



IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court Reference: COR 2013 1339

FINDING INTO DEATH WITHOUT INQUEST

Form 38 Rule 60(2)

Section 67 of the Coroners Act 2008

Findings of:	JUDGE SARA HINCHEY, STATE CORONER
Deceased:	MARIE-FAITH CHANTAL ABLA FIAWOO
Date of birth:	13 November 1979
Date of death:	28 March 2013
Cause of death:	Head injuries
Place of death:	501 Swanston Street, Carlton, Victoria

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HER HONOUR:

BACKGROUND

1. Dr Marie-Faith Chantal Abia Fiawoo (**Dr Fiawoo**) was a 33-year-old French woman who had been living in Victoria for two-and-a-half years at the time of her death. She is survived by her parents, Elie and Teresa, brother, Jonathan, and sister, Elina.
2. Dr Fiawoo had studied physics at university and was a post-doctoral research fellow at Monash University at the time of her death.
3. Dr Fiawoo, a well-liked and dedicated academic, loved the outdoors and was scheduled to leave for a 13-day hiking trip in New Zealand the weekend that she was killed.
4. Dr Fiawoo was close to her family and had enjoyed a visit with them in France over the 2012 Christmas period. At the time of her death, Dr Fiawoo was looking forward to her mother visiting her from France in mid-April.

THE PURPOSE OF A CORONIAL INVESTIGATION

5. Dr Fiawoo's death constituted a '*reportable death*' under the *Coroners Act 2008* (Vic) (**the Act**), as the death occurred in Victoria and was the result of an accident, unexpected and not from natural causes.¹
6. The jurisdiction of the Coroners Court of Victoria is inquisitorial.² The Act provides for a system whereby reportable deaths are independently investigated to ascertain, if possible, the identity of the deceased person, the cause of death and the circumstances in which death occurred.³
7. It is not the role of the coroner to lay or apportion blame, but to establish the facts.⁴ It is not the coroner's role to determine criminal or civil liability arising from the death under investigation, or to determine disciplinary matters.
8. The expression "*cause of death*" refers to the medical cause of death, incorporating where possible, the mode or mechanism of death.

¹ Section 4 *Coroners Act 2008*

² Section 89(4) *Coroners Act 2008*

³ See Preamble and s 67, *Coroners Act 2008*

⁴ *Keown v Khan* (1999) 1 VR 69

9. For coronial purposes, the phrase “*circumstances in which death occurred*,” refers to the context or background and surrounding circumstances of the death. Rather than being a consideration of all circumstances which might form part of a narrative culminating in the death, it is confined to those circumstances which are sufficiently proximate and causally relevant to the death.
10. The broader purpose of coronial investigations is to contribute to a reduction in the number of preventable deaths, both through the observations made in the investigation findings and by the making of recommendations by coroners. This is generally referred to as the Court’s “*prevention*” role.
11. Coroners are also empowered:
 - (a) to report to the Attorney-General on a death;
 - (b) to comment on any matter connected with the death they have investigated, including matters of public health or safety and the administration of justice; and
 - (c) to make recommendations to any Minister or public statutory authority on any matter connected with the death, including public health or safety or the administration of justice. These powers are the vehicles by which the prevention role may be advanced.
12. All coronial findings must be made based on proof of relevant facts on the balance of probabilities. In determining these matters, I am guided by the principles enunciated in *Briginshaw v Briginshaw*.⁵ The effect of this and similar authorities is that coroners should not make adverse findings against, or comments about individuals, unless the evidence provides a comfortable level of satisfaction that they caused or contributed to the death.
13. In conducting this investigation, I have made a thorough forensic examination of the evidence including reading and considering the witness statements and other documents in the coronial brief.

MATTERS IN RELATION TO WHICH A FINDING MUST, IF POSSIBLE, BE MADE

Identity of the Deceased, pursuant to section 67(1)(a) of the Act

14. On 6 April 2013, Teresa Fiawoo identified Dr Fiawoo’s body to be that of her daughter, Marie-Faith Chantal Aba Fiawoo, born 13 November 1979.

⁵ (1938) 60 CLR 336

15. Identity is not in dispute in this matter and requires no further investigation.

Medical cause of death, pursuant to section 67(1)(b) of the Act

16. On 31 March 2013, Dr Noel Woodford, a Forensic Pathologist practising at the Victorian Institute of Forensic Medicine, conducted an examination of Dr Fiawoo's body. Dr Woodford provided a written report, dated 6 May 2013, which concluded that Dr Fiawoo died from head injuries.
17. Dr Woodford commented that the external examination of Dr Fiawoo's body showed findings consistent with the history and that examination of post mortem CT scan showed multiple fractures, including skull, rib and pelvic, and internal injuries.
18. Toxicological analysis of post mortem specimens taken from Dr Fiawoo were negative for alcohol and common drugs or poisons.
19. I accept the cause of death proposed by Dr Woodford.

Circumstances in which the death occurred, pursuant to section 67(1)(c) of the Act

20. At approximately 2.58pm on 28 March 2013, Easter Thursday, Dr Fiawoo was walking along Swanston Street, outside 501 Swanston Street, Carlton. At the same time, a strong gust of wind brought down a brick wall onto the footpath (**the wall collapse**) where Dr Fiawoo was walking. Three pedestrians, including Dr Fiawoo and siblings Alexander and Bridget Jones (**Mr and Ms Jones**), were struck by the falling wall and trapped underneath the rubble of the collapsed wall.
21. A number of witnesses, passers-by and persons in surrounding offices attended the scene of the wall collapse to render assistance, picking up bricks and removing the rubble from where they saw the pedestrians to be trapped.
22. Ms Jones was first to be located under the rubble, followed shortly thereafter by Mr Jones.
23. At approximately 3.02pm, four ambulance paramedics arrived at the scene of the wall collapse. They commenced to assess Mr and Ms Jones. Mr Jones was assessed as not showing any signs of life and having injuries incompatible with life and was declared deceased at the scene of the wall collapse. Ms Jones, who was severely injured but alive, was treated at the scene before being transported to the Royal Melbourne Hospital.
24. At about the same time, Dr Fiawoo was located a short distance away.

25. At approximately 3.07pm, Dr Fiawoo was assessed as not showing any signs of life and having injuries incompatible with life.
26. Dr Fiawoo was pronounced deceased at the scene of the wall collapse.

COMMENTS PURSUANT TO SECTION 67(3) OF THE ACT

27. Immediately following the wall collapse, WorkSafe Victoria (**WorkSafe**) commenced an investigation into the event. The WorkSafe investigation ran concurrently with the coronial investigation. WorkSafe provided their investigation brief to the Court at the conclusion of their investigation.
28. The Worksafe investigation into the cause of the wall collapse identified the following matters:
- (a) at the time of the wall collapse, the site was owned by Grocon (Victoria Street) Developments Pty. Ltd. (**Grocon (Victoria Street)**), a subsidiary of Grocon Pty. Ltd. (**Grocon**) (although it was sold to Contexx Pty. Ltd. when negotiations concluded on 28 March 2013);
 - (b) in May 2011, while the site was predominantly vacant, employees of Grocon (Victoria Street) communicated with Aussie Signs Pty. Ltd. (**Aussie Signs**), in relation to signage to be affixed with timber hoarding (**hoarding**) to the wall along Swanston Street;
 - (c) on 5 October 2011, Doug Capon (**Mr Capon**), an Aussie Signs employee sent a quote to Nellie O'Keefe (**Ms O'Keefe**) at Grocon (Victoria Street) for installation of ply onto the wall, hoarding, painting and sign-writing;
 - (d) the hoarding and signage was to be approximately 30 metres long and 3.0 metres high. Due to the varying height of the wall, the height difference between the top of the wall and the top of the hoarding varied from 300 to 700 millimetres at various points along the structure;
 - (e) there was no discussion of or reference to building permits by either party in the correspondence;
 - (f) in October 2011, Mr Capon subcontracted the sign installation to Thomas Westmoreland, whose sign installation business was JT Hire Pty. Ltd. (**JT Hire**). Thomas Westmoreland then subcontracted the job to his brother, Jonathon

Westmoreland (**Mr Westmoreland**), whose business was trading as Paramount Signs Pty. Ltd.;

- (g) on 11 October 2011, Paramount Signs Pty. Ltd. commenced constructing the hoarding and affixing it to the wall;
- (h) on 12 October 2011, a WorkSafe inspector attended the site following a public complaint regarding workers installing the hoarding in an unsafe manner (relating to workers standing atop 'A frame' ladders) and without a pedestrian traffic management plan on the footpath. The WorkSafe inspector identified certain workplace safety issues and deficiencies, which were rectified;
- (i) the hoarding construction was completed on 14 October 2011; and
- (j) the wall collapsed shortly before 3.00pm on 28 March 2013, when average wind speed in inner Melbourne was over 80km/hr, reaching approximately 100km/hr at the time the wall collapsed.

Criminal proceedings

29. On 28 April 2014, WorkSafe filed charges against the following corporate entities:

- (a) Grocon (ACN 006 772 238) for breaches of s.23 and s.26 of the *Occupational Health and Safety Act 2004 (OHS Act)*;
- (b) Grocon Builders (Vic) Pty. Ltd. (ACN 133 299 162) for breaches of s.23 and s.26 of the OHS Act;
- (c) Grocon (Victoria Street) (ACN 120 542 707) for breaches of s.26 of the OHS Act; and
- (d) Aussie Signs (ACN 006 631 894) for breaches of s.23 and s.26 of the OHS Act.

30. WorkSafe ultimately withdrew the charges against Grocon and Grocon Builders (Vic) Pty. Ltd., advising the Magistrates' Court that it did not believe it could prove that Grocon (Victoria Street)'s actions caused the wall collapse. WorkSafe revised the charge against Grocon (Victoria Street) to allege a "*non-causal breach*" of s.26 of the OHS Act.

31. The revised charge against Grocon (Victoria Street) alleged that:

- (a) Aussie Signs did not, prior to the attachment of hoarding to the wall, take necessary steps to ensure that it was safe to attach the hoarding to the wall;
- (b) Grocon (Victoria Street) did not check whether Aussie Signs had taken such steps, nor did it require Aussie Signs to do so; and
- (c) the attachment of the hoarding to the wall increased the risk that the wall would collapse.

32. On Friday, 21 November 2014, having pleaded guilty to one count of a breach of s.26 of the OHS Act, Grocon (Victoria Street) was convicted and fined \$250,000.

33. Aussie Signs was committed to stand trial in the County Court on 9 November 2015. On 4 February 2016, Aussie Signs, having pleaded guilty to breaching s.23 of the OHS Act, was convicted and fined \$250,000.

34. On 29 April 2014, the Victorian Building Authority (VBA) filed charges against Mr Westmoreland for carrying out building work, namely the construction of a timber structure (the hoarding) affixed to a brick wall, when no building permit had been issued or was in force in respect of the work under section 16(1) of the *Building Act 1993*.

35. Grocon (Victoria Street) and Aussie Signs were not charged with offences under the *Building Act 1993* as, at the relevant time, it was not an offence for an owner of land to permit building work to be carried out on the land without a building permit. On 4 July 2016, the *Building Act 1993* was amended to include s.16(3), which states:

- (3) *An owner of land must not permit building work to be carried out on that land unless—*
 - (a) *a building permit in relation to the work has been issued and is in force under this Act; and*
 - (b) *the work is carried out in accordance with this Act, the building regulations and the building permit issued in relation to that work.*

Penalty: 500 penalty units, in the case of a natural person;
 2500 penalty units, in the case of a body corporate.

36. The decision by Magistrate Gwynn in the matter of *VBA v Jonathon Clyde Westmoreland* noted:

“Pursuant to section 17 of the relevant Act, it would appear that it was for Grocon Victoria Square Developments Pty. Ltd. or someone authorised on its behalf to have made the application for a relevant building permit. Section 16 prohibits work being carried out

without a building permit having been issued or being in force. It does not concern itself with whose responsibility it is to obtain a permit...

Section 17 confirms that persons such as Mr Westmoreland are not those that can obtain the permit to carry out building works. He is not the one who could hold a building permit. The obligation on him was to not carry out building work unless the building permit in respect of the work had been issued and was in force.”

37. Mr Westmoreland contested the charge, arguing that the work was a temporary structure for display purposes. However, Magistrate Gwynn was satisfied that:

- (a) the hoarding was a ‘building’ under the *Building Act 1993*;⁶
- (b) the structure was a sign; and
- (c) the sign exceeded the measurements for a temporary structure under the Building Regulations 2006.

38. On 22 May 2015, Mr Westmoreland was found guilty of breaching s.16 of the *Building Act 1993* and was fined \$7,500 with costs agreed in the sum of \$26,375.

Prevention opportunities

39. On 23 July 2015, the Court sought a statement from each of the VBA, WorkSafe, Grocon, Melbourne City Council and later (following the conclusion of criminal proceedings) from Mr Westmoreland and Aussie Signs. Each party was requested to outline:

“...any regulatory changes or changes to policy and processes made by your organisation or any recommendations made following the deaths and in light of the various prosecutions and investigations, in order to prevent similar deaths from occurring in the future.”

40. In its response dated 22 September 2015, the VBA confirmed that, in addition to the prosecution of Mr Westmoreland, it had undertaken the following actions:

- (a) on 18 April 2013, issued a media release reminding building owners of their responsibility to maintain the safety of buildings and structures on their premises and explaining the manner in which buildings and structures may be professionally assessed by registered building practitioners;
- (b) on 4 April 2013, written to all registered Victorian building practitioners (approximately 20,683), reminding them of their responsibilities and asking them to assess all structures

⁶ Section 3, *Building Act 1993*

- on sites in which they are involved and to take appropriate action to ensure that all buildings are safe and secure;
- (c) on 4 April 2013, written to all Municipal and Regional Councils in Victoria, reminding them of their responsibilities in relation to the enforcement of the Building Regulations in their municipality; and
 - (d) on 24 May 2013, written to the Real Estate Institute of Victoria in relation to the requirement for building permits for signs, including the exemption requirements.
41. The VBA also noted that it had numerous Practice Notes that were in effect prior to and at the time of the wall collapse. Those Practice Notes were relevant to the wall collapse, readily available on its website and provided that enquiries could be made via the contact details of the relevant technical officer in the VBA's Technical and Regulation Unit, which were provided on the website.
42. In its response dated 9 February 2016, WorkSafe's manager, Construction Program, Dermot Moody, provided a statement, which identified:
- (a) WorkSafe had not, to his knowledge, made any regulatory changes as it considered that the existing provisions of the OHS Act and Regulations sufficiently articulate the duties owed to employees and members of the public;
 - (b) the failure of masonry structures is an issue that WorkSafe has continually sought to reinforce in guidance material, articles and education campaigns with builders and others in the construction industry over the years;
 - (c) WorkSafe participates in approximately 20 construction forums every year and the failure of masonry structures is included and discussed as one of the major causes of fatalities in at least half of those presentations;
 - (d) policy documents relating to the stability of masonry structures, were (and continued to be) available on the WorkSafe website; and
 - (e) following the deaths of Mr and Ms Jones and Dr Fiawoo:
 - (i) in May 2013, WorkSafe developed and implemented a '*Team Talk-Kit*' regarding unstable masonry walls. This is a specific tool for WorkSafe inspectors to use to

intervene on all worksites where they consider that there is the potential for unstable masonry structures to exist; and

- (ii) in July 2014, WorkSafe published a Safety Alert entitled '*Danger of Freestanding Masonry Walls*'.

43. On 18 September 2015, the Court received a response from Aussie Signs, which stated:

- (a) Grocon (Victoria Street) engaged Aussie Signs to construct advertising hoarding and attach it to the wall and this engagement was specific only to the installation of the hoarding;
- (b) Aussie Signs was not requested by Grocon (Victoria Street) to obtain a structural assessment of the wall, nor was Aussie Signs authorised in writing by Grocon (Victoria Street) to engage a building surveyor and/or obtain a building permit for the works;
- (c) Aussie Signs subcontracted the job to JT Hire, to build and construct the hoarding to the wall, as Aussie Signs did not have the relevant expertise. JT Hire, in turn, engaged Mr Westmoreland (trading as 'Paramount Signs');
- (d) on 10 October 2011, Aussie Signs, in accordance with the directions of Grocon (Victoria Street), provided a Safe Work Method Statement (SWMS) to Grocon (Victoria Street) for their review prior to commencing work on the hoarding. The SWMS did not include an assessment of pre-existing structures on Grocon (Victoria Street)'s site;
- (e) in the 18 months after the hoarding was installed, Grocon (Victoria Street) carried out various works at the construction site. Archaeological excavations, soil contamination remediation and site excavations to clear rubbish and remove mounds of earth near the wall continued until the week before the wall collapse;
- (f) prior to the wall collapse, but following its installation in 2011, Aussie Signs had already commenced moving its business away from the installation of signs and has not engaged in the installation of signs nor subcontracted the installation of signage to another business since the wall collapse;
- (g) Aussie Signs has no intention of undertaking future engagements for sign installation and, therefore, it has been unnecessary to implement any changes to internal policy or processes to address any of the issues arising from the wall collapse;

- (h) experts relied upon in the criminal prosecutions against Grocon (Victoria Street) and Aussie Signs stated that it is reasonably open to conclude that the wall would have collapsed *without* the hoarding being attached;
- (i) it is imperative that structural and risk assessments of pre-existing structures are conducted as early as possible by the *owners* of land and buildings, to prevent future tragedies and that responsibility ought not to be transferred;
- (j) in circumstances where a building permit or structural assessment has not been obtained, a sign writing company is not in a position to compel the registered proprietor to obtain a building permit or structural assessment;
- (k) sign companies do not generally hold the necessary expertise in determining that a pre-existing structure is not sound (and therefore that a structural assessment is required);
- (l) Aussie Signs is of the view that the responsibility of maintaining a site and assessing structures on a site falls to the site owner and this responsibility should not be eroded; and
- (m) Aussie Signs recommends the implementation of a new Code of Practice for the sign manufacturing and installation industry, which specifically addresses and clarifies the respective obligations of sign writers and occupiers of development sites.

44. On 7 March 2016, the Grocon entities (Grocon (Victoria Street), Grocon Builders (Vic) Pty. Ltd. and Grocon) responded to the Court, as follows:

- (a) setting out a summary of the key matters, including the history of the site, construction of the wall and various work on the site in the period 2006-2013, including inspections, archaeological investigations, a dilapidation survey, assessments and advertising signage installation;
- (b) stating that the systems which normally applied when Grocon was engaged in undertaking construction works were not implemented at this site because, at the time, there was no construction work being undertaken. The marketing and other arrangements relating to the site at this pre-construction stage were being dealt with by the Grocon (Victoria Street) development team;
- (c) in its plea to a breach of safety laws, Grocon recognised that it should have done more to ensure proper management steps were taken by Aussie Signs;

- (d) the Grocon entities and the broader Grocon Group are committed to safety. Following the wall collapse, Grocon has, at a Group level, identified areas in which it can improve processes to ensure safety matters are properly managed on vacant development sites;
- (e) in order to ensure this type of incident can never occur again, Grocon has taken a number of steps including:
 - (i) reviewing and amending procedures, including expressly confirming the extension of ‘contractor oversight’ procedures (i.e. the monitoring of subcontractors engaged by Grocon to perform work, including temporary work and non-construction activities on development sites) to Grocon’s development companies;
 - (ii) providing additional training and refresher training to personnel including those with management responsibilities within Grocon development companies; and
 - (iii) engaging an independent engineer to inspect existing temporary structures on all Grocon sites, whether they be construction or development sites.

45. On 26 July 2016, the Court wrote to WorkSafe, requesting that they respond to certain matters raised by the Jones and Fiawoo families’ legal representative in their letter dated 5 May 2016, particularly that the family considered that WorkSafe’s site visit on 12 October 2011 was:

“a golden opportunity (which) was missed by the work safety regulator to check, as a minimum, whether:

- (a) all risks associated with the construction of the hoarding had been assessed and controlled as required by sections 20, 21 and 23 of the OHS Act;*
- (b) risks associated with the construction work had been eliminated or reduced as mandated by regulation 5.1.7 of the OHS Regulations 2007; and*
- (c) a building permit had been issued whilst the hoarding was in the process of being erected.”*

46. On 29 June 2017, WorkSafe provided the statement of Barry Dunn (**Mr Dunn**), Construction Safety and Prevention Manager, to the Court. Mr Dunn stated that:

- (a) while following up on a public complaint alleging that there was an uncontrolled falls risk and no pedestrian traffic management in place, he made enquiries and observed the work and concluded that the work was being undertaken in a safe manner;

- (b) he observed that a non-compliant electrical generator was in use, which was then voluntarily removed from service; and
- (c) he considered that his approach while at the work site was consistent with the approach taken by WorkSafe's inspectors when responding to complaints, in that:
 - (i) *"the priority of inspectors in responding to complaints, is first to determine whether these complaints are valid after which, subject to competing service demands elsewhere, an inspector will typically seek to take advantage of their presence at the workplace to conduct a general inspection;*
 - (ii) *when undertaking a general inspection, more apparent/common occupational hazards or 'priority areas' will generally be subject of an inspector's attention;*
 - (iii) *inspectors do not typically make enquiries into matters such as compliance with local council bylaws, planning, or building permits which are granted and regulated by other organisations such as the Victorian Building Authority, Municipal Councils or independent building surveyors; and*
 - (iv) *inspectors do on occasion seek engineering advice and/or verification regarding structures when their integrity or stability appears compromised. However, during my attendance at the worksite I did not observe any conditions that caused me to consider this was justified."*

47. I note that:

- (a) WorkSafe's primary roles and responsibilities are to ensure workplace safety and to enforce Victoria's occupational health and safety laws;
- (b) the WorkSafe inspector who attended the site on 12 October 2011 regarding workplace safety concerns raised by a member of the public (which were unrelated to the structural stability of wall) was not alerted to any obvious structural stability concerns;
- (c) the onus to ensure structural stability of the wall for attachment of hoarding rested with the owner of the site, which in this case was Grocon;
- (d) WorkSafe is not the appropriate regulatory body to police planning or building permits;
- (e) in 2016, the *Building Act 1993* was amended and ss.16(3) and (4) imposed duties on owners of land, building practitioners and architects to ensure that a building permit is in force and that building work is carried out in accordance with the *Building Act 1993*, Building Regulations 2006 and the building permit;

- (f) under s.16(5), s.16(3) does not apply if an owner of land engages a building practitioner or architect to carry out the work, reflecting that building practitioners and architects are more likely to be familiar with regulatory requirements; and
- (g) according to Dennis Hogan, Director of Regulatory Development, Victorian Building Commission, none of the exemptions under the Building Regulations 2006 applied to the timber structure so as to exempt it from the requirement for a permit and *“if a building permit application had been sought for the work, an engineer would have needed to be engaged to prepare drawings and computations, which would have been able to confirm whether the proposed building work would have been structurally sound and, in particular, whether the timber structure would have been able to be adequately supported by the existing masonry wall and timber paling fence.”*

As such, I consider WorkSafe’s involvement in relation to the construction of the hoarding was adequate and appropriate.

48. I consider that the prevention matters arising from the circumstances of Dr Fiawoo’s death have been adequately addressed by the introduction of legislative amendments to s.16 of the *Building Act 1993* and the various regulatory and policy changes of the relevant entities in this matter.

FINDINGS AND CONCLUSION

49. Having investigated the death, without holding an inquest, I make the following findings pursuant to section 67(1) of the Act:

- (a) the identity of the deceased was Marie-Faith Chantal Abia Fiawoo, born 13 November 1979;
- (b) the death occurred on 28 March 2013, at 501 Swanston Street, Carlton, Victoria, from head injuries; and
- (c) the death occurred in the circumstances described above.

50. I convey my sincerest sympathy to Dr Fiawoo’s family and friends at her tragic and untimely death in 2013.

51. Pursuant to section 73(1A) of the Act, I order that this Finding be published on the internet.

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

- (a) Elie and Teresa Fiawoo, Senior next of kin;
- (b) Detective Sergeant Peter Rains, Victoria Police, Coroner's Investigator;
- (c) Department of Transport, Planning and Local Infrastructure;
- (d) WorkSafe Victoria;
- (e) Melbourne City Council;
- (f) Grocon Pty Ltd;
- (g) Victorian Building Authority;
- (h) Jonathon Westmoreland; and
- (i) Aussie Signs.

Signature:



JUDGE SARA HINCHEY
STATE CORONER

Date: 4 June 2018

