during any lease period.
8. Ms Robinson and her de-facto partner, Rick Slama, erected the spa pool. It was located in an alcove at the side of the house, in the patio area, on the east side of the premises, accessible from the rear yard and the living room of the house. It was octagonal in shape with a width of 197cms. Water in the spa at its deepest point was 75cms. There was a seating area around the inside of the spa and the water depth at this point was 43cms. There was a step in the spa and the depth of water at the step was 14cms. Access to the spa was gained by two steps. There

was no barrier fencing around the spa and no automatic locks on the access doors from the house to the patio area. There was no building permit issued from the local council – City of Casey, for the construction of the spa. Ms Robinson and Mr Slama had not obtained permission from the landlord, Mr Steven Camilleri, to erect the spa.

The Coroner’s Prevention Unit

9. The Coroner’s Prevention Unit (CPU),¹ provided additional research information to support the investigation into Chanel’s death, including:

Information regarding point of sale requirements, practices and policy

Requirements

10. There are no requirements for pool and spa retailers to provide information to customers at the point of sale, although it is encouraged throughout the industry. There are no mandatory or voluntary standards for these products relating to information and labelling requirements under the Australian Consumer Law (ACL). The Australian Consumer and Competition Commission (ACCC) is the national product safety regulator, and has proposed the development of a safety labelling standard for portable pools, but this does not apply to other products.² This proposed standard is aimed at the relatively inexpensive market for portable pools, which are sold through many retail outlets and have minimal installation requirements. This contrasts with “non-portable” pools and spas, which are sold through specialist retailers, and require a more permanent and complex installation, such as plumbing and electrical work.
11. The outdoor spa at 18 Golden Grove Drive Drive was installed in January 2009.³ A swimming pool or spa⁴ constructed or installed after 8 April 1991 and before 1 May 2010, is required to have a child-resistant safety barrier compliant with *AS 1926 Part 1 – 1993*, which states:

1. *Swimming pool or spa safety fencing must be designed and constructed so that young children cannot climb on the fence or any attached members. The fence height, any*

¹ The Coroners Prevention Unit is a specialist service for coroners created to strengthen their prevention role and provide them with professional assistance on issues pertaining to public health and safety.

² Draft Regulatory Proposal – Portable Swimming Pools, 2011. Australian Competition and Consumer Commission.

³ Statement of Julianne Robinson.

⁴ This requirement applies to products which can hold 300 mm or more of water. It relates to both permanent and portable products.

horizontal fencing components, such as openings, footholds in the fence and the operation of self-closing and self-latching gates must be taken into account.

- 2. Gates must swing outwards from the swimming pool or spa area and be fitted with a self-closing device that will return the gate to the fully closed position and engage the latching device.*
 - 3. The latching device must automatically operate on the closing of the gate and prevent the gate from being re-opened without manual release. This device must also be located a minimum of 1.5 metres above finished ground level.*
 - 4. Walls of buildings can also be acceptable, subject to consideration of doors and windows as set out in Australian Standard 1926.1.*
 - 5. A 1.2 metre clearance around the safety barrier is required which must not contain any climbable elements. This may apply to adjoining property.*
12. The *Building Act 1993* and associated regulations require that a building permit to be submitted for the construction of any pool or spa capable of containing 300mm of water. While the use of temporary pools and spas does not require a building permit, a permit is required for the installation of the required permanent barrier. The statement of the Municipal Building Surveyor (MBS) of the City of Casey, indicates that no building permits were issued for the installation of a spa or the required barriers at 18 Golden Grove Drive Drive.
13. The MBS was notified of Chanel's drowning on the day of her death. The next day, a letter was sent to the owner requesting an inspection, which eventually occurred on 19 April 2011, some 10 days later. The inspection revealed that the spa had been removed and the property vacated.
14. This is the only child drowning in a domestic pool or spa of which the CPU are aware where a MBS did not attend the property on the day of the incident and issue a notice for emergency building works when the barrier was inadequate. Pursuant to the Building Act 1993, a MBS may issue an emergency building order to owners and occupiers if they are of the opinion that there is a danger to life based on the condition of a building (S102).⁵ There is an accompanying power of entry to assist in the assessment of the property and service of the

⁵ Building includes structure, temporary building, temporary structure and any part of a building or structure (S3).

notice (S232). The pool barrier requirements are established to prevent the drowning of young children aged five years and under.⁶ Skye Peckham was five years of age at the time her sister drowned.

The Swimming Pool and Spa Association of Victoria (SPASA)

15. The CPU sought information from SPASA,⁷ the peak industry body for pool and spa retailers (Attachment A). The response provided by SPASA (Attachment B) details the Association's safety messaging which is provided to and through their member retailers. SPASA estimate that they represent approximately 60% of pool and spa retailers in Victoria.
16. SPASA note that they have a very active safety agenda, and provide a variety of materials to retailers to pass onto clients. These include the SPASA Handover Book, given to all pool and spa purchasers, which details the requirements for safe operation and barriers. SPASA have also distributed water safety DVDs through retailers, and works closely with the Victorian Building Commission to ensure the accuracy and consistency of their messages. SPASA are a member of the Victorian Swimming Pool and Spa Safety Committee, in conjunction with KidSafe Victoria, Life Saving Victoria, the Australian Institute of Building Surveyors, the Building Commission and the Municipal Association of Victoria.⁸
17. In their submission, SPASA's provided the following recommendations for domestic pool and spa safety:⁹

SPASA Recommends –

1. *Safety Checks be conducted on all Victorian backyard pools every 3 years.*

An Australian study has found that more than 70% of backyard child drownings occurred in fenced pools. With distracted adults, children climbing over fences or pool gates being propped open as the main cause factors. Anecdotal advice from industry tells us that a significant number of pools in Victoria, while having once-compliant safety barriers, are no longer operative.

⁶ AS 1926.1 2007.

⁷ Pronounced "SPA-H-ZAH"

⁸ The CPU have previously attended meeting of the Committee with the status of "observer".

⁹ <http://www.spasavic.com.au/media-centre/100-2010-pool-fencing> accessed 6 December 2011

2. *Meaningful backyard pool community awareness campaigns be created that focus on; parental vigilance, the need for CPR training and swimming lessons for all children.*

A pool fence cannot save a life. In the late 1990s, SPASA WA ran a public awareness campaign promoting the above theme and halved the drownings in the State, compared to the previous 4 year period. Not enough is done to alert pool owners of the need to never take their eyes off children around pools and spas. In NSW, between 2003 and 2007, 75% of drownings in backyard pools occurred where there was no adult supervision.

3. *Prior to mandating this change, that further consultation takes place with industry and the community. With nearly 50 years of continuous industry experience, SPASA has not been a party to any of the regulatory discussions and believes a unique “in the field” perspective can add to pool safety. Everyone gains if the safest pool fencing regulations are developed in consultation with key stakeholders.*

Parents must teach their children how to swim, and pool owners must observe children at all times when around water. There is no substitute for vigilance around backyard pools.

SPASA strongly recommend that all pool owners read the SPASA Pool & Spa Safety Fact Sheet on our website www.spasavic.com.au and the important information contained in our new 2010 Pool & Spa Book.

Summary –

SPASA is disappointed that regulations focus on fencing regulations rather than introducing Safety/Compliance Checks on pool fencing, widely promoting safe practice around pools, providing communities with mandatory swimming lessons and CPR training. The end result of the regulation changes may be an elevated false sense of security.

Consumer Affairs Victoria (CAV)

18. *CAV is responsible for the administration of residential tenancies in Victoria. The booklet “Renting a home – A guide for tenants and landlords” is required to be provided to tenants by the landlord or agent at the time of occupancy. The booklet sets out the responsibilities of each*

party, and remedies for breaches. There are no references in the document to pool or spa fencing and it is not listed as an example of an urgent repair. The booklet also specifies recourse to VCAT for urgent repairs and notes that applications will be heard within two days of lodging the application.

19. The CPU met with representatives from CAV to discuss residential tenancies and the issue of pools and spas and to also discuss the limitations of the booklet. CAV advised that in 2012 there will be a campaign concentrating on real estate agents and landlords with the goal to:
20. Increasing the understanding of landlords that they cannot transfer their burden of risk or liability to other parties, including tenants and real estate agents; and
21. Building the capacity of real estate property managers in respect to property safety, negotiating conflict and disagreement between landlords and tenants; repairs to properties and their obligations to tenants.
22. Also discussed at the meeting was the lack of information regarding pools and pool barriers in CAV publications. CAV advised that they would review their publications with a view to include specific information about pool fencing in the guide for tenants and landlords.

Residential Tenancies Act 1997

23. The Act defines the rights and duties of landlords and tenants in rented properties. A landlord is defined as:
 - a) *The person by whom premises are let under a tenancy agreement; or*
 - b) *The person by whom the premises are to be let under a proposed tenancy agreement.*
24. The Act does not define the responsibilities of Real Estate Agents to either the tenant or landlord.
25. The landlord is required to ensure the property and take reasonable steps to ensure that any common area of rented premises are in “good repair”,¹⁰ however the definition of this standard is not prescribed in the Act.

¹⁰ Residential Tenancies Act 1997 Part 2, Section 68 (1) & (3)

26. Tenants have a general duty to not install fixtures, or alter, renovate or add to the property without consent (S.64):

Tenant must not install fixtures etc. without consent

1. *A tenant must not, without the landlord's consent—*
 - a. *install any fixtures on the rented premises; or*
 - b. *make any alteration, renovation or addition to the rented premises.*
2. *Before a tenancy agreement terminates, a tenant who has installed fixtures on or renovated, altered or added to the rented premises (whether or not with the landlord's written consent) must—*
 - a. *restore the premises to the condition they were in immediately before the installation, renovation or addition, fair wear and tear excepted; or*
 - b. *pay the landlord an amount equal to the reasonable cost of restoring the premises to that condition.*

27. Landlords can issue a Breach of Duty Notice¹¹ to tenants who modify the property without permission. The notice directs the tenant to either remedy the breach (such as dismantling an outdoor spa) or seeks compensation.

Coronial cases

28. A number of deaths of children at rental premises for the period 2000 – 2011, in all States and Territories, were identified from the CPU database and the National Coroners Information System.¹² Most were drownings and Coroners made recommendations regarding the need for effective pool barriers, establishment of registration and regulatory systems and education of the community regarding their requirements under law.

¹¹ Section 208, *Residential Tenancies Act 1997*

¹² Only closed cases were identified, as the detail in the finding was required to determine whether they involved a rental situation. Given the variability of data completeness between the jurisdictions and different processes for the inclusion of detailed circumstances in coronial findings, it is likely that this number is an underestimation of the true incidence.

29. Chanel Peckham is the third drowning death of a child at rental premises investigated by a Victorian Coroner in recent times.¹³ Deputy State Coroner West is currently part-heard in an Inquest into the death of Lauren Harris, which is exploring many of the same issues as identified in Chanel's death, including that the property where the death occurred was a rental home and the pool was not adequately fenced.

COMMENTS

Pursuant to section 67(3) of the **Coroners Act 2008**, I make the following comment(s) connected with the death of Chanel Peckham:

1. The circumstances of this incident are similar to others whereby a drowning occurred because of inadequate parental supervision and non-compliant barrier fencing. A number of Coroner's findings have alluded to the issue of pool owners lacking knowledge about their pool fencing obligations imposed by the legislation. Chanel's death was preventable in that a compliant barrier would have prevented her access to the spa area.
2. While there appears to be adequate safety information provided at point of sale, there is an absence of information in resources, which is given to tenants. It is not known whether Chanel's mother and partner were aware of the requirement for barrier fencing. Given they were willing to contravene the terms of their lease agreement by installing fixtures without permission; it is unlikely that a barrier would have been installed regardless. The guide¹⁴ provided to tenants clearly states that permission to install a fixture or any other addition to the premises must be sought from the landlord or agent.
3. It is also concerning that the spa was installed for some sixteen months, and during that time was not identified by the property manager or landlord. It is difficult to conceive that landlords are able to meet their obligations under the *Residential Tenancies Act 1997* to keep the property in "good repair" without regular inspections of that property. Property inspections, when actually undertaken by property managers, should not just be considered as important for the management of an expensive asset, but also to ensure the health and wellbeing of tenants. In this matter, had regular inspections of the property been undertaken by the responsible real estate agency, the presence of the spa would have been dealt with and either dismantled or appropriately fenced prior to April 2010.

¹³ See also 4363/2008 and 377/2010.

¹⁴ Renting a home; A guide for tenants and landlords. Published by Consumer Affairs Victoria, Page 14.

4. Life Saving Victoria has made the following submission for other reports provided to the Coroners Court of Victoria and is reproduced here. Their submission includes four recommendations:
 - i. Continued programs for toddler water safety education;
 - ii. Placing into legislation a requirement to display at the poolside a sign displaying current cardio-pulmonary resuscitation (CPR) procedures;
 - iii. A register of pools and spas; and
 - iv. Mandatory inspection of all pool and spa safety barriers every four years by licensed pool safety inspectors.
5. I support the recommendations of Life saving Victoria.
6. I also **recommend** pursuant to section 72(2) of the *Coroners Act* 2008, that Consumer Affairs Victoria amend its tenancy forms and publications created for tenants and landlords to include regulatory information about pool barrier fencing.
7. I further **recommend** that the Real Estate Institute of Victoria communicate to their members the importance of property inspections, which are not simply for the management of their client's asset, but also from a duty of care to ensure the health and wellbeing of tenants.

Finding:

I accept and adopt the cause of death as identified by Dr Sarah Parsons and find that Chanel Peckham's death is consistent with drowning in a backyard spa pool at the rental property of 18 Golden Grove Drive Drive, Narre Warren.

AND I further find that Chanel's death was preventable as it occurred in circumstances where there was a lack of supervision of her in an environment where she had easy access to a spa pool that had no protective barrier fencing or covers.

Pursuant to rule 64(3) of the Coroners Court Rules 2009, I order that this Finding be published on the internet.

I acknowledge the assistance of the Coroner's Prevention Unit in this matter.

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

Mr Ben Peckham

The Hon Mr Michael O'Brien, Minister for Consumer Affairs, 121 Exhibition Street,
Melbourne 3000

The Hon Mr Matthew Guy, Minister for Planning, Level 7, 1 Spring Street, Melbourne 3000

Consumer Affairs Victoria, Mr Phil D'Adamo, Acting Executive Director, Consumer Affairs
Victoria, 121 Exhibition Street, Melbourne 3000

Real Estate Institute of Victoria, Mr Enzo Raimondo, Chief Executive Officer REIV, PO Box
443 Camberwell 3124

Mr Nigel Taylor, Chief Executive Officer, Life Saving Victoria. PO Box 353, South
Melbourne 3205

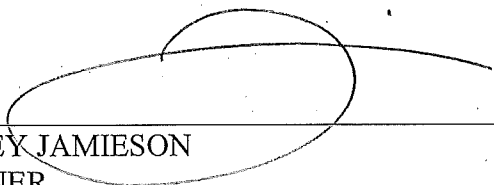
Swimming Pool And Spa Association Victoria, Mr Brendan Watkins, Chief Executive Officer
SPASA Victoria Ltd, Unit 55, 41-49 Norcal Road Nunawading 3131

Building Commission, Mr Michael Kefford, Building Commissioner, PO Box 536, Melbourne
3001

Ms Ruth Mackay, General Manager Product Safety, Australian Competition and Consumer
Commission, 23 Marcus Clarke Street, Canberra 2601

Mr Mike Tyler, Chief Executive Officer, City of Casey, Magid Drive, Narre Warren 3805.

Signature:



AUDREY JAMIESON
CORONER

Date: 6 September 2012

