

IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court Reference: COR 2009 2211

FINDING INTO DEATH WITH INQUEST

Form 37 Rule 60(1)

Section 67 of the Coroners Act 2008

Inquest into the Death of: DAMIEN JOHN SPOONER

Delivered On:	28 October 2013
Delivered At:	Coroners Court of Victoria Level 11, 222 Exhibition Street Melbourne 3000
Hearing Date:	7 May 2009
Findings of:	JUDGE IAN L. GRAY

I, JUDGE IAN L. GRAY, State Coroner having investigated the death of DAMIEN JOHN SPOONER

AND having held an inquest in relation to this death on 7 May 2009
at MELBOURNE
find that the identity of the deceased was DAMIEN JOHN SPOONER
born on 10 OCTOBER 1975
and the death occurred on 7 FEBRUARY 2009
at 45 SCHOOL RIDGE ROAD, STRATHEWEN, VICTORIA 3099
from:

1 (a) Effects of fire

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

Background

1. The Kilmore East fire of 7 February 2009 burned across the Shires of Nillumbik, Mitchell and Yarra Ranges as well as the City of Whittlesea, about 85 kilometres north of Melbourne. The fire started at approximately 11.47am, on top of a rocky hill between two gullies near Saunders Road in Kilmore East. Fires were also reported at Wallaby Creek, Humevale, Strathewen, St Andrews, Steels Creek, Dixons Creek and Yarra Glen, and in the Healesville area.
2. After a south-westerly wind change, the head of the fire impinged on Kinglake, Kinglake West, Clonbinane, Steels Creek, Chum Creek and Strathewen, before progressing towards Flowerdale, Hazeldene, Castella and Glenburn.
3. In all, 119 people died in the fire, including Mr Damien John Spooner.¹
4. In addition to the fatalities, 1,242 homes were destroyed. The combined area burnt by the Murrindindi and Kilmore East fires, which later merged, was 168,542 hectares. The Kilmore East fire alone burnt 125,383 hectares.²

¹ Mr Spooner was formally identified following an inquest held at the Coronial Service Centre, Southbank on 7 May 2009 (Interim Finding of Judge Jennifer Coate, State Coroner, dated 11 May 2009).

² Final Report of the VBRC, Volume 1: page 70.

Investigation into the Kilmore East/Kinglake fire

2009 Victorian Bushfires Royal Commission ("the VBRC")

5. On 16 February 2009, the (former) Governor of Victoria, Professor de Kretser issued Letters Patent setting out the terms of reference for a Royal Commission into the bushfires that raged through Victoria on 7 February 2009, on what came to be known as Black Saturday. The VBRC was given very broad terms of reference. The VBRC produced two Interim Reports containing 58 recommendations and a four-volume Final Report containing 67 recommendations.
6. The VBRC was comprised of three members and was chaired by the Honourable Bernard Teague AO. The VBRC was supported by a considerable team of lawyers including Senior Counsel appointed to assist the VBRC.
7. The VBRC heard from 434 witnesses including 100 lay witnesses over 155 sitting days, accepted the tender of more than 1000 exhibits and produced 20,767 pages of transcript. Further, the VBRC received almost 1700 public submissions together with its own internal research.³ The VBRC convened and directed two expert panels.
8. The VBRC undertook an extensive investigation and delivered detailed findings, along with a large number and range of recommendations, in its Final Report dated July 2010.

Forensic investigation

9. Despite extensive searches undertaken in and around the premises at 45 School Ridge Road, Strathewen in the wake of the fire, no human remains were able to be identified as those of Mr Spooner.
10. On the evidence provided during the inquest held on 7 May 2009, Judge Coate made an interim finding that the reported missing person Damien John Spooner, suspected to have lost his life in the Black Saturday bushfires, did perish on or around the premises at 45 School Ridge Road, Strathewen on 7 February 2009.⁴

³ Final Report of the VBRC, Volume 1: page xxvi.

⁴ Above n 1.

Coronial investigation

11. Following the conclusion of the police investigation into the Kilmore East/Kinglake fire (codenamed "Operation Angora"), a brief of evidence was delivered to the Coroners Court in October 2011.
12. The inquest brief prepared in relation to Mr Spooner's death included statements from eye witnesses, experts, witnesses from events prior to and during the fire, police investigators, a forensic pathologist, DVI investigators, photographs and images, an interactive re-enactment of the events and a range of documents including maps, meteorology, DVI and police comparison reports, reports and transcripts and statements provided to the VBRC.
13. Much of the material in the inquest brief was made available to, and considered by, the VBRC.
14. In preparing this finding, I have had regard to the extensive electronic inquest brief compiled by Victoria Police. I have also had regard to the material from the VBRC and in particular, the findings and conclusions contained in the VBRC final report.
15. I concur with the conclusions from the VBRC hearing regarding the circumstances of Mr Spooner's death, which are attached to this finding.⁵
16. In light of the work undertaken by the VBRC, and having regard to section 7 of the *Coroners Act 2008*,⁶ the court does not propose to conduct any further investigation into this death. I note that the family of Mr Spooner has not asked the court to do so.

Finding

17. I find that Damien John Spooner tragically died from the effects of fire as a result of the 7 February 2009 bushfires in the Kilmore-East/Kinglake area.

⁵ Attachment 1.

⁶ Section 7 of the *Coroners Act 2008* (Vic) provides:

"It is the intention of Parliament that a coroner should liaise with other investigative authorities, official bodies or statutory officers-

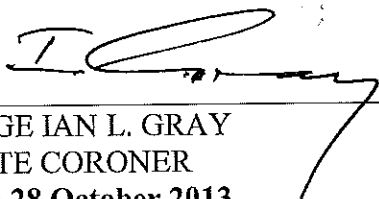
- (a) to avoid unnecessary duplication of inquiries and investigations; and
- (b) to expedite the investigation of deaths and fires."

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

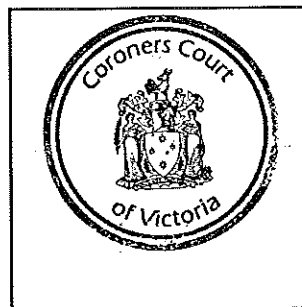
Mrs Jodie Spooner, Senior Next of Kin

Detective Senior Sergeant Andrew Kerr, Phoenix Taskforce

Signature:



JUDGE IAN L. GRAY
STATE CORONER
Date: 28 October 2013



ATTACHMENT 1

EXTRACT of the 2009 VICTORIAN BUSHFIRES ROYAL COMMISSION FINAL REPORT in respect of the death of: DAMIEN JOHN SPOONER⁷

“Marilyn and Denis Spooner moved to Strathewen in 1980, to an address that later became known as 45 School Ridge Road. There they raised their two sons, Damien and Warwick. In February 2009 three generations were living in the single-storey five-bedroom house: Denis and Marilyn were sharing with Damien, his wife, Jodie, and their two young children. Marilyn, aged 57, and Damien, aged 33, died there on 7 February 2009, having sought shelter in the house after an unsuccessful attempt to evacuate. They are survived by Denis and Jodie, both of whom escaped, along with Warwick and his wife and their extended families.

The fire plan for the Spooner residence was of long standing. It was to leave. Denis explained:

The family's fire plan has always been to leave. The plan was only verbal but it had been discussed many times and had been in place for years. If we couldn't leave, our back-up plan was to take shelter in the house until the fires passed and then leave. We never intended on fighting any fires.

There were only two ways out of the property. The preferred choice was to head towards Arthurs Creek because that road was sealed and allowed for two-way traffic. In contrast, the road to Kinglake was unsealed, narrow and winding and as a result more difficult to navigate in extreme circumstances. There was some firefighting equipment at the property, but this was to be used as a last resort if the family was unable to leave.

Denis spent the morning of 7 February monitoring the CFA website. He was home alone because Marilyn had gone to Hurstbridge to do some shopping and Damien, Jodie and the children had gone to visit Jodie's parents in Greensborough. Just before 2.00 pm Damien called Warwick. They discussed the fires and arrangements for the evening: a family gathering had been planned to celebrate Jodie's birthday. At about the same time, in Strathewen, Denis had noticed smoke in the air, causing the sun to be obscured.

At about 4.30 pm Damien and Jodie arrived home having left the children with her parents; they wanted to make sure Denis and Marilyn left safely. Denis was not home when they arrived, having gone to warn neighbours. Damien and Jodie tried to persuade Marilyn to leave but she would not leave without Denis, so the three of them started to load family items into their cars. When Denis returned not long afterwards he joined them.

At some time before 5.00 pm Denis heard a loud roar, which he assumed was the approaching fire, and a decision was made to evacuate in four separate cars. After some discussion between Damien and Jodie, who had wanted Damien to come with her because she was anxious about driving in the deteriorating conditions, they left. Jodie drove out first, followed by Marilyn, then Denis and finally Damien. Jodie recalled:

I drove out the bottom exit down towards the school and onto School Ridge Road and then into Bowden Spur Road and then turned left into Strathewen – Cottles Bridge Road. I was driving fairly slowly because the smoke was getting thicker and visibility was reduced.

⁷ Final Report of the VBRC, Volume 1: pp284-285.

Jodie saw the fire moving from the grass into the trees, tree branches were on the road, the smoke was getting thicker and visibility was deteriorating. She arrived at her parents' house in Greensborough at about 6.00 pm. Meanwhile Denis, Marilyn and Damien had not been able to follow Jodie because a tree had fallen across the road, forcing them to turn around. Denis took the lead position and yelled to Damien to follow him back past their house to Kinglake. Some distance past their house, Denis realised Damien and Marilyn were no longer behind him. He turned around to go and find them but realised he had been blocked by fire and could go no further. He turned around again and continued towards Kinglake along Bowden Spur Road, picking up neighbour Henk Vreulink on the way. Henk had fled on foot from fire at his property. The two men eventually found shelter in Kinglake.

It appears that Marilyn and Damien returned to the house, although it is not known whether they went there to collect something or to shelter from the fire. At about 5.00 pm Marilyn called Warwick, told him they were under fire attack and asked him to call 000. He was unable to reach 000 and called his mother back to tell her. Just after 5.00 pm Warwick rang Damien and told him the CFA was on its way. Damien told Warwick that he and Marilyn were in the bath. Warwick recalled that Damien was struggling to speak and breathing heavily. The last contact with Damien and Marilyn was at 5.21 pm, when Jodie returned a call from Damien's mobile. He had called her moments earlier to make sure she had made it to safety; he told her he was getting in the bath and would call once the firefront had passed.

On 10 February police went to the Spooner residence. They found human remains in the bathroom area of the house, which had been razed.

A coronial inquest on 7 May found that Damien Spooner had died in or near 45 School Ridge Road on 7 February 2009 from the effects of fire. The post-mortem report records that Marilyn Spooner's death was consistent with the effects of fire."

Directly extracted from Volume 1 pp284-285 of the Final Report of the VBRC.