



MAGISTRATES COURT of TASMANIA

CORONIAL DIVISION



Record of Investigation into Death (Without Inquest)

*Coroners Act 1995
Coroners Rules 2006
Rule 11*

(These findings have been de-identified in relation to the name of the deceased, family, friends and others by direction of the Coroner pursuant to S.57(1)(c) of the Coroners Act 1995)

I, Simon Cooper, Coroner, having investigated the death of J

Find That:

- (a) The identity of the deceased is J;
- (b) J died in the circumstances described further in these reasons;
- (c) J died as a result of drowning in a swimming pool;
- (d) J died in April 2014 in Tasmania; and
- (e) J was born at Launceston in Tasmania and was aged four years at the time of his death.

Background:

J was one of three children of Ms C and Mr D. In addition to his sisters, C and M, J had three other half siblings. He was born in Launceston and described by his parents as a normal, happy and healthy young child. He was active, adventurous and inquisitive and a little boy who loved to play outdoors and climb.

J did not, however, like the water and was unable to swim. He reportedly even disliked getting into a bath.

Circumstances Surrounding the Death:

In late April 2014 Ms C left J and his sister M with his paternal grandparents Mr and Mrs E at their home. The children were dropped off at about 9.30am. Ms C was working that day and it was her normal practice to drop the children off at Mr and Mrs E's home.

Mr and Mrs E's home is in northern Tasmania. They bought the property in 1968. It has a pool in the backyard.

Sometime between 10.15 and 10.30am J told his grandparents he was going outside into the backyard to play with a ball. At about 11.00am Mr E went outside to look for J but was unable to find him. He went back inside and told Mrs E this. Both Mr and Mrs E then went back outside to look for him. They looked around the backyard and realised J was not there. It was assumed that J had gone out the side gate, which was latched but not locked. Mr and Mrs E therefore considered, not unreasonably in my view, that it was likely J had left the backyard that way.

Mr and Mrs E commenced to look for J. They thought that J may have gone to a nearby park, so Mr E drove his car there to look for him. He was unable to locate him. After more unsuccessful searching for J, Mrs E called the police and then Ms C.

Ms C arrived and started to also look for J. So did Mr S a neighbour of Mr and Mrs E.

Mr S went into the backyard with Mr E to look there again. Both noticed a tear in the pool cover. The tear was in the roof of the dome. Both men saw J face down in the pool. Mr E unlocked the padlocks on the pool cover and lifted it up. Mr S lent down and pulled J out of the pool onto the grass. As he turned him over he could see white froth coming from J's mouth. Mr S described J as being completely white and said that his "body was dead cold". He said he knew by looking at him that J was dead. Mr S picked J up, carried him into the house and laid him down on his back on a towel in the lounge room. By now an ambulance had been called. Mrs E commenced CPR on J. Constable Mark Williams who was on duty in the area attended the address and took over performing CPR on J. This he continued for a further eight to 10 minutes before officers of Ambulance Tasmania and his supervisor Sergeant McKinnell arrived. The ambulance officers commenced undertaking separate resuscitation related procedures while Constable Williams continued CPR.

Attempts to resuscitate J at the scene continued for at least another 25 minutes until a decision was taken by the ambulance officers to move him to the ambulance and transport him for further treatment at the Launceston General Hospital (LGH).

Unfortunately there was nothing that could be done for J and at 12.51pm he was pronounced dead by medical staff at the LGH.

His body was formally identified and then transported by mortuary ambulance to Hobart for the purpose of an autopsy. That autopsy was carried out at my direction by Dr Christopher Lawrence, State Forensic Pathologist. After autopsy Dr Lawrence expressed the opinion, which opinion I accept, that J died as a result of drowning.

Samples were taken from his body for toxicological examination. That analysis, subsequently carried out at the Forensic Science Service Tasmania's New Town laboratory, revealed no toxicology of any significance at all.

The circumstances of J's tragic death were the subject of an extensive investigation by officers of Tasmania Police on behalf of the Coroner. That investigation concentrated upon the pool in the backyard of Mr and Mrs E's home. The pool and its cover were closely examined. The pool is a rectangular shape, 3m x 7m in size, covered by an opaque plastic pool cover (solar dome), which was described as being of a concertina design.

An examination of the cover found a noticeable hole at the top of the cover roughly 400mm in diameter. That hole is more than big enough for J to have fallen through. The pool cover itself was equipped with three locking mechanisms on each end. From the investigation it is clear that those locks were in place and closed prior to J's body being found in the pool.

Importantly, footmarks of shoes the same size as worn by J were identified and photographed on the surface of the pool cover leading up to the area of the hole. Police forensic officers were able to affirmatively match those foot marks with a pair of black size 8 children's boots worn by J and which were found upon his feet when he was pulled from the pool.

In 1984 Mr and Mrs E had a pool installed in the back yard. The council building permit for the pool was issued on 16 February 1984. At first, after its installation, the pool was not covered at all but according to Mr E they purchased a floating solar blanket after a time and used that as a cover to essentially retain temperature and keep leaves out.

In the early 1990s Mr and Mrs E bought a solar dome cover. The solar dome cover was purchased from, and installed by, a landscaper who was also an agent for the company on the mainland of Australia who manufactured the solar domes. The landscaper, Mr Craig Bartlett, installed the dome.

Mr Bartlett was interviewed by police as part of this coronial investigation. He explained that he had been the Tasmanian agent for Solar Domes Australia for 30 years and that for the last six years he had owned Solar Domes Australia.

The evidence is that the solar dome over the Es' pool had been kept by them in good repair. It was locked with padlocks at each end. Whilst its presence may act as an impediment to a child entering the pool, it is not a safety device and is not a substitute for proper fencing. The evidence from Mr Bartlett is that the domes do deteriorate over time – as this one clearly did.

I note that at the time of installation there was no requirement for a pool in Tasmania to be fenced or secured in any way. Pool fencing regulatory requirements commenced in this State on 2 November 1994 when an Australian Standard was adopted from the Building Code of Australia. The requirement then introduced was that any pool constructed or installed after that date had to have, in most circumstances, a fence of 1.2 metres high. The exceptions related to pools with a

volume less than nine cubic metres of water or a depth of 300mm or less – neither of which would be of any applicability in this case as the pool in question is considerably greater in volume and depth. With some minor modifications that standard has continued to apply ever since.

However, no backyard pool constructed or installed before 2 November 1994 was required to be so fenced. That safety requirement has not altered in 20 years. The evidence is that no inspections are carried out at all by any authority of any pool for safety or any other reason in Tasmania whether a pool was installed before or after 2 November 1994. There is little doubt in my mind that had this pool been fenced then J would not have drowned in the circumstances in which he did.

I find that J climbed to the top of the pool cover and fell through it into the pool where he drowned. He was unable to swim. The pool in which he drowned was unfenced but the investigation reveals that there was, and is, no requirement that it be fenced. It was covered with a solar dome which is not a safety device and not a substitute for properly fencing a pool.

Comments and Recommendations:

As should be clear from the foregoing I am of the view that had the pool in the backyard at Mr and Mrs Es' residence been fenced then J would not have drowned.

The fact that there are no statutory or regulatory requirements to fence any pool constructed or installed before 2 November 1994 is not a position that should, in my view, be allowed to continue. As a consequence I recommend, pursuant to section 28 (2) of the *Coroners Act* 1995 that immediate steps be taken by the appropriate authorities to enact a regulatory regime to ensure all domestic pools, irrespective of when they were constructed or installed, comply with the applicable Australian Standard.

I warn that a solar dome is not a substitute for a properly constructed safety fence.

I commend the efforts of Police and Ambulance officers at the scene and consider Constable Mark Williams to be worthy of particular recognition.

In conclusion, I wish to convey my sincere condolences to J's family on the tragic loss of a much loved little boy.

DATED 1 October 2015 at Hobart in the State of Tasmania

Simon Cooper
CORONER