

IN THE CORONERS COURT  
OF VICTORIA  
AT MELBOURNE

Court Reference: COR 2005 365

**FINDING INTO DEATH WITH INQUEST**

*Form 37 Rule 60(1)*

*Section 67 of the Coroners Act 2008*

**Inquest into the Death of:** Niel Fraser Buckton

**Delivered On:** 20 December 2013

**Delivered At:** Level 11, 222 Exhibition Street  
Melbourne 3000

**Hearing Dates:** 19, 20, 21, 23 October 2009; and  
17, 18, 19 December 2012.

**Findings of:** JANE HENDTLASS, CORONER

**Representation:** MR T. WRAIGHT appeared on behalf of South East  
Water.  
MR G. LIVERMORE appeared on behalf of VWA,  
Matthew De Graves, Alex Simovski.  
MR W.R. RAY Q.C. with MR R. TAYLOR appeared on  
behalf of Reeds Consulting.  
MR STAFFORD appeared on behalf of Worksafe.

**Police Coronial Support Unit** Leading Senior Constable King Taylor

I, JANE HENDTLASS, Coroner having investigated the death of NIEL FRASER BUCKTON

AND having held an inquest in relation to this death on 19, 20, 21, 23 October 2009 and 17, 18 and 19 December 2012

at MELBOURNE

find that the identity of the deceased was NIEL FRASER BUCKTON

born on 27 February 1964

and the death occurred between 25 and 31 January 2005

in Blue Hills Estate, Pakenham, Victoria

from:

1 (a) Unascertained

**in the following circumstances:**

## **BACKGROUND**

1. Niel Buckton was 40 years old when he died. He lived with two of his brothers, Paul and Kevin Buckton, at 39 Golfwood Close in Dingley Village.
2. Mr Buckton was close to his family, including his father, Gordon Buckton. They called him 'Tiger'. Mr Buckton's mother had died suddenly in July 1984.
3. Mr Buckton graduated as an engineer in 1985. He was a qualified construction, design, geotechnical and civil engineer with eight years' experience in design construction and supervision of contractors followed by nine years of geo-technical investigations for buildings, dams, distressed structures, slope stability studies and environmental investigations.
4. Between 1985 and 1994, Mr Buckton had also lived at the Dingley address. However, in January 1994, he moved into a different house with Leanne Wiebenga. Mr Buckton married Ms Wiebenga on 22 January 1999.
5. In August or September 2000, Mr Buckton and Ms Wiebenga separated. Ms Wiebenga says that the relationship became unsustainable when Mr Buckton became aggressive after finding a potato chip her daughter had left on the couch.
6. On 3 July 2004, Mr Buckton met Rhonda Anderson and they commenced a relationship. Ms Anderson described herself as a manager at Telstra, home manager, and school teacher.

7. Mr Buckton and Ms Anderson continued to live separately but the relationship had become serious. For example:
- Mr Buckton had discussed rings with his step-mother who had worked in the jewellery business;
  - At Christmas in 2004, in the context of talk about his new relationship with Ms Anderson, Mr Buckton spoke to his father about his plans to buy a house; and
  - On 23 January 2005, Mr Buckton asked Ms Anderson to marry him. They were planning to announce their engagement on 14 February 2005.
8. Ms Anderson last spoke to Mr Buckton on the morning of 25 January 2005. They had arranged to meet at their favourite restaurant the following morning which was Australia Day.
9. Mr Buckton's recorded medical history included insomnia, anxiety, depression including suicidal ideation, and impotence. Since 1980, Mr Buckton had usually consulted only one general practitioner, Dr Richard Wrennall.<sup>1,2</sup>
10. Ms Wiebenga says Mr Buckton had told her that he had also been diagnosed with obsessive compulsive disorder and treated for this condition. For example, she noted that he would always check that the Melways was in the correct place in the car whenever she returned home and would spend hours in the evenings rewriting his forms because he was worried that they were not perfect.
11. However, there is no record that Mr Buckton was ever clinically diagnosed with obsessive compulsive disorder. Doctor Wrennall and Ms Cowan agreed that they saw no evidence that Mr Buckton suffered from this.
12. Further, Ms Anderson indicates that she did not see any evidence of obsessive compulsive disorder during the seven months that she knew him.
- "No, not at all, if anything he was a very tidy person but no, not at all."*
13. On 13 March 2001, Dr Wrennall referred Mr Buckton to psychologist Jillian Cowan for counselling in relation to his depression.

---

<sup>1</sup> On occasion, Mr Buckton also consulted Dr Jeffrey Shapiro. Dr Shapiro was another General Practitioner at the same clinic as Dr Wrennall.

<sup>2</sup> Mr Gordon Buckton had also known Dr Wrennall since 1985. He said that Dr Wrennall used to be his doctor.

14. Until about 1995, Mr Buckton worked as an engineer for the Moorabbin and Mornington Shire Councils.
15. After 1995, Mr Buckton worked for Civil Test. He worked long hours which he had never done for the Shire and was not happy working at Civil Test. Mr Buckton told Ms Wiebenga that he felt the position was not what he had expected and he would also regularly reflect on the “good old days” at the Shire of Mornington.
16. In 1999, Mr Buckton left Civil Test. He opened a soil testing business with his brother, Mark Buckton. This business was called Buckton Brothers.
17. Ms Wiebenga suggested to the Court that Mr Buckton wanted to start small but Mark Buckton had a different and bigger business plan that the Buckton Brothers ultimately followed. They built a drill rig for the business. In Ms Wiebenga’s opinion, this difference between the brothers created extra stress for Mr Buckton.
18. Buckton Brothers was not successful and problems arose with civil litigation for the design of the drill rig. Sometime around the beginning of 2000, the Buckton Brothers ceased business. Ms Wiebenga says that Mr Buckton told her he felt like a failure because of Buckton Brothers did not succeed.
19. In April 2000, Mr Buckton started work as an engineer at Chadwick Group Holding Pty Ltd (‘Chadwicks’). He was recruited by the director, Timothy Chadwick, who had worked with Mr Buckton at Civil Test.
20. As a result of his mental ill-health, Mr Buckton took an extended period of leave from work at Chadwick’s between February 2001 and January 2002.
21. In his capacity as an employee of Chadwick’s, on 28 February and 3 March 2004, Mr Buckton undertook an Occupational Health and Safety Induction Training General Course for Construction Work.<sup>3</sup>
22. On 24 November 2004, Mr Buckton resigned from Chadwicks to take up a position he was offered at Reeds Consultancy P/L (‘Reeds’). Richard Brewster was Mr Buckton’s direct supervisor at Reeds.
23. On 25 January 2005, Mr Brewster sent Mr Buckton to inspect rectification of faults in the sewage works associated with the Blue Hills Estate in Pakenham. Mr Brewster supplied Mr

---

<sup>3</sup> See Chadwick’s work file.

Buckton with plans of the relevant section of the Blue Hills Estate, a screw driver, a Gatic opener, which is a device required to open access chambers to the sewers, and a camera to take photos of the rectified works.

24. At about 2:30pm on 25 January 2005, Mr Buckton left Reeds premises in a Reeds car. Mr Brewster told him he could take the car home when he finished his work.
25. No one is known to have seen Mr Buckton alive after he left Reeds at about 2:30pm on 25 January 2005.
26. At about 4:00pm on 31 January 2005, investigators found Mr Buckton unresponsive in the Henry Road Main sewer 459 metres east of the open access chamber known as HRM27 and directly under the next access chamber in the sewer after the one in which he entered (known as HRM24). He had been dead for some time.
27. The water flow in the sewer was insufficient to move a person of Mr Buckton's size along the sewer.<sup>4</sup> Therefore, he moved himself 459 metres along the sewer before he died. Accordingly, his unconsciousness and death was not rapid or consistent with asphyxiation.
28. When Mr Buckton was retrieved, his watch still showed the correct time. His jeans pocket had a set of car keys and a handkerchief. He also had a wallet and loose change in his pockets and a piece of water logged paper that looked like some sort of plans. He was clean and shaven still wearing work boots.
29. The forensic pathologist who performed the autopsy was unable to ascertain the cause of death. There were no skeletal injuries consistent with a fall from a height. Any soft tissue injuries were disguised by decomposition.<sup>5</sup> There was no evidence of significant exposure to carbon monoxide.
30. Asphyxiation from sudden exposure to an irrespirable atmosphere can occur with no significant findings at autopsy. If this had occurred, unconsciousness and death would have occurred very rapidly.
31. Alex Simovski, Senior Occupational Hygienist from WorkSafe Victoria, found the oxygen level was 21% (normal) in the HRM27 access chamber to the Henry Road Main sewer, hydrogen sulphide was zero and CO was 1-2ppm. Overnight monitoring indicated that the

---

<sup>4</sup> Evidence of Mr Stodal, Transcript 19 December 2012, page 544.

<sup>5</sup> Toxicological analysis revealed the presence of blood alcohol at a concentration of 0.07 gram/100ml. However, this may have been due to decomposition.

hydrogen sulphide reached 10ppm, oxygen went down to 18.1% and CO reached 2ppm. These levels would not be sufficient to cause death.

32. However, I note the opinion of David Stodal, an engineer from Fulton Hogan (previously FRH Group) that flows in the Henry Road Main sewer in January 2005 were low and that the site is close to the Pakenham Treatment Plan. As such, even though the atmospheric conditions would have generally been suitable for entry, it is possible for gas to accumulate on some occasions.<sup>6</sup>
33. Therefore, although possible, it is unlikely that Mr Buckton died from asphyxiation associated with gas accumulation in the Henry Road Main sewer after he had moved 459 metres east from the access chamber through which he entered.
34. Accordingly, I am unable to determine the cause of Mr Buckton's death.
35. In the circumstances in which he was found and in the absence of injuries consistent with fall from a height, this coronial investigation has also assumed that Niel Buckton intentionally entered the HRM27 access chamber to the Henry Road Main sewer on 25 January 2005.
36. Further, in the absence of an alternative cause of death, this coronial investigation has assumed that Niel Buckton's death was causally related to his entry into the HRM27 access chamber to the Henry Road Main sewer on 25 January 2005.
37. Therefore, this coronial investigation has focussed on the reasons that Mr Buckton intentionally entered the HRM27 access chamber to the Henry Road Main sewer on 25 January 2005 and the ways in which his entry could have been prevented.
38. This coronial investigation considered the findings of other investigations into Mr Buckton's death including investigations by Worksafe and Crawford & Co.
39. In particular, Mathew de Graves from Worksafe investigated the incident.
40. On 31 January 2005, Worksafe issued a Prohibition Notice prohibiting Reeds employees removing drainage manhole covers and inspecting drainage shafts where no means to prevent a fall exists.
41. The WorkSafe brief was reviewed by James Arnott. No prosecution proceeded because Mr Arnott formed the belief that Mr Buckton committed suicide

---

<sup>6</sup> Evidence of Mr Stodal, Transcript 19 December 2012, pp. 530-532.

42. Further, Derham Daymond from Crawford & Co investigated the matter on behalf of Reeds' insurers. Mr Daymond formed the view that Mr Buckton entered the sewer intentionally.<sup>7</sup>
43. Reeds has also actively encouraged me to find that Mr Buckton entered the HRM27 access chamber to the Henry Road Main sewer on 25 January 2005 with the intention to commit suicide.
44. On the other hand, Mr Buckton's family and medical advisers have argued that Mr Buckton was not in the frame of mind to commit suicide on 25 January 2005.
45. Therefore, I have systematically collected and assessed the evidence in relation to the following Mr Buckton's circumstances on 25 January 2005:
- Control of entry into the HRM27 access chamber for the Henry Road Main sewer;
  - Entry of the HRM27 access chamber for the Henry Road Main sewer; and
  - Intention to die.
46. I have then commented on this evidence and made recommendations intended to prevent further deaths occurring for the reasons that Mr Buckton died.

**Control of entry into the HRM27 access chamber for the Henry Road Main sewer**

47. Blue Hills residential estate ("Blue Hills Estate") is Stage 2 of a new residential sub-division in Pakenham which is in the Shire of Cardinia. It is located on the north side of the Monash Freeway. The eastern boundary of Blue Hills Estate adjoins the McGregor Road off ramp.
48. South East Water Corporation ("South East Water") is a statutory body<sup>8</sup> which provides water and sewerage services to Pakenham and other areas of Victoria south east of Melbourne.
49. Under these provisions, South East Water owns and is responsible for limiting access to its sewer facilities.
50. Accordingly, the Cardinia Shire Council certified the Plan of Subdivision including sewerage easements for the Blue Hills Estate in favour of South East Water.<sup>9</sup>

---

<sup>7</sup> There is no evidence before me to indicate whether or not Reeds' insurance contract excluded liability for suicide.

<sup>8</sup> Including ss. 124(2), 130(3), 136, 138, 1221B & Part 9 *Water Act* 1989.

<sup>9</sup> S. 12(1) *Subdivision Act* 1988.

51. Stephen Muir was the Manager of Sewerage Operations at South East Water. Mr Muir says he had responsibility for the day to day and long term operational and strategic aspects of the sewerage operations of South East Water.
52. The below ground sewer system for this area of Pakenham is serviced by the Henry Road Main sewer which feeds into the Pakenham Treatment Plant.
53. The access chamber to the Henry Road Main sewer was serviced by a number of access chambers or sewer pits. The plans of the Blue Hills Estate indicated that there was an HRM27 access chamber to the Henry Road Main sewer in then undeveloped land close to Lobelia Street in Pakenham.
54. I note that, even with these plans, my police assistant and I were unable to find the HRM27 access chamber to the Henry Road Main sewer when we went to assess the scene in preparation for the Inquest.
55. On the surface, the cover of the HRM27 access chamber to the Henry Road Main was 1.2 metres in diameter. It could not be opened without a Gatic opener. It was also secured using plastic lugs which could be removed using a screw driver.
56. Sewer covers are the property of South East Water and may not be removed without their authority. There was no warning notice on the cover and no grid under the covers of the access chambers to South East Water sewers.
57. In January 2005, only a small number of dwellings had been built and occupied in Stage 2 of the Blue Hills Estate. Therefore, there was less than 10cm flow in the Henry Road Main sewer.
58. For this reason, Mr Brewster believed that the sewer was not live and therefore there was no need to submit an application to South East Water to access the access chamber for audit purposes.<sup>10</sup>
59. However, South East Water contended that because there was some minimal flow in the Henry Road Main sewer it was therefore, by definition, live.<sup>11</sup> Mr Collier confirmed and I accept this opinion.<sup>12</sup>

---

<sup>10</sup> Evidence of Mr Brewster, Transcript 21 October 2009.

<sup>11</sup> See discussion in Transcript, 19 December pp. 516-517.

<sup>12</sup> Evidence of Mr Collier, Transcript 19 December 2012, p.490.



60. Permission to lift the cover of an access chamber cover greater than 300mm diameter and/or enter a live sewer required a Form Q to be submitted to South East Water for authorisation two days prior to access.
61. Mr Collier of South East Water confirmed:
- “Notification was, and still is, required for all manhole openings.”*
62. Further, the procedure for sewer access also required the person to be approved and listed in South East Water’s list of approved contractors for live sewer work.
63. In 2005, the South East Water procedure for lifting an access chamber cover on a live sewer required a minimum of two persons in attendance. One person was required to be qualified by completing an accredited training course in relation to lifting sewer access covers.
64. Eric Collier was a Senior Engineer-Project Management for Land Development at South East Water from March 2003 to mid-2005.
65. Mr Collier’s job was to ensure that land development construction of sewerage and water supply assets were carried out by construction contractors in accordance with South East Water’s technical and quality standards and to formally accept the works on behalf of South East Water when completed to South East Water standards.
66. In Court, Mr Collier confirmed:
- “...my understanding is that two people would have been required, one with this minimum qualification and one other person.”<sup>13</sup>*
67. South East Water policies also required Mr Buckton to have specific qualifications to open the cover of an access chamber to a sewer:
- “Only qualified personnel are permitted to lift sewer access chamber covers. A qualified person is anyone who has completed an appropriate training course in relation to lifting sewer access chamber covers and possess the current accreditation card.”<sup>14</sup>*
68. There were two options for the qualification relating to:
- Confined Space Entry; or
  - Confines Space Awareness.

---

<sup>13</sup> Evidence of Mr Collier, Transcript 19 December 2012, p.490.

<sup>14</sup> South East Water, “Land Development Policy and Pricing Manual”, Section 6-3.

69. Andrew Laurie used to work for Reeds. He told the Court that, in his experience, these qualifications also needed to be renewed every six or twelve months to keep the certificate current.<sup>15</sup>

70. It was clear from South East Water policies that confined space training was required to lift the lid and not just for entry. Mr Collier stated:

*“With respect to lifting manhole lids for the purpose of inspection without making entry, my understanding at the time of the incident was that lids were not to be lifted unless the relevant personnel had attended the TAFE course.”*

71. In addition, Mr Collier indicated that:

*“there would have been an expectation that anyone that was going to open a manhole would have had either the basic confined space awareness or the full confined space ticket.”<sup>16</sup>*

72. Further, the HRM27 access chamber to the Henry Road Main sewer had an internal diameter of 1.5 metres and was 6.68 metres from the surface to the bottom of the sewer. There was a 4.5 metre metal ladder fixed to the vertical wall of the HRM27 access chamber to the Henry Road Main sewer. The ladder reached to a concrete ledge about 4.5 metres below the surface.

73. South East Water imposed extra requirements for entry into a confined space including the access chamber to a sewer.<sup>17</sup>

74. As well as those required to lift the cover of the access chamber, these extra provisions included:

- Entry to a Confined Space is restricted to Authorised Persons appropriately trained and nominated by the Responsible Manager; and
- Entry only occurs in a workgroup of three people, two on the ground and one entering. Radio or telephone communications must be available and working.

75. Decleah Investments Pty Ltd (“Decleah”) was the developer of the Blue Hills Estate.

---

<sup>15</sup> Evidence of Mr Laurie, 23 October 2010, p. 375.

<sup>16</sup> Evidence of Mr Collier, Transcript 19 December 2012, p.494.

<sup>17</sup> South East Water, South East Water ‘Quality System Work Instruction No: AM1717: Procedure for Processing and Monitoring Entry into Confined Space’.

76. In particular, the Decleah development required integration of the sewer service from each new residence in Stage 2 of the Blue Hills Estate with the the Henry Road Main sewer.
77. Further, a drop pipe was required to drain houses in and around Lobelia Street. This drop pipe entered the HRM27 access chamber to the Henry Road Main sewer about two metres from its base.
78. In 2002, Decleah had engaged Reeds Consulting Pty Ltd (“Reeds”) to act as development consultant including managing of the sewerage system in the Blue Hills Estate.
79. Peter Weeks was the Managing Director at Reeds. Sam Ravida was the Engineering Director. Richard Brewster was an associate engineer.
80. Reeds required all employees and contractors to undertake training and have a certificate of competency from a registered/endorsed training provider.<sup>18</sup>
81. Further, Reeds policies and procedures confirmed a commitment to undertake work requirements in accordance with practice established by South East Water who had adopted City West Water policies.
82. Reeds policies and procedures also included:
- “No personnel shall enter a live sewer maintenance hole under any circumstances.”(their underlining).<sup>19</sup>
83. Reeds Construction Site Work Activity Hazard & Risk Assessment Guide outlined the risks associated with work in confined space and those associated with entry & exit of a confined space included asphyxiation and slipping falling and wet conditions.<sup>20</sup>
84. In a document attached, Reeds explained that they had never had a member of staff enter or have justification to enter or been required to enter a confined space. However, they included it so that staff would understand the risks.
85. On 14 August 2002, Simon Podolsky, Property Development at South East Water, provided Reeds, acting for Decleah, with a Notice of Agreement for the provision of water and

---

<sup>18</sup> “Confined Space Work Procedures” dated 28 October 2004 and based on City West Water Ltd QES Management System, See paragraph 2.8.

<sup>19</sup> Reeds Work Instruction WI/4.9/011 ‘Lifting Sewer Access Covers on Live Sewers’ issued by Mr Brewster and approved by Mr Ravida on 27 November 2001, Reeds Consultancy.

<sup>20</sup> Reeds Construction Site Work Activity Hazard & Risk Assessment Guide: Work in Confined Space and Entry & Exit of Confined Space.

sewerage facilities to Blue Hills Estate-Stage 2, Pakenham in the Municipality of Cardinia Shire Council. This Notice of Agreement also confirmed that about 950m of sewerage mains would need to be installed.

86. On 20 March 2003, Reeds, acting for Decleah, accepted the conditions imposed by South East Water, accepted South East Water as the quality auditor and agreed to pay for rectification work resulting from non-compliance identified by South East Water.
87. Consistent with their policy never to enter a live access chamber, Reeds subcontracted construction of confined space and below ground sewer works on the Blue Hills Estate to FRH Standard Roads ("FRH Group"). FRH was an accredited South East Water Live Sewer Contractor.
88. In particular, FRH Group work included a requirement to connect the drop pipe from properties near Lobelia Street to the HRM27 access chamber to the Henry Road Main sewer.
89. After FRH Group had constructed the new sewer works, the South East Water audit identified 73 non-conforming projects requiring rectification.
90. On 6 May 2004, South East Water issued letters of introduction to Reeds' accredited sewer engineers, Richard Brewster, Frank Mendolia and Andrew Laurie. These letters advised residents that these accredited sewer engineers would be conducting engineering inspections of sewer works on the Blue Hills Estate until 3 November 2004.
91. In evidence, Reeds told the Court that they believed these letters to be, in effect, authorities to open the sewers that terminated on 3 November 2004. Accordingly, Reeds' accredited sewer engineers progressed through the work of directing FRH Group to rectify the 73 non-conforming projects and auditing completed rectifications. Reeds did not seek authorities from South East Water to perform these tasks.
92. On 20 October 2004, Mr Collier emailed Mr Brewster to discuss progress on the verification of these 73 non-conforming projects because there were 32 projects outstanding and they needed to be completed by 3 November 2004. He ended his email:

*"At the present rate of progress, it appears that your company is going to have trouble meeting the deadline. If the deadline is not met, then South East Water will have to re-consider Reed's position on the Supplier's List."*

93. On 20 October 2004, Mr Brewster acknowledged to South East Water that Reeds had drifted from their original action plan.
94. On 15 November 2004, South East Water re-audited Blue Hills Estate Stages 1 & 2 and informed Reeds of four further non-conformance issues.
95. In particular, South East Water identified, *inter alia*, a visible leak of ground water into the HRM27 access chamber to the Henry Road Main sewer at the site where a new incoming sewer down pipe entered the access chamber wall. This leak was reported in the Non Conformance Report 202984 dated 15 November 2004.
96. South East Water would not issue a conformance certificate for Stage 2 of the Blue Hills Estate until all the non-conforming items were corrected.
97. On 19 November 2004, Mr Brewster wrote to Mr Collier confirming that they had assessed all outstanding land development projects. Thirty projects required additional works. Twelve of these did not involve live assets. They expected to complete rectification of "live assets" throughout December and early January.
98. On 25 November 2004, Mr Brewster faxed a copy of these South East Water non-compliance reports to FRH Group to ask that they investigate, rectify and confirm once the works comply with the standards.
99. At 1:14pm on 13 January 2005, FRH Group faxed a notification of Live Sewer Entry to South East Water requesting access for maintenance works in the HRM27 access chamber to the Henry Road Main sewer.
100. At 10:31am on 14 January 2005, South East Water Field Services faxed a notification of Live Sewer Entry to FRH Group confirming two day notification and that one hour prior to access they were required to phone South East Water to obtain an access number. On exit of the confined space the access number was to be cancelled.
101. On 14 January 2005, FRH Group faxed a completed South East Water non-compliance report to Reeds to indicate they had re-inspected the items in the non-compliance report and rectified the defects to meet the sewer technical standards:

*"M/Hs have been exposed and adjustments made where applicable. Timbers have been confirmed under inspection shafts. Sewer has been flushed and M/H's cleaned.*

*It should be noted that at the time of AOW all these items where (sic) satisfactory."*

102. Further, in the context of their dead-lines for auditing the FRH Group rectifications of sewer works at the Blue Hills Estate and the consequences if these audits were not completed in a timely manner, Reeds sought to recruit new staff to assist them to complete their work.
103. On 25 November 2004, Mr Buckton applied for a job at Reeds. His friend, Gary Thomas, also worked for Reeds and encouraged him to make this application. Mr Thomas also promoted Mr Buckton's suitability for the position within Reeds.
104. Mr Buckton's application for the position at Reeds stated that his previous employment included work as a construction engineer, design engineer and geotechnical engineer. His curriculum vitae indicated he was a qualified civil engineer with eight years' experience in design construction and supervision of contractors followed by nine years of geo-technical investigations for buildings, dams, distressed structures, slope stability studies and environmental investigations.
105. On 11 January 2005, Mr Buckton commenced work at Reeds in the position of Construction Engineer (Graduate). He was on six months probationary period. Richard Brewster was Mr Buckton's direct supervisor.
106. Mr Buckton's Contract of Employment stated that he had:  
  
*“the appropriate training to undertake the nominated duties and responsibilities in a satisfactory manner (and had) a minimum of 5 years experience as a practicing engineer”.*
107. Mr Buckton's formal function at Reeds was to control and be responsible for the supervision and construction of all projects subject to the specific directions of the Engineering Director. However, Mr Brewster understood that, in practice, Mr Buckton's job was to inspect sewage pits for new housing estates.
108. Mr Buckton had experience with drainage works and he had undertaken a training course in trenching and tunnelling provided by Footscray College of TAFE.
109. However, Mr Buckton's *curriculum vitae* does not mention sewers or confined spaces. Further there is no evidence that Mr Buckton had undertaken an accredited or any course relating to access to confined spaces or to sewers.
110. There is also no suggestion that Mr Buckton was or ever had been a person approved and listed in South East Water's list of approved contractors for live sewer work.

111. Section-3 of the Management System Manual Issue-11 is the Reeds Consulting Pty Ltd Operating Procedure OP/4.18/001 Procedure for Training authorised by PG Weeks on 23 September 2004.
112. This Procedure for Training allocated responsibility for determining the need for, maintaining records of and providing training resides with the Directors and the Managing Director.<sup>21</sup>
113. Further, the Reeds Procedure for Training stated:

*“New staff to Reeds shall have a training needs analysis (TNA) carried out detailing previous training and skills and identifying the need for further training as soon as practical following commencement.... This detail shall be recorded in the training record.”<sup>22</sup>*

*“Training for specific tasks is usually conducted through “On the Job Training”. This training is invariably undertaken by Directors or their delegated representatives.”<sup>23</sup>*

*“The Managing Director is responsible for the overall training of staff, however, as stated earlier, heavy emphasis is placed on the job training (OJT) and the relevant Directors are responsible for this training.”<sup>24</sup>*

114. Mr Buckton’s induction to Reeds required him to spend time in the office to read Reeds policies and procedures. Mr Brewster told the Court that he was in the office and saw Mr Buckton at his computer reading the company policies. This is consistent with Reed’s normal induction process, which requires employees to have a familiarity with company Occupational Health and Safety and quality policies and procedures.
115. On 19 January 2005, Mr Buckton signed a ‘Form of Acknowledgement by New Employee - Quality System Manual including Policy and Objectives’.
116. Mr Buckton also recorded his work experience at Reeds in a diary. His diary entries included as relevant:

---

<sup>21</sup> Reeds Consulting Pty Ltd Section-3 of the Management System Manual Issue-11: Operating Procedure OP/4.18/001 Procedure for Training para 5.1.

<sup>22</sup> Reeds Consulting Pty Ltd Section-3 of the Management System Manual Issue-11: Operating Procedure OP/4.18/001 Procedure for Training para 5.2.1.

<sup>23</sup> Reeds Consulting Pty Ltd Section-3 of the Management System Manual Issue-11: Operating Procedure OP/4.18/001 Procedure for Training para 5.2.3.

<sup>24</sup> Reeds Consulting Pty Ltd Section-3 of the Management System Manual Issue-11: Operating Procedure OP/4.18/001 Procedure for Training para 5.3.1.

- On 12 January 2005, he was on site at Aspendale Gardens Retirement Village with Sam Ravida.
- Between 8.30am and 10.45am on 13 January 2005, he underwent a medical examination at Health Services Australia by Dr S. Teh.

Dr Teh noted that Mr Buckton had no serious illness or any difficulty seeing, hearing or walking. He also noted that Mr Buckton had been attending a physiotherapist for lower back pain for the last five weeks. His pain was improving and he had full range of movement but he was unable to squat repetitively. Dr Teh did not note any issues in relation to Mr Buckton's mental state. Accordingly, Dr Teh assessed Mr Buckton's health as acceptable.

- At 2:30 pm on 13 January 2005, he inspected two sewers in Springvale South with "Andrew". They also went to Brunnings Road which needed power.
- On 17 January 2005, he had an "x-ray and physio" appointment. There also seems to be a further medical examination scheduled for 31 January 2005. There is no other evidence before me relating to these appointments.
- On 18 January 2005, Mr Buckton visited a site by himself. It was referred to as the 'Akron Job 19075E'. He also viewed 'Stage 1 Berwick 20168E/1'.
- At 10:00am on 21 January 2005, Mr Buckton visited the site of HRM27 at McGregor Road, Pakenham for 15 minutes in relation to the Non Conformance Report 202984. Mr Buckton then wrote to Mr Cormick at SE Water to sign off corrective action on Non-Conformance Report 202984. He copied the letter to FRH Group and it was on their file. However, Reeds deny it was sent to South East Water and South East Water have no record of receiving it. Further, there is no evidence that Mr Buckton removed the cover of the HRM27 access chamber to determine its compliance.
- At 8:25am on 24 January 2005, Mr Buckton dropped off plans to South East Water in Moorabbin with respect to Job 16086E.
- At 12:00pm on 24 January 2005, Mr Buckton inspected the sewage pits at the Blue Hills Estate for South East Water with respect to Non Conformance Notice FRN 18740E/2 and sign off of 19423/1&2.



- On 24 January 2005, Mr Buckton also visited Banjo Height Estate. He then went to a walled site at Wallan.

117. Therefore, Mr Buckton had completed a 10 days induction period at Reeds when he died. He had reviewed their policies and procedures. He had accompanied their staff to sites. He had completed audit of remediation of non-conforming assets.

118. However, there is no evidence before me that Mr Buckton had undertaken an accredited course in access to confined spaces or a renewal of this qualification in the last 12 months as required by South East Water. Further, there is no evidence that he had seen anyone else perform audits of work 4.5 metres below the cover of an access chamber of a sewer.

#### **Entry of the HRM27 access chamber to the Henry Road Main sewer**

119. On 23 January 2005, FRH group faxed Richard Brewster the results of an audit conducted by South East Water Limited ('South East Water') noting four faults in the sewage works associated with the Blue Hills Estate. FRH Group indicated they had rectified the faults and requested Reeds to sign off the works when they had checked the rectifications.

120. These four rectified faults included the leak in the drop pipe in access chamber HRM27 to the Henry Road sewer that was the subject of the Non Conformance Report 202984.

121. Mr Collier from South East Water says the maintenance works were scheduled to be completed during the period 17 to 21 January 2005. South East Water recorded no Form Q requests for a permit to access the HRM27 access chamber to the Henry Road Main sewer in the week 24-31 January 2005.

122. In his statement, Mr Stodal from FRH Group says that, in his experience, Reeds expected Reeds to do one of two things in response to notification that FRH Group had rectified the faults identified in Non Conformance Report 202984: Reeds would either perform a visual surface inspection of the works to satisfy themselves it had been done or Reeds would accept FRH Group's response and note it on the Non Conformance Report 202984 without further inspecting the site.

123. On 21 January 2005, Mr Buckton had already prepared a Fax Cover Sheet addressed to South East Water and attaching completed Non Conformance Report 202984 and the FRH Group Report. This fax had not been sent to FRH Group or South East Water. Further, there is no signed copy of the completed Non Conformance Report 202984 or the FRH Group Report.

124. Further, no photographs of the rectification of the leak in the drop pipe in access chamber HRM27 to the Henry Road sewer that was the subject of the Non Conformance Report 202984 have been provided to the Court. Therefore, I presume that Mr Buckton completed his audit on 21 January 2005 using Mr Stodal's second option of relying on the FRH Group report as evidence of compliance.
125. At about 2:30pm on 25 January 2005, Mr Brewster directed Mr Buckton to go alone to conduct quality assurance engineering-related examinations on sewer pits near Lobelia Street in Pakenham. These were the rectifications noted in the correspondence from FRH Group and were at the newly constructed area in Stage 2 of the new Blue Hills Estate. They included the leak in the drop pipe in access chamber HRM27 to the Henry Road sewer that was the subject of the Non Conformance Report 202984.
126. Mr Brewster says that he instructed Mr Buckton to inspect the access chamber to the sewer at Blue Hills Estate to confirm the contractor had addressed the non-conformances earlier identified by South East Water. There is no suggestion that Mr Brewster knew that Mr Buckton had already signed off the Non Conformance Report 202984.
127. Mr Brewster was the last person known to have spoken to Mr Buckton.
128. The tasks associated with active auditing the rectification associated with Non Conformance Report 202984 required Mr Buckton to remove the cover of the HRM27 access chamber to the Henry Road Main sewer to take a digital photograph from the surface and ascertain whether there continued to be a leak from a drop pipe located within the shaft as reported in Non Conformance Report 202984 dated 15 November 2004.
129. Mr Brewster supplied Mr Buckton with a Gatic opener, which is a device required to open access chambers to the sewers, a screw driver, plans of the Stage 2 of the Blue Hills Estate and a camera usually used to photograph completed work which has a rotating screen and view finder.
130. Although Counsel for Reeds submitted that Mr Buckton had used the camera before, there is no evidence that Mr Brewster or anyone else showed Mr Buckton how to use the camera he took with him to take photos of the drop pipe entry in the HRM27 access chamber to the Henry Road Main sewer on the Blue Hills Estate on 25 January 2005 to show the leak was not continuing.
131. Further, Mr Brewster seems to have indicated that using the camera was discretionary. In particular, Mr Brewster says that he discussed the company policy with Mr Buckton at the

time he gave Mr Buckton instructions about his task to ensure that he was aware that Reeds employees cannot enter access chambers.

132. Mr Brewster told the Court he discussed the task with Mr Buckton:

*"in the briefing with him, yes. You know, could he have a look at these, and I'd mentioned that he may need to lift the cover and take some photos."*

133. Mr Buckton's response led Mr Brewster to believe that Mr Buckton was aware of the dangers of confined spaces and would not enter the HRM27 access chamber to the Henry Road Main sewer.

134. Mr Brewster said:

*"I indicated to him not to enter the shaft, take a photo from the top..... And I'd mentioned to him to have a drive by, have a look at them, verify that they were correct. And see, "If you need to pop the cover, pop the cover, take a photo". And I'd said something along the lines of we don't go in them, and I can't recall his exact words, but he made it very clear to me that he wasn't that silly, or he understood. It wasn't I suppose what you'd call a formal briefing, you know, sit down. But... we were standing at the corner of my desk at the time, and it was probably a five to ten minute briefing on a fairly straightforward task. And he certainly made it aware that I certainly drew from the conversation that he was aware of the dangers."<sup>25</sup>*

135. Accordingly, Mr Brewster expected that Mr Buckton would remove the cover of the HRM27 access chamber to the Henry Road Main sewer and take a photo using the flash equipment on the camera. However, he did not expect that Mr Buckton would enter the HRM27 access chamber to the Henry Road Main sewer.

136. Mr Brewster and Mr Buckton agreed Mr Buckton would visit the Blue Hills Estate and perform the work on his way home that afternoon prior to the Australia Day Public Holiday. Accordingly, at about 2:30pm on 25 January 2005, Mr Buckton left Reeds in Carlton in the company car.

137. Reeds operates a 'Where Is' program in which staff are required to indicate when they leave and return to work. On 25 January 2005, Niel Buckton indicated he was out but did not enter a return date or time.

---

<sup>25</sup> Evidence of Mr Brewster, Transcript of Evidence 21 October 2009, p.300.

138. No one is known to have seen or spoken to Mr Buckton after he left Reeds on 25 October 2005.
139. However, at about 3:15pm on 25 January 2005, a resident, Linda Moore, saw a white car later identified as Mr Buckton's drive down Lobelia Street and park near the end of the road. Rosalie Billington, who is a carer for Mrs Moore's husband, confirms this observation.
140. Ms Moore also says that she noticed another vehicle enter the court and leave a short time after. Mr Buckton's vehicle was still there at 5:45pm.
141. The following day, 26 January 2005, was Australia Day. Ms Moore says that the car was still parked in Lobelia Street.
142. Mr Buckton failed to keep his appointment with Ms Anderson at 10:30am on Australia Day and she was not able to ascertain his whereabouts.
143. On 27 January 2005, Ms Anderson and her daughter became particularly concerned when Reeds confirmed he was not at work.
144. At 12:30pm on 27 January 2005, Mr Brewster returned to the office and enquired about Mr Buckton.
145. Further, on 27 January 2005, Ms Moore reported Mr Buckton's vehicle in Lobelia Street to Victoria Police and they checked it later that day. Mr Buckton had not been reported missing and they had no reason to suspect anything suspicious had occurred.
146. By 28 January 2005, Ms Anderson, Mr Thomas and Ms Wiebenga were searching for Mr Buckton.
147. On 29 January 2005, Mr Thomas tried to contact Mr Buckton by phone and also discussed Mr Buckton's disappearance with Mr Ravida.
148. On 30 January 2005, after consulting Mr Thomas, Ms Anderson reported Mr Buckton missing to the Hastings Police Station. The police told Ms Anderson that his car had been checked on 27 January in Lobelia Street in Pakenham.
149. Accordingly, Mr Thomas, Ms Anderson, and Ms Anderson's friend, Wallace Gampbell went to Lobelia Street and confirmed that a Reeds car was parked there. Mr Thomas called Mr Ravida to ask why Mr Buckton's car would be at Lobelia Street but Mr Ravida did not know the answer.

150. At 7:30am on 31 January 2005, Mr Brewster found the HRM27 access chamber to the Henry Road Main sewer approximately 120 metres south of Mr Buckton's vehicle in the Blue Hills Estate. It was concealed in knee-high grass.
151. The cover from the access chamber had been removed. A Gatic opener was still attached to the cover of the access chamber and there was a screwdriver nearby. The screwdriver had been used to remove the plastic lugs in the covers.
152. South East Water were contacted and they conducted a probe of the sewer. At approximately 4:30pm, they found a blockage 459 metres east of the open sewer pit. The blockage was identified as Mr Buckton. He was lodged against a pole under the next access chamber to the Henry Road Main sewer (HRM24).
153. When Mr Buckton was retrieved, his watch still showed the correct time. His jeans pocket had a set of car keys and a handkerchief. He also had a wallet and loose change in his pockets and a water logged paper that looked like some sort of plans. He was clean shaven. He was still wearing work boots.

#### **Intention to die**

154. The evidence in relation to whether or not Mr Buckton entered the HRM27 access chamber to the Henry Road Main sewer on 25 January 2005 with the intention to die included his:
- Prior history of suicidal ideation;
  - Presentation in the weeks and months before he died; and
  - Behaviour in the last few days of his life.
155. I will discuss each of these issues and the way in which they have influenced my finding in relation to the Mr Buckton's intention when he entered the HRM27 access chamber to the Henry Road Main sewer on 25 January 2005.

#### Prior history of suicidal ideation

156. Mr Buckton had seriously contemplated suicide on at least three previous occasions: in 1998, in 2000 and in 2001.
157. In particular, Mr Buckton's previous wife, Leanne Wiebenga, told the Court that Mr Buckton told her that, in about 1998, Mr Buckton he burnt all of his Haileybury College books, his school books, photos and some letters that she had written to him. He then drove

to Mount Martha Reserve and sat in his car for four hours with a pipe connected to the exhaust but without turning the engine on.

158. After this incident, Ms Wiebenga believed that Mr Buckton had consulted a psychologist, David Tierney, who she also attended. She said:

*"Niel told me he was going to go and see him and I was actually going to make the appointment for him and he said he didn't want me to make the appointment for him, he'd do it himself and I just backed off and said, "You do it when you're ready," and I believed that he was actually seeing him."*

159. Dr Tierney has no record that Mr Buckton ever consulted him.

160. The second incident in which Mr Buckton is reported to have contemplated suicide occurred sometime before September 2000.

161. Ms Wiebenga told the Court that Mr Buckton foreshadowed his suicide in circumstances similar to his ultimate death in a conversation with her. She says that:

*"In addition to Niel telling me if he were to commit suicide he would do it so no one could find his body, he also described in detail that he would enter a sewer pit and inhale the methane gas."<sup>26</sup>*

162. Ruth Marshall confirmed that Ms Wiebenga had confided in her about this conversation.

163. At inquest, Ms Marshall clarified:

*"I asked, "Did he tell you how?" and that was when she said to me something like a drowning and I said, "All right," because we lived on the Peninsula at the beach and when our former prime minister dying in Portsea and, you know, with water, and, no, it was something more akin to a sewage."<sup>27</sup>*

164. In February 2001, the third time Mr Buckton contemplated suicide occurred in the context of Chadwicks asking Mr Buckton to attend a work assignment in Warrnambool.

165. Gary Thomas was Mr Buckton's close friend. He had known Mr Buckton for approximately 20 years and Mr Buckton had been the best man at Mr Thomas's wedding. Mr Thomas

---

<sup>26</sup> Second Statement of Leanne Wiebenga (8 September 2009), p.4.

<sup>27</sup> Evidence of Ruth Marshall, Transcript 20 October 2009, p.160.

confirmed that when Mr Buckton's business and marriage failed he was depressed and presented as suicidal.

166. In particular, Mr Buckton left Melbourne to keep the appointment but he did not attend work in Warrnambool and instead drove to Seymour. His family and his employer were unable to find him. Police records confirm that he was reported as a missing person on 26 February 2001 and located on 28 February 2001.

167. The evidence of a number of witnesses was that Mr Buckton had purchased a rope to take his life.

168. Mr Buckton also wrote a letter to his father while he was in Seymour that expressed a number of anxieties and regrets. Some of the witnesses referred to this letter as a suicide note, others indicated that it was just Mr Buckton expressing his love for his family.

169. Mr Gordon Buckton said:

*"It was a not a suicide note. Niel wrote me a letter where he reviewed his career to day and how happy he had been at college, at schools and also his family and also he had enjoyed working with the Moorabbin Council and also with the Mornington Shire Council and all of a sudden he was forced to make the change [...]"<sup>28</sup>*

170. Mr Gordon Buckton further said:

*"He was well aware that some people who'd reached his state of depression they had committed suicide but it wasn't for him. He was too concerned about his family and the fact that he knew he would recover eventually."<sup>29</sup>*

171. On the other hand, Ms Wiebenga reported a conversation with Mr Buckton's step-mother who described the letter as a suicide note:

*"[Val Buckton] told me they had received a suicide letter that had been posted to them from Niel. I believe I may have asked what he'd said. Val read it to me. I recall it described how Niel felt including how he could relate to the character played by Michael Douglas in the film, 'Falling Down.' The letter also mentioned that he felt I did not support him. I believe this would have related to his business ventures. The letter read like a goodbye, it apologised to his family. The letter triggered in me my memory of*

---

<sup>28</sup> Evidence of Gordon Buckton, Transcript 19 October 2009, pp.22-23.

<sup>29</sup> Evidence of Gordon Buckton, Transcript 19 October 2009, p.25.

*Niel telling me about spending a day sitting at his car at the Mount Martha Reserve contemplating suicide.”<sup>30</sup>*

172. The Court heard that Mr Gordon Buckton spoke with Mr Buckton by phone. At inquest, Mr Gordon Buckton said:

*“I remember he talked to me about how upset he was and he'd been thinking about his career and his family and what solution - what was life all about....”*

*Yes, he would have phoned me up and spoken to me about it and (indistinct) and I told him to return home and stay with us and we would have a chat about it and feel very comfortable.”<sup>31</sup>*

173. Ms Anderson told the Court that Mr Buckton told her later that his note to his father in 2001 was intended to be a suicide note. Ms Anderson indicated that Mr Buckton told her the following with respect to this incident:

*“Well basically, yes, that he felt so depressed and, you know, he went to a hotel in Seymour and I believe he took a rope with him and I believe he still had it, it was still in the garage at the Dingley home and also that I think he spoke to his father who talked him around to come home, the basics of what I remember of it.”<sup>32</sup>*

174. Following this incident, Mr Buckton lived with his father at the family home for about six weeks.<sup>33</sup>

175. As a result of his mental ill-health, Mr Buckton also took an extended period of leave from work at Chadwick’s for the rest of 2001.

176. On 5 March 2001, Mr Buckton consulted Dr Wrennall. Dr Wrennall’s notes state:

*“Life messed up, business failed, marriage failed – not coping, bored with job, nothing to look forward to. Sleep problems. Eating.”*

177. Mr Buckton also told Dr Wrennall that he had considered suicide when he was in Seymour but denied any intention to carry it out because of the burden for his family.

---

<sup>30</sup> First Statement of Leanne Wiebenga, p.3.

<sup>31</sup> Evidence of Gordon Buckton, Transcript 19 October 2009, p.40.

<sup>32</sup> Evidence of Rhonda Anderson, Transcript 20 October 2009, p.136.

<sup>33</sup> Evidence of Gordon Buckton, Transcript 19 October 2009, p.17.



178. Accordingly, Dr Wrennall diagnosed moderate to severe depression not requiring hospitalisation and prescribed 100mg Zoloft *nocte*. Dr Wrennall also referred him for counselling with Jillian Cowan and issued a medical certificate which stated that Mr Buckton was suffering from severe depression and was likely to be able to work for at least 8 hours a week or return to work in three months..
179. On 22 March 2001, Dr Wrennall also diagnosed insomnia associated with continuing depression. He increased Mr Buckton's prescription for Zoloft to 200mg *nocte* and prescribed temazepam for Mr Buckton's sleep difficulties. Dr Wrennall also issued another similar medical certificate.
180. Mr Buckton continued to consult Dr Wrennall and Ms Cowan each month during 2001 and Dr Wrennall continued to provide him with similar medical certificates:
- On or about 3 April 2001, Mr Buckton had the first of eight counselling sessions with Ms Cowan. She says:  

*"Niel has developed a very strong pattern of being highly self-critical.... He judges himself harshly, avoids disapproval from others and feels guilty if anyone suffers emotional pain as he believes that he caused it."*<sup>34</sup>
  - On 21 May 2001, Dr Wrennall reduced Mr Buckton's Zoloft from 200mg *nocte* to 100mg *nocte*;
  - On 23 July 2001, Mr Buckton stopped taking Zoloft;
  - On 19 September 2001, Dr Wrennall was of the opinion that Mr Buckton's episode of depression had resolved. Dr Wrennall's notes indicate that Mr Buckton was looking for a job;
  - On 18 October 2001, Dr Wrennall noted that Mr Buckton was feeling well but still had not had a job interview; and
  - On 20 November 2001, Dr Wrennall's noted that Mr Buckton did not have any job success yet.
181. During this period, Dr Wrennall believed that Mr Buckton had resigned from Chadwicks and required medical certificates to obtain sickness benefits while he recovered and looked for alternative work.

---

<sup>34</sup> Letter from Jillian Cowan to Dr Wrennall dated 17 May 2005.

182. However, unknown to Dr Wrennall, in March and April 2001, Mr Gordon Buckton was also forwarding these medical certificates to Chadwick's with letters explaining Mr Buckton's absence from work. These letters from Mr Buckton's father note that Mr Buckton was taking medication and would require counselling.

183. After April 2001, Mr Buckton forwarded copies of his medical certificates to Timothy Chadwick himself. With these medical certificates, Mr Buckton also attached the following notes to Mr Chadwick:

- On 21 June 2001, Mr Buckton wrote:

*"I visited my doctor on Monday 18 June 2001 and he is encouraged with my progress. However he unexpectedly (to me) has recommended that I still need time off. I consequently attach a copy of the medical certificate, which expires 25 July 2001."*

- On 24 July 2001, Mr Buckton wrote:

*"I visited my doctor on Monday 23 July 2001 and he has recommended for additional time off. I consequently attach a copy of the medical certificate, which expires on 25 August 2001."*

- On 23 August 2001, Mr Buckton wrote:

*"I visited my doctor on Tuesday 21 August 2001 and he has recommended that I still need time off. I consequently attach a copy of the medical certificate, which expires 21 September 2001."*

184. Relying on Mr Buckton's medical certificates and notes, Chadwick's held Mr Buckton's position open so that he could return when he was able.

185. Further, despite his indications to Dr Wrennall that Mr Buckton was looking for a position elsewhere, there is no evidence before me to suggest that he was actively applying for a new job in 2001.

186. On 16 January 2002, Mr Buckton returned to work at Chadwick's. Mr Chadwick told the Court that:

*"He eventually returned back full time and didn't any show and signs of depression (sic), in fact he worked quite well."*

187. On 22 July 2004, Mr Buckton consulted Dr Wrennall. He told Dr Wrennall he had formed a new relationship and he was having problems with erectile dysfunction. Dr Wrennall prescribed Cialis 20mg *prn* with review in one month.
188. Dr Wrennall indicated that, by July 2004, Mr Buckton's general health was excellent, there was no contra-indication to trying these medications, and, at his age, medication would often improve the problem to the point where he would not need to continue their use.
189. On 7 August 2004, Dr Wrennall changed Mr Buckton's medication to Viagra because his condition had not improved.
190. Dr Wrennall last saw Mr Buckton on 27 November 2004.<sup>35</sup> At this time, Dr Wrennall notes that Mr Buckton's condition had responded to Viagra and issued a repeat prescription. Mr Buckton was due for further review in three months.
191. Dr Wrennall told the Court that, by this consultation on 27 November 2004, Mr Buckton had no signs or indication that he was contemplating suicide and his depression was well and truly under control. Applying a scale of 1 to 10, he would have allocated Mr Buckton's level of depression about 1 or 2. He said that Mr Buckton appeared to be positive about work.
192. However, Dr Wrennall conceded that:

*"The two or three patients of mine who committed suicide over the years [had] not given any previous indication they were thinking of suicide."*

193. In retrospect, Ms Anderson says that she did not see any signs of stress or depression caused by Mr Buckton's erectile dysfunction. Ms Anderson said she was aware he was being prescribed medication for this issue and although this stressed their relationship, they were going to sort it out together. She said:

*"As far as our relationship, yes, but not to the point of as I said to him, you know, "We're in this together so we'll sort it out together.""*<sup>36</sup>

194. Some time prior to Christmas in 2004 Mr Buckton had a conversation with Ms Wiebenga's next door neighbour, Ruth Marshall. Ms Marshall is a teacher of English and Psychology, a

---

<sup>35</sup> Dr Wrennall's statement indicated that he last saw Mr Buckton on 23 September 2004 however at Inquest he clarified that this was a mistake and that he must have meant November.

<sup>36</sup> Evidence of Rhonda Anderson, Transcript 20 October 2009, p.137.

university lecturer and a psychologist. Mr Buckton knew Ms Marshall from his time living in Stanton Close.

195. Ms Marshall told the Court that she had not seen Mr Buckton since he had moved out of Stanton Close. On this day, she saw Mr Buckton's work vehicle parked outside Ms Wiebenga's house. He appeared to be waiting in front of Ms Wiebenger's place for her to return.
196. Ms Marshall told the Court that it did not make sense for Mr Buckton to be at Ms Wiebenga's place in the middle of the day or mid-afternoon. She was also not comfortable with the conversation because of odd behaviour that Ms Wiebenga had previously described. For example, Ms Wiebenga had told her that Mr Buckton was following her during 2004. Ms Marshall said that Mr Buckton's alleged stalking concerned her.
197. Ms Marshall said that Mr Buckton seemed melancholy about how he, in his opinion, had let so many people down and failed in his parents' eyes because they had invested in him by sending him to Haileybury College. Mr Buckton did not feel he was able to speak with his father about his concerns.
198. Ms Marshall also told the Court that, in the course of their conversation, Mr Buckton said that he felt like a failure because his business had failed.
199. Ms Marshall told the Court that, although she knew from Ms Wiebenga about Mr Buckton's previous suicidal ideation, her concern about Mr Buckton's demeanour before Christmas 2004 did not extend to thinking about whether he would commit suicide. In contrast to the general tone of the conversation, Mr Buckton had also said that he was looking forward to starting his new job.
200. However, after Mr Buckton died, Ms Wiebenga had formed the belief that he had taken his own life. Therefore, in retrospect, his conversation in November 2004 raised for her the possibility that Mr Buckton was closing loose ends in preparation for suicide.
201. On 11 January 2005, Mr Buckton prepared for his new job by consolidating his previous superannuation policies and setting up a new personal superannuation scheme with AMP. His brother Mark Buckton assisted him with this task, in his capacity as a financial planner. In making these arrangements, Mr Buckton denied that he needed to consider any dependents.

202. Further, Mr Buckton last saw Ms Wiebenga towards the end of January 2005 when he took a birthday present to her daughter. Mr Buckton said to her:

*"Well, when Alyce moves out maybe you and I can get back together"*

203. In response to this, Ms Wiebenga says:

*"I got completely spooked and then I started to back off....*

*I don't know if I was scared of him actually committing suicide that following week or the two weeks after, what I was scared of was he was perhaps still fragile more than I thought he was originally."*<sup>37</sup>

204. At 10:30am on 23 January 2005, Mr Buckton collected Ms Anderson and her daughter from Ms Anderson's house. They took her daughter to her outing and then went to a restaurant called Salty's at Flinders Beach.

205. On that day, Mr Buckton was stressed because of renovations occurring at the family home where he lived in Dingley.

206. Mr Buckton told Ms Anderson he not only wanted to punch the painter but he also wanted to punch his father. He also said it was only the second time since his mother's death that he felt like punching his father. Ms Anderson told the Court he was cross but:

*"He sort of said it in a jovial manner actually."*

207. Mr Gordon Buckton noted that he probably triggered Mr Buckton's anger because he had arranged for painters at the house. They were not finished within the original timeframe and Mr Gordon Buckton said that they should continue with the work until it was completed.<sup>38</sup>

208. Mr Buckton had also indicated to Ms Anderson that he was not clear about his position at Reeds and that:

*"...he had found a mistake at his work that he wished he had never found because it became a nightmare".*<sup>39</sup>

209. Ms Anderson clarified at Inquest:

---

<sup>37</sup> Evidence of Ms Wiebenga, Transcript 20 October 2009, p.204.

<sup>38</sup> Evidence of Gordon Buckton, Transcript 19 October 2009, p.44.

<sup>39</sup> Statement of Rhonda Anderson, p.1.

*"Yes, look he was a bit, yes, unsure of his position there. I don't know whether he thought he'd made the right decision. He was very concerned about this mistake that he'd found but we sort of never went into it. So - yes I am uncertain what it was."*<sup>40</sup>

210. Ms Anderson also says that on 23 January 2005, Mr Buckton asked her to marry him. They were planning to announce their engagement on 14 February 2005. They also arranged to meet at Salty's restaurant on Australia Day.
211. At 11:00pm on 23 January 2005, Mr Buckton left Ms Anderson's house to go home to Dingley. He later sent her an SMS telling her that he had arrived home safely.
212. On the morning of 25 January 2005, Mr Buckton sent Ms Anderson an SMS saying he was looking forward to meeting her the next day.
213. At lunchtime on 25 January 2005, Gary Thomas spoke to Mr Buckton at work. Mr Thomas had known Mr Buckton during the period he was severely depressed in 2001.
214. Mr Thomas told the Court that Mr Buckton appeared normal. They talked about the Aspendale Gardens Retirement Village development. However, their final conversation ended unusually. Mr Thomas said:

*"The - the last thing I said to - I remember him - ah, he sort of snapped at something I said. It was, a little bit unusual. .... It was something to do with kids, and he just made some comment, and I thought, "Oh, what would you know", just passed off and walked off."*

215. Mr Thomas was not concerned that Mr Buckton was depressed again.
216. After Mr Buckton disappeared, police searched his car in Lobelia Street. They found his work bag, a mobile phone, his cap, plans, a small lever tool and a green diary that Mr Buckton had kept during the period he worked for Reeds.
217. The work camera in the car did not have any photos on it. Mr Thomas says that it was completely out of character for Mr Buckton to leave the camera and cap in the car. Mr Thomas was of the view that Mr Buckton is unlikely to have left the camera in the car if he intended to take photos at the site. He said:

*"Niel was almost compulsive about making sure that he did not forget things."*

---

<sup>40</sup> Evidence of Rhonda Anderson, Transcript 20 October 2009, p.138.

218. Therefore, in summary, Mr Buckton was stressed over the weekend before he died because he was concerned about his work and he argued with his father about renovations at their Dingley home.
219. However, no witnesses who knew Mr Buckton well and were aware of his previous medical history expressed any concern that Mr Buckton's mental state on 25 January 2005 indicated that he was suicidal.

## COMMENTS

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

1. Niel Buckton was 40 years old when he died. He lived at 39 Golfwood Close in Dingley Village with two of his brothers; Paul and Kevin Buckton.
2. Mr Buckton was a qualified civil engineer of approximately 20 years experience and was employed by Reeds Consultancy Pty Ltd ("Reeds") at the time of his death.
3. On 25 January 2005, Mr Buckton attended at the newly developed Blue Hills Estate in Pakenham to conduct some engineering inspections for Reeds. These inspections included taking a photograph of an aspect of a repair 4.5 metres below ground in the HRM27 access chamber to the Henry Road Main sewer. This work was the subject of the South East Water Non Conformance Report 202984.
4. At 4:50pm on 31 January 2005, searchers found Mr Buckton's body wedged in the sewer 459 metres east of where he had entered the access chamber five days earlier. He had been dead for some time.
5. The forensic pathologist who performed the autopsy was unable to determine the cause of death. Further, toxicological investigations and the circumstances in which Mr Buckton's body was found were not entirely consistent with asphyxiation.
6. Therefore, I am unable to determine the cause of Mr Buckton's death.
7. In the absence of injuries consistent with fall from a height, this coronial investigation has assumed that Niel Buckton intentionally entered the HRM27 access chamber to the Henry Road Main sewer on 25 January 2005.

8. Further, in the absence of an alternative cause of death, this coronial investigation has assumed that Niel Buckton's death was causally related to his entry of the HRM27 access chamber to the Henry Road Main sewer on 25 January 2005.
9. Therefore, this coronial investigation has focussed on the reasons that Mr Buckton intentionally entered the HRM27 access chamber to the Henry Road Main sewer in 25 January 2005 and the ways in which his entry could have been prevented.
10. In particular, Reeds has actively encouraged me to find that Mr Buckton deliberately entered the HRM27 access chamber to the Henry Road Main sewer on 25 January 2005 with the intention to commit suicide. On the other hand, Mr Buckton's family and medical advisers have argued that Mr Buckton was not in the frame of mind to commit suicide on 25 January 2005.
11. Accordingly, I have analysed and commented on the following issues:
  - Control of access to the HRM27 access chamber to the Henry Road Main sewer; and
  - Reasons for Mr Buckton entering the HRM27 access chamber to the Henry Road Main sewer.

**Control of access to the HRM27 access chamber to the Henry Road Main sewer**

12. On 25 January 2005, Mr Brewster directed Mr Buckton to audit the rectification of remediation in the HRM27 access chamber to the Henry Road Main sewer.
13. Throughout my investigation, I explored workplace safety implications of this task allocated to Mr Buckton and the manner in which it was expected to proceed.
14. These workplace safety implications are influenced by:
  - The live status of the sewer;
  - The requirements imposed by South East Water for lifting the cover of the access chamber of the sewer;
  - The requirements imposed by South East Water for entering the access chamber of the sewer; and
  - The training provided for safe performance of the task of auditing the rectification of remediation in the access chamber or the sewer.



### The live status of the sewer

15. The dangers of working in or around a confined space are well known to civil engineers and others in the industry.
16. The specific dangers associated with sewer work are also common knowledge. These include risk of falls from a height, slipping and falling in wet conditions and exposure to toxic gases.<sup>41</sup>
17. As a particular example, Grant Cocks died from asphyxia in the Henry Road Main sewer on 11 July 2003.<sup>42</sup> I understand that Mr Cocks worked for FRH Group and his work required him to enter the access chamber to the sewer.
18. There was some question about whether the Henry Road Main was a live sewer on 25 January 2005.
19. The HRM27 sewer was connected to the Henry Road Main, which was a live sewer. However, the HRM27 sewer was servicing very few houses on 25 October 2005 and had very little flow.
20. Accordingly, Mr Brewster believed that the sewer was not live and therefore there he believed was no need to submit a Form Q application to South East Water to access the access chamber for audit purposes.<sup>43</sup>
21. However, South East Water contended that the minimal flow in the Henry Road Main sewer defined it as live on 25 October 2005.<sup>44</sup> Mr Collier confirmed this opinion.<sup>45</sup>
22. Further, Mr Stodal from FRH Group told the Court that, even when flows are low, it is possible for gas to accumulate on some occasions.<sup>46</sup>
23. On 13 January 2005, FRH Group engineers had submitted a Form Q to South East Water before they performed their remediation work in the HRM27 access chamber to the Henry Road Main sewer. This is consistent with their belief that the sewer was live.

---

<sup>41</sup> Reeds Construction Site Work Activity Hazard & Risk Assessment Guide: Work in Confined Space and Entry & Exit of Confined Space.

<sup>42</sup> Coroner Olle, Finding without Inquest, 23 March 2011 (Coroners Case No 2003 2238).

<sup>43</sup> Evidence of Mr Brewster, Transcript 21 October 2009.

<sup>44</sup> See discussion in Transcript, 19 December 2012, pp. 516-517.

<sup>45</sup> Evidence of Mr Collier, Transcript 19 December 2012, p.490.

<sup>46</sup> Evidence of Mr Stodal, Transcript 19 December 2012, pp. 530-532.

24. Accordingly, although Mr Brewster believed the sewer was not yet live when he directed Mr Buckton to audit the rectification in the access chamber to the sewer on 25 January 2005 and excused his directions to Mr Buckton on that basis, I find that Henry Road Main sewer was live and the policies and practices relating to live sewers applied.
25. Accordingly, I have formed the view that the live status of sewer facilities subject to a South East Water 'Notice of Agreement for the provision of sewerage facilities' should be continuously available to consultant engineers performing the work.
26. Further, South East Water Non-compliance Notices should indicate the live status of the facilities requiring remediation.
27. Accordingly, I recommend that South East Water upgrade their recording facilities to include the live status of sewer facilities subject to a 'Notice of Agreement for the provision of sewerage facilities' so that it is available for electronic access to approved consultant engineers and engineers on their provider list. **Recommendation 1**

#### Access to the Henry Road Main sewer

28. Sewer covers are the property of South East Water and may not be removed without their authority. There were no warning notices on the covers and no grids under the covers of the access chamber to South East Water sewers.
29. In 2005, South East Water policies and procedures imposed a number of requirements on contractors who were required to open the covers of access chambers to sewers. These included the requirement:
  - To seek and obtain a permit from South East Water for a particular person to access the sewer using Form Q;
  - To notify South East Water of the intention to access the sewer;
  - For a minimum of two people to be in attendance;
  - For one person attending to have completed successfully an appropriate training course and must be able to produce the current accreditation card on site; and
  - For this person to be registered with South East Water to lift the cover of the access chamber of the sewer.<sup>47</sup>

---

<sup>47</sup> South East Water Land Development Policy and Pricing Manual Section 6-3.

30. In order to maintain its position as an approved consultant and on the South East Water Supplier's List, Reeds was required to complete the verification of the non-conforming works and comply with these policies and guidelines.<sup>48</sup>

31. However, in sending Mr Buckton to re-audit the remediation of the leaking drop line in the HRM27 access chamber to the Henry Road Main sewer on 25 January 2005 that was the subject of the Non Conformance Report 202984, Reeds failed to comply with any of these requirements:

- Reeds did not submit a Q Form to South East Water for approval to connect with or access a live sewer on 25 January 2005.
- Reeds did not make a phone call to South East Water on 25 January 2005 prior to Mr Buckton lifting the cover of the access chamber of the sewer.
- Mr Brewster directed Mr Buckton to audit the rectification in the access chamber to the sewer without another person present.
- Mr Buckton had not undertaken an accredited course and did not carry an accreditation card;
- Mr Buckton was not recorded as a person authorised by South East Water to lift the cover of the access chamber of the sewer.

32. Further, the investigator for South East Water's insurers, Mr Daymond, argued that any employee of Reeds would be experienced with respect to construction and/or design of sewerage systems and would know the dangers of raising the cover of an access chamber to a sewer.

33. However, Andrew Laurie, who was a construction engineer, told the Court he had a role as a mentor of junior staff at Reeds:

*"There were people there who were junior to me who I um, sort of showed around a bit, I suppose. But um, it wasn't a specific part of my role, but it was just depending on who - who was there, who was ah, less experienced than I was."*<sup>49</sup>

34. In his evidence, Mr Laurie said he was uncertain he could remember the requirements for opening a sewer because he had not performed the task recently:

---

<sup>48</sup> Mr Collier, email to Mr Brewster, 20 October 2004.

<sup>49</sup> Evidence of Mr Laurie, Transcript of evidence 23 October 2009, p.354.

*"...if the sewer asset - my recollection of exact procedures is a little bit vague cos I haven't worked in that area for a while. But, if the sewer asset had just been constructed, generally there was a um, there was a plug that um, blocked ah, the newly constructed asset from the live sewer, which then that sewer under construction could be accessed by opening the lid and having a look down it to make sure that, you know, things had been finished off; there's no debris in it, that sort of thing."*

35. In his statement, Mr Collier of South East Water confirmed the requirement for notification of South East Water of the intention to lift the cover of the access chamber of a sewer:

*"Notification was, and still is, required for all manhole openings."*

36. In further evidence, Mr Collier also confirmed that two people were required to lift the cover of the access chamber of a sewer if they did not expect to enter the access chamber:

*"... my understanding is that two people would have been required, one with this minimum qualification and one other person."<sup>50</sup>*

37. However, Mr Collier was unaware of Reeds' breaches of South East Water policies and procedures and South East Water had made no provision for auditing of compliance.

38. In 2005, Reeds' policies and procedures confirmed their commitment to undertake work requirements in accordance with practice established by South East Water and City West Water and stated:

*"No personnel shall enter a live sewer maintenance hole under any circumstances."*(their underlining).<sup>51</sup>

39. Reeds' policies and procedures also required their employees to comply with the same training and accreditation requirements as those imposed by South East Water:

*"Personnel must be appropriately trained in relation to the types of works performed and meet the requirement of the confined space and proof of training for this type of work should be available on site."<sup>52</sup>*

---

<sup>50</sup> Evidence of Mr Collier, Transcript 19 December 2012, p.490.

<sup>51</sup> Reeds Work Instruction WI/4.9/011 'Lifting Sewer Access Covers on Live Sewers' issued by Mr Brewster and approved by Mr Ravida on 27 November 2001, Reeds Consultancy.

<sup>52</sup> Reeds Work Instruction WI/4.9/011; "Confined Space Work Procedures" dated 28 October 2004 and based on City West Water Ltd QES Management System, See paragraph 2.8.

40. On 19 January 2005, Mr Buckton signed off that he was aware of and familiar with Reeds policies requirements. Therefore he was aware or should have been aware of the Reeds work instructions relevant to opening of the cover on the access chamber of a sewer on 25 January 2005.
41. Accordingly, in accepting directions to perform a task which was acknowledged to require opening of a sewer asset alone without notifying South East Water using a Form Q or having appropriate training and accreditation, Mr Buckton also breached both South East Water and Reed's policies and procedures.
42. Mr Buckton's formal function at Reeds was to control and be responsible for the supervision and construction of all projects subject to the specific directions of the Engineering Director. However, Mr Brewster understood that Mr Buckton's specific task was to inspect sewage pits for new housing estates.
43. Under Reeds policies and procedures, the Directors and the Managing Director were responsible for determining the need for, maintaining records of and providing training for staff to ensure they could perform the tasks required of them.
44. The Safety Action Report concluded that:

*"It is clear that Reeds Consulting operated a competent safety induction and training system for new employees, including as provided for Niel Buckton when he commenced employment at Reeds Consulting on 11 January 2005."*<sup>53</sup>

45. Further, the evidence of Mr Stodal from FRH Group was that, from a purely engineering perspective, Mr Buckton was well qualified to assess whether the defect had been rectified. He said:

*"It's considered standard practice within the land development and water industries for junior engineers and supervisors to undertake such surface inspections and sewer and water assets".*<sup>54</sup>

---

<sup>53</sup> Safety Action Report commissioned by Reeds, 11 May 2005, page 10.

<sup>54</sup> Exhibit 29, Statement of Mr Stodal, page 3.

46. However, although Mr Buckton was a qualified and experienced engineer, he had no confined space entry accreditation and he had not undertaken confined space training or training in opening the covers of access chambers to sewers.<sup>55</sup>
47. Therefore, I do not accept the opinions of Safety Action Report and Mr Stodal that Mr Buckton was appropriately qualified and trained to perform the task for which Reeds recruited and trained him and directed him to perform on 25 January 2005.
48. In recruiting Mr Buckton to inspect sewage pits for new housing estates, failing to ensure that Mr Buckton undertook appropriate training and accreditation to perform the tasks he was recruited to perform, and directing Mr Buckton to perform a task which was acknowledged to require opening of a sewer asset alone without notifying South East Water using a Form Q or having appropriate training and accreditation, Reeds breached both South East Water and their own policies and procedures.
49. However, the Court heard that consultant engineers working in the industry were not necessarily aware of the content of the South East Water, "Land Development Policy and Pricing Manual". For example, Mr Stodal said:
- "I was aware of the existence (of the South East Water land development policy and pricing manual), but we're removed from the pricing aspect with the developer, so we're not furnished with a copy of the policy manual at that time."*<sup>56</sup>
50. Accordingly, Mr Stodal told the Court that he believed Reeds did not need a permit for Mr Buckton to merely lift the cover of the access chamber of a live sewer on 25 January 2005. Mr Stodal said:
- "We work for a range of consulting engineers and with other contractors and the practice at the time was no permit (for non-entry inspections) unless there's an entry required on this type of asset."*<sup>57</sup>
51. The Court also heard and I accept evidence that lifting the cover of the access chamber of a live sewer without a permit was standard practice across much of the industry.

---

<sup>55</sup> Chadwicks had very limited involvement with sewers; they do not open pits or work within the sewer itself.

<sup>56</sup> Evidence of Mr Stodal, Transcript 19 December 2012, page 524.

<sup>57</sup> Evidence of Mr Stodal, Transcript 19 December 2012, page 523.

52. For example, in response to Mr Ray's questions about whether he was aware of consulting engineers' practice throughout suburban and country areas of conducting sewer top inspections without filing a Form Q, Mr Stodal said:

*"Ah, yes. I can't comment on behalf of the regional authorities but for the Melbourne Water retail agencies including South East Water that was the case."*

*And certainly it was the practice in response to each of those two governing water authorities that to simply remove a man hole cover and do an inspection by taking a photograph would not require the entry permit to be filled out?---Ah, it was our belief that that wouldn't be required..... for any cover openings, whether or not you're taking a photograph or not."*<sup>58</sup>

53. Mr Laurie from Reeds also differentiated between live and non-live sewer assets when he said:

*"... you'd need to seek permission to lift the lid on a live manhole, because it's got the potential of, you know, there's a whole range of potential OH&S risks with confined space entry. So once the sewer's live, then there was protocols."*<sup>59</sup>

54. By implication, this indicated that Mr Laurie also believed no permit was required to open the cover of the access chamber of non-live sewers but a permit was required to access a live sewer.

55. Further, in the context of auditing remediation of non-compliant sewer works, South East Water had facilitated other Reeds staff to lift covers of access chambers of sewers on the Blue Hills Estate without submitting a Form Q.

220. In particular, on 6 May 2004, South East Water issued letters of introduction to Reeds' accredited sewer engineers, Richard Brewster, Frank Mendolia and Andrew Laurie. These letters advised residents that these accredited sewer engineers would be conducting engineering inspections of sewer works on the Blue Hills Estate until 3 November 2004.

56. In evidence, Reeds told the Court that they believed these letters to be, in effect, authorities to open the sewers that terminated on 3 November 2004. Accordingly, they did not seek authority to open the access chambers of sewers in the course of remediation works at Blue Hills Estate between 3 May and 3 November 2004.

---

<sup>58</sup> Evidence of Mr Stodal, Transcript 19 December 2012, page 533.

<sup>59</sup> Evidence of Mr Laurie, Transcript 23 October 2009, page 356.

57. Mr Buckton was not on the list of contractors approved by South East Water to enter a live sewer.
58. Mr Buckton was not provided with a similar letter of introduction or an authority to open sewers to witness the works and photograph the relevant parts identified in the “End of Defects Liability Form”.
59. South East Water has revised the Form Q since Mr Buckton’s death. The revised form includes a change of title and a change in the description of the type of work field. This revised policy makes it clearer that a Form Q is required for any removal of a cover of an access chamber of a live sewer.<sup>60</sup>
60. The revised Form Q now states:
- “This form is to be used for all works associated with live sewers including lifting maintenance hole covers, entering maintenance holes, altering maintenance holes connecting to maintenance holes, connecting property branches or insertion / removal of plugs etc.”<sup>61</sup>*
61. However, without identification of live sewers on residential developments and adequate audits of their facilities, South East Water cannot enforce the requirement to obtain authority to access live sewer facilities.
62. Therefore, I recommend that South East Water require approved consultant engineers and engineers on their provider list to submit regular reports of the sites they have accessed and apply random audits to ensure these lists comply with their applications for permission to access live sewer assets. **Recommendation 3**
63. Mr Weeks from Reeds also told the Court that Reeds were unaware of the requirement for inspectors to work in pairs when they opened the covers of access chambers of sewers. He said that it was not unusual or contrary to policy for only one person to attend for an inspection of a non-live sewer that did not require entry.<sup>62</sup>

---

<sup>60</sup> Evidence of Mr Stodal, Transcript 19 December 2012, page 533-534.

<sup>61</sup> South East Water Corporation, Form-Q Deed – Work on Live Sewers, 01/07/2012.

<sup>62</sup> Evidence of Mr Weeks, Transcript 19 December 2012, page 552.



64. Mr Weeks' opinion was shared by the Safety Action Report which stated that it was common practice for access chamber inspections not requiring entry and with no special fall protection measures to be conducted alone.<sup>63</sup>

65. Mr Stodal also stated that Mr Buckton did not need to obtain a permit or work with another person when he lifted the cover of the access chamber of a sewer:

*"At the time of the rectification works industry practice was such that surface inspections, including opening of sewer manhole covers for visual inspections and surveying, were undertaken by one person without the submission of an Entry Permit. An Entry Permit would not have been normally sought as surface inspection activities did not require physical entry into the manhole."*<sup>64</sup>

66. In addition, South East Water had no process in place to identify where one-up access chamber inspections were occurring and it was never raised by South East Water as an issue. Mr Weeks told the Court:

*"... if there was any doubt by anyone, including South East Water, I would have expected them to have raised an issue. I would have expected it to come out in the audits that were done. The fact that our company for years before this had been taking the photographs, have been supplying the photographs, if there was any doubt that that was what the industry was doing I would have expected a question to be raised, and I don't believe that that happened."*<sup>65</sup>

67. Mr Brewster also told the Court that that South East Water inspectors themselves also operated one-up:

*"Normally it would be one construction engineer, and that was similarly with South East Water. They would generally have one auditor undertaking this lifting inspection follow up type work."*<sup>66</sup>

68. Mr Collier confirmed the accuracy of Mr Brewster's observation but he was not aware that companies involved in the construction industry were also adopting this practice.<sup>67</sup>

---

<sup>63</sup> Safety Action Report commissioned by Reeds, 11 May 2005.

<sup>64</sup> Statement of Mr Stodal, See also Evidence of Mr Stodal, Transcript 19 December 2012, pp 530, 534.

<sup>65</sup> Evidence of Mr Weeks, Transcript 19 December 2012, page 556-557.

<sup>66</sup> Evidence of Mr Brewster, Transcript 21 October 2009, p.309.

<sup>67</sup> Evidence of Mr Collier, Transcript 19 December 2012, p. 490.

69. Therefore, not only was it industry practice for only one person to inspect an access chamber of both live and non-live sewers that did not require entry, it was also a practice adopted by South East Water themselves.
70. Accordingly, I find that lifting the cover of an access chamber to a sewer without assistance was always contrary to requirements set down by South East Water. However, it was consistent with usual industry and South East Water practice.
71. I note that, from 1 January 2010, Yarra Valley Water has required an access permit for developers opening their access chambers to sewers where no physical entry is required and survey, maintenance, inspection, isolation or testing is occurring.<sup>68</sup>
72. However, in circumstances where the person lifting the cover of an access chamber to a sewer without assistance is properly trained and qualified so that there is no risk of their entering the access chamber, I am unable to find that this industry practice and current policy is risky. Therefore, I make no recommendation on this issue.
73. However, from a recruitment, training and accreditation perspective, Reeds recruited Mr Buckton to inspect sewage pits for new housing estates when they were behind schedule in auditing remediation of sewer works performed by their sub-contractors. They were under pressure from South East Water to complete their task and under threat of losing their position as an approved consultant and on the South East Water Supplier's List. Other pressures on the company would flow from these delays.
74. Reeds recruited Mr Buckton on the basis of his relationship with Mr Thomas and his 20 year experience as a qualified construction, design, geotechnical and civil engineer with eight years' experience in design construction and supervision of contractors followed by nine years of geo-technical investigations for buildings, dams, distressed structures, slope stability studies and environmental investigations.
75. There is no evidence before me that Mr Buckton underwent a training needs analysis during his induction period.
76. On 21 January 2005, Mr Buckton had previously audited remediation of the leaking pipe defect to the drop pipe in the HRM27 access chamber to the Henry Road Main sewer reported in Non Conformance Report 202984 dated 15 November 2004. He had signed off

---

<sup>68</sup> Yarra Valley Water, CSE and Asset Access Permit Manual, Access permit Requirements.

on the Fax Cover for evidence of completion of this audit but it was not distributed to South East Water or FRH Group.

77. However, no photos were provided to me to show that Mr Buckton had previously photographed the HRM27 access chamber to the Henry Road Main sewer. Therefore, I infer that Mr Buckton authorised completion on 21 January 2005 on the basis of the FRH Group documentation. In particular, he did not go to the site and he did not use the camera on 21 January 2005.

78. Therefore, other than Mr Brewster's instructions, there is no evidence that Mr Buckton had been trained in use of the camera to visualise the defect 4.5 metres below the surface of the HRM27 access chamber to the Henry Road Main sewer.

79. Accordingly, although he knew enough to take the Gatic opener and the screw driver with him and physically open the HRM27 access chamber to the Henry Road Main sewer, I find that Mr Buckton had no or very little historical or immediate practical training in the task of inspection or audit of sewer works 4.5 metres below the ground in an access chamber to a sewer.

80. It is likely that a training needs assessment performed as required by Reeds policies and protocols would have identified Mr Buckton's inadequate training in the specific tasks required to audit remediation works in the access chamber of a sewer.

81. This training would have changed the way in which Mr Buckton went about his work on 25 January 2005 and may have prevented his death.

82. Therefore, I recommend that Reeds' Directors ensure that all new employees undergo training needs analysis relevant to the tasks they are expected to perform.

### **Recommendation 2**

83. In 2009, Reeds amended its training requirements for opening of covers for access chambers for live and non-live sewers.<sup>69</sup>

84. This new policy requires all employees to carry proof of relevant training and an OHS Red Card on site. It also tells employees that the first question to ask is:

*"Is this a sewer pit? Is the sewer pit live?"*

---

<sup>69</sup> Reeds, "Lifting Covers on Pits, Maintenance Holes and Shafts", WI/4.9/011, issued by R. Brewster & S. Ravida, 20/4/2009.

*If this is a LIVE sewer pit? STOP Opening live sewer pits is not permitted in most cases. If unsure, don't do it. If the sewer cover needs to be removed it may only be done by a person with appropriate training and safety equipment....”*

85. In addition to the misunderstanding of South East Water policies, there was no warning notice on the cover of the access chamber to a sewer and no grid under the cover of the access chamber to a sewer at the time of Mr Buckton's death.
86. The latter were introduced in February 2005 and by 8 June 2005, South East Water had painted warnings on all 40 access sites to the Henry Road Main sewer line.
87. However, the practice of labelling the covers of access chambers to a sewer was subsequently abandoned because of the requirement that they be repainted every twelve months and this cost was prohibitive.
88. Mr Buckton was directed to lift the cover of an access chamber to a sewer on 25 January 2006 to audit remediation of the leaking drop pipe in the HRM27 access chamber to the Henry Road Main sewer 4.5 metres down the shaft. Therefore, a warning painted on the cover is unlikely to have changed his decision to enter the access chamber to a sewer.
89. Similarly, the grid under the cover of the access chamber to a sewer, which operates to prevent unintentional entry, would not have prevented Mr Buckton's deliberate entry.
90. Accordingly, I make no recommendation on these issues.
91. Since and because of Mr Buckton's death, Reeds and South East Water have made a number of modifications to their policies and practices related to sewer assets.
92. Reeds has also circulated a document called 'Construction Site Work Activity Hazard and Risk Assessment Guide'. Although this considers entry to confined spaces, it does not consider the opening of a cover to a confined space.
93. Further, in 'Reeds Response to Worksafe Field Report' dated 18/02/05, the introduction states:

*“During the period, and at all times prior to that, no member of staff has entered, has justification to enter or been required to enter a confined space. Therefore no specific “hazard identification and risk assessment for hazards associated with works in a confined space” have been undertaken.”*
94. Reeds have also provided that lifting of a cover to an access chamber greater than two metres deep requires a falls prevention grate.

95. However, Reeds has still not addressed the risks associated with the task allocated to Mr Buckton, that is opening the cover of an access chamber to a sewer that he believes is not live and visualising works that are too far down the access chamber to be seen by the naked eye.

96. When asked whether the process imposed by South East Water had changed since the date of Mr Buckton's death, Mr Stodal said:

*"The process has changed as in that the contractors together with the other parties being the development, the consulting engineers and South East Water all bind together with an (indistinct) development deed, which then references that policy manual and that policy manual is available online from South East Water."*<sup>70</sup>

97. The current South East Water Land Development Policies and Pricing Manual specifies:

*"Only qualified personnel are permitted to lift sewer maintenance hole covers. A qualified person is anyone who has provided South East Water with a copy of their up-to-date confined space entry training ticket. Lifting of sewer maintenance hole belonging to other water companies can only be done with the permission of those companies.*

*The conditions for lifting South East Water maintenance hole covers, detailed below, must be strictly adhered to:*

- ***Entry into the maintenance hole is not permitted.***

*The person lifting the maintenance hole cover has to have provided South East Water with a copy of their up-to-date confined space entry training ticket prior to lifting the cover.*

- ***For all maintenance hole cover lifting a minimum of two working days written notice must be given to South East Water. South East Water will respond within two working days with advice of conditions or refusal of permission as necessary.***
- ***The notice document is Standard Form Q – Work on Live Sewers contained in SouthEast Water's Land Development Policy Manual, which must be completed accordingly.***

---

<sup>70</sup> Evidence of Mr Stodal, Transcript 19 December 2012, page 524.

- *The consultant / contractor must ring South East Water on BH:(03) 8788 4120 AH: 132 812 to get an Access Permit Number 1 hour prior to lifting the maintenance hole, inform South East Water of the maintenance hole number, contact number and expected time duration that the maintenance hole will be lifted and then ring back after that time to cancel the Access Permit Number.*
- *Penalties for breaching these conditions include intensive audit for consultants and removal from South East Water's list of Contractors for Minor Sewer Alterations and Connection into Live Sewer Assets.*<sup>71</sup>

98. These requirements do not discriminate between live and non-live assets nor address all the issues that arise out of Mr Buckton's entry into the HRM27 access chamber to the Henry Road Main sewer on 25 January 2005.
99. They also make no comment about the number of people required to perform the task of lifting the cover of the access chamber of a sewer.
100. In maintaining the requirement for qualification and accreditation and removing the requirement for two people to lift the cover of an access chamber to a sewer, South East Water has validated its own and consultant's usual practice in 2005. Therefore, I make no recommendations in relation to South East Water requirements for lifting of covers of access chambers to sewers.

**Mr Buckton's reasons for entering the HRM27 access chamber to the Henry Road Main sewer**

101. It is common knowledge that live sewers contain toxic gases. I accept that an engineer with Mr Buckton's qualifications and experience would know that live sewers contain toxic gases. Mr Buckton had expressed this knowledge to Ms Wiebenga.
102. Further, Mr Buckton's death occurred when he intentionally entered the HRM27 access chamber to the Henry Road Main sewer.
103. Therefore, I have seriously and systematically considered the evidence that would support my making a finding that Mr Buckton entered the HRM27 access chamber to the Henry Road Main sewer with the intention of committing suicide.
104. Suicide has been defined as:

---

<sup>71</sup> South East Water Corporation, Land Development Policies and Pricing Manual, September 2013.

*"(V)oluntarily doing an act for the purposes of destroying one's life while one is conscious of what one is doing. In order to arrive at a verdict of suicide there must be evidence that the deceased intended the consequence of his act."<sup>72</sup>*

105. Accordingly, in order to explain Mr Buckton's death as suicide, I must be satisfied that Mr Buckton entered the sewer on 25 January 2005 with the intention to die.
106. In forming a view about Mr Buckton's intention when he entered the HRM27 access chamber to the Henry Road Main sewer on 25 January 2005, I have relied on evidence about:
- his history of mental ill-health including previous suicide attempts and suicidal ideation;
  - his mental state in the week prior to his death; and
  - his state of mind on 25 October 2005.
107. To assist with this analysis, I sought the expert opinion of Professor James Bell who is a Consultant Psychiatrist and Clinical Director of the Victorian Institute of Forensic Mental Health at the time he provided his report.
108. I also considered the report and oral evidence provided to the Court by Dr Paul Kornan. Dr Kornan is a consultant psychiatrist who provided his expert opinion for Reeds.

#### **Mr Buckton's history of mental ill-health**

109. In 1998, in 2000 and in 2001, Mr Buckton had three episodes of severely depression including active contemplation or planned suicide.
110. Mr Buckton's general practitioner was Dr Richard Wrennall. Dr Wrennall gave evidence that he had seen Mr Buckton since 1980.<sup>73</sup>
111. Dr Wrennall first diagnosed Mr Buckton with depression on 5 March 2001. He assessed the condition as severe depression not requiring hospitalisation. He prescribed Zoloft and referred him to a psychologist, Jillian Cowan.
112. On the other hand, Dr Wrennall indicates that at his last consultation on 27 November 2004, Mr Buckton's depression was well and truly under control. Applying a scale of 1 to 10, he would have allocated Mr Buckton's level of depression about 1 or 2. He said that Mr

---

<sup>72</sup> R v Cardiff City Coroner, Ex parte Thomas [1970] 1 WLR 1475.

<sup>73</sup> Mr Gordon Buckton had also known Dr Wrennall since 1985. He said that Dr Wrennall used to be his doctor.

Buckton appeared to be positive about work and had not given him any signs or indication that he was contemplating suicide.

113. In November 2004, a previous neighbour and psychologist, Ruth Marshall, also spoke to Mr Buckton. Although, she formed the view that Mr Buckton seemed melancholy about his perceived failure to succeed, she was not so concerned about Mr Buckton's demeanour that she thought about whether he would commit suicide. In contrast to the general tone of the conversation, Mr Buckton also said that he was looking forward to starting his new job.
114. Therefore, I accept that the severe depression experienced by Mr Buckton between 1998 and 2001 had resolved by November 2004. To the extent that Mr Buckton's presentation two months before his death was a useful predictor of his state of mind on 25 January 2005, neither Dr Wrennall nor Ms Marshall believed he was suicidal.
115. Therefore, I find that the evidence does not support a finding that Mr Buckton was clinically depressed in November 2004 to the extent that he would have entered the HRM27 access chamber to the Henry Road Main sewer on 25 January 2005 with the intention to die.
116. In addition to depression, Ms Wiebenga says Mr Buckton was a perfectionist and had told her that he had been diagnosed with obsessive compulsive disorder and treated for this condition.
117. Further, Mr Buckton's friend, Mr Thomas, stated:

*"Niel was almost compulsive about making sure he did not forget things.... It was like there were two Niels, one was an extremely happy and loving person, and the other was like he was deeply troubled."*

118. However, there is no record that Mr Buckton was ever clinically diagnosed with obsessive compulsive disorder. Doctor Wrennall and Ms Cowan agreed that they saw no evidence that Mr Buckton suffered from obsessive compulsive disorder. There is no evidence that he was treated for obsessive compulsive disorder by the psychologist named by Ms Wiebenga.
119. Further, Ms Anderson indicates that she did not see any evidence of obsessive compulsive disorder during the seven months that she knew him.

*"No, not at all, if anything he was a very tidy person but no, not at all."*

120. Dr Bell also indicated that in his expert opinion:



*“Some of the comments offered as potentially indicative of his having this condition are much more appropriately understood as suggesting that he was of a rather fastidious and perfectionist personality. [...]*

*There is no indication of clinically significant symptoms of obsessive compulsive disorder in any of the observations made of him by Mr Buckton’s family, friends and associates in the material available to me.” [...]*

121. Therefore, I find it unlikely that Mr Buckton ever suffered from clinical obsessive compulsive disorder.

122. However, even if he had experienced this disorder earlier in life, Dr Bell expressed the opinion that it was not indicative of suicidal behaviour:

*“To the extent that Mr Buckton had a well-founded diagnosis of obsessive compulsive disorder following his mother’s death, and there is some evidence to support this, this history is of limited relevance to the question of whether or not he has committed suicide given the minimal evidence of clinically distressing symptoms in the last few years of his life.”*

123. Therefore, even if Mr Buckton had previously suffered from undiagnosed obsessive compulsive disorder, this condition had resolved itself by November 2004.

124. Accordingly, I find that the evidence does not support a finding that Mr Buckton suffered from obsessive compulsive disorder in November 2004 or that it was ever evidence that he entered the HRM27 access chamber to the Henry Road Main sewer on 25 January 2005 with the intention to die.

125. Further, at inquest, evidence was given with respect to Mr Buckton’s difficulties with erectile dysfunction and the conclusions that can be drawn from experience of this disorder. Two possibilities were raised: his impotence caused him psychological problems or psychological problems caused his impotence.

126. Before he came to Court, Dr Kornan had formed the belief that Mr Buckton’s erectile dysfunction was highly cogent evidence that he was experiencing some psychological difficulties in January 2005. He formed this opinion by analysing prescriptions for Mr Buckton’s medication.

127. However, Dr Kornan was mistaken about Mr Buckton's prescriptions and their effect on his impotence: Mr Buckton was first prescribed Viagra on 7 August 2004. On 27 November 2004, Dr Wrennall provided him with a repeat prescription because his condition had responded to its use.

128. Therefore, there is no evidence that Mr Buckton continued to experience these issues after he changed his medication in August 2004. Further, Ms Anderson's evidence was that it was not a problem with their relationship and that they were working through it together.

129. When confronted with this evidence, Dr Kornan withdrew his opinion that Mr Buckton's mental state would have been influenced by his sexual difficulties. In evidence, Dr Kornan conceded:

*"Well, I think that we can assume that it would be a very significant concern for him. Um, if in fact that the Viagra temporally made some improvement, that would relax him and relax her to some degree."*<sup>74</sup>

130. Further, Dr Bell did not agree that Mr Buckton's erectile dysfunction in 2004 was evidence of continuing severe depression because there are many factors that can influence impotence. Dr Bell stated:

*"Dr Kornan in his evidence - in his statement, I have no idea what his evidence was yesterday, but makes strong emphasis on the notion that Mr Buckton was consulting with Dr Wrennall for treatment of impotence and appears, if I've understood his report correctly, to cite this is as a strong or powerful argument for him having been depressed throughout that period. I'm happy to discuss the literature, in relation to depression and erectile dysfunctional suicide, Your Honour, I'm quite happy to go into the - into that, if you wish, but my conclusion of that is, that it is simply not a warranted conclusion to draw, that he was depressed."*<sup>75</sup>

131. Therefore, I do not accept erectile dysfunction is necessarily evidence of depression or other psychological disorder.

132. Accordingly, I find that the evidence does not support a finding that Mr Buckton's medical condition in November 2004 was evidence that he entered the HRM27 access chamber to the Henry Road Main sewer on 25 January 2005 with the intention to die.

---

<sup>74</sup> Evidence of Dr Kornan, Transcript of evidence 17 December 2012, page 415.

<sup>75</sup> Evidence of Dr Bell, Transcript of Evidence 25 November 2013, page 447-448.

133. Therefore, I am unable to find that Mr Buckton's previously diagnosed depressive illness and/or obsessive compulsive disorder and/or impotence support a determination that Mr Buckton entered the HRM27 access chamber to the Henry Road Main sewer on 25 January 2005 with the intention to die.

**Mr Buckton's state of mind in the week prior to his death**

134. Dr Bell told the Court that suicide can sometimes occur in the absence of mental illness if the individual is presented with a situational crisis that momentarily overwhelms them.

135. On the weekend on 22 and 23 January 2005, Mr Buckton was stressed because of renovations occurring at the family home in Dingley, where he had been living. Mr Buckton said that it was the second time since his mother's death that he felt like punching his father.

136. Mr Buckton had also indicated to Ms Anderson that he was stressed because he was not clear about his position at Reeds and that:

*"...he had found a mistake at his work that he wished he had never found because it became a nightmare."*

137. Further, although positive, Mr Buckton and Ms Anderson's decision to get married was also likely to be emotional and stressful for the participants.

138. Dr Bell told the Court:

*"At times of stress when the individual's means of maintaining emotional equilibrium are heavily strained, or overwhelmed, the individual experiences a rapidly escalating and intense state of anger that is disproportionate to whatever has provoked the anger. It is reasonable to suggest given the observations of Ms Anderson and Mr Thomas, that a few days prior to his death, Mr Buckton was going through a period of such personal, emotional strain."*

139. Ms Anderson told the Court that Mr Buckton was a good person of very sound mind. She did not believe that he would ever want to harm himself or anyone else; they were happy and had made plans for a future together.

140. Dr Bell counters Ms Anderson's observations:

*"It would be possible to suggest the alternative interpretation that - that this was him not wanting to give any suspicion about the fact that he was contemplating suicide, wanting her to think that all was normal, so that there was no intervention."*<sup>76</sup>

141. Mr Thomas also believed that Mr Buckton was a private person who was good at keeping his troubles to himself.

*"I have known Niel for about 18 years, he was my best man at my wedding, and I believe that I know him well, it was like there were two Niels, one was an extremely happy and loving person and the other, was like he was deeply troubled. After every thing I have seen and learnt in my effort to find Niel, I find it hard to believe that this was an accident; to me it is more likely to have been suicide."*

142. Further, I note the objective written evidence that Mr Buckton misled Dr Wrennall, Timothy Chadwick and his father about his job situation in 2001. Dr Wrennall explained this behaviour as follows:

*"I think he had the sort of personality where he liked to keep things to himself as much as possible, be in control of his situation. So although he was easy to talk to, he wasn't particularly forthcoming about those problems. He never told me why his marriage wasn't working. I dare say it wasn't working and that was it. I didn't have any close details about various things like that."*<sup>77</sup>

143. I also note the evidence that Mr Buckton misled Ms Wiebenga to believe that he was consulting a psychologist in 1998 although this coronial investigation found there was no other evidence to support her belief.

144. Therefore, it is possible that Mr Buckton was also deliberately misleading his doctor and his family about his mental state in November 2004 and in the period leading up to 25 January 2005.

145. The evidence before me also suggested two ways in which Mr Buckton may have attempted to tie up loose ends in preparation for his death:

- In the weeks preceding his death, he engaged in financial planning with the help of his brother; and

---

<sup>76</sup> Evidence of Dr Bell, Transcript of evidence, 18 December 2012, page 478.

<sup>77</sup> Evidence of Dr Wrennall, Transcript 20 December 2009, p. 130.

- Towards the end of January 2005, he went to see Ms Wiebenga to give her daughter a birthday present.

146. However, neither of these events is sufficient to demonstrate that Mr Buckton was preparing to die.
147. In particular, although I note that there seems to be an inconsistency with the evidence about his financial planning and the evidence that he was intending to marry Ms Anderson in that he indicated to his brother that they did not need to take into account dependants, I also note that Ms Anderson was financially independent and therefore he would not necessarily have considered her a dependent.
148. Further, Ms Wiebenga's daughter had been part of his previous life and it was routine for him to give her a birthday present.
149. From that perspective, these two activities and his proposal of marriage to Ms Anderson on 23 January 2005 can all be interpreted as evidence that Mr Buckton was actively planning for the future in the week before he died.

#### **Mr Buckton's state of mind on 25 January 2005**

150. The relevance of the evidence for and against suicide is difficult to determine without returning to the circumstances of Mr Buckton's work situation on 25 January 2005 when Mr Brewster directed him to go to the Blue Hills Estate to check that FRH Group had properly fixed the leak where the drop pipe entered the access chamber 4.5 metres below the opening of the HRM27 access chamber to the Henry Road Main sewer that was the subject of the South East Water Non Conformance Report 202984.
151. On 25 January 2005, Mr Buckton was aware of the safety implications of toxic gases in a live sewer.
152. Mr Buckton had also undertaken two weeks induction at Reed. He had read their Occupational Health and Safety literature and Reeds policies and procedures. These included Reeds work instruction:

"No personnel shall enter a live sewer maintenance hole under any circumstances."(their underlining).<sup>78</sup>

---

<sup>78</sup> Reeds Work Instruction WI/4.9/011 'Lifting Sewer Access Covers on Live Sewers' issued by Mr Brewster and approved by Mr Ravida on 27 November 2001, Reeds Consultancy.

153. However, Mr Brewster believed the sewer was not yet live when he directed Mr Buckton to audit the rectification in the HRM27 access chamber to the Henry Road Main sewer on 25 January 2005. Mr Brewster and other Reeds employees also understood that the Reeds' policies and procedures relating to lifting the covers of sewer access chambers related to live sewers.
154. Mr Brewster was the last person known to have spoken to Mr Buckton before he left Reeds on 25 January 2005.
155. I find it is more likely than not that Mr Buckton similarly believed the Henry Road Main sewer was not live, either from conversation with Mr Brewster and/or by implication from his knowledge of the Reeds policies and procedures and Mr Brewster's directions and/or because he knew that Reeds had not complied with the South East Water requirements for lifting the cover of the access chamber of a live sewer and/or because he had previously inspected the site on 21 January 2005.
156. Therefore, Mr Buckton would also similarly believe that the environment in the access chamber to the sewer did not contain toxic levels of methane and other gases.
157. Accordingly, if Mr Buckton believed that the Henry Road Main sewer was not live, he did not enter it on 25 January 2005 with the intention to die.
158. So, why did Mr Buckton enter the HRM27 access chamber to the Henry Road Main sewer on 25 January 2005?
159. After lifting the cover of an access chamber, Mr Brewster expected Mr Buckton to expose the entry of the pipe into the sewer by taking a photo using flash down the HRM27 access chamber to the Henry Road Main sewer and then enlarging it to show whether the works that required review had been remediated.<sup>79</sup>
160. Mr Buckton had inspected several other development sites with other Reeds engineers. However, there is no evidence that any of this work experience included taking a photo of works 4.5 metres down the access chamber of a sewer as he was required to do on 25 January 2005.

---

<sup>79</sup> See photos on Safety Action Report commissioned by Reeds, 11 May 2005, p. 16 which indicate the way in which the camera was intended to be used and the photo down the pit is unclear.

161. Further, on 21 January 2005, Mr Buckton had inspected the leak in the drop pipe in access chamber HRM27 to the Henry Road sewer that was the subject of the Non Conformance Report 202984.
162. I am unable to say what procedure Mr Buckton took to audit the leak in the drop pipe in access chamber HRM27 to the Henry Road sewer on 21 January 2005 or why he audited the leak in the drop pipe in access chamber HRM27 to the Henry Road sewer on 21 January 2005 or explain why Mr Brewster did not know that Mr Buckton had audited the leak in the drop pipe in access chamber HRM27 to the Henry Road sewer on 21 January 2005.
163. However, Mr Buckton seems to have performed the task on 21 January 2005 without using a camera. Therefore, although he had signed off on the rectification, there were no photographs to demonstrate that the rectification had been completed. These photographs were required evidence for South East Water.
164. Therefore, there is no reason to believe that Mr Buckton had practical experience with the specific task he was required to perform on 25 January 2005.
165. Further, Mr Brewster told the Court he discussed the task with Mr Buckton:
- “...in the briefing with him, yes. You know, could he have a look at these, and I'd mentioned that he may need to lift the cover and take some photos.”*
166. Mr Brewster also told the Court that he told Mr Buckton, *inter alia*:
- And I'd mentioned to him to have a drive by, have a look at them, verify that they were correct. And see, "If you need to pop the cover, pop the cover, take a photo”<sup>80</sup>*
167. Accordingly, Mr Brewster's direction to Mr Buckton indicated that removing the cover of the HRM27 access chamber to the Henry Road Main sewer and using the camera were discretionary components of the task that Mr Buckton was required to perform.
168. In the circumstances which Mr Buckton found himself on 25 January 2005 after he removed the cover of the HRM27 access chamber to the Henry Road Main sewer, it was impossible to see with the naked eye the entry point of the pipe which he was required to check and was 4.5 metres below the entry to the access chamber of a sewer. Further:
- There is no evidence that Mr Buckton had seen anyone else use a camera to illuminate and magnify the condition of an entry pipe in the access chamber of a sewer; and

---

<sup>80</sup> Evidence of Mr Brewster, Transcript of Evidence 21 October 2009, p.300.

- There is a ladder down the access chamber to the sewer to a platform 4.5m below the surface.

169. Andrew Laurie was a construction engineer with Reeds in 2004. In evidence, he confirmed that it was difficult to check a defect that was four to six metres deep. Mr Laurie told the Court:

*“It would make it more difficult to see if the issue was in the invert (the bottom of the sewer) of the sewer...generally if you took a flash photo and you had the camera positioned right, you could generally see a lot more than you could with the naked eye, because you got - obviously the flash put light over the depth of the sewer.”<sup>81</sup>*

170. Mr Thomas also told the Court:

*“Depending on the depth of them, and what you're trying to look at. Sometimes it's not easy to see down them, so you use your camera. The camera actually lights up the inside of the pit pretty good.”*

171. The Court also heard that, in some cases, a mirror was used to focus more light into the access chamber of the sewer in order to illuminate the defect under consideration.<sup>82</sup>

172. After he identified the sites of the work he had been allocated, Mr Brewster had suggested that Mr Buckton:

*“have a drive by, have a look at them, verify that they were correct.”*

173. In the context of Mr Buckton's well-ordered habits, I note that he left almost all the equipment he needed to perform his allotted tasks in his car when he entered the HRM27 access chamber to the Henry Road Main sewer on 25 January 2005.

174. Dr Kornan stated:

*“Finally, the fact that he did not take his cap, and camera, with him is an indication that, on the balance of probabilities, he did not intend, in all the circumstances that occurred, to return”.*

175. However, I note that Mr Buckton took with him the screw driver and Gatic opener and the plans that he needed to lift the cover of the HRM27 access chamber to the Henry Road Main sewer.

---

<sup>81</sup> Evidence of Mr Laurie, Transcript of evidence 23 October 2009, p.358.

<sup>82</sup> Evidence of Mr Laurie, Transcript of evidence 23 October 2009, p.378.



176. Therefore, in the context of his failure to understand the task on 21 January 2005, Mr Buckton's opening of the HRM27 access chamber to the Henry Road Main sewer could be interpreted to be a preliminary examination of the access chamber in preparation for gathering the evidence required.
177. This interpretation is consistent with Mr Brewster's suggestion that he "have a drive by" and with taking the plans and opening equipment with him but leaving the camera and mobile phone in the car.
178. Having established that Mr Buckton's deliberate entry into the access chamber to the sewer was not evidence of intention to die, I have more difficulty explaining how he found himself on his back in the horizontal Henry Road Main sewer.
179. The Court observed a full-size model of the bottom of the access chamber including the platform, the entrance of the pipe requiring assessment and the Henry Road Main sewer.
180. From this demonstration and the efforts required of a model said to be the same general shape as Mr Buckton, I accept that he would not easily have involuntarily entered the Henry Road Main sewer if he had slipped from the platform.
181. I note that Mr Buckton would remain frustrated in his attempt to visualise his task even when he reached the ledge in the access chamber to the sewer. It would be dark because his body would block any light that could otherwise penetrate 4.5 metres down the chamber. Further, the entry point of the drop pipe he was required to inspect would be close to his feet and he would not have room to bend down while he stood on the ledge.
182. However, it seems to me that a man as pedantic as Mr Buckton was portrayed to be may have decided to let himself drop so that he was standing on the bottom of the access chamber to the sewer. In this position, he would not obliterate the available light and his head would be closer to the same height as the pipe entry he was required to audit.
183. Further, Dr Teh had reported to Reeds that Mr Buckton had suffered lower back pain for the last five weeks. His pain was improving and he had full range of movement but he was unable to squat repetitively.
184. Therefore, having seen the model of the sewer and the difficulty Mr Buckton would have experienced entering it and in the absence of handles and in the narrow area in which he now found himself, I can understand that it would be difficult for a person of Mr Buckton's

build to reverse his actions and get himself back on to the ledge of the access chamber to the sewer with access to the ladder.

185. On the other hand, Mr Buckton's feet could have slipped out from under him as he was attempting to slide down the east side of the access chamber wall to drop from the ledge to the bottom of the sewer. In these circumstances, it is possible that his feet slid down the sewer so that his head was also on the bottom facing north. For the same reasons as before, having got himself into that position, Mr Buckton would find it very difficult to extricate himself.
186. My alternative explanations for Mr Buckton's position on his back in the horizontal HRM sewer remain speculative.
187. However, Mr Buckton's deliberate movement down the HRM27 sewer on his back to the next access pipe could have been an attempt to find another way out of the sewer after he was unable to get back on to the ledge at the bottom of the ladder in the HRM27 access chamber to the Henry Road Main sewer.

### **Conclusion**

188. Mr Buckton's body was found lying on his back 459 metres along the Henry Road Main sewer on the Blue Hills Estate in Pakenham, directly under the next access chamber to the Henry Road Main sewer. He still had with him his car keys, his watch, his handkerchief, his wallet, loose change and a water logged paper that looked like some sort of plans.
189. I have accepted that it was unlikely that Mr Buckton involuntarily entered the Henry Road Main sewer from the HRM27 access chamber on or about 25 January 2005.
190. Accordingly, I have determined that Mr Buckton intentionally entered the HRM27 access chamber to the Henry Road Main sewer on the Blue Hills Estate on 25 January 2005.
191. The forensic pathologist was unable to determine the cause of Mr Buckton's death and the circumstances in which he was found are not consistent with a finding of asphyxia.
192. However, Mr Brewster believed the sewer was not yet live when he directed Mr Buckton to audit the rectification in the access chamber to the sewer on 25 January 2005 and excused his directions to Mr Buckton on that basis.
193. Mr Brewster was the last person known to have spoken to Mr Buckton before he left Reeds on 25 January 2005.
194. Accordingly, I find that Mr Buckton is likely to have formed a similar belief either:

- From conversation with Mr Brewster, and/or
  - By implication of Mr Brewster's directions, and/or
  - Because he knew that Reeds had not complied with the South East Water requirements for lifting the cover of the access chamber of a live sewer and/or
  - Because he had inspected the site on 21 January 2005.
195. If Mr Buckton believed the Henry Road Main sewer was not live, he would also similarly believe that the environment in the access chamber to the sewer did not contain toxic levels of methane and other gases.
196. Accordingly, Mr Buckton believed that the Henry Road Main sewer was not live, he did not enter the HRM27 access chamber to the Henry Road Main sewer on 25 January 2005 because he intended to die.
197. Having taken seriously and investigated fully the contention of Worksafe, Reeds insurers, South East Water and Reeds, I do not accept that Mr Buckton necessarily or probably entered the HRM27 access chamber to the Henry Road Main sewer to commit suicide.
198. In particular, I find that the evidence before me does not support a determination that Niel Buckton deliberately entered the HRM27 access chamber to the Henry Road Main sewer on 25 January 2005 with the intention to die.
199. Rather, Mr Buckton did not have enough training and experience in the task Mr Brewster asked him to perform on 25 January 2005.
200. In circumstances where he believed the sewer was not yet live, Mr Buckton is likely to have accepted Mr Brewster's advice to reconnoitre the job site before or instead of taking photographs.
201. When he could not see down the HRM27 access chamber to the Henry Road Main sewer and/or did not realise that the camera was his means of exposing the rectification site, Mr Buckton would have believed that this task required him to enter the HRM27 access chamber to the Henry Road Main sewer and climb down the ladder provided for access to the ledge 4.5 metres below the surface.
202. Mr Buckton would still have had difficulty seeing the works he was required to audit when he was on the ledge of the HRM27 access chamber to the Henry Road Main sewer because it would be dark and the work would be close to his feet.

203. However, I can only speculate about why or how Mr Buckton found himself at the bottom of the access chamber in the Henry Road Main sewer and actively moved to the position where which his body was found 459 metres along the Henry Main sewer five days later.

## RECOMMENDATIONS

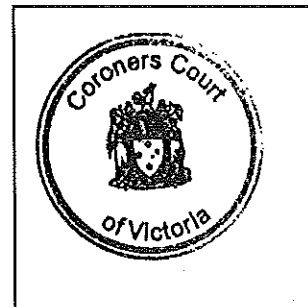
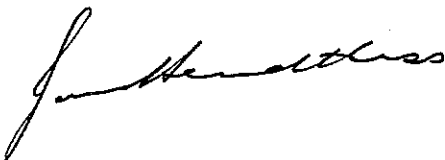
Pursuant to section 72(2) of the **Coroners Act 2008**, I make the following recommendation(s) connected with the death:

1. That South East Water upgrade their recording facilities to include the live status of sewer facilities subject to a Notice of Agreement for the provision of sewerage facilities so that it is available for electronic access to approved consultant engineers and engineers on their provider list. **Recommendation 1**
2. That South East Water require approved consultant engineers and engineers on their provider list to submit regular reports of the sites they have accessed and apply random audits to ensure these lists comply with their applications for permission to access live sewer assets. **Recommendation 2**
3. That Reeds Consulting Pty Ltd review its recruitment and training needs assessment policies and protocols to ensure new employees have adequate training, experience and peer support in the specific tasks they are required to perform. **Recommendation 3**

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

- Managing Director, Reeds Consulting Pty Ltd; and
- South East Water

Signature:



---

DR JANE HENDTLASS  
CORONER  
Date: 20 December 2013