

CORONERS COURT OF THE AUSTRALIAN CAPITAL TERRITORY

Case Title: **INQUEST INTO THE DEATH OF RIVER ARAMA PARRY**

Citation: **[2016] ACTCD 2**

Date of Findings: 4 November 2016

Before: Coroner Campbell

Legislation Cited: *Building Act 2004 (ACT)*
Coroners Act 1997 (ACT)

Texts Cited: *Building Code of Australia*
Australian Standard AS 1926, Fences and gates for private swimming pools
ACT Planning and Land Authority, *Swimming Pool Fencing*, Discussion Paper, March 2011

Appearances and Representation: Ms Sarah Baker-Goldsmith as Counsel Assisting the Coroner.
Mr Wayne Sharwood on behalf of the ACT Government

File Number(s): CD 267 of 2015

**AUSTRALIAN CAPITAL TERRITORY
CORONERS ACT 1997**

**IN THE CORONERS COURT
AT CANBERRA IN THE
AUSTRALIAN CAPITAL TERRITORY**

FINDINGS

I **Lisbeth Ellen Campbell**, a Coroner for the Territory, held an inquest, including a hearing conducted on **3 and 4 November 2016** into the death of:

River Arama Parry

I find that River Arama Parry, born in March 2014, died in Fisher, in the Australian Capital Territory on 30 December 2015. The manner and cause of River's death was drowning after he entered an unfenced in-ground home swimming pool. I find a key factor in his death was a lack of supervision.

Background

The basic facts of River's death are undisputed:

- a. On the afternoon of 30 December 2015, after a morning out, River and his mother, Tynan Abel, returned to Fisher where they had been staying with Mrs Abel's parents-in-law.
- b. Mrs Abel took River to the living room of the premises to be watched over by other family members while she returned to a bedroom to pack a suitcase.
- c. After a period of time River left the living room and the family members in that room assumed that he had returned to the bedroom with his mother.
- d. After about 30 minutes Mrs Abel completed the packing and went to the living room but River was not there.

- e. All family members commenced a search of the premises and its outdoor areas for River.
- f. Georgia Abel, River's aunt, went to the backyard to search the in-ground swimming pool.
- g. The water was murky and she could not see the bottom of the pool, so she took a long pole and scooped it along the bottom of the pool.
- h. She encountered something in the pool which she brought to the surface with the pole. It was River.
- i. Georgia Abel dived into the pool to retrieve River and brought him to the edge of the pool to be lifted out.
- j. Charlie Abel commenced CPR on River, which was later described by the ACT Ambulance Service (ACTAS) officers as effective, but River did not respond.
- k. At 6:23pm a 000 call was made for an ambulance.
- l. ACTAS officers arrived shortly thereafter and took over resuscitation and conveyed River to The Canberra Hospital.
- m. Upon arrival at The Canberra Hospital, River was blue with no signs of a pulse or breathing, and he did not respond to any resuscitation efforts.

No evidence has arisen during the course of the inquest or hearing to suggest any issues with the treatment provided to River by the ACT Ambulance Service or The Canberra Hospital. Police believe, and I find, that there are no suspicious circumstances surrounding River's death.

Matter of Public Safety

I found a matter of public safety arose in relation to River's death, in that the general legislative framework in the ACT for the fencing of home swimming pools (often referred to as backyard pools) is inadequate. The pool in which River died was unfenced and access to it was directly from the back door of the house. The door had no specific child locks or self-closing mechanisms to make access to the pool more difficult. And yet the pool was compliant with the applicable ACT pool fencing legislation. As it had been installed decades ago it was not required to comply with any changes and improvements in pool fencing and barrier standards which had

subsequently been introduced. The ACT law does not require that historically and lawfully erected pools must be retrofitted with pool barriers or that pool barriers must be upgraded or enhanced as requirements for newly constructed pools are strengthened.

Although I am told that there have been 32 drowning deaths in the ACT since 1 July 2000 (not counting River), only three of those deaths occurred in a home swimming pool, and in only one of those deaths were formal findings delivered: the inquest into the death of Daniel Weissegger (CD 13 of 2004).

Daniel was a two year old boy who drowned in an above-ground pool in a private rental property. He was left alone in a 'toy room' from which the pool could be directly accessed through a sliding door. This method of access to the pool did not comply with the applicable standard as neither the sliding door nor the sliding screen door had self-closing mechanisms. The tenant had identified this as a potential issue to the landlord but the landlord believed (incorrectly) that the sliding door did comply with the relevant requirements.

Coroner Dingwall found that Daniel's death could have been avoided had the relevant building and pool fencing regulations been complied with, and if a much more vigilant degree of supervision of Daniel had been exercised. The key issues from a regulatory viewpoint in that matter were the fact that the premises were a rental property and the non-compliance of the pool barrier with relevant ACT building requirements. His Honour made recommendations directed at those issues. It was not necessary for him to examine the overall legislative framework in any detail.

As became apparent at the hearing the legislative framework in respect of the fencing of domestic swimming pools in the ACT is confusing. This arises because swimming pools are not specifically regulated but rather are governed by generic rules which apply to all forms of building work. As James Corrigan (who at the relevant time was the Executive Director of the Planning Delivery Division of the ACT Environment and Planning Directorate), explained in his written statement dated 29 April 2016 there was no requirement in the ACT to have a pool fence at all until the 1970s, there were no technical standards for child-resistant pool fencing until 1976, and certain

demountable or portable pools were exempt from fencing requirements until 2004. Since 1988, pool fencing has been regulated mainly by the *Building Act 2004* (or its earlier iterations) which imposes the requirement to install barriers around pools compliant with the *Building Code of Australia*. The *Building Code* once incorporated Australian Standard AS 1926 *Fences and gates for private swimming pools*, but since 1997, it no longer expressly requires compliance with AS 1926. Compliance with the Standard is still deemed to comply with the *Building Code* but other pool barrier arrangements can also be accepted as complying with the *Building Code*. The requirements of AS 1926 have also changed significantly since its original introduction in 1976 and require increasingly more stringent and more child-resistant barriers to be in place.

There is however no general legislative requirement that requires those barriers to be maintained or upgraded over time. Similarly, when the *Building Code* changes its pool barrier requirements, there is no direct legislative requirement to bring a lawfully erected barrier into compliance with the increased stringency of the Code.

A mechanism does exist which could be used to enforce improvements to unsafe pools on a case by case basis, in that the *Building Act* allows for the issue of notices in respect of unsafe buildings or building work requiring safety issues to be rectified - the “section 62 notice”. However I accept this process is not an efficient way to regulate the upgrading of pool barriers which might be considered unsafe by contemporary standards even though they cannot be regarded as being unlawful in any way.

The standard that applied to the Abel’s pool, which was constructed in 1986, was AS 1926-1979 picked up and applied by the *Building Code* under the *Building Act*. That permitted the pool barrier to consist of boundary fencing and normal house doors, including a standard, that is, non-child resistant door from the house providing access to the pool area. Based on that Standard, the pool was compliant and not unlawful, even in 2015 when River drowned.

There are no nationally uniform pool laws and different States and Territories have taken different paths in their regulation of pool fencing. Queensland appears to have gone the furthest, in requiring that pool barriers for all pools must create a four sided

isolated zone with no door access, unless some exemption applies. In most other States and Territories, pool fencing laws do not apply fully retrospectively to existing pools but often the rules applied to such pools have been modernised in some way from the laws applicable at the time of construction. For example, in Victoria, pools built prior to 8 April 1991 must comply with 2006 regulations which require restricted door access; and in Western Australia, pools built after 5 November 2001 have been regulated to forbid external doors of houses from constituting part of the pool barrier. South Australia and the Northern Territory (and to some extent New South Wales) have taken the position that existing pools must be brought up to current standards at the point of sale or lease. Some States and Territories have also put in place registers and inspection regimes for pools.

In March 2011 the ACT Planning and Land Authority (ACTPLA) issued a *Discussion Paper on Swimming Pool Fencing*. It raised a number of proposals and invited public comment. Many of the issues raised in that paper do not directly arise in this inquest, such as the need for better pool safety signage. However, one of the suggestions mooted was that safety requirements should be upgraded so that all existing pools should comply with the (then current) *Building Code* requirements. The Paper went on to discuss whether this should occur as a one-off change or whether the requirement should be triggered at certain times such as the point of sale or rental of a property which included a home swimming pool. It also discussed the possibility of ancillary compliance mechanisms such as a register of all pools in the ACT and a home swimming pool inspection regime run by government officers. It is disappointing that this Paper appears not to have led to any further action, despite the lobbying of interested parties such as the ACT Branch of the Royal Life Saving Society of Australia.

I draw attention to the fact that since the publishing of the Discussion Paper in 2011, a number of Coroners in other jurisdictions have further considered the appropriateness of pool fencing requirements in the context of child drowning inquests. For example:

- a. Inquest into the death of Chanel Peckham, Finding into Death without Inquest, published by Coroner Jamieson on 6 September 2012 (Victoria);

- b. Inquest into the death of James Box, Record of Investigation of Death, published by Coroner King on 30 October 2013 (Western Australia);
- c. Inquest into the death of Lauren Harris, Finding into Death with Inquest, published by Deputy State Coroner West on 14 October 2014 (Victoria);
- d. Inquest into the death of Sebastien Yeomans, Reasons for Decision and Recommendations, published by Magistrate Stafford on 1 April 2015 [The NSW Government has also published a response to those recommendations];
- e. Inquest into the death of J, Record of Investigation into Death without Inquest, published by State Coroner Cooper on 1 October 2015 (Tasmania); and
- f. Inquest into the death of T, Findings of Inquest, published by Deputy State Coroner Lock on 18 December 2015 (Tasmania).

I urge the relevant areas of the government to have regard to these other inquests, and the recommendations of the Coroners in them, in determining the way forward for the ACT. It would also be appropriate for regard to be had to the material in evidence in this inquest, to the extent it has not already been considered. I commend in particular the oral evidence and written report of James Corrigan.

We will never know whether River would still have entered the pool had the Abel's pool been surrounded by pool fencing and barriers which were compliant with the standards in force at the time of his death. By all accounts, he was an inquisitive and active child with good coordination and dexterity for his age. But had the Abel's pool had a child-resistant pool barrier, River may well have been slowed down in his path to the pool sufficiently so that he might have been discovered, or he may have been discouraged in his efforts to reach the pool and wandered away.

I have reached the view that a requirement to bring existing pools into compliance with current laws should apply from a fixed point in time rather than be triggered simply upon the sale or lease of the property. Although the latter arrangement may well be administratively convenient for government, and may provide a transition period and defray costs over a longer period of time, it will not rectify any issues in older pools where the premises do not frequently turn over. For example, the Abels had lived at the Fisher address since January 2006, and the previous owners had lived there for over 37 years. It may be appropriate to have the sale/lease trigger in place as

an additional measure to ensure ongoing compliance with enhanced standards over time. I consider that as a first measure, all ACT pools need to be brought up to an appropriate standard as a priority.

Although undoubtedly there will be a significant cost imposed upon existing pool owners to bring their pools up to specifications, as counsel assisting me submitted, Detective Senior Constable Reynolds' work in relation to quantifying the economic cost of River's life gives some rigour to the commonly held notion that the loss of a child so young has an enormous cost, in every sense of that word, to his family and society as a whole.

Although nothing done in the inquest process will bring River back, or alter the pain his loss has caused his family, a change to the ACT legislative framework to improve ACT pool fencing requirements would be a significant legacy arising from this tragedy.

Recommendations

I make the following recommendations:

1. That the ACT Government develop and implement as a matter of some urgency, bearing in mind the advent of summer, a public awareness campaign with two key messages:
 - First, to remind the community of the importance of active and close adult supervision of small children in the vicinity of home swimming pools; and
 - Second, to raise awareness in the community of the efficacy of prompt resuscitation in reviving children who have fallen into water, and to encourage adults involved in supervising children in water to obtain and maintain appropriate life saving skills.
2. That the ACT legislative framework applying to home swimming pools be amended to require that all existing home swimming pools, irrespective of

when they were constructed or installed, be required to comply with the latest version of the *Building Code*. I note that it is a matter for government as to what transitional periods or arrangements might be adopted, but the outcome of having all home swimming pools protected by child-resistant safety barriers should be achieved as soon as possible.

3. That the ACT legislative framework applying to home swimming pools be amended to provide methods for ensuring all existing pools continue to comply with the latest standards as they change over time. It is not necessary for the purpose of this inquest for me to recommend a method, but I note that other jurisdictions have employed the following tools, often in combination, which are worthy of consideration:
 - A register of all home swimming pools and a compliance certificate regime;
 - A regime of periodic safety inspections;
 - Sale or lease triggering a requirement to make the pool barrier compliant with the standard in force at the time.

4. That the ACT have regard to the findings and recommendations of Coroners in other States and Territories since March 2011, in so far as they are relevant, and to the material in evidence in this inquest, in taking the actions recommended by me.

I thank counsel assisting me, Sarah Baker-Goldsmith, for all the work she has undertaken in relation to this inquest. It was of enormous assistance to me. I am in no doubt that her continuing contact with River's family, and also that of Detective Senior Constable Paul Reynolds, provided them with enormous support in a very dark time. The officer's investigation was exemplary and his compassion and the sensitivity with which he approached his task was evident before me at the hearing.

In conclusion I express my sincere sympathy to River's family for the tragic loss of a much loved little boy.

DATED 4 November 2016

**L.E. CAMPBELL
CORONER**

AUSTRALIAN CAPITAL TERRITORY

CORONERS ACT 1997

NOTIFICATION OF HOLDING AN INQUEST

To the Registrar-General,

I, **Lisbeth Ellen Campbell**, a Coroner for the Australian Capital Territory hereby notify that an Inquest into the manner and cause of the death of:

River Arama Parry

has been held on the **3 and 4 November 2016**.

- a) River Arama Parry, born 19 March 2014, died in Fisher in the Australian Capital Territory on 30 December 2015.
- b) The cause of death was drowning.

DATED 4 November 2016

**L.E. CAMPBELL
CORONER**