



## NEW SOUTH WALES STATE CORONER'S COURT

**File Number:** 76/2009  
**Name of Deceased:** Ruby-Lea BURKE  
**Hearing Dates:** 20-21 September 2011  
**Location of Inquest:** Griffith  
**Date of Finding:** 21 September 2011  
**Coroner:** Magistrate P.A. MacMahon  
Deputy State Coroner

**Representation:**

- Senior Sergeant D. Maddocks, Coronial Advocate assisting the Coroner,
- Mr C. Jeremy – Ms Tanya White (mother of Ruby-Lea) and Mr Justin Douglas,
- Mr J. Wilson – Mr Dwayne Burke (father of Ruby - Lea),
- Mr M. Fordham – Ms Lorraine O'Donnell and Mr Ronald Conlon,
- Mr D. Davidge – Leeton Shire Council.

*Note:* Certain evidence given during this inquest is subject to a non-publication order pursuant to section 74 (1)(b) of the Coroner's Act 2009

### **Non-publication order**

The publication of photographs of Ruby-Lea Burke and Lily-May Burke contained in Exhibit 2 in the proceedings is prohibited.

### **Findings made in accordance with Section 81(1) Coroners Act 2009**

Ruby-Lea Burke (born 26 August 2005) died on 7 January 2009 at 8 Beechworth Street Whitton in the State of New South Wales. The cause of her death was multiple injuries that were sustained when she was attacked that day by dogs ordinarily housed at the said property.

## **Recommendations made in accordance with Section 82 Coroners Act 2009**

### **To: The Minister of Local Government.**

That this Finding, together with the Statement of Detective Sergeant Simon Day and the reports prepared by Dr Kersti Seksel together with the recommendations contained therein as to the management of dogs and investigation of dog attacks, be referred to the Companion Animals Taskforce for consideration by that body in providing advice to Government on companion animal issues.

### **To: The commissioner of Police.**

That the NSW Police Force, in conjunction with officers of the Department of Local Government and other relevant bodies, develop a protocol specifying the forensic examinations that should be undertaken of dogs involved in fatal and serious dog attacks and that once such examinations have been undertaken the subject dogs should be destroyed and then disposed of.

### **To: The General Manager, Leeton Shire Council.**

That the Council undertake a review of the tranquilisers made available to animal management officers to assist them to control dogs and other animals that pose a threat to the community and other animals so as to ensure that the most effective product is made available to them.

## Introduction

1. Ruby-Lea Burke (who in these findings I will refer to as Ruby-Lea) was born on 26 August 2005. In January 2009, as a 3 year-old, she lived in Whitton, about forty (40) kilometres south of Griffith, with her mother Tanya White, older brother Nicholas (5 years), younger sister Lilly-May (14 months) and Ms White's partner Justin Douglas.
2. On Wednesday 7 January 2009 at about 8.30am Ms White left Ruby-Lea and Lily-May to be minded by a friend Lorraine O'Donnell at 8 Beechworth Street Whitton. Ms White intended to use the time to do her shopping.
3. Ms O'Donnell and her partner Ronald John Conlon were friends of Ms White and Mr Douglas and Ms O'Donnell had minded the children on numerous previous occasions. Normally she did so at Ms White's home however 7 January 2009 was a very hot day and Ms White's air conditioning was not working so it was decided that the children would be minded at the Beechworth Street property.
4. Mr Conlon and Ms O'Donnell had five dogs that ordinarily were kept at the property.
5. At about 10.50am Marleen Aliendi, was in her garden at 12 Beechworth Street Whitton. She heard the noise of dogs fighting coming from Ms O'Donnell's property and walked in that direction. She then heard Ms O'Donnell calling for help and a baby crying. She went to assist. The front door of 8 Beechworth Street was locked. Marleen's husband Doug Aliendi used a crow bar to open the front door and he and another neighbour went inside.
6. On entering the home Ruby-Lea was found lying on the floor deceased. Lilly-May was also on the floor nearby and had had suffered facial, head and neck injuries and puncture wounds. Lorraine O'Donnell was lying on a mattress

nearby in an incoherent state. Two dogs were also found inside the house. The dogs were removed and placed in the backyard by Mr Aliendi where they joined the other three dogs.

7. Ruby- Lea had suffered multiple injuries consisting of sever facial injuries and had bite marks all over her body. When examined she was found to be deceased.

### **Jurisdiction and function of the Coroner:**

8. Section 35(1) Coroners Act 2009 (the Act) requires that all “reportable deaths” be reported to a coroner in accordance with the Act.
9. Section 6(1)(a) of the Act provides that a death of a person that is “*violent or unnatural*” is a reportable death.
10. Part 3.2 of the Act confers jurisdiction on coroners to hold inquests concerning reportable deaths.
11. Section 81(1) of the Act sets out the primary function of a coroner following an inquest. That section provides, in summary, that at the conclusion of an Inquest the coroner is required to establish, should sufficient evidence be available, the fact that a person has died, the identity of that person, the date and place of their death and the cause and manner thereof.
12. Section 82 of the Act provides that a coroner conducting an inquest may also make such recommendations, as he or she considers necessary or desirable, in relation to any matter connected with the death with which the inquest is concerned. The making of recommendations are discretionary and relate usually, but not necessarily only, to matters of public health, public safety or the

conduct of services provided by public instrumentalities. In this way coronial proceedings can be forward looking, aiming to prevent future deaths. It is not the role of the coroner to attribute blame.

13. Section 78(1)(b) deals with the situation where, having regard to the evidence available, the coroner forms the view that the evidence is capable of satisfying a jury beyond reasonable doubt that a known person has committed an indictable offence, and that there is a reasonable prospect that a jury would convict the known person of the indictable offence, and that the indictable offence would raise the issue of whether the known person caused the death with which the inquest is concerned. In such a situation the coroner is required to suspend the inquest and refer the matter to the Director of Public Prosecutions in order that criminal proceedings may be considered.
14. Having considered all the evidence available to me I am satisfied that the provisions of Section 78(1)(b) have not been activated by these events.

**Identity, date and place of death:**

15. Ruby-Lea's identify was unable to be undertaken visually due to her injuries however on 9 January 2009 it was confirmed, on the balance of probabilities, by the State Coroner, Her Honour Magistrate Jerram, having regard to the information she had available to her at the time. I accept and adopt that determination.
16. The date and place of Ruby-Lea's death were not matters of contention. Having regard to the evidence available I am satisfied that Ruby-Lea died on 7 January 2009 at 8 Beechworth Street Whitton in the State Of New South Wales.

**What Happened on 7 January 2009?**

17. Police interviewed Lorraine O'Donnell on 23 January 2009 and she gave evidence at the inquest. She outlined that she and her partner had five dogs in

their care at 8 Beechworth Street Whitton. She outlined the circumstances in which she came to care for the two girls, how they went to the shops then the park and after which they returned home arriving at about 11am.

18. The events that followed she described in the following terms:

*"When we got home, I left Ruby-Lea and Lily-May on the front veranda, while I went inside and put all the dogs outside in the backyard. I then came and got the girls and took them inside. As soon as we got inside we filled the bath up and I gave the girls a bath because they were very hot. While they were having a bath, I made myself a cup of coffee. Both girls were mucking around splashing water everywhere.*

*I got Lily-May out of the bath first, and took her to the kitchen table. I dried her off and got her dressed. I left her crawling around on the floor of the kitchen and lounge room.*

*I then went back into the bathroom and got Ruby-Lea out of the bath. I took her to the kitchen table. I dried her off and got her dressed.*

*We all had a cold drink. They had some sandwiches that Tanya had made and brought over with them. We were all in the kitchen and lounge room.*

*After about 10 minutes, I picked up Lily-May and I was holding her in my left arm. I walked down the hallway and went to the bathroom to empty out the bathwater. Ruby-Lea stayed in the kitchen.*

*I was in the bathroom, when I heard the back screen door opening. You can hear the door opening because it is old and does not have all of its rollers. I yelled out to Ruby-Lea.*

*I said 'Ruby girl, what are you doing? Don't you play with that door.'*

*She said 'I just want to pat the dogs.'*

*I said 'Don't go near those dogs, they're naughty dogs. Don't you touch them.'*

*She said 'Alright.'*

*I heard the back screen door open some more. I don't know if Ruby-Lea opened the door some more, or if one of the dogs has opened the door some more after it was opened a little bit. Lucy can get her nose in and open the door if it is opened a little bit. She has done it before. I don't know that Ruby-Lea would have been strong enough to open the door all the way.*

*I then heard Ruby-Lea start to scream. She didn't say any words, she just screamed like she was in a lot of pain. I immediately knew that something was wrong. I Ran out of the bathroom and went running up the hallway. I was holding Lily-May.*

*I got to a point near the kitchen table when I saw the dogs on top of Ruby-Lea, who was laying on the kitchen floor. The dogs were the boy dogs, Willie and Lars. Ruby-Lea was crying and screaming. They were biting her on the arms legs and body. There was blood everywhere.”*

19. It is unnecessary to what happened after that other than to note that the attack was a ferocious one and as well as resulting in the death of Ruby-Lea also resulted in injuries to both Lily-May and Ms O'Donnell.
20. Having heard Ms O'Donnell's evidence I have no reason to believe that she was not telling the truth as to the events of the day and accept her description of what was no doubt a most traumatic experience.

### **The Dogs:**

21. As mentioned above there were 5 dogs that were located at 8 Beechworth Street Whitton. The evidence was that the dogs had not had any formal training however Mr Conlon and Ms O'Donnell sought to train them as best as they were able. Ms O'Donnell and Mr Conlon's evidence was that when children, or other visitors, attended the home the dogs were placed in the backyard. At other times however they had the full access to the house and backyard.
22. An examination of the dogs on the day following the attack found that blood was found on all but the oldest of them suggesting the involvement of four of the dogs in the attack on Ruby- Lea, Lily-May and Ms O'Donnell in some form or other. I am satisfied that this was the case.

23. Mr Peter Skarlis is the Leeton Shire Ranger. On 7 January 2009 he was on annual leave and was called to assist with in dealing with the dogs. He is a man well qualified to deal with dogs having, among other things, been employed for a number of years as an Australian Federal Police dog Trainer. It fell to Mr Skarlis to tranquilise the dogs so that they might be removed to the dog pound.
24. Mr Skarlis gave evidence as to the level of aggression he observed in the dogs on his arrival at the property some hours after the events. He found the level of aggression to be unusual. Indeed his evidence was that he had no doubt that had he or any of the police entered the backyard even some hours after the event they would have been attacked. I accept that evidence.
25. Mr Skarlis's evidence was that the Leeton Shire Council maintained a record of dog attacks and complaints about dogs. He had examined the Council records and found that there had never been any complaints about or events involving the dogs that were located at 8 Beechworth Street Whitton. I accept that evidence.
26. The evidence of Ms O'Donnell and Mr Conlon was that none of the dogs had never attacked anyone or ever given them any concerns that they might attack anyone. I accept that evidence.
27. This raised the question of why dogs that had never shown any previous indication of the sort of aggression that they exhibited on 7 January 2009 would suddenly do so. In trying to find some answer to this question I had the assistance during the inquest of Dr Kersti Seksel a specialist in animal behaviour.
28. It is not necessary for me to go into the detail of Dr Seksel's evidence except to note that she identified a variety of factors that were present on 7 January 2009 that may have aroused one or more of the dogs in question and which may have led to the terrible events that followed. Apart from identifying the possible factors

that may have been involved however Dr Seksel, having examined the evidence, could not be more specific as to what matters played a part in this particular case.

29. Dr Sekse's evidence was, however, most useful in outlining the level of misunderstanding of dog behaviour within the community and the need for a greater awareness by both dog owners and others of these matters.
30. One matter identified in this particular case that supported Dr Seksel's contention that there was a lack of understanding of the need to properly care for dogs was that although the evidence was that Mr Conlon and Ms O'Donnell tried to care for the dogs in question, and I am satisfied were committed to them, they were found to be grossly obese when examined by Mr Skarlis. This suggests that either their diet or their opportunity for exercise, or both, were unsatisfactory.
31. Dr Seksel's evidence was that the care of five dogs, particularly of the kind that were involved in this case, would require a great deal of attention. The state of the dogs would suggest that Mr Conlon and Ms O'Donnell either did not have the knowledge or ability to care for the number of dogs that were at their property.
32. Notwithstanding Dr Seksel's informative evidence the fact remains that we do not know what it was that resulted in the dogs attacking and killing Ruby-Lea on 7 January 2009. We do not know if the fact that there were five dogs on the property was a contributing factor nor do we know if the high temperatures on the day contributed. All we do know is that for whatever reason the dogs having entered the house attacked and killed Ruby-Lea.
33. Dr Seksel's evidence did however highlight that fact that all dogs need to be managed effectively. Ruby-Lea's death could have been prevented had the dogs at 8 Beechworth Street Whitton been managed effectively. Such management would have involved the dogs being kept in a childproof enclosure. That did not happen in this case. The dogs were simply placed in the backyard and the only restraint was a screen door that appears to have been opened, at least in part, by

Ruby-Lea. That door was of little protection due to there being no way that the door could be secured.

34. It was also Dr Seksel's opinion that children should always be supervised when in the presence of any dog. The reason for this is that all dogs can bite and are more likely to respond aggressively if provoked, challenged or threatened. It would be hard to believe that a young three year old girl could be seen as threatening a dog, particularly one that was more than forty kilograms in weight as these dogs were, however it was Dr Seksel's evidence that the high pitch scream of a child is in fact something that may cause a dog to become aroused. Once again we do not know if Ruby-Lea's scream resulted in the attack on her or was the result of the attack. We do know, however, this is why it is both necessary for dogs to be enclosed and for children to be supervised when in the presence of dogs.
35. Having reviewed the evidence available the only matters that contributed to Ruby-Lea's death that I can be confidently satisfied about is that there was a breakdown in the supervision of her that allowed her to open the rear screen door of the property thus allowing the dogs access to her and that the failure to ensure the dogs were in a child proof enclosure, or that the rear door was properly fastened, meant that the dogs were able to enter the home whilst she was present and attack her. I am unable to make a determination as to why, once in the house, the dogs attacked Ruby-Lea.

**Recommendations:**

36. As mentioned the role of a coroner is to determine, to the extent that the evidence available allows the manner and cause of a death the subject of the investigation. That examination is not to attribute blame but to find out what happened and if possible try and learn from those circumstances. The coroner may make recommendations with the aim of trying to ensure that similar tragic events do not happen again or that the systemic or structural issues identified are corrected.

37. In this matter Detective Sergeant Simon Day, the officer in charge of the investigation of Ruby-lea's death, Dr Seksel and Mr Wilson, counsel for Mr Dwayne Burke the father of Ruby-Lea, each suggested that certain recommendations be made.
38. Detective Day suggested that in ordinary residential properties it was inappropriate for more than two dogs to be kept. He acknowledged that there could be exceptions particularly involving breeders however such exceptions would need to be approved by the local authority. He also suggested that dogs that were involved in a fatal attack on a human ought be destroyed within 48 hours to ensure that the risk is removed. Detective Day also suggested that there was a need for an education campaign to remind the public about safety issues around dogs and the need to properly supervise children when they are near dogs and other animals.
39. Dr Seksel also made a number of recommendations including the creation of an expert committee to develop standard protocols for dealing with dog attacks, a nationally uniform approach to legislation for the control of companion animals, a nationally uniform approach for the collection of data on dog attacks to determine the effectiveness of dangerous dog policy and legislation with a view to review and amendment when required, a national database to store all information on dog attacks, creation and implementation of education campaigns for the community based on current scientific evidence about canine behaviour, and ongoing Animal Management Officer training.
40. In a later consideration of the issues Dr Seksel added to her recommendations by suggesting that a review of all deaths and serious injuries caused by dogs to humans in the last 10 years be conducted in order to identify predisposing factors so that appropriate canine and human factors might be targeted in dog bite prevention policies and education.
41. Mr Wilson's submission was that the events that led to the death of Ruby-Lea were such that there ought to have been some criminal sanction of Mr Conlon and Ms O'Donnell as the owners of the dogs in question. He suggested that an examination of the available criminal offences showed there was a gap in the

offences available to a prosecuting authority and that there was a need to review the offences available so as to ensure that there was some “accountability” for such tragedies.

42. The recommendations made by DS Day, Dr Seksel and Mr Wilson were well considered and arose from their involvement in or review of this particular matter and bringing to it their expertise and experience. It is, however, sometimes difficult to extrapolate general principles from one particular set of facts. Fortunately, during the preparation of this matter for inquest, I was also informed that on 15 August 2011 the NSW Ministers for Local Government and Primary Industries announced the formation of a Companion Animals Taskforce to provide advice to them on key companion animal issues. That taskforce is to be chaired by a member of the NSW Legislative Assembly and will consist of representatives of relevant organisations. I was also informed that Dr Seksel had been appointed to the Taskforce.
43. It is my view that given the establishment of the Taskforce and the expertise available to it in this area it would not be appropriate for me to endeavour to draw any conclusions or recommendations as to the management of dogs or the availability of penalties from the limited circumstances that I am investigating. I will, however, recommend to the Minister for Local Government that this finding, together with the statement of Detective Sergeant Day and reports of Dr Seksel be drawn to the attention of the Taskforce so that the matters suggested by them and the submission by Mr Wilson concerning offences might be considered during their deliberations.
44. There are however two matters that have arisen from this inquest that I consider should be the subjects of separate recommendation. They relate to the forensic examinations to be conducted following a fatality, and also serious injury, caused by a dog attack and the availability of appropriate tranquiliser for the use of animal management officers.
45. The issue concerning the forensic examination of dogs to be undertaken such an event appears to have arisen during the course of the inquest into the death of

Tyra Anne Kuehne that was conducted by Deputy State Coroner Magistrate MacPherson in August 2008. Tyra was a young girl who died following a dog attack in Warren on 19 July 2006. Magistrate MacPherson did not make any recommendations dealing with forensic examination however it seems that there were some comments made during the course of the inquest that raised some questions as to what forensic examinations should be undertaken on the subject dogs following an attack. The result is that the dogs involved in this matter have been preserved in a frozen state awaiting the outcome of this inquest.

46. This is clearly an unsatisfactory state of affairs and a waste of community resources. I propose to recommend to the Commissioner of Police that, in conjunction with officers of the Department of Local Government and other relevant bodies, a protocol be developed as to the examinations that should be undertaken of dogs involved in fatal and serious injury dog attacks and that once such examinations have been undertaken the subject dogs should be destroyed and then disposed of.
47. The issue of the tranquiliser arose following the evidence of Mr Skarlis as to the difficulty he had in subduing the dogs with the tranquiliser that he had available. Dr Seksel also made some comments during her evidence as to the effectiveness of the tranquiliser used. The evidence available to me does not enable me to make a finding one way or another as to the appropriateness of what was available to Mr Sarklis on 7 January 2009 however it would seem appropriate for the Leeton Shire Council to consider whether or not there is now a more effective tranquiliser available that might be provided to officers involved in this potentially dangerous work.
48. I wish to commend Detective Sergeant Simon Day for the quality and professionalism of the investigation undertaken by him following this tragic event

Magistrate P A MacMahon  
Deputy State Coroner  
21 September 2011

