



IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court Reference: COR 2011 4910

DETERMINATION FOLLOWING A REQUEST TO INVESTIGATE A FIRE

Form 17 Rule 39(2)

Section 31 of the Coroners Act 2008

Determination of: **JUDGE SARA HINCHEY, STATE CORONER**

Delivered on: 23 May 2018

Delivered at: Coroners Court of Victoria
65 Kavanagh Street, Southbank

Details of fire(s): Unknown

Location of fire(s): Country Fire Authority Training College Fiskville
4549 Geelong – Ballan Road, Fiskville, Victoria

Applicant: Peter Marshall, United Firefighters Union of Australia
410 Brunswick Street, Fitzroy, Victoria

Date of Application: 12 December 2011

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HER HONOUR:

BACKGROUND

1. By a letter dated 12 December 2011, the Coroners Court of Victoria (**the Court**) received an application (**the Application**) from Peter Marshall (**the Applicant**), on behalf the United Firefighters Union. In the Application, the Applicant requested that a coroner commence an investigation under section 31(1) of the *Coroners Act 2008* (Vic) (**the Act**) into “*one or more fires*” (**the Fires**). The Fires were said to have occurred at the Country Fire Authority (**CFA**) Training College, situated at 4549 Geelong – Ballan Road, Fiskville, Victoria (**Fiskville**) during the 1970s and 1980s.
2. At the same time as the Application, the Applicant made the following related applications:
 - (a) a request to hold an inquest into the Fires;
 - (b) an application to commence investigations into the deaths of 11 former firefighters and other persons connected to Fiskville (**the Fiskville deaths**); and
 - (c) a request to hold an inquest into the Fiskville deaths.

APPLICATION TO INVESTIGATE FIRES

3. The relevant parts of the Application state:

“For many years, the College [Fiskville] has been used to conduct training and educational exercises for firefighters in Victoria.

We understand that a large number of people who spent time on the Fiskville site from the 1970s onwards have subsequently been diagnosed with various forms of cancer, and many of these people have passed away as a result of their conditions.

As you would be aware from recent media reports, it has emerged that the fuels used in training exercises on the Fiskville site included known carcinogens such as benzene and other chemical waste products from petroleum providers. From the 1970s onwards these chemicals were burned for training purposes (including live fire drills), and were also stored and disposed of on the Fiskville training grounds. These substances were inhaled by, ingested by or otherwise exposed to the occupants of the Fiskville site and nearby residents over a lengthy period of time. As a result of these practices, potentially thousands of firefighters and their relatives may have been exposed to high doses of potent carcinogens over the course of several decades.

...

We request that the coroner investigate one or more fires at the Fiskville College training grounds during the 1970s and 1980s. Based on the evidence available, we believe that these

fires, which involved burning large quantities of presumptively toxic and / or carcinogenic materials for training, are likely to have exposed the above named individuals (and others) to known carcinogens.

If the Coroner commences an investigation into a fire at Fiskville which is the subject of our request under section 31, we request that an inquest be held.

THE LEGAL FRAMEWORK

4. Any person may request a coroner to investigate a fire.¹ If a coroner exercises their discretion to investigate a fire, they must make a finding pursuant to section 68 of the Act and find, if possible:
 - (a) the cause and origin of the fire; and
 - (b) the circumstances in which the fire occurred.
5. Neither the Act, nor the second reading speech which preceded the Act, provides any criteria to be considered when determining whether to commence an investigation into a fire. However, the preamble and purposes of the Act assist in determining when a fire should be the subject of a coronial investigation, namely:

“for the purpose of finding the causes of those... fires and to contribute to the reduction of the number of preventable... fires and the promotion of public health and safety and the administration of justice.”

APPLICATION OF THE LEGAL FRAMEWORK

6. The Application requests that the Court, *“investigate one or more fires at the Fiskville College training grounds during the 1970s and 1980s.”* Apart from the wide time frame and the imprecise description of the location, the Application does not provide specific dates of any particular fire or fires. However, it is noted that the Application states that the fires were lit for *“training purposes.”*
7. In *Harmsworth v The State Coroner*,² Justice Nathan observed that:

“[t]he coroner’s source of power of investigation arises from the particular death or fire. A coroner does not have general powers of enquiry or detection [...].”

¹ Section 31(1) *Coroners Act 2008*

² *Harmsworth v The State Coroner* [1989] VR 989

8. A coronial enquiry must be directed to specific matter,³ namely the making of the findings required under the Act. To this end, in considering whether to conduct an investigation into the Fires, I have:
 - (a) considered the scope of the phrase ‘*circumstances in which the fire occurred*,’⁴ read in conjunction with the preamble and purposes of the Act; and
 - (b) determined that it does not permit a broad consideration of fires which, as detailed in the Application, were deliberately lit for “*training purposes*.”
9. Moreover, had the Application nominated or identified specific fires, section 7 of the Act specifically states that a coroner should avoid unnecessary duplication of inquiries and investigations, by liaising with other investigative authorities, official bodies or statutory officers. The rationale behind this provision is to allow for consideration of public interest principles that weigh against the potential benefits of any further investigation, such as further cost to the community. It also acknowledges that a number of authorities or organisations may have the mandate to investigate the same matters and some are more appropriately placed than others to do so.
10. Relevantly, the Fires have been the subject of a number of inquiries, including:
 - (a) 1988 A S James Geotechnical Report;
 - (b) the Joy Report;
 - (c) the Monash Report; and
 - (d) a Parliamentary Inquiry into health concerns associated with the Fiskville Training Centre.
11. In a letter dated 19 January 2012, the CFA provided the Court with a copy of a document titled ‘*1988 A S James Geotechnical Report*’ (**the 1988 Report**). The 1988 Report was related to industrial waste that had been buried in a small site at Fiskville. It was required to determine the nature of the waste and to recommend an appropriate long-term approach to future utilisation of the area. The 1988 Report did not relate to the Fires and does not assist with determining whether to conduct an investigation into the same.

³ *Harmsworth v The State Coroner* [1989] VR 989

⁴ Section 68(b) *Coroners Act 2008*

12. In a letter dated 27 February 2012, the Applicant's legal representatives, Slater & Gordon provided details in relation to deceased persons that are referred to in the Application for the Fiskville deaths to be investigated (**the Fiskville deaths investigation**). This letter also advised that the family of Chester Read (**Mr Read**) did not wish to participate in any investigation and the Applicant requested that this death be withdrawn from the Fiskville deaths investigation. Relevant to the Application, this letter stated, *inter alia*, that:

“In all cases, it is suspected that there may be a causal nexus between the deceaseds' exposure to chemicals at the Fiskville site and their subsequent development of various types of cancer.”

13. In a letter to the Court, dated 4 July 2012, the CFA advised that on 28 June 2012, it received Professor Robert Joy's 165 page report, “*Understanding the Past to Inform the Future*” (**the Joy Report**), which looked into the historical use of chemicals for live fire-fighting training at Fiskville between 1971 and 1999.

14. In an email to the Court, dated 6 July 2012, the CFA advised that Professor Joy, in completing the Joy Report:

- (a) engaged a team of 23 staff and 22 paralegals;
- (b) interviewed 324 people;
- (c) searched four million records (with approximately 8,000 being deemed to be relevant);
- (d) reviewed all records about Fiskville that were held by the Environment Protection Authority;
- (e) had contact with the Department of Education and Early Childhood Development; and
- (f) sought advice from an expert panel.

15. On 12 July 2012, the CFA released the Joy Report publicly. In summary, the Joy Report made 10 recommendations. Seven of the recommendations were based on environmental analysis or monitoring and were directed to new site management arrangements. The remaining three recommendations were health-related, including one that focused on a health study. The Joy Report identified:

- (a) people as having ‘*high*’ or ‘*medium*’ relative risk of chronic exposure during 1971 and 1999;

- (b) that the exposure was to a variety of potential materials, including flammable chemicals, combustion products, foams and recycled water; and
 - (c) that the vast majority of Fiskville personnel fall in the ‘*low*’ or ‘*negligible*’ risk category, including Fiskville employees such as administrative, maintenance, kitchen, catering, finance, gardening and domestic, visitors, recruits, trainees and residents of Fiskville.
16. In December 2014, Premier Daniel Andrews announced a Parliamentary Inquiry into health concerns associated with the Fiskville Training Centre (**the Parliamentary Inquiry**). Under section 33 of the *Parliamentary Committees Act 2003*, the inquiry into Fiskville was referred to the Environment and Natural Resources Committee. The terms of reference included:
- (a) a comprehensive historical study of pollution, contamination and unsafe activities at Fiskville between 1970 and the present day;
 - (b) a study of the health impacts on employees, residents and visitors between 1970 and the present day;
 - (c) a study of the role of past and present executive management at Fiskville;
 - (d) an assessment of the feasibility of decontamination/rectification of the training site; and
 - (e) recommendations as necessary to mitigate ongoing harm and to provide justice to victims and their families.
17. On 22 January 2015, the CFA sent a letter to the Court concerning a study by Monash University entitled “*Fiskville Firefighters’ Health Study*.” The study concerned people who worked and trained on the Fiskville hot fire training ground between 1971 and 1999 (**the Monash study**).
18. The Monash Study found that, when compared with the Victorian community, the overall incidence of cancer was not higher for the study group as a whole, although the incidence was significantly elevated in the high risk group. In particular, the Monash Study identified higher than expected cancer rates for melanoma and for cancer of the testes in the ‘*high*’ relative risk of chronic exposure group and for brain cancer in the ‘*medium*’ relative risk of chronic exposure group. Among the 606 people who were the subject of the study, 69 cancers were discovered which had resulted in 16 deaths.
19. On 24 May 2016, the Victorian Parliament released its final report entitled, “*Inquiry into the CFA Training College at Fiskville*” (**the Final Report**). The Parliamentary Inquiry:

- (a) examined thousands of CFA documents and environmental reports;
- (b) read over 450 submissions; and
- (c) heard evidence from almost 100 witnesses, including scientific experts and people with first-hand experience of Fiskville.

20. The Parliamentary Inquiry found:

- (a) that documentary evidence regarding knowledge of contamination at Fiskville contradicted some of the evidence received from witnesses; and
- (b) the Victorian community had been let down by the CFA as well as the regulators empowered to oversee the CFA, such as WorkSafe and EPA Victoria.

21. The Parliamentary Inquiry studied the Fiskville site's effects on employees' health, residents and visitors during that time, and the roles and responsibilities of past and present executive management. The Final Report includes 125 findings and makes 31 recommendations relating to Fiskville, including a recommendation that there be a dedicated redress scheme for Fiskville-affected persons.

22. In tabling the Final Report in Parliament, Committee Chair, the Hon. Bronwyn Halfpenny, MP said the Final Report provides a forensic examination of events at Fiskville, including the unsafe training practices that allowed contamination of the site and placed the health of those present at Fiskville and its neighbours at risk. I note Ms Halfpenny's statement in response to releasing the Final Report, "*I stated early in the Inquiry that the Committee is committed to providing both the answers to what happened at Fiskville and justice to all those affected. This report does just that.*"

23. On 24 November 2016, the Victorian Government responded to the Parliamentary Inquiry findings by stating that it would implement each recommendation in part or in full.

24. I note that as part of the Victorian Budget 2016-17, the Victorian Government announced a \$46.2 million investment to establish a new fire-fighting training centre in the Central Highlands and to upgrade the training facility at Huntly. The Victorian Government also announced that an additional \$80.7 million had been allocated over four years to decommission and remediate the Fiskville site and to upgrade six other training centres located across regional Victoria.

DETERMINATION

25. I acknowledge that the concerns and issues outlined in the Application are serious and worthy of examination. However, I emphasise that it is not the role of a coroner to apportion blame or responsibility, nor to assist an aggrieved party with any potential civil claim.
26. The Application requested that I exercise my discretion to, “*investigate one or more fires at the Fiskville College training grounds during the 1970s and 1980s.*” I consider that this request is too broad. Moreover, I am satisfied that the issues relate to fires that were deliberately lit for training purposes at Fiskville. The Fires have already been the subject of numerous inquiries, resulting in many findings and recommendations concerning the health and safety aspects of activities that occurred at Fiskville.
27. My role is to determine whether it is necessary to conduct a coronial investigation with a view to finding, pursuant to section 68 of the Act, the cause and origin of the fire, the circumstances in which the fire occurred and to assist with the reduction of preventable fires. Having regard to:
- (a) the preamble of the Act;
 - (b) the matters in relation to which I am required to make findings if an investigation is conducted;
 - (c) the outcome of the wide-ranging inquiries that have already taken place; and
 - (d) the specific parliamentary intention set out in the Act, that I avoid any unnecessary duplication of other inquiries and investigations.

I consider that there is neither a necessity nor any utility to be found in conducting a coronial investigation into the matters raised by the Application.

28. For the reasons set out above, the Application is refused.

APPLICATION TO HOLD AN INQUEST INTO THE FIRES

29. For the reasons set out above, I also refuse to hold an inquest into the fires.

Signature:



JUDGE SARA HINCHEY
STATE CORONER

Date: 23 May 2018



NOTE: An appeal can be made to the Supreme Court of Victoria within 28 days after the day on which this determination has been made.
