

IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court Reference: COR 2014 5652

FINDING INTO DEATH WITHOUT INQUEST

Form 38 Rule 60(2)

Section 67 of the Coroners Act 2008

I, AUDREY JAMIESON, Coroner having investigated the death of ANITA KALNINS

without holding an inquest:

find that the identity of the deceased was ANITA KALNINS

born 2 September 1981

and the death occurred on 5 November 2014

at Murray River Foreshore at the Rear of 479 Brimin Rd, Brimin

from:

1 (a) BLUNT IMPACT INJURIES

Pursuant to section 67(1) of the **Coroners Act 2008**, I make findings with respect to **the following circumstances:**

1. Anita Kalnins was 33 years of age at time of her death. She lived in Chirnside Park with her partner, Paul Keen and was a child care worker.
2. On 31 October 2014, Ms Kalnins and Mr Keen began camping with friends at the Murray River foreshore, which they accessed through a private property at 479 Brimin Road, Brimin.
3. On the afternoon of 5 November 2014, Ms Kalnins was sitting under a River Red Gum tree with two friends, on the foreshore. The tree was to the friends' left, with another, larger tree further to the left. Just after 1.00pm a branch dropped from the further tree, causing a branch approximately 30cm in diameter from the closest tree to fall. The friends heard the crack of the limb and jumped up, running in different directions, but the branch from the closest tree landed on Ms Kalnins. Her friends sought to assist but were unable to lift the tree branch; it was

apparent that Ms Kalnins was already deceased. Emergency services were contacted and police, ambulance paramedics, Country Fire Authority (CFA) and State Emergency Services (SES) subsequently attended.

INVESTIGATIONS

Forensic pathology investigation

4. Dr Jacqueline Lee, Forensic Pathologist at the Victorian Institute of Forensic Medicine performed an external examination on the body of Ms Kalnins, reviewed a post mortem computed tomography (CT) scan and referred to the Victoria Police Report of Death, Form 83. Anatomical findings were consistent with the known mechanism of injury. On the evidence available to her, Dr Lee ascribed the cause of Ms Kalnins' death as due to blunt impact injuries.

Police investigation

5. Leading Senior Constable (LSC) Aaron Hardinge, the nominated coroner's investigator,¹ conducted an investigation of the circumstances surrounding Ms Kalnins' death, at my direction, including the preparation of the coronial brief. The coronial brief contained *inter alia* statements made by Ms Kalnins' partner Paul Keen, fellow campers Nicole Paterson and Catherine Ault, Parks Victoria Area Chief Ranger Andrew McDougall and arborist Mick Downing.
6. In the course of the investigation, police learned that the land on which the incident occurred is unreserved crown land regulated by the *Land Act 1958* (Vic) ('Land Act') and associated regulations. The site was subject to a Department of Environment, Land, Water and Planning (DELWP) water frontage grazing licence under section 130 Land Act, which prohibits camping.
7. The freehold land at 479 Brimin Rd was owned by Rick and Sheree Coulthard at the time of the incident. The relevant section of the water front crown land must be accessed via the Coulthard family's private property, via a private road, and then via licensed water frontage.
8. Mr Keen had been camping at the property for approximately three or four times a year over the past 10 to 15 years, and had a permanent camping spot from 2008. Mr Keen had permission from the owners to access their property to get to the camping spot, and a pass for their electronic gate. Mr Keen paid \$1500 per year for access to the property and for up to four

¹ A coroner's investigator is a police officer nominated by the Chief Commissioner of Police or any other person nominated by the coroner to assist the coroner with his/her investigation into a reportable death. The coroner's investigator takes instructions direction from a coroner and carries out the role subject to the direction of a corner.

caravans to stay there all year round. He would make a cash payment to Sheree Coulthard every January.

9. Members of the public can access the water frontage by boat, but must pay a fee to access the site across the Coulthard's freehold property. Parks Victoria did not have vehicle access to the land, and as such no warning signage exists at the site. Parks Victoria staff infrequently patrolled the area by boat.
10. Mick Downing's arborist report assessed the larger of the two trees involved in Ms Kalnins' death as 'above average risk' but noted the general public often camp under trees in worse condition than this tree.
11. A Parks Victoria Incident Response Report Form included within the brief noted 'Warning: Due to Mr Coulthard's aggressive behaviour towards Parks Victoria staff, staff must not enter the Coulthard property without Vic Pol in attendance.'
12. LSC Hardinge informed the Court by email on 16 September 2015 that a lot of camping spots in the area have grazing licenses over them, even though the licences prohibit camping. It was noted there had not been any action taken against the Coulthards regarding the apparent camping activity.

Further investigations

13. Following receipt of the coronial brief, the Court sought and received further correspondence and information in relation to Ms Kalnins' death.
14. The Coroners Prevention Unit² researched the occurrence of deaths in similar circumstances to Ms Kalnins, and noted that a further 23 deaths occurred in Victoria between 1 January 2000 and 30 November 2015 from falling trees or branches. It was noted that these deaths did not involve one particular species of tree, but gum trees figured prominently.
15. By way of letter dated 5 October 2015, Parks Victoria Area Chief Ranger Andrew McDougall informed the Court that the Hume reach of the Murray River has had numerous historic clashes in past and current uses and land tenures. The Brimin Road land has added complexity in that

² The Coroners Prevention Unit (CPU) was established in 2008 to strengthen the prevention role of the coroner. The unit assists the coroner with research in matters related to public health and safety and in relation to the formulation of prevention recommendations, as well as assisting in monitoring and evaluating the effectiveness of the recommendations. The CPU comprises a team with training in medicine, nursing, law, public health and the social sciences.

there is no legal road reserve access, making it extremely difficult for public land managers to access the site.

16. Mr McDougall noted that between March 2013 and April 2014, 29 crown land encroachments were removed from the Coulthard crown frontage through negotiations between Parks Victoria, Mr and Mrs Coulthard and the structure owners. The Coulthard family were made aware that they were in breach of their licence conditions and instructed they needed planning consent from Indigo Shire, a tourist operator's licence and land manager consent from Parks Victoria and to amend current grazing practises if they wished to conduct a camping enterprise. Mr McDougall confirmed that Parks Victoria's management of the Coulthard crown water frontage is now limited to boat access but is still ongoing.
17. Mr McDougall noted that Parks Victoria staff considered recommending that the Coulthards' grazing licence be revoked, but declined to do so because *inter alia*:
 - The issue of grazing and camping is a historical and state-wide policy issue that affects many other graziers and would require government support to implement. The closure of camping grounds carries major political risk and has economic impacts on regional communities.
 - Historically, it has been common for licensees to breach licence conditions and allow camping on licenced frontage, with family and friends often being allowed to use licenced frontages.
 - Many licensees across the state believed a licence gave them ownership of the crown land rather than a nonexclusive right of use.
 - Boundary fencing of approximately 9.5km would be needed at the Coulthard property at an approximate cost of \$76,000 to prevent stock from grazing on the crown land.
 - As there is no vehicle access it would be almost impossible to monitor any illegal grazing activity or undertake compliance of any breach of legislation other than by boat. Removal of a grazing licence would allow camping to occur legally, however a breach of the *Land Act* would still result as stock would continue to graze crown frontage without a water frontage licence being in effect.
18. On 31 March 2016, the Court corresponded with Therese Davis, Program Manager of Public Land Wodonga, at DELWP. Ms Davis informed the Court by telephone that it was very seldom that action is taken against grazing licensees under the Land Act, in the form of prosecutions or

finer. She relayed that the process is protracted and can result in a fine as small as \$72. Ms Davis emphasised that cancelling a grazing licence is very difficult and fraught from an industrial relations perspective.

19. By email dated 10 May 2016, John Stevens, Senior Legal Counsel at Parks Victoria confirmed that as the section 130 grazing licence over the waterfront land was issued by DELWP, Parks Victoria is not a party to the licence, and its role in enforcement is limited to management of the crown land, monitoring for compliance (which is limited as there is no legal road access) and reporting any alleged infringements to DELWP. Mr Stevens also noted that enforcement powers under the current *Land Act* and *regulations* are limited.
20. A series of questions were posed to DELWP by way of a Form 4 'document or prepared statement required to be given to the Coroner'³ dated 16 May 2016. In response, Peter Beaumont, Executive Director of Land Management Policy at the Department provided a statement dated 7 June 2016. Mr Beaumont noted that the licence for 479 Brimin Rd, Brimin is for the purpose of grazing only and contains directions from the licensor in relation to this purpose only. The licensee can be notified of contraventions of licence conditions, however enforcement for continued non-compliance is covered in the 'termination upon default' clause (s 407(1A) of the *Land Act 1958* provides for the cancellation of a licence). This action has strong procedural rights and responsibilities listed in the *Land Act 1958*.
21. Mr Beaumont noted that currently, camping is prohibited on licensed crown land, as per s 401A of *Land Act 1958*. However, there was no legal access for Parks Victoria staff to the Crown land to monitor compliance. If DELWP had cancelled the licence for 479 Brimin Rd, the landowner would have been required to fence off water frontage to prevent stock access, costing approx. \$76,000.
22. Mr Beaumont confirmed that compliance of unauthorised activities (not associated with a licence) are dealt with by the land manager (Parks Victoria in this case). The use of Crown land for recreational profit is regulated by s 140H of the *Land Act* which makes it an offence to conduct an organised tour or recreational activities on crown land if unlicensed. In addition, there is a penalty under s 188A of the *Land Act* for the unauthorised occupation of crown land for illegal structures.

³ A Form 4 'Document or prepared statement required to be given to the Coroner' is issued under section 42 of the *Coroners Act 2008* (Vic) and requires the recipient to provide information within a specified timeframe.

23. Mr Beaumont noted potential legislative changes that have been discussed as mechanisms to improve land management in Victoria's River Red Gum Forests. Suggested improvements include:

- the establishment of a single land tenure;
- increasing the penalty unit specified under the *Land Act* to something more substantial to act as a deterrent to undesirable behaviour; and
- DELWP could consider including a clause within standard licenses for reasonable vehicle access by DELWP or Parks Victoria staff through the licensee's freehold land adjacent to the licensed crown land for the purpose of managing that land.

24. The Court located an online article entitled 'Two mixed farming operations on the Murray River at Brimin for Sale',⁴ published on 'The Weekly Times' website and dated 1 July 2015. The article referenced the Coulthards' 'sideline in hosting holiday-makers' and stated that the Brimin property included a 'camping business'. It added 'with 8.5km of Murray frontage, it is a magnet for campers and caravanners.' In addition, a listing on the 'Landmark Harcourts Real Estate Wangaratta' website⁵ for 479 Brimin Road, advertised that the property had 'profitable caravan camping sites with permanent and seasonal campers'.

Mention hearing on 30 August 2016

25. A mention hearing was held on 30 August 2016, to progress the coronial investigation towards either an Inquest or in-chambers finding, and assist me to ascertain what, if any, remedial action had been taken in the aftermath of Ms Kalnins' death to prevent like incidents in the future. Specifically, I was interested in learning if there was any indication that camping would not continue at 479 Brimin Road, or if Parks Victoria would be able to access the area and maintain it for camping purposes. Kathleen Foley of Counsel appeared on behalf of Parks Victoria and DELWP; Ms Kalnins' partner Paul Keen and mother Gillian Kalnins attended the hearing.

26. Ms Foley noted that neither DELWP nor Parks Victoria consider it appropriate or desirable to take steps to identify all 'at risk' tree limbs situated in natural bushland and remove them. In addition, it was not considered desirable to exclude the public from their enjoyment of natural

⁴ See: <http://www.weeklytimesnow.com.au/property/two-mixed-farming-operations-on-the-murray-river-at-brimin-for-sale/news-story/a45abee3630d89474bc50e5da60b1cc2?nk=dc36f0dc92cede166b865ca6260882b5-1474326087>, accessed on 20 September 2016.

⁵ See: <http://wangeratta.landmarkharcourts.com.au/Property/615716/LWR5968/479-Brimin->, accessed on 30 August 2016. I note that on 20 September 2016, the reference to 'profitable caravan camping sites with permanent and season campers' appeared to have been removed from the website.

bushland or river banks. Ms Foley said that DELWP and Parks Victoria respond to the risk of falling tree limbs in the natural bush by ensuring that signage that warns of the risk is in place. She noted that the sheer size of bushland in Victoria means it is impossible to have warning signs wherever there is a risk of a tree limb falling. However, Parks Victoria takes steps to ensure that camping areas, on land that it manages, have adequate signage. Ms Foley advised the Court that Parks Victoria has designated camping areas at many bends in the Murray River, which are well signed and subject to risk reduction activities. However, Parks Victoria also places signs dealing with local risks and permitted activities at 'disbursed self-selected camping' areas on the crown land river frontage.

27. Ms Foley noted that the water front land at 479 Brimin Road presented particular difficulties, as it is unreserved Crown land and subject to a grazing licence issued to the Coulthard family. There was no public access to the land, by land or by road, so for Parks Victoria staff to access it, they needed permission to travel through the private Coulthard property. While there is some access to the land by boat from the river, the waterfrontage is 8.5km long. Ms Foley said that Parks Victoria did consider signage along the riverfront, accessing from the river, but found no obvious 'point of orientation'⁶ at which to erect a warning sign. The conclusion was reached that ensuring adequate signage in relation to the camping activities required the cooperation of the Coulthard family.

28. Ms Foley noted that since about 2008, Parks Victoria staff in Wangaratta have tried to negotiate with the Coulthard family to deal with the camping being conducted. Negotiations were unsuccessful and in 2013 and 2014, further investigation led to Parks Victoria undertaking a compliance operation targeting camping activities. A range of public safety issues identified included unapproved lighting infrastructure; suspected asbestos; and discharge of waste from pit toilets into the river. As a result of this operation, 29 unauthorised structures were removed from the land in a long-running project that lasted until April 2014.

29. Ms Foley advised that due to the safety concerns for staff as a result of interactions with Mr Coulthard, Parks Victoria determined that its staff could not enter the Coulthard property without the attendance of Victoria Police. This difficult relationship with the Coulthards, combined with the lack of public access by land, meant that ultimately Parks Victoria has not erected warning signs on the land.

⁶ Ms Foley noted that a 'point of orientation' would be a place where campers will access the Crown land in the area.

30. Given the view that people should enjoy the river frontage, it was preferred that the Coulthard family obtained the appropriate tour operator licence. However, it appeared that the Coulthard family chose not to pursue this option. Ms Foley acknowledged that if the Coulthards wished to provide commercial camping arrangements on the land in a formal way, they would be required to relinquish their current grazing licence and construct a fence along the boundary. Ms Foley noted that Parks Victoria did give consideration to recommending cancellation of the Coulthards' grazing licence. However, Ms Foley emphasised some of the factors weighing against this option, particularly that the Coulthard land is not the only land along the Hume reach of the Murray River where the use of the land is inconsistent with the licence conditions.
31. Ms Foley also noted that it appeared that Ms Kalnins' group had an awareness of the danger of falling tree limbs, and that warning signs would not have prevented her death.
32. In the case of the Coulthard property, Ms Foley noted that further possible action includes referring the matter to DELWP to consider prosecution for conducting a recreational activity on crown land for profit without a tour operator licence, contrary to section 140H of the Land Act. Another option was that DELWP has recently been trialling the use of remotely piloted aircraft systems or drones, for a range of public land management tasks. Ms Foley stated that these may be useful in supporting future compliance operations in areas of crown land that are difficult to access.
33. Finally, Ms Foley noted that section 401A of the Land Act, which prohibits camping on water frontage which is subject to a grazing licence, is focused on the campers rather than licensees such as Coulthard family. As a result, DELWP or Parks Victoria would not wish to pursue this action, as there is no desire to prevent people from enjoying the river frontage.
34. Following Ms Foley's submissions, I noted that there remains a significant public health and safety issue, specifically in regard to the Coulthard family's failure to cooperate and allow access to their land by Parks Victoria. At the hearing, I advised parties that I would consider the material before me prior to deciding whether or not to hold an Inquest, and subsequently determined to complete this in-chambers finding.

COMMENTS

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

1. The investigation into the death of Ms Kalnins has highlighted sustained, systemic issues which continue to negatively impact upon the public health and safety of people choosing to camp on the Murray River Foreshore today.
2. I acknowledge that Ms Kalnins' death occurred in tragic and unexpected circumstances. Certainly, it is not possible to foresee the danger of every tree limb located in bushland, and I note that while arborist Mick Downing described the larger of the two implicated trees as 'above average risk', he also noted that the general public often camp under trees in worse condition. I also acknowledge the merit in the view adopted by Parks Victoria and DELWP that people should be able to enjoy natural bushland.
3. However, significant problems exist in relation to the management of crown land on the Murray River foreshore at 479 Brimin Road, Brimin. The fact that Parks Victoria – the body responsible for maintaining the relevant crown land - has apparently had its land access through the Coulthard family's property limited, is thoroughly untenable. River access by boat may theoretically exist, but with 8.5km of river frontage, this is not a viable option. The community would expect that Parks Victoria should have adequate access to monitor, conduct risk assessments and erect safety signage on land that it is responsible for managing.
4. I note that the evidence indicates that the Coulthard family have been running a profitable camping enterprise over the crown land adjacent to their Brimin property, without a tour operator licence (as required by section 140H of the Land Act) and its associated compliance requirements. In circumstances where people are paying to camp on crown land, where a tour operator licence is not in place, and with Parks Victoria's ability to manage the land greatly impeded by limited physical access, it is hard to comprehend why DELWP has not cancelled the Coulthards' grazing licence over the land or at a minimum, launched proceedings for a contravention of s140H of the Land Act.
5. The reasons proffered for the Department's inaction in relation to cancelling the Coulthards' grazing licence range from the considerable expense to the Coulthards should they have to install a fence to restrain livestock from crown land; difficulties with monitoring compliance; to the historical policy issues that exist in the area. In the context of Ms Kalnins' death, these reasons present as both moot and insignificant. If the Coulthard family will not obtain the

appropriate tour operator licence to legitimise their camping venture, nor allow Parks Victoria staff to properly access the land through their freehold property, then it remains unclear as to why they should be permitted to have a grazing licence over the crown land. I acknowledge Ms Foley's submission at the mention hearing that were the Coulthards to obtain a tour operator licence, they would need to relinquish their current grazing licence and construct a fence along the boundary with the crown land. I accept that this would impose considerable expense upon the Coulthards, but the current status quo is entirely unsustainable. If the Coulthards are not prepared to adopt appropriate, regulated measures for their commercial camping enterprise, they should shut it down. Access to crown land by Parks Victoria should take precedence.

6. I note that at the mention hearing, Ms Foley emphasised that a reason for inaction against the Coulthards was that the relevant crown land is not the only land along the Hume reach of the Murray River where the use of land is inconsistent with licence conditions. Inconsistency between the specifications of the Land Act, its application and historic policy issues have been constant themes in this investigation. The legislation is not being used for its intended purpose of enabling access and monitoring of crown land. This is concerning. Ultimately, this is a matter for government but enhanced clarity, purpose and application would greatly improve my and I daresay the public's understanding in this area.
7. It should be a fundamental unsaid right of Parks Victoria to be able to access, monitor and maintain crown land. According to the available evidence, the actions of the Coulthard family appear to have impeded Parks Victoria and I have significant concerns about the ramifications of this behaviour. I have not engaged the Coulthard family with this investigation, as while I view their apparent behaviour as questionable, recourse rests with statutory bodies, at a legislative level outside my jurisdiction.
8. It is concerning that Parks Victoria essentially allowed a dysfunctional situation to continue, where the organisation was denied access to assess and maintain crown land. However, when regard is had to the arborist Mick Downing's opinion, even periodic assessments may not have been able to predict and prevent the falling of the relevant tree. In the circumstances, and in the absence of a direct causal relationship between the apparent illegal activity of the Coulthards and Parks Victoria's inability to adequately enter or access the site, and Ms Kalnins' death, I make no specific adverse comment against the Coulthards and make no adverse comment that could be interpreted to say that the Coulthards' behaviour is causally linked to Ms Kalnins' death. The matter of this continued use and profit making from crown land is really a matter for Parks Victoria.

9. However, I maintain my concern about this situation, where Parks Victoria cannot enter onto land that it needs to manage. Had the arborist assessed that the relevant tree was a more obvious and high risk tree that could have been identified and maintained by Parks Victoria, I would have proceeded to Inquest.

FINDINGS

The evidence indicates that Ms Kalnins died after choosing to camp in a location that was largely devoid of appropriate management by both Parks Victoria and the Coulthard family. I am unable to find that there is a direct causal link between Parks Victoria's inability to enter onto the Coulthards' property; stop camping in the area; or assess the trees for risk of unpredictable falling or branch breaking, and Ms Kalnins' death.

While I acknowledge that the fall of the tree limb which killed Ms Kalnins was both unexpected and largely unpredictable, I do find that appropriate health and safety measures at the camping site were not in place. This absence relates to an apparent inability of Parks Victoria to adequately access and thus manage the site, as well as the Coulthard family's lack of Tour Operator Licence or formal framework for the commercial camping enterprise.

Given that Ms Kalnins' group were apparently alert to the risk of falling tree limbs, I am unable to find that warning signage or appropriate risk assessments would have definitely prevented her death. However, I do find that that inaction on the part of Parks Victoria and the Department of Environment, Land, Water and Planning – whether for reasons of ineffective legislation or policy issues - permitted the camping enterprise to illegally continue on crown land, and enabled Ms Kalnins to camp there.

It seems abhorrent that private individuals are able to exploit crown land, where obligations for maintaining the safety of the area divests to Parks Victoria. In these circumstances, the health and safety of public is being compromised for the benefit of individuals.

I accept and adopt the medical cause of death as identified by Dr Jacqueline Lee and find that Anita Kalnins died from blunt impact injuries, in circumstances that relate to an act of nature.

RECOMMENDATIONS

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

1. With the aim of improving the clarity of the relevant legislative framework and preventing harms and like deaths, **I recommend** that the Secretary of the Department of Environment, Land, Water and Planning, coordinate a review of the *Land Act 1958* (Vic), in particular reviewing the purpose of the Act; the remedies available for contravention of the Act – including whether penalty units are appropriately substantial and deterring; the application of the Act; and the consistency of the Act with relevant policy issues.
2. With a view to ensuring that Parks Victoria is able to discharge its duties to control and monitor crown land, and with the aim of preventing harm and like deaths, **I recommend** that the Secretary of the Department of Environment, Land, Water and Planning, include a clause within standard licenses for reasonable vehicle access by DELWP or Parks Victoria staff through the licensee's freehold land adjacent to the licensed crown land for the purpose of managing that land, including reviewing and amending existing licenses.
3. With the aim of preventing harm and like deaths, and improving the public health and safety for campers on the relevant crown land, **I recommend** that Adam Fennessy the Secretary of the Department of Environment, Land, Water and Planning, consider whether Rick and Sheree Coulthard have conducted a recreational activity on crown land for profit without a tour operator licence, contrary to section 140H of the Land Act, and whether prosecution is warranted.

Pursuant to section 73(1A) of the *Coroners Act 2008*, I order that this Finding be published on the internet.

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

Mr Paul Keen

Ms Gillian Kalnins

Mr John Scott-Mackenzie, Devenish Lawyers, on behalf of Paul Keen

Kathleen Foley of Counsel

Mr John Wycherley, Moray and Agnew Lawyers on behalf of Parks Victoria

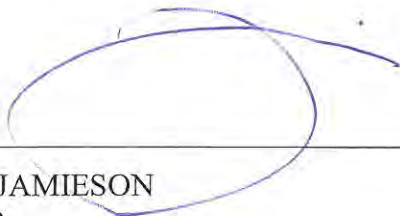
John Stevenson, Senior Legal Counsel, Parks Victoria

Mr Adam Fennessy, Secretary of the Department of Environment, Land, Water and Planning

Mr Neil Robertson, Principal Solicitor, Department of Environment, Land, Water and Planning

Leading Senior Constable Aaron Hardinge

Signature:



AUDREY JAMIESON
CORONER



Date: **10 October 2016**