

IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court Reference: COR 2010 000377

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 JACOB BEN ZUR

without holding an inquest:

find that the identity of the deceased was JACOB (YAKKOV) OVADIA BEN ZUR

born on 19 July 2008

and the death occurred on 26 January 2010

at 4 Wooton Grove, Caulfield North, Victoria 3161

from:

1a. **CONSISTENT WITH DROWNING**

Pursuant to section 67(2) of the **Coroners Act 2008**, I make findings with respect to **the following circumstances:**

1. Jacob (Yakkov) Ovadia Ben Zur was 1 year and 5 months old at the time of his death. He was the youngest of four children to Rani Shlomo Ben Zur and Leah Ben Zur, whose other children were Levy (aged 6 years), Ginger (aged 4 years) and Chezky (aged 3 years). The family lived in rented premises at 4 Wooton Grove, Caulfield North, having signed a lease for the premises on 15 August 2009.
2. The property at 4 Wooton Grove, Caulfield North, was owned by Arvi and Tzipi Silver. The house was a large double storey house with a disused in-ground swimming pool in the backyard.
3. On 26 January 2010, the three oldest children were playing in the rear yard. Mrs Ben Zur sent Jacob into the backyard to play with his siblings so that she could do some cleaning. Approximately 5-10 minutes later, she secured the rear door of the house open. Mrs Ben Zur

found Jacob in the swimming pool a short time later. She immediately removed him from the water and carried him to the front door of the premises and called her husband who was at the Synagogue. Mr Ben Zur returned home and commenced cardio pulmonary resuscitation (CPR) attempts on Jacob. The Hatzolah Jewish Ambulance service was also contacted with officers attending soon after to continue with CPR. Other members of Emergency Services also attended the Wootton Grove home. Jacob was transferred to the Royal Children's Hospital, where despite resuscitation attempts he was pronounced deceased.

Investigation

4. Dr Marian Wang, Forensic Pathologist at the Victorian Institute of Forensic Medicine, performed an external examination of Jacob's body. Dr Wang found no injuries of a type that might contribute to death and a skeletal survey showed no recent or remote bony fractures. A CT scan similarly showed no obvious internal injuries, but there was bilateral opacity (pulmonary oedema) in both lungs. Dr Wang reported to the coroner that a reasonable cause of death in the circumstances could be attributed to being consistent with drowning.
5. The Police investigation identified that the initial owners of the property in Caulfield North did not have a final inspection of the pool completed as per building regulations. The history of the construction of the pool is as follows:

02/09/1996

Building Permit with conditions was approved for a pool to be constructed at 4 Wootton Grove, Caulfield North issued by private building surveyors A. A. & A. S. Lorenzini. The Permit was issued to the previous owners of the property.

07/10/1996

Mr Lorenzini carries out pool steel inspection and approves the construction.

01/10/1997

Mr Lorenzini contacts pool builder to arrange final inspection.

17/10/2001

Glen Eira Council Statutory Building Officer (SBO) writes to Mr Lorenzini requesting him to finalise the permit.

19/11/2001

Glen Eira Council SBO again writes to Mr Lorenzini requesting to determine why a Final Certificate, Building Notice or Building Order has not been issued for the swimming pool at 4 Wooton Street.

20/11/2001

Mr Lorenzini again attempts to contact pool builder to arrange final inspection.

29/11/2001

Mr Lorenzini speaks with the property owner, who advises that they were upgrading barriers and would shortly arrange final inspection.

08/01/2002

Mr Lorenzini attempts to do final inspection but was unable to and leaves a message with house keeper.

18/01/2002

Mr Lorenzini attempts to contact owner (or builder) again unsuccessfully and leaves a message.

20/02/2002

Mr Lorenzini does not approve final inspection on the basis of additional conditions which he has not inspected. It is unknown how this is arranged.

21/02/2002

Mr Lorenzini again rings to arrange final inspection.

19/3/2002

Glen Eira Council SBO writes to Mr Lorenzini, noting "THIS IS THE THIRD FAX I HAVE SENT TO YOUR OFFICE", and informing Mr Lorenzini that unless he finalises the building permit or issues a notice/order, then Council will "alert the BCC that a pool is being used without a suitable barrier."¹

¹ The "BCC" refers to the Building Control Commission, the predecessor of the Building Commission.

25/10/2002

Glen Eira Council SBO again writes to Mr Lorenzini regarding final inspection of the pool at 4 Wootton Grove, Caulfield North, requesting him to "follow this up at your earliest convenience". No mention is made of referring the matter to the BCC (Building Commission).

01/11/2002

Mr Lorenzini attempts to ring for final inspection without success.

29/03/2006

Glen Eira Council responds to a request from ANSTAT² to supply property information certificate relevant to the property (the certificate discloses any permits approvals on the property etc). This certificate disclosed the building permit for the pool and that final inspection was not done.

12/07/2007

Glen Eira Council supplies another property information certificate to a request from ANSTAT. This certificate did not disclose the pool building permit as the original permit was issued more than ten years prior.

16/01/2008

Mr & Mrs Silver buy and take possession of 4 Wotton Grove, Caulfield North.

February 2009

New owners ring the Council to ask that the property be inspected for pool fencing compliance.

04/02/2009

Council building inspector attends at the property and with the owner inspects the pool for compliance. Owner advises that the house is to be a rental property. There is no indication that the building inspector was actioning, or aware of, the outstanding final permit for the swimming pool. Two minor areas for rectification were identified: a lack self-closure mechanism on the living room door that opens into the pool area, and a climbable side gate. A

² The ANSTAT Group of companies provide organisations with information services including Standards information and company searches. SAI Global is part of this group. <http://www.anstat.com.au/>

Building Order for Minor Works (BOMW) was posted to the owners with notice that a follow up inspection is listed for 12/03/2009.

12/03/2009

Council building inspector attends property to conduct final inspection. Property is vacant and he does not gain entry. Contact is made with the real estate agents and arrangements made to inspect the following day.

13/03/2009

Council building inspector again attends property to find no one in attendance.

16/03/2009

Council writes to the owners advising non-compliance with BOMW and therefore council would commence enforcement. Owners later ring council to advise that the works would be done and that she would contact council when the BOMW was complied with.

17/04/2009

Council building inspector again attended property to affect final inspection however found property vacant with no one in attendance. Council have no further involvement with the property until 26/01/2010 (on which date Jacob drowns).

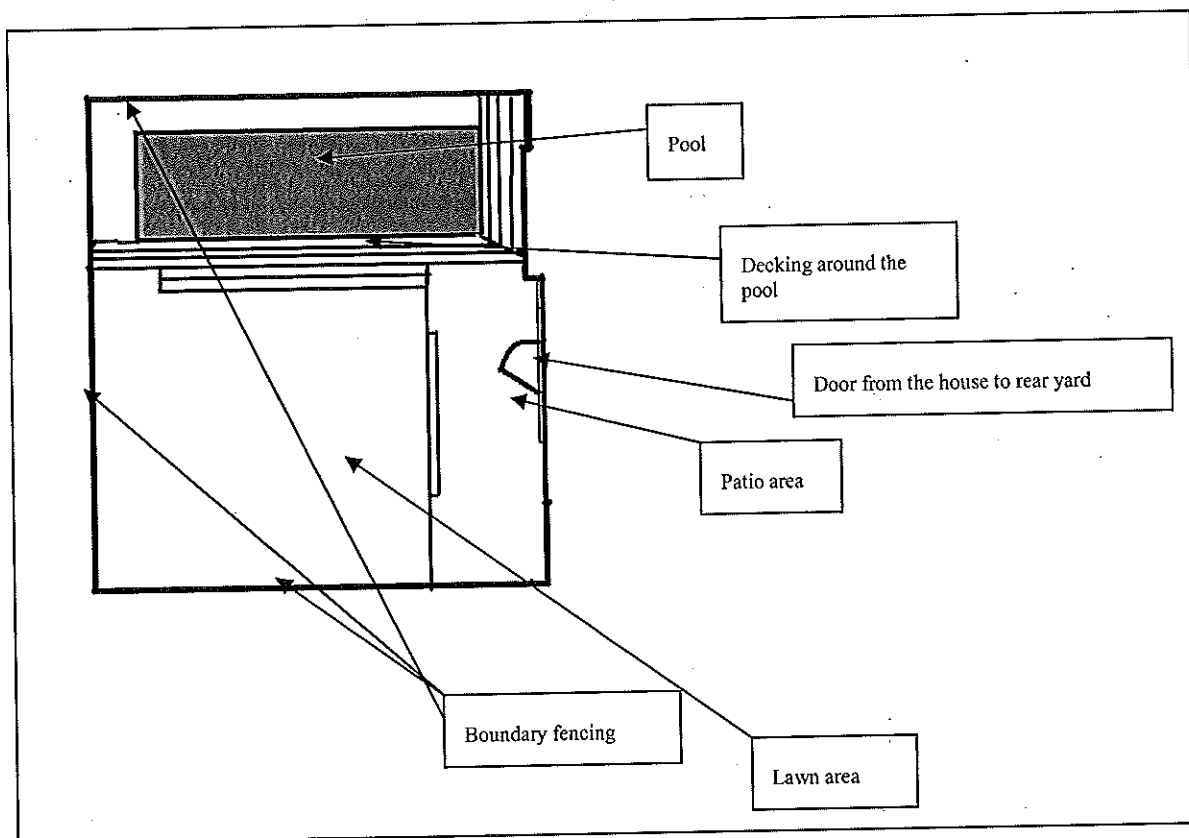
August 2009

The Ben Zur family rent and move into 4 Wootton Grove, Caulfield North. Soon after moving into the house Mr Ben Zur enquired about the construction of a pool fence from the Silvers.

August 2009

Mrs Silver advised him to obtain quotes and would consider them if they were not too expensive. Mr Ben Zur obtained two quotes, each being for \$5000. Mr Ben Zur considered the house unsafe for his children and, as the Silvers refused to assist, he used temporary cyclone fencing which he obtained from his employer and erected the fence with the assistance of his nephew. The wire fence placed by Mr Ben Zur had numerous gaps, particularly where the fence extended to the wooden paling fence. The end result was that the pool did not have separate surrounding safety fencing but relied on the boundary fence, together with the walls of the home in combination with a self-closing child proof door that lead into the rear garden.

Pool layout at 4 Wootton Grove Caulfield North (not to scale)



6. The Coroner's Prevention Unit (CPU)³, provided additional research information to support the investigation into Jacob's death, including:

Statistics:

- a. Nationally, 315 people drowned in Australia over the 2010-11 period.⁴ Of the twenty-eight children in the 0-4 age group who drowned, twelve (43%) occurred in a swimming pool. This was a reduction of four drownings from the previous five year average.

Other investigations:

- b. Deputy State Coroner West, is currently part heard in an Inquest into the death of Lauren Harris⁵, which is exploring many of the same issues as identified in Jacob's death, including that the property where the death occurred was a rental home, the pool was not

³ The Coroners Prevention Unit is a specialist service for coroners created to strengthen their prevention role and provide them with professional assistance on issues pertaining to public health and safety.

⁴ National Drowning Report 2011, Royal Life Saving Society – Australia.

⁵ Case 4363/2008.

adequately fenced and the tenants had made applications to the landlord to rectify the barriers.

Other enquiries:

- c. A 2010 Cochrane Review⁶ found that isolation fencing together with legislation and education was an effective method by which drowning in young children could be minimised. The study concluded:

“Isolation fencing with dynamic self-latching gates is an effective environmental intervention that reduces unintended access to pools and reduces the risk of drowning for preschool children. Legislation accompanied by educational campaigns should be implemented for all public, semi-private and private swimming pools. Legislation should require fencing of both newly constructed and existing pools and include enforcement provisions, in order to be effective.”⁷

Legislation:

- d. In Victoria, pools constructed on or after 8 April 1991 but before 1 May 2010 must meet the requirements of the Building Regulations 2006 and the 1993 Australian Standard 1926.1. AS1926.1 (1993) permitted boundary fencing and child-proof doorsets and windows as barriers; however it noted that this option was considered less acceptable as the door may be treated as a normal door rather than a barrier.

Pools and barriers constructed after 1 May 2010⁸, are required to be compliant with the Building Code of Australia, stipulating safety fencing on all four pool sides.

- e. The *Residential Tenancies Act 1997* defines the rights and duties of landlords and tenants in rented properties. Tenants can request that the landlord or agent carry out urgent repairs. An urgent repair is defined in the Act (Section 3: Definitions) as including a gas leak, broken toilet, or leaking roof, but does not prescribe a faulty or inadequate pool safety barrier.

Education:

- f. Consumer Affairs Victoria (CAV) is responsible for the administration of residential tenancies in Victoria. The booklet *“Renting a Home – A guide for tenants and landlords”*

⁶ Pool fencing for preventing drowning of children (review); The Cochrane Library 2010 Issue 9

⁷ Ibid, page 6

⁸ *Building Code of Australia 2010* published by the Australian Building Codes Board (ABCB) – may be purchased for a fee or viewed at ABCB offices.

is required to be provided to tenants by the landlord or agent at the time of occupancy. The booklet sets out the responsibilities of each party, and remedies for breaches. There are no references in the document to pool fencing, and it is not listed as an example of an urgent repair.

CONCLUSIONS AND COMMENTS

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

1. Two significant issues have been identified in the course of the investigation into the death of Jacob Ben Zur. In the first instance the issue of ongoing compliance with the old standards and legislation and secondly, whether certain configurations of properties are "*fit for purpose*" when they are either for rent or for sale.
2. While the swimming pool involved in Jacob's death never had a final building approval, it is unlikely to have changed the eventual outcome. When reviewed by a building surveyor after the drowning, the barrier configuration was found to be largely compliant with the requirements at the time, despite offering direct access to the pool to those in the backyard.
3. Perimeter fencing and child proof locks on external doors may be sufficient for a rental property where the tenants are for example university students; however, for a family with young children such a configuration would prove ineffective. Literature referred to concluded that isolation fencing, that is safety barrier fencing on all four sides, would provide a more effective drowning deterrent.
4. The circumstances of this incident involving Jacob Ben Zur are similar to others whereby a drowning occurred because of inadequate parental supervision on a background of ineffectual or insufficient barriers. In past coronial investigations⁹, coroners have often highlighted the primary importance of parental supervision, together with safety equipment such as barrier fencing. Supervision of children near a swimming pool by parents or guardians is critical in affecting a reduction in the number of drownings of young children in Australia. Coroners have also called for the identification of properties which contain pools and spas in order to maintain a register so that inspections can be initiated at regular intervals by regulatory agencies.¹⁰

⁹ See for example QLD 37/2003, 2944/2006 and WA 28/2001.

¹⁰ See for example Case No 4850/2006.

RECOMMENDATIONS

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

1. That Consumer Affairs Victoria seeks to amend its tenancy forms and publications available to tenants and landlords to include information about pool barrier fencing. Furthermore, landlords and their agents should be encouraged when making available properties to rent to families with young children, to strongly consider complying with the latest Australian Standard relating to pool fencing.
2. That the Building Commissioner and the Minister for Planning consider the contributing circumstances of this death, and determine whether amendments should be made to the existing swimming pool barrier requirements to reduce the risk of previously acceptable barrier configurations, particularly those which utilise self-closing doors, when properties are sold, or offered for lease.

FINDING

I accept and adopt the cause of death as identified by Dr Marian Wang and find that Jacob (Yakkov) Ovadia Ben Zur's death is consistent with drowning in a backyard, disused swimming pool at the rental property of 4 Wootton Grove, Caulfield North.

Pursuant to rule 64(3) of the Coroners Court Rules 2009, I order that the following be published on the internet.

I acknowledge the assistance of the Coroner's Prevention Unit in this matter.

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

Mr Ran Shlomo and Mrs Leah Ben Zur

The Hon Mr Michael O'Brien, Minister for Consumer Affairs, 121 Exhibition Street
Melbourne 3000

The Hon Mr Matthew Guy, Minister for Planning, Level 7, 1 Spring Street Melbourne 3000

Consumer Affairs Victoria, Mr Phil D'Adamo, Acting Executive Director, Consumer Affairs
Victoria, 121 Exhibition Street Melbourne Vic 3000

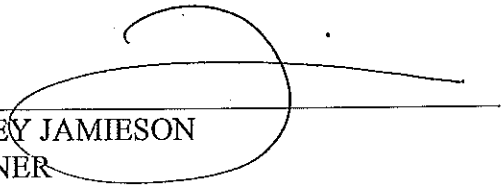
Real Estate Institute of Victoria, Mr Enzo Raimondo, Chief Executive Officer REIV, PO Box 443 Camberwell, Vic 3124

Mr Nigel Taylor, Chief Executive Officer, Life Saving Victoria. PO Box 353, South Melbourne VIC 3205

Swimming Pool And Spa Association Victoria, Mr Brendan Watkins, Chief Executive Officer SPASA Victoria Ltd, Unit 55, 41-49 Norcal Road Nunawading VIC 3131

Building Commission, Mr Michael Kefford, Building Commissioner, P.O. Box 536 Melbourne 3001

Signature:


AUDREY JAMIESON
CORONER
Date: 23 August 2012

