MAGISTRATES COURT of TASMANIA

CORONIAL DIVISION

Ruling and reasons

Inquest into the deaths of Craig Nigel Gleeson, Alistair Michael Lucas and Michael George Welsh

Counsel

Mr S Nicholson – Counsel Assisting the Coroner

Mr N Sweeney and Mr L Taylor – Barminco Ltd

Mr C Gunson SC – Copper Mines of Tasmania Pty Ltd

Introduction

1. On 9 December 2013 Mr Gleeson and Mr Lucas died in the course of their work at the Mount Lyell Mine, Queenstown. They were employed at the relevant time by Copper Mines of Tasmania Pty Ltd. A few weeks later, on 17 January 2014, Mr Welsh died whilst working at the same mine. He was employed by Barminco Ltd at the time of his death.

2. Charges were laid against Copper Mines of Tasmania arising out of each of the deaths. All of the proceedings in relation to those charges are at an end.

3. Section 24 (1)(ea) of the *Coroners Act* 1995 makes the holding of an inquest mandatory where a death occurs at a person's place of work or as a result of an accident or injury that occurred at a person's place of work. The provision contains an exception with respect to death by natural causes, which has no applicability to any of the three cases. Section 24 (1)(ea) is also subject to section 26A of the Act. None of the next of kin of the deceased have made a request in accordance with that section that no inquest be held.

4. In addition the delegate of the Chief Magistrate made a direction pursuant to section 50 of the Act that each death is to be investigated at one inquest.

5. Accordingly the matter has been the subject of several Case Management Conferences with a view to facilitating the conduct on an inquest into the deaths of Mr Gleeson, Mr Lucas and Mr Welsh.

The issue

6. However before any case management conference had been conducted, and before any decision had been made as to which witnesses would be called, Copper Mines of Tasmania raised an objection to the admissibility of the evidence of Mr John Webber.

7. Copper Mines of Tasmania submitted as follows:

> "… at the hearing of the criminal proceedings against [Copper Mines of Tasmania] relating to the [death of Mr Welsh] [Copper Mines of Tasmania] identified a number of significant deficiencies in the reliability of the complainant's expert witness, John Webber, and, ultimately, the court ruled his opinion evidence inadmissible. The deficiencies included, among other things, the witness' [sic] lack of independence and his admitted lack of specialist knowledge in the areas on which he intended to opine.
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> While it is accepted that the Coroner is not, strictly speaking, bound by the *Evidence Act* 2001, to the extent that any reliance is sought to be placed on the evidence of Mr Webber at an inquest, [Copper Mines of Tasmania] intends to seek that Mr Webber's evidence not be admitted for the same reasons articulated by Magistrate Webster in the proceedings against [Copper Mines of Tasmania]".

8. It is convenient to deal with this "objection" before the inquest commences. It of course only arises for determination if I decide that Mr Webber should be called as a witness. The question as to whether he ought to be called depends on what he has to say, and whether it is relevant in a legal sense.

9. The starting point is to note, as Freckelton and Ransom did in "Death Investigation and the Coroner's Inquest (Oxford University Press, Melbourne, 2006)" at 570, that 'coroners are not bound to observe the rules of procedure and evidence which apply in other courts of record…[which] means that objections as to admissibility based on…statutory rules of evidence are not particularly helpful at inquest'. It should also be noted that common law rules of evidence have no applicability (see section 4 of the *Coroners Act* 1995).

The statutory position

10. The question is whether the evidence of Mr Webber should be admitted at the inquest. The answer to that question will be found by looking at the applicable legislation. In this regard Copper Mines of Tasmania submit that a coroner is “not strictly speaking” bound by the *Evidence Act* 2001. This is not quite accurate. The relevant statutory provision in the *Coroners Act* 1995 – section 51 – is as follows:

> “A coroner holding an inquest is not bound by the rules of evidence and may be informed and conduct an inquest in any manner the coroner reasonably thinks fit.”

11. In *White v FAI* A29/1991 Zeeman J observed of a section in the *Workers Rehabilitation and Compensation Act* 1988, practically speaking indistinguishable from section 51, that such a provision gave "considerable latitude to (the workers compensation commissioner) in determining proceedings before him".

12. Wright J considered the same section in *Connelly v. P and O Resorts Pty Ltd T/A Cradle Mount Lodge* [1996] TASSC 132. His Honour, at paragraph 20 of his judgement, said that the provision did not give the workers compensation tribunal “carte blanche to act in a completely unfettered manner …[and that]… at the very least the Tribunal must have before it evidence which is relevant to the issue in dispute. Material which is not logically capable of bearing upon that issue cannot be regarded as relevant evidence.” His Honour went on to say at paragraph 22:

> “Nonetheless "evidence" is a very broad concept. Cross on Evidence, 5 ed, at 1 says, "the evidence of a fact is that which tends to prove it, something which may satisfy an enquirer that the fact exists." This is a definition consistent with the judgment of Isaacs and Gavan Duffy JJ in *Cheney v Spooner*. Hearsay evidence would be receivable by the Tribunal. Whilst sometimes cogent and reliable, hearsay is frequently of little, if any, weight, but that is not the determinative factor. ***So long as the material relied upon satisfies the test of being evidence rather than a mere supposition, guess or intuitive hypothesis, it may be received by the Tribunal***.”
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> [emphasis added]

13. As this passage makes clear, weight is not a determinative factor in deciding whether to receive evidence or indeed if something is properly categorised as evidence (although of course the weight to be afforded to any evidence will always be a relevant

consideration in determining what use is to be made of it). To be received at an inquest it seems to me that material or evidence must be capable in some way of assisting the coroner to answer one of the questions posed by section 28 (1) or, in appropriate circumstances, making a recommendation or comment pursuant to section 28 (2) or (3). Providing material is something more than "mere supposition, guess or intuitive hypothesis" and in some way bears upon the subject matter of an inquest it may be received. Conversely, if material is no more than this then logic dictates it is not evidence and thus should not be received.

Mr Webber's evidence

14. The material to which objection seems to be taken is that contained in a 50 page (plus annexes) document prepared by a Mr John Webber entitled "Overview Report of the CMT Mount Lyell Fatal Mudrush Incident Investigation 17 January 2014 Privileged and Confidential information for the Coroner and the Director of Public Prosecution". I note that it is not immediately apparent why the document is entitled, *inter alia*, "Confidential information for the Coroner" given that it was commissioned by Worksafe Tasmania and only came into the possession of the coroners division when Worksafe complied with an order made under section 59 of the Act to provide all information in its possession to the coroner to assist in relation to the investigation of each of the three deaths. Nothing seems to turn on that point, although doubtless, the inquest would benefit from some explanation as to the rationale for the apparent claim of privilege with respect to Court.

15. The report only deals with Mr Welsh's death. It is technical, highly so, in its content. It apparently deals with what the author perceives to have been the potential for a mudrush event at the relevant time at the Mount Lyell mine and the procedures adopted to militate against that risk. Nothing in the report indicates the qualification, background or experience of Mr Webber but I have subsequently been provided with a copy of his *curriculum vitae*. I have had regard to that document.

Conclusion

15. On the face of it, Mr Webber's report, read with his *curriculum vitae*, contains material which may assist me in answering the question I am required to answer by section 28 (1)(b) of the *Coroners Act* 1995. On the face of it, it is a report of someone qualified to express the various opinions contained in it as to the cause of the mudrush which

caused Mr Welsh's death. It appears to be more than mere supposition, guess or intuitive hypothesis. As such, I consider that I may be assisted by receiving it. The argument that because Mr Webber's opinion evidence was ruled inadmissible in criminal proceedings it follows that it should not be received at an inquest or should be excluded for the same reasons expressed by the learned magistrate in those proceedings is, in my respectful view, misconceived, based on a misunderstanding of the inquisitorial nature of these proceedings, contrary to principal, and unsupported by any authority. It must be rejected.

16. Mr Webber will be called to give evidence and the 'objection' raised by Copper Mines of Tasmania to that course is not made out.

1 February 2018

Simon Cooper
Coroner