

## CORONERS COURT OF THE AUSTRALIAN CAPITAL TERRITORY

**Case Title:** AN INQUEST INTO THE DEATH OF TANIA LOUISE KLEMKE

**Citation:** [2018] ACTCD 18

**Date of Findings:** 29 November 2018

**Before:** Coroner K. M. Fryar

**Decision:**

1. Tania Louise Klemke died on 25 October 2017 at 41 Molesworth Street, Watson, in the Australian Capital Territory;
2. The manner and cause of death of Ms Klemke are sufficiently disclosed and a hearing is unnecessary;
3. The manner of Ms Klemke's death was from multiple significant injuries with associated exsanguination caused by a determined attack by her own large dog;
4. I find that a matter of public safety is found to arise in connection with this inquest and my relevant comments are contained in my findings below.

**Legislation Cited:** *Coroners Act 1997* (ACT)  
*Family Violence Act 2016* (ACT) s 149, 150  
*Domestic Animals Act 2000* (ACT)  
*Domestic Animals (Dangerous Dogs) Legislation Amendment Act 2017* (ACT)  
*Domestic Animals Legislation Amendment Act 2018* (ACT)

**Cases Cited:** *R v Coroner Maria Doogan; ex parte Lucas-Smith* [2005] ACTSC 74; 158 ACTR 1

**File Number:** CD 240 of 2017

1. Tania Louise Klemke was a 46 year old woman at the time of her death. She died at her residence in Watson in the aftermath of an attack by her dog Simba, described as a "staffy-cross-pitbull".
2. In the circumstances of her death I directed the preparation of a brief of evidence by investigating Police in this matter. I have also been assisted by the autopsy report prepared by Professor Johan Duflou, and the expert report prepared by Dr James Crosby, an international dog behaviour expert. For the reasons set out following, after considering all the information before me, I am satisfied that the manner and cause of

Ms Klemke's death are sufficiently disclosed and a hearing in relation to the inquest is unnecessary. I do note that Ms Klemke's family are content with that approach.

### **Facts in relation to death**

3. At about 3:20am on 25 October 2017, Douglas Fry was riding past 41 Molesworth Street, Watson, the residence of Tania Klemke. After the incident, Mr Fry told Police the following information:
  - a. He had been to Ms Klemke's house on a number of previous occasions and had met Simba before.
  - b. At about 7:58pm on 24 October 2017, Mr Fry and Ms Klemke had had a short conversation over iMessage in which Ms Klemke indicated that she was home with Simba.
  - c. When riding past Ms Klemke's house in the early hours of 25 October 2017 Mr Fry saw a light on, so he decided to knock on the front door. Ms Klemke opened the front door. The screen door was locked and Simba came to the front door also. Simba was behaving aggressively, barking and jumping up on the door. Ms Klemke asked Mr Fry to wait at the front door while she took Simba into the laundry and shut Simba in there.
  - d. Ms Klemke returned to the front door and let Mr Fry in with his bicycle into the hallway. She then let Simba out of the laundry. Simba immediately charged at Mr Fry and jumped up and bit him on the right thigh. Mr Fry tried to use his bicycle to push Simba away, but Mr Fry fell backwards and Simba jumped on top of him. Ms Klemke then grabbed Simba and pulled the dog backwards off Mr Fry, telling Mr Fry to get into the laundry and lock himself in.
  - e. Mr Fry locked himself in the laundry and pushed the washing machine in front of the door. He heard Simba barking and jumping against and hitting the door. He heard Ms Klemke yelling at the dog and she asked him to get help. He started to scream. Eventually Simba stopped barking and the events in the house became quiet, so he assumed that Ms Klemke had managed to escape the residence.
4. Multiple neighbours heard Mr Fry's screams and called Police at about 3:40am. Police attended the residence at about 3:50am. They discovered Mr Fry with a dog bite injury in the laundry, and Ms Klemke laying unresponsive on a mattress on the floor in the lounge room with Simba standing over her. Simba was displaying protective behaviours towards Ms Klemke and due to his level of aggression Police were unable to check her welfare. At first, Police OC sprayed Simba in an attempt to calm him and remove him from Ms Klemke's side, but that was ineffective. Police then tasered Simba, and this caused Simba to move slightly away from Ms Klemke and Police used shields in an attempt to contain Simba. Simba then began to recover from the effects

of the taser, and the officer in charge formed the view that Simba was an imminent threat to Police particularly given that they had no safe manner of containing Simba for an extended period, and Simba's location inhibited their assistance of Ms Klemke. An officer then shot Simba dead at about 4:00am so that Police could attempt resuscitation of Ms Klemke without further attack or distraction by Simba.

5. ACTAS officers were called by Police and attended the residence shortly thereafter, at about 4:02am. They found Ms Klemke unresponsive with extensive wounds to her leg and arm, and significant blood loss. Despite best efforts, the ambulance officers determined that Ms Klemke could not be resuscitated, and efforts were ceased at 4:11am.
6. An examination of the scene by Police identified that the laundry door had been significantly damaged by scratches and/or biting, and debris from the door lay outside in the hallway.
7. Mr Fry was conveyed to hospital for treatment. He was unaware of Ms Klemke's death until advised by ACTAS officers at the scene and the news caused Mr Fry significant distress. He initially left hospital after a few days but returned shortly thereafter when the dog bite wound became infected.
8. Professor Johan Duflou conducted the post mortem examination of Ms Klemke at my direction. Dr James Crosby also attended the post mortem examination. The key findings from that examination were as follows:
  - (a) *There were extensive injuries to Ms Klemke's body, typical of being the result of multiple bites from a large dog. These injuries were predominantly to the arms and legs, and there was associated damage to major blood vessels with resulting exsanguination. No injuries were identified on the body which were not obviously the result of a dog attack.*
  - (b) *Ms Klemke also had some smoking related lung disease and hepatitis damage to her liver.*
  - (c) *Toxicological testing revealed the presence of significant levels of methamphetamine and its likely breakdown product amphetamine in blood. Although the levels of these substances in Ms Klemke's blood were at levels recognised in other persons to have resulted in fatal overdose, in this case Ms Klemke's injuries were such that the drug played no significant role in causing her death. However, it is entirely possible that Ms Klemke may have been intoxicated by the effects of the drug at the time of the events in question.*
9. Simba was also the subject of a necropsy undertaken by local veterinarians, with the assistance of Dr Crosby. Simba was described by the veterinarians as an entire Staffordshire Terrier Cross, brown in colour. Other than a possible urinary tract infection, Simba appeared to have been in good health prior to death, and no injury or other physical cause for his aggression was identified. No drugs were identified in

Simba's system after death. Evidence was located supporting that Simba had attacked Ms Klemke in a very vicious and aggressive manner. Dr Crosby noted that the wounds observed on Ms Klemke were consistent with the dimensions of Simba's bite.

10. Dr Crosby's professional opinions set out in his report were, inter alia, "(1) ...the wounds to Ms Klemke are fully consistent with a determined attack by a large dog; (2) the injuries are consistent with deep , full engagement bite behaviour that includes forceful grip, tearing, shaking of the victim, avulsion of tissue, and biting and pulling in opposition to significant opposing forces: biting a person that is attempting to defend themselves by resisting the attack of the dog; (3) ... the measurement [of the inter-canine distance] ... is consistent ... with the measured dentition of the dog Simba; (4) the behaviour of Simba towards Fry is consistent with the history provided of Simba protecting Ms Klemke from two past attacks on her person at the home; (5) redirection of defensive or aggressive behaviour by a dog is not uncommon, particularly in dogs that have shown strong defensive behaviour in the past; (6) based on the testimony of Fry, the physical evidence documented at the scene, and the injuries to Klemke, it is my professional opinion ... that the dog Simba inflicted the fatal wounds on Ms Klemke by redirecting his defensive aggression from Fry to Klemke. ... The attack by the dog Simba was most likely accidental, and was the result of behavioural redirection of a dog in an extremely high state of arousal ... The extremely high state of arousal of the dog is consistent with prior reports of defensive aggression displayed by Simba."
11. I should say at this stage that there is no evidence before me to indicate that Mr Fry had at any stage presented as a threat to Ms Klemke, nor that he had deliberately provoked Simba's reaction that night in any way. I find that Mr Fry did not cause or contribute to the death of Ms Klemke.
12. Noting all of the above matters, I consider the events immediately prior to Ms Klemke's death are well established and that there is no more evidence likely to be discoverable by way of a hearing that would further assist me in the task I am required by law to undertake. Accordingly I make formal findings as detailed above.

#### **Facts in relation to Simba**

13. Prior to the incident which resulted in Ms Klemke's death, it is clear that Simba was known by Ms Klemke and others to be a potentially dangerous dog.
14. Interviews by Police after the incident with Ms Klemke's neighbours obtained evidence to the following effect:
  - a. Simba was a very strong dog;
  - b. Ms Klemke had told neighbours that Simba could open doors;
  - c. Simba was sometimes vicious (described by one person as "10 out of 10 vicious"), and multiple neighbours reported being concerned for their children (although others reported feeling comfortable in Simba's presence);

- d. Simba was known to regularly break into neighbouring yards, and had broken neighbouring fences;
  - e. Simba was under stimulated as he never got walked;
  - f. Simba would often be heard barking from inside the house; and
  - g. Ms Klemke had told neighbours that Simba had previously attacked her ex-boyfriend to protect her.
15. Police attended Ms Klemke's residence on 29 August 2017 in response to this latter incident. In a statement Ms Klemke made to Police later that same day, she said that her ex-partner came to her house that morning, without her permission, to return some property to her. Ms Klemke stated that he became physically aggressive and kicked a door. She said that kicking the door startled Simba, and he bit the ex-partner. There was then a fracas in which Simba became protective of Ms Klemke and inflicted more injury. Simba was only deterred after Ms Klemke was able to restrain him, but a neighbour first had to hit Simba in the head with a baseball bat and attempt to distract him with meat. After hearing the concerns of neighbours about this incident Police made enquiries with Domestic Animal Services (DAS) about having Simba declared a dangerous dog under the law as it then stood.
16. DAS officers arrived at the premises shortly after Police and extracted Simba from the property without incident. They observed that Simba's head and legs had been seriously injured in the attack, and he was urinating blood. Simba was taken to a vet to receive treatment but, at a later stage, was returned back to Ms Klemke who indicated that she did not want Simba to be put down. The DAS officer involved decided that Simba would not be put down because the incident took place on private property and Simba was provoked and was protecting Ms Klemke.
17. Ms Klemke's son told Police after her death that Ms Klemke and Simba had a great relationship and Simba was very protective of Ms Klemke. The family were shocked that Simba would in any way be aggressive towards Ms Klemke. However, Ms Klemke's son also advised Police that she had been the subject of an aggravated burglary in March 2017 in which she had been assaulted and Simba had had his ear cut off.
18. DAS records show that prior to Ms Klemke's death, Simba had come to their attention on a number of previous occasions. Relevantly:
- a. On 18 March 2017 DAS were requested to assist Police to execute a warrant at the premises, due to Simba's aggressiveness.
  - b. On 8 July 2017 DAS were advised that Simba was roaming the streets. Officers attended and observed Simba being let into a house. A calling card was left by the officers, but no follow-up action was taken due to, the record states, "being short staffed".

- c. On 31 July 2017 DAS were advised that Simba was roaming the streets without a collar, but no follow up action appears to have been taken in this case.
  - d. On 2 August 2017 DAS were again advised that Simba was roaming the streets, but further that this was a recurring issue and Simba was following neighbours and barking at small children. Although DAS attended the scene they did not locate Simba. Again, no follow-up action was taken due to, the record states, “lack of staff”.
19. I draw a number of conclusions from the totality of this evidence. Firstly, Ms Klemke was well aware that Simba was a dangerous dog capable of causing injury to herself and others. Secondly, knowing that fact Ms Klemke used Simba’s dangerousness in a protective and deterrent way. Thirdly, that once Simba was agitated and acting aggressively, it was very difficult to deter or redirect Simba’s attack.

**Matter of public safety**

20. Subsection 52(4) of the *Coroners Act 1997* (ACT) places an obligation on me as follows:

*The coroner, in the coroner’s findings—*

(a) *must—*

(i) *state whether a matter of public safety is found to arise in connection with the inquest or inquiry; and*

(ii) *if a matter of public safety is found to arise—comment on the matter; and*

(b) *may comment on any matter about the administration of justice connected with the inquest or inquiry.*

21. In the context of the facts of this inquest I am satisfied on the balance of probabilities that a matter of public safety is found to arise in relation to the operation of the legislative framework for regulating dangerous dogs. However my consideration has been largely overtaken by events.
22. The week after Ms Klemke’s death, the ACT Legislative Assembly passed changes to the *Domestic Animals Act 2000* (ACT) and the *Domestic Animals Regulation 2001* (ACT). The *Domestic Animals (Dangerous Dogs) Legislation Amendment Act 2017* (ACT) was said by the ACT Government to “provide even stronger protections for public safety and animal welfare”, ensuring “that the ACT comes in to line with best practice in other jurisdictions in Australia and around the world and that there is a holistic approach to addressing dangerous dogs and potentially dangerous dogs” (taken from the Government’s Supplementary Explanatory Statement to the Bill, dated 29 November 2017, p2). The legislation was, as I understand, crafted in response to a number of concerns in relation to dangerous dogs, and other dog attacks, not just the circumstances surrounding Ms Klemke’s death. Relevant to the events of Ms Klemke’s

death, the amendments to the *Domestic Animals Act 2000* (ACT) effective from 14 December 2017 (according to the Supplementary Explanatory Statement):

- (a) introduce three new 'classes' of responding to a dog attack with proportionate powers to act by the Registrar;
- (b) permit the Registrar to destroy a dog in extreme and serious circumstances with reduced appeal timeframes so that action can be taken promptly and without delay;
- (c) result in a three-tiered system for managing dogs with the introduction of a 'Dog Control Order', along with existing nuisance notices and dangerous dog licences, depending on the type of behaviour exhibited by the dog and the owner and the risk to the community;
- (d) introduce a general public safety consideration in (a) how the Registrar exercises discretion in dealing with dogs that could be dangerous, and (b) in making important decisions about dogs and community safety;
- (e) impose greater restrictions on keepers of dangerous dogs with public safety being the paramount consideration; and
- (f) increase enforcement powers and give authorised officers an ability to seize and act on nuisance, harassing or dangerous dogs in a greater range of circumstances, particularly where they pose a potential or actual threat to public safety.

23. Additional changes to the dangerous dogs regulatory framework were also made by the *Domestic Animals Legislation Amendment Act 2018* (ACT), effective 24 May 2018. According to the Government's Revised Explanatory Statement to the Bill, dated 10 April 2018, p2-3, the Act:

- (a) harmonises the infringement notice framework under the Act to bring it in to line with current policy and ensure authorised officers can effectively administer fines by stating or reframing offences as strict liability or not;
- (b) makes other minor amendments following the dangerous dog amendments, including:
  - providing a definition of 'breeding' in the legislation, which includes the full process of breeding from insemination to birth and weaning, in line with best-practice;
  - allowing for a 'Dog Control Order' to be placed on a carer for a dog as well as the keeper for a dog. For example where the keeper is temporarily overseas or where a dog attacks a neighbour's chickens but can be suitably located temporarily with a carer while the keeper finds alternate housing;

- allowing for a home impoundment direction to be placed on a carer for a dog as well as the keeper for a dog. For example where the keeper has moved overseas and the carer can appropriately and safely keep the dog at home while ownership of the dog is transferred to the carer;
- allowing for a dog to be impounded on Territory premises or another location approved by the Registrar. Currently a dog can only be impounded on Territory premises. The amendments would mean that if Domestic Animal Services (DAS) undertakes a targeted compliance program to stamp out illegal breeding it can temporarily impound dogs at a location other than the pound, for example with an animal rescue facility. This would alleviate pressure on the pound and also mean that breeding female dogs and puppies can be placed in more appropriate facilities. Studies have found the facilities at pounds are not ideal for the welfare of puppies; and
- other minor technical amendments.

24. I understand also further changes are presently under consideration by the Legislative Assembly: see the *Domestic Animals (Dangerous Dogs) Legislation Amendment Bill 2018* (ACT) put forward by Ms Lawder MLA, [https://www.legislation.act.gov.au/b/db\\_59106/](https://www.legislation.act.gov.au/b/db_59106/).
25. I take the legislative actions by Government, and the timing of them, as conceding that the previous legislative framework in relation to dangerous dogs was inadequate and did not sufficiently protect public safety.
26. I note that on the information available to them at the time, and under the legislative regime as it then stood, in my opinion DAS officers acted appropriately in their engagement with Simba and Ms Klemke. More of course could have been done, but this does not mean that what was done was inadequate or falls so far below what would have been reasonable that adverse comment or finding is warranted. I certainly do not make any finding that their prior actions in any way contributed to Ms Klemke's death.
27. I further note by way of comment my concern that for two of the prior incidents DAS was aware of in relation to Simba, no follow up appears to have occurred due to resourcing issues. In a "*Statement on the management of dangerous dogs in Canberra*" released on 1 November 2017 Meegan Fitzharris MLA, relevantly then the Minister for City Services, said: "*The ACT Government has already announced several measures to protect the community, including doubling the number of animal rangers and introduce new roles into (DAS)*": see [https://www.cmtedd.act.gov.au/open\\_government/inform/act\\_government\\_media\\_releases/meegan-fitzharris-mla-media-releases/2017/statement-on-the-management-of-dangerous-dogs-in-canberra](https://www.cmtedd.act.gov.au/open_government/inform/act_government_media_releases/meegan-fitzharris-mla-media-releases/2017/statement-on-the-management-of-dangerous-dogs-in-canberra). In light of that statement I think no further comment or recommendation by me is warranted.

28. I then ask myself whether further enquiry by me on this matter is warranted. I remind myself of the guidance from the ACT Supreme Court in *R v Coroner Maria Doogan; ex parte Lucas-Smith* [2005] ACTSC 74; 158 ACTR 1 (*'R v Coroner Doogan'*) and specifically the passage at [15] as follows:

*The [Coroners] Act is generally concerned with the resolution of relatively straightforward questions such as "what was the cause of this death?" or "what caused this fire?" It does not provide a general mechanism for an open ended inquiry into the merits of government policy, the performance of government agencies or private institutions, or the conduct of individuals, even if apparently related in some way to the circumstances in which the death or fire occurred.*

29. Their Honours go on at [28] to warn coroners against the conduct of 'a wide-ranging inquiry akin to that of a Royal Commission' and of particular relevance to this matter, provide an example at [31] of the limits of enquiry:

*... a coroner might well hear evidence suggesting that a cyclist's death had been caused not merely by a collision with a motor vehicle, but also by the antecedent conduct of the driver of that vehicle in failing to stop at a stop sign adjacent to an intersection. However, the limited jurisdiction conferred ... would not authorise the coroner to inquire into any perceived failures in relation to general policy relating to the siting of stop signs or the enforcement of traffic regulations. The particular siting and design of the relevant intersection may be a different matter. The application of the common sense test of causation will normally exclude a quest to apportion blame or a wide-ranging investigation into antecedent policies and practices.*

30. I consider that in the circumstances of this matter there is no necessity for me to enquire further in relation to the identified matter of public safety. The changes to the *Domestic Animals Act 2000* (ACT) have only been effective for a short period and should be given some time in a real world setting for their operation to be tested.

### **Conclusion**

31. This matter is of course a very sad and concerning one for all involved. I wish to acknowledge the first responders, the Police Officers who attended and dealt with Simba while endeavouring to assist Ms Klemke, and then the Ambulance Officers who arrived and attempted resuscitation. They were confronted with the most difficult situation, but performed their jobs with the utmost professionalism. The ACT Community is well served by them and their fellow officers.
32. I thank Senior Constable Treloar for a thorough investigation and brief of evidence. Also in that respect I acknowledge the willingness of DAS to assist my investigation. I place on record my appreciation, as ever, of the expertise and thoroughness of Professor Duflou, and in this case I am also very grateful for the expertise and willing contribution made by Dr Crosby. I must also mention my gratitude for the continued

assistance given to me by the AFP Coronial Team, and the staff in the Coronial Unit of the ACT Magistrates Court, in particular Counsel Assisting Sarah Baker-Goldsmith. Without their constant support and professionalism my job as Coroner would be that much more difficult.

33. I again convey my condolences to Tania's family and friends.

I certify that the preceding thirty-three [33] numbered paragraphs are a true copy of the Findings of Coroner K. M. Fryar

Associate: Emma Bayliss

Date: 29 November 2018